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PENAL INSTITUTIONS Board and Department of Corrections: Provide for Transfer of Inmates who Commit Aggravated Assault or Battery on Correctional Officers; Provide for Assistance to Victims of Aggravated Assault or Battery

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PENAL INSTITUTIONS

Board and Department of Corrections: Provide for Transfer of Inmates who Commit Aggravated Assault or Battery on Correctional Officers; Provide for Assistance to Victims of Aggravated Assault or Battery

CODE SECTION:	O.C.G.A. § 42-2-11 (amended)
BILL NUMBER:	HB 660
ACT NUMBER:	826
GEORGIA LAWS:	1996 Ga. Laws 726
SUMMARY:	The Act provides for the transfer of inmates who commit aggravated assault or battery on a correctional officer while in custody to a higher security facility. It further provides procedures by which the Department of Corrections may offer assistance to victims in filing criminal or civil actions. Such assistance does not include legal representation.
EFFECTIVE DATE:	July 1, 1996

History

The disproportionate population of Georgia's prisons has placed many of the state's correctional officers in a dangerous position.[1] Because the prisons are understaffed with correctional officers, there are places where a correctional officer is alone with more than fifty inmates.[2] These conditions have resulted in increased instances of violence by the inmates on the officers.[3] Furthermore, because the prisons are understaffed, there are times when these officers cannot take lunch breaks or even restroom breaks.[4] The State Employees' Union needed a way to protect its workers.[5]

HB 660

HB 660 evolved as an attempt to correct these problems. The House Committee on State Institutions and Property offered a substitute to

1. Telephone Interview with Rep. Gerald Greene, House District No. 158 (May 8, 1996) [hereinafter Greene Interview].
2. *Id.*
3. *Id.*
4. *Id.*; Telephone Interview with Andy Freeman, Georgia State Employees' Union (June 26, 1996) [hereinafter Freeman Interview].
5. Freeman Interview, *supra* note 4; Greene Interview, *supra* note 1.

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HB 660,[6] and the Act incorporates only the language of the substitute, changing the original in several significant ways.[7]

The Act allows for the transfer of inmates who commit aggravated assault or battery on a correctional officer to a higher security facility.[8] The bill, as introduced, would have required the transfer of any inmate who committed aggravated assault or battery to a maximum security facility.[9]

The Board of Corrections (Board) enjoys much discretion in its administration, and many legislators were wary of mandating actions on the part of the Board.[10] Thus, to increase the bill's liklihood of passing, language was changed from mandating transfers to allowing for transfers.[11] Furthermore, in Georgia, a higher security facility is the equivalent of a maximum security facility,[12] so that change will have little effect.

The Act specifically provides that those inmates who are already in a maximum security facility will not be transferred to another facility should they commit aggravated assault or battery on a correctional officer.[13] In this instance, other administrative rules exist to address the appropriate discipline in such a situation.[14]

This Act does not address the problems of assault and battery between inmates; administrative procedures are already in place which provide for different kinds of punishment, such as isolation.[15] Only inmates who have committed aggravated assault or battery on a correctional officer are subject to the transfer.[16] The original bill did not limit the victims to correctional officers,[17] implying that an inmate who committed aggravated assault or battery on another inmate would be subject to the transfer provisions of the bill.[18] In an effort to clarify the Act, the House Committeee on State Institutions and Property added language applying the Act only to those inmates who commit aggravated assault or battery on correctional officers.[19] The purpose of

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6. HB 660 (HCS), 1996 Ga. Gen. Assem.
7. *Compare* O.C.G.A. § 42-2-11(g) (Supp. 1996) *with* HB 660, as introduced, 1996 Ga. Gen. Assem.
8. O.C.G.A. § 42-2-11(g)(1) (Supp. 1996).
9. HB 660, as introduced, 1996 Ga. Gen. Assem.
10. Greene Interview, *supra* note 1.
11. *Id.*; Freeman Interview, *supra* note 4; *see* O.C.G.A. § 42-2-11(g)(1) (Supp. 1996).
12. Greene Interview, *supra* note 1.
13. O.C.G.A. § 42-2-11(g)(1) (Supp. 1996).
14. Greene Interview, *supra* note 1.
15. *Id.*
16. O.C.G.A. § 42-2-11(g)(1) (Supp. 1996).
17. HB 660, as introduced, 1996 Ga. Gen. Assem.
18. Greene Interview, *supra* note 1.
19. Freeman Interview, *supra* note 4; Greene Interview, *supra* note 1.

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the Act and of the original bill was to implement procedures to ensure the safety of correctional officers only.[20]

Further, the Act provides that the Board shall provide rules that specify procedures for offering Department assistance to correctional officers who are victims of battery or aggravated assault by inmates.[21] In contrast, the bill, as introduced, provided that the Board would adopt rules *requiring* Department assistance for employees who were victims of battery or aggravated assault.[22] In the original bill, this assistance included aiding the victims in filing criminal charges or civil actions, as well as providing a toll-free number victims could call to receive legal advice.[23] The bill would have required the Department to post notices that such assistance was available.[24]

In Committee, these provisions were changed to specifically exclude legal representation from the assistance to be made available to the employee victims.[25] According to Representative Gerald Greene, "[Legal representation] is not the Board's responsibility."[26] The Board will help in filing either civil or criminal actions, but the State Employees' Union has lawyers available for its employees.[27]

Several other important features included in the original bill do not appear in the Act. For example, the Act does not provide lunch breaks for security personnel in non-emergency situations.[28] The Board believed, and many legislators agreed, that this would be too costly.[29]

Further, the Board did not want to establish a review board, as required in the original bill.[30] This review board would have met periodically to make recommendations regarding "security issues, staffing levels, facility design, and prison life in each department facility."[31] Since many institutions already have a similar procedure, and the quality of the program varies from institution to institution, the Board was unwilling to compromise on a similar program being established through this Act.[32]

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20. Freeman Interview, *supra* note 4; Greene Interview, *supra* note 1.
21. O.C.G.A. § 42-2-11(g)(2) (Supp. 1996).
22. *Compare* HB 660, as introduced, 1996 Ga. Gen. Assem. *with* O.C.G.A. § 42-2-11(g)(2) (Supp. 1996).
23. HB 660, as introduced, 1996 Ga. Gen. Assem.
24. *Id.*
25. O.C.G.A. § 42-2-11(g)(2) (Supp. 1996).
26. Greene Interview, *supra* note 1.
27. *Id.*; Freeman Interview, *supra* note 4.
28. *Compare* HB 660, as introduced, 1996 Ga. Gen. Assem. *with* O.C.G.A. § 42-2-11(g) (Supp. 1996).
29. Greene Interview, *supra* note 1.
30. *Id.; see* HB 660, as introduced, 1996 Ga. Gen. Assem.
31. HB 660, as introduced, 1996 Ga. Gen. Assem.
32. Greene Interview, *supra* note 1.

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Safety is the goal of this legislation.[33] "It's a dangerous situation when you have one security guard locked up with fifty or sixty inmates."[34] Because a transfer to a higher security facility will appear on an inmate's parole record, this is the type of procedure that deters them from endangering the life of a correctional officer.[35]

Shannan L. Freeman

33. *Id.*
34. *Id.*
35. *Id.*

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