



The
PRISONS AND CORRECTIONS SECTION
respectfully submits the following position on:

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Proposed New Court Rule

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The Prisons and Corrections Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Prisons and Corrections Section only and is not the position of the State Bar of Michigan. To date, the State Bar does not have a position on this matter.

The total membership of the Prisons and Corrections Section is 153.

The position was adopted at a meeting of the Section's Council. The number of members in the decision-making body is 13. The number who voted in favor to this position was 13. The number who voted opposed to this position was 0.



Report on Public Policy Position

Name of Section:

Prisons and Corrections

Contact Person:

Dan Manville

Email:

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Other:

Proposed New Rule

Date position was adopted:

November 6, 2004

Process used to take the ideological position:

This policy position was adopted at a November 6, 2004 meeting of the Section's Council at which 13 Council members were present.

Number of members in the decision-making body:

13 presently holding office; 2 vacancies

Number who voted in favor and opposed to the position:

The vote was 13 yes, 0 no, 0 abstentions

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:

The 3-page report is being sent by email. Short version is that the Section supports a court rule requiring that all defendants be sentenced using their birth name even if arrested using an aliases. This is needed so that the Secretary of State will adopt using of a prison id as one form of identification so that a released prisoner can obtain a driver license.

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:

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

Presently many of those released from prisons do not have the necessary documents to obtain a driver license or other State id needed to start a life in society. This prevents these people from obtaining work, renting apartments, and/or federal/ state benefits. Requiring courts to sentence a defendant using the birth name will allow the Secretary of State to receive assurance that released prisoners are not using aliases to start a new life.

Arguments against the position (if any):

No arguments against the position were 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.

As of December 8, 2004, the State Bar did not have a position on this matter.

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

Probably none. Any impact would be in the positive because the changes advocated would likely contribute to less crime and that would mean less costs of incarceration.

Name of Section:

Prisons and Corrections

Contact Person:

Daniel Manville

Email or Phone:

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Bill No:

None; proposed new court rule

Date Position Adopted:

November 6, 2004

Process used to take the ideological position:

The Prison and Corrections Sections has an attorney membership of about 145. The Section's governing Council is empowered by the Section's bylaws to take public policy positions. This policy position was adopted at a November 6, 2004 meeting of the Section's Council at which thirteen (13) Council members were present. The vote was 13 yes, 0 no, 0 abstentions.

Number of members in the decision-making body:

There are 15 members of the Council, including 3 non-attorney criminal justice practitioners. However, at present two positions on the Council are vacant.

Number who voted in favor and opposed to the position:

At the time of the November 6, 2004 meeting of the Section's Council, thirteen (13) voting Council members were present. All thirteen voted in favor of the position.

Policy Position

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.

Because the Prisons and Corrections Section believes that access to post-release identification is a significant barrier to prisoner reentry, the Section supports the proposal of the Working Group on Reentry to adopt a new court rule requiring that individuals be sentenced under their legal names. The proposed rule reads:

If it is determined that the defendant's legal name differs from the name under which the defendant was arrested, charged or convicted, then the judgment of sentence shall bear the defendant's legal name and the court record shall be amended to reflect the defendant's legal name. If it is impossible to determine the individual's actual identity, the judgment of sentence shall so state.

Many prisoners are currently being released from the Department of Corrections without state identification, such as a driver's license or state ID card. The prisoner's ID may have disappeared, along with other belongings, during the prisoner's incarceration. Or the ID may have been retained by prosecuting officials. Or the ID may have been lost when the prisoner was being transferred from one facility to another. Whatever the reason, the absence of ID makes the transition from prison even more difficult than it might otherwise be. Employers require ID to hire employees. Landlords require ID to rent to tenants. Utility companies require ID to provide service. And some social welfare programs require ID to provide benefits.

Released prisoners do typically have a Department of Corrections ID or other DOC paperwork. Such identification, which immediately marks the individual as a former prisoner, is obviously less than helpful for finding employment or housing. Moreover, DOC identification documents are not accepted by the Secretary of State as one of the forms of ID required as part of an application for state ID card or driver's license. Since released prisoners typically do not have ready access to the other documents accepted by the Secretary of State – such as birth certificates, marriage/divorce decrees, or school records – it can take weeks or months until the former prisoner can assemble the documents needed to get ID. Some ex-offenders go without ID for a year or more. Because research shows that the initial period post release is critical in terms of preventing recidivism, this time lag in obtaining ID damages the prospects for successful prisoner reentry.

The Department of State is reluctant to accept DOC ID primarily because the Department of State is concerned about aliases. Since the Department of Corrections identifies inmates by the name contained in the court record, any inaccuracies in the court record will be carried over into the DOC system. Unfortunately, the name in the court record is not always the individual's legal name. Some prisoners use aliases. Others have foreign names that are inaccurately transcribed or misunderstood (e.g. surname mistaken for a given name). And other prisoners have chaotic life histories that affect their names; for example, a prisoner may have been in multiple foster placements as a child, and have used different last names at different times.

In many if not most cases, law enforcement personnel learn the individual's legal name during the course of court proceedings. Often this information is contained within the pre-sentence report. While some prosecutors and courts modify the court records when this information comes to light, others do not. The rule proposed by the Working Group for Reentry would ensure that such modifications are routinely done around the state.

The proposed court rule would not completely solve the issue of post-release identification. However, it is our hope that if the accuracy of judicial and corrections records is improved, the Department of State would be more willing to accept DOC documentation as one of the forms of ID required for the issuance of a state ID card. Even if DOS would accept DOC ID only for those offenders sentenced after the adoption of the rule change, this would still make a significant difference in the speed and ability of prisoners to obtain ID. We believe that this step, although a modest one, could have an important impact on prisoners' ability to obtain identification. Accordingly, we urge that the proposed rule be adopted.