

Legislative Analysis



EXPUNCTION REVISIONS

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Senate Bill 159 as passed by the Senate

Sponsor: Sen. Rick Jones

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (5-27-11)

BRIEF SUMMARY: The bill would allow a person to apply to have a felony or a misdemeanor conviction expunged even if that person also had a conviction for one or two minor offenses committed when the person was 21 years of age or younger.

FISCAL IMPACT: The bill would have no fiscal impact on state or local government.

THE APPARENT PROBLEM:

Michigan law allows a person with only one criminal conviction to apply to have that conviction set aside (expunged), but he or she must wait at least five years from the date of sentencing or the completion of imprisonment, whichever is later. Certain crimes, such as murder, rape, and traffic offenses are not eligible for expungement. However, if a person has a felony conviction and years later had a minor misdemeanor or a traffic misdemeanor such as reckless driving, the felony can never be expunged and the person may be negatively affected for a lifetime. A similar situation affects persons with two misdemeanors, even when those are for minor, nonviolent offenses.

It is estimated that 30 percent of adult Americans have criminal records, and studies have shown that about two-thirds of employers will not knowingly hire a person with a past criminal conviction. Many national companies have iron-clad policies that exclude ex-felons from employment. Even a misdemeanor conviction for a non-violent offense can prevent a person from receiving an occupational license under state law. Many professions are now required by statute to do fingerprint checks on applicants and employees and refuse employment if the person had been convicted of certain crimes. In addition, many ex-offenders are denied housing and financial aid for schooling, even decades later. These statistics are important because research reveals that unemployment and homelessness are major factors influencing whether a person convicted of a crime will commit another one. Unemployment or underemployment forces many of these people to apply for state aid and decreases the ability of non-custodial parents to pay child support.

The legacy of a criminal past is particularly hard on those who when young committed small offenses, like hanging out in a public park after closing and therefore are ineligible to apply to have a subsequent criminal offense expunged. Some people believe that the law should be changed so that a person – who as a teenager or young adult committed a

minor misdemeanor offense – could still apply to have a felony offense or other misdemeanor offense removed from his or his record.

THE CONTENT OF THE BILL:

Michigan law allows a person with only one criminal conviction to apply to have that conviction set aside (expunged), but the person must wait at least five years from the date of sentencing or the completion of imprisonment, whichever is later, before applying for an expunction. Certain crimes, such as murder, rape, and traffic offenses are not eligible to be set aside.

Senate Bill 159 would amend Public Act 213 of 1965, which provides a mechanism by which a person who has only one criminal conviction (a felony or a misdemeanor) can apply to the court for an order setting aside the conviction.

Under the bill, a person who is eligible to file an application to have either a felony or a misdemeanor expunged could do so even if that person also had up to two minor offenses. "Minor offense" would mean a misdemeanor or ordinance violation, but only if the maximum permissible term of imprisonment for the violation is 90 days, the maximum permissible fine does not exceed \$1,000, and the offense was committed when the person was 21 years of age or younger.

Additionally, certain information is currently required to be included in an application for expunction. The bill would revise one of the required pieces of information so as to require a statement that the applicant has not been convicted of an offense other than the conviction sought to be set aside as a result of the application, and not more than 2 minor offenses, if applicable. (Highlighting denotes proposed new language.)

MCL 780.621

HOUSE COMMITTEE ACTION:

The committee reported the Senate-passed version without amendment.

BACKGROUND INFORMATION:

Under Public Act 213 of 1965, a conviction cannot be set aside for a felony that is punishable by life imprisonment (or an attempt to commit such a felony), for a conviction for a violation or attempted violation of the criminal sexual conduct (CSC) statutes (with the exception of CSC in the fourth degree), or for a traffic offense.

The issue of expanding eligibility for expunction of criminal convictions has been discussed for many years. Similar legislation was introduced in the previous four legislative sessions. House Bill 4327 in the 2005-2006 session and House Bill 5493 in the 2003-2004 session were passed by the House but failed to see action in the Senate. House Bill 5213 in the 2006-2007 session and House Bill 4405 from last session were

reported from committee but died on the House floor. Earlier this year, House Bill 4106 was introduced to allow a person, under certain circumstances, to apply to have a felony conviction expunged even if that person had also been convicted of one or two misdemeanor offenses, and would allow a person convicted of not more than two misdemeanor offenses to apply for the expunction of either or both misdemeanors. The bill is pending action on the House floor.

ARGUMENTS:

For:

Currently, individuals can apply to have their criminal records wiped clean only if they have only one eligible felony or misdemeanor offense. Many advocates feel this is unfair as a person who has a felony conviction is ineligible to apply for expunction today if he or she had also been convicted as a youth for a minor misdemeanor offense or even for some traffic-related offenses or local ordinance violations. For example, a minor in possession conviction (MIP) is enough to prevent individuals who have later turned their lives around from being able to get a felony or a more serious misdemeanor off their records. The law needs to be changed, especially considering the impediments for housing and employment created by a criminal record.

The bill would not change the type of felonies or misdemeanors eligible for expunction, or the five-year waiting period to apply for the conviction to be set aside. The bill would simply help those with a minor youthful indiscretion to still be eligible to clean up their records, get a job, and be productive members of society.

Against:

Few individuals would be helped by the bill. Over the past several years, the criminal penalties for most misdemeanor crime categories have been increased from a maximum of 90 days imprisonment to 93 days in order to trigger fingerprinting and record retention requirements. Thus, most people in need of expunction reform would remain ineligible because the misdemeanors on their records would likely carry the 93-day maximum. Moreover, depending on when the conviction occurred and the date when the penalties were increased, the same violation considered a minor offense for one person would not constitute a minor offense for someone else.

Also, those who made mistakes when young are not the only ones deserving a second chance. A recent editorial in the *Detroit Free Press* related the story of a man named Smith who, at age 52, was denied entry into a nursing program after completing two years of college with a 3.7 grade point average because of a felony record. (Gerritt, Jeff, Too late for one Detroiter, expunge bill could help many, *Detroit Free Press*, 5-20-11.) Years earlier, Smith, after cleaning his car in preparation to sell it, forgot to put back in his trunk a duffel bag holding the unloaded, registered gun he carried to and from a shooting range. He pleaded no contest to an attempt to carry a concealed weapon and served two years' probation. His attempt to get the felony record expunged failed because long before the gun incident, he had been convicted of a misdemeanor for driving with a suspended license. Under Senate Bill 159, Smith will still be unable to

purge the felony from his record and move on with his life unless the suspended license offense happened when he was 21 or younger.

The broad consensus among prosecutors, defense attorneys, and judges is that the broader approach taken in House Bill 4106 is what is needed to provide judges with discretion to look at each case individually. Judges need discretion to make a decision based on the facts surrounding the offense to be expunged and any other minor misdemeanor on the person's record; the time that has passed since any of the offenses were committed; and whether the person has successfully turned his or her life around.

POSITIONS:

The Prosecuting Attorneys Association of Michigan (PAAM) supports the bill, but prefers the broader discretion provided to a judge contained in House Bill 4106. (5-12-11)

The Attorney General supports the bill. (5-12-11)

The Criminal Defense Attorneys of Michigan (CDAM) supports the bill but prefers the broader judicial discretion contained in House Bill 4106. (5-12-11)

The State Bar of Michigan has been on record for over six years supporting changes to the criteria allowing an individual to apply for criminal record expunction, but feels that Senate Bill 244 and House Bill 4106 represent the version of expunction legislation most strongly requested by judges, prosecutors, defense attorneys, and civil law practitioners. (5-9-11)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.