



**House
Legislative
Analysis
Section**

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RESTRICT PRISONERS' ACCESS TO RECORDS

House Bill 5975 as introduced
First Analysis (9-26-90)

Sponsor: Rep. Floyd Clack
First Committee: Corrections
Second Committee: Judiciary

THE APPARENT PROBLEM:

The Freedom of Information Act of 1976 (FOIA) provides for public access to records of public bodies, and prisoner requests for copies of Department of Corrections' (DOC) records have burgeoned steadily since its enactment. The department's total number of requests rose from approximately 20,000 in 1987 to 33,976 in 1989. Most of the requests are made by, or on behalf of, prisoners under the DOC's jurisdiction. Since the FOIA requires that a public agency respond to a request for disclosure of a public record within five business days of receipt of the request, the department must provide requested information, unless there is a statutory exemption for the document. The reason for a disclosure request generally is not required to be divulged. If the agency denies a request for disclosure of information, it is required to inform the requester of his or her right to sue the agency. Further, since all prisoners are considered indigent, the first \$20 worth of copied records must be supplied free of charge to any prisoner who requests information that specifically names the prisoner.

In an attempt to cut down on the abuses that had resulted from the amount of free copying that prisoners were allowed, Public Acts 59 and 99 of 1988 amended the Department of Corrections act and the FOIA, respectively, to exempt certain DOC records from the \$20 waiver for information requested by prisoners. Some contend, however, that many prisoners, intent on "beating the system," and with plenty of time at their disposal to explore loopholes in the law, have found ways to manipulate that law to further harass the department, especially since winning a lawsuit over a FOIA request that has not been properly responded to can bring \$500 in punitive damages. The requirement that requests must be responded to within five business days, for example, places a burden on prison agencies that are already overwhelmed with the volume of FOIA requests from prisoners, and since failure to meet the five-day disclosure requirement is considered a denial, the agency is open to lawsuits. The provision that certain records be exempt from the disclosure requirements of the FOIA, "if their release would constitute a security risk," has also resulted in litigation where the burden of proof has been on the department in each case to demonstrate the particular security concern. It is contended that the Department of Corrections act should be amended to place further limits on the type of information prisoners can request of the department, and to give the department the authority to establish reasonable restrictions on FOIA requests.

THE CONTENT OF THE BILL:

House Bill 5975 would amend the Department of Corrections act to exempt records pertaining to prisoners in state or federal correctional facilities from the disclosure requirements of the Freedom of Information Act (FOIA) when the information was requested by, or on behalf of,

another prisoner. The bill would also exempt records that have been created by — or that have previously been provided to — a prisoner from the waiver of the first \$20 of copying fees provided under the FOIA. The Department of Corrections act currently exempts from disclosure under the FOIA records such as departmental employees' staffing charts or daily assignment sheets, the release of which would threaten a correctional facility's security. The bill would delete the requirement that the excluded staffing charts or daily assignment sheets be among those records whose release "would threaten a facility's security." The bill would also specify that prisoners could inspect documents that were not otherwise exempt from disclosure, subject to reasonable restrictions by the Corrections Commission or the Department of Corrections.

MCL 791.230

FISCAL IMPLICATIONS:

According to the Department of Corrections, the bill would result in an indeterminate amount of savings to the state, and a substantial savings in time for department employees (9-13-90).

ARGUMENTS:

For:

The bill would grant the department more discretion in establishing reasonable restrictions on the type of information that could be requested by prisoners, and would reduce the risk of prisoner-instigated FOIA lawsuits by removing ambiguous language from the act. As evidenced by the staggering number of FOIA disclosure requests received by the department, prisoners have abused their right to information disclosure. While the changes enacted in recent years have reportedly provided some relief from frivolous requests, some contend that prisoners still use their rights to disclosure of information under the FOIA to harass the department and its employees by requesting copies of the same records over and over again, and that prisoners use the privileges granted them under FOIA to provide a "personal photocopying service" at the taxpayer's expense. By limiting the records that could be disclosed and waiving rights to free copies in some instances, the bill would reduce disclosure requests and save the state money.

For:

The bill would ensure that records specifically naming the requesting prisoner still would be accessible. For those prisoners whose requests for information were relevant to their legal battles, therefore, the necessary information would still be available.

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OVER

For:

As written, the act contains no provision that would permit the department to deny one prisoner access to the records of another under the FOIA. By exempting these records from the disclosure requirements of the FOIA, the bill would put into statute a practice which, for obvious security reasons, makes good sense.

Against:

Although there has been an increase in so-called nuisance requests, certain documents should remain accessible even if a particular prisoner's name does not appear in the document. Medical records and staff log books, for instance, should be accessible. If a prisoner filed a suit claiming that a health care worker did not make required rounds, the prisoner would need the log to demonstrate that failure, but his or her name would not actually appear in the log. Under the bills, that document would be inaccessible under the FOIA disclosure provisions. While it is true that if such a suit were filed the information would be subject to the discovery provisions of Michigan court rules, no enforcement of those rules can occur unless a suit actually is filed. The bills, consequently, could result in an increase of frivolous suits against the department.

Against:

Such broad restrictions on FOIA disclosure would violate prisoners' legal rights. Since prisoners' mobility is restricted by their confinement, their ability to gain access to information already is limited. The bills would compound that limitation. In addition, although the bills could effectively reduce the abuses of the FOIA, it would occur at the expense of some prisoners whose disclosure requests were legitimate. Currently, the department's policy is that inmate's files may not be disclosed to other inmates, and prisoners who wish to do so must bring action against the department under the FOIA. One prisoner, for example, desired to obtain the "misconduct report" on another who had assaulted her, and against whom she intended to file a lawsuit. The court granted her request. The bill, however, would impose a blanket exemption on such requests.

Response: The courts have recognized that a concern for security is of paramount importance to corrections' officials, and the department's policy that copies of inmates' files are not to be disclosed to other inmates is based on a concern for the safety of inmates and the security of its institutions. In the absence of a blanket exemption for such request, corrections officers would have to decide each request on a case by case basis, and due to the large volume of FOIA requests, it would be impossible for the officers at each institution to determine whether one inmate's request should be granted and another's denied. Moreover, in situations where a prisoner needs another prisoner's records in order to file a lawsuit, the court would grant that access to the attorney handling the case.

POSITIONS:

The Department of Corrections supports the bill. (9-13-90)

The Michigan Corrections Organization supports the bill. (9-14-90)

The Michigan Trial Lawyers Association has no position on the bill. (9-15-90)

The Michigan Council on Crime and Delinquency has no position on the bill. (9-18-90)