

October 1, 2019

From: Emmet County Sheriff Pete Wallin, President, Michigan Sheriffs' Association

To: Chairman Filler, Sponsors of HB 4980 – 4985, and Members of the House Judiciary Committee

RE: HB 4980 – 4985, As Introduced

Thank you for the opportunity to make comments on “The Expungement Package,” consisting of House Bills 4980 – 4985. While MSA supports the concept that persons should be afforded a reasonable opportunity to achieve redemption, it has concerns about the package and is hopeful that changes can be made to improve outcomes for public safety and victims of crime.

Michigan's Sheriffs believe that we must strike a balance on these bills and find a population that is likely to be successful if afforded the opportunity to set aside their crimes. Further, we must balance the wants and needs of those who ultimately fail, after being granted an opportunity at expanded expungement, against the wants, needs and rights of the previous victims of crime and of those who may be subject to victimhood in the future as a result. MSA appreciates the sponsors' and Chair's attempts to seek this balance, and offers the following comments and suggestions to achieve this goal.

General Concerns

MSA is concerned about the interplay of the bills themselves. Specifically, how the various bills may affect each other. It is unclear exactly how many misdemeanors and felonies a person could set aside as a whole under the bills. MSA suggests limiting each set aside as statute does today – disallowing set aside opportunities if other convictions or arrest warrants are present, either before or after the crimes being set aside. MSA also suggests making sure any data system being used is able to continue to track any set asides for court and law enforcement use. Set aside criminal convictions should be available for use by prosecutors for charging purposes in the future, for use by judges in sentencing, and for use by law enforcement for job application background checks.

HB 4980, “Clean Slate”

This bill allows for an automatic set aside for an offense that occurred more than 10 years ago, was non-assaultive according to MCL 770.0a and 780.811, and if restitution has been paid in

full. MSA's concerns with this bill are that the definition of assaultive crimes does not include crimes which the MSA considers to be assaultive/violent. MSA recommends adding, Torture, Gun Crimes – especially Felony Firearm, Drive-by Shootings Emanating From a Motor Vehicle, Discharging a Firearm Into an Occupied Dwelling, Fleeing and Eluding, and Resisting Arrest. These are violent, assaultive crimes that need to be added to the prohibition.

In addition, this bill allows automatic set aside of non-assaultive crimes regardless of the person's record, which MSA believes to be an oversight. A person could be a violent felon and have his or her 2 non-assaultive crimes and 4 misdemeanors set aside. MSA believes it would be wise to limit those who qualify for set asides to those who have demonstrated that society can trust them. MSA recommends limiting those who qualify for these set asides to those who have 2 or fewer cumulative non assaultive crimes and/or 4 non assaultive misdemeanors, have no other record or outstanding warrants, and have paid restitution in full. The auto set aside should be one-time only – with a clearly defined lifetime limit of the number of convictions that may be set aside, as MSA believes is the intent.

HB 4981, Traffic

MSA has no issues with this bill, except that MSA was under the impression that the 4 year wait time for felonies was a drafting error and was supposed to be 5 years. MSA supports a change back to 5 years for felonies.

HB 4982, Marihuana

MSA is grateful for the language in Subsection 15, which we believe is an attempt to allow the court to determine if the facts or charges may disqualify a person from a set aside under this section. MSA believes this subsection could be clearer in purpose and suggests the following:

- Change (15) on page 7-8 as follows:
 - **(15) The court may grant an application to set aside a conviction under this section if the court determines that the underlying fact pattern that led to the arrest and the conduct that resulted in the conviction do not constitute a criminal violation of the laws of this state on the date of the application.**
- Limit the number of offenses that can be set aside to some reasonably established number and/or
- Allow for “X” number of misdemeanor marihuana offenses to be incrementally set aside over a prescribed period of time – such as two offenses every year provided the individual was not convicted of any other crime(s) during that period.

HB 4983, Application Lookback Changes

MSA is neutral on a 3 year lookback for the first misdemeanor, but suggests a 4 year lookback for the second and subsequent misdemeanors.

HB 4984, Expansion of Set Asides

MSA has concerns with this bill as introduced. The bill expands the number of felonies (from 1 to 3) and misdemeanors (from 2 to unlimited) that can be expunged if a person has no more than 3 felonies and they are non-assaultive. In addition, the bill expands the number of felonies (from 1 to 2) and misdemeanors (from 2 to 4) for assaultive felonies and misdemeanors. MSA maintains that a person with 3 felonies and unlimited misdemeanors is a habitual offender. As said before, this should be about those who have made mistakes and are likely to remain reformed. MSA believes that the victims of crime, including potential new victims, have a right to a reasonable expectation of safety from our criminal justice system, and that three felonies and unlimited misdemeanor convictions is just too many. In addition, MSA supports separating out assaultive and violent felonies from other felony set asides in the bill, but recommends adding the same list previously mentioned to those that are unable to be set aside - Torture, Gun Crimes – especially Felony Firearm, Drive-by Shootings Emanating From a Motor Vehicle, Discharging a Firearm Into an Occupied Dwelling Fleeing and Eluding, and Resisting Arrest. These are violent, assaultive crimes that need to be added to the prohibition.

HB 4985, “One Bad Night”

MSA applauds the sponsor of this bill in making an attempt to provide a break to those who truly made a series of bad decisions over a confined 24 hour period of time. If these are the only blemishes on an otherwise clean record, MSA believes these persons should qualify for application for set aside – and recommends saying so, but MSA does not support allowing a person with additional felonies to take advantage of the “one bad night” provision as one of the felonies under HB 4984. In addition, MSA simply would ask that the same list previously mentioned be added to those considered to be assaultive - Torture, Fleeing and Eluding, and Resisting Arrest. These are violent, assaultive crimes that need to be added to the prohibition. (Gun crimes are already included in the bill as a crime involving use or possession of a weapon).

Again, The Michigan Sheriffs’ Association looks forward to further discussion of this important package of bills. It is important for our state to strike the right balance for victims, public safety, and for those who have proven that they have reformed and need a hand to better their lives and the lives of their families. MSA thanks you for your time.