



## **VIRTUAL CONGRESS OF THE UNITED STATES OF AMERICA**

### **In the House of Representatives**

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*April 2nd 2020*

Proposed by: Representative Harder (D-CA)

Co-Sponsors:

President Vita (I)	Representative Jacob (R-OH)
Vice President Helvin (R-4)	Senator Pete (D-AL)
Representative Pluribus (D-IN)	Senator Ethan (D-KS)
Representative Hill (I-DE)	Representative Bo (D-FL)
Representative Dillon (R-OR)	Representative Katie (D-MI)
Representative McKenna (D)	Representative Ghandi Stalin (D-NY)
Representative Emma (I-OR)	

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# ***THE C.R.I.M.E. ACT***

To automatically expunge certain felonies after 10 years and misdemeanors after 7 years, with a cap of 2 felonies and 4 misdemeanors (assaultive crimes not eligible);

To allow for the total expungement of marijuana-related offenses if it would not have been a crime under law passed by the VC;

To treat multiple felonies or misdemeanors arising from the same 24-hour period as one conviction for the purposes of expungement (assaultive crimes, possession of weapons, or crimes with max penalties of 10+ years in prison not eligible);

To allow the expungement of most traffic offenses (not including intoxicated operation, improper licensing for commercial vs motor vehicles, and any offense causing injury or death);

To expand the number of convictions eligible for expungement to allow for up to three felonies and an unlimited number of misdemeanors (under the conditions that no more than two assaultive crimes, and not more than one felony conviction for the same offense if the offense is punishable by more than 10 years imprisonment);

To revise the waiting period after which someone can apply for expungement, to between three and seven years, depending on the type and number of convictions.

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## **SECTION 1.**

Short title.

- A. This Act or Bill may be cited as the “Conviction Removal and Institutional Misdemeanor Expungement Act” or the “C.R.I.M.E. Act”.

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## **SECTION. 2.**

1. Beginning 15 days after the date of this law’s passage, a felony conviction must be set aside under this section if the following applies:
  - a. Ten years have passed from whichever of the following events occurs last:
    - i. Imposition of the sentence for the conviction.
    - ii. Completion of any term of imprisonment for the conviction.
2. Beginning 15 days after the date of this law’s passage, a misdemeanor conviction must be set aside under this section if the following applies:

- a. Seven years have passed from the imposition of the sentence.
  3. Not more than 2 felony convictions and 4 misdemeanor convictions total may be set aside under this section during the lifetime of an individual.
  4. A conviction must not be set aside under this section unless all of the following apply:
    - a. The applicable time period required under this section has elapsed.
    - b. There are no criminal charges pending against the applicant.
    - c. The applicant has not been convicted of any criminal offense during the applicable time period required under this section.
  5. This section does not apply to an individual who has more than 1 conviction for an assaultive crime.
  6. An individual whose conviction is set aside under this section impliedly consents to the creation of the nonpublic record.
  7. This section does not apply to a conviction for an assaultive crime, a serious misdemeanor, a crime of dishonesty, any other offense punishable by 10 or more years' imprisonment, a violation of the laws which involve a minor, vulnerable adult, injury or serious impairment, death, or any violation related to human trafficking.
  8. The Department of Justice shall develop and maintain a computer-based program for the setting aside of convictions under this section. In fulfilling its duty under this subsection, the Department of Justice may contract with a private technical consultant as needed.
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### **SECTION. 3.**

1. This act does not relieve any obligation to pay restitution owed to the victim of a crime nor does it affect the jurisdiction of the convicting court with regard to enforcing an order for restitution.
2. A conviction, including any records relating to the conviction and any records concerning a collateral action, that has been set aside under this act cannot be used as evidence in an action for negligent hiring, admission, or licensure against any person.

3. A conviction that is set aside under this act may be considered a prior conviction by 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.
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#### **SECTION. 4.**

1. A person shall not apply to have set aside, and a judge shall not set aside, a conviction for any of the following:
    - a. A felony for which the maximum punishment is life imprisonment or an attempt to commit a felony for which the maximum punishment is life imprisonment.
    - b. The following traffic offenses:
      - i. A conviction for operating while intoxicated by any person.
      - ii. Any traffic offense committed by an individual with an indorsement on his or her operator's or chauffeur's license to operate a commercial motor vehicle that was committed while the individual was operating the commercial motor vehicle or was in another manner a commercial motor vehicle violation.
      - iii. Any traffic offense that causes injury or death.
    - c. A felony conviction for domestic violence, if the person has a previous misdemeanor conviction for domestic violence.
  4. An order setting aside a conviction for a traffic offense under this act must not require that the conviction be removed or expunged from the applicant's driving record.
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#### **SECTION. 5.**

1. Beginning on April 1, 2020, a person convicted of 1 or more misdemeanor marijuana offenses in violation of federal law or the laws of a state or a local ordinance of a political subdivision a state may apply to set aside the conviction or convictions under this subsection.
2. An application under subsection (1) must contain all of the following information:
  - a. The full name and current address of the applicant.
  - b. A certified record of each conviction that is to be set aside.
3. A copy of the application under subsection (1) must be served upon the agency that prosecuted the offense or offenses the applicant seeks to set aside.

4. A rebuttable presumption that a misdemeanor marijuana-related conviction sought to be set aside by an applicant was based on activity that would not have been a crime if committed on or after March 1, 2020 arises upon the filing of an application under subsection (1). The presumption described in this subsection may be rebutted by the presentation of evidence by the prosecuting agency that prosecuted the case that demonstrates 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 federal law, the laws of a state or a political subdivision of a state if it had been committed on or after March 1, 2020. An answer made under this subsection must be filed no later than 60 days from the date of service of the application. If an answer is filed with the convicting court, the answering party must serve the answer upon the other parties to the matter.
5. Upon the expiration of the 60-day period under subsection (4), if the prosecuting agency has not filed an answer to the application addressing the rebuttable presumption described in subsection (4), the convicting court must 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 Justice
6. If the prosecuting agency files an answer addressing the rebuttable presumption in subsection (4), the convicting court must 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 must prove by a preponderance of the evidence that a conviction or convictions sought to be set aside by an applicant were based upon conduct that would constitute a criminal violation of federal law, the laws of a state or a political subdivision of a state if it had been committed on or after March 1, 2020. An applicant is not required to present evidence that his or her conviction was based upon conduct that would not constitute a criminal violation of the laws of this state or a political subdivision of this state on or after March 1, 2020. The evidentiary burden under this subsection rests solely on the objecting prosecuting agency. After a hearing under this subsection, the court shall enter an order denying or granting the application no later than 14 days after completion of the hearing and serve any written opinions and orders, including an order setting aside the conviction or convictions, upon the parties, including the Department of Justice. The rules of evidence do not apply to a hearing under this subsection.

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## SECTION. 6.

1. A person convicted of 1 or more criminal offenses, but not more than a total of 3 felony offenses, may apply to have all of his or her convictions set aside.
2. An applicant may not have more than a total of 2 convictions for an assaultive crime set aside under this act during his or her lifetime.
3. An applicant may not have more than 1 felony conviction for the same offense set aside under this section if the offense is punishable by more than 10 years imprisonment.

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## **SECTION. 7.**

1. For purposes of this act, more than 1 felony offense or more than 1 misdemeanor offense must be treated as a single felony or misdemeanor conviction if the felony or misdemeanor convictions were contemporaneous such that all of the felony or misdemeanor offenses occurred within 24 hours and arose from the same transaction, provided that none of those felony or misdemeanor offenses constitute any of the following:
  - a. An assaultive crime.
  - b. A crime involving the use or possession of a dangerous weapon.
  - c. A crime with a maximum penalty of 10 or more years' imprisonment.
  - d. A conviction for a crime that if it had been obtained in this state would be for an assaultive crime.

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## **SECTION. 8.**

1. An application under this act to set aside more than 1 felony conviction shall only be filed 7 or more years after whichever of the following events occurs last:
  - a. Imposition of the sentence for the convictions that the applicant seeks to set aside.
  - b. Completion of any term of felony probation imposed for the convictions that the applicant seeks to set aside.

- c. Discharge from parole imposed for the convictions that the applicant seeks to set aside.
    - d. Completion of any term of imprisonment imposed for the convictions that the applicant seeks to set aside.
  - 2. An application under this act to set aside 1 or more serious misdemeanor convictions or 1 felony conviction shall only be filed 5 or more years after whichever of the following events occurs last:
    - a. Imposition of the sentence for the conviction or convictions that the applicant seeks to set aside.
    - b. Completion of probation imposed for the conviction or convictions that the applicant seeks to set aside.
    - c. Discharge from parole imposed for the conviction that the applicant seeks to set aside, if applicable.
    - d. Completion of any term of imprisonment imposed for the conviction or convictions that the applicant seeks to set aside.
  - 3. An application under this act to set aside 1 or more misdemeanor convictions, other than an application to set aside a serious misdemeanor or any other misdemeanor conviction for an assaultive crime, shall only be filed 3 or more years after whichever of the following events occurs last:
    - a. Imposition of the sentence for the conviction that the applicant seeks to set aside.
    - b. Completion of any term of imprisonment imposed for the conviction that the applicant seeks to set aside.
    - c. Completion of probation imposed for the conviction or convictions that the applicant seeks to set aside.
  - 4. If a petition under this act is denied by the convicting court, a person shall not file another petition concerning the same conviction or convictions with the convicting court until 3 years after the date the convicting court denies the previous petition, unless the court specifies an earlier date for filing another petition in the order denying the petition.
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