

## EXPUNGEMENT OF CRIMINAL CONVICTIONS

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<http://www.house.mi.gov/hfa>

**House Bill 4980 as introduced**  
**Sponsor: Rep. Eric Leutheuser**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4981 as introduced**  
**Sponsor: Rep. Pauline Wendzel**

**House Bill 4982 as introduced**  
**Sponsor: Rep. Luke Meerman**

**House Bill 4984 as introduced**  
**Sponsor: Rep. David LaGrand**

**House Bill 4983 as introduced**  
**Sponsor: Rep. Yousef Rabhi**

**House Bill 4985 as introduced**  
**Sponsor: Rep. Sherry Gay-Dagnogo**

**Committee: Judiciary**  
**Revised 10-1-19**

### BRIEF SUMMARY:

House Bills 4980 through 4985 would each amend 1965 PA 213, which provides for the expunging (or setting aside) of convictions under certain circumstances. The changes proposed by the bills include the following:

- Allowing for automatic expungement of certain convictions if certain conditions were met (meaning the act's requirements to file a petition would not apply).
- Making most traffic offenses eligible for expungement.
- Allowing a person to petition to set aside one or more marijuana offenses if the offense would not have been a crime if committed after the use of recreational marijuana by adults became legal in the state.
- Expanding the number of felonies and misdemeanors eligible to be set aside.
- Treating multiple felonies arising from the same time period as one felony, with certain conditions.
- Shortening the waiting period before a person may apply to have certain convictions set aside.

Currently under 1965 PA 213, a person who has a felony offense and no more than two misdemeanor offenses may petition the convicting court to set aside the felony offense. If the person has no more than two misdemeanor offenses and no felony offenses, he or she may petition to have one or both of the misdemeanor offenses set aside. Certain offenses may not be set aside, including a felony for which the maximum term of imprisonment is life, criminal sexual conduct violations, and traffic offenses. The act states that the setting aside of a conviction is a privilege and conditional and not a right.

## DETAILED SUMMARY:

**House Bill 4980** would add section 1b to the act to require, beginning two years after the bill's effective date, a conviction to be set aside without the filing of an application under section 1 of the act *if all* of the following apply:

- Ten years have passed from whichever of the following events occurred last:
  - The date the sentence for the conviction was imposed.
  - The date probation imposed for the conviction was completed.
  - The date the person was discharged from parole for the conviction.
  - The date any term of imprisonment for the conviction was completed.
- The conviction or convictions to be automatically set aside are otherwise eligible to be set aside under the act.
- All restitution ordered for the conviction has been paid.

[Note: As written, the bill does not contain a mechanism by which the above requirements would be tracked or which entity would make a determination that all of the requirements were satisfied. District and circuit courts, the Department of Corrections, and the Department of State Police each retain some of the information referenced above, but not all of it.]

Not more than two felony or four misdemeanor convictions could be automatically expunged.

A conviction for an *assaultive crime*, a *serious misdemeanor*, or any other offense punishable by imprisonment for 10 or more years would not be eligible for an automatic expungement.

*Assaultive crime* as defined in section 9a of Chapter X of the Code of Criminal Procedure includes offenses such as assault, homicide, manslaughter, assaults against pregnant women, kidnapping, rape, armed robbery, terrorism, and violations involving bombs and explosives.

*Serious misdemeanor* as defined in section 61 of the William Van Regenmorter Crime Victim's Rights Act includes a wide range of misdemeanor offenses and substantially similar local ordinances such as domestic violence and assault, breaking and entering, child abuse in the fourth degree, certain firearm violations, injuring a worker in a work zone, and certain drunk and drugged driving offenses, among other offenses.

MCL 780.621 and 780.624 and proposed MCL 780.621b

**House Bill 4981** would exclude only certain traffic offenses, rather than all traffic offenses, from being eligible to be expunged. The bill would also shorten the period of time that a person must wait before he or she may apply to have one or more convictions set aside.

Currently, the act prohibits any traffic offenses from being set aside from a person's criminal record, and a conviction for a traffic offense is included in the total number of felonies and misdemeanors on a person's record when determining if the person is eligible to apply to have one or more convictions set aside.

House Bill 4981 would amend the act to exclude only the following traffic offenses from eligibility for expungement:

- A conviction for operating while intoxicated by any person.
- Any traffic offense committed by an individual with an indorsement on his or her operator's or chauffeur's license to operate a commercial motor vehicle.
- The following violations under the Michigan Vehicle Code:
  - Section 601b—moving violation in work zone, emergency scene, school zone, or school bus zone.
  - Section 601c—moving violation causing injury or death to person operating implement of husbandry on highway.
  - Section 601d—moving violation causing serious impairment of a body function or death.
  - Section 602a—failure to stop at signal of police or conservation officer.
  - Section 617(2) or (3)—failure to stop at an accident that results in serious injury or death, or failure to stop after causing an accident that results in death, respectively.
  - Section 626(3) or (4)—reckless driving causing serious impairment of a body function, or causing death, respectively.

In addition, the act currently requires a person to wait at least five years after the sentence for the conviction was imposed, probation or parole was completed, or any term of incarceration was completed, whichever occurred last, before applying to have the conviction set aside. House Bill 4981 would shorten the waiting period to four years.

The bill would take effect 90 days after enactment.

MCL 780.621

**House Bill 4982** would allow a person convicted of one or more marijuana offenses to petition the court to set aside the misdemeanor offense or offenses. This would only apply if the offense would not have been a crime on or after December 6, 2018 (the day the voter-approved initiative to legalize the use by adults of recreational marijuana took effect). A court would be required to grant the application to set aside the marijuana offense or offenses if it determined that the conduct that resulted in the conviction does not constitute a criminal violation of Michigan laws on the date of the application. [Note: As written, the bill does not appear to cap the number of misdemeanor marijuana offenses that may be set aside. Further, the bill is not clear whether the ability to expunge one or more misdemeanor marijuana offenses is in addition to, or in place of, the ability under the act to apply to expunge one felony or up to two misdemeanor offenses.]

MCL 780.621

**House Bill 4983** would shorten the waiting period before a person could petition a court to set aside a misdemeanor offense.

The act currently requires a person to wait at least five years after a sentence was imposed for a conviction, completion of a term of incarceration, or completion of probation or parole, whichever occurs last, before petitioning a court to set aside a felony or up to two misdemeanor offenses.

House Bill 4983 would allow an application to set aside a misdemeanor offense to be filed three or more years after whichever of the following events occurred last:

- Imposition of the sentence for the conviction that the applicant seeks to set aside.
- Completion of probation imposed for the conviction that the applicant seeks to set aside.
- Discharge from parole imposed for the conviction that the applicant seeks to set aside.
- Completion of any term of imprisonment imposed for the conviction that the applicant seeks to set aside.

The waiting period to apply to set aside a felony offense would remain at five years.

MCL 780.621

**House Bill 4984** would revise the number of felonies and misdemeanors eligible to be set aside and revise the time periods an applicant must wait before filing an application to have an eligible offense set aside.

The act currently allows a person who has a conviction for no more than one felony offense and no more than two misdemeanor offenses to petition the convicting court to have the felony set aside. A person who has been convicted of not more than two misdemeanor offenses may petition to have one or both of the misdemeanors set aside.

House Bill 4984 would eliminate this provision. Instead, the bill would allow a person convicted of one or more criminal offenses, but not more than a total of three felony offenses (whether in Michigan or any other jurisdiction), to apply to have all of his or her convictions from Michigan set aside if both of the following applied:

- None of the felony or misdemeanor convictions from Michigan was for an assaultive crime.
- None of the convictions from other jurisdictions was for a crime that would be an assaultive crime if the conviction had been obtained in Michigan.

An eligible person could petition a court to set aside not more than two felony convictions or four misdemeanor convictions, or both, as applicable.

The act currently excludes certain offenses from being eligible for expungement, such as a felony for which the maximum punishment is life imprisonment and traffic offenses. House Bill 4984 would retain those exclusions.

Currently, before a person may apply to have a conviction set aside, he or she must wait a certain number of years after whichever of the following events occurred last:

- Imposition of the sentence for the conviction that the applicant seeks to set aside.
- Completion of probation imposed for the conviction that the applicant seeks to set aside.
- Discharge from parole imposed for the conviction that the applicant seeks to set aside.
- Completion of any term of imprisonment imposed for the conviction that the applicant seeks to set aside.

Under House Bill 4984, the waiting periods would be as follows:

- Seven or more years before applying to set aside more than one felony conviction.
- Five or more years to set aside one or more serious misdemeanors.
- Three or more years to set aside a misdemeanor, other than an application to set aside a serious misdemeanor (see above) or any other misdemeanor conviction for an assaultive crime. [Note: As written, it appears that a misdemeanor conviction for an assaultive crime is not eligible to be set aside.]

MCL 780.621

**House Bill 4985** would require that more than one felony conviction be treated as a single felony conviction if the felony offenses were contemporaneous, such that they all occurred within 24 hours or less and reflected a similar intent, as long as none of those felony offenses constituted any of the following:

- An assaultive crime.
- A crime involving the use or possession of a weapon.
- A crime with a maximum penalty of 10 or more years' imprisonment.
- A conviction for a crime that would be an assaultive crime if the conviction had been obtained in Michigan.

The bill would take effect 90 days after enactment.

MCL 780.621

## **FISCAL IMPACT:**

### **Judiciary**

House Bills 4980 through 4985 would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact could be significant, and would depend on the system used for the automatic expungement process, the mechanism in place for data to be shared with all necessary agencies, and responsibility for maintaining the system or systems.

According to the State Court Administrative Office (SCAO), courts do not have an automatic process for setting aside records. Records are maintained in individual courts throughout the state. If an automatic expungement occurs, a list of all of the defendants meeting specified criteria would need to be generated. Local courts do not have that

capability. Individual trial courts' case management systems are limited to cases that have been before that court. The Judicial Data Warehouse is a centralized statewide database, but it is not the official criminal history and it excludes a few criminal courts. A list would need to be generated from the official criminal history, maintained by the Michigan State Police (MSP), if that is possible.

Criminal history information is currently kept in at least four locations. Local law enforcement has records regarding the arrest or issuance of a ticket. These records are locally maintained with no central database. The prosecutor has records regarding charge information. The court has records regarding charges, dispositions, and sentencing. Court records are maintained at the local trial courts. There are 242 trial courts in the state. The majority of these courts submit case-level data to a centralized database; however, this database is not the official criminal history. MSP is responsible for keeping the official criminal history records, which consist of the arrest segment, the charge segment, and the court disposition segment. Also, courts do not have the ability to check the nationwide criminal history of an individual. Law enforcement must provide the official criminal history that includes convictions in other states.

Among other issues to note, synthetic marijuana is still illegal under state law, but synthetic and plant-based marijuana share the same code in the system currently used by prosecutors, courts, and law enforcement. Courts would not be able to determine, based on the data, if defendants are convicted for real or synthetic marijuana. There is not data collected by the court that would reflect the date of "10 years after their monitoring by the justice system ends." Capturing this data would require programming by trial courts, the Department of Corrections, and MSP to track this data in order to count the number of years that have passed. Courts' case management systems cannot mark individual counts or charges within a case as nonpublic. They may only mark the entire case as nonpublic. In order to make one charge nonpublic, the courts' case management systems would require additional programming.

### **Corrections**

According to Department of Corrections, the fiscal impact of the bills would depend on the extent of their involvement with the automatic expungement system. The department would be able to process expanded expungements in the current OMNI system, but if the department is to have a major role in a new automated system, the fiscal impact could be significant.

### **Information Technology**

The bills would result in significant information technology (IT) costs related to necessary computer system changes for IT systems across multiple state departments, including the Department of State, Department of State Police, Department of Corrections, and the Judiciary. IT costs may be incurred by each state department, but since IT work must be coordinated and integrated across multiple Executive branch departments, IT costs would likely be largely one-time increases incurred by the Department of Technology, Management, and Budget (DTMB) to manage an enterprisewide IT project, or projects, to incorporate the bills' changes into existing IT systems. Relevant state departments would

also incur marginal ongoing IT maintenance and data storage cost increases once IT system changes have been implemented. The cost of an IT project has not yet been determined. The median cost for an IT project for the state government is approximately \$300,000; however, costs to DTMB may greatly exceed this amount due to IT system changes being required across multiple systems and departments.

DTMB is charged with providing IT services only to Executive branch departments, which does not include the Judiciary. Additional IT costs to the Judiciary would need to be supported by funds appropriated to it.

### **State Police**

The bill package would cause an indeterminate, though likely significant, increase in expenditures by the Department of State Police (MSP), due to necessary information technology activities that would need to be conducted in order to implement the bills. The department administers the Michigan Criminal History Record Database, but there are a variety of information systems within different entities that comprise the entirety of the state's criminal history record. Some systems that retain criminal history records do not interface with each other, and some require manual input from staff members. The department does not currently have a cost projection for implementing these bills, as the process is likely to be a multi-department undertaking.

### **Licensing and Regulatory Affairs and Insurance and Financial Services**

The bills would have an indeterminate fiscal impact on the Departments of Licensing and Regulatory Affairs and Insurance and Financial Services by expanding the populations of persons who would be eligible to obtain licensure in various regulated professions if various felony and misdemeanor offenses were expunged from criminal records.

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