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BILL ANALYSIS

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Senate Bill 159 (as reported without amendment) *(as passed by the Senate)*
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 3-18-11

RATIONALE

Michigan law allows a person convicted of an offense, with certain exceptions, to apply to the convicting court to have the conviction expunged from the person's record. A person is not eligible for expunction if he or she has been convicted of more than one offense. Some people believe that an individual should be eligible to have a conviction set aside if he or she had committed no more than two minor misdemeanors before the age of 22, in addition to the conviction sought to be set aside.

CONTENT

The bill would amend Public Act 213 of 1965, which provides for the setting aside of certain criminal convictions, to specify that a person would not be ineligible for expunction of a criminal conviction because of not more than two convictions for a "minor offense" in addition to the offense to be expunged.

Under the Act, a person who is convicted of a single offense may file an application with the convicting court for an order setting aside the conviction. An application may not be filed until at least five years after the sentencing for the conviction, or five years after completion of any term of imprisonment for the conviction, whichever is later. (A conviction for criminal sexual conduct (except in the fourth degree), a felony for which the maximum penalty is imprisonment for life, or a traffic violation may not be set aside.)

Under the bill, a person who otherwise was eligible to apply for expunction would not be rendered ineligible by virtue of being convicted of not more than two minor offenses in addition to the offense for which the person filed an application.

An application for expunction must include a statement that the applicant has not been convicted of an offense other than the one sought to be set aside. Under the bill, the statement would have to indicate that the applicant had not been convicted of an offense other than the conviction sought to be set aside and not more than two minor offenses, if applicable.

"Minor offense" would mean a misdemeanor or ordinance violation for which the maximum permissible imprisonment is 90 days, for which the maximum permissible fine is $1,000, and that is committed by a person who is not more than 21 years old.

MCL 780.621

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Committing a youthful indiscretion, such a being a minor in possession of alcohol, should not preclude a person from having another, more serious conviction set aside after maintaining a spotless criminal record for at least five years. That is not the case, however, under Michigan's criminal expunction statute. Under the bill, a person who committed a minor offense, punishable by 90 days or less, before turning 22 would

be able to seek expunction of his her more serious criminal conviction, despite having more than one conviction on his or her record. This would allow greater leniency by the courts.

Response: Many minor misdemeanors carry a 93-day maximum and would not be included as a "minor offense" under the bill. Some of these violations once were punishable by up to 90 days, but were changed to trigger fingerprinting and recording requirements. Under the bill, depending on the date of those changes, and the date of a person's misdemeanor conviction, the same violation considered a minor offense for one person would not constitute a minor offense for someone else. Perhaps the bill's definition of minor offense should include misdemeanors punishable by up to 93 days.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.