

HEARINGS FOR INTERSTATE PRISONERS

Senate Bill 873 (Substitute H-1) First Analysis (7-2-98)

Sponsor: Sen. Leon Stille
Senate Committee: Judiciary
House Committee: Corrections

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, under the Interstate Corrections Compact, 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.

To give the Department of Corrections greater unilateral authority to transfer prisoners, the legislature passed Senate Bill 838 earlier this session. (See *BACKGROUND INFORMATION*.) Among other things, the bill eliminates the need for a prisoner's consent to transfer, and also removes a provision that guarantees a prisoner the right to a hearing before transfer. The Michigan legislature passed Senate Bill 838 which was ordered enrolled and presented to the governor on June 25, 1998.

To relieve overcrowded prisons, the Michigan Department of Corrections is negotiating a contract with the State of Virginia to temporarily house prisoners who have been sentenced in Michigan, but for whom there is inadequate prison bed capacity. According to committee testimony, the Office of the Attorney General in Virginia will not approve the contract, and has advised the Virginia Department of Corrections that Michigan's statute does not clearly state that Virginia corrections officials will have complete disciplinary responsibility for Michigan prisoners while the prisoners are under Virginia's jurisdiction. To compromise, the office of the Virginia attorney general has suggested to the office of the Michigan attorney general that the states agree to a dual system which would, in effect, apply Virginia's rules to Michigan's prisoners while they are in Virginia, but assess Michigan's penalties for a violation of those rules, if they are harsher. The Michigan Department of Corrections has rejected the compromise, certain that it would invite lawsuits from prisoners who would claim a violations of their right to due process.

Some have argued that the law should clearly state that Michigan Department of Corrections hearing standards

do not apply to Michigan prisoners when they are transferred to other states to serve a part of their sentence.

THE CONTENT OF THE BILL:

Senate Bill 873 (H-1) would amend the Department of Corrections act to specify that the hearings division is not responsible for a prisoner hearing that is conducted for prisoners transferred to an institution of another state pursuant to the Interstate Corrections Compact.

MCL 791.251

HOUSE COMMITTEE ACTION:

As introduced and passed by the Senate, Senate Bill 873 concerned Parole Board appeals and interviews. Specifically, the bill would have amended the Department of Corrections act to remove a prisoner's ability to appeal an action of the Parole Board in granting or denying parole. The bill also would have eliminated the requirement that the Parole Board interview a prisoner after his or her initial 10-year interview. Instead of subsequent interviews (usually every five years), the bill would have required the Parole Board to review the prisoner's case at appropriate intervals.

BACKGROUND INFORMATION:

Senate Bill 838. On June 25, 1998, enrolled Senate Bill 838 was presented to the governor for his signature. That bill removes a statutory requirement that a Michigan prisoner consent to transfer to another state, and that a prisoner is entitled to a hearing before his or her transfer to another state. Although the bill that was reported out of the House Corrections Committee contained a provision specifying that the hearings division of the Michigan Department of Corrections was not responsible for a prisoner hearing conducted for a prisoner transferred to an institution of another state pursuant to the Interstate Corrections Compact, that language was deleted on the House floor during debate on second reading. The amended bill was concurred in by the Senate.

Instead of a blanket repeal of a prisoner's right to voluntary transfer, enrolled Senate Bill 838 requires that when considering transfers of prisoners out of state pursuant to the Interstate Corrections Compact due to bed space needs, the Department of Corrections must consider first prisoners who volunteer to transfer as long as they meet the eligibility criteria for such

transfer. The bill also prohibits the department from transferring a prisoner who has a significant medical or mental health need, and it requires the department to use objective criteria in determining which prisoners to transfer. In addition, the bill specifies that after transfer the Michigan Department of Corrections must provide law library materials including Michigan compiled laws, Michigan state and federal cases, and U.S. Sixth Circuit Court cases to prisoners transferred out of state.

The bill also specifies that unless a prisoner consents in writing, a prisoner transferred under the Interstate Corrections Compact due to bed space needs shall not be confined in another state for more than one year. Senate Bill 838 also specifies that a prisoner who is transferred to an institution of another state must receive all of the following while in the receiving state: mail services and access to the court; visiting and telephone privileges; occupation and vocation programs such as GED-ABE and appropriate vocational programs for his or her level of custody; programs such as substance abuse programs, sex offender programs, and life skills development; and, routine and emergency health care, dental care, and mental health services.

In addition, enrolled Senate Bill 838 included 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.

Interstate Corrections Compact. 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.

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:

Fiscal information is not available.

ARGUMENTS:

For:

This bill is necessary so that the Michigan Department of Corrections can finalize its contract with the Virginia Department of Corrections to allow a transfer of Michigan prisoners. The bill makes it plain that while Michigan prisoners are housed in Virginia prisons, they must abide by Virginia rules and accept Virginia penalties for violation of those rules. Until this amendment to Michigan's statute is signed by the governor, the Virginia attorney general will not recommend approval of this prisoner transfer contract.

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 specify a prisoner's rights, and his or her right to Michigan-based hearings and

penalties when those rights are alleged to have been violated, impede the speedy relocation of a prisoner. Consequently, 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.

Against:

If this bill is signed into law, Michigan prisoners who are transferred to out-of-state prisons will certainly bring lawsuits against the State of Michigan. They will argue that their constitutional and statutory rights have been violated, rights that are guaranteed by the Interstate Corrections Compact. Defending those cases will cost the state's taxpayers money that could be better spent to provide services to citizens.

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 MAACS'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.

POSITIONS:

The Department of Corrections supports the bill. (7-2-98)

The Michigan Appellate Assigned Counsel System opposes the bill to the extent that it would allow transfers under conditions that would deny prisoners' constitutional or statutory rights they would have in Michigan. (7-2-98)

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.