

To: Members of the House Judiciary Committee

From: Delaney McKinley, Senior Director of Government Affairs and Advocacy

Date: October 2, 2019

RE: Comments on HB 4980-4985

Thank you for the opportunity to provide our comments on House Bills 4980-4985, which seek to expand access to the expungement of criminal convictions under certain circumstances.

MMA represents almost 1,700 companies in the largest sector of the Michigan economy, ranging in size from some of the world's largest and most iconic corporations to very small "mom and pop" shops.

We applaud the sponsors' desire to respond to the talent shortage that is challenging Michigan and, in particular, the manufacturing industry. Today, many of our members incorporate returning citizens into their talent acquisition strategy and have found them to be loyal and successful employees.

MMA and our member companies would ask that you consider reasonable and targeted amendments to ensure that the bills do not result in unintended consequences. Our suggested changes, which are also supported by the Michigan Chamber of Commerce, are attached.

Thank you for your consideration of the perspective of Michigan's manufacturing industry. I am available at your convenience for any questions, concerns or comments.



HB 4980: Automatic expungement - While we support creating the opportunity for an individual to have his or her misdemeanor and felony conviction(s) set-aside, we support narrowing the list of crimes that can be automatically set-aside and continuing to have a process that brings judgment to the decision-making process. Furthermore, we believe individuals who have not stayed on the straight-and-narrow should not be eligible to have their crimes automatically set-aside.

- **Crimes that Can Be Automatically Set Aside** – We support adding certain, high-level white-collar crimes to the list of crimes that cannot be automatically set-aside, including:
 - Embezzlement – MCL 750.174, 750.174a, 750.175, 750.176, 750.180, 750.181
 - Cybersecurity – MCL 752.794-.796
 - Criminal Enterprise (Racketeering) – MCL 750.159f-.159x
 - Extortion – MCL 750.213-.214
 - Forgery and Counterfeiting – MCL 750.248-.266

- **Process** – We support adding an additional layer of checks and balances on the automatic set-aside process. This could be accomplished by:
 - Creating a streamlined judicial review process, whereby the court would review all automatic set asides to determine whether the set aside is “consistent with the public welfare.”; or
 - Creating a process whereby the attorney general and/or prosecuting attorney who prosecuted the crime(s) has the opportunity to weigh in within a certain time period (e.g., 60 to 90 days) to challenge an automatic set-side. If the automatic set aside is challenged, it should go through the judicial review process specified under current law (possibly with pro bono assistance for those who need it). If it isn’t challenged, it should be automatically set aside.

- **Only Good Actors** – Today, a person is not eligible for expungement if they have been convicted of another offense in the 5 years following the original conviction. This same principle of displaying good behavior should be carried through into any automatic expungement process. To accomplish this, House Bill 4980 should be amended as follows:
 - Amend page 10, after line 13 by inserting “(4) Section 1 does not apply if the individual has been convicted of a subsequent felony or misdemeanor offense.”

HBs 4980-85: Liability to Employers – We believe the legislative package should make clear that there shall be no liability to job providers for not considering a set-aside crime(s) in the job application, interview or continued employment context. A similar provision is included in the Indiana statute.

- Amend HBs 4980-85 as follows: “A conviction, including any records relating to the conviction and any records concerning a collateral action, that has been set aside under this chapter cannot be used as evidence in an action for negligent hiring, admission or licensure against a person or entity who relied on the order.”

HBs 4983: Limit Eligibility for Shorten Set-Aside Window - The legislation should specify that those convicted of a crime subsequent to the crime that otherwise would be set-aside shall not be eligible for the *shortened* expungement window. Furthermore, we believe the legislation should limit the types of white collar crimes that are eligible for three-year shortened window to exclude: Embezzlement – MCL 750.174, 750.174a, 750.175, 750.176, 750.180, 750.181; Cybersecurity – MCL 752.794-.796; Criminal Enterprise (Racketeering) – MCL 750.159f-.159x; Extortion – MCL 750.213-.214; and Forgery and Counterfeiting – MCL 750.248-.266.