

# Expungement Expansion & Automation Clean Slate Legislation

## Why it's needed:

- Michigan's prior expungement process was extremely limited — for instance, it was limited to no more than one felony and two misdemeanors, and excluded traffic violations — even if the offenses happened decades ago.
- The expungement petition process is long, expensive and confusing, requiring applicants to notify the court, have the Michigan State Police do an FBI background check and give the attorney general, local prosecutor, and in some cases the crime survivor notice and an opportunity to appear. Applicants must obtain a certified copy of their record, get fingerprinted and pay a fee.
- Because of the difficult process, an estimated only about 6 percent of the people who were eligible for an expungement even tried to obtain one.
- However, those who did obtain an expungement often saw great benefits. Two years after an expungement, average wages rose about 25 percent, according to a University of Michigan study.

## How Clean Slate Works:

Clean Slate is made up of seven bills:

- **House Bill 4980:** Creates an automated process for expunging eligible misdemeanors after seven years and eligible non-assaultive felonies after 10 years.
- **HB 4981:** For the first time, makes most convictions for traffic offenses — which constitute half of all criminal cases in Michigan — eligible for expungement.
- **HB 4982 & 5180:** Creates a process to set aside most marijuana convictions that would have been legal as of Dec. 6, 2018, when recreational marijuana was legalized in Michigan; Creates a rebuttable process for marijuana expungements and specifies that burden of proof is on prosecutors.
- **HB 4983:** Reduces the waiting period to file a petition to expunge the record of an eligible misdemeanor conviction to three years.
- **HB 4984:** Increases the number of misdemeanors and felonies a person can have expunged to an unlimited number of non-assaultive misdemeanors and up to three felonies. Note: no more than two assaultive felonies which can be charged with a sentence of more than 10 years in a lifetime may be expunged.
- **HB 4985:** Allows multiple convictions for certain offenses arising on "one bad night" to become eligible for expungement as a single offense.

## Clean Slate status:

- The bills have finished the legislative process and the governor intends to sign.
- There will be a two-year phase-in for HB 4980 (automatic expungement) that begins once funding is appropriated to create the technological systems to allow for expungement automation across courts, police and state systems.
- The remainder of the bills will take effect in April 2021.

Questions? Contact John Cooper, Executive Director of Safe & Just Michigan, at 517.258.1134 or [john@safeandjustmi.org](mailto:john@safeandjustmi.org)

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## Michigan Clean Slate Package FAQ

*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.*

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

**Answer:** Michigan law permits a person with no more than 1 felony or 2 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 that will automatically seal certain non-violent conviction records if a person has remained conviction-free for a period of time (7 years for misdemeanors, 10 years for felonies).

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

**Answer:** Current law permits a person to apply to seal a conviction, if it has been 5 years since the end of the related sentence and 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 were not (1) assaultive, (2) 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 three years for misdemeanors, and permits 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.

### **Question: When will the new law become effective?**



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**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 October 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: Did you say earliest because the automatic expungement might not become effective until later?**

**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 is clearance limited in the number of felonies and misdemeanors eligible for clearance?**

**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.

**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:** Because the automatic process will go forward without any involvement of the individuals whose records are being sealed, it is possible that 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 make sure people know about its impact and effective date, and to provide resources that 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 four hundred thousand people helped to over one 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 law.

**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 a large number of people - uptake is estimated at 6.5 percent of eligible people, which translates to 2,000 to 3,000 people annually - even though hundreds of thousands are 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. The new law makes all misdemeanors for marijuana possession and use that would not be illegal under current law eligible for expungement (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 were not eligible to apply because they had more than one felony or two misdemeanors on their record.

**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.



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2. Eligibility for the automatic expungement is not conditional on whether the applicant has unpaid criminal justice debt. Although 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. The expansions to eligibility for the petition process also position Michigan as 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 the Safe & Just Michigan website](#) or contact us directly at [info@safeandjustmi.org](mailto:info@safeandjustmi.org).