



MEMORANDUM TO: Members of Michigan House Regulatory Reform Committee

FROM: Peter Ruark, Senior Policy Analyst

DATE: May 21, 2019

SUBJECT: Support of HB 4488-4493, regarding eligibility requirements for certain licenses and regulations

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The Michigan League for Public Policy is a nonpartisan policy institute dedicated to economic opportunity for all, and advocates for state-level policy that helps people and families with low incomes achieve economic security. All of the League's work is done through a racial equity lens.

The League asks you to support the package of bills HB 4488-4493 that would make it easier for returning citizens to obtain occupational licenses while preserving public safety. These bills would build on Governor Rick Snyder's executive action in 2018, which lifted blanket felony conviction bans from state licenses, by enumerating and clarifying the disqualifying criteria used in licensing determinations including the phrase "good moral character."

Being gainfully employed is one of the most important factors in reducing the chance of recidivism. The benefits of investing in helping the formerly incarcerated to thrive "on the outside" and avoid going back to prison are not only humanitarian, but also make fiscal sense. Imprisonment costs the state money—an average of \$37,000 per prisoner per year—and takes workers out of the labor pool, threatening their ability to become re-employed after finishing their sentences.

Removing barriers to occupational licensure to enable more formerly incarcerated individuals to become skilled workers is in the interest of taxpayers and employers as well as to the individuals and families who are directly affected.

Attached is a copy of the League's new report, *[Thriving on the Outside: How Michigan Can Help the Formerly Incarcerated Become Gainfully Employed](#)*, which discusses policy options that Michigan can undertake to support returning citizens as they reintegrate into society, including removing barriers to occupational licensing. We hope you will read and consider the policy recommendations, and will be happy to answer any questions you may have.





# THRIVING ON THE OUTSIDE: How Michigan Can Help the Formerly Incarcerated Become Gainfully Employed

Peter Ruark, Senior Policy Analyst | May 2019

One of the biggest challenges for a person returning to society after spending time incarcerated is finding employment. At the same time, being gainfully employed is one of the most important factors in reducing the chance of recidivism. Removing unnecessary barriers to employment while protecting public safety is key to helping returning citizens reintegrate into their communities. It is also important that they get work that pays a living wage rather than staying in low-wage, dead-end work due to the stigma of a criminal record.

The benefits of investing in helping the formerly incarcerated to thrive "on the outside" and avoid going back to prison are not simply humanitarian, but make fiscal sense. Recidivism not only disrupts families and communities, but costs the state money: Michigan pays an average of \$37,000 per prisoner per year—one fifth of the General Fund budget.<sup>1</sup> It also takes workers out of the labor pool and can threaten their ability to become re-employed after finishing their sentences. Reducing barriers to employment, training and re-integration is in the interest of taxpayers and employers as well as to the individuals and families who are directly affected.

This report explores several ways Michigan can enact and improve public policy to help the formerly incarcerated return to society and thrive.

## Remove the Stigma of Conviction History for Job Applicants

### *Employer-Side Solutions: Removing Criminal History Questions from Job Applications*

Many states, counties and local jurisdictions have adopted "fair chance" laws and ordinances that prohibit employers from including a question about past criminal convictions on job applications, i.e. requiring applicants to check a box in answer to "Have you ever been convicted of a felony?" The objective of these policies is to enable a person with a past criminal conviction to have his or her application initially considered for employment without the stigma of past corrections involvement. Fair chance policies generally permit employers to ask the question further along in the hiring decision process, such as during callbacks or interviews, and do not preclude the employer from conducting a background check. They do not prohibit employers from

Have you ever used a name other than your legal name for us to verify your work or school records?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are you under age 18? <i>If yes, what is your birth date?</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Have you ever pled guilty or "no contest" to a crime, been convicted of a crime, had adjudication withheld or prosecution deferred? <i>(If yes, please give details and dates of each: (Dates must be provided))</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If you are currently employed, may we contact your present employer now?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

considering an applicant's conviction in making the decision to hire, but simply enable the returning citizen to get a foot in the door if the submitted application looks otherwise favorable to the employer.

### States With Fair Chance Policies

State	Employers Covered		
	Private	Vendors	Public
Arizona			X
California	X		X
Colorado			X
Connecticut	X	X	X
Delaware			X
District of Columbia*	X	X	X
Georgia			X
Hawaii	X	X	X
Illinois	X	X	X
Indiana			X
Kansas			X
Kentucky			X
Louisiana			X
Maryland			X
Massachusetts	X	X	X
Michigan			X
Minnesota	X	X	X
Missouri			X
Nebraska			X
Nevada			X
New Jersey	X	X	X
New Mexico	X	X	X
New York			X
North Dakota			X
Ohio			X
Oklahoma			X
Oregon	X	X	X
Pennsylvania			X
Rhode Island	X	X	X
Tennessee			X
Utah			X
Vermont	X	X	X
Virginia			X
Washington	X	X	X
Wisconsin			X

Green=Departmental Policy | Purple=State Law

\* Other

Source: National Employment Law Project

While 11 states currently have statewide fair chance laws or policies covering all private and public sector employment, Michigan does not; private employers may include questions on their applications asking about felony and even misdemeanor convictions.<sup>2</sup> Because it can be very difficult to get such laws passed and signed statewide, there has been a nationwide movement for several years to push cities and counties to adopt fair chance laws covering private employment as well as government employment. To date, 18 cities and counties across the United States have adopted fair chance policies covering private employment, including New York City, Los Angeles and Chicago.<sup>3</sup>

Unfortunately, to stave off the enactment of such local policies in Michigan, Governor Snyder signed a bill into law in 2015 pre-empting city and county governments from enacting ordinances that restrict certain aspects of private sector employment and hiring, including banning conviction history questions from employment applications. To make matters worse, the Legislature and governor went further with a second law in 2018 that pre-empts local governments from prohibiting private employers from asking questions during the employment interview process that are not already illegal statewide to ask—for example, counties and cities may not enact ordinances prohibiting questions about an applicant's experiences in prison.

The 2015 and 2018 local pre-emption laws are very unfortunate because they reduce the opportunity for returning citizens to become employed and gain work experience. This is especially true when unemployment is high and many applicants "compete" for limited job slots. Employers can use a checked "yes" box on a felony conviction question as an easy basis for thinning out which applications will be considered without taking into account the applicants' other strengths. Moreover, city and county ordinances can serve as useful "working labs" for developing good statewide policy and local pre-emption eliminates a good tool for research on best practices.

Moving in a positive direction, however, in 2018 Governor Snyder signed an executive order removing questions

about conviction history from all state government applications, and encouraged county and municipal governments in Michigan to do the same. Michigan now joins 30 other states that have eliminated such questions. Additionally, the cities of Ann Arbor, Detroit, East Lansing and Kalamazoo, along with Genesee and Muskegon counties, do not include the questions on their government employment applications. Detroit and Kalamazoo go further and do not allow the questions on applications of vendors and contractors doing business with their cities, and Kalamazoo includes banning the box as a requirement for companies getting tax abatement. Ann Arbor and Genesee County conduct a background check only after a conditional offer of employment has been made.<sup>4</sup>

### Michigan Cities and Counties With Fair Chance Hiring Policies

Location	Employers:			Background check only after conditional offer or finalists selected
	Private	Vendors	Public	
Ann Arbor			X	X
Detroit		X	X	
East Lansing			X	
Genesee County			X	X
Kalamazoo		X	X	
Muskegon County			X	

Source: National Employment Law Project

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### *Applicant-Side Solutions: Expunging the Convictions*

Removing conviction questions from employment applications is only part of the solution, however. Many employers do background checks on their applicants at some point in the hiring process, often for good reasons such as public safety or the security of the workplace. Unfortunately, a background check reveals not only recent convictions of newly returning citizens, but also long-ago convictions for which applicants served time and then moved on, became employed, and contributed positively to society with no further involvement in the corrections system. During periods of economic downturn, long-employed workers who lose their jobs may have difficulty becoming re-employed due to the stigma of a decades-old conviction coming back to haunt them. Old convictions can also create barriers to housing, credit and even participation in volunteer opportunities.

One solution to this problem is expungement. Expungement is the setting aside of a criminal conviction from one's record after a given period of time, sealing it off from public view and allowing the individual to legally present himself or herself as not having the conviction. In this way, an employer's prerogative to do a background check would not be infringed, but old convictions that do not indicate a danger to the workplace or the public would not continue to provide a stigma for years and decades after prison time has been served.

Having a conviction expunged has been shown to increase employment and wages. In one study of Michigan returning citizens who received an expungement, the probability of employment within the first year of receiving the expungement rose from approximately 58.6% to approximately 65.1%, and the subjects' average wages rose by about 22%.<sup>5</sup>

Some former offenders are able to get their criminal convictions expunged, but many of Michigan's expungement policies have not been updated since the 1960s. Currently, an individual is eligible for expungement only if he or she has no more than one felony and two minor offenses (some felonies such as possession of child pornography are ineligible for expungement), and the courts maintain discretion over the final decision to expunge. The paperwork and processing required for expungement application is cumbersome and costly, and is likely a factor in why an estimated 95% of eligible individuals do not apply.<sup>6</sup>

There is a movement to extend eligibility to a larger population and to make the process easier. Expanding the maximum number of offenses allowed for eligibility would enable many more individuals to have their records expunged. Bills introduced in 2018 would have allowed nonviolent felonies to be expunged after 15 years, allowed two felonies to be expunged if they were part of the same criminal transaction and one involved a firearm while the other was non-assaultive, and allowed those who completed a veterans' court treatment program to expunge two felonies and an unlimited number of misdemeanors.<sup>7</sup> The legislation did not pass before the end of the legislative session.

In order to address the processing problems, expand eligibility and increase the number of eligible people who actually receive expungement, the advocacy organization Safe and Just Michigan has recommended automatic expungement of most convictions after 10 years. The exception would be assaultive crimes and "serious misdemeanors" (such as indecent exposure and stalking) that require victims be notified and have the opportunity to appear and make a statement at the expungement hearing; such convictions would continue to be decided using the current discretionary process. In the absence of progress on automatic expungement due to political barriers or other reasons, the process could be made much easier with a web-based application, automated notifications of the various government entities and a reduced or eliminated fee.<sup>8</sup>

### Recommendations

- Overturn or amend Public Act 105 of 2015, which pre-empts county and municipal governments from enacting fair chance ordinances covering private employment.
- For county and city governments, remove conviction questions from government employment applications and require the same of government contractors and vendors and of businesses receiving tax abatements.
- Preserve the Snyder administration's executive order keeping felony conviction questions off state employment applications, and extend it to companies that contact or vendor with the state government and companies that receive a state subsidy.

- Automatically expunge most categories of convictions, and reduce burdensome paperwork and process for the discretionary categories that cannot be expunged automatically.

### **Remove Unnecessary Occupational Licensing Barriers**

In his final year as governor, Rick Snyder issued an executive order to the Michigan Department of Licensing and Regulatory Affairs (LARA) to remove questions about conviction history from occupational license applications that do not have prohibitions under state or federal law, such as those for cosmetology, plumbing and construction. The administration also urged the Legislature to re-examine licensing requirements in certain healthcare fields to determine which licensing applications can have the question removed while ensuring public safety and which types of felony convictions should continue to disqualify individuals for specific licenses. The Whitmer administration is continuing these policies.

While this is a good start, there continues to be a lot of ambiguity in occupational licensing requirements concerning an applicant's background. One of these is the use of the phrase "good moral character." There is legislation being deliberated in Michigan at the time of this writing that would clarify the term and its applicability, and would require a greater degree of transparency and stringency on the part of licensing boards as they consider what types of offenses will bar an applicant from receiving a license.

Expanding on and adding clarity to the steps taken by the previous administration will not only benefit returning citizens themselves, but will save state money and reduce crime because having a skilled job that provides economic security and wage mobility significantly reduces the likelihood of recidivism.

### **Recommendation**

- Build on the progress made as a result of the administrative rule lifting blanket felony conviction bans from state licenses by adding clarity to language governing disqualifying criminal convictions and to language such as the phrase "good moral character" that are used in licensing determinations.

### **Utilize Public Assistance More Effectively as a Tool for Re-Integration**

As individuals returning from incarceration often face difficulty finding jobs and housing, food assistance through the federal Supplemental Nutrition Assistance Program (SNAP) can be a key component in helping them reintegrate into society and avoid recidivism. However, the federal "welfare reform" legislation of 1996 bars states from allowing individuals with drug felonies to receive food or cash assistance. States may request waivers from this prohibition, and Michigan has had a partial waiver in place since 1996 that allows people with only one drug felony (or multiple drug felonies from the same incident) occurring after 1996 to receive assistance, but keeps those with more than one drug felony in separate incidents ineligible.

The partial ban prevents many returning citizens from receiving assistance as they get back on their feet, since many with drug felony convictions have had repeated arrests for drug dealing or possession. In no other category of crime is there a ban on receiving food

assistance; the drug felony ban was put into law at a time when there was heightened (and some might say sensationalized) concern in Congress and state legislatures around drug crimes. However, concerns about former drug offenders violating again need not be a reason to continue the partial ban, because the conditions of parole for those leaving prison for drug offenses almost always include drug testing.

In addition to the unfairness of singling out people who have served time for drug felonies and treating them differently than those who committed other types of felonies, retaining the partial ban is also misguided fiscal policy. While allowing former drug felons to receive food assistance does not cost the state additional money (because SNAP benefits are entirely federally funded), recidivism does—at an average of \$37,000 per prisoner per year.<sup>9</sup> One study found that males with “drug trafficking” convictions who were subject to Florida’s ban were nine percentage points more likely to end up in prison than their counterparts who had access to SNAP benefits.<sup>10</sup>

Because lifting the ban saves the state money to the degree that receiving food assistance helps individuals avoid repeat incarceration, and because receiving temporary assistance may be necessary for many formerly incarcerated persons to rebuild their lives and obtain secure housing and employment, Michigan should seek a complete waiver from the drug felony ban rather than continuing with its current partial waiver.

### **Recommendation**

- Remove boilerplate language in the appropriation for the Michigan Department of Health and Human Services that requires the department to deny assistance to applicants with more than one felony ban on their records.

### **Increase Access to Postsecondary Education and Occupational Training**

Most employers who pay a livable wage expect their new hires to already possess occupational skills at some level. Sometimes prior experience is sufficient, but for many workers, the attainment of required skills must be signified by a recognized credential such as a degree, license or certificate. These credentials are most often attained through completion of a postsecondary program at a community college, technical school or university.

Because of this, many individuals leaving incarceration make the decision to get trained in new skills at a community college or public university. Unfortunately, while state financial aid helps many students from “traditional” college age up through around age 30, there are no state financial aid programs to help students attend public community colleges or universities if they have been out of high school for more than 10 years. Two of the three existing grant programs explicitly exclude such individuals from eligibility, and the third is available only to those attending a private, not-for-profit institution.

In addition, none of the three current grant programs are available to students enrolled less than half time or who are in short-term occupational programs. Students who are juggling employment, family and school must often go less than half time or enroll in a short-term program due to having to work and care for family members. While returning citizens are likely to need employment to support themselves and their families (if they have them) and finance their education, working more than a few hours at a job may



result in lower grades and even dropping out. Not having financial aid may discourage adult learners from going to school less than half time.

In 2010, the Legislature eliminated a number of grant programs that were available to adult learners: the Adult Part-Time Grant, the Michigan Educational Opportunity Grant, the Michigan Nursing Scholarship, and Work-Study. It should be pointed out that there are employer-sponsored training programs in some areas of the state that are of low cost or no cost at all to the student. Michigan supports such programs through its Skilled Trades Training Fund. However, for older working students who are in community college and university programs that are not employer-based, there is no state financial aid available, though at the time of writing a program called Michigan Reconnect is being considered in the Legislature that will serve this population.

Because people leaving prison often return to communities with low incomes, they may be targets of advertising by for-profit colleges. Returning citizens should be encouraged to explore programs at community colleges instead, due to the lower cost and higher level of recognition of their credentials. One study shows that 62% of graduates of for-profit four-year colleges have student debt of at least \$24,300.<sup>11</sup> Loan defaults by students at these schools (whether they have graduated or not) are also far higher (22%) than at public (9%) or not-for-profit (8%) four-year colleges and account for nearly half of the nation's student loan defaults.<sup>12</sup> Students who attend for-profit colleges have lower earnings six years after starting college than their counterparts at public and nonprofit institutions and are more likely to experience substantial unemployment after leaving school.<sup>13</sup> Entering into a cycle of debt and unemployment or low earnings will only exacerbate the difficulty returning citizens already face as they re-enter society.

The removal of felony prohibitions from the state licenses (unless they are seen to indicate possible danger to public safety) and clarification of current restrictions will enable Michigan to provide prison-based training in more occupational fields, so that more individuals who have completed their time will be work-ready upon release. A recent study by the RAND Corporation found that inmates who participated in correctional education programs were 43% less likely to experience recidivism than inmates who did not, that participating in a high school diploma or GED program reduced the odds of recidivism by 30%, and that the odds of obtaining employment after release was 13% higher for inmates who participated in correctional education than for those who had not.<sup>14</sup> Michigan should make every effort to increase the number of occupational training programs in prisons in order to prepare more returning citizens for work.

### **Recommendations**

- Because many formerly incarcerated individuals have been out of high school for more than 10 years and are hence not eligible for any of Michigan's grant programs to attend a university or community college, fund and implement Michigan Reconnect (or another financial aid program that targets this population).
- Enact policies that protect consumers from false advertising on the part of for-profit colleges, including inflated claims about job placement, and that ensure that prospective students are receiving a good-faith estimate of the total costs of attending the college before they enroll.

- Support programs that connect formerly incarcerated individuals with community colleges.
- Increase prison education and training programs leading to in-demand credentials and licenses that do not have restrictions against individuals with most types of felonies.

## Endnotes

1. Michigan House Fiscal Agency Budget Briefing, presented to the Michigan House Appropriations Subcommittee on Corrections in January 2019 ([http://house.michigan.gov/hfa/PDF/Briefings/Corrections\\_BudgetBriefing\\_fy18-19.pdf](http://house.michigan.gov/hfa/PDF/Briefings/Corrections_BudgetBriefing_fy18-19.pdf), accessed February 4, 2019).
2. Michigan's Elliott-Larsen Act Civil Rights Act prohibits employers from requesting information regarding misdemeanor arrests that did not result in a conviction.
3. Avery, Beth, *Ban the Box: U.S. Cities, Counties and States Adopt Fair Chance Policies to Advance Employment Opportunities for People with Past Convictions*, National Employment Law Project, April 2019.
4. Avery, *ibid*.
5. Starr, Sonja & J.J. Prescott, "Evaluating the Impact of Criminal Record Set-Aside Laws on Recidivism and Socioeconomic Outcomes," preliminary findings summary as republished on the website of the Collateral Consequences Resource Center, February 27, 2018 ([ccresourcecenter.org/2018/02/27/michigan-set-asides-found-to-increase-wages-and-reduce-recidivism/](https://ccresourcecenter.org/2018/02/27/michigan-set-asides-found-to-increase-wages-and-reduce-recidivism/), accessed on November 5, 2018).
6. Safe and Just Michigan, *Fact Sheet: Clean Slate Legislation*, November 2018.
7. Safe and Just Michigan, "Current Reforms: Expanding the Scope of Expungement in Michigan," online blog published October 2, 2018 (<https://www.safeandjustmi.org/2018/10/02/current-reforms-expanding-the-scope-of-expungement-in-michigan>, accessed on November 5, 2018).
8. Safe and Just Michigan, "Proposals to Reform the Expungement Process," online blog published November 1, 2018 (<https://www.safeandjustmi.org/2018/11/01/proposals-to-reform-the-expungement-process/>, accessed on November 5, 2018).
9. Michigan House Fiscal Agency Budget Briefing, presented to the Michigan House Appropriations Subcommittee on Corrections in January 2019 ([http://house.michigan.gov/hfa/PDF/Briefings/Corrections\\_BudgetBriefing\\_fy18-19.pdf](http://house.michigan.gov/hfa/PDF/Briefings/Corrections_BudgetBriefing_fy18-19.pdf), accessed February 4, 2019).
10. Tuttle, Cody, *Snapping Back: Food Stamp Bans and Criminal Recidivism*, Social Science Research Network, March 29, 2018 (<https://ssrn.com/abstract=2845435>, accessed on December 13, 2018).
11. Smith, Peter & Leslie Parrish, *Do Students of Color Profit from For-Profit College? Poor Outcomes and High Debt Hamper Attendees' Futures*, *The Center for Responsible Lending*, October 2014.
12. Smith, *ibid*.
13. Deming, David J., Claudia Goldin, and Lawrence F. Katz, *The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators?*, *Journal of Economic Perspectives*—Volume 26, Winter 2012.
14. Davis, Lois M., Jennifer L. Steele, Robert Bozick, Malcolm V. Williams, Susan Turner, Jeremy N. V. Miles, Jessica Saunders, Paul S. Steinberg, *How Effective Is Correctional Education, and Where Do We Go from Here? The Results of a Comprehensive Evaluation*, RAND Corporation, 2014 ([https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR500/RR564/RAND\\_RR564.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR500/RR564/RAND_RR564.pdf), accessed on April 22, 2019), as cited in *Jobs for the Future, Supporting Second Chances: Education and Employment Opportunities for People Returning from Correctional Facilities*, July 2015 (<https://jfforg-prod-prime.s3.amazonaws.com/media/documents/Supporting-Second-Chances-073015.pdf>, accessed on April 22, 2019).