

Safe & Just Michigan

Testimony of Safe & Just Michigan in Support of H.B. 4980-85 (2019)

*House Judiciary Committee, September 24, 2019
House Office Building, Room 519; 8:30am*

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 here in Lansing.

Safe & Just Michigan supports all of the expungement reform bills being considered today, but I wanted to focus on H.B. 4980 – the automatic expungement, or “clean slate” bill – because I think it’s important for the committee and the public to understand that automatic record-sealing is not a pipe dream, or a hard to engineer and implement solution—it is something we can do now: Michigan already has the technical infrastructure to automatically seal conviction records, and it is already *doing* automatic relief for non-conviction records. Expanding this capability to conviction records is both doable and very much worth doing.

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 of a number of years have passed. Michigan has had this sort of a paper-based process since 1965, and it has changed little since then.¹

The downside of an “opt-in” process like petitioning for expungement is that relatively few of the people that are eligible will attempt to complete it, and even fewer will do so successfully. Professors Prescott and Starr, for example, have found that just 6.5% of eligible people are able to successfully navigate the petition process in Michigan²—a few thousand annually in a state where hundreds of thousands of people are eligible for relief.

This is problematic, since record-sealing has significant economic benefits: those that receive it experience a 25% increase in income within two years and a significant increase in overall employment rates.³ Good policy would maximize the number of people able to obtain these benefits—not least because increasing employment rates is good for public safety. But the petition process, which is long and resource-intensive, is difficult to scale and efforts to increase uptake have been costly.

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.

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To address the shortcomings of the petition process, states have begun to explore policies that benefit all eligible people by sealing eligible records automatically. Automatic sealing of conviction records is a relatively new concept: Pennsylvania became the first state to pass an automatic-sealing law in Spring 2018, and Utah and California (pending signature by the Governor) have followed suit in 2019.

The benefit of an automatic record-clearing policy is obvious: instead of 6.5% uptake, it has 100% uptake without a petition; and instead of a few thousand expungements per year, there are hundreds of thousands—which scales up not only the remedy but the associated economic benefits as well.

How Automatic Record-Sealing Could Work in Michigan

The Michigan State Police (MSP) maintains Michigan’s official criminal history repository. The database is organized around a person’s electronic fingerprint, and includes arrest, charge, and conviction records. State law already requires automatic sealing of records of arrests and related charges that are dismissed before trial;⁴ H.B. 4980 would simply extend this policy to conviction records.

To implement automatic sealing of conviction records, MSP could leverage their existing systems to identify convictions eligible for relief by running a computer script that applies the law that defines eligibility to the data. This would produce a list of convictions eligible for relief, and relief could be applied to those convictions by applying the relevant relief/disposition code.

MSP could then restrict public access to these eligible convictions, and generate a dataset of the convictions that are set aside and removed from public view.⁵ MSP could then send this list in a standardized format to the courts, who could then update their own digital case records, as they do now, to denote that a case is restricted from public view. This restriction could then be applied to paper record requests.

⁴ See MCL 28.243(8): “If an individual is arrested for any crime and the charge or charges are dismissed before trial, both of the following apply:

(a) The arrest record shall be removed from the internet criminal history access tool (ICHAT).

(b) If the prosecutor of the case agrees at any time after the case is dismissed, or if the prosecutor of the case or the judge of the court in which the case was filed does not object within 60 days from the date an order of dismissal was entered for cases in which the order of dismissal is entered after the effective date of the amendatory act that added this subdivision, both of the following apply:

(i) The arrest record, all biometric data, and fingerprints shall be expunged or destroyed, or both, as appropriate.

(ii) Any entry concerning the charge shall be removed from the LEIN.”

⁵ Law enforcement agencies would maintain access to non-public records, as the expungement statute requires. See MCL 780.623(2).

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While there is technical work to do to implement automatic record-sealing in Michigan, H.B. 4980 provides a generous 2-year implementation period in which to develop, test, and roll out the automated system, and Code for America—a national non-profit that is providing technical assistance to Pennsylvania and California in implementing their own clean slate laws—is already committed to do the same here in Michigan at no cost to the State.

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 a resource-intensive petition process, and it could be done 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,

John S. Cooper /s/ _____

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