

PRISONS & CORRECTIONS SECTION
Respectfully submits the following position on:

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SB 1214

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The Prisons & 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 & 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 & Corrections Section is 140.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 15. The number who voted in favor to this position was 12. The number who voted opposed to this position was 0.

Report on Public Policy Position**Name of section:**

Prisons & Corrections Section

Contact person:

John Shea

E-Mail:jashea@earthlink.net**Bill Number:**

[SB 1214](#) (Jones) Corrections; parole; standard of review for parole board release decisions; modify, and allow for attorney general intervention. Amends sec. 34 of [1953 PA 232](#) (MCL [791.234](#)).

Date position was adopted:

November 3, 2012

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

15

Number who voted in favor and opposed to the position:

12 Voted for position

0 Voted against position

0 Abstained from vote

3 Did not vote

Position:

Oppose and Amend

Explanation of the position, including any recommended amendments:

Background: MCL 791.234(11), permits a county prosecutor or a victim to appeal from Michigan Department of Corrections' decisions to grant parole to a prisoner committed from that county. Prisoners, however, do not have the same right to appeal when their parole is denied. As the Section Council observed on March 5, 2011 in considering a position regarding this statutory provision:

Prosecutors are filing such appeals with increasing frequency. As a result, prisoners who are granted parole, including those who have already been released, are forced to defend their parole status in formal court proceedings. Prisoners usually do not have the means to hire counsel, nor is there any rule or other mechanism for the appointment of counsel in such circumstances. These appeals may involve complicated issues of fact, as well as procedural and substantive issues of law. The Office of the Attorney General does not defend the parolee; it will

defend only the authority of the Parole Board to grant parole. An unrepresented prisoner is no match for a county prosecutor in litigating such issues, and the unfairness is plain.

On March 5, 2011, the Section adopted the following position:

The Prisons and Corrections Council believes it essential, as a matter of due process, that prisoners who are unable to hire counsel to defend these appeals have counsel appointed to them for such defense. The right to counsel in the context of these appeals should be recognized, and steps taken to adopt the necessary court rules or other available measures to ensure that counsel is appointed to indigent prisoners.

In addition, on January 8, 2011, the Section took a number of related positions proposing legislation that would do the following:

1. Establish Rebuttable Presumption of Parole at Minimum Sentence
2. Restore Right to Appeal Parole Denials
3. Provide Prisoners with Timely Opportunity to Respond to Negative Information Material to Parole or Commutation Decision
4. Apply Parole Guidelines and Other Risk Assessment Instruments to Lifers
5. Eliminate Judicial Vetoes of Lifer Paroles or Require Procedural Safeguards
6. Create a Specialized Board for Public Hearing Cases
7. Public Hearings: Enforcement of Right to Representation and Presentation of Evidence
8. Expedite the Public Hearing Process for Medically Fragile Prisoners and Waive it for Those Who Are Terminally Ill

Issue: Now pending is SB1214, a bill to further amend MCL 791.234(11), to expand the right to appeal a grant of parole to include the State Attorney General, and establish an abuse of discretion standard for the review of the Parole Board's determination. The proposed amendment does not provide a comparable right to prisoners to appeal when their parole is denied.

As the Section noted in its March 5, 2011 position:

The grant of parole implicates a liberty interest. Michigan already recognizes the right to counsel in the context of parole revocation proceedings, and appoints counsel in such proceedings where the parolee is indigent. A similar interest and right is implicated in the context of these prosecutor and victim appeals.

Position: The Prisons and Corrections Council opposes SB No. 1214.

If there is to be any amendment of MCL 791.234(11), it should provide for the right of a prisoner to appeal the denial of parole, and if an appeal is taken from a grant of parole, prisoners who are unable to hire counsel to defend those appeals should have counsel appointed to them for such defense.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2012-SB-1214>