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P R E S S R E L E A S E

The State Appellate Defender Office today issued a report decrying the manipulation of the state's criminal justice system. Authored by F. Martin Tieber, Director of the Lansing office, the report documents that legislation passed during Perry Bullard's term as chair of the House Judiciary Committee (1981 through 1992) made Michigan one of the harshest criminal justice systems in the world.

Tieber warns against the current move to pass additional "tough on crime" measures. He noted that, during Bullard's term as chair, the Corrections' budget has increased five-fold, the inmate population has more than doubled, sentences have lengthened, good time was virtually eliminated and the cost soared from \$180 million to over 1 billion dollars per year. Given this buildup, unprecedented throughout the world, it is hard to understand how Bullard is being cast in the role of having thwarted anti-crime legislation, the report states.

The report urges that precise cost and system impact studies, with respect to all units of government, must be done before passing the current spate of legislation that will further expand Corrections with little or no public safety improvement. Many of these proposals simply lock up, for longer periods, more non-assaultive offenders, a group which currently comprises about 70 percent of current prison intake. Given the state's current fiscal situation, Tieber states that further corrections expansion will continue to cripple other vital areas.

Michigan Criminal Justice Policies The Bullard Era and Beyond

by F. Martin Tieber
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False Premise:

Perry Bullard chaired the House Judiciary Committee from 1981 through the end of 1992, a span of six two-year legislative terms. During this period a popular political strategy consisted of moving "tough on crime" legislation into the House Judiciary Committee and complaining of its treatment there. This strategy permitted the proponent to champion the most severe crime bills, crying foul at the "liberal" and "soft on crime" House Judiciary Chair, while avoiding the tab - the huge cost component of these doomed bills.

This popular political game, fostered by prosecutors who garnered their own political chips by promoting all manner of tactical advantages for themselves and harsh penalties for their targets, ultimately promoted a myth. This myth, or false premise, is that the Bullard era was soft on crime. This false premise is now, at the start of the 93-94 legislative term, being used to justify passage of a substantial number of very costly criminal justice measures of dubious value. Given the tax reduction mode of the Engler administration as it nears the end of its first term and approaches its first re-election campaign, continuing to play politics with the criminal justice system can significantly exacerbate already severe problems while doing virtually nothing to promote public safety or reduce crime.

Reality - Beyond South Africa:

During the Bullard era, the United States moved into a commanding lead in the numbers of its citizens behind bars, outdistancing the former leaders with 426 prisoners per 100,000 population to 333 (South Africa) and 268 (Soviet Union). A study released by the United States Bureau of Justice Statistics in 1986 revealed that Michigan is near the top of the list in severity of sentencing among the 50 states. Undoubtedly Michigan imposes the most severe drug sentences in the country and, to the extent there has been an "increase" in crime, it has come in the drug area due to beefed up law enforcement, not because of an increase in drug use. Between 1980 and 1992, Michigan's Corrections budget has risen from 180 million to over one billion dollars. During this period the Corrections population in our state has more than doubled. Recent commitment figures show that more than half of our prisoners are entering with minimum sentences of less than 2 years and 71% are going to prison for non-assaultive and substance abuse crimes while only 29% are entering for assaultive behavior.

What have we gotten for all these dollars? Studies have shown beyond question that we are not impacting crime rates with incarceration policies. Crime rates have reduced over the last decade (except for drug crime, again due to expanded law enforcement resources) but not because of our incarceration policies. Crime rates are moved by demographics and economics. We cannot impact crime rates through incarceration policy, law enforcement propaganda regarding repeat offenders notwithstanding, because only about 3% of crime results in conviction and a very small percentage of that number leads to any type of incarceration.

Other recent studies have convincingly demonstrated that our incarceration policies are not only politically based but racist in their operation. Over the last few years, a lot of print has been devoted to exposing the direct link between reduction in spending on education, infrastructure and other vital areas and the increase in corrections spending. The irony is that some of these decreased expenditure areas, like education, if properly funded could have more ameliorative impact on crime rates than our incarceration policies.

Reality - Bullard Era Crime Legislation:

How has Michigan gotten into the position it is in - one of the most punitive states in the most punitive country in the world? It has done so by passing legislation during the Bullard era. Contrary to myth, the law enforcement and corrections areas have been the recipients of a bounty of funds and new programs/policies granted by the Blanchard and Engler and Reagan-Bush administrations and the national and state legislatures during this period. Despite repeated calls for cost impact analysis, most of this has been done without any regard for what the price tag would be and what effect it would have on other budget areas. Indeed, during the past decade these policy changes moved thousands of additional bodies through all stages of the Court system and no one cared to assess the impact on the courts or provide the resources needed to process the additional work. As a result, in addition to the dire impact on large budget areas, we are today looking at a court system that is in crisis, not just in Michigan but all across the country. The impact of this crisis is being felt in the civil arena as well as in the criminal.

This legislation, some of which will be documented below, was passed in part because of its perceived political value.

'81-'82 term:

- revise and strengthen drunk driving laws
- prohibit probation for CSC I and CSC III
- expand controlled substance forfeiture provisions
- new firearms restrictions
- new crimes for cable tv transgressions
- new crime for jumping or diving from overpass

'83-'84 term:

- criminalize delivery of look-alike drugs
- establish state police drunk driving task force

prison good time/credit limitations
allow double bunking in jails
allow trailers and modular units to house prisoners
expand kidnapping to include parents
expand criminal sexual conduct coverage
new crime for alteration of telecommunication equipment
restitution and mandatory sentencing for vehicle theft
obscenity legislation
drivers license forfeiture provisions

'85-'86 term:

crime victims rights act
criminalize operation of aircraft under influence
criminalize operation of train under influence
drug forfeiture revisions
drunk driving revisions
remove prosecutorial res gestae witness requirement
felonize possession of certain knives
revise criminal solicitation statutes
criminalize paramilitary training
felonize in-state parental kidnapping
exempt corrections from administrative procedures act
restrictions on csc prisoners
expand double occupancy allowance for prisons
provide rule making power for corrections director
allow police inspection of car dealers' records

'87-'88 term:

69 bill crime package
substantial juvenile legislation
automatic juvenile waiver provisions
drunk driving revisions - ignition interlock
expansion of theft provisions to transaction devices
retail fraud provisions
warrantless arrest of retail fraud offenders
increase penalties for jail escape
felonize solicitation of minor to commit felony
increase drug penalties for delivery to minors
felonize use of minors as drug runners
triplicate prescription provisions
prosecutor to be notified of forfeiture actions
create new crimes for prescription of schedule 2 drugs
license revocation for controlled substance conviction
relax search warrant informant restrictions
expand federal officer arrest power
restrictive bail provisions
limit holmes youthful trainee application
close preliminary exam in csc cases
require prosecutor consent to waive jury trial
ease prosecutorial use of child witnesses in csc cases
allow state court admission of federal wiretap evidence
require consecutive sentence for certain crimes
permit increased revelation of expunged convictions
require report to police of students with weapons
expand prosecutor appeal rights
criminalize abandonment of animals

permit doc employees to arrest without warrant
criminalize conduct of athletic agents
establish afis (identification) system
establish boot camps
prohibit pharmacists from dispensing without prescription
allow prosecution of spouse for csc
felonize breeding of dangerous animals
owner of dangerous animal guilty of manslaughter in death
felonize ethnic intimidation
increase fleeing and eluding penalties
criminalize food stamp violations
relax jail population restrictions
require prisoner information to be entered in lein
make odometer tampering a felony
make prison rioting a felony
require doc to administer aids test
expand suspected child abuse reporting requirements
exclude certain crimes from speedy trial coverage
expand malicious use of telephone restrictions
expand forfeiture provisions
felonize failure to disclose aids

'89-'90 term:

give prosecutors multi-county grand jury powers
restore more serious drug penalties
provide criminal assessments for crime victim services
increase penalty for leaving scene of injury
prisoner property restrictions
provide for probation and parole oversight fees
boot camp revisions
prohibit armor piercing ammunition
create several new firearm offenses and penalties
revise firearm licensing requirements
increase penalty for leaving scene of accident
criminalize steroid use and delivery
allow police to enforce certain domestic warrants
expand coverage for child abuse protection
prohibit early parole for child assault/abuse
restrict certain prisoners from community placement
prohibit criminal defendant civil suit
provide for state police dna lab
prohibit bail for domestic violence offenders
expand forfeiture reporting requirements
permit warrants by fax

'91-'92 term:

substantial drunk driving revisions
parole board expansion and changes
no lifer parole until service of 15 (formerly 10) years
allow victim to appeal grant of parole
provide greater obscenity restrictions
relax prosecution requirements in obscenity cases
expand firearm violations and penalties
add four year felony for crime while using body armor
add four year felony for weapons licensing forgery
substantial boot camp restrictions

permit residential treatment after boot camp
criminalize simple and aggravated stalking
allow warrantless arrest of stalking violators
allow stalking victims to obtain restraining orders
criminalize assisted suicide
enhance penalties for repeat document fraud offenders
allow local police to arrest on bench warrants

The Future - Facing the Cost Factor:

As can be seen from the expansion of our corrections system, these changes have been very costly. After the fact reviews conservatively estimated the cost of the 69 bill crime package ('87-'88 term) at 256 million dollars in a four year period and a single consecutive sentencing provisions in that package was said to require 2,175 extra prison beds per year. Many of these provisions, like the increase in lifer mandatory service from ten to fifteen years ('91-'92 term), present time delay booby traps that will encumber future appropriations. Before the fact cost and impact analyses have simply not been done.

Recently the Governor announced substantial budget cuts to several areas of state government. Despite this the Department of Corrections received an increase and it was announced that 80 state troopers would be added. Though the job of these troopers will be to move bodies to the court system, the courts were again cut. In the wake of all of this, new momentum has been seen in the effort to cut property taxes. The decrease in revenue to the schools will presumably be made up by the state, requiring more cuts in the state budget.

Given the current situation, it is inappropriate for the legislature to be taking fast, ill-considered action on bills that will make it easier for police to arrest and for prosecutors to convict people who will then go to prison for longer periods. In the first month of the '93-'94 term, nearly 200 criminal justice related bills have been introduced. Many of these, by mid-February, 1993, have already been reported by Senate committees, and some have reached the House. These bills will have a substantial system impact, requiring costly expansion of the court system and the prison system. Some of the most expensive provisions will have little or no impact on crime rates.

This current activity is proceeding in the face of a nationwide scaling back of anti-crime provisions, prosecutorial powers and enhanced penalties - even by some of the most conservative states. These bills are being propelled forward by the false notion that former House Judiciary Chair Perry Bullard allowed Michigan to become "soft" on crime.

It is critical that our policy makers examine where we are with our criminal justice system and at what cost as a base for determining where we want to go. It is critical that new policy direction be formulated deliberately, with full understanding of the fiscal and systemic impact of any changes.