

OPERATING WHILE INTOXICATED SET-ASIDE

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Senate Bill 400 as reported from House committee

Sponsor: Sen. Ed McBroom

House Committee: Judiciary

Senate Committee: Judiciary and Public Safety

Complete to 5-19-21

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

BRIEF SUMMARY: Senate Bill 400 would amend 1965 PA 213, which provides for setting aside certain criminal convictions, to extend to five years, from the current three years, the waiting period before a person may petition a court to set aside a first violation operating while intoxicated (OWI) offense.

FISCAL IMPACT: A fiscal analysis is in progress.

THE APPARENT PROBLEM:

Legislation that has passed the House of Representatives (HBs 4219 and 4220) would allow for a person to ask a court to expunge, or set aside, a conviction for operating while intoxicated if the offense did not result in a death or serious injury to another and if the person met certain conditions. A first offense OWI is a misdemeanor. Under the current expungement law, a person must wait only three years after certain events occur (such as the release from jail or completion of probation, whichever occurs later) before applying to set aside a misdemeanor. Because driving drunk or drugged carries a serious risk to public safety, it has been recommended that a five-year waiting period be required before a person could apply to have a first offense OWI conviction set aside. Currently, felony and serious misdemeanor convictions eligible to be set aside require a five-year waiting period.

THE CONTENT OF THE BILL:

Senate Bill 400 would amend 1965 PA 213 to require a person to wait at least five years after whichever of the following events occurs last before filing an application to set aside one operating while intoxicated offense:

- Imposition of the sentence for the conviction the applicant seeks to set aside.
- Completion of probation imposed for the conviction.
- If applicable, discharge from parole imposed for the conviction.
- Completion of any term of imprisonment imposed for the conviction.

The bill would take effect 180 days after its enactment.

The bill is tie-barred to House Bills 4219 and 4220, which means that it could not take effect unless both of those bills were also enacted. House Bills 4219 and 4220, which were passed by the House of Representatives, would allow a person to apply to have set aside, and allow a judge to set aside, a first violation operating while intoxicated offense. Certain

violations, such as a drunk or drugged driving offense that caused the death or serious impairment of a bodily function of another person and any second or subsequent convictions for a drunk or drugged driving offense, would not be included in the offenses eligible to be set aside under the bills.

MCL 780.621d

HOUSE COMMITTEE ACTION:

The House Judiciary committee reported the Senate-passed version of the bill without amendment.

ARGUMENTS:

For:

Senate Bill 400 is a companion bill to House Bills 4219 and 4220, which would allow a person to apply to a court to set aside one OWI conviction in a lifetime if the offense met certain conditions (e.g., the offense did not cause death or serious injury to another person). Under Senate Bill 400, a person would have to wait at least five years after completing a period of incarceration, probation, or parole, whichever occurred later. This waiting period should provide ample time for the person to show the court if the OWI violation was a one-time aberration and that he or she is serious regarding driving responsibly. If the bill is not enacted and House Bills 4219 and 4220 become law, the waiting period to apply for an OWI set aside would default to the statutory waiting period of three years for most misdemeanor offenses.

Against:

Although Senate Bill 400 only affects the waiting period before petitioning a court for an OWI set aside and would not apply to setting aside an offense in which a person was killed or seriously injured, it should be amended to appropriately reflect the seriousness of driving drunk or drugged. For instance, Mothers Against Drunk Driving (MADD) and the Coalition of Ignition Interlock Manufacturers recommend that a provision be added to require a driver, to be eligible for expungement, to submit proof of using an ignition interlock device for at least six months in a row. Doing so has been shown to dramatically reduce the likelihood of a repeat drunk driving offense. All-offender interlock laws reduce recidivism by 67% while the device is in use, according to the Centers for Disease Control and Prevention (CDC). After the device is removed, repeat OWI offenses are reduced by 39% compared to a drunk or drugged driver who never had a device installed.

Currently, such devices are not required for reinstatement of driving privileges for a first violation except for a high BAC, or super drunk, offense (a BAC of 0.17 grams or more). Requiring use of an ignition interlock device as a condition for future consideration of expungement could encourage first-time offenders to voluntarily submit to installation of a device and better ensure they would not become repeat offenders. Other changes to consider could include excluding violations involving high BAC offenses or including a sunset (expiration date) so that the impact of the legislation can be reviewed to see if it is

working as intended. A bill to allow first-offense OWI set-asides last session (SB 1254) was pocket vetoed by the governor. Adopting such amendments to SB 400, however, along with requiring a five-year waiting period, would mitigate public safety concerns.

POSITIONS:

The Prosecuting Attorneys Association of Michigan indicated opposition to the bill.
(5-12-21)

The Coalition of Ignition Interlock Manufacturers indicated opposition to the bill as written. (5-10-21)

Mothers Against Drunk Driving (MADD) indicated that it could support the bill if it were amended to include ignition interlock device requirements, as described above in **Arguments**. (5-19-21)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

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