

Safe & Just Michigan

Clean Slate for First-Violation DUI

Disclaimer: Safe & Just Michigan does not provide legal services, and the information provided below is not legal advice. If you have specific legal questions about the new law and how it applies to a particular criminal record, we recommend that you contact an attorney.

While Michigan law allows for different variations of Operating While Intoxicated offenses, the most common offenses are for Driving/Operating Under the Influence (DUI/OWI) and Operating/Driving While Visibly Impaired (OWVI/DWVI).

As seen below, Operating While Intoxicated offenses are generally prosecuted based on the amount of DUI's an individual has accumulated to that point (See **MCL 257.625** at bit.ly/midui-mvc).

- DUI-1st offense (Misdemeanor-93 day Max)
- DUI-2nd offense (Misdemeanor-1 Year Max)
- DUI-3rd offense (Felony-5 Year Max)

Traditionally, these types of offenses have been excluded from expungement under Michigan law. However, that is about to change with the recent passage of **HB 4219** (See bit.ly/midui-4219) and **HB 4220** (See bit.ly/midui-4220). These amendments to Michigan's Clean Slate Act will go into effect on Feb. 19, 2022, and will open the door for expungement of certain DUI offenses.

Key Changes:

- Under the new law, first-violation Operating While Intoxicated (OWI) offenses will potentially be eligible for expungement by application. This will be the only means of expunging first-violation DUI offenses, as they will not be eligible for automatic expungement (See **MCL 780.621c(3)** at bit.ly/midui-exempt).
- A first-violation DUI offense will not be eligible for expungement if the individual has previously applied and had a first-offense DUI expunged (See **MCL 780.621c(3)** at bit.ly/midui-exempt).
- A 5-year waiting period before filing for expungement of a first-violation Operating While Intoxicated (OWI) offense (See **MCL 780.621d(2)** at bit.ly/midui-5yr).
- The new law also allows courts to consider whether the applicant has "benefitted from rehabilitative or educational programs" when evaluating DUI expungement petitions (See **MCL 780.621c(4)** at bit.ly/midui-progs).

Questions? Contact Safe & Just Michigan, at 517.258.1134 or info@safeandjustmi.org

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While these are all significant changes, many of the prohibitions under the current law (listed below) will still remain in effect:

- Any other Operating While Intoxicated (OWI) offense not considered a first violation, e.g. a second- or third-offense DUI. First-offense DUI could also be excluded in cases where the applicant has multiple first-conviction DUIs or has previously had a first-violation DUI expunged.
- Traffic offenses causing injury or death. A DUI causing injury or death, even if it was considered a first-violation offense, is ineligible for expungement.
- Any traffic offense committed by a person with a commercial driver's license (CDL) while operating a commercial vehicle. First-violation DUIs in cases where the driver had a CDL license while operating a commercial vehicle are ineligible for expungement.

What does it mean to be convicted of a first-violation OWI offense?

A first-violation Operating While Intoxicated offense is considered to be any violation committed by an individual who at the time of the offense did not have a prior Operating While Intoxicated offense (See **MCL 780.621(4)(d)** at bit.ly/midui-define). Yet determining what constitutes a first violation DUI offense isn't always as clear as it may seem.

Example 1:

First DUI 1999	Second DUI 2006	Third DUI 2010
First Violation	Second Violation	Third Violation

The nature of criminal plea agreements allows for an individual to be convicted of multiple first-offense DUIs, even if that individual has had prior convictions for the same offense. See Example 2.

Example 2:

Operating While Visibly Intoxicated 1999	First DUI 2006	First DUI 2010
First Violation	Second Violation	Third Violation

Thus, even though the individual in Example 2 was convicted of multiple OWI first offenses, the 1999 OWVI first-offense is the only offense that would be eligible for expungement because the applicant had no prior OWI offenses at the time they were convicted of that particular offense in 1999.

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The Court's Discretionary Powers under the Clean Slate Act:

- Courts have traditionally enjoyed a significant amount of discretion when determining whether an applicant's expungement application should be granted or not. This would often involve an analysis of the applicant's post-conviction behavior balanced against the interests of the public (See **MCL 780.621D(13)** at bit.ly/midui-courts).
- Once the new amendments go into effect, courts will also be able to consider the rehabilitative steps taken by the applicant to address any substance abuse problem that may have contributed to their first violation operating while intoxicated offense. (See **MCL 780.621c(4)** at bit.ly/midui-rehab). While not necessarily a requirement, this could mean that DUI expungement applicants may have to submit evidence of involvement in AA or other substance abuse programs in order to convince the court that the issue has been addressed adequately.

Expungement vs. Driver's License Restoration

Criminal convictions can often be a barrier to better housing and job opportunities, but DUI convictions can also result in the loss of the applicant's driving <https://bit.ly/midui-petition> privileges. With that in mind, it is important to draw a distinction between the expungement process and the driver's license restoration process.

- The Clean Slate Act specifically states that the expungement of a traffic offense (e.g. DUI) from an applicant's criminal record would not result in the removal of the conviction from the applicant's driving record with the Michigan Secretary of State (See **MCL 780.621C(5)** at bit.ly/midui-sos). This would also mean that the expungement of a first-violation DUI offense would not directly lead to the restoration of the applicant's driving privileges.
- Unlike an expungement which involves petitioning the court for removal of a conviction, an individual seeking to restore their driving privileges would generally have to petition the **Michigan Secretary of State** (See www.michigan.gov/sos). You can obtain the **petition package** at bit.ly/midui-petition.
- It is important that the applicant understands the difference between the expungement process and the driver's license restoration process, to ensure that they make an informed decision which aligns with their ultimate objective.

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