

Safe & Just Michigan

Testimony of Safe & Just Michigan in Support of H.B. 4980-85 & 5120

*Senate Judiciary Committee, June 11, 2020 ; 8:30am
Harry T. Gast Appropriations Room; 3rd Floor, Capitol Building
100 S. Capitol Avenue; Lansing, MI 48933*

Good morning. My name is John Cooper; I am the Executive Director of Safe & Just Michigan, a non-partisan criminal justice policy and research organization based in Lansing.

Safe & Just Michigan supports all of the expungement reform bills being considered today, but my testimony today will focus on H.B. 4980--the “automatic expungement” or “clean slate” bill. It’s important for this committee and the public to understand how the automatic expungement will work, the policy problems it attempts to solve, and why it will have a far greater impact at less cost than the existing manual process.

Why Automatic Record-Sealing is Important

Most states have a process for sealing a person’s criminal record, the usual mechanism being a petition process in the sentencing court after a number of years have passed. Michigan has had this sort of paper-based process since 1965, and it has changed little since then.¹

The downside of a complex, time-intensive “opt-in” process like petitioning to seal a criminal record is that only a small percentage of the people eligible for this relief will attempt it, and even fewer will complete it successfully. Professors Prescott and Starr, for example, have found that just 6.5% of eligible people successfully petition for expungement within 5 years of eligibility.²

This is problematic: record-sealing has significant economic benefits for recipients, who experience a 23% increase in income within a year, and a 13% increase in employment rates.³ Given that successful applicants have very low recidivism rates - one that compares favorably to offense rates among the general population⁴ - good policy would seek to maximize the number of eligible people who receive expungements, not least of all because increasing incomes and employment rates *themselves* improve public safety.

To address the shortcomings of the petition process, states have begun to adopt policies to automatically seal low-level, non-violent conviction records automatically (i.e. without a petition) for otherwise-eligible people that have not been convicted of another crime for 10 years. Pennsylvania was the first state to adopt such a policy in 2018, and Utah did (with shorter waiting periods) in 2019.

¹ See MCL 780.621.

² J.J. Prescott & Sonja B. Starr, Expungement of Criminal Convictions: An Empirical Study , Harvard Law Review (forthcoming), U. of Michigan Law & Econ. Research Paper No. 19-001 (March 16, 2019) at 4, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3353620.

³ *Id.* at 5.

⁴ *Id.* at 4.

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The advantages of an automatic record-clearing policy are obvious: (1) it solves the uptake problem - instead 6.5% uptake rates, it is 100% of those that are eligible; (2) it is a scalable, low-cost solution to resource constraints that are inherent in the petition process - more petitions means more work for courts and court clerks - but that is not the case for the automatic expungement. Indeed, the more convictions that are eligible for automatic expungement, the *less* work there will be for courts and court clerks because it will reduce demand for petitions.

How Automatic Record-Sealing Would Work

The Michigan State Police (MSP) maintains Michigan's official criminal history database, which is organized around a person's electronic fingerprint, and includes fields for arrests, charges, and convictions. State law already requires automatic sealing of records of arrests and charges that are dismissed before trial;⁵ H.B. 4980 would simply do the same for certain low-level, non-violent conviction records that are already eligible for expungement through the petition process.

To implement automatic sealing of conviction records, MSP could leverage its existing systems to identify convictions eligible for relief using an algorithm based on statutory eligibility criteria. This would produce a list of eligible convictions to remove from public access, and that could be sent to the courts in a standardized format to be used to update their own digital case records to denote, as they do now, that a case is sealed. This restriction can then be used to limit access to relevant paper records if such records are subject to a public records request.

H.B. 4980 has a 2 year implementation period in which to build, test, and roll out the automatic process, and agencies are engaged in the planning process and well positioned to do this work. In addition, Code for America, a national technology non-profit that is providing technical assistance to Utah and other states working on clean slate, has also offered their services to the State at no cost. And, while building the automatic system will take some investment up front, we do not anticipate these costs to be unreasonable--for reference, the cost was \$250,000 in Pennsylvania, and \$1.6 million in Utah--and more than justified by the economic impact of the legislation, which will increase incomes for hundreds of thousands of people, and tax revenues for the State.

What H.B. 4980 Does NOT Do

- DOES NOT apply to convictions for violent crimes, sex offenses, or other serious crimes (see [Attachment A](#) for a list of ineligible convictions).
- DOES NOT impact law enforcement's access to records, as a non-public record is maintained in LEIN (the Law Enforcement Information Network).
- DOES NOT impact a person's obligations to pay restitution, fines, or fees.

⁵ See MCL 28.243(8).

Unpaid Restitution Should Not Be A Disqualifier

I have been asked whether having fully paid restitution for the underlying offense should be a requirement for eligibility for the automatic expungement. Safe & Just Michigan's position is that it should not. This is the case for a number of reasons:

1. This requirement would not increase restitution payment rates. Simply making a person with unpaid restitution ineligible for relief is unlikely to cause a change in payment rates, especially when that person cannot pay because they are unable to find a good job because of their criminal record (as is common; plus, 80% of criminal defendants are indigent to begin with). Indeed, adding such a requirement would result in *less* restitution being paid than if H.B. 4980 passed as is, because the bill will help fewer people find jobs that increase their ability to pay restitution.
2. This requirement would reduce the impact of the bill. Restitution data is maintained at the local court level, so we do not know what percentage of eligible people would be excluded, but given that the bill is expected to help hundreds of thousands of people, even a small percentage exclusion would impact thousands of people. This is important not just from an economic standpoint, but from a public safety perspective, since access to better jobs *reduces crime* and thus *reduces future victimization*.
3. This is about restitution for old low-level, non-violent convictions. Violent crimes, sex crimes, and other serious offenses are ineligible for automatic record-sealing, so the debate is really about restitution for traffic offenses and other low-level, non-violent convictions, not serious or violent crimes.
4. This requirement would be difficult to implement. Restitution data is maintained at the local court level, and my understanding is that it is not disaggregated from other debt, such as fines and court fees. Without the ability to isolate unpaid restitution, this requirement would be difficult to implement or be overinclusive and exclude far more people from eligibility than intended.
5. Restitution reform should be comprehensive, not piecemeal. Restitution collection rates are low, but as noted above, adding this requirement would not improve them. Further, restitution is a complex subject that is better dealt with in a comprehensive way as part of a separate reform effort; in fact, it is my understanding that such efforts are already underway.

Conclusion

Automatic record-sealing can and should be adopted in Michigan. It would open up new economic opportunities for hundreds of thousands of Michiganders without requiring them to go through an expensive, months-long petition process, and without major changes to existing administrative systems and processes.

Thank you. I would be happy to answer questions from the Committee.

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Respectfully submitted,

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Attachment A

Offenses Ineligible for Automatic Expungement

- **Statutorily Ineligible Offenses** (see MCL 780.621(3))
 - “(a) A felony for which the maximum punishment is life imprisonment or an attempt to commit a felony for which the maximum punishment is life imprisonment.”
 - MCL 333.74012A1 - deliver >1,000
 - MCL 333.74032A1 - possess >1,000
 - MCL 750.136D1A - 1st degree child abuse in the presence of a child
 - MCL 750.157B - solicitation of murder or another felony
 - MCL 750.207 - place explosives with intent to destroy or kill
 - MCL 750.234A1D - discharge a firearm from a vehicle causing death
 - MCL 750.316 - 1st degree murder, felony murder, open murder
 - MCL 750.317 - 2nd degree murder, delivery of a controlled substance causing death
 - MCL 750.335A2C - Indecent Exposure by Sexually Delinquent Person
 - MCL 750.349 - Kidnapping
 - MCL 750.349A - Prisoner taking a hostage
 - MCL 750.422 - Perjury
 - MCL 750.462B4 Human Trafficking - Forced Labor w/Kidnapping, CSC, or Death
 - MCL 750.462I - Human Trafficking - Kidnap, CSC or Attempt to Kill
 - MCL 750.520 - Rape
 - MCL 750.520B - CSC 1st
 - MCL 750.529/529A - Armed Robbery, Carjacking
 - MCL 750.531/531A/531B - Bank robbery, safe breaking
 - MCL 750.543F-A - Terrorism
 - MCL 750.761A - Arson of an Insured Dwelling
 - MCL 750.83 - Assault with intent to murder
 - MCL 750.85 - Torture
 - MCL 750.89 - Assault with intent to rob while armed
 - MCL 750.90A - Assaulting a pregnant individual with intent to induce miscarriage/stillbirth
 - MCL 750.91 - Attempted murder
 - MCL 767A.91A - Perjury in response to a prosecutor’s investigative subpoena
 - MCL 769.12 - Habitual offender 4th Offense

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- (b) A violation or attempted violation of section 136b(3), 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c, 750.145d, 750.520c, 750.520d, and 750.520g.
 - MCL 750.136 - Child Abuse
 - MCL 750.145 - possession of child pornography, use of a computer to commit a sex crime
 - MCL 750.520 - criminal sexual conduct
 - (c) A violation or attempted violation of section 520e of the Michigan penal code **[4th degree CSC]**, 1931 PA 328, MCL 750.520e, if the conviction occurred on or after January 12, 2015.
 - (d) A traffic offense, including, but not limited to, a conviction for operating while intoxicated. **[NOTE: To be amended by HB 4981]**
 - (e) A felony conviction for domestic violence, if the person has a previous misdemeanor conviction for domestic violence.
 - (f) A violation of former section 462i or 462j or chapter LXVIIA or chapter LXXXIII-A of the Michigan penal code **[Human trafficking]**, 1938 PA 321, MCL 750.462a to 750.462h and 750.543a to 750.543z.
- **Assaultive Crimes**
 - 750.81c Threats or assault against employee of family independence agency;
 - 750.82 Felonious assault
 - 750.83 Assault with intent to commit murder.
 - 750.84 Assault with intent to do great bodily harm less than murder; assault by strangulation or suffocation;
 - 750.86 Assault with intent to maim.
 - 750.87 Assault with intent to commit felony not otherwise punished.
 - 750.88 Assault with intent to rob and steal; unarmed.
 - 750.89 Assault with intent to rob and steal; armed.
 - 750.90a Conduct proscribed under MCL 750.81 to 750.89 as felony;
 - 750.90b Conduct proscribed under MCL 750.81 to 750.89 as crime; intent.
 - 750.91 Attempt to murder.
 - 750.200 Explosives; common carriers for passengers; transportation.
 - 750.201 Explosives exploded by concussion or friction;
 - 750.202 Explosives; marking when intended for shipment.
 - 750.204 Explosives; sending with intent to frighten, injure, or kill person or damage or destroy property;
 - 750.207 Explosive substance; placing with intent to frighten, injure, or kill person or damage or destroy property; violation; penalties.
 - 750.209 Offensive or injurious substance or compound; placing with intent to injure, coerce, or interfere with person or property;

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- 750.210 Substance that when combined will become explosive or combustible; possession with intent to use unlawfully;
 - 750.211a Device designed to explode upon impact, upon application of heat, or device highly incendiary; possession with intent to use unlawfully;
 - 750.212a Violation as felony; term of imprisonment; definitions.
 - 750.316 First degree murder;
 - 750.317 Second degree murder;
 - 750.321 Manslaughter.
 - 750.349 Kidnapping;
 - 750.349a Prisoner taking person as hostage;
 - 750.350 Leading, taking, carrying away, decoying, or enticing away child under 14;
 - 750.397 Mayhem;
 - 750.411h Stalking.
 - 750.411i aggravated stalking;
 - 750.520b Criminal sexual conduct in the first degree;
 - 750.520c Criminal sexual conduct in the second degree;
 - 750.520d Criminal sexual conduct in the third degree;
 - 750.520e Criminal sexual conduct in the fourth degree;
 - 750.520g Assault with intent to commit criminal sexual conduct;
 - 750.529 Use or possession of dangerous weapon; aggravated assault;
 - 750.529a Carjacking;
 - 750.530 Larceny of money or other property;
 - Sec. 543a. to 543z - Terrorism
- **Crimes of Dishonesty**
 - Racketeering
 - 750.174 Embezzlement by agent, servant or employee, or trustee, bailee, or custodian;
 - 750.248 Making, altering, forging, or counterfeiting public record; intent; felony; penalty; exception; venue.
 - 750.249 Forgery of records and other instruments; uttering and publishing; exception.
 - 750.250 Forgery of notes issued for debt of state or political subdivisions.
 - 750.251 Forgery of bank bills and promissory notes;
 - 750.252 Possession of counterfeit notes with intent to utter same as true;
 - 750.253 Uttering counterfeit notes as true;
 - 750.254 Possession of counterfeit bank, state or municipal bills or notes;
 - 750.255 Tools and implements for counterfeiting bills or notes;
 - 750.256 Testimony of president and cashier of bank.
 - 750.259 Affixing fictitious signature;

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- 750.260 Coins; counterfeiting and possession.
 - 750.261 Coins; counterfeiting; possession of less than 5 counterfeit.
 - 750.262 Counterfeiting; tools.
 - 750.263 Counterfeit marks.
 - 750.264 Possession of counterfeit mark, die, plate, engraving, template, pattern, or material; violation as misdemeanor; penalty.
 - 750.265a Union label; counterfeiting, imitation, unauthorized use.
 - 750.174 Embezzlement by agent, servant or employee, or trustee, bailee, or custodian; penalty; prima facie proof of intent; enhanced sentence based on prior convictions; consecutive sentence; conditions.
 - 750.174a Vulnerable adult; prohibited conduct; violation;
 - 750.175 Embezzlement by public officer, agent or servant; penalty.
 - 750.176 Embezzlement by administrator, executor or guardian; penalty.
 - 750.180 Embezzlement in bank, deposit, trust company, or credit union; penalty.
 - 750.181 Embezzlement of property belonging to person and part owner; violation; penalty; enhanced sentence based on prior convictions.
 - 752.794 Prohibited access to a computer, computer system, or computer network.
 - 752.796 Use of computer program, computer, computer system, or computer network to commit crime.
- **Serious Misdemeanors**
 - MCL 750.81, assault and battery, including domestic violence.
 - MCL 750.81a, assault; infliction of serious injury, including aggravated domestic violence.
 - MCL 750.115, breaking and entering or illegal entry.
 - MCL 750.136b, child abuse in the fourth degree.
 - MCL 750.145, contributing to the neglect or delinquency of a minor.
 - MCL 750.145d, using the internet or a computer to make a prohibited communication.
 - MCL 750.233, intentionally aiming a firearm without malice.
 - MCL 750.234, discharge of a firearm intentionally aimed at a person.
 - MCL 750.235, discharge of an intentionally aimed firearm resulting in injury.
 - MCL 750.335a, indecent exposure. MCL 750.411h, stalking.
 - MCL 257.601b, injuring a worker in a work zone.
 - MCL 257.617a, leaving the scene of a personal injury accident.
 - MCL 257.625, operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood alcohol content, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual.

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- Selling or furnishing alcoholic liquor to an individual less than 21 years of age in violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701, if the violation results in physical injury or death to any individual.
- Operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood alcohol content, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual.