



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4980 (as enacted)
House Bill 4981 (as enacted)
House Bill 4982 (as enacted)
House Bill 4983 (as enacted)
House Bill 4984 (as enacted)
House Bill 4985 (as enacted)
House Bill 5120 (as enacted)

PUBLIC ACT 193 of 2020
PUBLIC ACT 187 of 2020
PUBLIC ACT 192 of 2020
PUBLIC ACT 190 of 2020
PUBLIC ACT 191 of 2020
PUBLIC ACT 188 of 2020
PUBLIC ACT 189 of 2020

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: 12-16-20

CONTENT

House Bill 4984 amends 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 is convicted of one or more criminal offenses may 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 is recodified in Section 1c, which House Bill 4981 adds).**
- **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 are recodified in Section 1d, which House Bill 4983 adds).**

House Bill 4985 adds 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 constitute certain crimes specified in the bill.

House Bill 4981 adds 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 adds Section 1d to PA 213 to do the following:

- Prescribe certain waiting periods before a person may file an application under Section 1 of PA 213.
- Specify that if a petition is denied by the convicting court, a person may not file another petition concerning the same conviction or convictions with the convicting court until three years after the date the court denies the previous petition, unless it specifies an earlier date for filing another petition in the order denying the petition.
- Specify that an application under Section 1 is invalid unless it contains 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 to report to the court any similar information obtained from the FBI.
- Prohibit a court from acting on an application until the MSP reports 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 is seeking to set aside.

House Bill 4982 adds 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 is seeking to set aside.
- Specify that there is 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 may be rebutted.

House Bill 5120 adds 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 does not entitle the applicant to the return of certain fines, costs, or fees.

House Bill 4980 adds Section 1g of PA 213 to do the following:

- Prescribe circumstances under which certain convictions must be set aside without filing an application under Section 1.
- Specify that setting aside a conviction without filing an application do 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 is not subject to reinstatement.**

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

The bill also adds 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 must spend money from the Fund, upon appropriation.**

In addition, the bill amends 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 is not considered to have been previously convicted, subject to exceptions.**
- **Specify that if the conviction set aside under Section 1e or 1g is for a listed offense as defined in Section 2 of the Sex Offenders Registration Act, the applicant may be considered to have been convicted of that offense for purposes of that Act.**
- **Prohibit a conviction that has 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 may be considered a prior conviction for purposes of charging certain crimes as a second or subsequent offense or for sentencing**

The bills take effect on April 11, 2021.

House Bill 4984

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 may 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, may apply to have all of his or her convictions from the State set aside.
- An applicant may 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 may not have more than one felony conviction for the same offense set aside if the offense is punishable by more than 10 years' imprisonment.
- 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.

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 includes 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" means 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

Under the bill, for a petition to set aside a conviction under Sections 1 or 1e, more than one felony offense or more than one misdemeanor offense must 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 constitute 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" means 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

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

- A felony for which the maximum punishment is life imprisonment or an attempt to commit a felony for which the maximum is 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 has 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 may not apply to have set aside, and a judge may 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 applies to the setting aside of convictions without application.

An order setting aside a conviction for a traffic offense does 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

The bill requires 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 occurs last:

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

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

- Imposition of the sentence for the convictions that the applicant seeks to set aside.
- Completion of any term of felony probation imposed for the convictions that the applicant seeks to set aside.
- Discharge from parole imposed for the convictions that the applicant seeks to set aside.
- Completion of any term of imprisonment for the convictions that the applicant seeks 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, may be filed only three years after whichever of the following events occurs last:

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

- Completion of any term of imprisonment for the convictions that the applicant seeks to set aside.

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

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

If a petition is denied by the convicting court, a person may not file another petition concerning the same conviction or convictions with the convicting court until three years after the date it denies the previous petition, unless it specifies 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, may be filed at any time following the date of the conviction to be set aside. A person may 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 is invalid unless it contains the following information and is signed under oath by the person whose conviction is or convictions are to be set aside:

- The applicant's full name and current address.
- A certified record for each conviction that is to be set aside.
- For an application to set aside a conviction for one or more criminal offenses, a statement that the applicant has not been convicted of an offense during the applicable time period required under the Act.
- A statement listing all actions specified in the Act that were initiated against the applicant and have been dismissed.
- A statement as to whether the applicant has 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 has any other criminal charge against him or her in any court in the US or in any other country.
- If the person is 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 meets 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 must submit a copy of the application and one complete set of fingerprints to the MSP. The MSP must compare those fingerprints with its records, including the nonpublic record created under Section 3, and must 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 must report to the court in which the application is 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 must report to the court any similar information obtained from the FBI. The court may not act on the application until the MSP reports the required information to the court. The copy of the application submitted to the MSP must be accompanied by a \$50 fee payable to the State of Michigan that must be used by the MSP to defray the expenses incurred in processing the application.

A copy of the application must be served on the Attorney General and on the office of each prosecuting attorney who prosecuted the crime or crimes the applicant seeks to set aside, and an opportunity must be given to the Attorney General and to the prosecuting attorney to contest the application. If a conviction is for an assaultive crime or a serious misdemeanor, the prosecuting attorney must 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 must be by first-class mail to the victim's last known address. The victim has 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 may require the filing of affidavits and the taking of proofs as it considers 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 proves 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 may, subject to the requirements described below, enter an order setting aside the conviction.

If the court determines 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 warrants setting aside the conviction or convictions, and that setting aside the conviction or convictions is consistent with the public welfare, the court may enter an order setting aside the conviction or convictions.

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

House Bill 4982

Under the bill, beginning January 1, 2020, a person convicted of one or more misdemeanor marijuana offenses may apply to set aside the conviction or convictions for a misdemeanor marijuana offense. "Misdemeanor marijuana offense" means a violation of Sections 7403(2)(d), 7404(2)(d), or a marijuana paraphernalia violation of Section 7453 of the Public Health Code, or a violation of a local ordinance substantially corresponding to those sections, or a prohibition regarding marijuana paraphernalia of Section 7453 of the Public Health Code.

An application must 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 must be served on the agency that prosecuted the offense or offenses the applicant seeks to set aside.

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, arises after filing an application. The presumption may be rebutted by the presentation of evidence by the prosecuting agency that prosecuted the case that demonstrates 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 must be filed within 60 days from the date of service of the application. If an answer is filed with the convicting court, the answering party must serve the answer on the other parties to the matter.

After the 60-day period expired, if the prosecuting agency has not filed an answer to the application addressing the rebuttable presumption, the convicting court must 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 files an answer addressing the rebuttable presumption, the convicting court must 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 must prove by a preponderance of the evidence that a conviction sought to be set aside by an applicant was 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 is not 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 rests solely on the objecting prosecuting agency. After a hearing, the court must 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 do not apply to a hearing.

House Bill 5120

The bill requires 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 is granted.

If an application to set aside a conviction or convictions is granted under Section 1e, the applicant may 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 may seek a rehearing or reconsideration under the applicable rules of the convicting court or may 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 does 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

Setting Aside a Conviction

Under the bill, beginning two years after the bill's effective date and subject to any necessary appropriation, a misdemeanor conviction for an offense for which the maximum punishment is up to 92 days' imprisonment is set aside without filing an application if seven years have passed from the imposition of the sentence. Each court must notify the arresting law enforcement agency of each conviction on or before the tenth day of the each month that was set aside for the preceding month. Each law enforcement agency does not need to retain, but must make nonpublic, the notification that the conviction has been set aside, and the record of the arrest, fingerprinting conviction, and sentence of the person in the case to which the notification applied.

Beginning two years after the bill's effective date and subject to any necessary appropriation, a felony conviction that is recorded and maintained in the MSP database must be set aside without the filing of an application to set aside one or more convictions if both of the following apply:

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

Beginning two years after the bill's effective date and subject to any necessary appropriation, a conviction for a misdemeanor conviction for an offense for which the maximum punishment is up to 92 days' imprisonment that is recorded and maintained in the MSP database must be set aside without filing an application if seven years have passed from the imposition of the sentence.

Beginning two years after the bill's effective date and subject to any necessary appropriation, a conviction for a misdemeanor conviction for an offense for which the maximum punishment is imprisonment for 93 days or more that is recorded and maintained in the MSP database must be set aside without the filing of an application if seven years have passed from the imposition of the sentence.

Except as otherwise provided, not more than two felony convictions and four misdemeanor convictions total that are recorded and maintained in the MSP database may be set aside during an individual's lifetime. The limit on the number of misdemeanor convictions that may be set aside does not apply to the setting aside of a conviction for a misdemeanor offense for which the maximum punishment was up to 92 days' imprisonment.

A conviction for a felony offense or a misdemeanor offense for which the maximum punishment is imprisonment for 93 days or more may not be set aside unless all of the following apply:

- The applicable time period has elapsed.
- There are no criminal charges pending in the MSP database against the applicant.
- The applicant has not been convicted of any criminal offense during the applicable time period required.

The provisions pertaining to setting aside a conviction for a felony offense or a misdemeanor offense for which the maximum punishment is imprisonment for 93 days or more do not apply

to an individual who has more than one conviction for an assaultive crime or an attempt to commit an assaultive crime that is recorded and maintained in the MSP database.

If the Governor determines that the process for setting aside a conviction without an application cannot be implemented by the date required under the bill because of technical limitations, he or she may issue a directive delaying the implementation for no more than 180 days. The Attorney General, the State Court Administrator, or the Director of the MSP may recommend to the Governor a delay of implementation.

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

The provisions pertaining to setting aside a conviction for a felony offense or a misdemeanor offense for which the maximum punishment is imprisonment for 93 days or more do not apply to a conviction recorded and maintained in the MSP database for the commission or an attempted commission of any of the following:

- An assaultive crime.
- A serious misdemeanor.
- A crime of dishonesty.
- 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, or death
- Any violation related to human trafficking.
- Any other offense, not otherwise listed above that is punishable by imprisonment of 10 or more years.

"Crimes of dishonesty" 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.

The setting aside of a conviction without an application is subject to reinstatement (described below).

Computer-Based Program

The bill requires 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 may contract with a private technical consultant as needed.

Electronically Accessible Record

The bill requires the MSP to create and maintain an electronically accessible record of each conviction recorded and maintained in the MSP database that was set aside and must be provided to or accessible by each court in the State. An electronic record created as required under this provision may be used by a court only for purposes of updating locally maintained court records.

Implementation

The implementation of Section 1g is subject to appropriation. The MSP and the DTMB must begin work to implement Section 1g immediately upon appropriation.

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 does apply to an order under Sections 1e or 1g, or other notification regarding a conviction that is automatically set aside under section 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 may 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.

Reinstatement

Upon the occurrence of the circumstances described below, a conviction that was set aside by operation of law must be reinstated by the court as provided below.

If it is determined that a conviction was improperly or erroneously set aside because the conviction was not eligible to be set aside or any other provision of the Act, the court must, on its own motion, reinstate the conviction.

Upon a motion by a person owed restitution, or on its own motion, a court must reinstate a conviction that was set aside for which the individual whose conviction was set aside was ordered to pay restitution if the court determines that the individual has not made a good-faith effort to pay the ordered restitution.

Michigan Set Aside Fund

The bill creates the "Michigan Set Aside Fund" within the Department of Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund. The State Treasurer must direct the investment of the Fund and must credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year remains in the fund and does not lapse to the General Fund. The State Treasurer is the administrator of the Michigan Set Aside Fund for auditing purposes.

The MSP, the DTMB, and the State Court Administrative Office must spend money from the Fund, upon appropriation, only for one or more of the following purpose:

- Implementation costs associated with changes made by the bill.
- System upgrades necessitated by the changes made by the bill.
- Staffing needs necessitated by the changes made by the bill.

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 applies to entry of an order

under Sections 1e and 1g or upon the automatic setting aside of a conviction under Section 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 applies to convictions set aside under Sections 1e and 1g.

The bill specifies that PA 213 does not relieve any obligation to pay restitution owed to the victim of a crime, and does not affect the jurisdiction of the convicting court or the authority of any court order 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 has been set aside under the Act, may not be used as evidence in an action for negligent hiring, admission, or licensure against any person.

A conviction that is set aside under Section 1 or Sections 1e or 1g may 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 may have a significant fiscal impact on the Department of Corrections; however, that cost is indeterminate and depends on the level of involvement that the Department plays in the automatic expungement system. The Department currently has an expungement system in place; however, if the Department plays a major role in the automatic expungement system under the bills, the Department may see a need to update their current system, the costs for which may be significant.

Judiciary

House Bills 4980 through 4985 will have an indeterminate, though likely negative, fiscal impact on local courts and the State Court Administrative Office. Additional State and local costs likely will 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 are 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 go to a Judiciary restricted fund. Expungement hearings typically do not take very long, but a large increase in those hearings may increase administrative costs and hearing times for courts.

It is not clear if the bill package requires 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 will 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 will not be affected by the bill package, and that system likely will not need changes.) In contrast, a new shared records system will require an investment for its creation and maintenance across several departments.

Insurance and Financial Services

The bills may have a minor positive fiscal impact on the Department of Insurance and Financial Services. It is possible that individuals who may not have applied for an occupational license because of their records may do so following expungement. However, it is not possible to estimate the number of individuals who may pursue this course of action. Any revenue increases from application and license fees may be used to fund licensing administration and enforcement. In addition, the Department may incur unknown costs related to any information technology changes that are required because of the bills.

Licensing and Regulatory Affairs

The bills may have a minor positive fiscal impact on the Department of Licensing and Regulatory Affairs. It is possible that individuals who may not have applied for an occupational license because of their records may do so following expungement. However, it is not possible to estimate the number of individuals who may pursue this course of action. Any revenue increases from application and license fees may be used to fund licensing administration and enforcement. In addition, the Department may incur unknown costs related to any information technology changes that may be required because of the bills.

State Police

The bills will 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 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 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 are \$18.5 million.

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

Technology, Management, and Budget

The bills may have a significant fiscal impact on the Department of Technology, Management, and Budget. Information technology project upgrade and replacement costs may 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 will engage a private contractor at unknown costs. The Department estimates that approximately 17.0 FTEs will be needed to perform related work in FY 2019-20. It estimates that only 3.0 FTEs will be needed by FY 2023-24. However, these figures presume that a substantial portion of this work will be completed in FY 2019-20. Delays may result in higher costs and an extended timeline for completion.

Treasury

House Bill 4980 will have a minimal fiscal impact on the Department of Treasury. Specifically, the creation and administration of the Michigan Set Aside Fund may have a minimal fiscal impact and may be accomplished within current appropriations.

Fiscal Analyst: Bruce Baker
Joe Carrasco
Elizabeth Raczkowski
Cory Savino
Michael Siracuse

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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.