

# Legislative Analysis



## REVISE CRITERIA FOR EXPUNCTION

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### House Bill 4327

Sponsor: Rep. Mary D. Waters

Committee: Judiciary

Complete to 3-4-05

## A SUMMARY OF HOUSE BILL 4327 AS INTRODUCED 2-17-05

Public Act 213 of 1965 provides a mechanism by which a person who has only one criminal conviction can apply to the court for an order setting aside the conviction. However, a conviction cannot be set aside for a felony that is punishable by life imprisonment (or an attempt to commit such a felony), for a conviction for a violation or attempted violation of the criminal sexual conduct (CSC) statutes (with the exception of CSC in the fourth degree), or for a traffic offense.

House Bill 4327 would amend Public Act 213 to instead allow a person convicted of only one felony offense and no other offenses or not more than two misdemeanor offenses to apply to have either the conviction for the felony offense or one or both of the misdemeanor offenses set aside. The bill would keep the exclusion for a felony offense that is punishable by life imprisonment (which includes CSC in the 1st degree); for convictions for CSC in the 2nd or 3rd degree or assault with the intent to commit CSC in the 1st, 2nd, or 3rd degree; and for traffic offenses.

If a person was convicted of more than one misdemeanor for the following crimes, he or she would not be allowed to apply to set aside any of those convictions, and a judge could not set aside more than one misdemeanor conviction of the following:

- A crime in which the victim was a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or who had resided in the same household.
- A conviction for assault; aggravated assault; misdemeanor stalking; threats or assaults against a person who works for the Family Independence Agency (Lisa's Law); various assaultive crimes against a pregnant woman; and child abuse.

Currently, an application to set aside a conviction can be made five years after the sentence was imposed or five years after completion of any term of imprisonment imposed for that conviction, whichever is later. The bill would revise the time frame. To set aside a felony conviction, a person would have to wait until at least five years after he or she successfully completed probation or parole imposed for that felony, or at least five years after completing imprisonment, whichever was later. For a misdemeanor conviction, a person would have to wait until two years following the successful completion of probation or two years after completion of a term of imprisonment, whichever was later.

In addition, the bill would require an applicant to submit just one complete set of fingerprints to the Department of State Police instead of two as currently required. (This change reflects the current practice of the department to send a copy of the fingerprints to the Federal Bureau of Investigation via electronic transmission. Therefore, two sets are no longer needed.)

Also, the bill would repeal Section 4 of the act which provides that only one conviction can be set aside.

MCL 780.621

**FISCAL IMPACT:**

The bill would have an indeterminate fiscal impact on the state and on local units of government, depending on the numbers and the circumstances of offenders seeking expunction of offenses, and on how expunctions affected sentencing for subsequent offenses by individuals granted expunctions.

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