



Expungement of Cannabis Crimes

Prepared for: Chair Filler, Michigan House Judiciary Committee
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This is written testimony for the Michigan House Judiciary Committee in its consideration of HB's 4890, 4981, 4982, 4983, 4984, and 4985 for the set-aside of marijuana and other criminal records.

Testimony

The goal of HB 4982 is to vacate all current criminal charges for activities that would now be legal under the Michigan Regulation and Taxation of Marijuana Act (MRTMA). It directs the court to set aside all marijuana related crimes, regardless of quantity and misdemeanor or felony designation if a manual application is submitted, while HB 4983 allows for automatic set asides under separate and more strict conditions.

We believe the bill sponsors and stakeholders are to be commended for the tremendous amount of work that has gone into the package of bills and consider them an important and much needed first step. However, for all that it does well, we also want to briefly touch upon a couple items to consider moving forward to ensure greater consistency

Mainly, it requires unnecessary waiting periods for marijuana crimes to be set aside as well as treating marijuana crimes with more scrutiny because there is a legal framework to reference them against. We believe that due to marijuana's current legality in Michigan, those records should receive shorter or no waiting periods to be automatically expunged and that even currently illegal marijuana activities should be set aside or reduced alongside commensurate non-marijuana crimes that remain illegal.

HB 4983 requires a manual application for those seeking to set-aside any number of felony or misdemeanor crimes, but requires felonies to be 5 years removed and misdemeanors 3 years removed from either incarceration or last interaction with supervision. Each application is accompanied by a \$50.00 fee and a complete set of fingerprints which cost \$50.00.

Yet, HB 4980 allows for up to 2 felonies and 4 misdemeanors, not necessarily marijuana related, to be automatically set aside 2 years after the passage of the bill and 10 years after release from prison or interaction with supervision. Included in the eligible crimes are embezzlement, extortion, most marijuana and drug offenses, and others but no assaultive crimes or "serious misdemeanors" as defined by MCL 780.811.

We see no practical purpose in making most potential marijuana applicants be 10 years separated from their crimes and also have to wait for 2 years to have their records automatically set aside. Since most marijuana activities are now legal there is technically no criminal rehabilitation period as the formerly convicted can engage in the same activities they did 10 years ago today and they would no longer be criminals, essentially there is no behavior to rehabilitate.

Marijuana users and growers are no longer criminals in the statutory sense whereas those convicted of still illegal crimes should have to prove rehabilitation over a period or else the state risks setting aside the record of a potential repeat offender. The two year enactment period from the passage of the HB 4890 for automatic set aside also appears to serve little practical purpose.

While it is generally a positive that the legislature offers the manual application period, this process comes at a cost to both applicants and the state. At an estimate of 230,000 marijuana criminal record holders, the state will generate roughly \$11.5 million dollars via fees while applicants will spend an additional \$11.5 million on fingerprints, totaling \$23 million if everyone applied manually. However, the state has not identified how many records would have to apply manually because they have more than 2 felonies or 4 misdemeanors. It is unclear how long it will take judges to review marijuana cases and what their opportunity cost of time spent on this activity will be.

Something for committee members to keep in mind is that technology is making it possible for other states to successfully utilize innovative alternatives to the application review process. Just one example of this is Code for America's computer program, ClearMyRecord, which scans state databases and attach attributes to case records making it easy for the state to determine what records are eligible for expungement. One city official estimated it saved them roughly \$1.5 million per 25,000 records.

Another option would be to have state prosecutors, on their own time without applications but as expeditiously as possible, review all marijuana cases and flag those which they believe represent still illegal and in need of further review. The un-flagged cases could be automatically set-aside while the court could review the remaining flagged cases.

This raises the second inconsistency in the bill package, mainly that the court is directed to only set aside marijuana cases which would now be completely legal, but for other crimes that are still illegal the court is not given this instruction. In other words, why should someone convicted of a non-marijuana crime that is still illegal have an easier time getting that record set aside than a marijuana crime that is still illegal?

With this structure it is likely that records with crimes eligible for automatic expungement such as embezzlement, fraud, theft, and non-marijuana drug trafficking will be set aside while someone with a marijuana possession charge in excess of what MRTMA allows will not have their record set aside. We believe it is illogical to give extra scrutiny to marijuana cases just because there is a now legalized framework to reference them against whereas other crimes with no such legalized reference do not face this scrutiny. If anything, because most marijuana activities are now legal the state should heir towards setting aside marijuana cases more expeditiously.

Again, we do want to reiterate that the bill package should be highly applauded for its effort to set aside criminal records; however, we did want to flag a couple of these items for your consideration. In totality the bill package does many great things and Michigan it will help Michigan stand out as a national leader in expungement reform.

Thank you for your time and effort and please let us know if you have further questions.

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