



CAPPS Testimony Regarding H.B. 5450, 5451 & 5452

House Law & Justice Committee, January 30, 2018

Good morning. My name is John Cooper;¹ I am the Policy Director at the Citizens Alliance on Prisons and Public Spending (CAPPS), a criminal justice research and advocacy organization based in Lansing. I appreciate the opportunity to provide testimony today in support of H.B. 5450, 5451 & 5452, which would eliminate overbroad restrictions on the talent pool available to health care providers, and promote employment of individuals with criminal records.

I strongly encourage the Legislature to pass these bills, which will both help meet Michigan's talent needs and promote public safety.

Discussion

Michigan's unemployment rate is at historic lows,² and many businesses in Michigan are suffering from a shortage of qualified workers,³ but the unemployment rate for individuals on parole is ~67%. In spite of this, tens of thousands of people with criminal histories—including many with low-level, non-violent crimes—are legally barred from employment in many health care facilities for years after they have paid their debt to society.

1. The Statutes at Issue

These three bills amend three statutes that impose identical restrictions on when an individual with a criminal history may work in health care facilities that provide residential nursing care or home health care, psychiatric care, or adult foster care.⁴ Among other things, these statutes provide that an individual convicted of any felony may not work in a covered facility within 10 years of completing all the terms of conditions of their sentencing.⁵ Similar years-long restrictions exist for a number of misdemeanors, including property crimes such as larceny and retail fraud (5 years),⁶ and drug possession (3 years).⁷

¹ J.D./M.A. University of Virginia, 2008; *Law Clerk*, Hon. Boyce F. Martin, Jr., U.S. Court of Appeals for the 6th Circuit, 2008-09; *Litigation Associate*, Latham & Watkins LLP, 2009-2016; *Super Lawyers* (Washington D.C.), Rising Star in Criminal Defense – 2014, 2015 & 2016.

² http://www.mlive.com/business/index.ssf/2017/07/michigans_unemployment_rate_no.html.

³ See, e.g., Mike Jandernoa, "Why Hiring People with Criminal Records Benefits All of Us," *Fox News* (Dec. 12, 2017), available at <http://www.foxnews.com/opinion/2017/12/12/why-hiring-people-with-criminal-records-benefits-all-us.html>.

⁴ See MCL 333.20173a (Nursing care), MCL 330.1134a (Psychiatric care), MCL 400.734b (Adult foster care).

⁵ See MCL 333.20173a(c), MCL 330.1134a(c), MCL 400.734b(c).

⁶ See MCL 333.20173a(e)(v)-(vi), MCL 330.1134a(e)(v)-(vi), MCL 400.734b(e)(v)-(vi).

⁷ See MCL 333.20173a(f)(iii), MCL 330.1134a(f)(iii), MCL 400.734b(f)(iii).

2. Why They Should be Repealed

While these laws appear to be well-intentioned—i.e. to protect vulnerable individuals—they are not narrowly tailored to accomplish this goal. To the contrary, they are overbroad, and have negative impacts on both the business environment and public safety.

a. Overbroad

These laws are blanket bans that do not permit employers to make individualized determinations of a person's suitability, for example, based on the job they will be doing, when they will be working, how they will be supervised, or what they have accomplished since their offense. Rather, they ban everyone with a particular criminal record from employment for years beyond their sentence from any job with “direct access ... to a patient or resident or to a patient's or resident's property, financial information, medical records, treatment information, or any other identifying information.”⁸ This broad definition encompasses not just care providers and their aides, but administrative staff, laundry and janitorial staff, and security personnel—essentially every job in a facility with residential beds.

Guidance interpreting Title VII of the Civil Rights Act requires employers to show that an exclusion based on criminal conduct is job-related and consistent with business necessity.⁹ To make this showing, the guidance states that an employer must demonstrate that the exclusion is reasonable based on (1) the nature and gravity of the offense, (2) the time elapsed since the offense, and (3) the nature of the job held or sought.¹⁰

H.B. 5450-52 modify these laws to permit employers to better make this kind of an individualized assessment. First and foremost, they eliminate the 10-year ban on employment of a person with any felony; they also remove 3- and 5-year bans for certain common misdemeanors such as shoplifting and drug possession. They leave in place the bans on certain serious crimes, as well as certain misdemeanors that are more directly tied to fitness to work in residential health care, such as abuse and neglect.¹¹

b. Negative Impacts on Business

Michigan has a very tight labor market,¹² and a lack of workers is constraining businesses' ability to expand.¹³ As numerous prominent observers have noted, people with

⁸ See, e.g., MCL 333.20173a(c), (e)(v), (f)(iii).

⁹ People of color are disproportionately impacted by criminal records when seeking employment; because of this, these laws have a disparate impact upon racial minorities. See Kimberly Buddin-Crawford, *Supporting Black Labor: Ending Criminal Record Exclusions in the Workforce* (Jan. 19, 2017), available at <http://www.aclumich.org/article/supporting-black-labor-ending-criminal-record-exclusions-workforce>. This disparate impact triggers the Title VII analysis.

¹⁰ See *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended*, 42 U.S.C. § 2000e et seq., No. 915.002 (April 25, 2012), citing *Green v. Missouri Pacific Railroad*, 523 F.2d 1290 (8th Cir. 1975), available at https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

¹¹ See MCL 333.20173a(d)(v).

¹² See, e.g., Paula Gardner, “Michigan’s Unemployment Rate Now Under 4 Percent,” *MLive* (July 19, 2017), available at http://www.mlive.com/business/index.ssf/2017/07/michigans_unemployment_rate_no.html.

criminal records can help meet this demand,¹⁴ which would help make our communities safer and more prosperous in the process.

The statutes at issue here prevent that from happening. They arbitrarily restrict the talent pool available to many health care providers by tens of thousands of people,¹⁵ which restricts their ability to grow and to fill vacancies. They also *create* job needs by requiring employers to fire employees that are convicted of any of the relevant offenses, and barring them from rehiring the employee within the statutory period regardless of whether the conduct was at work or relevant to their suitability to do their job.

c. Negative Impacts on Public Safety

Finally, while the desire to protect vulnerable populations from harm is laudable, policies changes that are not implemented in a targeted way can have significant unintended consequences; there is good reason to believe this policy does. It is well-established that stable employment is a key factor in post-conviction success for those with criminal-justice involvement,¹⁶ and this policy cuts off access to potentially life-changing jobs in health care from tens of thousands of people.

Limiting access to employment for individuals with criminal records in this way is misguided policy that contributes to recidivism, and thus negatively impacts public safety. Michigan's recidivism rate within three years of release currently stands at 31.1%,¹⁷ which leaves significant room for improvement.

* * *

For all these reasons, I urge you to support these bills and repeal restrictions on employment of people with criminal histories that do not pose a demonstrable threat to public safety.

¹³ See, e.g., Mike Jandernoa, "Why Hiring People with Criminal Records Benefits All of Us," *Fox News* (Dec. 12, 2017), available at <http://www.foxnews.com/opinion/2017/12/12/why-hiring-people-with-criminal-records-benefits-all-us.html>.

¹⁴ See, e.g., Mike Jandernoa, "Why Hiring People with Criminal Records Benefits All of Us," *Fox News* (Dec. 12, 2017), available at <http://www.foxnews.com/opinion/2017/12/12/why-hiring-people-with-criminal-records-benefits-all-us.html>; Nolan Finley, "Returning Citizens Can Fill Skilled Trades Gap," *The Detroit News* (May 31, 2017), available at <http://www.detroitnews.com/story/opinion/2017/05/31/inmate-training/102371864/>; Dick DeVos, "Smart Justice Reforms Find Unlikely Ally in Business Community," *Detroit Free Press* (Dec. 1, 2016), available at <https://www.freep.com/story/opinion/contributors/2016/12/01/michigan-parole-reform/94075318/>. I have included these op-eds for your convenience as attachments to my testimony.

¹⁵ 47,347 people were convicted of felonies in 2016 (see *Michigan Department of Corrections 2016 Statistical Report* (Sept. 5, 2017) at A-2); tens of thousands more were convicted of relevant misdemeanors such as retail fraud and drug possession. Over a ten-year period (the statutory exclusion period for a felony), these laws likely impact hundreds of thousands of potential workers.

¹⁶ See, e.g., Berg, M. T., & Huebner, B. M. (2011). Reentry and the ties that bind: An examination of social ties, employment, and recidivism. *Justice Quarterly*, 28(1), at 398 (finding unemployed offenders are 18% more likely to be rearrested than employed offenders within 600 days of release).

¹⁷ See *Michigan Department of Corrections 2016 Statistical Report* (Sept. 5, 2017) at Chart D3, available at http://www.michigan.gov/documents/corrections/MDOC_2016_Statistical_Report_599836_7.pdf.

Thank you for the opportunity to testify today. Please do not hesitate to contact me if you have questions.

Sincerely,

/s/

John S. Cooper

Attachments

Mike Jandernoa, "Why Hiring People with Criminal Records Benefits All of Us," *Fox News* (Dec. 12, 2017), available at <http://www.foxnews.com/opinion/2017/12/12/why-hiring-people-with-criminal-records-benefits-all-us.html>

Nolan Finley, "Returning Citizens Can Fill Skilled Trades Gap," *The Detroit News* (May 31, 2017), available at <http://www.detroitnews.com/story/opinion/2017/05/31/inmate-training/102371864/>

Dick DeVos, "Smart Justice Reforms Find Unlikely Ally in Business Community," *Detroit Free Press* (Dec. 1, 2016), available at <https://www.freep.com/story/opinion/contributors/2016/12/01/michigan-parole-reform/94075318/>

VALUES • December 12th, 2017

Why hiring people with criminal records benefits all of us

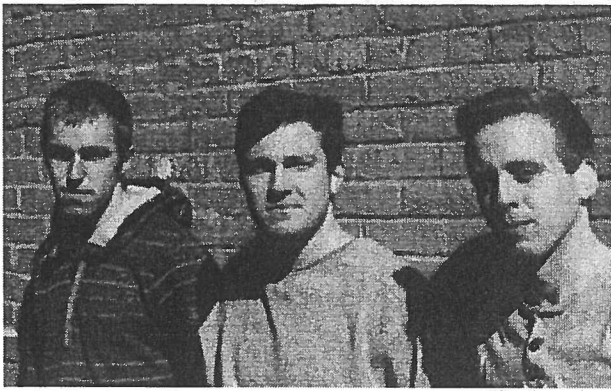


OPINION

By Mike Jandernoa | Fox News



(iStock)



A Message from **EverQuote**

Lansing, Michigan: This Brilliant Company Is Disrupting A \$200 Billion Industry

Using a personalized auto insurance match engine developed by Boston grads drivers can now look for the right coverage for the right price.

From the smallest "mom and pop" shop to the largest international corporation, businesses across America are constantly looking for good employees. We want committed, engaging and creative individuals who can grow our organizations. We scour applications and resumes, trying to discern whether a potential employee will fulfill our needs and become an asset to our teams.

In the past, many employers would often not consider hiring people who had even minor criminal records. But as the former CEO of a 10,000-employee organization, I have one message for America: we can no longer exclude this vital component of our workforce.

An estimated one in three American adults has a criminal record of some kind. And about 600,000 people leave our nation's prisons every year, looking to rejoin the workforce. While individuals in this group of workers won't be right for every job, the right job is out there for everyone.

The benefits of boosting employment for those with criminal records are significant.

First, opening up opportunities to this population will make our country safer. Right now, almost 60 percent of individuals remain unemployed a year after being released from incarceration. It's in our collective self-interest for them to get jobs, because steady employment is one of the best ways to ensure that individuals lead productive, crime-free lives. In one study of 6,000 returning citizens, employment cut the rate of those who committed a new crime in half.

Second, employers all across the country are suffering from a dearth of skilled labor. Every year, one major national bank surveys small businesses across this country. This year the survey found incredible optimism: 80 percent of employers said their business is stronger than ever; 40 percent said they plan to make a capital expenditure to grow their companies; and a quarter of those surveyed said they plan to hire more workers.

In West Michigan, most of the business leaders I know plan to expand their workforces. The downside? The businesses can't find enough workers.

In fact, 61 percent of business owners reported extreme or moderate difficulty finding qualified employees. Adding to the challenge is the number of baby boomers retiring and a shortage of entry-level workers to fill all the vacancies that currently exist.

I've experienced this firsthand in West Michigan, where we've built one of the hottest job markets in the country. We've become one of the top places for growth and one of the best places to live. But our success has made it very difficult to find employees.

Our region is almost at full employment, so we must look for alternatives. We have a very strong manufacturing base, and these businesses are looking for people who will show up on time and test negative for drugs – that's it. This opens the door for people who were formerly incarcerated and who are serious about turning their lives around.

It is not unheard of for employers to send vans to pick up workers who are in residential

community corrections programs because the employers are so desperate for workers.

Some of our country's largest employers are making second-chance hiring their official policy. Target and Home Depot have "banned the box" in their employment practices. "Ban the box" delays inquiry into an applicant's criminal history until late in the hiring process, ensuring that those with criminal records aren't tossed aside before having an opportunity to detail their skills, training and qualifications.

This policy also allows these individuals to explain the circumstances of their offense, and show potential employers how they have turned their lives around.

Government jobs provide valuable training for private sector employment, so many private companies are asking their lawmakers to shift hiring processes for public sector jobs as well.

The West Michigan Policy Forum, made up of some of the state's most influential business leaders, has ranked criminal justice reform as one of the five top "pro-business" policy priorities.

This type of leadership from the business community has yielded incredible results across the country. A whopping 29 states have "banned the box" for public-sector jobs. And the bipartisan Fair Chance Act, sponsored by Senators Ron Johnson, R-Wis., and Cory Booker, D-N.J., would replicate this policy at the federal level.

Reforms to seal or erase records of criminal convictions are also a priority for job creators. These policies seal minor criminal records after a certain crime-free period. Research shows that low-level offenders who have remained crime-free for three to five years are no more likely to commit a crime than anyone else.

And in many states, when minor criminal records are sealed, law enforcement and judicial officers still have access to these records, ensuring that public safety continues to be a priority.

Almost all states have some mechanism through which certain criminal records can be erased or sealed, but erasing records at the federal level is virtually impossible. Fortunately, the issue is gaining traction in Congress.

Sen. Rand Paul, R-Ky., is spearheading the REDEEM Act, with bipartisan support. And Rep. Hakeem Jeffries, D-N.Y., introduced the Renew Act with Rep. Trey Gowdy, R-S.C.

Occupational licensing reform is another issue important to the business community. Today one in four occupations requires a government license – but a criminal history often bars an individual from the licensing process.

-Ironically, such restrictions make us less safe. One study showed that states with more burdensome licensing laws saw an average 9 percent increase in recidivism, while those with the lowest burdens had a recidivism reduction of 2.5 percent.

States as diverse as Illinois, Arizona, and Louisiana have already begun peeling back the layers of government-issued permission slips to work.

At the federal level, the New HOPE Act, introduced by Rep. Tim Walberg, R-Mich., and similar legislation sponsored by Sen. John Cornyn, R-Texas, would allow states to use federal funding to identify and reduce unnecessary licensing barriers within their regulations and statutes.

Elected officials should look to job creators for sound public policy. I urge my fellow employers to beat the drum even louder and make their voices heard at the local, state and federal level.

We can improve public safety, strengthen the economy and broaden our pool of skilled labor through commonsense criminal justice reforms and offering second chances for those who have earned them. I don't know a good businessperson who would turn down that deal.

Mike Jandernoa is former Chairman of the Board and CEO of Perrigo Company.

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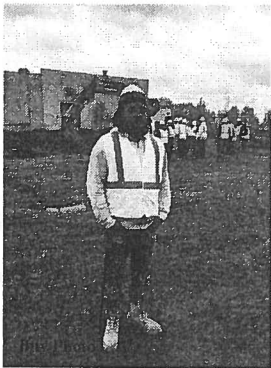
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Finley: Returning citizens can fill skilled trades gap

Nolan Finley, The Detroit News

Published 11:08 p.m. ET May 31, 2017



(Photo: Nolan Finley / The Detroit News)

Mackinac Island —

The muddy Detroit lot where McKinley Brown is learning to operate an excavator is a long way from the porch of the Grand Hotel, where the region's business leaders are gathered this week.

But Brown wants those business bosses to know he's ready to put his past behind him and go to work — if they'll have him.

"I want stability in my life, and for my kids' lives," says Brown, a recent prison parolee who is learning blight remediation skills at the Detroit Training Center.

The center, under contract with the city of Detroit, is readying the recently and soon-to-be released prisoners for careers other than crime. Brown, 32, of Detroit, believes a decent job will keep him from returning to prison for a fourth time and allow him to support his two daughters.

He started training while finishing a nine-month sentence for fleeing from police. The previous two times he was released from prison, including a two-year term for a felony firearm conviction, he was ill-prepared to rejoin society.

This time, he expects to land a job with a contractor tearing down blighted buildings in Detroit.

"I have a skill now," says Brown, who was paroled in March. "I can do this work."

That's the message Heidi Washington is bringing to Mackinac Island this week. The director of the Michigan Corrections Department is making her first trip to the Detroit Regional Chamber's Mackinac Policy Conference to convince employers to give returning citizens like Brown a chance.

"Mackinac is an opportunity to tell our story to a really important audience," says Washington.

That story is that ex-convicts can help fill Michigan's skilled trades gap.

Gov. Rick Snyder is championing skills training for prisoners and parolees as a way to cut down on recidivism and boost the state's workforce, while trimming the \$2 billion annual Corrections budget.

The first classes of trained convicts are now ready to go to work, and Washington wants employers to know they make capable and loyal employees.

"Returning citizens are coming home to your communities," she says. "You have thousands of skilled jobs to fill. They can fill them."

Detroit Mayor Mike Duggan contracted with the Detroit Training Center to specifically prepare returning citizens to work for demolition companies handling the city's anti-blight efforts.

These are good jobs, paying in the \$15 to \$20 an hour range. And they're also hard jobs, so the pool of prospective employees is not large.

But the work suits Matthew Hernandez, 34, who was released in December after serving 18 months in Jackson Prison for an unarmed robbery.

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He had some construction experience before his conviction, so when he got out he applied with building firms. He did fine in the job interviews, he says, until the background question came up.

"Then it was, 'Uh, we'll call you,' " Hernandez says.

He finished his training last week and expected to start work right away with a demolition firm.

"This is huge for me," he says. "When I went to prison, I gave up on being successful again. This program gave me hope."

Malia Salaam of the One Stop program, which works with the state and the city to coordinate reentry efforts, says the average returning citizen receiving training has spent 10 to 15 years behind bars, and most had no idea what they would do on their release.

"A job is what they want most," she says. "That represents opportunity."

She's found employers in the construction trades receptive. And they should be. Those who hire returning citizens are eligible for a \$2,400 payroll tax credit from the federal government and a \$5,000 wage reimbursement from the state.

Patrick Beal, CEO of the Detroit Training Center, say feedback from employers who have hired the ex-cons is positive.

"They find they're getting good results," he says.

That's been the experience of Cindy Pasky, CEO of Strategic Staffing Solutions in Detroit, who is actively recruiting parolees.

"They're some of the best employees we have," Pasky said during a recent Detroit Economic Club forum I moderated. "We've been able to convince our customers to let us bring returning citizens into their work environment. It's talent that is loyal and appreciative. You've given them an opportunity to change their status and their lives, and more importantly, their family's station in life."

At this point, only a small fraction of the 7,000 to 8,000 inmates who are released each year in Michigan are in the training programs.

At Ionia, the Corrections Department is training inmates as mechanics, hi-lo drivers, welders, plumbers and electricians. A second program will open soon in Jackson to teach masonry, robotics and 3-D printing.

Washington says the department hopes to scale up, so more convicts walk out of prison with a clear vision for the future.

"We want them to have job offers before they leave prison," she says. "It's a vulnerable time the day they get out. We don't like them to have idle time. We want them to immediately start working."

That, of course, depends on the willingness of employers to hire them. Washington is urging executives this week to visit the prison training programs and talk to those who are about to return to society.

"Historically, we haven't had a lot of people come inside the prisons," she says. "We've been content to know the inmates are inside and we're outside. Coming inside and seeing what these returning citizens have to offer takes away the apprehension."

Hiring returning citizens is a classic two-fer. Employers get the skilled workers who are in such high demand, and the parolees get the opportunity they need to prevent a return trip to prison.

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Smart justice reforms find unlikely ally in business community

Dick DeVos Published 9:44 p.m. ET Dec. 1, 2016



(Photo: Tomasz Wyszolmirski, Getty Images/iStockphoto)

President Gerald Ford, who had represented Michigan for nearly 25 years in the House of Representatives, once famously remarked, "A government big enough to give you everything you want is a government big enough to take from you everything you have."

Nowhere is this statement more applicable than in our criminal justice system. Here in the Great Lakes State, one in every five general fund dollars goes toward corrections, representing our second largest budget line item. Prison inmates in Michigan serve longer average sentences than any other states in the country. This "too big to fail" government program was meant to keep us safe and act as a deterrent to potential criminals everywhere. Sadly, this approach did not provide the public safety return.

We are putting too many low-level, nonviolent offenders behind bars for too long, depriving them of any chance for success. And when they return to society, as more than 95% of them will, we are often returning better criminals, not better citizens.

On a positive note, state leaders on the right and the left are beginning to recognize the deficiencies in the old tough-on-crime policies and instead supporting smart-on-crime initiatives. A parole reform bill passed the state House of Representatives by an overwhelming bipartisan vote last year, but died in the Senate. In 2016, this legislation returned and again passed the House, while a multi-bill reform package passed the Senate unanimously. Unfortunately, the House and Senate appear to be in a standoff over which chamber should move first to send the other chamber's legislation to the governor's office.

Recognizing we are running out of time, an unlikely chorus of voices is rising up to demand that the Legislature put aside petty political issues and move these reforms to final passage: the Michigan business community.

You may wonder why business leaders would care about what some view as a purely "social justice" issue. First, similar reforms in other states have proven to save hundreds of millions in taxpayer dollars. That's money that could be better put to use in education, training, and infrastructure improvement, issues all very important to a healthy Michigan.

Furthermore, many businesses in Michigan are facing a real dearth in skilled labor, and returning citizens could certainly fill that void if they are properly rehabilitated and given the tools to successfully re-enter society. One recent study showed that employment was the single most important influence on reducing recidivism, and ex-offenders who are able to obtain gainful employment are twice as likely to stay crime-free, which means all our communities are safer.

Anyone doubtful of business' support for justice reform would have become a believer at the recent West Michigan Policy Forum in Grand Rapids. In his address to a room packed with hundreds of Michigan business leaders, Gov. Rick Snyder energized the audience when he was asked about the prospects for justice reform, stating that supporting tough-on-crime rhetoric that would see many prisoners serve more time is "the dumbest thing you can do." Snyder challenged the businesses in the room to consider hiring returning citizens, drawing a standing ovation from the group. Later, General Counsel and Senior Vice President of Koch Industries Mark Holden delivered remarks to the forum, offering that prisoners "have a lot of untapped genius, a lot of untapped skills, and we want the best people, period, with or without a criminal record." Forum attendees then voted smart justice reform as one of the group's top five policy priorities.

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Michigan lawmakers who are still reluctant to support smart justice reform would be wise to listen to these business voices. Ultimately, legislators have two choices: they can pass these reforms now and continue Michigan's efforts in the reform movement, or succumb to the type of legislative dysfunction that we expect out of Washington D.C.

So let us be ever mindful of the admonition of former President Ford, and right-size our bloated and ineffective justice system to address what Michigan really needs: a broad and skilled workforce, and safer communities. Michigan lawmakers should listen to their state's business leaders, break this stalemate, and move smart justice reforms to the governor's desk as soon as possible.

Dick DeVos is president of the Windquest Group.

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