

CLIENT ALERTS

Governor Whitmer Signs Bills Making First-time Offenders of “Operating While Intoxicated” (“OWI”) Eligible to Set Aside Convictions

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Earlier this week, Governor Gretchen Whitmer signed into law two bills, House Bills 4219 and 4220, which will allow first-time offenders of “operating while intoxicated” (“OWI”) to have their OWI set aside (also called “expunged”) from their records. The new laws follow last year’s passage of the “Clean Slate” legislation, which expanded eligibility for setting aside certain convictions and created a process for the automatic sealing of certain non-violent conviction records for those who remained conviction-free for specified periods of time. Clean Slate notably excluded certain traffic offenses including drunk driving. This week’s bill signings change that.

If you have a conviction for a first OWI offense, the signings create an opportunity to apply to set aside the OWI conviction a few years after sentence imposition or discharge from imprisonment, probation, or parole for the conviction, whichever is later. Traffic offenses that caused injury or death remain ineligible for set-aside. Further, those who have previously applied to have and had a first violation OWI set aside are ineligible to take advantage of the new laws.

Mechanically, the new laws are effective February 19, 2022, 180 days from enactment. Once eligible, those seeking to set aside their OWI conviction will petition the court through application, and a judge will review and rule on the application. The new law provides guidance to judges to help them determine whether to grant the application to set aside: “the reviewing court may consider whether or not the petitioner has benefited from rehabilitative or educational programs, if any were ordered by the sentencing court, or whether such steps were taken by the petitioner before sentencing for the first violation operating while intoxicated offense conviction he or she is seeking to set aside.”

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If you have an OWI conviction on your record and believe you may be eligible to have it set aside, the Butzel team is available to advise and assist you in evaluating your record, making suggestions now that will help in making your eventual application (6 months from now) more likely to be granted, and petitioning the court on your behalf to set aside the conviction. Please contact the authors or members of our team for more information.

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