

CLEAN SLATE YEAR 3: The First Year of Automatic Expungements — Looking Back & Looking Ahead



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I. Introduction:

Why criminal record sealing is good policy

Nationally, it is estimated that 1 in 3 adults has a criminal record,¹ including an estimated 2.8 million people in Michigan. Since criminal background checks are used as a screening tool by most employers and landlords, even very old convictions can create systemic barriers to employment and housing, leading to poverty and housing instability for tens of thousands of adults with criminal records and their families. This is in spite of the fact that research shows that people who go five years without a criminal conviction are no more likely than a member of the general public to commit a crime.²

Criminal record sealing, also known as expungement, offers people with old criminal convictions the opportunity to seal their public criminal record so that it no longer appears on commercial background checks (the Michigan State Police maintains a nonpublic record for law enforcement use). This gives people a “Clean Slate” with employers and landlords so they can pursue employment and housing opportunities without the burden of a criminal record. For many people, the difference is transformative. For example, research by two professors at the University of Michigan Law School found that people who receive an expungement see a 23 percent increase in income within the first year and are 11 percent more likely to be employed.³ Based on

these findings, the researchers recommend maximizing state expungement policies, including by automatically sealing large numbers of old convictions, to maximize the societal benefits of record sealing.

Background on Michigan's record sealing law

Michigan has had a court-based expungement petition process since the 1960s (see MCL 780.621), but historically it served a limited number of people — typically a few thousand annually. This was due to several factors, including (1) narrow eligibility criteria, (2) strict limits on the number of convictions that could be sealed, and (3) legal and logistical complexity that deterred people from applying. Multiple attempts to expand eligibility and access in the 2010s were met with stiff opposition and yielded limited gains. However, by early 2019, there was bipartisan support in the Michigan Legislature for more ambitious changes: (1) a significant expansion of eligibility to petition, and (2) an automatic expungement for low-level, nonviolent convictions modeled after a Pennsylvania law passed in 2018, which was the first of its kind.⁴ The automatic expungement in particular had significant impact, because it was not limited by the procedural or resource constraints of



Michigan legislators gather in Detroit in September 2019 to mark the introduction of the Clean Slate package of legislation, which would be signed into law in October 2020.

¹ [Just Facts: As Many Americans Have Criminal Records as College Diplomas, Matthew Friedman](#)

² [A Criminal Record Shouldn't be a Life Sentence to Poverty, Rebecca Vallas](#)

³ [Expungement of Criminal Convictions: An Empirical Study, J.J Prescott and Sonja Starr](#)

⁴ [PA Clean Slate: Delivering on its Promises, Sharon Dietrich](#)



Tony Gant (left), co-acting executive director of Nation Outside, explains the need for expungement expansion with state Rep. Julie Brixie (D-Meridian Township) at a community event in 2019.

the court petition process and therefore could be scaled up to seal large numbers of eligible records instantly and at little cost. It was a scalable solution to the negative impacts of old criminal records.

The Michigan Clean Slate campaign

The Michigan Clean Slate campaign launched in 2019. As part of this effort, Safe & Just Michigan conducted significant outreach into justice-impacted communities statewide. With JustLeadershipUSA and Nation Outside, we co-hosted community listening sessions in 10 cities across the state that included incarcerated people and their family members, law enforcement and MDOC officials, legislative representatives/staff, employment specialists, service providers, and others. Outreach included storytelling, legislative advocacy, and organizing trainings. Findings from these outreach efforts informed legislative priorities for the Clean Slate campaign, and helped identify advocates and stories featured in it.

The primary legislative champions of Clean Slate were state Reps. Graham Filler (R-DeWitt), who then served as chairman of the House Judiciary Committee, and David LaGrand, (D-Grand Rapids), the committee's Minority Vice-Chair. Safe & Just Michigan coordinated advocacy from outside groups. The seven-bill package (House Bills 4980-85 & 5120) moved quickly through the House, with hearings in September and October 2019. The bills were voted out of committee with minor changes on Nov. 5, 2019, and received a floor vote the same day; all bills passed with

large bipartisan majorities, including 95-13 on the automatic expungement (HB 4980).⁵ The bill package was referred to the Senate Judiciary committee, where it received hearings in June 2020 and was voted to the floor with additional changes in July 2020. The bill package passed the Senate — again with large bipartisan majorities (29-8 on HB 4980) — on Sept. 23, 2020. The House then approved the Senate changes the next day (vote of 93-12 on HB 4980).

The Michigan Clean Slate law was signed by Gov. Gretchen Whitmer on [Oct. 12, 2020](#). The law had two main components: (1) a large eligibility expansion to the court petition process that was scheduled to go into effect in April 2021, and (2) an automatic expungement that was scheduled to go into effect in April 2023.

The remainder of this report is intended to provide the public with an overview of the Clean Slate implementation process over the last three years, including an update on these laws and its impact. This report will highlight some of early successes as well as some of the challenges faced in implementing such a complex set of laws, and it will make some recommendations on how the administration and impact of the Clean Slate law can be improved.

Overall, Michigan's new Clean Slate Law has drastically changed the lives of many who were previously deemed to be ineligible under prior laws or unable to access the court petition process. Expungement petition filings increased five-fold after the eligibility expansion went into effect, and more than three million conviction records have been sealed through the automatic process.

As one of many organizations at the forefront of this work, Safe & Just Michigan has been able to witness firsthand the impact that these laws have had on the public, as well as some of the challenges that have arisen in implementing such a law.

Clean Slate implementation timeline

Year 1: The first phase of Michigan's Clean Slate law went into effect on **April 11, 2021**. The law expanded eligibility requirements for petition based expungements and allowed expungements for individuals with up to three felonies and an unlimited amount of misdemeanors.⁶ This expansion occurred in the midst of an existing backlog of cases due to COVID-related court closures, and resulted in a wave of petitions being filed that made the backlog worse. In addition, both the Michigan State Police and Michigan Attorney General's Office struggled to process petitions in a timely manner, and this led to expungement hearings being further delayed throughout the local court system. Reported wait times for hearings during this time regularly exceeded six months, and in some cases were closer to a year.

⁵ [Clean Slate Legislative Analysis, HBs 4980 to 4985 and 5120 as reported from committee, House Fiscal Agency](#)

⁶ [MCL 780.621\(\)\(a\)](#)



Safe & Just Michigan Executive Director John S. Cooper offers testimony supporting passage of Clean Slate expungement expansion committee before a House committee in October 2019.

Year 2: The backlog problem continued, and while not required by statute, most courts were reluctant to proceed with their expungement hearings until they received a response from the Michigan Attorney General’s Office confirming whether the petitioner met the eligibility criteria under the law. In addition, effective **Feb. 19, 2022**, the petition process was amended to allow first-violation driving under the influence (DUI) offenses eligible for expungement.⁷

Year 3: The second phase of the Clean Slate law went into effect on **April 11, 2023**. The law required that the Michigan State Police create a computer algorithm, otherwise referred to as a “rules engine”, that would automatically expunge up to two felonies after 10 years and four “93-day or more” misdemeanor offenses after seven years, provided that the individual meets the criteria set forth under law.⁸ The law also required local courts to auto expunge all “92-day or less” misdemeanors seven years from the date of conviction, even if there is no record of the offense on Michigan State Police’s internal criminal history database.⁹

While the automatic expungement process applies to many convictions, there still remains a number of offenses which cannot be expunged through the automated process. Those offenses include:

- **Assaultive Crimes:** e.g Aggravated Assault or Felonious Assault.
- **Serious Misdemeanors:** e.g DUI or Domestic Violence
- **Crimes of Dishonesty:** e.g Felony Embezzlement or Uttering and Publishing.

- **Any offense punishable by 10 or more years:** e.g Home Invasion 1st or Unarmed Robbery.
- **Any Human Trafficking violation:** Ineligible for petition process as well.
- **Any violation of [MCL 777.1 to 777.69](#),** which involves injury, serious impairment or death, a minor or vulnerable adult.
- **Any other conviction listed under [MCL 780.621c](#)** which is ineligible for expungement through the petition process.

These exclusions were negotiated during the legislative process, and reflect compromise between lawmakers wanting broader eligibility and those wanting more serious convictions to be reserved for the petition process where the expungement petition is litigated and approved by a judge. The focus of automatic expungement eligibility is thus on lower-level, non-assaultive convictions, which represent the “easy cases” judges were already likely to approve. Logistics also played a role in these exclusions. For example, because victims of assaultive crimes have the right to be notified of an expungement petition and the right to appear at the hearing,¹⁰ convictions for assaultive crimes could not be incorporated into the automatic process, which does not provide notice or a hearing. Similarly, the “crimes of dishonesty” exclusion was added in response to financial institutions’ concerns about how expunging these convictions might impact their compliance with applicable federal regulations. Since a number of convictions — including the most serious — are not eligible for the automatic expungement, the petition process remains a viable alternative for many.

⁷ [MCL 780.621d\(2\)](#)

⁸ [MCL 780.621g](#)

⁹ [Id.](#)

¹⁰ [MCL 780.621d\(10\)](#)

II: Clean Slate implementation challenges

Michigan has arguably the broadest automatic expungement system in the country, and its petition process is now significantly broader than most states. These reforms have led to unprecedented numbers of expungements; however, there is much more work to do to maximize the impact of these laws: we have documented a variety of barriers — from individual knowledge and access, to data integration, to technical issues:

Fig. 1

	Year 1 of Clean Slate (2021)	Year 2 of Clean Slate (2022)	Year 3 of Clean Slate (2023)
Number of expungement petitions received by the Michigan Attorney General's Office	7,458	15,056	9,268

Source: Michigan Attorney General's Office

Limited legal services capacity to file and process petitions

The existing petition process is complicated, and while it does not require legal assistance, many people have been left frustrated by the process. The lack of adequate legal assistance increases the likelihood of defective petitions being submitted to the courts, as individuals are forced to navigate the petition process on their own. In some cases, courts may deny a defective petition, and impose a three-year wait period before the individual is allowed to refile their petition.¹¹

While the backlog and delays in processing petitions has since subsided, the overwhelming demand for expungement services and the lack of adequate legal support to meet those demands remains the same. Even with the implementation of the automated expungement process, we have not seen a noticeable decrease in the demand for legal services at many of our expungement fairs. Additionally, due to some of the limitations within the “rules engine” and the law itself, legal assistance for the petition process is still needed by many. Prior to Michigan’s Clean Slate law going into effect, it was

Fig. 2

Number of expungement fairs in 2023 (Hosted by SJM and partners)	Estimated eligible/partially eligible	Estimated ineligible	Estimated blank ICHATs or ICHATs with no record of a conviction	Estimated number of people served
25	2,338 (50%)	1,681 (36%)	625 (14%)	4,664

Source: Safe & Just Michigan (Note: This data only reflects fairs for which SJM was involved in the planning and hosting process.)

11 [MCL 780.621d\(5\)](#)

estimated that over two million Michiganders had criminal convictions on their record. As reflected in the table above, even though the number of expungement petitions received by the Michigan Attorney General’s Office in 2023 dropped since peaking in 2022, there still seems to be a demand for assistance with petition based expungements (*see Fig. 1, above*).

Expungement fairs and their limitations

In an effort to bridge the gap in legal services, SJM, the Michigan Attorney General’s Office, and our various community partners have hosted dozens of expungement fairs throughout the state. These fairs have provided us with a platform to actively engage the public, and to screen thousands of people to determine their eligibility under the law. Furthermore, our Legal Aid partners continue to provide pro bono expungement services to the general public throughout the year

These fairs have also served to assist the public in understanding which offenses still remain on their Michigan State Police ICHAT background check. As seen in Fig. 2 below, due to the number of individuals that are potentially

eligible for an expungement, SJM and a number of our Legal Aid partners lack the resources and manpower to assist all of these individuals in filing their expungement petitions.

Need for a state-run Clean Slate portal and barriers to a portal

Implementation of the automated expungement system has also presented its own unique set of challenges. The main challenge centers on ensuring that all people with eligible convictions are both (1) aware of the automatic process, and (2) able to check their record to confirm that their record has been sealed. If a person either isn't aware of the process or lacks the ability to check their record, that defeats the purpose of the law because the person will continue to "check the box" and thus not benefit from the law, even if their record is sealed.

To address this issue, SJM continues to advocate for the creation of a publicly-funded, online Clean Slate Portal so impacted people can easily check their records for free. This portal would be similar to portals introduced by our partners in [Pennsylvania](#) and [Utah](#). However, unlike the portals in Pennsylvania and Utah, a Michigan portal would be operated by the state instead of privately-funded nonprofit organizations. Significantly, because not all relevant records are in the Michigan State Police's internal criminal database, the portal would also need access to local court records and their databases.

While all relevant stakeholders appear to be open to the idea of creating a portal, there are still a number of outstanding issues that need to be resolved before a portal can be created:

- **Funding:** Any type of portal requires funding, which would likely be sourced through an appropriations bill passed by the legislature. The projected cost of operating a portal is unclear at this time, but our understanding is that about \$5 million in unspent, previously appropriated implementation funds have been set aside for this project.
- **Merging multiple databases:** As previously noted, the Clean Slate law requires local courts to auto expunge all "92-day or less" misdemeanor offenses that have

not been reported to Michigan State Police's criminal database.¹² Thus, a state run-portal would need to pull information from both Michigan State Police's internal criminal database as well databases from local courts around the state. As things stand, this would be further complicated by the fact that there are as many as 17 different case management systems being used by various courts across the state. The State Court Administrator's Office (SCAO) is in the midst of an effort to bring all courts into a single case management system (JIS, which SCAO operates). While the unification of the court case management system would presumably streamline this process, SCAO believes that this transition is two to three years from completion. This may push the creation of a portal back a similar amount of time.

- **Privacy Concerns:** Some stakeholders have expressed concerns about potentially making non-public information (e.g. sealed records) available to the public. This would not only defeat the purpose of Clean Slate, but the disseminators of that information could potentially be held criminally liable under the law as well.¹³ To alleviate some of these concerns, the portal would need an ID verification system to ensure non-public information is only released to the expungement recipient.

Automatic Expungement algorithm or "Rules Engine" limitations

1. Automatic Expungements by the numbers

Since going live in April 2023, MSP's rules engine has auto expunged more than 1.3 million convictions. It should be noted that these numbers do not include the amount of "92-day or less" misdemeanors which have been auto expunged solely by the courts. (See Fig. 3, below)

Despite these numbers, the overall effectiveness of the rules engine has been hindered by limitations built into the law as well as systemic issues that have arisen since the rules engine went live.

Fig. 3

	Number of misdemeanors automatically expunged	Number of felonies automatically expunged	Total number of convictions automatically expunged	Number of people with partial expungements	Number of people with full automatic expungements
Overall total as of March 21, 2024	1,281,092	124,727	1,405,819	912,416	283,428

Source: Michigan State Police

¹² [MCL 780.621g\(1\)](#)

¹³ [MCL 780.623\(5\)](#)

2. Rules Engine Blindspots

The rules engine has its own limitations which prevents it from auto-expunging offenses even if those offenses meet the statutory criteria.

- **Convictions with no MCL/PACC Codes:** The rules engine has been coded to identify offenses based on their MCL (statutory section) or PACC (charge) code, this means that offenses that are listed on MSP’s database without an MCL code will not be auto expunged even if those offenses are eligible for automatic expungement. This tends to be an issue with older criminal offenses that were never assigned an MCL/PACC code when they were reported to MSP by the convicting court. In *Illustration 1* below, the individual’s possession of marijuana offense would have otherwise been automatically expunged but for the fact the offense lacked an MCL/PACC code:
- **Impact of Open Cases with “Hanging Charges”:** MSP has indicated that a “hanging charge” (open



Safe & Just Michigan Clean Slate Program Manager Kamau Sandiford (left), SJM volunteer Felecia Tyson-Waters (center) and an unidentified volunteer staff an expungement fair in Detroit in August 2023.

case) will prevent the rules engine from auto expunging any offenses on that individual’s record. It is not unusual for prosecutors to leave charges in non-priority cases open indefinitely, and for thousands of “hanging charges” to accumulate over time. This has proven to be an issue particularly in places such as Wayne County where there is an unusually large amount of open cases with “hanging charges.” This has led to a lower than expected number of automatic expungements overall in

Illustration 1

ARREST SEGMENT			CHARGE SEGMENT			JUDICIAL SEGMENT		
DATE: 04/15/1999	:	NO DATA RECEIVED	:	DATE: 06/07/1999	:	MIS20225J	:	23RD DISTRICT COURT
MIS277500	:		:		:	CFN: 992034CM	:	
TAYLOR POLICE DEPARTMENT	:		:		:	CNT-1 MCL	:	ORDINANCE VIOL
OCA: 9912086	:		:		:	DISP: PLED GUILTY	:	SENT/REMARKS:
1 CNT OF 3500	:		:		:	POSS OF MARIJUANA	:	F/C/R-\$400 OR 15D
ORDINANCE VIOL	:		:		:	PROB-1Y	:	
DANGEROUS DRUGS	:		:		:		:	
DISP: CHGD BY PROSECUTOR	:		:		:		:	

DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION (CHRI) VIA THE INTERNET CRIMINAL HISTORY ACCESS TOOL IS IN COMPLIANCE WITH MICHIGAN COMPILED LAW (MCL) 28.242a, WHICH STATES THAT ALL CHRI THAT IS SUPPORTED BY BIOMETRIC DATA SHALL BE DISSEMINATED IN RESPONSE TO A NAME-BASED SEARCH OF THE CHRI DATABASE, UNLESS THE CHRI IS NONPUBLIC (AS DEFINED BY MCL 769.16a) OR OTHERWISE PROHIBITED BY LAW FROM BEING DISSEMINATED.

PURPOSE CODE USED NOT FORWARDED TO NCIC III

Wayne County. Ultimately, this issue can only be resolved at the local county level, and requires the courts and local prosecutor’s office to work together to close these open cases by reporting the final dispositions of those cases to MSP. In *Illustration 2*, below, the individual’s “hanging charge” has no final disposition. As a result, the other offense listed (2005 Misdemeanor Check-Non-Sufficient Funds) will not be auto expunged by the rules engine even though the offense appears to be eligible for automatic expungement. Additionally, since MSP’s rules engine can only auto expunge convictions that are already in their database, any offenses which weren’t reported to MSP by the convicting court will not be eligible for automatic expungement.

3. Delays in processing felony expungements by rules engine

Before the rules engine can auto expunge felony cases, it must first cross reference each felony case with the Michigan Department of Corrections’ (MDOC) internal database. The closing date for the case is needed to calculate the 10-year wait period from the completion of any term of imprisonment, which must lapse before certain felony offenses can be automatically expunged.¹⁴ Unfortunately, the closing date information from MDOC isn’t always readily available to MSP, and this has led to delays in felony cases being automatically expunged. MSP has indicated that felony cases which have yet to be expunged have been placed in a “problem queue.” MSP staff is currently working through each case in the “problem queue” manually, and this usually involves requesting the missing closing date information

from MDOC. Once the case that is in the problem queue has been cross referenced with MDOC’s database and the required information is provided by MDOC, it can then be expunged by MSP assuming the case meets the statutory criteria. MSP notes that even felony cases where there was no prison time, still have to go through this process before they are subject to being automatically expunged. MSP estimates that there are as many as **76,000 felony cases** in the problem queue that have yet to be processed.

This issue is further

Illustration 2

INCIDENT DATE: 10/06/2005		
ARREST SEGMENT	CHARGE SEGMENT	JUDICIAL SEGMENT
DATE: 10/06/2005	DATE: 10/06/2005	DATE: 12/07/2005
MI4142600	MI410012A	MI410025J
GRAND RAPIDS POLICE DEPARTMENT	KX KENT CO PROSECUTING	17TH CIRCUIT COURT
OCA: 0550693	ATTY	CFN: 200810475
1 CNT OF 2500	1 CNT MCL 750.253	CNT-2 MCL 750.1313B1
FELONY	FELONY	MISDEMEANOR
FORGERY AND COUNTERFEITING	UTTERING AND PUBLISHING	CHECK -
DISP: CHGD BY PROSECUTOR	COUNTERFEIT BILLS OR NOTES	NON-SUFFICIENT FUNDS
	1 CNT MCL 257.9041C	\$100 OR MORE BUT LESS THAN \$500
	MISDEMEANOR	DISP: PLED GUILTY
	OPERATING-LICENSE	SENT/REMARKS:
	SUSPENDED, REV,	F/C/R 600, PROB 365D
	DENIED/ALLOWING SUSP	
	PERSON TO	
	OPERATE-2ND OR SUB	
	OFF	
INCIDENT DATE: 08/16/2005		
ARREST SEGMENT	CHARGE SEGMENT	JUDICIAL SEGMENT
DATE: 08/16/2005	DATE: 08/16/2005	NO DATA RECEIVED
MI4185000	MI410012A	
KENTWOOD POLICE DEPARTMENT	KX KENT CO PROSECUTING	
OCA: 05-302413T	ATTY	
1 CNT OF 5400	1 CNT MCL 257.9041C	
MISDEMEANOR	MISDEMEANOR	
TRAFFIC OFFENSE	OPERATING-LICENSE	
DISP: CHGD BY PROSECUTOR	SUSPENDED, REV,	
	DENIED/ALLOWING SUSP	
	PERSON TO	
	OPERATE-2ND OR SUB	
	OFF	

¹⁴ [MCL 780.621g\(2\)](#)

exacerbated by the fact that MSP has a limited amount of staff to review these cases. As a result of this, there are currently a large number of felony convictions that have yet to be automatically expunged. There's no clear fix in the works for this issue, but MSP hopes to have easier access to MDOC's database in the future, which would allow for the processing of felony cases in the problem queue at a faster rate.

Statutory barriers to full implementation

In addition to some of the unforeseen impediments to implementation that have arisen since the law went into effect, the Clean Slate law itself also has built in restrictions which have impacted the effectiveness of the law. The most notable impact has come from the rules regarding intervening convictions, which in some instances have served as a permanent bar to those seeking an expungement through both the petition process and the automated system.

When petitioning for an expungement, the law states that a court can only enter an order expunging a conviction if:

Illustration 3

ARREST SEGMENT	CHARGE SEGMENT	JUDICIAL SEGMENT
DATE: 07/28/2002	DATE: 07/28/2002	DATE: 05/27/2002
MI4114100	MI410012A	MI410045J
KENT COUNTY SHERIFF	XX KENT CO PROSECUTING	43RD DISTRICT COURT
DEPARTMENT	ATTY	CFN: R0218615M
OCA: 0243291	1 CNT MCL 750.5355	CNT-1 MCL 750.5355
1 CNT OF 2300	MISDEMEANOR	MISDEMEANOR
FELONY	STOLEN PROPERTY -	STOLEN PROPERTY -
LARCENY	RECEIVING AND	RECEIVING AND
DISP: CHGD BY PROSECUTOR	CONCEALING - LESS	CONCEALING - LESS
	THAN \$200	THAN \$200
		DISP: PLED GUILTY
		SENT/REMARKS:
		CONF-93D F/C/R-4465
		PROB-24M
DATE: 11/17/2003	NO DATA RECEIVED	DATE: 02/04/2003
MI4114100		MI410095J
KENT COUNTY SHERIFF		59TH DISTRICT COURT
DEPARTMENT		CFN: W161360
OCA: 03		CNT-1 MCL 750.356D4
1 CNT OF 2300		ORDINANCE VIOL
MISDEMEANOR		RETAIL FRAUD - THIRD
LARCENY		DEGREE
DISP: WARRANT REQUESTED		DISP: PLED GUILTY
		SENT/REMARKS:
		VICT: \$50 FINE: \$200
		COST: \$200 JAIL: 22
		DAYS PROB: 12 MON

“The applicant has not been convicted of any criminal offense during the applicable time period required under subsection (1), (2), or (3).” [MCL 780.621d\(4\)\(c\)](#).

Similarly, this is also a requirement for automated expungements under [MCL 780.621g\(6\)\(c\)](#), which allows for the automatic expungement of an offense if

“The applicant has not been convicted of any criminal offense that is recorded and maintained in the department of state police database during the applicable time period required under subsection (2) or (4).”

While most courts have adopted a more liberal interpretation of [MCL 780.621d\(4\)\(c\)](#), which allows for a “restarting of the clock/wait period” from the most recent intervening conviction as a means of circumventing this restriction, the rules engine lacks such flexibility when interpreting [MCL 780.621g\(6\)\(c\)](#). MSP notes that in instances where an individual has an intervening conviction, the rules engine must auto expunge the intervening conviction before it can auto expunge the prior offense. In *Illustration 3* below, the 2003 offense would have to be auto expunged first before

the rules engine could auto expunge the 2002 offense.

However, in cases where the intervening conviction is ineligible for automatic expungement, the rules engine is blocked from auto expunging the prior offense as well. In *Illustration 4*, below, the 2009 offense (assaultive crime) serves as a bar for auto expungement of the 2003 offense because it occurred during the seven year wait period after the 2003 offense.¹⁵

Commercial background check companies

Even prior to the Clean Slate law going into effect, commercial background check companies have presented issues to those who have successfully had their convictions expunged. In some cases, commercial background check companies fail to update their records in a timely manner, and this has led to expunged convictions continuing to appear on commercial background checks. Unfortunately, Michigan

law offers minimal oversight over these commercial background check companies and limited recourse to those whose records have been misrepresented to prospective employers and landlords. Additionally, while the Clean Slate law allows for an individual to be held criminally liable for disseminating non-public information, the law doesn't specifically address what if any liability companies who engage in this type of activity will face.¹⁶

Multiple pathways to expungement

At its most basic level, Michigan's Clean Slate law essentially creates two distinct pathways towards expunging a conviction. Both the automated and petition processes are designed to operate independent of one another, with each having its own eligibility criteria. See *Fig. 4* on Page 13:

Illustration 4

ARREST SEGMENT	CHARGE SEGMENT	JUDICIAL SEGMENT
DATE: 05/03/2003	DATE: 05/04/2003	DATE: 11/06/2003
MI3949911	MI390013A	MI390045J
KALAMAZOO DEPT OF PUBLIC SAFETY	KALAMAZOO CO	8TH DISTRICT COURT
OCA: 03025099	PROSECUTING ATTORNEY	CFN: 03064845M
1 CNT OF 3500	1 CNT MCL 333.74032D	CNT-1 MCL 333.74032D
MISDEMEANOR	MISDEMEANOR	MISDEMEANOR
DANGEROUS DRUGS	CONTROLLED SUBSTANCE - POSSESSION OF MARIJUANA OR SYNTHETIC EQUIVALENTS	CONTROLLED SUBSTANCE - POSSESSION OF MARIJUANA OR SYNTHETIC EQUIVALENTS
DISP: CHGD BY PROSECUTOR		DISP: PLED GUILTY
		SENT/REMARKS: 7411 REVOKED

ARREST SEGMENT	CHARGE SEGMENT	JUDICIAL SEGMENT
DATE: 04/22/2009	DATE: 04/22/2009	DATE: 05/04/2009
MI3913900	MI390013A	MI390045J
KALAMAZOO COUNTY SHERIFFS OFFICE	KALAMAZOO CO	8TH DISTRICT COURT
OCA: 09-000087	PROSECUTING ATTORNEY	CFN: 09063913M
1 CNT OF 1300	1 CNT MCL 750.81D1	CNT-1 MCL 750.81D1
MISDEMEANOR	FELONY	ATTEMPT-MISDEMEANOR
ASSAULT EXCLUDING SEXUAL	POLICE OFFICER - ASSAULTING/RESISTING/OBSTRUCTING	POLICE OFFICER - ASSAULTING/RESISTING/OBSTRUCTING
1 CNT OF 1300	1 CNT MCL 750.81	OBSTRUCTING
ATTEMPT-MISDEMEANOR	ATTEMPT-MISDEMEANOR	DISP: PLED GUILTY
ASSAULT EXCLUDING SEXUAL	ASSAULT OR ASSAULT AND BATTERY	SENT/REMARKS: F/C/R \$200
DISP: CHGD BY PROSECUTOR		

¹⁵ [MCL 780.621g\(6\)\(c\)](#)

¹⁶ [MCL 780.623\(5\)](#)

Fig. 4

Applicable Rules	Clean Slate automated process	Clean Slate petition process
Three-felony rule	N/A: Based on language used in the statute, this rule appears to be applicable only to the petition process. This is further supported by the fact that MSP's rules engine can auto expunge up to two felonies regardless of the amount of total felony convictions an individual may have. Recently, we have seen some local county prosecutor's offices object to this interpretation and argue that individuals who have already had their fourth and/or fifth felony convictions automatically expunged are barred from petitioning for expungement of their remaining three felonies.	Applicant is allowed no more than a total of 3 felonies - MCL 780.621(1)(a)
One bad night rule	N/A: Only applicable to the petition process.	Multiple felony offenses treated as one offense if they arose from the same transaction and occurred within 24 hours of each other - MCL 780.621b Only applicable to the petition process, as it requires an analysis of the underlying facts of the case by the court.
Assaultive crimes	Not only are assaultive crimes excluded from the automated process, but individuals with more than 1 assaultive crime on their record are not eligible to have any convictions auto expunged by the rules engine - MCL 780.621(g)(7)	An applicant can have up to two assaultive crimes expunged during their lifetime. - MCL 780.621(1)(b)
Wait periods	Misdemeanors: Seven years from sentencing date Felony: 10 years from either sentencing date or completion of imprisonment with MDOC - MCL 780.621g	<ul style="list-style-type: none"> • 3 years: Non-Serious Misdemeanors • 5 years: Serious/Assaultive Misdemeanors, 1 Felony, 1 DUI. • 7 years: 2-3 Felonies Wait period is triggered by whichever of the following events that occurred last: <ul style="list-style-type: none"> • Imposition of Sentence • Discharge from Probation • Discharge from Parole • Completion of any term of imprisonment MCL780.621D
Intervening convictions	Convictions that occur during the wait period will prevent the rules engine from expunging prior offenses, unless the intervening conviction is eligible for automatic expungement by the rules engine first - MCL 780.621g(6)(c)	Convictions that occur during the wait period can serve as an impediment during the petition process. Most courts have elected to "restart the clock/wait period" from the most recent intervening conviction. - MCL 780.621d(4)(c)
Total number of convictions eligible for expungement	The rules engine can auto expunge up to 2 felonies and 4 "93-day or more" misdemeanors. An unlimited amount of "92-day or less" misdemeanors may also be expunged by the rules engine. Additionally, the courts can expunge an unlimited number of "92-day or less" misdemeanors which aren't already on MSP's database - MCL 780.621g	Up to three felonies, and unlimited number of misdemeanors - MCL 780.621(1)(a) . Exceptions: <ul style="list-style-type: none"> • No more than two assaultive crimes can be expunged. - MCL 780.621(1)(b) • An applicant can expunge no more than one felony conviction for the same offense, if the offense was punishable by more than 10 years imprisonment. - MCL 780.621(1)(c).

Overlap between the automatic and petition processes

Despite establishing two distinct legal avenues for relief, there will inevitably be cases where both laws intersect with one another, and the text of the law provides little guidance on how to interpret these interactions.

For example, while an applicant is allowed no more than three felonies in order to potentially qualify for expungement through the petition process, that criteria does not appear to be applicable to the automated process.¹⁷ This means that MSP's rules engine has the ability to expunge up to two felony convictions even in cases where an individual has more than three felony offenses.¹⁸ This may result in cases where individuals have as many as five felonies expunged because they may have had two felonies automatically expunged via MSP's rules engine, and the remaining three felonies may be expunged through the petition process. Indeed, we have already seen some objections to this interpretation of the law by some local county prosecutor's offices who believe that an individual who has already had a fourth and/or fifth felony conviction auto expunged isn't eligible for expungement of their remaining three felony convictions through the petition process. Given how new the law is, and the lack of established case law addressing this issue, this will likely be the source of future litigation as legal practitioners seek clarity from the courts on this issue.



Volunteer attorneys staffing the Second Chances Summit held at Little Caesar's Arena on March 1, 2024. Safe & Just Michigan helped organize and run this event.

¹⁷ [MCL 780.621\(1\)\(a\)](#)

¹⁸ [MCL 780.621g\(5\)](#)

III: Recommendations for 2024 and beyond

Removal of both Intervening Conviction clauses under [MCL 780.621d\(4\)\(c\)](#) and [MCL 780.621g\(6\)\(c\)](#)

Any legislation in the future should strongly consider the removal of both intervening conviction clauses under [MCL 780.621d\(4\)\(c\)](#) and [MCL 780.621g\(6\)\(c\)](#) because they remain the biggest impediments to expungements being granted at either level. This issue is of particular concern for the automated expungement process, because MSP's rules engine lacks the flexibility in its interpretation of the law as compared to local courts processing expungement petitions through the petition process.

If this is not politically feasible, one alternative would be removing misdemeanors from the intervening conviction rule so that only an intervening felony conviction would serve as a bar for expungement of a prior offense. This approach could balance concerns about recidivism risk/desistance from crime with the reality that many misdemeanors (e.g. traffic offenses) are circumstantial and not predictive of more serious criminal activity. The commonality and sheer number of misdemeanor convictions weighs against such a serious consequence as preventing a conviction record from being sealed.

Amending the three-felony rule under [MCL 780.621\(1\)\(a\)](#)

As previously stated, we have already begun to see some conflation between the automated process and the petition process when interpreting the three-felony rule. While the law seemingly refers to the petition/application process by stating that:

- (a) Except as provided in subdivisions (b) and (c), a person convicted of 1 or more criminal offenses, but not more than a total of 3 felony offenses, in this state, **may apply** to have all of the applicant's convictions from this state set aside.

Some courts have applied this rule to the automated process by ruling that individuals who have already had their fourth and/or fifth felony convictions automatically expunged are precluded from petitioning for removal of their remaining felony offenses. Thus, further clarification of the law may be needed in order to avoid any confusion moving forward. For example, the law could be amended to read the following:

- (a) Except as provided in subdivisions (b) and (c), a person convicted of 1 or more criminal

offenses, but not more than a total of 3 felony offenses, in this state, may apply to have all of the applicant's convictions from this state set aside. **The limit on the number of felony convictions that may be set aside under this subsection does not apply to the automatic setting aside of any convictions described under section 1g. Any conviction that was set aside under section 1g, shall not be considered a prior conviction for purposes of determining whether a person is eligible to have any conviction set aside under this act.**

Drawing a clear distinction between these two processes (automatic and petition) would presumably aid the courts when interpreting these types of issues in the future, and more importantly, it would allow individuals to benefit from both processes under the law.

Oversight and/or data sharing with commercial background check companies

Additionally, the lack of clearly defined legislation providing oversight for commercial background check companies means that there are limited legal mechanisms in place to deal with the problem of expunged convictions being reported by private background check companies. This problem is likely exacerbated by the fact there are many more convictions than ever before being expunged through the petition and automated processes. Indeed, the automatic process alone has cleared hundreds of thousands of records since it went into effect in April 2023, and this makes it hard for background check companies to keep their records up to date. Given the limited amount of protections for individuals under existing laws, any type of legislation which holds commercial background check companies liable for their failure to remove expunged convictions from their database would be beneficial. In the absence of any legislative changes, there are ways of establishing some degree of oversight over these companies.

1. Increased enforcement of Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) offers some protections against private background check companies, as it requires that those companies use "reasonable procedures to assure maximum possible accuracy" when reporting information.¹⁹ Since the Michigan Attorney General's office has joint statutory authority to enforce the FCRA, increased

19 [15 U.S.C. §1681e\(b\)](#)

enforcement of FCRA by the Attorney General’s office could apply more pressure on these companies to comply with existing laws.²⁰ Private plaintiffs are able to bring class actions under the FCRA as well, and could provide some accountability as well, but there is not currently a robust plaintiff’s bar bringing this sort of case.

2. Data sharing between state agencies and commercial background check companies

Data sharing between state agencies and private background check companies isn’t a foreign concept, in fact we can look to states such as Pennsylvania to see how this model can work. Unlike in Michigan, Pennsylvania law specifically allows for their state police agency to disseminate criminal history records to non-criminal justice agencies.²¹ Additionally, the state of Pennsylvania, through its [Administrative Office of the Courts](#), has implemented a policy of entering into [data sharing agreements](#) with commercial background check companies operating within the state. Pennsylvania also has a [unified judicial system](#) which essentially serves as a central repository for their criminal record information.²² This has allowed their state to control the type of criminal history information that is disseminated to commercial background check companies. This type of policy reduces the likelihood of expunged convictions appearing on private background check searches,

as these types of agreements (1) force these companies to comply with existing laws regarding the dissemination of non-public information and (2) ensure that a conviction which was expunged by the state, will not continue to appear on commercial background check searches.

The current law and makeup of Michigan’s judicial administrative system would make implementing such a policy considerably more challenging, but not impossible. As previously noted, Michigan currently lacks any type of unified case management system, and is at least a few years away from such a system being instituted. Michigan State Police’s criminal history database serves as a de facto repository for criminal history information to some degree, but there isn’t a system in place that allows for the bulk distribution of criminal record information to commercial background check companies.

If Michigan were to adopt the model established in Pennsylvania, this would pave the way for commercial background check companies to source their information directly from either Michigan State Police’s criminal history database or from a unified case management system. For some context, MSP reported that their rules engine automatically expunged as many as 1,182,866 convictions on the first day (April 11, 2023) of the system going live. Since commercial background check companies often source their information from local courts and don’t update their records in a timely manner, many of those convictions likely remained on these

commercial background check searches for a considerable period of time. However, if commercial background check companies were able to pull their information directly from MSP’s database, the offenses which had already been expunged by MSP, would presumably no longer appear on these commercial background searches either.



An overview of an expungement fair held at the Allen Neighborhood Center in Lansing that Safe & Just Michigan helped organize and staff in February 2024.

20 [15 U.S.C. 1681s\(c\)\(1\)](#)

21 [18Pa. C.S § 9121\(B\)](#)

22 [Administrative Office of Pennsylvania Courts Information Technology Department: A Retrospective](#)

What to do — even temporarily — in lieu of a portal?

Without an effective means to communicate to the public which of their offenses may or may not have been automatically expunged, the potential impact of the Clean Slate law may never be fully realized. There are some available options to obtain one's record. First, one can obtain court records in the same manner third party background providers do. Second, the Michigan State Police maintains the [ICHAT](#) system, which can be searched for a \$10 fee, although this system does not contain some <93 day misdemeanor convictions that are available through the courts. Third, the Clean Slate Act requires MSP to provide a copy of the non-public record for anyone who has had their convictions set aside under Clean Slate. [MCL 780.623\(3\)](#) specifically states:

(3) A copy of the nonpublic record created under subsection (2) must be provided to the person whose conviction is set aside under this act upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

In keeping with the law, MSP has developed a process that allows for individuals to request a [personal record check](#) by submitting a set of fingerprints and a \$30 fingerprint processing fee to MSP. Once submitted, a certified copy of the individual's entire criminal history (including expunged convictions) is then mailed to the individual. In the absence of a portal, this would at least allow individuals to verify which of their offenses may have been automatically expunged. The state of Utah has implemented a [similar system](#) which allows their residents to pull their public and non-public criminal history as well.

Finally, SJM has created our very own [Clean Slate Assessment Tool](#), which allows the public to provide us with the information needed to pull their ICHAT, and to provide them with a copy of their ICHAT free of charge. Individuals generally fall into two categories, and are instructed on next steps based on which category they fall under:

1. Individuals with no offenses on their ICHAT: They are instructed to contact the convicting court(s) to confirm whether their offense(s) has been automatically expunged or not.
2. Individuals who still have convictions on their ICHAT: They are provided with resources on [upcoming expungement fairs](#) in their area or they are directed to [MSP's Clean Slate website](#) where they can find out more information on the automated

expungement process. MSP has also developed its own [Clean Slate MCL Search Tool](#) which allows the public to identify which of their offenses are eligible for automatic expungement based on the MCL code.

The tool is not meant as a replacement for the state-operated portal, as it has its own restrictions. SJM has organizational limitations on the number of ICHATS that can be run annually, along with capacity limitations on reviewing the ICHATS for eligibility.

Increasing ICHAT capacity for other local non-profit organizations

In the absence of a portal, ICHAT remains the primary means through which the public can identify which of their offenses may have been automatically expunged. To that end, we intend to engage with other local community organizations to assist with running ICHATS on a broad scale, since MSP makes free ICHAT accounts available to non-profit organizations. The goal would be to make it easier for members of any given community to be able to go into the office of their local community organization and have a staff member run their ICHAT for free. The individual would then be instructed on next steps based on the results of their ICHAT.

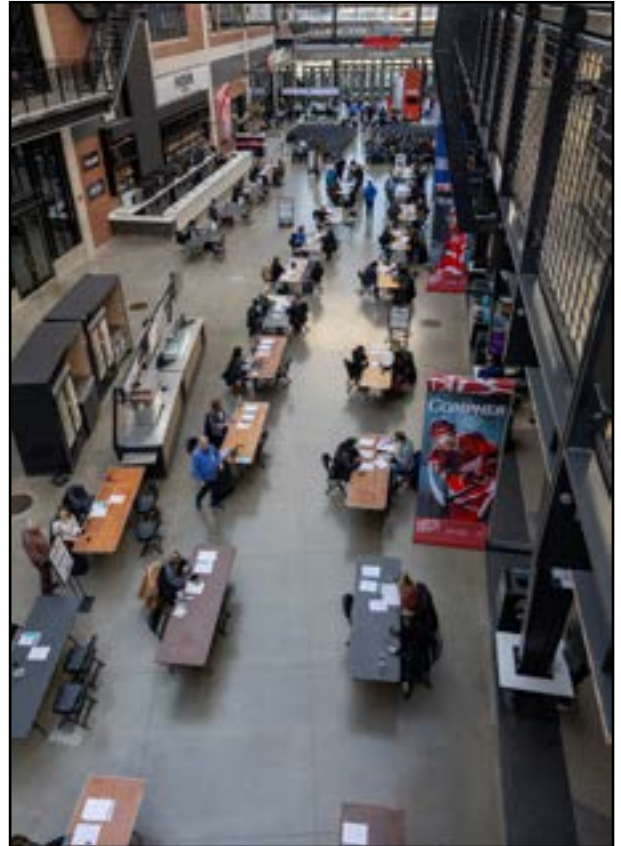
SJM hopes to build on our established relationships with partners across the state, as well as developing relationships with new partners in order to advance this objective.



Clean Slate Program Manager Kamau Sandiford (left) and Office Manager Veronica French represent Safe & Just Michigan at an expungement fair at Cooley Law School in Lansing in October 2023.

IV: Conclusion

Despite some of the obvious challenges faced, the recent changes to Michigan's Clean Slate law have undoubtedly had an overwhelmingly positive impact on [thousands](#) of [people](#). Every person that has already been impacted by law now has a chance at finding better housing, employment and improving their daily lives. By identifying ways in which the Clean Slate law can be improved upon, we hope to continue to refine the existing process to ensure that it has the impact that was intended and continues long into the future.



Scenes from expungement fairs: **Upper Left** — Safe & Just Michigan Director of Engagement and Community Partnerships Ken Nixon explains the need for expungements at the Second Chances Summit at Little Caesar's Arena on March 1, 2024; **Upper Right** — An overview of the Second Chances Summit; **Bottom** — Former SJM Fund Development Fellow Erica Cederberg (left) and SJM Clean Slate Program Manager Kamau Sandiford work at an expungement fair in Detroit in September 2023.

Appendix

- [Just Facts: As Many Americans Have Criminal Records as College Diplomas, Matthew Friedman](http://www.brennancenter.org/our-work/analysis-opinion/just-facts-many-americans-have-criminal-records-college-diplomas) (www.brennancenter.org/our-work/analysis-opinion/just-facts-many-americans-have-criminal-records-college-diplomas)
- [A Criminal Record Shouldn't be a Life Sentence to Poverty, Rebecca Vallas](http://www.americanprogress.org/article/criminal-record-shouldnt-life-sentence-poverty-2) (www.americanprogress.org/article/criminal-record-shouldnt-life-sentence-poverty-2)
- [Expungement of Criminal Convictions: An Empirical Study, J.J Prescott and Sonja Starr](http://repository.law.umich.edu/cgi/viewcontent.cgi?article=3167&context=articles) (repository.law.umich.edu/cgi/viewcontent.cgi?article=3167&context=articles)
- [PA Clean Slate: Delivering on its Promises, Sharon Dietrich](http://clsphila.org/wp-content/uploads/2020/05/Clean-Slate-implementation-report-final.pdf) (clsphila.org/wp-content/uploads/2020/05/Clean-Slate-implementation-report-final.pdf)
- [Administrative Office of Pennsylvania Courts Information Technology Department: A Retrospective](http://www.pacourts.us/Storage/media/pdfs/20210517/125524-file-11046.pdf) (www.pacourts.us/Storage/media/pdfs/20210517/125524-file-11046.pdf)

Additional Resources:

For more information about Michigan's Clean Slate Law, please click on anyone of the statewide expungement resources listed below:

- [Michigan Attorney General's Expungement Assistance Website](http://www.michigan.gov/ag/initiatives/expungement-assistance) (www.michigan.gov/ag/initiatives/expungement-assistance)
- [Michigan Legal Help](http://michiganlegalhelp.org/resources/crime-traffic-and-id/applying-set-aside-expunge-adult-criminal-conviction) (michiganlegalhelp.org/resources/crime-traffic-and-id/applying-set-aside-expunge-adult-criminal-conviction)
- [MSP Clean Slate Website](http://www.michigan.gov/msp/services/chr/conviction-set-aside-public-information/michigan-clean-slate) (www.michigan.gov/msp/services/chr/conviction-set-aside-public-information/michigan-clean-slate)
- [Automatic Expungements-What You Need To Know](http://www.safeandjustmi.org/wp-content/uploads/2023/04/Automatic-Expungements-What-You-Need-To-Know.pdf) (www.safeandjustmi.org/wp-content/uploads/2023/04/Automatic-Expungements-What-You-Need-To-Know.pdf)
- [Clean Slate FAQ Fact Sheet](http://www.safeandjustmi.org/wp-content/uploads/2022/02/Clean-Slate-FAQ-Fact-Sheet_update-February-15-2022.pdf) (www.safeandjustmi.org/wp-content/uploads/2022/02/Clean-Slate-FAQ-Fact-Sheet_update-February-15-2022.pdf)

