

# Legislative Analysis

---



## CRIMINAL RECORD EXPUNCTION: EXPAND

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

### House Bill 4186

Sponsor: Rep. Stacy Erwin Oakes

Committee: Criminal Justice

Complete to 5-7-13

## A SUMMARY OF HOUSE BILL 4186 AS INTRODUCED 2-2-13

House Bill 4186 would amend Public Act 213 of 1965, which provides for the setting aside (or expunging) of convictions under certain circumstances, to do the following:

- Allow a felony to be expunged if an individual had no more than two misdemeanor convictions.
- If an individual had no more than two misdemeanor convictions, allow either or both to be expunged.
- Add to the list of offenses that may not be expunged.
- Revise the time limitations for filing an application to expunge a conviction.
- Revise the information required to be included on an application for expunction.
- Define terms.

Public Act 213 of 1965 provides a mechanism by which a person who has only one criminal conviction (either a felony or a misdemeanor) can apply to the court for an order setting aside the conviction. Public Act 64 of 2011 expanded this provision to apply it also to a person who had two minor offenses in addition to the felony or misdemeanor the person was applying to expunge; a "minor offense" is defined to mean a misdemeanor or ordinance violation for which the maximum term of imprisonment is 90 days and that was committed when the person was 21 years of age or younger. However, not all convictions are eligible to be set aside, as described later in the analysis, such as convictions for traffic offenses or felonies carrying life sentences.

The bill would revise the above provision to instead allow, with some exceptions, a person to file an application with the convicting court for an order setting aside one or more convictions as follows:

- A person convicted of one felony offense and not more than two misdemeanor offenses could petition to set aside the felony offense. (A traffic offense would not constitute a misdemeanor, unless it had been for operating while intoxicated.)
- A person convicted of not more than two misdemeanor offenses and no other felony or misdemeanor offenses could apply to have either or both of the misdemeanor convictions set aside. (A traffic offense would not constitute a misdemeanor, unless it had been for operating while intoxicated.)

"Operating while intoxicated" would mean a violation of the drunk and drugged driving laws listed in Sections 625 and 625m (commercial drivers) of the Michigan Vehicle Code or any substantially corresponding local ordinance, tribal law, law of another state, or federal law. Thus, a conviction for any of these offenses would count as a felony or misdemeanor conviction and, as a traffic offense, could not be expunged.

Convictions not eligible to be set aside.

Not all felony or misdemeanor convictions are eligible to be expunged. A conviction cannot be set aside for a felony that is punishable by life imprisonment (or an attempt to commit such a felony); 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); for offenses involving child sexually abusive materials; for offenses involving the use of a computer to commit numerous crimes including soliciting sex with a minor, stalking, causing death by explosives, or swatting; or for a traffic offense.

The bill would not change this, but would specify that a "traffic offense" includes, but is not limited to, a conviction for operating while intoxicated.

In addition, the bill would add another offense to the list of convictions that could not be set aside; that is, a conviction that is a felony involving domestic violence **if** the person had a prior misdemeanor conviction for domestic violence could not be expunged. (This provision would pertain to convictions for crimes in which the victim is a spouse, a former spouse, an individual with whom the person has had a child in common, an individual with whom the person has or has had a dating relationship, or an individual residing or who had resided in the same household as the person.)

Deferral/dismissals as misdemeanor convictions.

Currently, some misdemeanor offenses allow a first-time offender to have the conviction deferred; if the offender successfully completes probation, the charges are dismissed. Though the person was not "convicted" of the crime, a non-public record of the deferral and dismissal is retained by law enforcement agencies. In addition, a deferral and dismissal is sometimes counted as a prior offense for the purposes of sentencing. The bill would consider such a deferral and dismissal as a misdemeanor when determining a person's eligibility for expunction of a different felony or misdemeanor.

The offenses described in the bill that would count as a misdemeanor conviction even though the charge was deferred and dismissed include Section 703 of the Michigan Liquor Control Act (purchase, possession, and consumption by a minor); Section 1070(1)(B)(i) of the Revised Judicature Act (completion of drug treatment program); sections of the Code of Criminal Procedure dealing with (a) assignment of youthful trainees, (b) domestic violence, or (c) cases of delayed sentencing; Section 7411 of the Public Health Code relating to first time drug offenses; Section 350a of the Michigan Penal Code, which deals with the taking or retaining of a child by an adoptive or natural parent with the intent to conceal from another with parenting rights; Section 430 of the Penal Code, which deals with health professionals working under the influence of alcohol or controlled substances; or a dismissal under any other Michigan law or of one of its

political subdivisions similar to these that provides for the deferral and dismissal of a felony or misdemeanor charge.

Application for expunction.

The act requires certain information to be included with the application for setting aside a conviction. The bill would revise the information currently required to be on a statement that is required to be included with the application and require an additional statement as follows:

- A statement that the applicant had not been convicted of an offense other than the conviction or convictions sought to be set aside as a result of the application and not more than two nondisqualifying convictions described in subsection (2). (Currently, this statement requires the applicant to state that he or she had not been convicted of an offense other than the conviction being sought to be set aside and not more than two minor offenses, if applicable.)
- A statement listing all actions enumerated in subsection (2) that were initiated against the applicant and have been dismissed.

(Subsection (2) pertains to offenses which were deferred and dismissed.)

Further, if a petition to expunge a conviction is denied by the convicting court, the person must wait at least three years from the date of the denial before filing another petition concerning the same conviction or convictions, unless the court specified an earlier date in the order denying the petition.

Time limitations.

Currently, an application to set aside a conviction can be made five years after the sentence is imposed or five years after completion of any term of imprisonment imposed for that conviction, whichever is later.

House Bill 4186 would revise the time limitations. Under the bill, to set aside either a felony or misdemeanor conviction, a person would have to wait until at least five years after whichever of the following events related to the conviction to be set aside occurred last:

- Imposition of the sentence.
- Completion of probation.
- Discharge from parole.
- Completion of imprisonment.

Who Can Access the Non-public Record. By law, the state police must retain a nonpublic record of the order setting aside a conviction and of the record of the arrest, fingerprints, conviction, and sentence of the applicant in the case for which the order applies. This nonpublic record can only be made available to a court, an agency of the judicial branch of state government, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor and only for purposes allowed by statute (for

instance, to show that a person who has filed an application to set aside a conviction has previously had a conviction set aside).

The bill would expand access to the nonpublic records to the Department of Corrections to determine if a person applying for employment with the department had had a conviction set aside.

Retention of Safeguards. The bill would not affect safeguards currently contained in the law. A copy of the application for expunction would still have to be served on the attorney general and the office of the prosecutor who prosecuted the crime. The attorney general and local prosecutor would still have an opportunity to contest the application. A notice of the application would still have to be sent to the victim of an assaultive crime, and he or she could still appear at any proceeding concerning that conviction and could still make written or oral statements. The court would still have to determine that the expunction was warranted and consistent with the public welfare.

Fingerprints. 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 and to forward them electronically. (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.)

#### Definitions.

The bill would define a "misdemeanor" as being: (1) a violation of a Michigan, state, federal, or tribal penal law that is not a felony; (2) a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment for not more than one year or a fine that is not a civil fine, or both; (3) a violation of a local ordinance in this state that substantially corresponds to (1) or (2) that is not a felony; (4) a violation of the law of another state or political subdivision of another state substantially corresponding to a violation listed in (1)-(3) that is not a felony; or a similar violation of (1) or (2) under federal law. "Indian tribe" would mean an Indian tribe, Indian band, or Alaskan Native Village recognized by federal law or formally acknowledged by a state.

"Felony" would mean either of the following, as applicable: (1) for purposes of the offense to be set aside, a violation of a Michigan penal law punishable by imprisonment for more than one year or expressly designated by law to be a felony; or, (2) for purposes of identifying a prior offense, a violation of a penal law of this state, of another state, or the U.S. that is punishable by imprisonment for more than one year or is expressly designated by law to be a felony. (Some crimes designated as a misdemeanor carry a maximum penalty of two years' imprisonment and so would be counted under this provision as a felony.)

The bill would delete the definition of "minor offense".

MCL 780.621, 780.623, and 780.624

**BACKGROUND INFORMATION:**

The issue of expanding eligibility for expunction of criminal convictions has been discussed for many years. Similar legislation was introduced in the previous five legislative sessions. House Bill 5493 in the 2003-2004 session and House Bill 4327 in the 2005-2006 session were passed by the House but failed to see action in the Senate. House Bill 5213 in the 2007-2008 session, House Bill 4405 from 2009-2010, and House Bill 4106 of last session were reported from committee but died on the House floor.

Senate Bill 159 of the 2011-2012 legislation session, which became Public Act 64 of 2011, expanded eligibility for expunction so that a person could apply to have a felony or a misdemeanor conviction expunged even if that person also had a conviction for one or two minor offenses committed when the person was 21 years of age or younger.

**FISCAL IMPACT:**

For a similar bill last session, it was determined that the legislation would have little to no fiscal impact on the Judiciary. Although there could be increased administrative time to process applications, it is not believed that this would increase costs to the state or local units of government.

The bill would likely not have a significant fiscal impact on the Department of State Police. Per statute, the cost for processing the fingerprints and application to set aside an adult conviction is \$50. This bill does not alter the amount of the fee.

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Mark Wolf

---

■ 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.