



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

MONITOR PRISONER CALLS

House Bill 4222 as enrolled
Sponsor: Rep. Robert Bender
First House Committee: Corrections
Second House Committee: Judiciary
Senate Committee: Family Law, Mental
Health, and Corrections

House Bill 4223 as enrolled
Sponsor: Rep. Thomas C. Mathieu
House Committee: Judiciary
Senate Committee: Family Law, Criminal
Law, and Corrections

Second Analysis (2-11-94)

THE APPARENT PROBLEM:

Corrections officials note that when prisoners were first given telephone privileges in the early 1970s, the telephones improved prisoner morale (and thereby helped with prison discipline) by enabling them to maintain contact with family members and deal with family problems without delay. Over the years, however, problems have developed with prisoners' use of telephones. Prisoners have learned to take advantage of electronic advances and use telephones to commit credit card fraud and run long-distance telephone call scams, as well as operate prostitution rings and other criminal endeavors. Such activities can be almost impossible to prevent or detect, at least before thousands of dollars have been lost by legitimate card holders or the telephone company. While the corrections department can now monitor prisoner calls, it says that it can do so only by obtaining a warrant through convincing a judge that probable cause exists to believe a crime is being committed. Legislation to enable the department to monitor prisoner calls has been proposed.

THE CONTENT OF THE BILLS:

House Bill 4222 would amend the corrections code (MCL 791.270) to allow a correctional facility to listen to or record prisoner telephone calls if all of the following conditions were met:

** the monitoring complied with rules promulgated under the bill. Those rules would have to minimize the intrusiveness of the monitoring, and prescribe a

procedure under which a prisoner could make unmonitored calls to his or her attorney and any federal, state, or local public official who requested it.

** the monitoring was routinely conducted by department employees to preserve security and orderly management of the facility, to interdict drugs and other contraband, and to protect the public; and,

** telephone users were informed of the monitoring by notices prominently posted on or near each telephone, and each party to a conversation was notified by voice that the conversation was being monitored. Prisoners also would have to be given reasonable notice of the rules promulgated under the bill.

A correctional facility would have to disclose criminal information obtained under the bill to any law enforcement agency having jurisdiction over that crime or attempted crime. Evidence obtained under the bill could be considered as evidence in a criminal prosecution for that crime or attempted crime.

House Bill 4223 would amend the Michigan Penal Code (MCL 750.539g) to exempt monitoring conducted under House Bill 4222 from eavesdropping prohibitions.

Neither bill could take effect unless both were enacted.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that House Bill 4222 would present indeterminate costs, probably minor, for monitoring equipment and staff time. The amount of any costs to the department would depend on the type and extent of monitoring that was done. (5-26-93)

ARGUMENTS:

For:

The bills would grant the corrections department reasonable powers to monitor prisoner telephone calls. Whether calls were randomly monitored or whether monitoring was aimed at specific individuals, monitoring could stymie prisoner efforts to continue a life of crime while behind bars. Innocent members of the public at large would be protected, and businesses could experience a reduction in the losses they suffer due to prisoner fraud. Monitoring would further help to maintain prison security, as prisoners can use telephone calls to arrange for drugs, weapons, or escapes. Arguments that the bills would erode the civil rights of prisoners are specious; the rights of prisoners are limited, and the use of telephones a privilege that the state has the right to restrict.

Against:

The bills would erode the rights of prisoners, but more importantly, they also would erode the privacy rights of innocent people who might speak over a telephone to a prisoner. Such people have committed no crime, but their conversations would be tapped as if they were criminals. The corrections department may now eavesdrop on calls when it has probable cause to suspect wrongdoing and can obtain a warrant; this should be sufficient to meet the needs of law enforcement. The bills would in essence allow the department to eavesdrop on innocent parties when there was no probable cause. Such additional wiretapping powers are not justified.

Against:

The corrections department could opt for other, less intrusive alternatives. Rather than eavesdrop on prisoner calls, the department could use devices that track and record telephone numbers called. If a suspicious pattern of calls was identified, the

department could then ask the state police to investigate. Illicit telephone use could be addressed without interfering in the personal lives of prisoners and their families.

Against:

It could breed abuse for corrections department employees to monitor prisoners' calls. Access to sensitive information about a prisoner's personal life or the lives of a prisoner's family members could give prison staff unacceptable leverage over a prisoner under their authority, with improper coercion the result. If routine monitoring is to be allowed, it should be done by people with no direct access to prisoners.

Against:

Many are skeptical that the corrections department's ability to monitor calls is as limited as claimed. Reports are that eavesdropping on calls is routine. If this is the case, it is unclear why the bills are needed. Perhaps what the bills really do is enable the information obtained through unjustified wiretaps to be used in court. In addition, if the department may now monitor calls and routinely does so, say in the interests of prison security, then, ironically, one effect of the bills would be to place restrictions on monitoring.

Response:

The bills would do no wrong in making it easier to obtain evidence and prosecute prisoners who commit or attempt crimes while incarcerated. Further, posted notices regarding monitoring could deter some prisoners from attempting schemes. Finally, although the bills would place some restrictions on monitoring, those restrictions would be reasonable ones, ensuring that monitoring was aimed at possible illegal activities and not confidential communications with attorneys or whistleblowing to oversight authorities.