

# Legislative Analysis

---



## REVISE CRITERIA FOR EXPUNCTION

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

**House Bill 5493 (Substitute H-4)**

**Sponsor: Rep. Mary D. Waters**

**Committee: Criminal Justice**

### **First Analysis (12-2-04)**

**BRIEF SUMMARY:** The bill would allow a court order to set aside one felony or no more than two misdemeanor convictions for eligible offenses, revise the time frame for when a person could file for an expunction, and repeal a section of law made obsolete by the bill's provisions.

**FISCAL IMPACT:** The bill would have an indeterminate fiscal impact on the judiciary.

### **THE APPARENT PROBLEM:**

Reportedly, lack of employment is the major factor influencing whether a person convicted of a crime will commit another one. Approximately two-thirds of all employers will not hire a person known to have a criminal record, and state law prohibits many people with even misdemeanor convictions for non-violent offenses from receiving occupational licenses. Lack of employment results in many of these people being forced to receive state aid, increases homelessness, and decreases the ability of non-custodial parents to pay child support.

Currently, a person with only one conviction can apply to have that conviction set aside, but he or she must wait at least five years. Certain crimes, such as murder, rape, and traffic offenses are not eligible for expungement. However, if a person has two misdemeanor convictions, even if those were for minor, nonviolent offenses, he or she is not eligible to have either of those convictions expunged, and so may be affected for a lifetime.

Some people believe that the law should be changed so that a person who had either one felony or two misdemeanor convictions could apply to have those convictions set aside. Legislation has been offered to address this concern.

### **THE CONTENT OF THE BILL:**

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. However, a conviction cannot be set aside for a felony (or an attempt to commit a felony) that is punishable by life imprisonment, for a conviction for a violation or attempted violation of the criminal sexual conduct (CSC) statutes (with the exception of CSC in the fourth degree), or for a traffic offense.

House Bill 5493 would amend Public Act 213 to instead allow a person convicted of only one felony offense and no other offenses 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 (which includes CSC in the 1<sup>st</sup> degree); for convictions for CSC in the 2<sup>nd</sup> or 3<sup>rd</sup> degree or assault with the intent to commit CSC in the 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> degree; and for traffic offenses.

If a person was convicted of more than one misdemeanor for the following crimes, he or she would not be allowed to apply to set aside any of those convictions, and a judge could only set aside one misdemeanor conviction of the following:

- A crime in which the victim was a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or who had resided in the same household.
- A conviction for assault; aggravated assault; misdemeanor stalking; threats or assaults against a person who works for the Family Independence Agency (Lisa's Law); various assaultive crimes against a pregnant woman; and child abuse.

Currently, an application to set aside a conviction 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. The bill would revise the time frame. To set aside a felony conviction, a person would have to wait until at least five years after he or she successfully completed probation or parole imposed for that felony, or at least five years after completing imprisonment, whichever was later. (This would mean, presumably, that if a person was paroled after serving time in prison, that he or she could not apply for an expunction until five years after the parole ended.)

For a misdemeanor offense, a person could apply for an expunction not less than two years after the successful completion of probation imposed for that offense or not less than two years following completion of any term of imprisonment, whichever was later.

In addition, the bill would require an applicant to submit just one complete set of fingerprints to the Department of State Police instead of two as currently required. (This change reflects the current practice of the department to send a copy of the fingerprints to the Federal Bureau of Investigation via electronic transmission. Therefore, two sets are no longer needed.)

In addition, the bill would repeal Section 4 of the act which provides that only one conviction can be set aside.

MCL 780.621

## **ARGUMENTS:**

### ***For:***

The bill would allow a person who had only two misdemeanor convictions (or one felony) to apply for a set aside or expunction – meaning that his or her record would be wiped clean. Under current law, a person can only apply for an expunction if he or she has only one conviction for an eligible crime, but must wait at least five years from the time of sentencing or when released from imprisonment, whichever is later. The bill would change this – for a felony – to at least five years after completing probation or parole, or being released from prison, whichever was later. In this way, each offender is given the same amount of time to prove that he or she has made changes in his or her life and is unlikely to reoffend.

In addition, it would shorten the time frame from at least five years to at least two years for removal of a conviction for a misdemeanor. This is an important change that will allow a person who committed a less serious offense to reclaim his or her life, secure employment, find suitable housing, and comply with child support orders.

The bill would still exclude serious crimes from being able to be expunged. And, since crimes such as domestic violence, assault, and stalking tend to be crimes of repetition (meaning that there is a strong likelihood that an offender will demonstrate a pattern of dangerous behavior), the bill would only allow a person who had just one conviction for one of these crimes to apply to have that conviction set aside. In this way, a distinction can be drawn between a person who represents a danger to society and a person who made a one-time mistake.

The bill will provide hope and an incentive for more individuals (those with two misdemeanor convictions) to make better decisions and life choices. It will facilitate successful reentry into society, lessen the burden on state agencies to provide aid to those unable to find jobs, decrease homelessness, decrease recidivism rates, and increase the ability for noncustodial parents to comply with child support orders. Therefore, the bill represents a win/win measure for society as well as for the individual who has since turned his or her life around.

### ***Response:***

The bill still doesn't address all situations, like multiple charges and convictions that arise from a single transaction. For example, a minor who is drunk, who spray paints a statue, and then who urinates in public could be charged and convicted of a felony and two misdemeanors, making him or her ineligible to have any of those convictions cleared from his or her record, even though all the crimes represent one night of bad decisions and behavior. Some people feel that the bill should be amended further to deal with situations such as these and allow all convictions (if for eligible crimes) arising out of the same transaction or event to be set aside after the applicable time frames have been met.

Further, many young people are charged with and convicted of sexual conduct crimes – even when in a consensual relationship. Therefore, some feel that the bill should be amended to also allow these individuals – on a case by case basis – to have their record

expunged and be released from registry requirements for the Sex Offenders Registry if they do not pose a threat to the public.

***POSITIONS:***

A representative of the Michigan State Police indicated support for the bill. (12-1-04)

A representative of the Michigan Coalition Against Domestic and Sexual Violence testified in support of the H-4 version of the bill.

A representative of the Michigan Domestic Violence Prevention and Treatment Board indicated a position of neutrality on the H-4 version of the bill. (12-1-04)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Marilyn Peterson

---

■ 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.