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RECENT DEVELOPMENTS REGARDING THE SEX OFFENDERS REGISTRATION ACT

By Patrick Affholter, Legislative Analyst

In the November/December 1999 issue of *Notes on the Budget and Economy*, the Senate Fiscal Agency published an article examining the evolution of Michigan's Sex Offenders Registration Act (SORA) (<http://www.senate.state.mi.us/sfa/Publications/Notes/notes.html>). That article reviewed how sex offender registration had expanded from being strictly a tool for law enforcement officials to providing a source of public information, to serving as a conduit for Federal funding for various law enforcement programs.

Under the Act, people convicted of or placed on youthful trainee status for certain crimes, and juveniles adjudicated in the family division of the circuit court (family court) under the juvenile code for certain actions that would be crimes if committed by an adult, must register information about their identity, address, and conviction with a law enforcement agency. This information is included in the sex offender registry maintained by the Michigan Department of State Police, which is accessible only for law enforcement purposes. In addition, the Department must compile certain information from the registry and make the compilation available to the public.

Recently, court cases have challenged the law's constitutionality in both Federal and State courts, and legislation to amend the Act has been proposed in the current legislative session. This article reviews these recent developments.

Court Challenges

On consecutive days in June 2002, the Federal District Court for the Eastern District of Michigan and the Michigan Court of Appeals issued rulings in cases challenging the constitutionality of Michigan's SORA. On June 3, the Federal District Court ruled the Act unconstitutional; on June 4, in a different case, the Michigan Court of Appeals upheld SORA's constitutionality. The Federal Court, however, modified its ruling on June 25, reinstating part of the Act and reiterating its earlier findings in part.

Fullmer v Michigan Department of State Police

This case was brought by an individual convicted of an offense that requires registration under Michigan's Sex Offenders Registration Act. The defendants are the Michigan Department of State Police and the Department Director. The plaintiff alleged that SORA violated constitutionally protected procedural due process.

On June 3, 2002, the U.S. District Court for the Eastern District of Michigan issued a declaratory judgment that the Act was unconstitutional under the Fourteenth



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Amendment to the U.S. Constitution. The Court enjoined the State from further enforcement of the Act until it provides sex offenders “adequate procedural safeguards for their constitutionally protected interests”. On June 25, 2002, in response to a motion by the State to stay the judgment pending appeal, the Court denied the request for a stay but modified its original ruling.

In the opinion issued on June 3, the Court reviewed SORA, the history of the Act and its Federal mandate, and previous court cases that had challenged sex offender registration laws in Michigan and other states. In doing so, the Court noted that SORA “does not provide any means by which individuals required to register can contest the listing” of information in the sex offender registry. The Court found that the plaintiff “sufficiently demonstrated a liberty interest...deserving of minimal due process protection”, and struck down SORA “as an unconstitutional denial of due process” because it “does not provide notice to registrants or an opportunity to be heard”.

In reaching that conclusion, the judge applied what has become known as the “stigma plus” test. Under that concept, reputation alone is not a constitutionally protected liberty or property interest, but procedural due process is triggered when the damage to reputation is coupled with another interest. So, the stigma of being listed on a public registry, in itself, is not an infringement on due process rights but, together with a “plus” factor that deprives a registrant of a previously held right, registration could be a violation of due process. The Court found compelling the plaintiff’s argument “that obligations of registration and attendant penalties for non-compliance with the SORA alter his legal status”.

The judge found that previous rulings in the Sixth U.S. Judicial Circuit (which includes Michigan) did not consider whether the continuing legal obligations of people subject to sex offender registration and the penalties for failure to comply with those obligations were “a sufficient ‘plus’ factor to alter the legal status of sex offender registrants in such a way that their constitutionally protected liberty interests are put in peril”. She cited rulings in other U.S. circuits, however, that found this to be a sufficient “plus” factor. Based on those cases, the *Fullmer* Court ruled “that the burdens of registration and the attendant alteration of...legal status” were sufficient “plus” factors.

Since the judge determined that SORA’s public notification (“stigma”) and continuing registration (“plus”) provisions implicated liberty interests deserving of due process protection, the Court then examined whether registrants were afforded procedural safeguards. The Court ruled that “Michigan’s SORA must be invalidated because it provides no opportunity to be heard on whether, and to what extent, public notification of sex offenders’ registry information is necessary to protect the public, and the extent to which the registration requirements should burden sex offenders, when balanced against the need to protect the public”.



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Fullmer Modified

On June 25, the same Federal District Court denied the State's motion for a stay of the Court's June 3rd decision pending appeal to the Sixth Circuit Court of Appeals, but modified the original ruling. Under the later ruling, the State still is enjoined from enforcing the public disclosure sections of SORA, but may resume requiring sex offender registration, and information in the registry may be used for law enforcement purposes.

In the June 25th ruling, the court pointed out that SORA actually creates two separate registries: one registry that is maintained for law enforcement purposes (which is confidential and not subject to the Freedom of Information Act), and a second compilation of information primarily for the public. The Court held that its earlier due process analysis would not apply to a registry that could not be disclosed to the public. In addition, the Court agreed with the State's contention that, under the earlier ruling, police no longer had access to information in the law enforcement registry and were unable to track convicted sex offenders. In addition, the June 3rd ruling put the State at risk of losing millions of dollars in Federal funding because the injunction prohibited it from complying with requirements for those grants.

For those reasons, the Court dissolved the injunction against the provisions of SORA that are "necessary for the maintenance and enforcement of the law enforcement sex offender registry, including the registration requirements, ...the notice requirements, ...and the attendant penalties".

Regarding the public availability of sex offender registry information, however, the Court stated:

If the Court were to stay the injunction against the public sex offender registry, Plaintiff and others like him would suffer a continuing constitutional injury and deprivation, because they have no opportunity to establish that they are not presently dangerous or likely to become dangerous in the future. In other words, they have no opportunity to demonstrate they should not be on a public sex offender registry which implies they are persons from whom the public must be protected.

Under the June 25th ruling, the defendants continue to be "enjoined from the public disclosure provisions of the SORA until they first afford sex offenders with an opportunity to be heard on the issues of whether they are a dangerous threat to the public", before being required to register under the Act.



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People v Wentworth

On June 4, 2002, the day after the first *Fullmer* ruling, the Michigan Court of Appeals decided an appeal of a juvenile adjudication for second-degree criminal sexual conduct (which requires sex offender registration after the juvenile reaches 18 years of age). The Court concluded "that the requirements of SORA are not an unconstitutional infringement of...protected liberty, property, or privacy interests, and that the state is not required to engage in due process beyond that afforded in...court proceedings before including information...in the public database of registered sex offenders".

In reaching that conclusion, the *Wentworth* Court relied on a 1998 case in the U.S. District Court for the Eastern District of Michigan. In *Lanni v Engler* (994 F Supp 849), the Court held that a defendant must show that SORA deprives him or her of a protected liberty or property interest in order to prevail on a due process argument, and found that the Act does not violate the due process rights of a convicted sex offender. The *Lanni* Court held that SORA "merely compiles truthful, public information and makes it more readily available" and that any detrimental effects suffered because of the Act flow from the offender's own misconduct and citizen reaction to it "and only tangentially from state action".

The rulings in *Fullmer*, however, effectively overrule the *Lanni* decision and make the *Wentworth* holding moot, unless *Fullmer* is reversed on appeal.

Proposed Legislation

Senate Bill 1275

The Campus Sex Crimes Prevention Act, a Federal law enacted on October 28, 2000, requires that convicted sex offenders enrolled at or employed by an institution of higher education register the name of that college or university with the police. Also, this information must be made available to the police agency with jurisdiction over the campus, and each institution of higher education must issue a statement advising the campus community where the information concerning registered sex offenders can be found. Apparently, the Act was aimed at closing a loophole in many states' laws that require sex offenders to register with the police agency near their permanent residence, but fail to address students and others who live part of the year on a campus.

States that do not comply with the requirements of the Campus Sex Crimes Prevention Act are subject to a mandatory 10% reduction of the formula grant funding available under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program, which is administered by the U.S. Bureau of Justice. Under the Federal Jacob Wetterling Crimes Against Children and Sexually



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Violent Offender Registration Act, Byrne funds withheld from noncompliant states are redistributed to those states in compliance.

Senate Bill 1275 (S-1), as passed by the Senate on May 16, 2002, would amend the Sex Offenders Registration Act to meet the Federal requirements of the Campus Sex Crimes Prevention Act. The bill would require certain sexual offenders who are employed by or students at Michigan institutions of higher education to report their sexual offense status to the law enforcement agency with jurisdiction over the campus. The State's sex offender registry would have to contain information required under the bill, and the computerized data base of registrations maintained by the State Police would have to include the name and campus location of each institution of higher education to which an individual had to report. The bill also would require the State Police to "provide the ability to conduct a computerized search" of the publicly available compilation of the sex offender registry based on the name and campus location of an institution of higher education.

On June 19, 2002, the Michigan House of Representatives amended Senate Bill 1275 (S-1) to include the following legislative declaration:

The legislature declares that the Sex Offenders Registration Act was enacted pursuant to the legislature's exercise of the police power of the state with the intent to better assist law enforcement officers and the people of this state in preventing and protecting against the commission of future criminal sexual acts by convicted sex offenders. The legislature has determined that a person who has been convicted of committing an offense covered by this act poses a potential serious menace and danger to the health, safety, morals and welfare of the people, and particularly the children, of this state. The registration requirements of this act are intended to provide law enforcement and the people of this state with an appropriate, comprehensive, and effective means to monitor those persons who pose such a potential danger.

House Bills 5163 and 5891

The Sex Offenders Registration Act provides that a juvenile tried as an adult and convicted of a listed offense, or a person assigned to youthful trainee status for a listed offense, must be placed on the State Police registry and the public compilation. Information about a juvenile adjudicated in the family court under the juvenile code, however, is not placed on the publicly available compilation unless he or she receives a disposition for first- or second-degree criminal sexual conduct (CSC), in which case the juvenile's information must be placed on the compilation after he or she reaches the age of 18.



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Some people have raised concerns that the registration requirements and the public availability of information in the compilation may be too broad. Reportedly, children as young as 10 have been adjudicated for CSC violations in the family court for actions that essentially amount only to curious touching. In addition, and more commonly, there are situations in which a teen who engages in sexual conduct is convicted of CSC because his or her partner was too young to consent to sexual relations. Those individuals are required to register as sex offenders for at least 25 years if convicted as an adult, or for at least 25 years after reaching 18 years of age if adjudicated as a juvenile for first- or second-degree CSC.

Under House Bills 5163 (H-2) and 5891 (H-2), if an individual were convicted of, or a juvenile were adjudicated responsible for, a CSC offense involving sexual penetration when the victim was less than 16 years old or involving sexual contact when the victim was less than 13, and the victim were within two years of age of that individual, the court would have to determine whether the convicted individual had to be listed on the publicly available compilation of the sex offender registry.

The court would have to place its determination on the abstract of conviction or on the order of juvenile disposition. The Department of State Police could not place an individual on the publicly available compilation if the abstract or order stated that the individual was exempt from registration. The bills identify criteria that a court would have to consider in determining whether an individual was exempt from being listed on the public registry. A court could not exempt an individual if he or she previously had been convicted of or found responsible as a juvenile for first-, second-, third-, or fourth-degree CSC or assault with intent to commit CSC.

Expected Action

On June 5, 2002, the Attorney General appealed to the U.S. Sixth Circuit Court of Appeals the June 3rd Federal District Court ruling that the Sex Offenders Registration Act was unconstitutional. According to reports published after the June 25th modification of that ruling, the Attorney General still is appealing the District Court decision that the registry may be available only to law enforcement, and is considering whether to request a stay of that decision by the Federal appellate court.

On July 9, 2002, the Senate ordered Senate Bill 1275 enrolled and sent it to the Governor for his signature. At this time, House Bills 5163 and 5891 remain before the House of Representatives. (The status of the bills and analyses of them are available at <http://michiganlegislature.org/>.)



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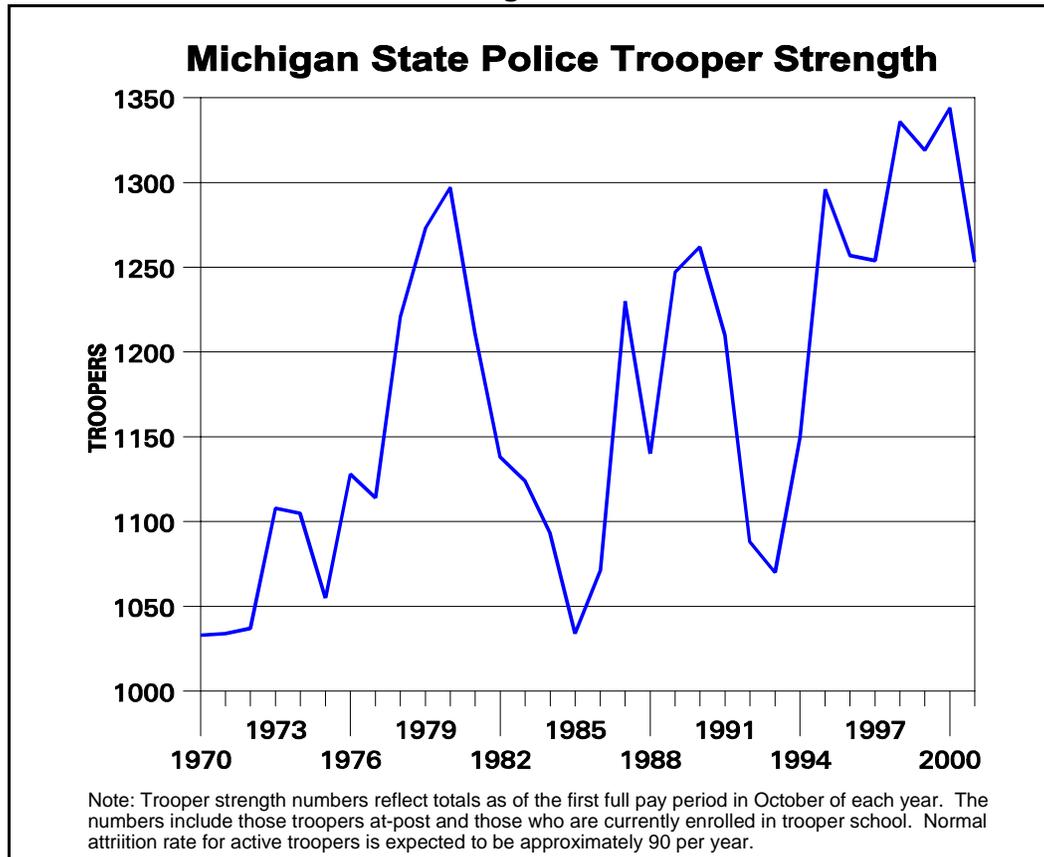
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STATE POLICE TROOPER COUNT DECLINE by Bruce R. Baker, Fiscal Analyst

Recent years have witnessed a reduction in the number of At-Post troopers in the State. "At-Post Troopers" refers to those Michigan State Police troopers who are assigned to 63 State Police posts throughout the State and whose primary functions are patrol and general law enforcement. In addition to the 63 traditional State Police posts, the Department currently has eight resident troopers, four detachments, and 20 satellite offices. A resident trooper is one assigned to work essentially out of his or her home. A detachment is a situation in which office space is provided free of charge to the Department in remote areas of a post to which specific officers are assigned. "Satellite office" refers to office space made available for use by any trooper assigned to the post area. As Figure 1, shows, last fall's trooper count of 1,253 was the lowest total since 1994. The most current count of At-Post troopers, reported from May 2002 payrolls, stands at 1,202.

Figure 1





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No function of the Department of State Police commands greater attention from the public and the Legislature than the general law enforcement services of a State trooper. The Department has many important responsibilities in support of general law enforcement in the State, but few are as vaguely defined in law as its role in providing troopers for general policing and patrol responsibilities. Public Act 59 of 1935 (MCL et seq., as amended) addresses the general policing/patrol responsibility with the following language:

Sec. 4. ...The commissioner shall establish a highway patrol in the uniform division consisting of not less than 100 members...

Sec. 6 (5). The commissioner and all officers of the department have all the powers of deputy sheriffs in the execution of the criminal laws of the state and of all laws for the discovery and prevention of crime, and have authority to make arrests without warrants for all violations of the law committed in their presence, including laws designed for the protection of the public in the use of the highways of the state, and to serve and execute all criminal process... The commissioner and all officers of the department shall cooperate with other state authorities and local authorities in detecting crime, apprehending criminals, and preserving law and order throughout the state.

Sec. 7. ...The director shall establish and maintain local headquarters in various places, and may do so by agreement, lease, or otherwise, so as to best establish the department throughout the various sections of the state where it will be most efficient in carrying out the purpose of this act, to preserve peace and prevent crime...

From this broad mandate, a policy of general law enforcement responsibility has evolved over the years. A statewide master plan, produced in 1981, summarized the role of the Department as having the responsibility of providing primary patrol services of the U.S. and interstate highway system in the State and of providing general law enforcement services to unincorporated rural and suburban areas of the State where needed. All counties, by law, have sheriff departments, but there is considerable variance in law enforcement capabilities among counties. In some areas of the State, municipal governments and/or the county fund extensive police services, leaving the demand for police services from the State at a low level. Other areas of the State have limited local police services and therefore require general law enforcement services from State troopers more extensively. A State Police study in 1989 revealed that in 34 of Michigan's 83 counties, the State Police had the major role in general law enforcement. These counties included the relatively populous counties of Genesee, Livingston, Jackson, and Bay. A 1994 survey by the Michigan Sheriffs Association of county-funded sheriffs' road patrols showed that 19 of Michigan's 83 counties had less than 24-hour road patrols. State Police



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general law enforcement services to these areas share a more pronounced role in law enforcement than in other areas of the State.

As the 1981 Michigan State Police statewide master plan stated:

Each county determines the amount of law enforcement services it desires, leaving the Michigan State Police with the responsibility of determining the amount of law enforcement personnel it must furnish to meet total law enforcement needs within these jurisdictions.

The Department's Gubernatorial Transition Report, dated November 26, 1990, added, "*The first (role and function) is to provide high quality, 24-hour a day police services for the unincorporated rural and suburban areas of the State...county law enforcement levels vary widely...the final responsibility always falls to the State Police.*"

The current Department administration has continued this policy by maintaining that the extent to which the State Police provide general police services is dependent upon the level at which local and county governments can support their own services. This policy implies a necessary working relationship between State and local law enforcement agencies. The extent and quality of this relationship can vary widely among counties. In some counties with extensive local law enforcement services, coordination between the local agencies and the State can be minimal. In other areas, local State Police District Commanders work with county sheriffs to split patrol responsibilities within a county to maximize coverage. On occasion, when a local agency loses patrol personnel due to a financial or other crisis, the State Police will come in to provide police coverage.

This departmental mission of providing general law enforcement services, including regular road patrols, falls primarily upon the troopers assigned to the State Police posts throughout the State. It is the number of these troopers who are employed at any given time that is often of primary concern to the Legislature, as the troopers are a symbol of the State's commitment to law enforcement and public safety, especially on the State's roadways. The number of At-post troopers has varied on an annual basis during the last 31 years from a low of 1,033 back in 1970, to a high of 1,344 in 2000 ([Figure 1](#)).

Trooper Strength and the State Budget

Drops in yearly trooper strength figures result when the Department does not hold a trooper candidate school or schools of sufficient size to supplant the expected attrition of officers from the rank of trooper. This occurs when either the Legislature chooses not to appropriate, or the Governor chooses not to spend, funds for the establishment of a new trooper school. Usually, budgetary limitations are cited as the reason a trooper school (where trooper candidates begin receiving the



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equivalent of trooper pay immediately upon entry into school) is not conducted in a given year. Between 1980 and 1985, 20% of all troopers (263) were lost due to budgetary constraints and rising trooper costs that permitted only one trooper school to be held in the intervening years.

Subsequently, trooper strength increased from 1,070 in 1993 to 1,344 in 2000, due to the fact that 12 trooper schools were held during that period with a total graduation of 1,126 troopers. Trooper attrition and a lack of recent trooper schools, however, have lowered recent trooper counts.

Attrition from the rank of trooper results from expected retirements, not only from the rank of trooper, but from higher ranks as well, as troopers will ultimately be promoted out of the rank of trooper to fill those positions.

Nearly the entire cost of a trooper school for the State consists of the payroll costs of trooper recruits as they begin drawing the pay equivalent of a full-fledged trooper's salary from the moment they begin their 19-week trooper training academy. A trooper school of 35 recruits that began at the start of a fiscal year (which means that the cost for an entire year's trooper salary would be needed) would require \$2.7 million for that year. At the end of five years of service, the salary and benefits of each trooper would amount to an obligation of approximately \$90,000 from the State.

The appropriation unit that provides for the salaries and benefits for troopers within the State Police budget is the At-Post trooper line. The line is appropriated for fiscal year (FY) 2001-02 at a level of \$114,219,000 funded primarily with General Fund dollars and collections from the Highway Safety Enforcement Program. The Highway Safety Enforcement Program provides salaries and benefits for troopers who are primarily designed to highway safety enforcement and is supported by restricted funds. Public Act 154 of 1987 created the Highway Safety Fund, which receives funds from a \$5 assessment on all moving civil infraction violations. This assessment generates between \$6.0 million and \$7.0 million per year

The reason for the declining level of troopers is simply that sufficient GF/GP funding for trooper schools has not been appropriated. No funds for a school for this fiscal year (FY 2001-02) or the next have been provided. In the previous year, FY 2000-01, a tight budget and unanticipated higher costs of fuel, fleet, and other items left insufficient funding to hold a planned trooper school. The Governor's original budget proposal for the current fiscal year included funding for a trooper school that was to bring the trooper strength level to a targeted 1,349. The subsequent elimination of economic increases to this year's State Police budget made the possibility of conducting a school in FY 2001-02 impossible without additional funds.



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Outlook for FY 2002-03

The Governor's FY 2002-03 budget recommendations for the Department of State Police contained no funds for a trooper school, and in fact made reductions to reflect vacancies in the At-Post trooper appropriations line. In addition, the Legislature chose not to add funds to the Governor's FY 2002-03 budget to provide for a trooper school. In place of providing such funding, the Legislature chose to add boilerplate language to the FY 2002-03 State Police budget bill that would call attention to the Legislature's commitment to a trooper school and require the administration to provide a plan for implementing it. The language is as follows:

Sec. 222. (1) Funds appropriated in part 1 for at-post troopers shall only be expended for trooper salaries, wages, benefits, retirement, equipment supplies, and other expenses directly related to state troopers assigned to general law enforcement duties at a department post, detachment, satellite office, or a resident trooper function.

(2) From the funds appropriated in part 1 for at-post troopers, 1 or more trooper recruit schools shall be conducted during fiscal year 2002-2003 with the goal of graduating at least 110 new troopers to state service to replace existing troopers projected to separate from the rank of trooper through attrition.

(3) The department shall submit a written report to the senate and house appropriations subcommittees on state police and military affairs no later than November 15, 2002, detailing the status of the department's plan for accomplishing the goal of subsection (2). If the department determines that insufficient funding exists under part 1 for at-post troopers or any other budget line to accomplish the goal of subsection (2), the department shall submit a plan outlining the additional funding necessary to accomplish the goal of subsection (2).

Future Factors

Aside from the Governor's and the Legislature's identifying the necessary funds and making new trooper schools a priority, other factors in the future could have an impact on trooper strength. Those that would make maintenance of higher trooper strength levels in the near future an additional challenge for the State, include:

- The settlement of the current trooper contract negotiations, expected in the next several months, which could trigger additional trooper retirements.
- The impact of possibly high numbers of trooper retirements in the near future, which could occur due to the large trooper class (360) of 1978 soon reaching its retirement eligibility point of 25 years of service. From year 2000 through 2005, it is estimated that 588 troopers will leave service.



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The settlement of the Michigan State Police Troopers Association contract, now in progress, also could certainly have an impact on funds available for a trooper school. State Troopers have been without a new contract since the start of FY 1999-2000. The arbitration process for determining a contract is ongoing and is likely to be finished during the summer of 2002. The contract in question covers the three-year period of FY 1999-2000, FY 2000-01, and FY 2001-02. To the extent that the cost of this contract exceeds economic increases provided within the budgets for these years (3% for FY 1999-2000, 2% for FY 2000-01, and 0% for FY 2001-02), additional funds will need to be found to pay the difference.

Another development within the past year that could help to mitigate the decline in the number of troopers is the Department's proposed restructuring plan, known as the "Business Process Improvement Initiative". The plan, still under internal review, is aimed at streamlining the operations of the entire Department, which could possibly translate into at-post efficiencies, thereby increasing the number of officers on patrol.

Some proposals considered under the plan would cut the number of nonpatrolling command officers located at State Police posts, from its current 270 members to as low as 69. The plan also could reduce the number of State Police districts in the State from seven to four, and could close several posts, to be replaced by additional satellite offices.

No final plan of restructuring has been announced as of this date, but a final plan is expected to be determined and put into action within the next year.



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PRISON CAPACITY REVIEW: TODAY, TOMORROW, AND BEYOND by Bethany Wicksall

Introduction

The appropriation process for fiscal year (FY) 2001-02 and FY 2002-03 included a number of changes in the Department of Corrections (DOC). The declining economic condition of the State as well as changing trends in prisoner populations necessitated a reorganization of DOC facilities. The reorganization included postponing the opening of one prison and a number of expansion units, closing and reopening certain facilities, converting security levels, and instituting double-bunking. More than 2,500 additional beds are funded for FY 2002-03, but the total funded capacity will be only 1,300 beds over the number originally appropriated for in FY 2001-02. This article provides a brief explanation of how these capacity changes came to be, how they affect DOC costs, and what they might mean for the near future.

FY 2001-02

The FY 2001-02 DOC budget initially included partial-year funding for a new facility. The Department had originally planned to open the 1,500-bed Bellamy Creek facility in Ionia in July 2001, but in the years since construction had begun, the prisoner population had grown less than projected and eliminated the need to open the facility at that time. The DOC subsequently estimated that population growth would not require opening the facility until FY 2002-03, so the FY 2001-02 Governor's recommended budget was decreased \$10.3 million.

Having Bellamy Creek available but unnecessary provided the DOC with an opportunity to move the population temporarily from nearby Michigan Reformatory to Bellamy Creek, in order to close Reformatory for some needed renovation. The Conference Committee on the DOC budget moved appropriations for Michigan Reformatory into the inmate housing fund line item to facilitate this possibility. The purpose of the inmate housing fund is to provide funds for the care and custody of prisoners not elsewhere appropriated for, and in this case, it allowed the DOC flexibility in its plan and time-line for the Michigan Reformatory renovation and transition to Bellamy Creek.

The FY 2001-02 appropriation also included full-year funding for a new 240-bed unit at Thumb correctional facility as well as partial-year funding to open two new 240-bed units at the Macomb and Saginaw correctional facilities when population growth made it necessary. These units were constructed during FY 1999-2000, but had not been opened because the additional beds were not needed at the time.

Executive Order 2001-9

As FY 2001-02 began, it became apparent that revenues would not reach expectations and State expenditures would have to be cut in order to balance the budget. In November, as part of Executive Order 9 of 2001 (E.O. 2001-9), the DOC took \$54.9



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million in budget cuts, 75% of which came from closing facilities, reorganizing prison capacity, and reducing institutional staff. Table 1 lists each institutional change and its impact on prison bed capacity. The Department closed Camp Pugsley, the oldest and smallest facility in the camp system, as well as the Pontiac Corrections Center, a transitional facility for prisoners moving toward parole. The need for these corrections centers is declining as truth-in-sentencing eliminates the possibility of early release from prison. The DOC also used this opportunity to close Michigan Reformatory and Jackson Maximum and open Bellamy Creek permanently. Because Bellamy Creek has more beds and is a new prison, it can be operated more efficiently, housing a higher population for less cost, compared with the two older prisons. Converting the Southern Michigan Prison from a high security Level IV to a lower security Level II and double-bunking its cells provided the remaining bed space needed after opening Bellamy Creek was opened.

Table 1: FY 2001-02 Executive Order Facility Changes	
Facility	Number of Beds
Close Pontiac Corrections Center	(162)
Close Camp Pellston	(140)
Close Jackson Maximum Correctional Facility	(1,556)
Close Michigan Reformatory	(1,008)
Open Bellamy Creek Correctional Facility	1,500
Double-bunk and convert security levels at Southern Michigan Correctional Facility	600
Total	(766)

Source: Department of Corrections

Executive Order 2001-9 decreased the total number of DOC beds by 766 and reduced full-time equated (FTE) positions by 805. Despite the large reduction in staff levels, the DOC has managed to implement the changes thus far by laying off fewer than 100 employees, although additional layoffs might be still possible as the Department implements final changes.

FY 2002-03

Although the FY 2002-03 budget is even tighter than the FY 2001-02 budget, the Executive recommendation as well as both of the original Senate- and House-passed substitutes for the DOC budget included \$28.4 million in additional General Fund/General Purpose (GF/GP) dollars. Target agreements exempted the DOC from the 1% across-the-board cuts most of the other departments are facing, but implemented GF/GP savings of \$7.8 million through the replacement of only 1:4 employees who opted to participate in the early retirement program. The DOC, however, may replace 1:1 correctional facility staff and 1:2 parole and probation officers.



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Overall, this budget represents a 1.3% increase from FY 2001-02 year-to-date GF/GP appropriation.

The largest increase in the DOC budget is a result of the need for additional prison beds. The cost of additional capacity is partially offset by \$15.1 million in annualized savings from staff reductions and facility closures implemented under E.O. 2001-9. The FY 2002-03 budget appropriates \$10.9 million in full-year funds for additional beds to be opened by October 1, 2002, at the Crane and Bellamy Creek correctional facilities as well as Camp Brighton, and it provides \$10.1 million in partial-year funding for beds opening later in FY 2002-03. The DOC will accomplish the latter additions by double-bunking remaining portions of Camp Lehman and Riverside correctional facility and reopening parts of Michigan Reformatory and Jackson Maximum under nearby parent facilities, so as to save administrative costs. The DOC also will save \$1.9 million by again postponing the opening of the drop-in units at Macomb and Saginaw correctional facilities until FY 2002-03 and carrying forward the funds appropriated for this purpose from the current fiscal year to FY 2002-03. Table 2 summarizes the capacity changes in order of their opening date. These changes also will require an additional 396 FTE positions, which would replace just under half of the staff level reductions taken in E.O. 2001-9.

Facility	Open Date	Beds	Additional Appropriation
Crane Correctional Facility	Jan-02	160	\$641,100
Camp Brighton	Oct-01	50	
	Oct-02	80	\$3,442,000
Bellamy Creek Correctional Facility	Oct-02	180	\$6,822,100
Camp Lehman	Jan-03	240	\$2,410,600
Saginaw Correctional Facility	Feb-03	240	(\$1,104,600)
Macomb Correctional Facility	Mar-03	240	(\$819,700)
Riverside Correctional Facility	Apr-03	210	\$1,287,900
Jackson Maximum Correctional Facility	May-03	200	\$4,060,900
	Jun-03	300	
	Jul-03	145	
Michigan Reformatory	Jul-03	200	
	Aug-03	300	\$2,392,700
Total		2,545	\$19,133,000

Source: Department of Corrections

FY 2003-04 and Beyond

A number of short-term changes in E.O. 2001-9 allowed the DOC to cut spending by \$59 million in FY 2001-02 as well as reduce staff and funded capacity, but the growing



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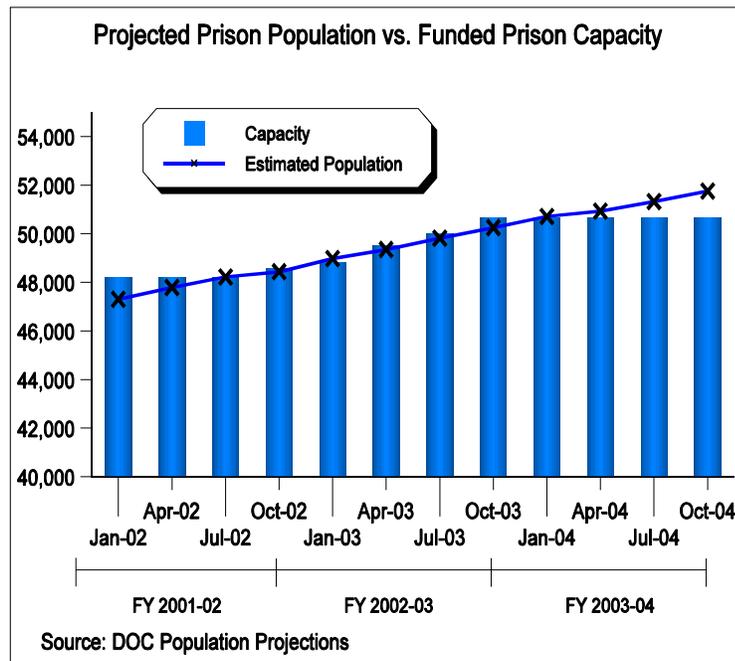
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prisoner population already requires an additional \$19.1 million for almost 400 more FTE positions and over 2,500 beds in FY 2002-03. This represents an overall increase of 1,300 beds and a decrease of 550 FTEs from the original FY 2001-2002 appropriation. What might this mean for FY 2003-04 and beyond?

Although the population had been growing at a slower rate leaving the Department with excess capacity, it now appears that the population is growing more quickly. While the prison population grew 3.3% during 2001 and is on pace to grow 5.8% in 2002, the rate of increase in that growth accelerated from 13.2% between calendar years 2000 and 2001 to almost 85% from calendar years 2001 to 2002, if it is assumed that growth during the first six months of this year is representative of growth for the whole year. Because of this unexplainably rapid growth, the DOC has yet to release its annual three- and five-year prison population projections as the Department attempts to determine the cause of the growth in order to establish accurate predictions for the future. Figure 1 uses the 2001 projections to compare the prison population and capacity. The additional beds funded for FY 2002-03 are scheduled to open as the population

increases, but by the end of FY 2003-04, the Department might need another 1,000 beds. If population growth continues to accelerate, that number could be even higher. These beds most likely would come from opening the remaining portions of Jackson Maximum and Michigan Reformatory, which would necessitate both additional custodial staff and additional administrative staff as the facilities again would become independent of their parent facilities.



If the population continues to grow at this rate once these two prisons are filled, additional construction will be required in order to accommodate the growth, possibly by the end of FY 2003-04 and definitely during FY 2004-05. Thus, despite attempts to cut costs during FY 2001-02, it appears that DOC expenditures and capacity needs are already rising and will continue to do so unless long-term policies that affect the growth of the prisoner population are considered.



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DISTRIBUTIONAL IMPACTS OF REVENUE SHARING CUTS by David Zin, Economist

Article IX, Section 10 of the Michigan Constitution of 1963 requires the State to distribute 15% of sales tax revenues collected at a 4% tax rate to cities, villages, and townships on a population (per capita) basis.¹ The Legislature also supplements these constitutional revenue sharing payments with additional funds, referred to as statutory revenue sharing payments. Statutory revenue sharing includes counties among the local units of government that may receive payments, and the payments are distributed through a set of formulas that have changed over the years. Public Act (P.A.) 532 of 1998, the current law governing how statutory revenue sharing payments are to be distributed, fundamentally revised the way the State distributed revenue sharing payments to local units of government, beginning with fiscal year (FY) 1998-99. Prior to the changes, statutory revenue sharing payments were distributed under three mechanisms: a per-person formula, an inventory reimbursement formula, and a relative tax effort formula. The new mechanism in P.A. 532 distributes revenue sharing payments through three equally weighted formulas: a population-type formula, an inverse taxable value formula, and a yield equalization formula. To ease the transition to the new formulas, P.A. 532 phases them in over a 10-year period. (That is, the portion of statutory revenue sharing payments based on the new formulas ranges from 10% in FY 1998-99 to 90% in FY 2006-07.)

Statutory revenue sharing payments are subject to appropriation by the Legislature. The current statute places a cap on the amount of money that can be distributed through statutory revenue sharing payments, at an amount equal to 21.3% of sales tax collections at a 4% tax rate. (Combined with constitutional payments, maximum revenue sharing payments equal 36.3% of sales tax collections at a 4% tax rate.) This amount is often referred to as “fully funded” revenue sharing payments. In many years, the Legislature has not appropriated the “fully funded” amount to revenue sharing payments, effectively providing the General Fund with additional unrestricted revenues (if the amount collected for statutory revenue sharing exceeds the amount appropriated). In most years since FY 1989-90, revenue sharing payments have been below the “fully funded” amount (Table 1). For FY 1998-99 and later, P.A. 532 provides that any reductions from “fully funded” revenue sharing payments must reduce payments made under the new distribution formulas before reducing any other statutory payments. In other words, the amount available for statutory revenue sharing must be distributed first under the old formula (subject to the applicable ratio under the formula phase-in schedule). The balance is distributed according to the new formula.

¹Although the sales tax rate was increased from 4% to 6% in 1994, the revenue sharing requirement does not apply to the revenue collected from the additional 2%.



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Fiscal Year	Estimated Fully Funded	Percent Change	Actual Restricted	Percent Change	Enacted Reductions
1989-90	\$1,029.0		\$1,029.0		\$0.0
1990-91	1,028.0	(0.1)%	1,017.3	(1.1)%	(10.7)
1991-92 ^{a)}	1,038.5	1.0%	926.3	(8.9)%	(112.2)
1992-93	1,078.0	3.8%	1,032.5	11.5%	(45.5)
1993-94	1,166.1	8.2%	1,111.6	7.7%	(54.5)
1994-95	1,236.1	6.0%	1,169.1	5.2%	(67.0)
1995-96	1,342.2	8.6%	1,260.9	7.9%	(81.3)
1996-97	1,300.9	(3.1)%	1,300.4	3.1%	(84.6)
1997-98	1,359.8	4.5%	1,359.2	4.6%	0.0
1998-99	1,404.4	3.3%	1,380.7	1.5%	(23.6)
1999-2000	1,520.8	8.3%	1,462.5	5.9%	0.0
2000-01	1,555.5	2.3%	1,555.5	6.4%	0.0
2001-02 ^{b)}	1,586.6	2.0%	1,523.6	(2.0)%	(63.0)
2002-03 ^{b)}	1,644.2	3.6%	1,523.6	0.0%	(120.6)

^{a)} In FY 1991-92 the reduction affected the State but not local units because of different fiscal years. Due to forward funding, \$112.2 million was shifted into the State's next fiscal year, but was only postponed for local units.

^{b)} Estimated

The phase-in of the new formulas was intended to smooth the change in the distribution formulas, since the distribution of revenue sharing payments between local units is significantly different between the old and new mechanisms. Under the old distribution formula, local units tended to receive more if their tax rates were relatively high, while under the new distribution mechanism a wide variety of factors affects how much a local unit will receive, with population being the most important factor. Payments under the population-type formula rise with an increase in population, while payments under the inverse taxable value formula increase if population increases or if taxable value falls. Payments under the yield equalization formula rise with increases in tax rates, up to 20 mills, or with decreases in taxable value. Consequently, high tax rate units fared best under the old formula, while high population-low taxable value units fare best under the new system.

In FY 1997-98, revenue sharing payments were "fully funded" for a total of \$1,361.5 million, compared with an estimated FY 2002-03 "fully funded" amount of \$1,644.2 million and actual restricted revenue sharing funding of \$1,523.6 million (Table 2). In aggregate, total "fully funded" revenue sharing payments (constitutional plus



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statutory) will have increased 20.8% and actual payments will have grown 11.9% between FY 1997-98 and FY 2002-03, while "fully funded" statutory payments will have increased 20.8% and actual statutory payments will have risen 5.6%. To illustrate the distributional changes from moving to the new formula, if FY 2002-03 revenue sharing payments were "fully funded", statutory payments to Chelsea Township in Washtenaw County would be 17.0% lower in FY 2002-03 than in FY 1997-98, while statutory payments to Sheridan Township in Clare County would be 889.8% higher.

	FY 1997-98	FY 1998-99	FY 1999- 2000	FY 2000-01	Est. FY 2001-02	Est. FY 2002-03
Constitutional	\$561.9	\$580.3	\$628.4	\$642.8	\$655.6	\$679.4
Statutory						
Counties	\$200.6	\$200.6	\$214.3	\$228.7	\$217.5	\$211.5
Cities, Villages & Townships	\$597.3	\$599.8	\$619.4	\$684.0	\$650.5	\$632.6
Old Formula	\$597.3	\$582.8	\$587.9	\$560.5	\$527.0	\$495.9
New Formula	\$0.0	\$17.0	\$31.6	\$123.5	\$123.4	\$136.7
Statutory Total	\$797.9	\$800.4	\$833.7	\$912.7	\$868.0	\$844.2
Restricted Total	\$1,359.8	\$1,380.7	\$1,462.1	\$1,555.5	\$1,523.6	\$1,523.6
"Fully Funded" Amount	\$1,359.8	\$1,404.3	\$1,520.7	\$1,555.5	\$1,586.6	\$1,644.2
Enacted Reductions	\$0.0	(\$23.6)	\$0.0	\$0.0	(\$63.0)	(\$120.6)
Effective Reductions ¹⁾	\$0.0	(\$23.6)	(\$58.6)	\$0.0	N/A	N/A
Percent of Statutory Payments to Cities, Villages & Townships (Excl. Detroit) Distributed Under New Formula						
Statutory Requirement ²⁾	0.0%	10.0%	20.0%	30.0%	40.0%	50.0%
Actual	0.0%	5.2%	8.9%	30.0%	32.5%	37.6%
1) Effective reductions are the difference between "fully funded" revenue sharing payments and what was appropriated based on receipts once all revenues had been collected. In contrast, enacted reductions are the difference between the appropriated amount and the forecast of "fully funded" revenue sharing payments at the time the appropriation was made.						
2) Excluding appropriation limit.						

As noted above, reductions in statutory revenue sharing payments are first subtracted from the new distribution formulas. Therefore, such reductions have two effects: 1) they change the distribution of payments between units compared with what the distributions would be if payments were "fully funded", and 2) they delay the phase-in to the new distribution that occurs under the new formula. As a result



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of the second effect, the changes in payments to local units become more drastic each year as the new formulas continue to phase-in, especially if the Legislature subsequently chooses to "fully fund" revenue sharing payments. At a minimum, in FY 2007-08, when the new formulas would presumably comprise 100% of the statutory distribution mechanism, the year-to-year change in revenue sharing payments will be very significant for many units.

In FY 2002-03, "fully funded" statutory revenue sharing payments would be distributed on a 50%/50% basis between the old and new formulas. The legislative appropriation, however, removes \$120.6 million from "fully funded" statutory revenue sharing payments, which represents a 7.3% reduction in total revenue sharing payments (constitutional plus statutory) and a 12.5% reduction in total statutory payments. The impact of this reduction, as well as the reduction in FY 2001-02, essentially moves revenue sharing payments back to a distribution more similar to that in FY 2000-01, when the split was 70% under the old formula and 30% under the new formulas.

The change in this distribution is significant for many local units. For example, compared with "fully funded" revenue sharing payments in FY 2002-03, the reduction will have no impact on the City of Olivet, in Eaton County, or on the City of St. Louis, in Gratiot County, while Bingham Township, in Clinton County, will experience a 54.5% decline in its statutory revenue sharing payments and Oscoda Township, in Iosco County, will experience a 44.2% decline. If the portion of statutory payments attributable to the old formula were removed, the reduction from "full funding" would have an even greater impact, with neither St. Louis nor Olivet experiencing any reduction in payments while the City of River Rouge, in Wayne County, would experience a 75.3% reduction in its payments under the new formula and Oscoda Township would experience a 74.8% decline.

Given that the average "fully funded" revenue sharing payment to a township in FY 2002-03 is expected to be about \$333,850, of which only about \$54,500 is the payment under the new formula, such large percentage declines do not represent a significant amount of money for most units. However, for many units, particularly cities, where (excluding Detroit) the average "fully funded" revenue sharing payment is more than \$2.1 million, the distributional changes can be significant. While cities such as Olivet and St. Louis would experience no reduction in payments under the revenue sharing appropriation, the City of Pontiac would lose \$1.9 million (a 47.1% decline in new formula payments and an 11.5% decline in total payments) and the City of Grand Rapids would lose \$2.1 million (a 24.4% decline in new formula payments and a 6.9% decline in total payments) compared with "full funding".

Reducing statutory revenue sharing below the full funding level in one year also can create impacts extending into the future. Part of the new distribution formulas includes a cap on how fast revenue sharing payments may grow from one fiscal year to the next for local units that did not experience at least a 10% increase in



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population between the 1990 and 2000 Federal Census. For units subject to this cap, if the payments would increase more than 8% from one year to the next, the extra is taken away and distributed to more slowly growing units. An exception to the cap enabled units with significant population growth to receive a substantial increase in revenue sharing payment in FY 2000-01, once the payments were based on the 2000 Census. However, the language permanently exempts these local units from the cap rather than exempting them for only FY 2000-01.

In years when statutory revenue sharing payments are not "fully funded", as indicated above, the decrease is not uniform across all local units. Consequently, in any future fiscal year, particularly one in which statutory revenue sharing payments are "fully funded", those units receiving the largest decreases under the statutory reductions in the prior year are the ones most likely to find their payments limited by the 8% cap. The 8% cap actually creates a double difficulty for these local units. Because these units are also the ones that benefit most from the new formula, as the new formula is phased in, they also would be the units most likely to receive a larger increase in revenue sharing payments. Thus, the reduction in statutory revenue sharing payments in the prior year not only generates a lower base for these units, exaggerating the growth in payments, but the phase-in of the new formula exacerbates the impact of the cap by attempting to provide significant payment growth to the same units. As a result of these two effects, a reduction in "fully funded" revenue sharing payments in one year will reduce statutory revenue sharing to some local units for many years afterward.

The 8% cap also delays the phase-in to the new formulas in a manner similar to the reductions in statutory revenue sharing payments. The cap payments distributed to slower-growth local units are most likely to be distributed to those units that are hurt by the phase-in to the new formula and receive more under the old distribution formula. Thus, reductions in statutory revenue sharing below the "full funding" level not only shift the phase-in of the new formula back in time, they create greater cap payments in future years as well, which also retards the implementation of the new distribution formulas.

The current statute does not indicate how statutory revenue sharing payments are to be distributed in FY 2007-08. Presumably, all statutory payments will be distributed under the new formulas, completing the logical next step in the phase-in of the new formula. Under the assumption that the history of limiting statutory revenue sharing payments below the "full funding" level will continue through FY 2007-08, statutory revenue sharing payments in FY 2007-08 could see significant distributional changes from the previous year, because there would no longer be an old formula distribution pattern to fall back upon and the previous year is not likely to exhibit the 90%/10% split suggested by statute.