

Legislative Analysis



EXPUNGE CERTAIN DUI FROM RECORD

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

House Bill 5029 (H-3) as reported from committee
Sponsor: Rep. Tenisha Yancey

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

House Bill 6453 (H-3) as reported from committee
Sponsor: Rep. Beau Matthew LaFave

Committee: Judiciary
Complete to 12-2-20

SUMMARY:

Taken together, the bills would allow a person to apply to have set aside, and allow a judge to set aside, a first violation operating while intoxicated offense. Under the bills, 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.

House Bill 5029 would amend 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 would mean 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), or (8) of the Michigan Vehicle Code (see below).
- An ordinance or law substantially corresponding to a violation listed above as follows:
 - A local ordinance.
 - A law of an Indian tribe.
 - A law of another state.
 - A law of the United States.

The definition for *operating while intoxicated*, which, generally speaking, currently means a violation of the drunk and drugged driving laws (section 625 of the Michigan Vehicle Code) and alcohol-related offenses committed while operating a commercial vehicle (section 625m of the Michigan Vehicle Code), and 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 would be revised to include any of those violations that are 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. *Operating while intoxicated* is defined to mean any of the following:

- Under the influence of alcohol, a controlled substance (e.g., prescription drugs), or other intoxicating substance or any combination of these.
- A BAC of 0.08 grams (beginning October 1, 2021, a BAC of 1.0 grams).
- A BAC of 0.17 grams (referred to as “superdrunk” offenses).

Section 625(2) prohibits an owner of a vehicle or a person in charge or in control of a vehicle from authorizing or knowingly permitting another person to operate the vehicle if that person is under the influence of alcohol and/or a controlled substance/other intoxicating substance, has a BAC of 0.08 grams or more, or the person’s ability to operate the vehicle is visibly impaired due to the consumption of alcohol and/or a controlled substance/intoxicating substance.

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

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

MCL 780.621

House Bill 6453 would amend a different section of the same act. Currently, a person cannot petition to have set aside, and a judge cannot set aside, a conviction for operating a motor vehicle while intoxicated.

Under the bill, the prohibition on setting aside a conviction for operating while intoxicating would not apply to a conviction for a *first violation operating while intoxicated offense*. However, a first violation operating while intoxicated offense could only be set aside if a person applied to a court to have the offense set aside and a judge approved the application; it would not be eligible to be automatically set aside under the process created by 2020 PA 123 to automatically set aside convictions for eligible offenses without an application to or approval by a judge.

MCL 780.621c

The bills would take effect April 11, 2021, and they are tie-barred to each other, which means that neither could take effect unless both were enacted.

FISCAL IMPACT:

The bills 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 at the time 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 described in Table 1, below.

In addition, House Bill 5029 would have an indeterminate fiscal impact on local units of government. The fiscal impact would be related to increased caseloads for courts and the additional resources required to process applications for conviction expungement.

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 Secretary 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 to law enforcement officers on using the equipment.

POSITIONS:

A representative of the Criminal Defense Attorneys of Michigan testified in support of the bills. (12-2-20)

The following entities indicated support for one or both bills (12-2-20):

- Detroit Regional Chamber (HB 6453)
- Safe and Just Michigan (HBs 5029 and 6453)
- Talent 2025 (HB 6453)
- ACLU Michigan (HBs 5029 and 6453)
- Saginaw Chamber of Commerce (HB 6453)
- Cascade Engineering (HB 6453)
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- Abcor Industries (HB 6453)
- Blue Heron Academy (HB 6453)
- Citizens for Prison Reform (HBs 5029 and 6453)

The following entities indicated opposition to one or both bills (12-2-20):

- Mothers Against Drunk Driving (HB 6453)
- Prosecuting Attorneys Association of Michigan (HBs 5029 and 6453)
- Michigan Sheriff's Association (HBs 5029 and 6453)
- Michigan Association of Treatment Court Professionals (HB 6453)

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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.