

INTERSTATE PRISON TRANSFER

Senate Bill 838 (Substitute H-2) First Analysis (6-10-98)

Sponsor: Sen. Loren Bennett
House Committee: Corrections
Senate Committee: Judiciary

THE APPARENT PROBLEM:

According to the Department of Corrections, Michigan does not have enough space in its prisons to house all the criminals who are sentenced. In mid-November 1997, Governor Engler proposed a prison construction program when he notified the legislature that Michigan needed three minimum-security prisons (at a cost of \$30 million each), and two multi-security level prisons (at a cost of \$70 million) for a total of 5,400 new beds. According to his report, the state needs a total of 6,400 new beds by 2001. He ordered the Department of Corrections to add more than 700 new beds to existing facilities, and to find prison accommodations in other states. Later that same week, Department of Corrections director Kenneth McGinnis announced that the state would house up to 2,000 prisoners out of state in 1998 until new prisons are built.

Citing the Interstate Corrections Compact (an agreement in place since 1994 and originally intended to allow voluntary transfers to ensure prisoner safety; see *BACKGROUND INFORMATION*), the department director announced his intention to enter into contracts that would allow Michigan to send its prisoners to be housed in federal prisons (perhaps in Ohio or West Virginia), in other states' prisons if they had excess capacity (although no Midwestern state prison system had extra room to lease), or in privately owned prisons (in Texas or Louisiana). Following his announcement, 31 minimum security prisoners were sent to a federal prison in West Virginia in December 1997, and all returned to Michigan in February 1998.

Under the Interstate Corrections Compact (Public Acts 92 and 93 of 1994), prisoners have to consent in writing to a transfer to another state, unless the transfer is required to protect the prisoner's safety. In addition, transferred prisoners are entitled to all hearings within 120 days of the time and under the same standards that are normally accorded to prisoners similarly sentenced and confined; and further, if a prisoner consents in writing, a hearing may be

conducted by corresponding agencies or officials of the other state.

Some have proposed that prisoner transfers to out of state facilities should be involuntary, decided by administrators in the Department of Corrections. Opponents of voluntary transfer argue that the consent requirement in the law should be eliminated since it interferes with the department's authority and slows the relocation of prisoners when the system has reached its full capacity. Some have argued further that certain hearing standards should be eliminated, and in particular the reference in law to a transferred prisoner's right to a timely hearing. Finally, some have argued that prisoners transferred out of state should not be transferred to privately owned corrections facilities.

THE CONTENT OF THE BILL:

Senate Bill 838 would amend the Department of Corrections Act to revise certain provisions pertaining to the transfer of a prisoner to another state. The bill would delete a provision requiring a prisoner's consent before he or she is transferred to another state. Currently the law requires that a prisoner consent to a transfer, unless a transfer is required to protect a prisoner's personal safety. Further, the bill specifies that when transferring prisoners to out-of-state prisons, the department director would be required to endeavor to ensure that such transfers do not disproportionately affect groups of prisoners according to race, religion, color, creed, or national origin.

The bill also would remove a requirement that a Michigan prisoner in another state receive a hearing within a specified time period. Further, the bill would provide that the DOC hearing division would not be responsible for a prisoner hearing for a prisoner transferred to another state's correctional facility. Currently, the law provides that a prisoner sentenced

under Michigan law who is imprisoned in another state pursuant to the Interstate Corrections Compact is entitled to all hearings, within 120 days of the time and under the same standards, that are normally accorded to prisoners sentenced and confined in Michigan. The bill specifies, instead, that a prisoner would be entitled to hearings pursuant to the compact.

Finally, Senate Bill 838 specifically states that a prisoner would not be entitled to a hearing before his or her transfer to another state.

MCL 791.211a, 791.251 and 791.256

HOUSE COMMITTEE ACTION:

The House Corrections Committee deleted all provisions of the bill that would have authorized the confinement of Department of Corrections prisoners in privately-owned correctional facilities located in another state. Further, the House committee substitute includes language requiring the department to ensure that out-of-state transfers do not disproportionately affect groups of prisoners by race, religion, color, creed or national origin.

BACKGROUND INFORMATION:

The Interstate Corrections Compact reportedly dates back to 1943 and includes as members about 40 states plus the District of Columbia. Michigan has been a member since 1994.

In 1994, two laws were enacted to allow Michigan's governor to join the Interstate Corrections Compact. The first, Public Act 92 of 1994, creates the compact and sets forth its purpose for the states that participate as "providing facilities and programs on a basis of cooperation with one another, thereby serving the best interests of offenders and of society and effecting economies in capital expenditures and operational costs." Public Act 92 of 1994 also sets conditions for any contract entered into by two states, specifying the procedures and rights both for the sending state, and for the receiving state.

The second law, Public Act 93 of 1994, allows the Department of Corrections director to enter into contracts on behalf of the state with other compact states, based on an inspection made at his or her direction that another state's institution is suitable for confinement of prisoners committed to the

department's custody, and that the facility maintained standards of care and discipline that were not incompatible with those of Michigan and that all inmates confined in the institution were treated equitably regardless of race, religion, color, creed, or national origin. Public Act 93 of 1994 also set hearing standards for prisoners. (Senate Bill 838 would change the hearing standards found in this act.)

According to the Senate Fiscal Agency bill analysis of the laws, dated 3-16-94, the bills authorizing the compact were intended to give the Department of Corrections an option to house a prisoner in a different state if that prisoner were placed in particular danger as a result of being incarcerated among the department's general population. The analysis notes that this situation occurs on occasion when a high-profile prisoner or former law enforcement officer or informant is incarcerated. The analysis reads: "Being a party to the Compact simply would be a useful administrative tool to the State and, according to the Department, would not be used as a means to alleviate Michigan's own prison crowding problem."

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have an indeterminate fiscal impact on the Department of Corrections. To the extent that beds in out-of-state facilities cost more than state-operated beds, the bill could lead to increased costs. Although current reports indicate that out-of-state placement would be more expensive than similar placement within Michigan, such costs would not be a necessary result of the bill. (6-9-98)

The Senate Fiscal Agency notes that the bill would result in indeterminate costs to the state and would have no fiscal impact on local government. To the extent that the bill would allow the Department of Corrections to incarcerate prisoners out-of-state without their written consent, the DOC could potentially send more prisoners out-of-state. Although out-of-state incarceration appears to cost more than in-state incarceration, this is an indirect cost of the bill and would apply only in times of overcapacity.

Further, the compact does not specify whether the sending or receiving state is responsible for costs incurred in providing hearings, nor does the bill. Thus, there is no indication that the state would incur costs above the costs implied in the existing language. (2-17-98)

ARGUMENTS:**For:**

This bill is necessary to speed up the process in which prisoners are transferred to facilities in other states. The provisions in law that require a prisoner's consent to transfer impede the speedy relocation of a prisoner, and they work to the state's disadvantage when the incarceration system reaches its capacity. Other states that are party to the Interstate Corrections Compact also have reached their capacity, and are competing against Michigan for space that is currently available in Virginia. In order for the Department of Corrections to lease 1,250 prison beds from Virginia for one year (with the possibility of an additional one-year contract extension), it is necessary that Michigan be able to move quickly to relocate its prisoners.

For:

To relieve overcrowding, the Department of Corrections has already successfully transferred 31 minimum security inmates (mostly convicted drunken drivers) to a federal prison in West Virginia, and returned them to Michigan. The prisoners were sent in December 1997, and returned in February 1998. As reported in the *Detroit News* (2-27-98), there are about 42,000 inmates in Michigan's prisons and about 29,000 are medium to high security. According to a Department of Corrections spokesman, at one point in February 1998 there were only 31 beds for medium to high security prisoners available in the prison system. During committee testimony in late May 1998, about 40 beds were reported to be available. This legislation is needed, and it is needed now.

For:

This version of Senate Bill 838 is an improvement over the Senate-passed version. During deliberations in the House Corrections Committee, the bill was rewritten to prohibit the transfer of prisoners to privately owned out of state prisons. What's more, the bill was amended in an attempt to ensure some measure of equity for prisoners who are transferred. Specifically, the bill reads: "When transferring prisoners to institutions of other states, the director shall endeavor to ensure that the transfers do not disproportionately affect groups of prisoners according to race, religion, color, creed, or national origin."

Response:

Although this bill eliminates the Senate-passed provision that prisoners could be transferred to privately owned correctional facilities out of state, a Department of Corrections spokesperson explained in

committee testimony that the department had only temporarily withdrawn this request. The department is able to withdraw the request because an ample number of beds has only recently become available in a state-run Virginia corrections facility. The department spokesman indicated that the department would renew its request for the authority to transfer to private facilities if it became necessary at some future date.

Against:

A spokesperson for the Michigan Appellate Assigned Counsel System (MAACS) has questioned whether the existing shortage of prison beds is "real." That office claims that the shortage of space is attributable in large part to changes the parole board made in its parole policy about four years ago. At that time, following two particularly heinous crimes committed by parolees, the board decided, at the urging of the public and many legislators, that prisoners should serve beyond their minimum terms. The spokesperson from the MAACS points out that if the parole board were granting paroles in its customary manner (that is to say, according to its rules before 1994) at a rate of 63.4 percent, there currently would be 1,480 free beds in the prison system. The MACCS's analysis further demonstrates the availability of nearly 6,000 beds, and ways to avoid prisoner transfers (and expensive prison construction), if the corrections system were to implement four other policies that were in place in the early 1990s.

Against:

According to committee testimony, the cost per day to house a prisoner out of state in Virginia will be about \$60. A comparable prisoner is housed in Michigan for between \$40 and \$45 a day. The cost of out of state contracts is too high.

Against:

Involuntary out of state transfers of prisoners can disrupt a prisoner's rehabilitation program. For example, over 1,800 women are incarcerated in Michigan prisons, the majority convicted of non-violent offenses. Over 80 percent of these women are mothers who have been the primary care givers for their children and their imprisonment causes drastic disruption in their children's lives. Since 1986 the Michigan Council on Crime and Delinquency has spearheaded a broad-based effort to research and address the needs of the children of incarcerated mothers. Programs have been developed and privately funded to enable children to visit their mothers each month. These kinds of programs cannot function if

prisoners are involuntarily transferred to other states. According to the American Friends Service Committee, research shows that family contacts improve a prisoner's institutional behavior and greatly increase the chance for success on parole. Undermining family relationships also negatively affects the non-prisoner family members, especially children.

Response:

A Department of Corrections spokesman has testified in committee that the department does not intend to transfer any women prisoners out of state. Women prisoners who are mothers will not be separated from their children.

Rebuttal:

Men who are prisoners and also fathers will be transferred involuntarily and separated from their children, since the department has not taken male prisoners' social situation into account when developing criteria to identify the 16,000 prisoners who will be eligible for transfer out of state.

Against:

When the bills authorizing Michigan's membership in the Interstate Corrections Compact were enacted in 1994, language was included to ensure a prisoner's consent to transfer. This bill would remove the transfer consent requirement to make transfers involuntary. Further, the 1994 legislation also included language to protect the hearing rights of prisoners who are sent out of state for incarceration. This bill seems to contradict those hearing requirements. As a result, the bill is likely to result in a lot of new prisoner litigation if it is enacted into law.

For example, the bill is vague about hearings--what kinds of hearings would be conducted and where? When? And by whom? As the American Friends Service Committee pointed out during committee testimony, the Interstate Corrections Compact says that any hearing to which an inmate may be entitled under the laws of the state sending the prisoner to confinement in another state may be carried out by officials of the sending or receiving state according to the choices of the sending state. Although it is not entirely clear how this legislation would work when considered together with the Interstate Corrections Compact Acts, Senate Bill 838 seems to indicate that the hearings would be the responsibility of the receiving entity, since the department's hearings division is absolved of any responsibility for a prisoner hearing that is conducted for a transferred prisoner. If that is so, then the bill would seem to conflict with the Corrections Compact Acts, which provides for hearings but no final decision-making in the receiving state. The hearings may include parole or misconduct

hearings during out-of-state incarceration. And under the compact, any hearing would be carried out according to the laws of the sending state. If Michigan eliminates its hearing's standards in Senate Bill 838, what standards will receiving states use? How and when will receiving entities conduct the hearings?

Response:

In committee testimony, the Department of Corrections spokesman testified that the department did not intend to transfer any prisoner out of state who is close to a parole hearing date. He testified that the department intends to continue to conduct all parole hearings in Michigan. The department did not testify as to the procedures it intends to implement for other kinds of hearings.

POSITIONS:

The Department of Corrections supports the bill. (6-5-98)

The Michigan Corrections Organization does not oppose the bill as amended in the House committee. (6-4-98)

The Michigan Appellate Assigned Counsel System opposes the bill. (6-4-98)

The American Friends Service Committee opposes the bill. (6-5-98)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.