

Legislative Analysis



REVISE CRITERIA FOR EXPUNCTION

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5493

Sponsor: Rep. Mary D. Waters

Committee: Criminal Justice

Complete to 6-8-04

A SUMMARY OF HOUSE BILL 5493 AS INTRODUCED 2-10-04

Public Act 213 of 1965 provides a mechanism by which a person who has only one criminal conviction can apply to the court for an order setting aside the conviction. An application can be made five years after the sentence was imposed or five years after completion of any term of imprisonment imposed for that conviction, whichever is later. However, a conviction cannot be set aside for a felony (or an attempt to commit a felony) that is punishable by life imprisonment or for a conviction for a violation or attempted violation of the criminal sexual conduct (CSC) statutes.

House Bill 5493 would amend Public Act 213 to instead allow a person convicted of only one felony offense or not more than two misdemeanor offenses to apply to have either the conviction for the felony offense or one or both of the misdemeanor offenses set aside. The bill would keep the exclusion for a felony offense that is punishable by life imprisonment. The language excluding a conviction for a criminal sexual conduct violation would be deleted and instead would exclude a conviction of an assaultive crime or an attempt to commit an assaultive crime, which does include CSC offenses. The bill would also exclude from expunction a conviction for driving while intoxicated, driving while visibly impaired, or driving with any bodily amount of a Schedule 1 controlled substance or cocaine.

Currently, "assaultive crime" is defined in the Code of Criminal Procedure as referring to the following crimes: felonious assault and felonious assault in a weapon free school zone; assault with intent to commit murder; assault with intent to do great bodily harm; assault with intent to maim; assault with intent to commit burglary or any other felony; assault with intent to rob and steal, whether armed or unarmed; first- or second-degree murder; manslaughter; kidnapping; prisoner taking person as hostage; leading, taking, enticing away a child under 14 years of age; mayhem (described as – with malicious intent - cutting out or maiming the tongue, putting out an eye, cutting or tearing off an ear, cutting off or disabling a limb or organ, etc. of another person); aggravated stalking; criminal sexual conduct offenses; armed robbery; carjacking; unarmed robbery; threats or assaults against a person who works for the Family Independence Agency (Lisa's Law); various assaultive crimes against a pregnant woman with the intent to cause a miscarriage or stillbirth, or great bodily harm to the fetus or embryo, and a miscarriage or stillbirth resulted; various assaultive crimes against a pregnant woman that resulted in a

miscarriage, stillbirth, or great bodily harm to the embryo or fetus; attempt to murder by poisoning, drowning, strangling, or by any means that does not constitute the crime of assault with intent to murder; a violation of Chapter 33 of the Michigan Penal Code, entitled “Explosives and Bombs, and Harmful Devices; stalking a victim under 18 and the defendant is five years or more older than the victim; and a violation of the Michigan Anti-Terrorism Act, Chapter 83-A of the Michigan Penal Code.

MCL 780.621

Legislative Analyst: Susan Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.