

# Legislative Analysis



## CLEAN SLATE LEGISLATION

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**House Bill 4980 (H-1) as reported from committee**  
**Sponsor: Rep. Eric Leutheuser**

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

**House Bill 4981 (H-2) as reported**  
**Sponsor: Rep. Pauline Wendzel**

**House Bill 4984 (H-1) as reported**  
**Sponsor: Rep. David LaGrand**

**House Bill 4982 (H-1) as reported**  
**Sponsor: Rep. Luke Meerman**

**House Bill 4985 (H-1) as reported**  
**Sponsor: Rep. Sherry Gay-Dagnogo, M.Ed.**

**House Bill 4983 (H-1) as reported**  
**Sponsor: Rep. Yousef Rabhi**

**House Bill 5120 (H-1) as reported**  
**Sponsor: Rep. Isaac Robinson**

**Committee: Judiciary**  
**Complete to 11-5-19**

## BRIEF SUMMARY:

Each of the bills either amends an existing section of, or adds a new section to, 1965 PA 213, which provides for setting aside (expunging) a conviction in certain criminal cases. The changes proposed by the bills include the following:

- Retain the current process by which an individual applies to have a conviction set aside and also allow for an automatic expungement process for certain convictions if required conditions were met (meaning the act's requirements to file a petition would not apply).
- Expand the number and revise the types of felonies and misdemeanors eligible to be set aside by application and revise the waiting periods before being eligible to apply.
- Treat multiple felonies or misdemeanor offenses arising from the same transaction as a single felony or misdemeanor conviction, with certain conditions.
- Make most traffic offenses eligible for expungement.
- Allow a person to petition to set aside one or more marijuana offenses if the offense would not have been a crime if committed after the use of recreational marijuana by adults became legal in the state.
- Prohibit a person who had an eligible misdemeanor marijuana offense set aside from petitioning to be sentenced for any other offense for which the marijuana offense had been considered in the sentence for that other offense.

The bills, which are tie-barred to each other, would take effect 180 days after enactment. A bill cannot become law unless each bill to which it is tie-barred is enacted.

## DETAILED SUMMARY:

Currently under 1965 PA 213, a person who has one felony offense and no more than two misdemeanor offenses may petition the convicting court to set aside the felony offense. If the person has no more than two misdemeanor offenses and no felony offenses, he or she

may petition to have one or both of the misdemeanor offenses set aside. Certain offenses may not be set aside, including a felony for which the maximum term of imprisonment is life, criminal sexual conduct violations, and traffic offenses. The act states that the setting aside of a conviction is a privilege and conditional and not a right.

**House Bill 4984** would amend section 1 of the act to revise the number of convictions eligible by application to be set aside, relocate multiple provisions to other sections of the act, revise the definition of “assaultive crime,” and add a definition for “violent felony.”

The act currently allows a person who has a conviction for no more than one felony offense and no more than two misdemeanor offenses to petition the convicting court to have the felony set aside. A person who has been convicted of not more than two misdemeanor offenses may petition to have one or both of the misdemeanors set aside.

House Bill 4984 would eliminate this provision. Instead, the bill would allow a person convicted of one or more criminal offenses in this state, but not more than a total of three felony offenses, to apply to have all of his or her Michigan convictions (felonies and misdemeanors) set aside. However, an applicant could not have more than two convictions for an *assaultive crime* (felony or misdemeanor) set aside during his or her lifetime and could not have more than one felony conviction for the same offense set aside under this provision if the offense is punishable by more than 10 years imprisonment.

The bill would retain a current provision that allows a conviction for fourth-degree criminal sexual conduct that occurred before January 12, 2015, to be expunged if certain conditions were met. In addition, convictions for certain offenses listed in the act that were deferred and dismissed, whether a misdemeanor or a felony, would still be considered a misdemeanor conviction for purposes of determining whether a person is eligible to have any convictions set aside under the act.

*Assaultive crime* is currently defined to mean that term as defined in section 9a of Chapter X of the Code of Criminal Procedure. Section 9a includes offenses such as serious assaults, homicide, manslaughter, assaults against pregnant women, kidnapping, rape and other criminal sexual conduct offenses, armed robbery, terrorism, and violations involving bombs and explosives. A violation included in section 9a would still be included in the definition of *assaultive crime*, but the bill would expand the definition to also include the following:

- A violation of Chapter XI (Assaults) of the Michigan Penal Code not otherwise included in section 9a. For instance, a first offense misdemeanor assault or domestic violence conviction would be included in the expanded definition.
- A violation of the following Michigan Penal Code offenses:
  - First- to third-degree home invasion (section 110a).
  - First- to fourth-degree child abuse (section 136b).
  - Intentionally discharging a firearm from a vehicle, at a dwelling or occupied structure, or at an emergency or law enforcement vehicle (sections 234a, 234b, and 234c, respectively).
  - Unlawful imprisonment (section 349b).

- Stalking (section 411h(2)(a)).
- Any other *violent felony*.
- A violation of a law of another state or of a political subdivision of this state or another state (e.g., a local ordinance) that substantially corresponds to a violation described above.

*Violent felony* would mean that term as defined in section 36 of the Corrections Code. The term includes offenses such as felonious assault, homicide, manslaughter, kidnapping, rape, maiming a person, and armed robbery.

MCL 780.621

**House Bill 4985** would add section 1b to the act to require that more than one felony offense or two misdemeanor offenses be treated as a single felony or misdemeanor conviction if the felony or misdemeanor offenses were contemporaneous, such that all of the felony or misdemeanor offenses occurred within 24 hours and arose from the same transaction, as long as none of those felony or misdemeanor offenses constituted any of the following:

- An assaultive crime.
- A crime involving the use or possession of a *dangerous weapon*.
- A crime with a maximum penalty of 10 or more years' imprisonment.
- A conviction for a crime that would be an assaultive crime if the conviction had been obtained in Michigan.

*Dangerous weapon*, as defined in section 110a of the Michigan Penal Code, means one or more of the following:

- A loaded or unloaded firearm, whether operable or inoperable.
- A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.
- An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.
- An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described above.

Proposed MCL 780.621b

**House Bill 4981** would add section 1c to exclude only certain traffic offenses, rather than all traffic offenses, from being eligible to be expunged and would prohibit convictions for certain offenses to be expunged.

Currently, the act prohibits any traffic offenses from being set aside from a person's criminal record, and a conviction for a traffic offense is included in the total number of felonies and misdemeanors on a person's record when determining if the person is eligible to apply to have one or more convictions set aside.

Under House Bill 4981, only the following traffic offenses would be excluded from eligibility for expungement:

- A conviction for operating while intoxicated by any person.
- For an individual who has an endorsement on his or her operator's or chauffeur's license to operate a commercial motor vehicle, any traffic offense committed while operating the commercial motor vehicle or that was in another manner a commercial motor vehicle violation.
- Any traffic offense causing injury or death. [Note: The bill as written does not establish what would constitute "an injury" for purposes of determining eligibility or ineligibility to set aside a traffic offense.]

*Offenses ineligible to be set aside*

Currently under the act, a person may not apply to have set aside, and a judge may not set aside, a conviction for certain offenses. The bill would relocate this prohibition from section 1 (HB 4984) and apply it both to expungement by application (whereby an individual files an application to have one or more convictions set aside) and to the automatic expungement process (created under section 1g in HB 4980). Thus, a person could not apply to have set aside, and a judge could not set aside, a conviction for any of the following whether made by application or by automatic expungement:

- A felony, or an attempt to commit a felony, for which the maximum punishment is life imprisonment.
- A violation or attempted violation of the criminal sexual conduct (CSC) statutes (with the exception of CSC in the fourth degree as discussed under HB 4984); for offenses involving second-degree child abuse or child sexually abusive materials; for offenses involving the use of a computer to commit numerous crimes, including soliciting sex with a minor, stalking, causing death by explosives, or swatting; a felony conviction for domestic violence if the person has a previous misdemeanor conviction for domestic violence; or a violation of Chapter LXVIIA (Human Trafficking) or Chapter LXXXIII-A (Michigan Anti-Terrorism Act) of the Michigan Penal Code.

Further, an order setting aside a conviction for a traffic offense could not require that the conviction be removed or expunged from the applicant's driving record that is maintained by the Secretary of State (SOS) as required under the Michigan Vehicle Code.

Proposed MCL 780.621c

**House Bill 4983** would add section 1d to revise the time periods an applicant must wait before filing an application to have an eligible offense set aside.

Currently, before a person may apply to have a conviction set aside, he or she must wait five years after whichever of the following events occurred last:

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

Under House Bill 4983, the waiting periods, after the conditions described above were met, would be as follows:

- Seven or more years before applying to set aside more than one felony conviction.
- Five or more years to set aside a single felony conviction or one or more serious misdemeanors.
- Three or more years to set aside a misdemeanor, other than an application to set aside a serious misdemeanor or any other misdemeanor conviction for an assaultive crime.

Further, the bill incorporates numerous provisions eliminated from section 1 by HB 4984. The provisions relocated to the new section 1d pertain to the existing application process to set aside a conviction for an eligible offense and contain minor revisions to comport with changes proposed by the bill package.

Proposed MCL 780.621d

**House Bill 4982** would add section 1e to specify that, beginning on January 1, 2020, a person convicted of one or more misdemeanor marijuana offenses in violation of state law or a local ordinance of a political subdivision could apply to set aside the convictions. An application would have to contain the full name and current address of the applicant and a certified record of each conviction to be set aside.

A copy of the application would have to be served upon the agency that prosecuted the offense or offenses sought to be set aside. When an application was filed, a rebuttable presumption would arise that the misdemeanor marijuana-related conviction was based on activity that would not have been a crime if committed on or after December 6, 2018 (the day recreational use of marijuana by adults became lawful). The prosecuting agency that prosecuted the case could rebut the presumption by a preponderance of the evidence that the conduct on which the applicant's conviction was, or convictions were, based would constitute a criminal violation of state or local laws if it had been committed on or after December 6, 2018. An answer made under this provision would have to be filed no later than 60 days from the date of service of the application. If an answer were filed with the convicting court, the answering party would have to serve the answer upon the other parties to the matter.

Upon expiration of the 60-day period, and if the prosecuting agency had not filed an answer to the application addressing the rebuttal presumption, the bill would require the court to—within 21 days—enter an order setting aside the conviction or convictions and serve a copy of the order upon the applicant, the arresting agency, the prosecuting agency, and the Department of State Police (MSP).

If an answer was filed by the prosecuting agency addressing the rebuttable presumption, the convicting court would have to promptly set the matter for a hearing no later than 30 days from its receipt of the answer and serve a notice of the hearing upon the applicant. At the hearing, the prosecuting agency would have to prove by a preponderance of the evidence that the conviction or convictions sought to be set aside were based upon conduct that would constitute a criminal violation of state or local laws if committed on or after

December 6, 2018. The evidentiary burden would rest solely on the objecting prosecuting agency.

No later than 14 days after the completion of the hearing, the court would have to enter an order denying or granting the application and serve any written opinions and orders, including an order setting aside the conviction or convictions, upon the parties, including MSP. The rules of evidence would not apply to a hearing under this provision.

Proposed MCL 780.621e

**House Bill 5120** would add section 1f to specify that if an application to set aside a conviction or convictions for a misdemeanor marijuana offense were granted under HB 4982, the arresting agency and MSP would have to maintain the nonpublic record created under section 3 of the act for use as authorized. (Section 3 requires a nonpublic record of expunged offenses to be maintained by the MSP and restricts access to that record to listed entities, such as judicial and law enforcement agencies, and for specific reasons only.)

If the application to set aside a marijuana offense were granted, the applicant could not thereafter seek resentencing in another criminal case the applicant was sentenced for during which the conviction or convictions at issue were used in determining an appropriate sentence for the applicant, whether or not the setting aside of the conviction or convictions would have changed the scoring of a prior record variable for purposes of the sentencing guidelines or otherwise.

A party aggrieved by the ruling of the convicting court considering an application to set aside one or more misdemeanor marijuana offenses could seek a rehearing or reconsideration under the applicable rules of the convicting court or could file an appeal with the circuit court or, if applicable, the court of appeals in accordance with the rules of those courts.

The setting aside of a conviction for a misdemeanor marijuana offense would not entitle the applicant to the return of any fines, costs, or fees imposed as part of the applicant's sentence for the conviction or convictions or any money or property forfeited by the prosecuting agency or any law enforcement agency as a result of the conduct leading to the conviction or as a result of the conviction itself.

Proposed MCL 780.621f

**House Bill 4980** would add section 1b to establish an automatic expungement for certain felony and misdemeanor offenses, if certain conditions were satisfied. The bill would require, beginning two years after the bill's effective date, a felony or a misdemeanor conviction to be set aside without the filing of an application under section 1 of the act if **both** of the following apply:

- For a felony, ten years have passed, and for a misdemeanor, seven years have passed, from whichever of the following events occur last:
  - The date the sentence for the conviction was imposed.

- The date any term of imprisonment for the conviction was completed.
- The conviction or convictions to be automatically set aside are otherwise eligible to be set aside under the act.

Not more than two felony and four misdemeanor convictions total could be automatically expunged during an individual’s lifetime.

A conviction for a felony or misdemeanor could not be automatically set aside unless all of the following apply:

- The required, applicable time period has elapsed.
- There are no criminal charges pending against the applicant.
- The applicant has not been convicted of any criminal offense during the required, applicable time period.

Exclusions or automatic set aside

Eligibility for an automatic set aside would not apply to an individual who has more than one conviction for an assaultive crime. In addition, an automatic set aside for a felony or misdemeanor would not apply to the following convictions: an assaultive crime, a serious misdemeanor, a **crime of dishonesty**, any other offense punishable by 10 or more years’ imprisonment, or a felony violation—the elements of which involve a minor, vulnerable adult, injury or serious impairment, death, or any violation related to human trafficking.

A **crime of dishonesty** would be defined to include a felony violation of Chapter XXVA (entitled “Criminal Enterprises”), Chapter XLI (entitled “Forgery and Counterfeiting”), and certain felony embezzlement violations of the Michigan Penal Code, as well as a violation of 1979 PA 53, which pertains to fraudulent access to computers, computer systems, and computer networks.

Nonpublic record

An individual whose conviction is set aside under the bill impliedly consents to the creation of the nonpublic record of expunged convictions under section 3 of the act (this is current law for a conviction that is set aside under the application process). The bill would also allow those entities eligible to access the nonpublic record to access it for the purpose of consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general for use in making determinations regarding charging, plea offers, and sentencing, as applicable.

Creation of the automatic expungement process

If the automatic expungement process cannot be implemented within two years of the bill’s effective date because of technical difficulties, as agreed upon in writing by the governor, the attorney general, the state court administrator, MSP, and a designated nongovernmental technical consultant, the governor could issue a directive delaying the implementation of the automatic expungement process for up to 180 days. Additional directives delaying the implementation for up to 180 days upon the expiration of previous directive could be issued by the governor if the parties described above agreed to the delay as provided under the bill.

The Department of Technology, Management, and Budget (DTMB) would have to develop and maintain a computer-based program for the setting aside of convictions under the bill. In fulfilling its duty, the department could contract with a private technical consultant as needed.

Miscellaneous provisions

Having a conviction automatically set aside would not relieve any obligation to pay restitution owed to the victim of a crime nor would it affect the jurisdiction of the convicting court with regard to enforcing an order for restitution. Further, a conviction set aside under the application process, a marijuana misdemeanor offense set aside under HB 4982, or a conviction set aside under the bill could be considered a prior conviction by a court, law enforcement agency, prosecuting attorney, or the attorney general, as applicable, for purposes of charging a crime as a second or subsequent offense or for sentencing under sections 10, 11, and 12 of the Code of Criminal Procedure (enhanced penalties for repeat offenders).

A conviction, including any records relating to the conviction and any records concerning a collateral action, that has been set aside under the act could not be used as evidence in an action for negligent hiring, admission, or licensure against any person.

MCL 780.622, 780.623, and 780.624

**FISCAL IMPACT:**

**Judiciary**

House Bills 4980 through 4985 would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact could be significant and would depend on the system used for the automatic expungement process, the mechanism in place for data to be shared with all necessary agencies, and responsibility for maintaining the system or systems.

According to the State Court Administrative Office (SCAO), courts do not have an automatic process for setting aside records. Records are maintained in individual courts throughout the state. If an automatic expungement occurs, a list of all of the defendants meeting specified criteria would need to be generated. Local courts do not have that capability. Individual trial courts' case management systems are limited to cases that have been before that court. The Judicial Data Warehouse is a centralized statewide database, but it is not the official criminal history and it excludes a few criminal courts. A list would need to be generated from the official criminal history, maintained by MSP, if that is possible.

Criminal history information is currently kept in at least four locations. Local law enforcement has records regarding the arrest or issuance of a ticket. These records are locally maintained with no central database. The prosecutor has records regarding charge information. The court has records regarding charges, dispositions, and sentencing. Court records are maintained at the local trial courts. There are 242 trial courts in the state. The



majority of these courts submit case-level data to a centralized database; however, this database is not the official criminal history. MSP is responsible for keeping the official criminal history records, which consist of the arrest segment, the charge segment, and the court disposition segment. Also, courts do not have the ability to check the nationwide criminal history of an individual. Law enforcement must provide the official criminal history that includes convictions in other states.

### **Corrections**

According to Department of Corrections, the fiscal impact of the bills would depend on the extent of their involvement with the automatic expungement system. The department would be able to process expanded expungements in the current OMNI system, but if the department is to have a major role in a new automated system, the fiscal impact could be significant.

### **Information Technology**

The bills would result in significant information technology (IT) costs related to necessary computer system changes for IT systems across multiple state departments, including the Department of State, MSP, Department of Corrections, and the Judiciary. IT costs may be incurred by each state department, but since IT work must be coordinated and integrated across multiple Executive branch departments, IT costs would likely be largely one-time increases incurred by DTMB to manage an enterprise-wide IT project, or projects, to incorporate the bills' changes into existing IT systems. Relevant state departments would also incur marginal ongoing IT maintenance and data storage cost increases once IT system changes have been implemented. The cost of an IT project has not yet been determined. The median cost for an IT project for the state government is approximately \$300,000; however, costs to DTMB may greatly exceed this amount due to IT system changes being required across multiple systems and departments.

DTMB is charged with providing IT services only to Executive branch departments, which does not include the Judiciary. Additional IT costs to the Judiciary would need to be supported by funds appropriated to it.

### **Department of State Police**

The bill package would cause an indeterminate, though likely significant, increase in expenditures by MSP, due to necessary information technology activities that would need to be conducted in order to implement the bills. The department administers the Michigan Criminal History Record Database, but there are a variety of information systems within different entities that comprise the entirety of the state's criminal history record. Some systems that retain criminal history records do not interface with each other, and some require manual input from staff members. The department does not currently have a cost projection for implementing these bills, as the process is likely to be a multi-department undertaking.

### **Licensing and Regulatory Affairs and Insurance and Financial Services**

The bills would have an indeterminate fiscal impact on the Departments of Licensing and Regulatory Affairs (LARA) and Insurance and Financial Services (DIFS) by expanding the

populations of persons who would be eligible to obtain licensure in various regulated professions if various felony and misdemeanor offenses were expunged from criminal records.

## **POSITIONS:**

The following entities testified or submitted written testimony in support of, or otherwise indicated support for, one or more of the bills:

- The Office of the Attorney General (10-8-19)
- Michigan League for Public Policy (10-29-19)
- Safe and Just Michigan (10-29-19)
- Michigan Bankers Association (10-29-19)
- Michigan Credit Union League (10-29-19)
- Criminal Defense Attorneys of Michigan (10-29-19)
- Department of State Police—HB 5120 (10-29-19)
- Michigan Manufacturers Association (10-29-19)
- Michigan Chamber of Commerce (10-29-19)
- Michigan Realtors (10-29-19)
- Michigan West Coast Chamber of Commerce (10-8-19)
- Prosecuting Attorneys Association of Michigan—HBs 4981 to 4985 support in concept (10-8-19)
- Michigan Coalition to End Domestic and Sexual Violence (10-8-19)
- Michigan Faith Action (10-8-19)
- Unitarian Universalist Congregation of Flint (10-8-19)
- R Street (10-8-19)
- Perpetual Harvest Sustainable Solutions (10-8-19)
- West Michigan Olive Tree, Inc. (10-2-19)
- Mackinac Center (10-2-19)
- Michigan Cannabis Industry Association (10-2-19)
- Talent 2025 (10-2-19)
- Detroit Justice Center (10-2-19)
- ABCOR Industries (10-2-19)
- Grand Rapids Chamber of Commerce (10-2-19)
- Detroit Chamber of Commerce (10-2-19)
- Jackson Transitions (10-2-19)
- ACLU of Michigan (10-2-19)
- Freedom Fund—support in principle (10-2-19)
- Michigan Restaurant and Lodging Association (10-2-19)
- Mayor of the City of Lansing (9-24-19)
- University of Michigan Law School (9-24-19)
- Reason Foundation (9-24-19)
- Quick Loans (9-24-19)
- Urban Core Mayors
- City of Detroit (9-24-19)

- City of Grand Rapids (9-24-19)
- Law Enforcement Action Partnership (9-24-19)
- Hope Network (9-24-19)
- DTE (9-24-19)
- Michigan Council on Crime and Delinquency (9-24-19)
- Nation Outside—HB 4980 (9-24-19)
- Alliance for Safety and Justice (9-24-19)
- Americans for Prosperity (9-24-19)
- Weedmaps—HB 4982 (9-24-19)
- Action of Greater Lansing (9-24-19)
- A.R.R.O. (9-24-19)
- National Association of Social Workers—Michigan Chapter (9-24-19)
- City of Saginaw (9-23-19)
- City of Battle Creek (9-23-19)
- City of Muskegon (9-20-19)
- City of Pontiac (9-20-19)
- City of Jackson (9-20-19)
- City of Bay City (9-20-19)

The following entities testified or submitted written testimony, or otherwise indicated a neutral position, for one or more of the bills:

- Michigan Sheriffs' Association—HBs 4981 to 4985 and 5120 (10-29-19)
- Michigan Association of Chiefs of Police—HBs 4981 to 4985 and 5120 (10-29-19)
- Just Leadership USA (10-2-19)

The following entities testified or submitted written testimony in opposition to, or otherwise indicated opposition for, HB 4980:

- Michigan Sheriffs' Association (10-29-19)
- Michigan Association of Chiefs of Police (10-29-19)
- Prosecuting Attorneys Association of Michigan (10-8-19)

Legislative Analyst: Susan Stutzky  
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■ 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.