

Legislative Analysis



EXPUNGE CERTAIN DUI CONVICTION FROM RECORD

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

House Bill 4219 as enacted
Public Act 78 of 2021
Sponsor: Rep. Tenisha Yancey

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

House Bill 4220 as enacted
Public Act 79 of 2021
Sponsor: Rep. Joseph N. Bellino, Jr.

Senate Bill 400 as enacted
Public Act 82 of 2021
Sponsor: Sen. Ed McBroom

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 10-18-21

BRIEF SUMMARY: House Bills 4219 and 4220 allow a person to apply to have set aside, and allow a judge to set aside, a first violation operating while intoxicated (OWI) 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. Senate Bill 400 increases the waiting period before a person may petition a court to set aside a first violation OWI offense from three years to five years.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on the state and local units of government. (See **Fiscal Information**, below, for a more detailed discussion.)

THE APPARENT PROBLEM:

Recently, the state's expungement laws were expanded to allow more convictions to be set aside and to include more categories of crimes as eligible to be set aside. However, drunk and drugged driving convictions (e.g., operating while intoxicated or OWI) remained ineligible even for consideration. For some, a single drunk or drugged driving conviction can mean that they are forever locked out of certain professions, volunteering opportunities such as a coach for youth sports, or even traveling to certain countries. It was suggested that a pathway for expungement of a first conviction for certain alcohol- or drug-related driving violations be created.

In addition, under the expungement law, a person had to wait three years after certain events occurred (such as release from jail or completion of probation) before applying to set aside a misdemeanor conviction such as a first offense OWI. Because driving drunk or drugged carries a serious risk to public safety, it was recommended that a five-year waiting period be required before a person could apply to have a first offense OWI conviction set aside. Felony and serious misdemeanor convictions eligible to be set aside require a five-year waiting period.

THE CONTENT OF THE BILLS:

House Bill 4219 amends 1965 PA 213, which provides for setting aside certain criminal convictions, to define the term *first violation operating while intoxicated offense*.

First violation operating while intoxicated offense means a violation of any of the following committed by an individual who at the time of the violation has no prior convictions for violating section 625 of the Michigan Vehicle Code:

- Section 625(1), (2), (3), (6), or (8) of the Michigan Vehicle Code (see below).
- A local ordinance, law of an Indian tribe, law of another state, or law of the United States substantially corresponding to a violation described above.

The bill also revises the definition of *operating while intoxicated*—which previously meant a violation of the drunk and drugged driving laws (section 625 of the Michigan Vehicle Code), alcohol-related offenses committed while operating a commercial vehicle (section 625m of the Michigan Vehicle Code), or a local ordinance, law of an Indian tribe, law of another state, or federal law that substantially corresponds to a violation of section 625 or 625m—to mean any of those violations that is not a first violation operating while intoxicated offense.

Section 625(1) of the Michigan Vehicle Code establishes penalties for operating a motor vehicle while intoxicated, which is defined to mean any of the following:

- Under the influence of alcohol, a controlled substance, another intoxicating substance, or a combination of any of those.
- A bodily alcohol content (BAC) of 0.08% or more.
- A BAC of 0.17% or more.

Section 625(2) prohibits an owner or person in charge or control of a vehicle from authorizing or knowingly allowing another person to operate the vehicle if that person is under the influence of alcohol, a controlled substance, another intoxicating substance, or a combination of any of those; if the person has a BAC of 0.08% or more; or if the person's ability to operate the vehicle is visibly impaired due to the consumption of alcohol, a controlled substance, another intoxicating substance, or a combination of any of those.

Section 625(3) prohibits a person from operating a vehicle while visibly impaired due to the consumption of alcohol, a controlled substance, another intoxicating substance, or a combination of any of those.

Section 625(6) prohibits a person who is under 21 years of age from operating a vehicle with any bodily alcohol content, which, for purposes of the prohibition, means an alcohol content of 0.02% or more but less than 0.08% or any presence of alcohol within the person's body from consuming alcohol (other than alcohol consumed as a part of a generally recognized religious service or ceremony).

Section 625(8) prohibits a person from operating a motor vehicle with any bodily amount of cocaine or a Schedule 1 controlled substance.

MCL 780.621

House Bill 4220 also amends 1965 PA 213. The act generally provides that a person cannot petition to have set aside, and a judge cannot set aside, a conviction for operating while intoxicated. The bill adds an exception to this prohibition, providing that the prohibition against setting aside a conviction for operating while intoxicated does not apply to a conviction for a ***first violation operating while intoxicated offense*** if the person applying to have the conviction set aside has not previously applied to have, and had, a first violation operating while intoxicated offense set aside. (That is, if a person has already applied for and been granted a set-aside of a first violation operating while intoxicated offense, he or she cannot apply for or be granted a set-aside for another first violation operating while intoxicated offense.) In addition, such a conviction can be set aside only if the person applies to a court to have it set aside and a judge approves the application. It is not eligible to be set aside under the process created by 2020 PA 123 to automatically set aside convictions for eligible offenses without application to or approval by a judge.

In determining whether to grant a petition to set aside a first violation operating while intoxicated offense conviction, the reviewing court may consider whether the petitioner has benefited from rehabilitative or educational programs, if any were ordered by the sentencing court, or whether such steps were taken by the petitioner before sentencing for the conviction he or she is seeking to set aside. The reviewing court is not constrained by the record made at sentencing. The reviewing court may deny the petition if it is not convinced that the petitioner has either availed himself or herself of rehabilitative or educational programming or benefited from rehabilitative or educational programming he or she has completed.

MCL 780.621c

Senate Bill 400 amends 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.

MCL 780.621d

Effective dates

House Bills 4219 and 4220 take effect February 19, 2022. Senate Bill 400 takes effect March 9, 2022.

BACKGROUND INFORMATION:

House Bills 4219 and 4220 are respectively reintroductions of HBs 5029 and 6453 of the 2019-20 legislative session, and taken together they are similar to that session's SB 1254, which combined the provisions of HBs 5029 and 6453 into one bill. Senate Bill 1254 was passed by the legislature and enrolled, but was pocket vetoed on January 4, 2021.¹

¹ If the governor does not sign a bill within 14 days after getting it and the legislature has adjourned to end the legislative session, the bill does not take effect and is said to have been "pocket vetoed." Unlike a regular veto, a pocket veto does not oblige the governor to provide the legislature with his or her objections to the bill.

FISCAL INFORMATION:

House Bills 4219 and 4220 could result in an indeterminate short-term increase in license reinstatement fee revenue resulting from the expungement of certain driving while intoxicated offenses and subsequent license reinstatements following expungement. The short-term revenue increase would presumably be later offset by fewer reinstatement fees being remitted when the individual would have paid the fee at the time the current law allows. This would result in no net revenue gain in the long-term.

Individuals convicted of an operating while intoxicated offense under section 625 of the Michigan Vehicle Code are required to have their driver license suspended and must pay a \$125 license reinstatement fee to have their license reinstated following the required suspension time for their offense. Revenue from license reinstatements is distributed to several state departments and allocated as shown in **Table 1**, below.

The bills, along with SB 400, also would have an indeterminate fiscal impact on local court systems. The fiscal impact would depend on how provisions of the bills affected court caseloads and related administrative costs. It is likely courts will experience an increase in the number of case filings for setting aside convictions, which could result in the need for additional resources to process applications for conviction expungement. The increase in caseload times and administrative costs is not known at this time.

**Table 1
Distribution of License Reinstatement Revenue**

Receiving Department/Entity	Amount	Fund Legal Basis (MCL)	Description
State	\$50	Reinstatement Fees 257.320e	Supports various operations within the Department of State.
Transportation	\$35	Economic Development Fund 247.902	Funds highway, road, and street projects that support economic growth.
Judiciary	\$30	Drunk Driving Fund 257.625h	Funds the drunk driving case-flow program, which assists trial courts with timely disposition of drunk driving offense cases.
State Police	\$10	Drunk Driving Prevention and Training Fund 257.320e	Supports the purchase and maintenance of breath-alcohol testing equipment and training for law enforcement officers on using the equipment.

ARGUMENTS:

For:

First, it is important to note what the bills do and do not do. The bills do not enable a person to apply to set aside an offense in which a person was killed or seriously injured. The bills allow only one drunk or drugged driving conviction to be set aside in a lifetime. The bills do not wipe clean a person's driving record maintained by the secretary of state. A drunk or drugged driving offense will remain on a person's driving record for determining a subsequent violation. The bills do not allow a person to apply to set aside an OWI conviction when operating a commercial vehicle or to set aside other drunk or drugged driving offenses not included in the definition of a *first violation operating while intoxicated offense*, such as when minors are present in the vehicle. Notably, the bills do not create a right to have eligible offenses set aside or allow such offenses to qualify for the automatic expungement process that applies to certain offenses. A person will have to apply to a court, and a judge will have to make a determination on the merits of the application and will have discretion to approve or deny the application.

For many, an OWI conviction is a wake-up call to seek help for a substance use disorder or to realize how many drinks at dinner can put them over the legal limit or cause impairment. For others, a violation may represent a single mistake in judgment or a really bad day in which solace was sought in drugs or alcohol. For those who have demonstrated rehabilitation and responsible driving, the bills offer a chance to move forward without an OWI conviction blocking career choices or travel.

For instance, the bills may open up employment or volunteer opportunities for which a drunk or drugged driving conviction prohibits the person from being hired or volunteering. In addition, several countries, including Mexico and Canada, generally refuse entry to those with drunk or drugged driving convictions. If a person's employment requires travel to such countries, or if the person has family who live or vacation in those countries, the bills will allow the person to remove a conviction that impedes entry. The legislation is expected to benefit those for whom a single incident in their past is seriously impacting their present and future.

For:

Under Senate Bill 400, a person will 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 that the OWI violation was a one-time aberration and that he or she is serious regarding driving responsibly.

Against:

Although a driver cited for an OWI causing death or serious injury to another person cannot expunge a conviction under the bills, drunk and drugged drivers kill and injure thousands of people in Michigan each year. According to media reports, Michigan ranked ninth in the nation in 2019 for drunk driving fatalities per capita. In 2020, the state had recorded 1,016 impaired driving fatalities by December 29. Such statistics underscore the seriousness of driving while under the influence of drugs or alcohol. In addition, the state is still experiencing unprecedented numbers of people addicted to controlled substances, and, with the recent legalization of recreational marijuana, driving incidents involving marijuana or a combination of marijuana and alcohol are increasing. Moreover, it is often said that a first drunk or drugged driving arrest is more likely to be at least the sixth or seventh time that the person drove under the influence. Therefore, some feel that the bills could impact public safety.

Certain changes to the bills could have mitigated some concerns. For instance, Mothers Against Drunk Driving (MADD) and the Coalition of Ignition Interlock Manufacturers recommended that a provision be added to the act 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% or more). Requiring use of an ignition interlock device as a condition for future expungement consideration could encourage first-time offenders to voluntarily submit to installation of a device.

Other changes offered for consideration included excluding violations involving high BAC offenses or including a sunset (expiration date) so that the impact of the legislation could be reviewed to see if it is working as intended.

Legislative Analyst: Susan Stutzky
Fiscal Analysts: Michael Cnossen
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.