

Public Comment and Testimony of Robert Wayne VanSumeren

October 2, 2019

Honorable Committee Members:

I appreciate this opportunity to speak with you. I am grateful that we're talking about expungement. Today, I'm here to express *general* support of the proposed bills, but I would like to see a few changes. Specifically, I'd like to see the elimination of the "maximum life sentence/punishment" exclusion.

Personal Introduction

- a. **Convictions.** In 1999, a few months shy of my twentieth birthday, I robbed a gas station and then a bank. I used a BB gun and was arrested shortly thereafter. Ultimately, I was sentenced to serve a minimum of seventy months in the MDOC. I was angry and immature when I went in. Eventually I took advantage of the programs I was offered and I began to learn how to think. I was released in 2005.
- b. **Education.** Once I was released (in 2005) I started taking classes at Jackson College. After one year I transferred to Western Michigan University where I earned my bachelor's and master's degrees. Last spring I graduated from Wayne State University Law School. I passed the bar and I am going through the licensure process. I have received favorable recommendations at every juncture.
- c. **Family & Community Work.** I am happily married. We have two sons and own our home. I'm active in my recovery community; I've been sober for over seven years. I am the editor of *Jackson Transitions*, a newsletter sent to every prisoner sentenced from Jackson County (since 2015). I am employed as a compliance officer at a reputable nonprofit organization.
- d. **Label: Violent Offender.** In spite of all I've tried to do to better myself, my family, and my community, I've struggled to move away from the label of my convictions. Over twenty years ago, I made some really bad choices. I'm sorry for what I did; I've worked to move on.

Life Sentence Exclusions

While I support this proposed package of bills, I am concerned because this package appears to exclude any offences that carry a possible life sentence. *As a person convicted of armed robbery (that is, a crime that carries a possible maximum life sentence), I would not benefit from these bills, in their current form.* I know many people who are similarly situated.

Violent Offenders: A Problematic Category

In my work in both the substance-abuse and re-entry communities, I have had the chance to meet a lot of people who could be impacted by this legislation. I observe that many of the most impactful advocates for criminal justice reform are people who carry convictions for violent crimes. The reason may be that these offenders tend to serve longer sentences and have perhaps had more time to reflect and change. It could also be that there is no ambiguity in what we've done, which has forced some of us to confront ourselves and our ways of thinking. Whatever the reasons, some of these men and women work tirelessly to mentor kids, to speak out against violence, and to work to create safe and just communities. To exclude these people, because their offences carry the possibility of life imprisonment makes little sense to me... *because I know them.*

Hope & Responsibility

When I go into prisons to speak, the thing the inmates want to know most is whether they'll be able to get out and rebuild. I tell them that they can build meaningful lives, but I tell them it won't be easy. The truth is, many of them have no hope of ever leaving a criminal record behind... not under current law.

We need to make restoration the norm, the natural expectation of post-release life. If we do, we can *insist* that former offenders follow the right path. We need to celebrate former offenders who are able to attain successful reintegration, of which expungement is a part. Accountability will make communities safer.

Proposals

- a. Remove the exclusion (House Bill 4984, Sec.3a).
- b. Draft and insert language that creates an evidentiary standard whereby an applicant (a person convicted of a violent crime for which the maximum punishment is life imprisonment) must show (i.e., *a preponderance of the evidence*) that they currently possess good moral character which justifies expungement, not likely to be a threat, etc. A few examples are offered in the footnote below.¹
- c. Proposed language to permit expungement of felonies for which the maximum punishment is life imprisonment:

HB 4984, Sec. 4:

An applicant who seeks expungement of a felony, or felonies, for which the maximum punishment is life imprisonment has the burden of proving by a preponderance of the evidence that he or she is currently a person of good moral character and that the individual's record and reputation are such that the individual is not likely to act in a manner dangerous to the safety of other individuals.²

Thank you,

Robert W. VanSumeren

¹ In cases involving applicants petitioning to have violent offences that carry possible life sentences expunged, consider adopting approaches similar to those outlined below.

MCL 28.424 outlines the process by which certain offenders may petition for the restoration of rights. The applicant bears the burden of proving that "[the] individual's record and reputation are such that the individual is not likely to act in a manner dangerous to the safety of other individuals." MCL 28.424(4)(c).

In Michigan, a criminal conviction does not necessarily prevent a person from obtaining a law license. According to the State Bar of Michigan's website, "An applicant has the burden of proving by clear and convincing evidence that he or she has the current good moral character and general fitness to warrant admission to the bar." <https://www.michbar.org/professional/step1#1>. I propose using language similar to this, except under a "preponderance of the evidence" standard.

The Legislature should draw upon these and other existing criteria for post-conviction restoration of privileges and rights when creating policies whereby those with violent (possible life incarceration) offences may petition for expungement.

² Per Sec.16, the ultimate decision to set aside a conviction is still a matter of judicial discretion.