



Report on Public Policy Position

Name of Section:

Prisons and Corrections

Contact Person:

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Bill Number:

HB 5371

Date position was adopted:

February 7, 2004

Process used to take the ideological position:

The Prison and Corrections Section has an attorney membership of about 145 and the Section's governing Council is empowered by the Section's bylaws to take public policy positions. This policy position was adopted, after due notice, at a February 7, 2004 meeting of the Section's Council at which time nine (9) Council members were present. The vote was 8 yes, 0 no, 1 abstention.

Number of members in the decision-making body:

14 voting members, including 3 non-attorney criminal justice practitioners

Number who voted in favor and opposed to the position:

At the time of the February 7, 2004 meeting of the Section's Council, nine (9) voting Council members were present. The vote was 8 yes, 0 no, 1 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:

Opposition to House Bill 5371 (see separate e-mail for report). Please see attached.

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.michiganlegislature.org/mileg.asp?page=getObject&objName=2003-HB-5371>

Statement of Support for House Bill 4773 and Opposition to House Bill 5371

Prison and Corrections Section of the State Bar of Michigan

Disclosure pursuant to State Bar bylaws and Michigan Supreme Court Administrative Order 2004-1: The Prison and Corrections Section is a voluntary section of the State Bar, not the State Bar itself. The position expressed here is that of the Section's governing body. The State Bar has no position on HB 4773 and HB 5371. The Prison and Corrections Section has an attorney membership of about 145 and the Section's governing Council is empowered by the Section's bylaws to take public policy positions. This policy position was adopted, after due notice, at a February 7, 2004 meeting of the Section's Council at which time nine (9) Council members were present. The vote was 8 yes, 0 no, 1 abstention.

The Prisons and Corrections Section of the State Bar of Michigan provides education, information and analysis about issues of concern to its members, who include corrections officials, attorneys involved with the criminal justice system, and others interested in the effective functioning of Michigan prisons. One of the priorities of the Prison and Corrections Section is to reduce recidivism by promoting the successful reentry of ex-offenders into the community. By adopting policies that encourage released offenders to lead crime-free, productive lives, the state not only saves money by decreasing the need for prison beds, but also reduces the human cost that recidivists have on crime victims.

Child support arrearages present a significant obstacle to the successful reentry of ex-offenders. Both House Bill 4773 and House Bill 5371 address the child support obligations of incarcerated parents, an issue which has major implications for the ability of offenders to lead productive lives and re-engage with their children upon release. The Prison and Corrections Section supports House Bill 4773, which requires child support obligations to be reviewed at the time of incarceration and at the time of release. The Section opposes House Bill 5371, which would prevent courts from calculating the child support owed by an incarcerated parent based on that parent's actual ability to pay.

In order to understand the potential effect of these bills, a brief review of the current situation is warranted. While all parents have the obligation to support their children, the amount of that support obligation varies depending on the parent's ability to pay. Accordingly, child support orders are modified over time at the request of the parties to reflect their changing circumstances. While some parents will retain the ability to pay support while incarcerated, the vast majority will not. Since the support obligation presupposes an ability to pay, an indigent, incarcerated parent cannot be required to pay support. *See Pierce v Pierce*, 162 Mich. App. 367 (1987).

While impoverished, incarcerated parents are not legally obligated to pay support, in practice many parents leave prison with huge child support arrears which accumulated during the parent's incarceration. Incarcerated parents end up with arrearages because MCL 552.603(2) prohibits retroactive modification of child support. In other words, unless an individual asks for a modification of child support when he or she is incarcerated, his or her child support obligation will continue to accrue. Once accrued, that

obligation cannot be retroactively modified, even if the arrearage should not have accrued in the first place. Since the vast majority of imprisoned parents do not know that they should file motions to modify child support as soon as they are incarcerated, most parents fail to file motions. They then leave prison thousands, or tens of thousands of dollars in arrears.

Child support arrearages represent a crushing financial burden that severely hampers the ability of ex-offenders to reintegrate upon release. A parent's inability ever to pay off these huge arrearages may not only discourage the parent from making current payments, but may also reduce the parent's desire to maintain a relationship with his or her child. Moreover, parents who cannot pay both their current support amount plus the hefty surcharges on the arrearage face contempt proceedings and bench warrants. A conviction for failure to pay child support can constitute a parole violation, and may end up costing the taxpayer tens of thousands of dollars if a parent is sent back to prison based on his or her inability to pay off arrearages. This is particularly pernicious, given that the arrearages should never have accrued in the first place. Finally, ex-offender parents, many of whom have limited job skills and little work history, already face significant barriers to finding and maintaining employment. Too often, an ex-offender who manages to find work discovers that most of his meager paycheck is being garnished for back support, leaving him unable to pay for basic necessities like food and housing. An ex-offender who cannot survive on his paycheck has little incentive to take and keep a lawful job, rather than return to a more lucrative life of crime.

House Bill 4773, by requiring the Friend of the Court to initiate a child support review if a parent is incarcerated or released from incarceration after a criminal conviction and sentence of more than 1 year, would go a long way towards addressing the problems in the current system.¹ Under the bill, a parent's child support obligation during a period of incarceration would reflect the parent's actual ability to pay, rather than the assumption that the parent can continue to pay at pre-incarceration levels. Upon release, child support would promptly be reassessed. The bill appears to make a support review automatic, rather than relying on the haphazard efforts of individual parents to seek such a review upon incarceration. Because the Prison and Corrections Section believes that such a systematic approach to reducing unwarranted child support arrearages will facilitate the success of offenders who are returning to the community, we strongly support House Bill 4773.

House Bill 5371, on the other hand, would make the current situation even worse by eliminating the ability of courts to modify child support orders to reflect the actual financial situation of an incarcerated

¹ The bill could be strengthened if two questions were clarified. First, the bill does not specify how the Friend of the Court will receive information that an individual is incarcerated or has been released from incarceration. The bill appears to contemplate that a formal mechanism would be adopted that would ensure that support is automatically reviewed for all parents upon incarceration and release from incarceration. However, the bill could also be read to require individual motions by affected parents, which would essentially mimic the current system. More specificity about how incarceration information is to be transmitted might be helpful. For example, a computer matching system could be used, or the Department of Corrections could be required to send information about new and released inmates to the Friend of the Court. Alternately, the sentencing court, upon determining that a defendant is subject to a support order, could be required to transmit notice of the sentence to the Friend of the Court.

Second, it would be helpful to clarify the effective date of any support modification that results from the support review. Because of caseload backlogs, as well as the time required to obtain and verify information from the parties, it may take months between the time a Friend of the Court office initiates a support review and the time a new order is issued.

parent. Under the bill, if an incarcerated, indigent parent petitions for a modification of a child support order, the court could not reduce the support payment more than 50% for individuals serving up to five years in prison, nor more than 25% for individuals serving up to ten years in prison. In other words, the bill would eviscerate the one existing mechanism which is available to prevent incarcerated parents from leaving prison with insurmountable arrearages. This bill runs directly counter to current efforts by the Department of Corrections (through its new Transition from Prison to Community Initiative), the criminal justice bar, and social service agencies to assist offenders in reducing child support arrearages in order to facilitate reentry into society. Moreover, since failure to pay child support can itself result in incarceration, this bill would effectively criminalize poverty, while allocating scarce prison beds to individuals whose offense is a failure to pay support that accrued at a time when they had no ability to pay. Because this bill would have the unintended effect of encouraging recidivism, would utilize limited prison resources to incarcerate debtors, and would discourage parental involvement by ex-offenders, the Prison and Corrections Section strongly opposes it.