

# FBI won't recognize some of Michigan's new expungements for gun background checks

Beth LeBlanc, The Detroit News 11:07 p.m. EDT Apr. 26, 2023

## Government and Politics

*Lansing* — The Federal Bureau of Investigation does not plan to remove crimes set aside under Michigan's automatic expungement process from federal databases used to assess a person's eligibility to own a gun until it gets a specific court order or request from the state seeking the removal.

The insistence on a formal request from the state makes it likely that an individual whose crimes were erased from state background check databases could still be blocked from purchasing or owning a firearm because those same felonies would show up in a federal background check. The legal hiccup could block tens of thousands of Michiganders from purchasing firearms, even after they had about 105,000 felonies wiped from their records earlier this month.

The FBI said Wednesday the bureau does not usually remove offenses from the federal background check without a formal order of expungement or request from the state, both of which are lacking after Michigan used a computer-generated algorithm to automatically purge specific crimes from the state's criminal history record.

Because of that, it's likely individuals whose felonies were automatically expunged under Michigan law may still have those offenses show up in the FBI's National Instant Criminal Background Check System (NICS), the FBI said. NICS is a system used almost exclusively to assess a person's eligibility to own a firearm or their eligibility to have a concealed pistol license.

"The state must request the modification to the federal criminal history record," the FBI's biometric support section said in a statement to The Detroit

Michigan Attorney General Dana Nessel's office said it respected the federal government's expungement recognition standards and had no plans to request more than 100,000 court orders affirming the expungements.

"I would expect that neither our department nor the courts have the capacity to request or produce them," Nessel spokesman Danny Wimmer said. "The expungements stand to make a real difference in the lives of Michigan residents seeing their previous convictions set aside, despite this lack of federal database recognition."



Michigan residents who had felonies automatically wiped off their criminal records earlier this month still may not be able to purchase firearms from gun dealers b... [more](#)

It's not yet clear whether similar state orders or requests would be required for the removal of the offenses from the FBI's National Crime Information Center or the Interstate Identification Index, criminal background databases that are used for investigative purposes by law enforcement agencies.

It's also not clear how the FBI's stance on NICS will interact with [language in Michigan's automatic expungement law](#) that makes it a misdemeanor to publicly disclose convictions that were set aside by the algorithm.

Earlier this month, the state started an automatic expungement program that removes certain non-assaultive misdemeanors and felonies from the state criminal history record and from court records based on an algorithm built to identify and erase certain crimes. Between April 11 and April 19, 105,140 felonies were set aside by the automatic expungement algorithm, according to Michigan State Police.

There was **some belief among law enforcement groups** that the changes would allow those individuals to own a gun. But lawyers questioned whether the federal government would recognize expungement by algorithm because it didn't include a formal order of expungement.

Without removal from the federal NICS background check, individuals would still be blocked from purchasing a firearm from a federal firearm licensee, such as Dunham's, and their records would still be applicable if stopped by a federal law enforcement officer and found to be in possession of a gun.

The State Court Administrative Office earlier this month acknowledged the automatic expungements are set aside "by operation of law" and will not include a formal court order confirming the expungement.

Rep. Graham Filler, a St. Johns Republican who chaired the House Judiciary committee in 2020 when the expungement package was passed, said the effect of the legislation on federal records was never discussed while the proposal was going through the legislative process.

He expressed confidence state level clearances would be enough for individuals to regain access to employment and housing opportunities, but said lawmakers would monitor to see if the lack of federal recognition becomes a problem.

"Getting people gun rights was not one of the main reasons we passed this legislation," Filler said. "The main reasons were access to jobs, access to

education, access to housing, more opportunities in general."

Michigan lawmakers in 2020 **passed the so-called "Clean Slate" laws**, expanding the crimes eligible for expungement and streamlining the process for getting an old felony and misdemeanor removed from public records. Since April 2021, people have been able to apply for expungement of certain crimes under the law.

But a key portion of the legislation — a process to automatically expunge certain misdemeanors and felonies — was delayed two years so the state would have time to prepare police, courts and software programs for the change.

The automatic expungement law sets aside certain misdemeanors after a seven-year, post-sentencing waiting period and certain non-assaultive felony convictions after a 10-year, post-sentence completion waiting period.

Felonies excluded from automatic expungement under the law include assaultive crimes, certain crimes of dishonesty, human trafficking, drunken driving, certain abuse offenses or crimes punishable by more than 10 years.

Individuals with pending criminal charges or individuals who were convicted of another crime during their waiting period that appears in the state criminal history record also are not eligible.