

House Bill 4980 (Substitute S-5 as reported)  
House Bill 4981 (Substitute H-2 as reported without amendment)  
House Bill 4982 (Substitute S-2 as reported)  
House Bill 4983 (Substitute H-1 as reported without amendment)  
House Bill 4984 (Substitute H-1 as reported without amendment)  
House Bill 4985 (Substitute S-2 as reported)  
House Bill 5120 (Substitute H-1 as reported without amendment)  
Sponsor: Representative Eric Leutheuser (H.B. 4980)  
Representative Pauline Wendzel (H.B. 4981)  
Representative Luke Meerman (H.B. 4982)  
Representative Yousef Rahbi (H.B. 4983)  
Representative David LaGrand (H.B. 4984)  
Representative Sherry Gay-Dagnogo (H.B. 4985)  
Representative Isaac Robinson (H.B. 5120)  
House Committee: Judiciary  
Senate Committee: Judiciary and Public Safety

## **CONTENT**

House Bill 4984 (H-1) would amend Section 1 of Public Act (PA) 213 of 1965, which provides for setting aside convictions in certain criminal cases, to do the following:

- Modify the circumstances under which a person who was convicted of one or more criminal offenses could file an application to set aside one or more convictions.
- Delete a provision specifying that a person may not apply to have set aside, and a judge may not set aside, certain offenses (that would be recodified in Section 1c, which House Bill 4981 (H-2) would add).
- Delete provisions prescribing certain waiting periods before a person may file an application under Section 1; requiring an applicant to submit a copy of his or her application, a complete set of fingerprints, and a \$50 fee to the Michigan State Police (MSP); and requiring the MSP to submit the fingerprints to the Federal Bureau of Investigation (FBI) (that would be recodified in Section 1d, which House Bill 4983 (H-2) would add).

House Bill 4985 (S-1) would add Section 1b to PA 213 to require that more than one felony offense or more than one misdemeanor offense be treated as a single felony or misdemeanor conviction if the underlying felony or misdemeanor offenses occurred within 24 hours and arose from the same transaction, provided that none of those felony or misdemeanor offenses constituted certain crimes specified in the bill.

House Bill 4981 (H-2) would add Section 1c to the PA 213 to prohibit a person from applying to have set aside, and prohibit a judge from setting aside, certain convictions.

House Bill 4983 (H-1) would add Section 1d to PA 213 to do the following:

- Prescribe certain waiting periods before a person could file an application under Section 1 of PA 213.

- Specify that if a petition were denied by the convicting court, a person could not file another petition concerning the same conviction or convictions with the convicting court until three years after the date the court denied the previous petition, unless it specified an earlier date for filing another petition in the order denying the petition.
- Specify that an application under Section 1 would be invalid unless it contained certain information.
- Require an applicant to submit a copy of his or her application, a complete set of fingerprints, and a \$50 fee to the MSP.
- Require the MSP to compare those fingerprints with its records, and to forward an electronic copy of the fingerprints to the FBI.
- Require the MSP to report to the court in which the application was filed the information contained in the MSP's records with respect to any pending charges against the applicant, any record of conviction of the applicant, and the setting aside of any conviction of the applicant and would have to report to the court any similar information obtained from the FBI.
- Prohibit a court from acting on an application until the MSP reported the required information to the court.
- Require a copy of the application to be served on the Attorney General and on the office of each prosecuting attorney who prosecuted the crime or crimes the applicant was seeking to set aside.

House Bill 4982 (S-1) would add Section 1e to PA 213 to do the following:

- Allow a person convicted of one or more misdemeanor marijuana offenses to apply to set aside the conviction or convictions.
- Require a copy of an application to be served on the agency that prosecuted the offense or offenses the applicant was seeking to set aside.
- Specify that there would be a rebuttable presumption that a conviction for a misdemeanor marijuana offense sought to be set aside by an applicant was based on activity that would not have been a crime if committed on or after December 6, 2018, and specify the how the presumption could be rebutted.

House Bill 5120 (H-1) would add Section 1f to PA 213 to do the following:

- Require an arresting agency and the MSP to maintain a nonpublic record created under the Act, if an application to set aside a conviction or convictions were granted.
- Prohibit an applicant from seeking resentencing in another criminal case he or she was sentenced for during which the conviction or convictions at issue were used in determining the appropriate sentence for him or her, if an application were granted under Section 1e.
- Allow an aggrieved party to seek a rehearing or reconsideration.
- Specify that the setting aside of a conviction under Section 1e would not entitle the applicant to the return of certain fines, costs, or fees.

House Bill 4980 (S-5) would add Section 1g of PA 213 to do the following:

- Prescribe circumstances under which certain convictions would have to be set aside without filing an application under Section 1.
- Specify that setting aside a conviction without filing an application would not apply to certain convictions.
- Require the Department of Technology, Management, and Budget (DTMB) to develop and maintain a computer-based program for the setting aside of convictions under Section 1g.
- Specify that setting aside a conviction under Section 1g would not be subject to reinstatement.

Additionally, the bill would add Section 1h to PA 213 to require a court to reinstate a conviction that was set aside if the conviction were set aside improperly or erroneously or upon a motion if the court determined that the individual had not made a good-faith effort to pay ordered restitution.

The bill also would add Section 1i to PA 213 to do the following:

- Create the "Michigan Set Aside Fund" within the Department of Treasury.
- Require the State Treasurer to be the administrator of the Fund for auditing purposes, and require the State Treasurer to deposit money or assets into the Fund, to direct the investment of the Fund, and to credit to the Fund any interest and earnings from Fund investments.
- Prescribe how the MSP and the DTMP would have to spend money from the Fund, upon appropriation.

In addition, the bill would amend PA 213 to do the following:

- Specify that after entering an order to set aside a conviction under Sections 1e and 1g, or after the automatic setting aside of a conviction under Section 1g, the applicant would be considered not to have been previously convicted, subject to exceptions.
- Specify that if the conviction set aside under Section 1e or 1g were for a listed offense as defined in Section 2 of the Sex Offenders Registration Act, the applicant would be considered to have been convicted of that offense for purposes of that Act.
- Prohibit a conviction that had been set aside under the Act from being used as evidence in an action for negligent hiring, admission, or licensure against any person.
- Specify that a conviction that was set aside under Section 1 or Sections 1e or 1g could be considered a prior conviction for purposes of charging certain crimes as a second or subsequent offense or for sentencing.

MCL 780.622 et al. (H.B. 4980)  
Proposed MCL 780.621c (H.B. 4981)  
Proposed MCL 780.621e (H.B. 4982)  
Proposed MCL 780.621d (H.B. 4983)  
MCL 780.621 (H.B. 4984)  
Proposed MCL 780.621b (H.B. 4985)  
Proposed MCL 780.621f (H.B. 5120)

Legislative Analyst: Stephen Jackson

## **FISCAL IMPACT**

### Corrections

The bills could have a significant fiscal impact on the Department of Corrections; however, that cost is indeterminate and would depend on the level of involvement that the Department played in the automatic expungement system. The Department currently has an expungement system in place; however, if the Department played a major role in the automatic expungement system under the proposed bills, the Department could see a need to update their current system, the costs for which could be significant.

### Judiciary

House Bills 4980 through 4985 would have an indeterminate, though likely negative, fiscal impact on local courts and the State Court Administrative Office. Additional State and local costs likely would come from an increase in the number of expungement filings and the

Judiciary's participation and contribution to the creation and or management of a shared criminal records database.

There would be several fees associated with the expungement process (\$50 to the MSP for a background check, \$10 to \$15 to MSP for fingerprints, \$10 to the Internet Criminal History Access Tool (ICHAT), but no filing fees that would go to a Judiciary restricted fund. Expungement hearings typically do not take very long, but a large increase in those hearings could increase administrative costs and hearing times for courts.

It is not clear if the bill package would require the State to create and institute a new criminal records database to be shared between multiple departments and local systems statewide. Without the creation of a new database, new expungements as a result of the bill package would need to be updated within ICHAT, local law enforcement records, local court records, prosecutor records, and, potentially, the judicial information warehouse. (Currently, offenders listed in the Offender Tracking Information System database would not be affected by the bill package, and that system likely would not need changes.) In contrast, a new shared records system would require an investment for its creation and maintenance across several departments.

#### Insurance and Financial Services

The bills could have a minor positive fiscal impact on the Department of Insurance and Financial Services. It is possible that individuals who could not apply for an occupational license because of their records would do so following expungement. However, it is not possible to estimate the number of individuals who would pursue this course of action. Any revenue increases due to application and license fees would be used to fund licensing administration and enforcement.

In addition, the Department could incur unknown costs related to any information technology changes that would be required because of the bills.

#### Licensing and Regulatory Affairs

The bills could have a minor positive fiscal impact on the Department of Licensing and Regulatory Affairs. It is possible that individuals who could not apply for an occupational license because of their records would do so following expungement. However, it is not possible to estimate the number of individuals who would pursue this course of action. Any revenue increases due to application and license fees would be used to fund licensing administration and enforcement.

In addition, the Department could incur unknown costs related to any information technology changes that would be required because of the bills.

#### State Police

The bills would have a significant fiscal impact on the MSP. According to administration estimates, initial one-time costs for the first two years of the bills' provisions would include \$6.0 million to build an automatic record expungement system, and \$1.0 million to develop necessary enhancements to the Criminal History Records (CHR) and the ICHAT systems. Over a five-year period, ongoing costs would include \$2.0 million to maintain and enhance the newly established automatic expungement system (\$500,000 annually, beginning in fiscal year (FY) 2020-21), \$400,000 for subsequent necessary adjustments to CHR and ICHAT systems (\$100,000 annually, beginning in FY 2020-21), and \$9.1 million for the handling of additional anticipated manual applications to set aside convictions (\$1.7 million in FY 2019-

20; \$1.8 million in FY 2020-21 and FY 2021-22; and \$1.9 million for FY 2022-23 and FY 2023-24). The MSP estimate includes the cost of hiring of an additional 12.0 department FTEs. Total required MSP expenditures for the first five years would be \$18.5 million.

The provision for a \$50 application fee for a sentence set aside application, to be paid to MSP, would provide an offset to the MSP for the costs of producing fingerprint analysis, but would have no significant fiscal offset to the total MSP costs of the bill package. Local law enforcement agencies could have some record-keeping expenses under the bills, in an amount that cannot be determined at this time.

#### Technology, Management, and Budget

The bills would have a significant fiscal impact on the Department of Technology, Management, and Budget. Information technology project upgrade and replacement costs could be split between the respective departments and the DTMB, the latter as interdepartmental grants. The DTMB has developed an estimate of approximately \$25.7 million across Executive Branch departments in the first five years for the automatic expungement system, but total costs specific to the DTMB are unknown. The Department likely would engage a private contractor at unknown costs. The Department estimates that approximately 17.0 FTEs would be needed to perform related work in FY 2019-20. It estimates that only 3.0 FTEs would be needed by FY 2023-24. However, these figures presume that a substantial portion of this work would be completed in FY 2019-20. Delays could result in higher costs and an extended timeline for completion.

#### Treasury

House Bill 4980 (S-5) would have a minimal fiscal impact on the Department of Treasury. Specifically, the creation and administration of the Michigan Set Aside Fund would have a minimal fiscal impact and could be accomplished within current appropriations.

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