House
Legislative
Analysis
Section

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EXEMPT PRISONERS FROM CIVIL RIGHTS LAWS

House Bill 4475 (Substitute H-2)
House Bill 4476 (Substitute H-3)
First Analysis (12-2-99)

Sponsor: Rep. Michael Bishop
Committee: Constitutional Law and Ethics

THE APPARENT PROBLEM:

Two recent opinions from the Michigan Court of Appeals have said that prisoners in state correctional facilities are protected, and can file lawsuits, under the Elliott-Larsen Civil Rights Act and the Persons with Disabilities Civil Rights Act. In Neal v Department of Corrections (Rehearing, issued 11-24-98), the court allowed female prisoners to bring a class action suit alleging a pattern of sexual harassment against female inmates by male corrections officers in state facilities. Sexual harassment is a form of sex discrimination under Elliott-Larsen. In Doe v Department of Corrections, the court allowed prisoners to bring a class action suit on behalf of inmates denied placement in community residential programs, camps, and farms because they were HIV positive, a form of disability. (The appeals panel in the Doe decision said that it "reluctantly" was following the reasoning of the Neal opinion.) Some people believe that these decisions were mistaken and that it was not the intent of the legislature for these civil rights acts to cover state prisoners. Legislation has been introduced to clarify the issue.

THE CONTENT OF THE BILLS:

The bills would amend the two state civil rights laws to specify that they do not apply to an individual serving a sentence of imprisonment in a state or county correctional facility in this or another state or in a federal correctional facility. Each bill would amend the definition of "person" in its respective act to specifically exclude such an individual. Each bill says that it expresses the original intent of the legislature that [such individuals] are not within the purview of [the] act", and each bill would be applied retroactively. House Bill 4475 would amend the Persons with Disabilities Civil Rights Act (MCL 37.1103 and 37.1301), and House Bill 4476 would amend the Elliott-Larsen Civil Rights Act (MCL 37.2103 and 37.2301).

Each bill also would amend the definition of "public service" to specify that public service does not include a state or county correctional facility with respect to actions and decisions regarding an individual serving a sentence of imprisonment.

House Bill 4475 says that it "is intended to clarify the construction of the Persons with Disabilities Civil Rights Act" . . . and to express the original intent of the legislature. House Bill 4476 says that it "is curative and intended to correct any misinterpretation of legislative intent."

BACKGROUND INFORMATION:

The Elliott-Larsen Civil Rights Act says in Section 302(a) that a person shall not "deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status." (Emphasis added)

The definition of "public service" in the act is "a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of the state, a political subdivision, or an agency thereof, or a tax exempt private agency established to provide service to the public."

The Persons with Disabilities Civil Rights Act contains a similar definition of "public service" and it provides that, except where permitted by law, a person shall not "deny an individual the full and equal enjoyment of the goods, services, facilities, advantages, and accommodations of a place of public accommodation or public service because of a disability that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids." (Emphasis added)

There have been two decisions in Neal v Department of Corrections by the Michigan Court of Appeals. In the second Neal opinion, the appeals court said: "The narrow issue before us is whether the MDOC correctional facilities are places of "public service" in which discrimination against inmates, based on sex, is prohibited." The court's answer was that they are, based on a recent U.S. Supreme Court ruling (which included state prisoners under the federal Americans with Disabilities Act.) Among other things, the court noted that "nowhere does the language of the Civil Rights Act purport to preclude its application because of a person's status as a prisoner or inmate" and argued that "when the Legislature has seen fit to exclude prisoners from the provisions of a statute, it has specifically done so." The court also opined that "insofar as subsection 302(a) of the Civil Rights Act governs 'public service', it is essentially a codification of the constitution's Equal Protection and Antidiscrimination Clauses, broadened to include categories not covered under the constitution, such as age, sex, and marital status." The subsequent Doe v Department of Corrections decision essentially followed the reasoning of Neal. (However, the Doe opinion states, "Although we disagree with the rationale and result of Neal II, we conclude that it parallels the present case to such an extent that it dictates the resolution of the present issue.")

The Neal case had been given a rehearing because of a recent U.S. Supreme Court case. In the first hearing, the appeals court panel had found that prisoners were not covered under state civil rights law, although visitors, employees, officials, and others who voluntarily sought admittance to prison would be covered. The court said in the first decision, essentially, that prisons were not established to provide "service to the public" in the same sense that hospitals, courts, or the secretary of state's office do. The court revised its opinion after a rehearing of the case to consider the effect of the U.S. Supreme Court Case Pennsylvania Department of Corrections v Yeskey, which dealt with a similar issue. It should be noted that one of the appeals court judges dissented, arguing that Yeskey was different enough from the Michigan case so as not to be useful.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that to the extent that the bills would reduce the number of prisoner lawsuits under the two civil rights acts, the bills could reduce state costs. (12-2-99)

ARGUMENTS:

For:

Supporters of these bills say that it was never the intent of the legislature that the state's two civil rights bills should apply to individuals serving prison sentences. They argue that there is simply no evidence that such an application was envisioned. The aim of the bills, therefore, is to preserve the status quo and to correct recent misinterpretations of the two civil rights laws. The legislation does not intend to diminish prisoners' rights but rather to make it clear that they should not have remedies under these two specific civil rights acts. Other remedies are available in state law and in federal law, including actions based on the state and federal constitutions.

Against:

Opponents say that the intent of these bills is to overturn a recent appellate court decision and, through retroactive application, deny prisoners the ability to continue with ongoing lawsuits against the state. This is unfair. They argue that the question that ought to be asked is, Why shouldn't prisoners have the protections of the state's civil rights laws? Why shouldn't the state law be available to provide remedies for abuses of state power against prisoners, particularly since the state has such overwhelming control over their lives? Doesn't taking prisoners out from under these protections make it easier for prison officials or employees to unfairly discriminate among prisoners or ignore the legitimate needs of prisoners, including prisoners with disabilities that require some accommodation? Prisoner advocates have cited the existence of such needed accommodations as special mealtimes for prisoners with HIV/AIDS so they can coordinate eating with medication schedules; allowing extra time for prisoners in wheelchairs to get from place to place (without being ticketed for being late); providing the deaf with visual notifications of announcements; making books on tape available for blind prisoners; etc. All of these are relatively cost-free and easy to make. The existence of civil rights laws that apply to prisoners makes it more likely such accommodations will be made. These bills do not attempt merely to limit lawsuits by prisoners under state civil rights laws in order to address abuses of the legal system by prisoners but instead to eliminate them entirely. This is unreasonable and shows a disregard for how prisoners are treated.

Response:

The bills are to be applied retroactively, say supporters, because they aim at retaining what has been the traditional interpretation of the two civil rights laws and to cure the misinterpretations that have allowed

lawsuits under the acts to go forward. As an earlier court decision noted, although prisons are performing a public service by confining people convicted of crimes, they are not providing service to the public (or accommodations) in the same sense that, say, a hospital is. The bills would not affect non-prisoners (visitors, volunteers, employees, etc.) when they were at prison sites or dealing with the Department of Corrections.

POSITIONS:

A representative of the Department of Corrections testified in support of the bill. (12-1-99)

A representative of the Prison and Corrections Section of the State Bar of Michigan testified in opposition to the bills. (12-1-99)

A representative of Michigan Protection and Advocacy Services testified in opposition to the bill. (12-1-99)

A representative of Prison Legal Services testified in opposition to the bill. (12-1-99)

Analyst: C. Couch

■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.