

MAINE STATE LEGISLATURE

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STATE OF MAINE

R. Cohen
80-128

Inter-Departmental Memorandum Date 19 August 1980

To Kevin Concannon, Commissioner

Dept. Mental Health and Corrections

From Karen G. Kingsley, Assistant

Dept. Attorney General

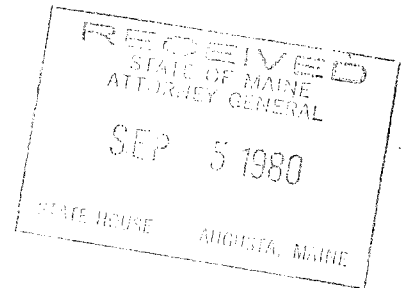
Subject Exchange of Offenders Under Treaty Authority: Transfer of Sanction Clause

SYLLABUS:

Anthony E. Travisono, Executive Director of the American Correctional Association, has sent a letter to the Governor, Attorney General and Speaker of the House. The same letter apparently has been sent to all the states, and it recommends adoption of a model clause authorizing transfer of sanction for foreign nationals held in state correctional systems. The model clause attached to the letter is taken from the Arizona Code, 41-105 which states

Exchange of offenders under treaty: Consent by Governor

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which they are citizens or nationals, the Governor may, on behalf of the state and subject to the terms of the treaty, authorize the director of the department of corrections to consent to the transfer or exchange of offenders and take any other action necessary to initiate the participation of this state in the treaty.



The ACA is recommending adoption of similar legislation in each state as a sensible criminal justice and correctional policy. The suggestion is made that the effect of passing such a law would be to free-up institutional space and cut costs.

QUESTION:

Is there any statutory authority, expressed or implied, in Maine law allowing the Governor to take the action contemplated by the model clause proposed for adoption by the American Correctional Association?

ANSWER:

No. Such authority, if desired, must be granted by the Legislature.

DISCUSSION:

The ACA proposal relates to transfer of foreign nationals from state prisons or correctional institutions to their own country if there were a treaty allowing this action between the Federal Government and the subject country. There is no express authority granted to the Governor either by the Constitution of Maine or by legislative resolve which would cover such transfers. In addition, there is no implied authority to do so incident to any of the Governor's expressly authorized powers.

Maine has entered a number of similar arrangements in which the transfer of inmates confined to its correctional system is authorized under certain conditions. ^{1/} All of these agreements, however, have been authorized by the Legislature.

Six of the states which have adopted the transfer of sanction clause are on the southern border of the United States. The problems these states have had in regard to numbers of foreign nationals in their correctional facilities is a matter of public knowledge. One of the transfer of sanction agreements which the Federal Government has is with Mexico.

Whether the state should adopt such a clause or not is a matter of policy. However, Maine does not have a foreign national population of great magnitude in its correctional system. Furthermore, the clause, while not mandatory, contains indications of reciprocity which should be taken into consideration.

Karen G. Kingsley
KAREN G. KINGSLEY
ASSISTANT ATTORNEY GENERAL

KGK/vv

CC: Richard Cohen ✓
Attorney General

John Martin
Speaker of the House

^{1/} 34 M.R.S.A. § 181 et seq. Uniform Interstate Compact on Juveniles.

34 M.R.S.A. § 1291 et seq. New England Interstate Corrections Compact.

34 M.R.S.A. § 1351 et seq. Interstate Corrections Compact.

34 M.R.S.A. § 1411 et seq. Interstate Compact on Detainers.

34 M.R.S.A. § 1721 Uniform Act For Out-of-State Parolee Supervision Act.