

Legislative Analysis



EXPUNGE CERTAIN DUI CONVICTION FROM RECORD

Phone: (517) 373-8080
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House Bill 4219 (H-1) as reported from committee
Sponsor: Rep. Tenisha Yancey

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

House Bill 4220 (H-1) as reported from committee
Sponsor: Rep. Joseph N. Bellino, Jr.

Committee: Judiciary
Complete to 3-3-21

BRIEF SUMMARY: Taken together, House Bills 4219 and 4220 would allow a person to apply to have set aside, and allow a judge to set aside, a first violation operating while intoxicated 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.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on the Department of 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 remain 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 has been suggested that a pathway for expungement of a first conviction for certain alcohol- and/or drug-related driving violations be created.

THE CONTENT OF THE BILLS:

House Bill 4219 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), (6), 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 of *operating while intoxicated*, which now generally means a violation of the drunk and drugged driving laws (section 625 of the Vehicle Code), alcohol-related offenses committed while operating a commercial vehicle (section 625m of the 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, would be revised to include any of those violations that are not *a first violation operating while intoxicated offense*.

Section 625(1) of the 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, or other intoxicating substance or any combination of those.
- A bodily alcohol content (BAC) of 0.08 grams (beginning October 1, 2021, a BAC of 0.10 grams).
- A BAC of 0.17 grams.

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

Section 625(6) prohibits a person who is less than 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 grams or more but less than 0.08 grams 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 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 intoxicated would 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 had already applied for and been granted a set-aside of a first violation operating while intoxicated offense, he or she could not apply for or be granted a set-aside for another first violation operating while intoxicated offense.) In addition, such an offense could only be set aside if a person applied to

a court to have it 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 application to or approval by a judge.

MCL 780.621c

The bills would take effect April 11, 2021. Each is tie-barred to the other, which means that neither could take effect unless both were enacted.

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

FISCAL INFORMATION:

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 Bills 4219 and 4220 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.

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." The term dates from the nineteenth century and is based on the metaphor of putting a bill in one's pocket instead of either signing it into law or returning it unsigned as a regular veto. Unlike a regular veto, a pocket veto does not oblige the governor to provide the legislature with his or her objections to the bill.

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.

ARGUMENTS:

For:

First, it is important to note what the bills would and would not do. The bills would not enable a person to apply to set aside an offense in which a person was killed or seriously injured. The bills would allow only one drunk or drugged driving conviction to be set aside in a lifetime. The bills would not wipe clean a person's driving record maintained by the secretary of state. A drunk or drugged driving offense would remain on a person's driving record for determining a subsequent violation. The bills would 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. Importantly, the bills would 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 would have to apply to a court, and a judge would have to make a determination on the merits of the application and would 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 would open up employment or volunteer opportunities for jobs 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/drugged driving convictions (however, Mexico may allow entry after 10 years and Canada does have a process, albeit lengthy and difficult, by which a person may apply for entry). 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 would 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.

Against:

Although a driver cited for an OWI causing death or serious injury to another person could not 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 and/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. Similar legislation last session was not signed into law by the governor, although the reasons are not known. Moreover, it is often said that a first drunk or drugged driving arrest is more likely to be the sixth or seventh time, if not more, that the person drove under the influence. Therefore, some feel the bills could impact public safety.

Certain changes to the bill could mitigate some concerns, however. For instance, Mothers Against Drunk Driving recommended that a provision be added that would require a driver to submit proof of using an ignition interlock device for at least six months in a row to be eligible for expungement. Doing so has been shown to dramatically reduce the likelihood of a repeat drunk driving offense. 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 grams or more). Requiring use of an ignition interlock device as a condition for future consideration of expungement could encourage first-time offenders to voluntarily submit to installation of a device. Other changes to consider could include excluding violations involving high BAC offenses or including a sunset (expiration date) so that the impact of the legislation can be reviewed to see if it is working as intended.

POSITIONS:

The Attorney General of Michigan testified in support of the bills. (2-16-21)

A representative of the Criminal Defense Attorneys of Michigan (CDAM) testified in support of the bills. (2-16-21)

The following entities indicated support for the bills:

Michigan League for Public Policy (2-23-21)

Mackinac Center for Public Policy (2-23-21)

Safe and Just Michigan (2-16-21)

American Civil Liberties Union of Michigan (ACLU) (2-16-21)

The Department of State indicated that is still reviewing the bills and does not have a position at this time. (2-23-21)

Mothers Against Drunk Driving (MADD) indicated that it could support the bills if they were amended to include ignition interlock device requirements as described above in **Arguments**. (2-19-21)

The following entities indicated opposition to the bills:

Prosecuting Attorneys Association of Michigan (PAAM) (2-23-21)

Michigan Association of Chiefs of Police (2-16-21)

Michigan Sheriffs' Association (2-16-21)

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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.