



Report on Public Policy Position

Name of Section:

Prisons and Corrections Section

Contact Person:

Daniel E. Manville

Email or Phone:

dmanville@wayne.edu

248-890-4720

Bill Number:

Senate Bill No. 1019 (Bishop) Corrections; parole; program completion as a factor in parole decisions; revise. Amends secs. 33 & 65 of [1953 PA 232](#) (MCL [791.233](#) & [791.265](#)).

Date position was adopted:

February 4, 2006

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:

11 voting members

Number who voted in favor and opposed to the position:

9 voted yes; zero voted no; two 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/\(j3gngd45jqz5og45wu3zi0fb\)/mileg.aspx?page=BillStatus&objectname=2006-SB-1019](http://www.legislature.mi.gov/(j3gngd45jqz5og45wu3zi0fb)/mileg.aspx?page=BillStatus&objectname=2006-SB-1019)

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

The Prison and Corrections Section supports SB 1019 with the below listed amendments recommended by the Section. SB 1019 requires the Michigan Department of Corrections (MDOC) create a statewide list of people needing treatment and that Corrections make a reasonable effort to transfer people when necessary to a facility having the required treatment to allow the completion of this treatment before their Earliest Release Date (ERD). This Bill also allows that parole decisions can be deferred to allow people to finish treatment programs and that parolee can be required to enroll and complete treatment as a condition of parole.

Suggested Amendment 1: This Bill should be amended to prohibit the transfer of prisoners once they start a treatment program except for medical or security needs. The transfer of prisoners from a recommended treatment program for reasons not related to security or medical needs is counter-productive to proper allocation of scarce resources (bed space); unnecessarily increase the costs of incarceration (since once transfer it is highly probable that the prisoner will be denied parole for failure to complete treatment and remain imprisoned for at least one or more additional years).

The language of SB 1019 is in upper case; proposed changes in italics:

Section 65 (2)

THE DEPARTMENT SHALL MAINTAIN STATEWIDE LISTS OF PRISONERS AWAITING PLACEMENT IN RECOMMENDED TREATMENT AND EDUCATIONAL PROGRAMS. IF NECESSARY, THE DEPARTMENT SHALL MAKE REASONABLE EFFORTS TO TRANSFER PRISONERS, WITHIN APPROPRIATE SECURITY CLASSIFICATIONS, TO FACILITIES IN A MANNER THAT ENSURES THAT PRISONERS HAVE THE OPPORTUNITY TO COMPLETE RECOMMENDED PROGRAMS BEFORE THEIR FIRST PAROLE ELIGIBILITY DATE. *A prisoner participating in a recommended program shall not be transferred unless necessitated by specified security reasons or medical emergencies.*

Suggested Amendment 2: SB 1019 only allows the Parole Board to defer a parole decision for up to “3” months for completion of a treatment program then enrolled in by the prisoner. This “3” months deferral makes sense if the only alternative is release, but not if the alternative is a 12 month flop. The board is routinely deferring decisions for up to 6 months now.

The language of SB 1019 is in upper case; proposed changes in italics:

Section 33 (2)

A PAROLE *interview or* DECISION MAY BE DEFERRED FOR UP TO ~~3~~³⁻⁶ MONTHS TO PERMIT A PRISONER TO COMPLETE A PROGRAM IN WHICH THE PRISONER IS ALREADY ENROLLED. ~~REASONABLE EFFORTS TO COMPLETE THAT PROGRAM OR A SIMILAR PROGRAM MAY BE MADE.~~ *The board may make completion of a program* A CONDITION OF PAROLE.

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.

To date, the State Bar of Michigan does not have a position on SB 1019

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 Amendments to Senate Bill 1019, as Submitted by
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 SB 1019. 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 February 4, 2006. The vote was 9 yes, 0 no, 2 abstentions.

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The above recommended amendments to SB 1019 were discussed by the Council at the February 4, 2006 meeting. The Section felt that getting prisoners into treatment programs in time is half the issue; allowing them to complete treatment is the other half. Too often, prisoners who have waited their turn to enter therapy and are finally enrolled, are transferred to other facilities, disrupting their treatment and delaying their chances of a positive parole decision. Even if they can get into a group at a new facility, they may have to wait months and then repeat portions of programs they have already completed, wasting not only their own time but also that of therapists and other prisoners waiting to participate.

While MDOC policy permits wardens to prevent the transfer of prisoners in treatment, the decision is discretionary. The proposed language, while allowing for security and medical needs, sets a standard that absent such overriding concerns, the completion of treatment programs is to be given priority. A prohibition on unnecessary transfers out of programs is not only the logical extension to requiring the MDOC to transfer people so they can enter programs, it is necessary to ensure that the statewide roster and transfer policy being enacted in this section are not undermined.

MCL 791.235 (1) requires the parole board to interview prisoners no less than one month before their earliest release. In the past, people who had not completed treatment programs were denied parole for at least 12 months, even if they were actually in programs and close to completion. Currently, the board routinely interviews individuals who are enrolled in treatment on schedule, but then defers the decision whether to grant parole until a final treatment report is available. In 2005, the board deferred decisions for up to eight months in approximately 1,800 cases.

While the current process allows the board to make a release decision sooner, people are interviewed long before they have had the opportunity to benefit from treatment. Adding the word "interview" would allow the board to wait to talk to the prisoner until he or she has actually or nearly completed a treatment program, thereby allowing prisoners to demonstrate what they have gained and the board to make more informed decisions. Changing the time period for deferrals from 3 to 6 months allows enough time for program completion in a significant number of cases. As drafted, people who are only four months from completing treatment could be forced to spend an extra eight months in prison because the board did not have treatment reports available when it was required to make its decision.