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May 10, 2005

The Honorable Mary D. Waters
State Representative
State Capitol
P.O. Box 30014
Lansing, MI 48909-7514

Re. HB 4327 Record Expungement

Dear Representative Waters:

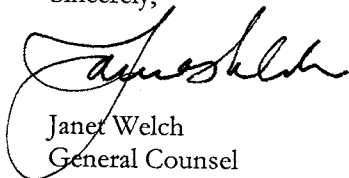
In June 2004, the Board of Commissioners considered the issue of record expungement and adopted the following position: **active support¹ for a bill that expands expungement to include 2 misdemeanors, except for misdemeanors involving domestic violence or violence against persons under the age of 18.** This position on record is applicable to HB 4327.

The Board further considered the issue of record expungement during its review of HB 4327 at its April 22, 2005 meeting. A second position of **active opposition² to lengthening the time to expunge a felony** was unanimously adopted.

For your information, I have enclosed public policy reports from the Criminal Law Section, the Prisons and Corrections Section and the Criminal Jurisprudence and Practice Committee. Please note that the State Bar does not endorse all of the positions expressed therein.

I would be happy to discuss the State Bar's position in more detail. I can be reached directly at (517) 346-6375 or jwelch@mail.michbar.org.

Sincerely,



Janet Welch
General Counsel

- CC. Nancy J. Diehl, President
John T. Berry, Executive Director
Gary M. Gabry, Chair, Criminal Law Section
Daniel E. Manville, Chair, Prisons and Corrections Section
Martin P. Krohner, Co-chair, Criminal Jurisprudence and Practice Committee
Valerie R. Newman, Co-chair, Criminal Jurisprudence and Practice Committee
Nell Kuhnmuensch, Governmental Consultant Services, Inc.

¹ Definition of active support: pending legislation that the State Bar supports and is the subject of active lobbying effort.

² Definition of active opposition: pending legislation that the State Bar opposes and is the subject of active lobbying effort.



Report on Public Policy Position

Name of Section:
Criminal Law Section

Contact Person:
Gary Gabry

Email:
gmgabry@hotmail.com

Bill Number:
HB 4327 (Waters) Criminal procedure; expunction; record expungement for certain offenders; provide for. Amends sec. 1 of 1965 PA 213 (MCL 780.621) & repeals sec. 4 of 1965 PA 213 (MCL 780.624).

Date position was adopted:
March 15, 2005

Process used to take the ideological position:
Legislative proposal reviewed and discussed. Motion to support passed with one vote in opposition

Number of members in the decision-making body:
18

Number who voted in favor and opposed to the position:
17 - 1

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:
Support HB 4327

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4327>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

None reported.

Arguments against the position (if any):

None reported.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

Active support for a bill that expands expungement to include 2 misdemeanors, except for domestic violence or violence against persons under the age of 18 (adopted June 2004).

Active Opposition to lengthening the time to expunge a felony (adopted April 2005).

Fiscal implications of the recommended policy to the State Bar of Michigan:

None reported.

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
- The availability of legal services to society
- The regulation of attorney trust accounts
- The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Keller-permissible explanation:

Not provided.



Report on Public Policy Position

Name of Section:

Prisons and Corrections Section

Contact Person:

Dan Manville

E mail:

dmanville@wayne.edu

Bill Number:

HB 4327 (Waters) Criminal procedure; expunction; record expungement for certain offenders; provide for. Amends sec. 1 of 1965 PA 213 (MCL 780.621) & repeals sec. 4 of 1965 PA 213 (MCL 780.624).

Date position was adopted:

April 2, 2005

Process used to take the ideological position:

The Policy Statement was presented to the members of the Council and a discussion was held. It was moved that the Policy Statement be adopted and it was.

Number of members in the decision-making body:

14 voting members

Number who voted in favor and opposed to the position:

11 voted yes; zero voted no; zero abstention

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

Please see attached position statement.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4327>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

The Prison and Corrections Section supports HB 4327 because it would facilitate the reintegration of former offenders into the community. Individuals with criminal records face significant legal and social barriers. Many employers will not hire individuals with even minor criminal records. Indeed, national research suggests that two-thirds of employers will not knowingly hire an ex-offender. Individuals with criminal records are frequently denied licenses for such jobs as barbering, and are completely barred from a large number of occupations. As a result, individuals with criminal records are chronically underemployed, making it difficult or impossible for them to support their families or pay child support. Taxpayers must pick up the slack through welfare, food stamps, and other government services for former offenders and their families.

Arguments against the position (if any):

None reported

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

Active support for a bill that expands expungement to include 2 misdemeanors, except for domestic violence or violence against persons under the age of 18 (adopted June 2004).

Active Opposition to lengthening the time to expunge a felony (adopted April 2005).

Fiscal implications of the recommended policy to the State Bar of Michigan:

None to the State Bar of Michigan

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

The regulation and discipline of attorneys

The improvement of the functioning of the courts

The availability of legal services to society

The regulation of attorney trust accounts

The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Keller-permissible explanation:

This does not impact on any of those listed above.

**Statement of Support for House Bill 4327, as Substituted¹
Prison and Corrections Section of the State Bar of Michigan**

Disclosure pursuant to Administrative Order 2004-1: The Prison and Corrections Section is a voluntary section of the State Bar, not the State Bar itself. Members of the Section include corrections officials, attorneys involved with the criminal justice system, and others interested in the effective functioning of Michigan prisons. The position expressed here is that of the Section. The State Bar has no position on HB 4327. The Prison and Corrections Section has a membership of about 145. The Section's governing body, a Council elected by the membership, is composed of 14 voting members. This policy position was adopted, after due notice, at a meeting of the Section's Council on April 2, 2005. The vote was 11 yes, 0 no, 0 abstentions.

In the 2003-2004 legislative session, the Prison and Corrections Section of the State Bar submitted a statement in support of modifications to HB 5493. That bill initially provided for conditional expungements in situations where an individual with a criminal record has not satisfied the waiting period required for a traditional expungement. The Section supported the objective of the bill, which was to encourage more individuals with criminal records to reintegrate into the community by removing legal and social barriers that result from criminal records. However, the Section argued that the bill did not address the primary obstacle faced by individuals seeking expungements, namely the requirement that the individual be convicted of "not more than 1 offense." A substitute bill, which did address the single offense issue, was eventually introduced. That bill was passed by the House, but was not passed by the Senate.

This session's HB 4327 squarely addresses the "one offense" issue. Under the bill, a person is eligible to apply for an expungement if the individual has been convicted of no more than one felony or no more than two misdemeanors. Since individuals who have only one conviction, whether a felony or a misdemeanor, are currently eligible for an expungement, the effect of the bill will be to allow many, but not all, individuals with two misdemeanors to apply for an expungement.² The bill also alters the time frame for applying for an expungement. Effectively the bill lengthens the waiting period for individuals with felony convictions (by starting the clock after completion of parole/probation rather than at the date of sentence or release from imprisonment), but shortens the waiting period for individuals with misdemeanor convictions (by reducing the waiting period to two years).

The Prison and Corrections Section supports HB 4327 because it would facilitate the reintegration of former offenders into the community. Individuals with criminal records face significant legal and social barriers. Many employers will not hire individuals with even minor criminal records. Indeed, national research suggests that two-thirds of employers will not knowingly hire an ex-offender.³ Individuals with criminal records are frequently denied licenses for such jobs as barbering, and are completely barred from a large number of occupations. As a result, individuals with criminal records are chronically underemployed, making it difficult or impossible for them to support their families or pay child support. Taxpayers must pick up the slack through welfare, food stamps, and other government services for former offenders and their families.

In addition to difficulties finding employment, individuals with criminal records face many other obstacles. For example, college students who have old drug convictions cannot get federal educational grants to help them pay for school. Moreover, many former offenders are ineligible for public housing, and cannot find landlords who will rent to them.

¹ H00895'05 (H-2).

² In certain cases an individual will still be unable to expunge two misdemeanors. For example if the individual was convicted of two domestic violence misdemeanors, two assault cases, two child abuse cases, or two acts of indecent exposure, only one of the convictions would be expungable.

³ Jeremy Travis et al., FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY 35 (2001).

Expungements provide a tremendously valuable opportunity to lift these barriers for deserving individuals. A former offender who can demonstrate rehabilitation can set aside the conviction and obtain a clean criminal record. As a result, that individual is much more likely to find work, find housing, and participate fully in our society.

Unfortunately, under current law expungements are rarely available. The primary obstacle faced by ex-offenders seeking expungements is the requirement that the applicant be convicted of “no more than 1 offense.” While many individuals with criminal records successfully turn their lives around, this often only happens after several brushes with the law. But the mere fact that an applicant has multiple convictions does not mean that the applicant should never get a second chance. For example, simply because a person shoplifted not just once, but a couple of times as a teenager, does not mean that the person should be dogged by those convictions throughout his or her adult life. The Prison and Corrections Section supports HB 4327 because it would relax, albeit only slightly, the criteria for expungement by allowing two misdemeanors to be expunged.

The Prison and Corrections Section also supports HB 4327 because it would address one of the oddities that exists under current expungement law. At present expungements are only available if the applicant has a single offense, whether a felony or misdemeanor. Thus, an individual can get a single felony charge, say for burglary, removed from his or her record, but cannot get two minor misdemeanors, say for trespassing, expunged.

The law contains many safeguards to ensure that expungements are not granted inappropriately. The most serious offenses cannot be expunged. Notice must be given to the prosecutor, the attorney general, and the victim, if there was one. Most importantly, a hearing is held before a judge who determines on a case by case basis whether an expungement should be granted. In cases where an applicant seeks to expunge two misdemeanor convictions, the judge will have the opportunity to weigh the fact that there were two offenses, along with information about the applicant’s subsequent conduct, in determining whether an expungement is appropriate.

Passage of this bill would make a significant difference in the lives of individuals who have been convicted of two misdemeanors. At the same time, the Section wishes to emphasize that the vast majority of individuals with criminal records will remain ineligible for expungement. An individual with two or more felonies, three or more misdemeanors, or a combination of felonies and misdemeanors will not be able to get his or her record set aside, even if decades have passed since the convictions and the person has led an exemplary life thereafter. While many individuals with longer or more serious records may be inappropriate candidates for expungement, certainly some such individuals can demonstrate that they have successfully turned their lives around. Those individuals too deserve a second chance.

The Section would propose two possible approaches to deal with cases not covered under the current bill. First, the legislature might consider a graduated system whereby former offenders have to wait for longer periods to expunge multiple offenses. For example, an individual could expunge one felony after five years, two felonies after ten years, and three or more felonies after fifteen years.

Second, the legislature should consider developing a mechanism, in addition to expungements, that would remove the civil legal barriers faced by individuals who have committed more than one offense but have since been rehabilitated. Several other states provide “Certificates of Good Conduct,” “Certificates of Rehabilitation” or “Certificates of Relief from Disabilities,” which lift statutory barriers to jobs or licenses, and remove other civil disabilities that follow upon a conviction. While an expungement erases a person’s criminal record for most purposes, a certificate simply restores the individual’s civil rights while leaving the criminal record intact. The Prison and Corrections Section believes that a system allowing for the issuance of Certificates of Rehabilitation would complement the existing expungement system, because it would facilitate the reintegration of ex-offenders who have multiple or more serious convictions.

In summary, the Prison and Corrections Section welcomes Bill 4327 as an important first step in moving former offenders into the workforce, and helping them to become productive members of our society.



Report on Public Policy Position

Name of Committee:

Criminal Jurisprudence and Practice Committee

Contact Person:

Valerie Newman/Marty Krohner

Email:

valerie@sado.org; marty@mich.com

Bill Number:

HB 4327 (Waters) Criminal procedure; expunction; record expungement for certain offenders; provide for. Amends sec. 1 of 1965 PA 213 (MCL 780.621) & repeals sec. 4 of 1965 PA 213 (MCL 780.624).

Date position was adopted:

3/17/05

Process used to take the ideological position:

Committee meeting

Number of members in the decision-making body:

10

Number who voted in favor and opposed to the position:

Unanimous support

Position:

The committee supports this much needed revision to the expungement statute and would urge that an even broader bill be recommended that would give judges more discretion in this area.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&zobjName=2005-HB-4327>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

The collateral consequences of a criminal conviction are numerous and sometimes devastating to people for their entire lives. Deportation, lack of access to public housing and jobs are just some of these consequences, which can stem from convictions that are so far removed in time as to be meaningless. It is critical that there is a meaningful process in place for expunging criminal convictions.

Arguments against the position (if any):

None

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

Active support for a bill that expands expungement to include 2 misdemeanors, except for domestic violence or violence against persons under the age of 18 (adopted June 2004).

Active Opposition to lengthening the time to expunge a felony (adopted April 2005).

Fiscal implications of the recommended policy to the State Bar of Michigan:

None

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
- The availability of legal services to society
- The regulation of attorney trust accounts
- The regulation of the legal profession, including the education, the ethics, the competence, and the integrity of the profession.

Keller- permissible explanation:

Allowing judges some latitude is an important first step to improving the functioning of the courts so that justice can be achieved for those being detrimentally and forever harmed by the system as it currently exists.