



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 159 (as enacted)
Sponsor: Senator Rick Jones
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 64 of 2011

Date Completed: 8-16-11

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. Previously, a person was not eligible for expunction if he or she had been convicted of more than one offense. It was suggested that an individual should be eligible to have a conviction set aside if he or she had committed not more than two minor misdemeanors before the age of 22, in addition to the conviction sought to be set aside.

CONTENT

The bill amended Public Act 213 of 1965, which provides for the setting aside of criminal convictions, to do all of the following:

- **Specify that a person is not 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.**
- **Prohibit expunction of a child sexually abusive material conviction.**
- **Prohibit expunction of a conviction for using the internet or a computer to communicate with another for the purpose of committing certain crimes.**

Under the Act, a person who was 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.

The bill specifies that a person who otherwise is eligible to apply for expunction is not rendered ineligible by virtue of being convicted of not more than two minor offenses in addition to the offense for which the person files an application.

Under the Act, 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. The bill also prohibits the expunction of a conviction for child sexually abusive material (MCL 750.145c) or for using the internet or a computer to communicate with another for the purpose of committing or attempting to commit certain crimes (MCL 750.145d).

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

The bill defines "minor offense" as 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.

The bill took effect on June 23, 2011.

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 as 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 has not been the case, however, under Michigan's criminal expunction statute. Under the bill, a person who commits a minor offense, punishable by imprisonment for 90 days or less, before turning 22 may seek expunction of his or her more serious criminal conviction, despite having more than one conviction on his or her record. This will allow greater leniency by the courts.

Response: Many minor misdemeanors carry a 93-day maximum term and are not included as a "minor offense" under the bill. Some of these violations once were punishable by up to 90 days' imprisonment, but were changed so fingerprinting and recording requirements would be triggered. 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 will not constitute a minor offense for someone else. The definition of minor offense should include misdemeanors punishable by up to 93 days.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Matthew Grabowski

A1112\159ea.

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.