

Legislative Analysis



REVISE CRITERIA FOR EXPUNCTION OF CRIMINAL RECORD

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5213

Sponsor: Rep. Andy Coulouris

Committee: Judiciary

Complete to 4-14-08

A SUMMARY OF HOUSE BILL 5213 AS INTRODUCED 9-15-07

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 5213 would amend Public Act 213 (MCL 780.621) to instead allow a person to file an application with the convicting court for an order setting aside one or more convictions as follows:

- A person convicted of one felony offense and no other felony or misdemeanor offenses could petition to set aside the felony offense. For purposes of eligibility only under this provision, a traffic offense would not constitute a misdemeanor, except for violations of the drunk driving laws.
- A person convicted of not more than two misdemeanor offenses and no other felony or misdemeanor offenses could apply to have either the felony conviction or one or both of the misdemeanor convictions set aside.

The bill would keep the current 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.

Time limitations. Currently, an application to set aside a conviction can be made five years after the sentence is imposed or five years after completion of any term of imprisonment imposed for that conviction, whichever is later. House Bill 5213 would revise the time limitations. Under the bill, to set aside either a felony or misdemeanor conviction, a person would have to wait until at least five years after the imposition of the sentence or the completion of the probation or parole imposed for that felony or misdemeanor, or at least five years after completing imprisonment, whichever occurred later.

When misdemeanors cannot be set aside. If a person was convicted of more than one misdemeanor for any of 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 a misdemeanor conviction:

** A conviction for assault and battery (including a domestic violence-related assault and battery); aggravated assault; misdemeanor stalking; threats or assaults against a person who works for the Department of Human Services, known as Lisa's Law; various assaultive crimes against a pregnant woman; indecent exposure; and child abuse.

** Also, a person could not apply to set aside, and a judge could not set aside, any misdemeanor conviction if a person is convicted of two misdemeanors and in addition to those had had one or more actions dismissed under a number of statutory provisions that allow for the deferral and dismissal of charges.

These include Section 703 of the Michigan Liquor Control Act (purchase, possession, and consumption by a minor); Section 1070(1)(B)(i) of the Revised Judicature Act (completion of drug treatment program); sections of the Code of Criminal Procedure dealing with assignment of youthful trainees; assault on a spouse, former spouse, individual with a child in common, person in a dating relationship, or household resident; and cases of delayed sentencing; Section 7411 of the Public Health Code relating to first time drug offenses; Section 350a of the Michigan Penal Code, which deals with the taking or retaining of a child by an adoptive or natural parent with the intent to conceal from another with parenting rights; and Section 430 of the Penal Code, which deals with health professionals working under the influence of alcohol or controlled substances. This provision also would include "any other law of this state or of a political subdivision of this state similar to those listed that provides for the deferral and dismissal of a felony or misdemeanor charge."

Definition of Misdemeanor. The bill would define a "misdemeanor" as being a violation of a state penal law that is not a felony; an order, rule, or regulation of a state agency that is punishable by imprisonment for not more than one year or a fine that is not a civil fine, or both; a local ordinance in this state that substantially corresponds to certain misdemeanors listed in the bill that is not a felony; a violation of the law of another state or political subdivision of another state substantially corresponding to listed Michigan misdemeanors that is not a felony; and a similar violation of federal law. "Felony" would mean a violation of a state penal law punishable by imprisonment for more than one year or expressly designated by law to be a felony. (Under this definition, and only for the purpose of an application to have a conviction set aside, a misdemeanor punishable by up to two years imprisonment would be treated like a felony conviction.)

Fingerprints. 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.)

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

Retention of Safeguards. The bill would not affect safeguards currently contained in the law. A copy of the application for expunction would still have to be served on the attorney general and the office of the prosecutor who prosecuted the crime. The attorney general and local prosecutor would still have an opportunity to contest the application. A notice of the application would still have to be sent to the victim of an assaultive crime, and he or she could still appear at any proceeding concerning that conviction and could still make written or oral statements. The bill would clarify that it would be "at the court's discretion" to enter an order setting aside the conviction or convictions, but the court would still have to determine that the expunction was warranted and consistent with the public welfare.

FISCAL IMPACT:

The bill would have little to no fiscal impact. Although there could be increased administrative time to process applications, it is not believed that this would increase costs to the state or local units of government.

The bill would have an indeterminate fiscal impact for the Department of State Police. The cost for processing fingerprints is \$54 and this bill would change the requirement for an applicant from submitting two sets of fingerprints to submitting one set of fingerprints to the State Police. It is unknown how many applicants would submit their fingerprints to the State Police for this purpose. This bill also requires the State Police to forward an electronic copy of the applicant's fingerprints to the FBI and this could generate some staff costs and other administrative costs.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Ben Gielczyk
Bethany Wicksall
Jan Wisniewski

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