

EXPUNGE CERTAIN DUI OFFENSES FROM RECORD

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Senate Bill 1254 (H-1) as reported from committee

Sponsor: Sen. Ed McBroom

House Committee: Judiciary

Senate Committee: Judiciary and Public Safety [Discharged]

Complete to 12-16-20

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

SUMMARY:

Senate Bill 1254 would amend 1965 PA 213, which provides for setting aside certain criminal convictions, to allow a person to apply to have set aside, and allow a judge to set aside, a first violation operating while intoxicated offense as defined in the bill. 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 among the offenses eligible to be set aside. The amendments proposed by the bill are virtually identical to those proposed by House Bills 5029 and 6453.

Currently, a person cannot petition to have set aside, and a judge cannot set aside, a conviction for operating a motor vehicle while intoxicated.

The bill would provide that 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 that first violation set aside has not previously applied to and had a first time operating while intoxicated offense conviction set aside. (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.)

For purposes of the bill, *operating while intoxicated* would mean a violation of either of the following that is not a *first violation operating while intoxicated offense*:

- Section 625 (various drunk or drugged offenses) or section 625m of the Michigan Vehicle Code (alcohol-related offenses committed while operating a commercial vehicle).
- A local ordinance, law of an Indian tribe, law of another state, or federal law, violation of which substantially corresponds to a violation of section 625 or 625m.

First violation operating while intoxicated offense, for purposes of the bill, would mean a violation of either 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 federal law, violation of which substantially corresponds to a violation of section 625(1), (2), (3), (6), or (8).

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(6) prohibits a person who is less than 21 years of age from operating a vehicle with any bodily alcohol content.

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

The bill would take effect April 11, 2021.

MCL 780.621c

HOUSE COMMITTEE ACTION:

The House Judiciary committee reported an H-1 substitute that expanded the first offense operating while intoxicated offenses that could be set aside under the bill to include a violation of driving with any bodily content of alcohol by a person less than 21 years of age. In addition, the substitute would provide that the bill would not apply if the person had previously applied for and received a set-aside for an operating while intoxicated offense.

FISCAL IMPACT:

The bill 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, the bill 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:

The following entities indicated support for the bill (12-15-20):

- Criminal Defense Attorneys of Michigan
- Safe and Just Michigan

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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.