

# Legislative Analysis

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## REVISE CRITERIA FOR EXPUNCTION OF CRIMINAL RECORD

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**House Bill 4327 (Substitute H-4)**  
**Sponsor: Rep. Mary D. Waters**  
**Committee: Judiciary**

### Second Analysis (9-19-05)

**BRIEF SUMMARY:** The bill would allow a court order to set aside one felony or no more than two misdemeanor convictions for eligible offenses, revise the time frame for when a person could file for an expunction, and repeal a section of law made obsolete by the bill's provisions. The bill would take effect January 1, 2006.

**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.

### **THE APPARENT PROBLEM:**

Michigan law allows a person with only one criminal conviction to apply to have that conviction set aside (expunged), but he or she must wait at least five years from the date of sentencing or the completion of imprisonment, whichever is later. Certain crimes, such as murder, rape, and traffic offenses are not eligible for expungement. However, if a person has two misdemeanor convictions, even if those were for minor, nonviolent offenses, he or she is not eligible to have either of those convictions expunged, and so may be affected for a lifetime.

It is estimated that 30 percent of adult Americans have criminal records, and studies have shown that about two-thirds of employers will not knowingly hire a person with a past criminal conviction. Even a misdemeanor conviction for a non-violent offense can keep a person from receiving an occupational license under state law. In addition, many are denied housing, even decades later. These statistics are important because research reveals that unemployment and homelessness are major factors influencing whether a person convicted of a crime will commit another one. Lack of employment also results in many of these people being forced to receive state aid and decreases the ability of non-custodial parents to pay child support.

Some people believe that the law should be changed so that a person who had either one felony or two misdemeanor convictions could apply to have those convictions set aside. Legislation has been offered to address this concern.

## ***THE CONTENT OF THE BILL:***

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 (MCL 780.621) to instead allow 1) a person convicted of one felony offense and no other felony or misdemeanor offenses or 2) not more than two misdemeanor offenses and no other felony or misdemeanor offenses to apply to have either the felony conviction or one or both of the misdemeanor convictions 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.

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 4327 would revise the time limitations. Under the bill, to set aside a felony 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 at least five years after completing imprisonment, whichever occurred later. For a misdemeanor conviction, a person would have to wait until two years following the imposition of the sentence or the completion of probation or at least two years after completion of a term of 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 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 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 (formerly the Family Independence Agency), 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 (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.) The bill would also 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.

The bill would take effect January 1, 2006.

## ***BACKGROUND INFORMATION:***

House Bill 4327 was first reported out by the House Committee on Judiciary on March 16, 2005, but was re-referred from the House floor to the Judiciary Committee on May 5. The current version of the bill is similar but not identical to the version previously reported.

The bill is similar to House Bill 5493 of the 2003-2004 legislative session. The bill was passed by the House of Representatives but failed to see action in the Senate.

## ***ARGUMENTS:***

### ***For:***

The adage says that once a person has done his or her time, the debt to society has been paid. The reality for many ex-offenders, however, is that society will never forgive or forget. Statistics reported in the media reveal that the majority of employers will not hire an ex-offender and landlords routinely deny housing to those with criminal records – regardless of the nature of the crime or how long ago it occurred. State laws prevent some from obtaining occupational licenses rather than deciding the merits of an application on a case-by-case basis. Considering that about 30 percent of adults nationally have a criminal record, it is easy to see how the poverty and homelessness experienced by these individuals can impact not just them, but their families and society as a whole. In addition, unemployment and homelessness raise the risk for reoffending.

Many who have tried to turn their lives around have felt thwarted by the stigma attached to their criminal records. Others have been plagued by the actions of a single action from long ago. Expungement offers these people an opportunity to turn their lives around and be productive members of society.

Expunction of serious crimes, such as murder and most sex crimes, would still be prohibited under the bill. Important safeguards built into the existing law would also remain unchanged. Therefore, prosecutors, the attorney general, and victims of assaultive crimes would still be notified of an application for an expunction and could object. Expunction would not be automatic upon application; as is now, a court must determine the merit of each application.

House Bill 4327 will, however, provide hope and an incentive for more individuals (those with two misdemeanor convictions) to make better decisions and life choices. It will facilitate successful reentry into society, lessen the burden on state agencies to provide aid to those unable to find jobs, decrease homelessness, decrease recidivism rates, and increase the ability for noncustodial parents to comply with child support orders. Therefore, the bill represents a win/win measure for society as well as for the individual who has since turned his or her life around.

***Against:***

Some view the bill as being soft on crime – protecting the rights of the criminal over the rights of law-abiding citizens. Current law allows one crime to be expunged, and that should suffice, especially considering the number of diversion programs currently in place that allow a conviction to be deferred and then set aside if all probation conditions are met.

***Response:***

A close reading of the bill reveals that it is not "soft on crime." In fact, a person who was convicted of a felony would have to wait longer before being eligible to apply for an expunction. Now, a person need only wait five years from sentencing (or five years after being released from jail or prison). Under the bill, he or she would have to wait five years after completing a term of imprisonment or probation or parole (which usually occurs after being released from jail or prison), whichever is later. In addition, since the bill would treat a two-year misdemeanor as a felony, those convicted of more serious misdemeanor crimes such as CSC in the 4<sup>th</sup> degree would be subject to this longer waiting period. At the very least, every felon would have to remain crime free for a period of at least five years. This should be a sufficient time period to demonstrate a change in behavior.

It is true that the time period for misdemeanors would be shortened to two years from the time of completing any imprisonment or probation. However, probation can last as long as five years; therefore, a person could have a waiting period of up to six years if the maximum term of imprisonment and probation were imposed.

As to viewing the expungement of two misdemeanors as being lenient, sometimes a person is charged with more than one crime arising from a single transaction. For example, a minor could be charged with and convicted of a minor in possession of alcohol (MIP) and urinating in public. Under current law, neither of these could be expunged. Under the bill, one or both could be expunged. And, certain crimes that tend to be repetitive, such as domestic violence, stalking, and child abuse would be treated differently. A person could only have one such crime expunged from his or her record in a lifetime; if the person already had two convictions of any of the listed crimes, then neither of those could be expunged. In this way, a distinction can be drawn between a person who represents a danger to society and a person who made a one-time mistake.

Moreover, diversion programs are a fairly recent addition to the criminal justice system. They simply were not available to many until recently. For those still facing discrimination in employment and housing two and three decades later, the bill represents hope of truly being able to put their pasts behind them.

***POSITIONS:***

The State Bar of Michigan indicated support for the bill on 9-14-05.

The following organizations were listed as supporting the bill when it was first reported from committee on 3-16-05:

The Prosecuting Attorneys Association of Michigan; the Michigan Coalition Against Domestic and Sexual Violence; and the Center for Civil Justice.

When the bill was first reported from committee, a representative of the Michigan Domestic Violence Prevention and Treatment Board testified in support of the provisions relating to domestic violence, stalking, and sexual offenses, but remained neutral on other provisions of the bill.

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■ 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.