

## Expungement Package

House Bills 4980-4985, 5120

On October 12, 2020, Governor Whitmer signed into law a bill package that will aid in the automatic expungement of certain offenses and changes the procedures and qualifications for applying for expungement of particular offenses. These laws will become effective on April 10, 2021.

Here's what you need to know:

### **House Bill 4980- Automatic Expungement**

- While the bill package become effective on April 10, 2021, *automatic* expungement does not take place until April 2023
- Under automatic expungement, a 90-day and 93- day misdemeanors may be set aside without the filing of an application if 7 years has passed from the imposition of sentence
- After 10 years have lapsed since sentencing, certain felonies may also qualify for automatic expungement
- Offenses that are not subject to expungement include assaultive crimes or attempt to commit an assaultive crime, a crime of dishonesty, and an offense punishable by 10 years or more in prison, a violation of a MCL 777.1 – 777.69 with elements involving a minor, vulnerable adult, injury or serious impairment, or death, and any violation related to human trafficking

**House Bill 4981** provides the list of excluded felonies, examples include but are not limited to:

- A felony (or its attempt) punishable by life imprisonment
- Child Abuse, offenses involving child sexually abusive material
- Criminal Sexual Conduct
- CSC 4<sup>th</sup> degree if the conviction occurred on or after January 12, 2015
- Operating while intoxicated
  - Any traffic offense committed by an individual with an endorsement on their licenses to operate a commercial vehicle if the violation was a commercial vehicle violation
    - Any traffic offense causing injury (injury not defined in the statute) or death
    - A felony conviction for domestic violence if the previous misdemeanor conviction for domestic violence
    - Forced labor laws

**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 can expunge the offenses by application.

- A copy of the application must be served to the agency that prosecuted offense.
- A rebuttable presumption would arise that the misdemeanor marijuana-related conviction would not have been a crime on or after December 6, 2018.
- Prosecuting agency can rebut the presumption by a preponderance of the evidence.
- Prosecuting agency must file an answer to application within 60 days.
- If no response is given the court is required to expunge the conviction within 21 days of the expiration of the 60 days.
- If a response is given the court shall hold a hearing within 30 days of the response.
- The court shall be required to rule within 14 days of the hearing. By this statute the rules of evidence will not apply to this hearing.

**House Bill 4983-** provides timelines for application to set aside convictions.

- 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.

The time for the above occurs after ALL of the following are met:

- Imposition of the sentence
- Completion of felony probation
- Discharge from parole
- Completion of any terms of imprisonment

The bill further specifies that the court shall not enter an order setting aside a conviction(s) unless ALL of the following apply

- The applicable time period has lapsed
- There are no pending charges
- The applicant has not been convicted of any criminal offense during the applicable time period

This bill also provides further requirements when filing the application for expungement- i.e. not the automatic expungement process.

### **House Bill 4984**

Previously, an applicant could only petition to have two misdemeanors and one felony expunged. Pursuant to this bill an applicant may have not more than three felony convictions to be eligible for expungement. Further, an applicant may only petition the court to have at most two assaultive crimes expunged in their lifetime.

The definition for assaultive crimes has been expanded to 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.

### **House Bill 4985 (One bad night)**

This bill requires that more than one felony offense or more than one misdemeanor offense be treated as a single felony or misdemeanor conviction if the underlying felony or misdemeanor offense occurred within 24 hours and arose from the same transaction. This is only applicable provided none of those felonies or misdemeanor are specifically excluded.

### **House Bill 5120**

This bill requires an arresting agency and the Michigan State Police to maintain a nonpublic record created under the Act if an application to set aside a conviction or convictions were granted. The bill prohibits an applicant from seeking resentencing in another criminal case he or she was sentenced for during which the conviction or convictions at issue were used in determining the appropriate sentenced for the individual.