

Legislative Analysis



DEPARTMENT OF CORRECTIONS: REMOVE PROHIBITION ON HIRING FELONS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4065 as reported without amendment

Sponsor: Rep. Dave Pagel

Committee: Law and Justice

Complete to 4-17-17

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 191 of 2017)

BRIEF SUMMARY: The bill requires the Department of Corrections (DOC) to establish a policy allowing the department to hire a person who had previously been convicted of a felony, as long as public safety or the operation of the department is not negatively impacted.

FISCAL IMPACT: House Bill 4065 would have no fiscal impact on the state or on local units of government.

THE APPARENT PROBLEM:

Legislation enacted in 1996 prohibited an individual with a felony record, or facing felony charges, from being hired by or appointed to a position with the Department of Corrections. Prior to this change, a person with a previous felony record could be hired after undergoing a background check and with approval by the director of the DOC.

Research continues to show a connection between employment and a decreased risk of reoffending. Yet many employers automatically exclude anyone with a criminal record, especially if that record includes a felony conviction. The Department of Corrections would like to be able to lead by example by, when appropriate, hiring felons or appointing someone with a felony conviction to a position within the department. In order to do so, legislation is needed to amend the current prohibition in law and grant the department some flexibility in its hiring practices.

THE CONTENT OF THE BILL:

Currently, the Corrections Code prohibits the Department of Corrections from hiring or appointing to a position anyone who has been convicted of a felony or who is subject to any pending felony charges.

House Bill 4065 keeps the current prohibition described above, but adds "except as otherwise provided in this section." Then the bill adds a provision to that section of the Correction Code to require the DOC to establish a policy that will allow an individual who has been convicted of a felony to be employed or appointed to a position within the DOC if the individual's employment or appointment will not negatively impact public safety or the operation of the department.

The policy must require that the applicant undergo an extensive background investigation and receive the written approval of the director of the DOC before being employed by or

appointed to a position in the department. An individual employed or appointed under the bill's provisions could not be dismissed from that employment or appointment solely due to a felony conviction that had been disclosed to the department prior to the employment or appointment.

The bill would take effect 90 days after enactment.

MCL 791.205a

ARGUMENTS:

For:

Apparently, the 1996 legislation that banned felons from employment with the department was a reaction to fears that the DOC was hiring too many felons, especially as corrections officers. At the time, about 60 of 90 employees with felony records worked as corrections officers. Though individuals convicted of violent crimes and drug crimes were excluded, and though a felon could not work in any facility in which he or she had been previously incarcerated, the fear remained that the built-in criminal connections associated with prison life posed too many temptations for ex-prisoners.

Proponents say that the bill offers a more enlightened approach and restores the department's ability to decide who would be a good candidate for employment or appointment to a position within the prison system. Safeguards are built in. The DOC director would have to sign off on the hiring or appointment of a person with a previous felony conviction, and neither public safety nor the department's operations could be negatively impacted. Supporters say that many felons have turned their lives around and would make excellent teachers, counselors, and life skills instructors, among other suitable employment options. As some have expressed it, who better to talk to inmates about redemption and life experiences than someone who has lived it and moved forward.

Response:

Some concern was expressed over how a provision in the bill would be implemented that specifies a person could not be dismissed from employment or an appointment solely due to a felony conviction that had been disclosed prior to the employment or appointment. Would this be an automatic defense if a former inmate disclosed the conviction prior to being initially hired by the DOC but failed to disclose it if the person was appointed to a different position at a later time?

Rebuttal:

According to a representative of the DOC, the inclusion of the language in question was to protect a person hired under any policy developed under the bill from being automatically dismissed should the policy be changed by a future administration or by future statutory changes. The disclosure of a prior criminal record would be part of the person's personnel file, as would the results of any criminal background check that a potential employee or appointee underwent.

For:

Proponents say that offenders are often told that with hard work, they can turn their lives around, put their pasts behind them, and move forward to a productive future. And then they can't find work. Without work they can't find a place to live or provide for themselves or their families. House Bill 4065 would remove some barriers to employment and thus could play an important role in decreasing recidivism rates among the state's felony population. The bill doesn't require the Department of Corrections to hire felons, it just allows the department the flexibility to explore where those with criminal backgrounds could work within the prison system without negatively impacting public safety. The DOC is a vocal advocate of reentry programs, and the bill allows the department to "put its money where its mouth is," in a manner of speaking. It is hoped that this policy of the DOC will inspire businesses to adopt fair-chance hiring policies and encourage those employers to look to what a potential employee has to offer in the present and future rather than automatically slamming the door to anyone with a less than stellar past.

For:

According to the U.S. Justice Action Network, House Bill 4065 would expand the opportunity for some who have earned it to find a job, earn a living, and choose a productive, law-abiding life. Thus, the bill is an example of a common sense criminal justice reform that has the potential to increase public safety by diverting people away from, and not towards, a life of crime.

For:

Enactment of House Bill 4065 not only would tend to decrease recidivism rates by removing barriers to employment, but would also end a policy within one of the largest state departments that, by automatically disqualifying anyone with a criminal record from employment within the DOC, is discriminatory. In addition, according to the ACLU of Michigan, policies that automatically disqualify felons have a disproportionate effect on African Americans. This is due to current racial inequalities of the criminal justice system that result in approximately 25 percent of African American adults having felony records compared to only 6 percent of non-African American adults. Added to this is that African Americans often face higher rates of unemployment.

Though the bill is unlikely to end all racial hiring disparities or create jobs for most former inmates within the DOC, nonetheless, the bill is a step in the right direction. It acknowledges that people can be redeemed, and gives some a fair chance at finding a new career to support themselves and their families. That alone is an idea with merit.

Against:

No arguments opposing the bill were offered.

POSITIONS:

A representative of the Department of Corrections testified in support of the bill. (2-21-17)

The ACLU of Michigan submitted written testimony in support of the bill. (2-21-17)

The Justice Action Network submitted written testimony in support of the bill. (2-21-17)

The Mackinac Center indicated support for the bill. (2-21-17)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.