



Report on Public Policy Position

Name of Section:

Prisons and Corrections

Contact Person:

Stephen J. Gobbo, Chair

Phone:

517-204-2678

Bill Number:

HB 5393

Date position was adopted:

April 3, 2004

Process used to take the ideological position:

The Prisons 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 the April 3, 2004 Council meeting at which time nine (9) Council members were present.

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:

The vote was 9 yes, 0 no, 0 absention.

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 5393, with commentary about suggested revisions for the Legislature to consider. 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-5393>

Statement of Support for Modifications to House Bill 5393 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. The position expressed here is that of the Section. The State Bar has no position on HB 5393. 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 3, 2004. The vote was 9 yes, 0 no, 0 abstention.

House Bill 5393 provides for conditional expungements in situations where an ex-offender has not met the waiting period for a conventional expungement. Under current law, a conviction cannot be expunged until five years after the conviction or the completion of any term of imprisonment, whichever occurs later. HB 5393 would allow an individual who was otherwise eligible for an expungement, but who has not completed the five-year waiting period, to obtain a conditional expungement. If the applicant did not commit any crimes during an additional four-year period, the conditional expungement would become permanent.

The Section supports the motivation behind House Bill 5393, which is to encourage more ex-offenders to reintegrate into the community by removing the barriers represented by a criminal record. Many employers will not hire and many landlords will not rent to ex-offenders. Moreover, ex-offenders are legally barred from pursuing certain jobs, and ex-offenders are ineligible for everything from federal educational grants to public housing to jury service. Expungements, by clearing an individual's criminal record, lift these barriers, and thereby facilitate the reentry of ex-offenders into the community. While the Section supports HB 5393, the bill would have only a very limited effect on the ability of ex-offenders to obtain expungements.

The primary obstacle faced by ex-offenders seeking expungements is not the five-year waiting period, but rather the requirement that the applicant be convicted of "no more than 1 offense." As interpreted by the courts, this means that an individual who has been convicted of two offenses – even two misdemeanors – does not qualify for an expungement. (For example, while a person with a single felony conviction for drug distribution would be eligible, a person who had two convictions as a minor in possession of alcohol, would not.) Moreover, the courts have also held that a person who has been convicted on two counts arising out of one incident is not eligible. (For example, if a person is convicted of driving on a suspended license, and simultaneously convicted of possessing marijuana, which was found in the car, that individual is not eligible for an expungement.)

Because HB 5393 does not address the “single offense” provision of the current statute, it will have only a limited impact on the ability of ex-offenders to obtain expungements. Nevertheless, the Section welcomes the opportunity presented by HB 5393 to consider how best to remove the civil legal barriers that face rehabilitated ex-offenders. Members of the Section – who include corrections officials, attorneys involved with the criminal justice system, and others interested in the effective functioning of Michigan prisons –that there needs to be 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 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 or rehabilitation simply restores the individual’s civil rights. Different states have adopted different eligibility criteria for such certificates and different mechanisms for awarding them. For example, an ex-offender’s civil rights can be automatically restored upon the successful completion of probation or parole, or a process can be adopted whereby the ex-offender petitions the court or parole board for such a certificate.

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 convictions.

Some of the advantages of Certificates of Rehabilitation are:

- Certificates of Rehabilitation can remove many of the statutory barriers to employment and licenses, which can prevent ex-offenders from finding work.
- Employers retain their discretion to individually assess every applicant and do not have to forego the opportunity to hire qualified employees because federal, state, and local laws mandate categorical exclusions based on a criminal record.
- Employers can obtain information both about an individual’s criminal record and about the individual’s rehabilitation. Employers are not required to hire individuals who have obtained certificates of rehabilitation, but can choose to do so. Employers retain the ability to learn about an individual’s criminal record and to consider the relevance of that record when making hiring decisions.
- Certificates of rehabilitation provide evidence of rehabilitation that individuals can share with prospective employers and other entities, like landlords and public housing agencies, who consider criminal record information.
- Because employment rates for ex-offenders are directly linked to recidivism rates, the positive impact that certificates of rehabilitation can have on ex-offender employment could reduce recidivism and thereby decrease the need for costly prison beds.
- Certificates of rehabilitation could potentially be used to restore other rights and opportunities, such as the ability to serve on a jury or the ability to access federal educational loan funds.
- The State of Michigan, by defining which rights are restored through a certificate of rehabilitation, can continue to impose any appropriate restrictions on ex-offenders. For example, certificates of rehabilitation might be defined so as to lift occupational barriers, but not to lift the prohibition on possession of firearms.