

Safe & Just Michigan Clean Slate FAQ

Question: What is an expungement or “set-aside” under Michigan law?

Answer: Before passage of Clean Slate, Michigan law permitted a person with no more than one felony or two misdemeanor convictions on their record to petition a court to remove their conviction(s) from the public record. This process is generally referred to as an expungement, or sometimes as “record-sealing” or a “set-aside.” In Michigan, law enforcement retains a non-public record of the conviction; in some other states, “expungement” means all records of the conviction are destroyed.

Question: What does the new law do?

Answer: The new law expands eligibility to petition for an expungement in several ways and creates a new process to automatically seal certain nonviolent conviction records if a person has remained conviction-free for a period of time (seven years for misdemeanors, 10 years for felonies).

Question: In what ways does the new law expand eligibility to *petition* for expungement?

Answer: Current law permits a person to apply to seal a conviction if it has been five years since the end of the related sentence (including jail, prison or community supervision) and the applicant has no more than one felony and two misdemeanors on your record. The new bills expand eligibility in the following ways:

1. It expands eligibility to up to three felony convictions and an unlimited number of misdemeanors. However, no more than two assaultive convictions can be set aside, and multiple convictions for the same crime are ineligible if they have a maximum penalty of more than 10 years in prison.
2. It counts multiple convictions that arise out of the same event as one for purposes of the new conviction limits, if the convictions: (a) were not assaultive, (b) did not involve use of a dangerous weapon, and (3) are not punishable by more than 10 years in prison.
3. It reduces the waiting period to petition for a misdemeanor expungement to three years and permits expungement applications for multiple felonies after seven years.
4. It makes most traffic offenses, which are 50 percent of all criminal cases in Michigan, eligible for the first time. DWIs or traffic offenses causing injury or death are excluded.
5. It creates a special process for people with marijuana convictions to apply for expungement if the conduct at issue would be legal under current law.

Disclaimer: Safe & Just Michigan does not provide legal services, and the information provided below is not legal advice. If you have specific legal questions about the new law, we recommend that you contact an attorney. Questions? Contact us at 517.258.1134 or info@safeandjustmi.org

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Question: When will the new law become effective?

Answer: There are different answers for the bills related to the petition process and the automatic expungement.

Expanded eligibility to petition (H.B. 4981-85 & 5120): These bills become effective 180 days from the day they are signed by the governor. Because they were signed on Oct. 12, 2020, **the expected effective date of these bills is April 10, 2021.**

Automatic Expungement (H.B. 4980): This bill has a two-year implementation period. That means **the earliest it will become effective is October 12, 2022.**

Question: Does that mean it may take longer for automatic expungement to take effect?

Answer: Yes. The automatic expungement system needs to be built and tested — which requires state funding — and it could be delayed if funding is not secured. Technical issues could also delay the effective date, although we do not anticipate that being an issue.

Question: What if I don't want to wait?

Answer: You may be eligible to apply for expungement under current law. If it has been five years since the end of your sentence and community supervision, and you have no more than one felony and two misdemeanors on your record, you are eligible to apply to seal most kinds of convictions.

Question: Are some convictions ineligible for expungement?

Answer: Yes — sex offenses, offenses punishable by a maximum of life in prison, second-offense domestic violence and human trafficking offenses are all ineligible to be sealed. In addition, traffic offenses will not be eligible until the **new law goes into effect in April 2021.**

Question: Why do the new laws limit the number of felonies and misdemeanors a person can have cleared?

Answer: The short answer is that it wasn't up to us. At Safe & Just Michigan, we believe that every person who has remained crime-free for the statutory waiting period should be eligible for public record clearance. This position is strongly supported by the existing research on record-clearance and recidivism, and — consistent with that — we will always advocate for the broadest possible expungement policy.

However, many legislators and other stakeholders do not share this view, and pushed for narrower eligibility. So while we believe this bill package is an important step forward, we will continue to fight for broader record clearance in the future.

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Question: How do I apply for expungement if I am eligible?

Answer: Use Form MC 227, which the state courts created to guide applicants. It is available here: <https://courts.michigan.gov/administration/scao/forms/courtforms/mc227.pdf>.

Question: How can I determine whether I am eligible for the automatic expungement?

Answer: The automatic expungement applies to up to two non-violent felony convictions and four misdemeanors ("serious misdemeanor" convictions are not eligible). Certain financial crimes, defined by the bill as "crimes of dishonesty," are also ineligible. Safe & Just Michigan will be releasing guidance to assist people in determining their eligibility closer to the effective date of the automatic expungement, which we currently project to be **October 12, 2022**.

Question: How will I know if my record has been automatically sealed?

Answer: The automatic process will go forward without the involvement of individuals whose records are sealed, it's possible a person may have their record sealed but not realize it. Safe & Just Michigan will be working with the state of Michigan, local governments and many partner organizations to do outreach related to the Clean Slate law to ensure people know about its impact and effective date, and to provide resources to assist people in determining whether their records have been cleared. However, at this time, these resources are still in development.

Question: How many people will be helped by the new Clean Slate law?

Answer: Estimates for the automatic expungement range from 400,000 people helped to over 1 million people who will have their criminal records automatically sealed. Similar numbers of people will be newly eligible to petition as a result of the new laws.

Question: What are some of the reasons the new law will have such a large impact?

Answer: There are several reasons:

1. The existing expungement process has never served the records of a large number of people. It's estimated that of all people who were eligible for expungement under old laws, only 6.5 percent even tried to get one. That translated to 2,000 to 3,000 people annually - even though hundreds of thousands were eligible to apply.
2. Traffic offenses are half of all criminal cases in Michigan, and no traffic offenses were eligible for expungement before this law was signed.
3. A new law makes it possible to seal all marijuana possession and use misdemeanors that aren't illegal under current law, (irrespective of when the conviction occurred or what other convictions the person has on their record). This impacts an estimated 240,000 people.
4. The law expands eligibility to many people who were not previously eligible. Before this law passed, most people with records weren't eligible to apply because they had more than one felony or two misdemeanors on their record.

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Question: I've heard people say this bill package makes Michigan a national leader in criminal record-sealing policy. In what ways is that true?

Answer: This is true in multiple ways.

1. Michigan is the first state in the nation to pass a retroactive automatic expungement that makes many felonies eligible for automatic expungement.
2. Eligibility for the automatic expungement is not conditional on whether the applicant has unpaid criminal justice debt. However, there is a provision that permits the expungement to be rescinded if the person does not make a good faith effort to pay restitution.
3. Expansions to eligibility for the petition process also make Michigan a national leader in criminal record sealing policy.

Question: Where can I learn more?

Answer: Please feel free to check out the Clean Slate resources page on Safe & Just Michigan website at www.safeandjustmi.org/our-work/clean-slate-for-michigan or contact us directly at info@safeandjustmi.org.

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