

Public Criminal Records and Michigan's New “Clean Slate” Law

Safe & Just
Michigan

Collateral Consequences of Convictions

- An estimated 80 million people in the US have criminal records (~19 million of these are felony records). These are not part of a person's legal punishment - they are "collateral consequences" that state law and private actors impose.
- Estimated \$78-87B in lost productivity nationally due to underemployment.
- **Most** employers and landlords do background checks and screen applicants based on criminal records.
- Criminal records can also bar people from accessing or obtaining:
 - 1) occupational license, business license, or commercial liability insurance,
 - 2) public benefits, and/or
 - 3) admission to college.

Collateral Consequences of Convictions

- Many states, including Michigan, have a court process that permits *some* people to seal *some* old convictions.
- **However**, these barriers are permanent for most, since current expungement process cannot begin to meet the need:
 - 2-3 million Michigan residents have criminal convictions.
 - ~45,000 new felony convictions and ~200,000 new misdemeanor convictions are issued annually by Michigan's state courts.
 - ~3,000 expungements are granted annually through court petition.

Michigan's Expungement Law (pre-April 11, 2021)

- A successful petition seals the public record of the conviction, but a non-public record is maintained by law enforcement.
- Paper-based court petition process created in the 1960s.
- Can apply if (1) >5 years from end of sentence or supervision, and (2) have no more than 1 felony or 2 misdemeanors on your record. *But* not all convictions are eligible.
- Applications are complex and resource-intensive:
 - must be filed in the convicting court(s), regardless of where one lives;
 - cost ~\$150 without a lawyer (10x that with a lawyer); and
 - processing time is at least 6 months in most courts.

Where Michigan's pre-2021 Expungement Law Fell Short

- The existing record-sealing process is totally inadequate to solve the problem.
- ***Why?***
 1. Eligibility Criteria is Too Narrow
 - # of convictions – 1 felony/2 misdemeanor *no matter how old*.
 - Kinds of convictions – traffic offenses (not previously eligible) are 50% of all criminal cases.
 2. Too complex, resource-intensive, and hard to navigate (see “uptake gap” studies)
 3. **It cannot be operated at a scale sufficient to meet the need – the courts would be overwhelmed trying to do much more than they already do.

The University of Michigan Law School Research

- Method: Studied people who have received expungements in Michigan, cross-referencing criminal history data with tax and unemployment data.
- Results:
 1. <7% of eligible people were able to successfully navigate the current process.
 2. Income increased 23% in the first year, employment rates increased 11%.
 3. Recidivism rates compared favorably to the general population - in other words, expungement recipients commit subsequent crimes at a rate equal to or less than people with no criminal record.
- Conclusion: Expungements promote economic productivity and likely improve public safety. Policymakers should maximize expungements through automation.

Background on Automatic Record-Sealing

- Pennsylvania was the first state to pass an automatic record-sealing law in 2018.
- Result of a 6-year campaign by Community Legal Services of Philadelphia, which developed the concept and technology to automatically seal records.
- How it works: An algorithm that is coded to statutory eligibility criteria for record-sealing runs a monthly search on the state's official criminal history database and routes the list of eligible records to the courts for processing. The courts then issue an omnibus record-sealing order that seals all eligible records and issues a record-sealing notice to other state record-keepers.
- The Pennsylvania law only applies to non-conviction records and low-level misdemeanors.
- Utah passed a similar law in 2019. Several other states have since then.

The Michigan Clean Slate Campaign

- Started campaign early 2019; bills introduced in Sept. 2019.
- Bipartisan: Bill Sponsors and Coalition of Support
- “Inside” Support: SJM, National Partners (CAP, ASJ/CSSJ), Conservative Groups (AFP, Mackinac, ACUF, R St.); the business community, including the Detroit, Grand Rapids, Lansing, & Saginaw chambers of Commerce, and the Small Business Association. The State Chamber, and the Bankers and Manufacturers supported after some minor changes.
- “Outside” Support: Grassroots support/impacted people - JLUSA, Nation Outside, MCAH, Michigan Faith in Action, Detroit Justice Center, plus all the storytellers and other impacted people who were reached through community listening sessions and outreach.

The Michigan Clean Slate Campaign: Timeline & Milestones

- Bill Introduction: Sept. 17, 2019
- House Judiciary Hearings: Sept. 24 – Oct. 8; substitute bill reported out on Oct. 29 without opposition.
- House Vote: Nov. 5, 2019 - 95 yes, 13 no.
- Senate Judiciary Hearings: June 11-24; substitute bill reported out on July 22, 2020 without opposition.
- Senate Vote: Sept. 23, 2020 - 29 yes, 8 no.
- House Consent to Senate Changes: Sept. 24, 2020 (93 yes, 12 no)
- Signed by the Governor: October 12, 2020

Clean Slate Law – Phase I (post-April 11, 2021)

- Expanded #s: Up to 3 felonies; no limit on misdemeanors. **BUT** no more than 2 assaultive crimes; cannot expunge >1 of the same felony if punishable by >10 years.
- Transactional counting: Convictions arising from the same transaction count as a single crime if committed within 24 hours of one another. **BUT** does not apply to (1) assaultive, (2) use of a weapon, or (3) punishable by >10 years.
- New waiting periods: 3 for misdemeanor applications (except serious); 5 for felony and serious misdemeanor applications; 7 for multiple felony applications.
- Traffic offenses: eligible for the first time (except DWIs and moving violations causing injury or death). (Half of all criminal cases.)
- Marijuana misdemeanors (possession/use): eligible if conduct would be legal today.

Clean Slate Law – Phase II (post-April 11, 2023)

- Automatic Expungement
 - After 7 years (from end of sentence/supervision; must be conviction-free):
 - No cap on lowest-level (<93 day) misdemeanors;
 - Up to 4 non-violent misdemeanors after 7 years;
 - After 10 years (from end of sentence/supervision; must be conviction-free): Up to 2 non-violent felonies.
 - Note: Automatic has the same ineligible offenses as the petition process; it is a narrower process that is targeted at the “easy cases.”
- Estimated impact: 500,000 to 1 million people (5-10% of Michigan’s population)

Clean Slate Update – 1 Year In

- Impact of the Expansion
 - Pre-expansion: 2,500 to 3,000 petitions filed annually.
 - Post-expansion: 10,000 filed in the first year.
- Futher expansion: 1st Offense DUI convictions
- Impact: Estimated 200,000 eligible convictions

Clean Slate Update – 1 Year Until Automatic Expungement

Frequently Asked Questions

- 1. When will the automatic expungement become effective?*
- 2. Why was there a 2-year implementation period?*
- 3. What needs to happen to automate expungements?*
- 4. How will I know if my record is cleared?*
- 5. What about commercial background check companies' records?*

Ineligible Offenses-Automatic Expungement

Even when the automated expungement program goes into effect, The following offenses **will not be eligible for automatic expungement**:

- [Assaultive crimes](#)
- [Serious misdemeanors](#)
- [Crimes of dishonesty](#)
- Any conviction punishable by 10 years or more

Please note that even though these offenses will not be eligible for automatic expungement, you may still be eligible for expungement of these types of offenses through the [Expungement by Application](#) process.

Navigating the Standard Petition Process

STATE OF MICHIGAN
JUDICIAL DISTRICT
JUDICIAL CIRCUIT

APPLICATION TO
SET ASIDE CONVICTION(S)

CASE NO. and JUDGE

☐ This application includes multiple case numbers as listed in Item 1.

ORI
Mi- Court address Court telephone no.

Police Report No.

THE PEOPLE OF

☐ The State of Michigan

Defendant's name, address, and telephone no.

CTNITCN SID

Defendant's attorney, bar no., address, and telephone no.

Use note: If you are asking to have an eligible conviction set aside under MCL 780.621(3) because the offense committed was a direct result of you being a victim of human trafficking, you must use form MC 227b.

If you are asking to have a misdemeanor marijuana conviction set aside under MCL 780.621e, you must use form MC 227a.

1. I request that the court issue an order to set aside the conviction(s) listed below as provided by law. I consent to use of the nonpublic record created by MCL 780.623 to the extent authorized by MCL 780.623. A certified copy of each conviction is attached. Use additional sheet(s) if more space is necessary.

	CRIME	CHARGE CODE(S) MCL citation/PACC Code	DATE OF CONVICTION	CASE NUMBER
a.				
b.				
c.				
d.				

2. a. ☐ I am requesting more than one felony to be set aside. At least seven years have passed since sentence was imposed or discharge from imprisonment, probation, or parole for the convictions, whichever is later. I have not been convicted of any offense during that time.

b. ☐ I am requesting one or more serious misdemeanor(s) to be set aside. At least five years have passed since sentence was imposed or discharge from imprisonment, probation, or parole for the conviction(s), whichever is later. I have not been convicted of any offense during that time.

c. ☐ I am requesting only one felony to be set aside. At least five years have passed since sentence was imposed or discharge from imprisonment, probation, or parole for the conviction, whichever is later. I have not been convicted of any offense during that time.

d. ☐ I am requesting one or more misdemeanor(s) to be set aside. None of the misdemeanors are a serious misdemeanor or for an assaultive crime. At least three years have passed since sentence was imposed or discharge from imprisonment or probation for the conviction(s), whichever is later. I have not been convicted of any offense during that time.

Approved, SCAO
Form MC 227, Rev. 3/21
MCL 780.621, MCL 780.621b, MCL 780.621d, MCL 780.622,
MCL 780.772a, MCL 780.827a
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Distribute form to:
Court
Defendant
Prosecuting official
Attorney General
State Police
Return

1. Confirm record: iChats can be incomplete.
2. Confirm eligibility: New criteria can be tricky – especially the exclusions.
3. Confirm what court(s) you need to apply in.
4. Check local practice on unpaid fines & fees.
5. Gather all required documentation: certified records, fingerprints, \$50 fee, 5 copies, etc.
6. Complete all procedural requirements.
7. Prepare for your hearing.

Navigating the Marijuana Misdemeanor Petition Process

STATE OF MICHIGAN
JUDICIAL DISTRICT
JUDICIAL CIRCUIT

APPLICATION TO SET ASIDE
MISDEMEANOR MARIHUANA
CONVICTION(S)

CASE NO. and JUDGE

☐ This application includes multiple case numbers as listed in form 1.

ORI
Mi- Court address Court telephone no.
Police Report No.

THE PEOPLE OF
☐ The State of Michigan
☐

Defendant's name, address, and telephone no.
CTNCTN SID
Defendant's attorney, bar no., address, and telephone no.

Use note: If you are asking to have an eligible conviction set aside under MCL 780.621(3) because the offense committed was a direct result of you being a victim of human trafficking, you must use form MC 227b.
If you are asking to have a non-marihuana related misdemeanor conviction set aside under MCL 780.621, you must use form MC 227.

1. I request that the court issue an order to set aside the following misdemeanor marihuana conviction(s)* as provided by law. Use additional sheet(s) if more space is necessary.

	CRIME	CHARGE CODE(S) MCL citation/PACC Code	DATE OF CONVICTION	DOCKET NUMBER
A.				
B.				
C.				
D.				

2. A certified copy of each conviction is attached.

Date Applicant signature

CERTIFICATE OF MAILING

I served a copy of this application and certified record of conviction(s) on the prosecuting official by first-class mail addressed to their last-known address as defined by MCR 2.107(C)(3). I declare under the penalties of perjury that this certificate of mailing has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date Signature

*Use note: Misdemeanor marihuana convictions are defined in MCL 780.621a(7)

Approved: SCAO
Form MC 227a, Rev. 3/21
MCL 780.621b, MCL 780.621c, MCL 780.621f,
MCL 780.622, MCL 780.623
Page 1 of 1

Distribute form to:
Court
Defendant
Prosecuting official
Return

- Different form: Use MC 227a
- Simpler eligibility criteria: No waiting period, conviction limits, or carve-outs.
- Simpler filing process: Fewer procedural requirements and fees.
- Less judicial discretion: Limited to eligibility determination.
- Faster process: no need to wait for a background check; process could be completed in a day if objection is waived and court is prepared to move forward.

Expungement Application Processing Delays

Due to the surge in expungement petitions being filed under the new law, applicants have been experiencing some delays with this process. Processing times vary from court to court, but it is not uncommon for an expungement application to take as long as six months before being processed by a particular court. Some courts will not make a decision on an expungement application until the Michigan State Police completes and submits the applicant's criminal background report to the court, and the Michigan Attorney General's office renders an opinion on whether the applicant meets the eligibility criteria under the law.

Free Legal Resources

Michigan Legal Help (<https://michiganlegalhelp.org/>)

Expungement resources (including online eligibility tool): <https://michiganlegalhelp.org/self-help-tools/crime-traffic-and-id/i-have-adult-criminal-conviction-i-would-set-aside-expunge>

Intake for Legal Aid via Michigan Legal Help

Online: https://michiganlegalhelp.org/call_intake_intro

Phone: Phone intake is available through the Counsel and Advocacy Law Line (CALL) at **1-888-783-8190**. Operates Monday through Thursday between 9:00am - 5:00pm (and until 6:00 on Wednesday only), or Friday between 9:00am - 1:00pm.

Legal Aid

Find your local legal aid: https://www.michbar.org/public_resources/legalaid

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Online: https://michiganlegalhelp.org/call_intake_intro

Phone: Phone intake is available through the Counsel and Advocacy Law Line (CALL) at 1-888-783-8190. Operates Monday through Thursday between 9:00am - 5:00pm (and until 6:00 on Wednesday only), or Friday between 9:00am - 1:00pm.

Legal Aid Pro Bono Contacts (for lawyers)



Legal Services of Eastern Michigan:

- Jamie Clayton (jclayton@lsem-mi.org) - Arenac, Bay, Clare, Gladwin, Gratiot, Isabella, Midland, and Saginaw counties
- Jenna Gardner (jgardner@lsem-mi.org) - Genesee, Huron, Lapeer, Sanliac and St. Clair, and Tuscola counties



Legal Services of South Central Michigan:

- Sarah Munro, (smunro@lsscm.org) - Barry, Branch, Calhoun, Clinton, Eaton, Hillsdale, Ingham, Jackson, Lenawee, Livingston, Monroe, Shiawassee, and Washtenaw counties



Legal Aid of Western Michigan:

- Noah Joseph (njoseph@lawestmi.org) - Allegan, Berrien, Cass, Ionia, Kalamazoo, Kent, Lake, Mason, Mecosta, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, St. Joseph and Van Buren counties



Lakeshore Legal Aid:

- Michelle Erickson (merickson@lakeshorelegalaid.org) - Macomb, Oakland, and Wayne counties



Michigan Indian Legal Services:

- Hank Fields and Norika Kida Betti (probono@mils3.org) - Statewide provider for expungement cases with a specific focus on Antrim, Benzie, Charlevoix, Emmet, Grand Traverse, Kalkaska, Leelanau, Manistee, Missaukee, and Wexford counties.

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Michigan**

Questions?

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