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SFA**BILL ANALYSIS**

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House Bill 4669 (as passed by the House)
Sponsor: Representative Mike Kowall
House Committee: Criminal Law and Corrections
Senate Committee: Judiciary

Date Completed: 5-27-99

CONTENT

The bill would amend the Code of Criminal Procedure to exempt a youth correctional facility operated by the Department of Corrections (DOC) or a private vendor from the Code's restrictions on strip searches, and on body cavity searches of a person lodged in a State correctional facility under the jurisdiction of the DOC. The bill also specifies that the DOC's current exemption from those restrictions would apply to DOC facilities that housed prisoners.

Strip Searches

The Code prohibits the strip search of a person arrested or detained for a misdemeanor or an offense punishable only by a civil fine except under specified circumstances; requires that a strip search be performed by a person of the same sex as the person being searched and in a place that prevents observation by a person not conducting or necessary to assist with the search; requires that an arresting officer prepare a report of the search; and makes it a misdemeanor for a law enforcement officer, employee of a law enforcement agency, or chief administrative officer or employee of a juvenile detention facility to conduct or authorize a strip search in violation of the Code's strip search provisions.

Those provisions do not apply, however, to the strip search of a person lodged in a detention facility by an order of a court or in a State correctional facility under the jurisdiction of the DOC. The bill specifies that the exemption for a DOC facility would apply to a facility housing prisoners and would include a youth correctional facility operated by the Department or a private vendor.

Body Cavity Searches

The Code prohibits the search of a body cavity without a valid search warrant, except as otherwise provided. That search warrant requirement does not apply to a body cavity search of a person serving a sentence for a criminal offense in a detention facility or a State correctional facility under the jurisdiction of the DOC. The bill specifies that the exemption for a DOC facility would apply to a facility housing prisoners and would include a youth correctional facility operated by the Department or a private vendor.

Under the Code, the search warrant requirement also does not apply to a body cavity search of either of the following:

- A person who, as a result of a court order, is lodged in an inpatient facility operated by or under contract with the Department of Community Health or a county community mental health board, if the person is self-abusive and the search is necessary for his or her protection.
- A person who, as the result of a dispositional order entered after adjudication by the juvenile division of probate court, before January 1, 1998, or by the family division of circuit court, on or after January 1, 1998, is residing in a juvenile detention facility.

If any of the circumstances allowing a body cavity search without a search warrant applies, a body cavity search may not be conducted unless the person conducting the search obtains prior written authorization from the chief administrative officer of the facility or the administrative officer's designee.

The Code requires that a body cavity search be conducted by a licensed physician or a physician's assistant, licensed practical nurse, or registered professional nurse acting with the approval of a licensed physician. If a body cavity search is conducted by a person of the opposite sex as the person being searched, it must be conducted in the presence of a person of the same sex as the person being searched. The Code also requires reports of the search, both for those conducted pursuant to a search warrant and for those authorized to be conducted without a search warrant. A report must be given without cost to the person who was searched, subject to deletions permitted by the Freedom of Information Act.

It is a misdemeanor for a law enforcement officer, employee of a law enforcement agency, or chief administrative officer or personnel of a correctional, mental health, or juvenile detention facility to conduct or authorize a body cavity search in violation of the Code's body cavity search provisions.

MCL 764.25a & 764.25b

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: K. Firestone