



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4980 (Substitute H-1 as passed by the House)
House Bill 4981 (Substitute H-2 as passed by the House)
House Bill 4982 (Substitute H-1 as passed by the House)
House Bill 4983 (Substitute H-1 as passed by the House)
House Bill 4984 (Substitute H-1 as passed by the House)
House Bill 4985 (Substitute H-1 as passed by the House)
House Bill 5120 (Substitute H-1 as passed by the House)
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

Date Completed: 6-10-20

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 (H-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 felony or misdemeanor convictions 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 (H-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 misdemeanor marijuana-related conviction 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 (H-1) 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.**

The bill also would amend the Act to do the following:

- **Specify that after entering an order to set aside a conviction under Sections 1e and 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.**

The bills are tie-barred to each other. Each bill would take effect 180 days after its enactment.

House Bill 4984 (H-1)

Under Section 1 of PA 213, except as otherwise provided in the Act, a person who is convicted of not more than one offense may file an application with the convicting court for the entry of an order setting aside one or more convictions as follows:

- A person who is convicted of not more than one felony offense and not more than two misdemeanor offenses may petition the convicting court to set aside the felony conviction.
- Except as otherwise provided, a person who is convicted of not more than two misdemeanor offenses and no other felony or misdemeanor offenses may petition the court or the convicting court to set aside one or both of the misdemeanor convictions.
- A person who is convicted of a violation or an attempted violation of Section 520e of the Penal Code, before January 12, 2015, may petition the convicting court to set aside the conviction if the individual has not been convicted of another offense other than not more than two minor offenses.

Instead, under the bill, except as otherwise provided in the Act, a person who is convicted of one or more criminal offenses could file an application with the convicting court for the entry of an order setting aside one or more convictions as follows:

- Except as otherwise provided, a person convicted of one or more criminal offenses, but not more than a total of three felony offenses, in Michigan, could apply to have all of his or her convictions from the State set aside.
- An applicant could not have more than a total of two convictions for an assaultive crime set aside under the Act during his or her lifetime.

- An applicant could not have more than one felony conviction for the same offense set aside if the offense were punishable by more than 10 years' imprisonment.
- A person who was convicted of a violation or an attempted violation of Section 520e of the Penal Code, before January 12, 2015, could petition the convicting court to set aside the conviction if the individual had not been convicted of another offense other than not more than two minor offenses.

The Act defines "assaultive crime" as that term is defined in Section 9a of Chapter 10 (New Trials, Writs of Error and Bills Of Exceptions) of the Code of Criminal Procedure: an offense against a person described in Section 81c(3), 82, 83, 84, 86, 87, 88, 89, 90a, 90b(a) or (b), 91, 200 to 212a, 316, 317, 321, 349, 349a, 350, 397, 411h(2)(b) or (3), 411i, 520b, 520c, 520d, 520e, 520g, 529, 529a, 530, or 543a to 543z of the Michigan Penal Code. (Those sections prohibit the following conduct, respectively: assault or assault and battery against a Family Independence Agency employee, felonious assault, assault with intent to commit murder, assault with intent to do great bodily harm less than murder, assault with intent to maim, assault with intent to commit burglary or any other felony, assault with intent to rob and steal (unarmed or armed), intentional assault of a pregnant woman, intentional assault of a pregnant woman that results in miscarriage or still birth or great bodily harm to an embryo or fetus, attempted murder, offenses involving explosives or bombs, first- and second-degree murder, manslaughter, kidnapping, prisoner taking person as hostage, leading or carrying away a child under 14, mayhem (intentional disfigurement), stalking a person under 18 years of age, contacting the stalking victim while on probation, first-, second-, third-, and fourth-degree criminal sexual conduct (CSC), assault with intent to commit CSC, larceny and aggravated assault with a dangerous weapon, carjacking, larceny by violence or assault, and committing various acts of terrorism.)

Under the bill, the term also would include any of the following:

- A violation of Chapter 11 (Assaults) of the Penal Code, not otherwise included in Section 9a.
- A violation of Section 110a, 136b, 234a, 234b, 234c, 349b, or 411h(2)(a) of the Michigan Penal Code, or any other violent felony.
- A violation of a law of another state or of a political subdivision of Michigan or of another state that substantially corresponds to a violation described above.

(Sections 110a, 136b, 234a, 234b, 234c, 349b, and 411h(2)(a) of the Penal Code prescribe the following offenses, respectively: first-, second-, and third-degree home invasion; first-, second-, third-, and fourth-degree child abuse; intentionally discharging a firearm from a vehicle, at a dwelling or occupied structure, or at an emergency vehicle; unlawful imprisonment; and stalking.)

"Violent felony" would mean that term as defined in Section 36 of the Corrections Code. Section 36 of the Corrections Code defines "violent felony" as an offense against a person in violation of Section 82, 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520e, 520g, 529, 529a, or 530 of the Penal Code.

House Bill 4985 (H-1)

Under the bill, for the purposes of PA 213, more than one felony offense or more than one misdemeanor offense would have to be treated as a single felony or misdemeanor conviction if the felony or misdemeanor convictions were contemporaneous such that all of the felony or misdemeanor offenses occurred within 24 hours and arose from the same transaction, provided that none of those felony or misdemeanor offenses constituted any of the following:

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

"Dangerous weapon" would mean that term as defined in Section 110a of the Penal Code. (Under Section 110a of the Penal Code, "dangerous weapon" means one or more of the following:

- A loaded or unloaded firearm, whether operable or inoperable.
- A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.
- An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.
- An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described above.)

House Bill 4981 (H-2)

Under the bill, a person could not apply to have set aside, and a judge could not set aside, a conviction for any of the following:

- A felony for which the maximum punishment was life imprisonment or an attempt to commit a felony for which the maximum was life imprisonment.
- A violation or attempted violation of Sections 136b(3), 136d(1)(b) or (c), 145c, 145d, 520c, or 520g of the Penal Code.
- A violation or attempted violation of Section 520e of the Penal Code, if the violation occurred on or after January 12, 2015.
- A felony conviction for domestic violence, if the person had a previous misdemeanor conviction for domestic violence.
- A violation of former Section 462i or 462j or Chapter 67A (Human Trafficking) or Chapter 83-A (the Michigan Anti-Terrorism Act) of the Penal Code.

(Sections 136b(3), 136d(1)(b), and 136d(1)(c) of the Penal Code prescribe the following offenses, respectively: second-degree child abuse, second-degree child abuse in the presence of another child, and contributing to neglect or delinquency of children. Section 145c prescribes certain offenses related to child pornography. Section 145d prohibits a person from using the internet or a computer, computer program, computer network, or computer system to communicate with any person for the purpose of committing certain crimes. Former Section 462i pertained to kidnapping or attempted kidnapping, CSC or attempted CSC, and attempt to kill. Former Section 462j pertained to providing or obtaining labor or services by force, fraud, or coercion as crime and recruiting, harboring, transporting, providing, or obtaining person for involuntary servitude or debt bondage as crime.)

Also, a person could not apply to have set aside, and a judge could not set aside, a conviction for the following traffic offenses:

- A conviction for operating while intoxicated.
- 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 that was committed while the individual was operating the commercial motor vehicle or was in another manner a commercial motor vehicle violation.
- Any traffic offense that caused injury or death.

The prohibition on the setting aside of convictions described above also would apply to the setting aside of convictions without application.

An order setting aside a conviction for a traffic offense could not require that the conviction be removed or expunged from the applicant's driving record maintained by the Secretary of State as required under the Michigan Vehicle Code.

House Bill 4983 (H-1)

The bill would require that an application under Section 1 of PA 213 to set aside more than one felony conviction be filed only seven or more years after whichever of the following events occurred last:

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

An application under Section 1 to set aside one or more serious misdemeanor convictions or one felony conviction could be filed only five or more years after whichever of the following events occurred last:

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

An application under Section 1 to set aside one or more misdemeanor convictions, other than an application to set aside a serious misdemeanor or any other misdemeanor conviction for an assaultive crime, could be filed only three years after whichever of the following events occurred last:

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

For an application under Section 1, a court could not enter an order setting aside a conviction or convictions unless all of the following applied:

- The applicable time period had elapsed.
- There were not criminal charges pending against the applicant.
- The applicant had not been convicted of any criminal offense during the applicable time period.

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 it denied the previous petition, unless it specified an earlier date for filing another petition in the order denying the petition.

An application to set aside one or more misdemeanor convictions for a violation of Sections 448, 449, or 450 of the Penal Code or a local ordinance substantially corresponding to Sections 448, 449, or 450, could be filed at any time following the date of the conviction to be set aside. A person could apply to have more than one of those misdemeanor convictions set aside.

(Sections 448, 449, and 450 of the Penal Code prohibit the following conduct, respectively: solicitation of prostitution by a person 16 years of older, admitting to a place for the purpose of prostitution by a person 16 years or older, and engaging services for purposes of prostitution.)

An application under Section 1 would be invalid unless it contained the following information and was signed under oath by the person whose conviction was or convictions were to be set aside:

- The applicant's full name and current address.
- A certified record for each conviction that was to be set aside.
- For an application to set aside a conviction for one or more criminal offenses, a statement that the applicant had not been convicted of an offense during the applicable time period required under the Act.
- A statement listing all action specified in the Act that were initiated against the applicant and had been dismissed.
- A statement as to whether the applicant had filed an application previously to set aside this or other convictions and, if so, the disposition of the application.
- A statement as to whether the applicant had any other criminal charge against him or her in any court in the US or in any other country.
- If the person were seeking to have one or more convictions set aside one or more misdemeanor convictions for a violation of Sections 448, 449, or 450 of the Penal Code or a local ordinance substantially corresponding to Sections 448, 449, or 450, a statement that he or she met the criteria to do so, together with a statement of the facts supporting his or her contention that the conviction was a direct result of his or her being a victim of human trafficking.
- A consent to the use of the nonpublic record created under Section 3 of the Act (described below) to the extent authorized by Section 3.

The applicant would have to submit a copy of the application and one complete set of fingerprints to the MSP. The MSP would have to compare those fingerprints with its records, including the nonpublic record created under Section 3, and would have to forward an electronic copy of a complete set of fingerprints to the Federal Bureau of Investigation for a comparison with the records available to that agency. The MSP would have 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. The court could not act on the application until the MSP reported the required information to the court.

The copy of the application submitted to the MSP would have to be accompanied by a \$50 fee payable to the State of Michigan that would have to be used by the MSP to defray the expenses incurred in processing the application.

A copy of the application would have 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, and an opportunity would have to be given to the Attorney General and to the prosecuting attorney to contest the application. If a conviction were for an assaultive crime or a serious misdemeanor, the prosecuting attorney would have to notify the victim of the assaultive crime or serious misdemeanor of the application under Section 22a or 77a of the Crime Victim's Rights Act. The notice would have to be by first-class mail to the victim's last known address. The victim would have the right to appear at any proceeding under the Act concerning that conviction and to make a written or oral statement.

For an application to set aside a conviction for one or more criminal offenses, after the hearing of the application the court could require the filing of affidavits and the taking of proofs as it considered proper.

For an application to set one or more misdemeanor convictions for a violation of Sections 448, 449, or 450 of the Penal Code or a local ordinance substantially corresponding to Sections 448, 449, or 450, if the applicant proved to the court by a preponderance of the evidence that the conviction was a direct result of his or her being a victim of human trafficking, the court could, subject to the requirements described below, enter an order setting aside the conviction.

If the court determined that the circumstances and behavior of an applicant described above, from the date of the applicant's conviction or convictions to the filing of the application warranted setting aside the conviction or convictions, and that setting aside the conviction or convictions was consistent with the public welfare, the court could enter an order setting aside the conviction or convictions.

The setting aside of a conviction or convictions under PA 213 would be a privilege and conditional and would not be a right.

House Bill 4982 (H-1)

Under the bill, beginning January 1, 2020, a person convicted of one or more misdemeanor marihuana offenses in violation of the laws of Michigan or a local ordinance of a political subdivision of Michigan could apply to set aside the conviction or convictions for a misdemeanor marihuana offense.

An application would have to contain the applicant's full name and current address and a certified record of each conviction that was to be set aside.

A copy of the application would have to be served on the agency that prosecuted the offense or offenses the applicant was seeking to set aside.

A rebuttable presumption that a misdemeanor marihuana-related conviction 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, would arise after filing an application. The presumption could be rebutted by the presentation of evidence by the prosecuting agency that prosecuted the case that demonstrated by a preponderance of the evidence that the conduct on which the applicant's conviction was or convictions were based would constitute a criminal violation of the laws of the State or a political subdivision of the State if it had been committed on or after December 6, 2018. An answer would have to be filed within 60 days from the date of service of the application. If an answer were filed with the convicting court, the answering party would have to serve the answer on the other parties to the matter.

After the 60-day period expired, if the prosecuting agency had not filed an answer to the application addressing the rebuttable presumption, the convicting court would have to enter, within 21 days, an order setting aside the conviction or convictions and serve a copy of the order on the applicant, the arresting agency, the prosecuting agency, and the Michigan State Police.

If the prosecuting agency filed an answer addressing the rebuttable presumption, the convicting court would have to set the matter for a hearing within 30 days from receiving the answer, and serve a notice of the hearing on the applicant. At the hearing, the prosecuting agency would have to prove by a preponderance of the evidence that a conviction or convictions sought to be set aside by an applicant were based on conduct that would constitute a criminal violation of the laws of the State or a political subdivision of the State if it had been committed on or after December 6, 2018. An applicant would not be required to present evidence that his or her conviction was based on conduct that would not constitute a criminal violation of the laws of the State or a political subdivision of the State if it had been committed on or after December 6, 2018. The evidentiary burden would rest solely on the objecting prosecuting agency. After a hearing, the court would have to enter an order denying or granting the application within 14 days after completion of the hearing and serve any written opinions and orders, including an order setting aside the conviction or conviction, on the parties, including the MSP. The rules of evidence would not apply to a hearing.

House Bill 5120 (H-1)

The bill would require an arresting agency and the MSP to maintain the nonpublic record created under Section 3 for use as authorized under Section 3 if an application to set aside a conviction or convictions were granted.

If an application to set aside a conviction or convictions were granted under Section 1e, the applicant could not seek 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, whether or not the setting aside of the conviction or convictions would have changed the scoring of a prior record variable for purposes of the sentencing guidelines or otherwise.

A party aggrieved by the ruling of the convicting court considering an application could seek a rehearing or reconsideration under the applicable rules of the convicting court or could file an appeal with the circuit court or, if applicable, the Court of Appeals in accordance with the rules of those courts.

The setting aside of a conviction under Section 1e would not entitle the applicant to the return of any fines, costs, or fees imposed as part of the applicant's sentence for the conviction or convictions or of any money or property forfeited by the prosecuting agency or any law enforcement agency as a result of the conduct leading to the conviction or as a result of the conviction itself.

House Bill 4980 (H-1)

Setting Aside a Conviction

Under the bill, beginning two years after the bill's effective date, a felony conviction would have to be set aside without the filing of an application to set aside one or more convictions if both of the following applied:

- Ten years had passed from whichever of the following events occurred last: imposition of the sentence for the conviction or completion of any term of imprisonment for the conviction.
- The conviction or convictions were otherwise eligible to be set aside under Section 1 of PA 213.

Beginning two years after the bill's effective date, a misdemeanor conviction would have to be set aside without filing an application if both of the following applied:

- Seven years had passed from the imposition of the sentence.
- The conviction or convictions were otherwise eligible to be set aside under Section 1.

Not more than two felony convictions and four misdemeanor convictions total could be set aside during an individual's lifetime.

A conviction could not be set aside unless all of the following applied:

- The applicable time period had elapsed.
- There were no criminal charges pending against the applicant.
- The applicant had not been convicted of any criminal offense during the applicable time period required.

Eligibility for a conviction or convictions to be set aside would not apply to an individual who had more than one conviction for an assaultive crime.

If the Governor, the Attorney General, the State Court Administrator, the MSP, and a designated nongovernmental technical consultant agreed in writing that the process for setting aside a conviction without an application could not be implemented by the date required under the bill because of technical limitations, the Governor could issue a directive delaying the implementation for no more than 180 days. The Governor could issue an additional directive or directives delaying the implementation for not more than 180 days after the previous directive expired if the parties agreed to the delay in writing.

An individual whose conviction was set aside impliedly consents to the creation of a nonpublic record.

Eligibility for a conviction or convictions to be set aside would not apply to a conviction for an assaultive crime, a serious misdemeanor, a crime of dishonesty, any other offense punishable by 10 or more years' imprisonment, a violation of Michigan Law listed under Chapter XVII (Sentencing Guidelines) of the Code of Criminal Procedure, the elements of which involve a minor vulnerable adult, injury or serious impairment, death, or any violation related to human trafficking.

"Crimes of dishonesty" would include a felony violation of Chapters 25A (Criminal Enterprises) and 41 (Forgery and Counterfeiting); felony convictions of Sections 174, 174a, 175, 176, 180, and 181 of the Penal Code; and a violation of Public Act 53 of 1979, which prohibits fraudulent access to computers, computer systems, and computer networks.

Computer-Based Program

The bill would require the Department of Technology, Management, and Budget to develop and maintain a computer-based program for the setting aside of convictions under the bill. In fulfilling its duty under this provision, the DTMB could contract with a private technical consultant as needed.

Nonpublic Record

Under Section 3 of PA 213, after entering an order under Section 1, a court must send a copy of the order to the arresting agency and the MSP. Under the bill, this provision also would apply to an order under Sections 1e or 1g.

Section 3 requires the MSP to 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 to which the order applies. Except as otherwise provided, the nonpublic record must be made available only to a court of competent jurisdiction, an agency of the judicial branch of State Government, the Department of Corrections, a law enforcement agency, a prosecuting attorney, the Attorney General, or the Governor upon request and only for certain purposes specified in the Act.

Under the bill, the nonpublic record also could be used for consideration by a court, law enforcement agency, prosecuting attorney, or the Attorney General for use in making determinations regarding charging, plea offers, and sentencing, as applicable.

Other Provisions

Under Section 2 of the Act, after entering an order to set aside a conviction under Section 1, the applicant, for purposes of the law, is considered not to have been previously convicted, except as otherwise provided. Under the bill, this provision also would apply to entry of an order under Sections 1e and 1g.

The Act specifies that if a conviction is set aside under Section 1 for a listed offense as defined in Section 2 of the Sex Offenders Registration Act, the applicant is considered to have been convicted of that offense for that Act's purposes. Under the bill, this provision also would apply to convictions set aside under Sections 1e and 1g.

The bill specifies that PA 213 would not relieve any obligation to pay restitution owed to the victim of a crime, and would not affect the jurisdiction of the convicting court with regard to enforcing an order of restitution.

A conviction, including any records relating to the conviction and any records concerning a collateral action, that had been set aside under the Act, could not be used as evidence in an action for negligent hiring, admission, or licensure against any person.

A conviction that was set aside under Section 1 or Sections 1e or 1g could be considered a prior conviction by a court, law enforcement agency, prosecuting attorney, or the Attorney General, as applicable, for purposes of charging a crime as a second or subsequent offense or for sentencing under Sections 10, 11, and 12 of Chapter 9 (Judgment and Sentence) of the Code of Criminal Procedure.

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, however, 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 as required under the bill, 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.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.