House
Legislative
Analysis
Section

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

PRISONERS CAN'T BE NOTARIES

House Bill 4809 with committee amendment
First Analysis (2-15-00)

Sponsor: Rep. Mike Kowall
Committee: Criminal Law and Corrections

THE APPARENT PROBLEM:

In 1992, as part of the ongoing case of *Cain v Michigan Department of Corrections* (a class action lawsuit filed by prisoners in an effort to prevent the department from implementing a new policy regarding prisoner possessions), the circuit court of Ingham county made a ruling on a motion determining that the Department of Corrections was required to allow prisoners to retain those items reasonably necessary to assist them with preparing a defense or an appeal. As part of its decision, the court also concluded that prisoners were not barred from appointment and service as a notary public under current law and that prisoners who were appointed as notaries were allowed to retain those items needed to act as a notary. The current law regarding notaries public provides that the secretary of state may appoint an individual as a notary public as long as he or she is 18 years of age or older, pays a $3 fee, and is either a resident of the county where he or she is going to be appointed, or if not a Michigan resident, show that his or her principal place of business is in the county where he or she would be appointed, and that he or she is engaged in activity that will likely require him or her to act as a notary. Finally, the individual seeking the appointment also must be endorsed by a member of the legislature or a circuit or probate judge of the county, district, or circuit where the individual resides.

One of the tools a notary public may use in certifying documents is a stamp or embosser that creates an imprint of the state seal. This is a fairly heavy, usually metal, object. In 1996, the Department of Corrections was called before the court to explain why it had violated the court's ruling in the *Cain* case by removing certain items, including embossers, from the possession of prisoners. The DOC argued that its removal of the embossers from the prisoners was appropriate as such items could serve as weapons and because embossers, for example, are not strictly required for a notary public to be able to function as a notary -- in most cases, pen and ink are sufficient to notarize a document. The court disagreed with the department's arguments and found the DOC in contempt. The court held that prisoners who were notaries public must be allowed to retain in their possession any items that could be needed in order to act as a notary. The *Cain* case and the circuit court's rulings as part of that case have brought to light what some see as an error in the law regarding notaries public, and it has been suggested that the law should be changed to prevent prisoners from becoming or serving as notaries public.

THE CONTENT OF THE BILL:

Under the bill, a person serving a term of imprisonment in a state correctional facility or jail in Michigan or in any other state, or in a federal correctional facility, could not be appointed or serve as a notary public. A person holding office as a notary public would have his or her commission revoked automatically if he or she was sentenced to a term of imprisonment; the revocation would occur on the day the person began serving the sentence. The bill would take effect on June 6, 2000.

The bill would amend Chapter 14 of the Revised Statutes of 1846 (entitled "Of County Officers"), which permits the secretary of state to appoint notaries on a countywide basis. To be appointed, a person must be endorsed by a member of the legislature or a local circuit or probate judge, be at least 18 years old at the time of application, and be a resident of the county for which the appointment is made. Once appointed, however, a person can act as a notary public in any part of the state.

MCL 55.107

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no state or local fiscal impact. (2-7-00)

ARGUMENTS:

For:

The bill provides for the DOC's legitimate need to limit the access of prisoners to items that could be used as weapons. The DOC has an affirmative duty to make certain that the prisons are safe, not only for the guards and other correctional employees, but for the prisoners as well. The fewer items that prisoners possess that could be made into or used as a weapon, the less risk of harm prisoners pose to the department's employees and to one another.

Furthermore, a notary public holds a position of trust and responsibility and thus prisoners should naturally be excluded from being notaries. The essence of a notary's work is to attest to the legitimacy of signatures; a person who is a prisoner should not be able to take on such a position of trust and responsibility.

Against:

While the removal of potential weapons from the possession of prisoners seems perfectly reasonable, it does not necessitate a complete prohibition against allowing prisoners to become or continue to act as notaries. In fact, such a prohibition is hardly reasonable -- it would limit access to notaries for prisoners. Although it is argued that some correctional employees are required to be notaries and could provide such services to prisoners, it is not difficult to imagine that this could create difficulties. First, it is likely that the demands of prisoners for notary services will impact negatively on the other duties of those corrections employees who are expected to provide notary services. Additionally, it is likely that lawsuits will result whenever any prisoner is unable to get a document notarized because the corrections employee who is able to act as a notary was unavailable. It is also likely that it will be alleged that the department personnel who are able to notarize documents are not readily available and that this system interferes with prisoners' rights to provide for their defense and/or appeal.

Furthermore, not all crimes impact on the credibility of those who commit them. While certainly individuals who have committed fraud might be less qualified to become notaries, it does not follow that all criminals lack the integrity to act as notaries.

Response:

A person who has been incarcerated for a crime has already failed to meet the societal expectation of obeying the law, and this does reflect upon the degree to which he or she can be relied upon to respect the law.

A notary has a broad authority and the trust of the public to act honestly and in obedience of the law. There is fairly limited oversight or ability to review a notary's actions and to a great extent the integrity of the person acting as a notary must be relied upon. Thus, it seems unreasonable to place someone who has already failed to follow society's restrictions against crime in a position to further abuse the trust of the public.

POSITIONS:

The Department of Corrections supports the bill. (2-9-00)

The Office of the Secretary of State supports the bill. (2-9-00)

The Michigan Corrections Organization supports the bill. (2-9-00)

Prison Legal Services opposes the bill. (2-9-00)

The Prisons and Corrections Section of the State Bar opposes the bill. (2-10-00)

Analyst: W. Flory

■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.