

# Legislative Analysis

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## **CRIMINAL HISTORY AS BAR TO EMPLOYMENT: REVISE**

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

**House Bill 5450 as introduced  
Sponsor: Rep. Klint Kesto**

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

**House Bill 5451 as introduced  
Sponsor: Rep. Jeffrey R. Noble**

**House Bill 5452 as introduced  
Sponsor: Rep. Curtis S. VanderWall**

**Committee: Law and Justice  
Complete to 1-29-18**

## **SUMMARY:**

House Bills 5450, 5451, and 5452 would amend various acts to do the following:

- Shorten the time period for which a person convicted of specific felonies or misdemeanors is ineligible for certain types of employment with, or for being granted clinical privileges at, most health-care-related facilities.
- Eliminate the current broad employment or clinical privileges ban of 10 years for any other felony conviction.
- Eliminate the ban on employment or clinical privileges for certain listed misdemeanors.

House Bill 5450 would amend the Public Health Code to apply to a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency. (MCL 333.20173a)

House Bill 5451 would amend the Mental Health Code to apply to a psychiatric facility or other facility defined under federal law as an intermediate care facility for persons with cognitive deficits. (MCL 330.1134a)

House Bill 5452 would amend the Adult Foster Care Facility Licensing Act to apply to a governmental or nongovernmental establishment that provides foster care to adults. The term generally includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but do not require continuous nursing care. (MCL 400.434b)

Currently, certain health-care-related facilities, such as nursing homes, hospices, certain hospitals, homes for the aged, home health agencies, psychiatric facilities, intermediate care facilities for cognitive deficits, or adult foster care facilities, are prohibited from employing, independently contracting with, or granting clinical privileges to an individual

who regularly has direct access to or provides direct services to patients or residents in the facility if the individual has been convicted of specific types of crimes, or of an attempt or conspiracy to commit any of those crimes, within a specified number of years prior to applying for employment or clinical privileges. “Direct access” means 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.

**House Bills 5450, 5451, and 5452** would amend their respective acts to revise the types of crimes for which an individual is prohibited from employment, an independent contract, or clinical privileges in any of the facilities, and to shorten the period of time after an individual completes a sentence, probation, or parole for certain crimes during which he or she is likewise prohibited from employment, an independent contract, or clinical privileges in the facilities.

However, a conviction (misdemeanor or felony) involving a federal or state health care program (e.g., Medicaid or Medicare) would remain a bar to employment, an independent contract, or the grant of clinical privileges at any of the facilities, as would being the subject of an order or disposition of not guilty by reason of insanity or having engaged in conduct that becomes the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency.

#### Felonies

A felony conviction (or attempt or conspiracy to commit a felony) for any of the following would also still bar employment, *though for a period of 10 years, instead of the current 15 years*, from the time the individual completed all of the terms and conditions of his or her sentencing, parole, or probation:

- A felony that involves the intent to cause, or that results in, death or serious impairment of a body function, or that involves the use or threat of force or violence.
- A felony involving cruelty or torture, criminal sexual conduct, abuse or neglect, or the vulnerable adults statute.
- A felony involving the use of a firearm or dangerous weapon.
- A felony involving the diversion or adulteration of a prescription drug or other medication.

Currently, a conviction for any other felony (or attempt or conspiracy to commit the felony) prohibits employment for 10 years after completion of any sentence, parole, or probation for that conviction. Each of the bills would delete this prohibition from its respective act.

#### Misdemeanors

The period of time for which an individual could not be employed, be an independent contractor, or have clinical privileges would be reduced from 10 years to 5 for the following misdemeanors, or substantially similar state or federal misdemeanors:

- A misdemeanor that involves the use of a firearm or dangerous weapon with the intent to injure, that results in a personal injury, or that involves the use or threat of force or violence.
- A misdemeanor involving criminal sexual conduct, cruelty or torture, abuse or neglect, or the vulnerable adults statute.

A provision establishing a 5-year period of ineligibility for employment, clinical privileges, or independent contract for any other misdemeanor would be revised to eliminate a conviction for a misdemeanor involving cruelty if committed by an individual less than 16 years of age; larceny; retail fraud in the second degree; or any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance. The bills would retain the 5-year period of ineligibility for a misdemeanor involving home invasion, embezzlement, negligent homicide, or a moving violation that caused death or serious impairment of a body function.

The bills would also eliminate the following hiring restrictions:

- The 3-year bar for an individual convicted of assault without a firearm or dangerous weapon and no intent to commit murder or inflict great bodily injury, retail fraud in the third degree, or misdemeanors involving controlled substances.
- The 1-year bar for an individual convicted of an offense involving controlled substances if, at the time of conviction, the individual was under the age of 18, or involving retail fraud in the second degree if the individual, at the time of conviction, was under 16 years of age.

The bills would take effect 90 days after being enacted. The bills are tie-barred to each other, meaning that no single bill could take effect unless all of the others were also enacted.

#### **FISCAL IMPACT:**

The bills would not have a fiscal impact on the state or local units of government.

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■ 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.