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House Bill 4186 (Substitute H-5 as passed by the House)
Sponsor: Representative Stacy Erwin Oakes
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 12-15-14

CONTENT

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

- **Allow a person who was convicted off not more than one felony and not more than two misdemeanors to petition the convicting court to set aside the felony.**
- **Allow a person who was convicted of not more than two misdemeanors to petition the court to set aside one or both of those convictions.**
- **Require a conviction that had been deferred and dismissed to be considered a misdemeanor conviction for purposes of eligibility for expunction.**
- **Require an application for expunction to include a list of all actions that had been deferred and dismissed.**
- **Prohibit expunction for certain convictions.**
- **Allow an expunction for fourth-degree criminal sexual conduct (CSC) only if the conviction occurred before the bill's effective date and the applicant had not been convicted of another offense except one or two minor offenses.**
- **Revise the provision that establishes when an application for expunction may be filed.**
- **Allow the Michigan Department of State Police (MSP) to make available to the Department of Corrections (DOC) a nonpublic record of a conviction that had been set aside, if a person with an expunged conviction applied to the DOC for employment.**
- **Exempt the victim of a crime for which a conviction had been expunged from the criminal penalty for disclosing information concerning an expunged conviction.**

Eligibility for Expunction

Under the Act, a person who is convicted of not more than one offense may file an application with the convicting court for the entry of an order setting aside the conviction. A person who otherwise is eligible to apply for expunction is not ineligible because he or she was convicted of not more than two minor offenses in addition to the offense for which the person files an application. The bill would delete these provisions.

Under the bill, a person who was convicted of not more than one offense could file an application with the convicting court for the entry of an order setting aside one or more convictions as described below.

A person who was convicted of not more than one felony and not more than two misdemeanors could petition to set aside the felony. A person who was convicted of not more than two misdemeanors, and no other felony or misdemeanor, could petition to set aside one or both of the misdemeanors.

In addition, a person who was convicted of fourth-degree CSC, or an attempt to commit that violation, before the bill's effective date, could petition to set aside the conviction if he or she had not been convicted of another offense other than not more than two minor offenses.

The Act defines "minor offense" as a misdemeanor or ordinance violation for which the maximum term of imprisonment does not exceed 90 days, for which the maximum fine is not more than \$1,000, and that is committed by a person who is not more than 21 years old.

The bill would define "felony" as either of the following, as applicable:

- For purposes of the offense to be set aside, a violation of a penal law of this State that is punishable by imprisonment for more than one year or that is designated by law to be a felony.
- For purposes of identifying a prior offense, a violation of a penal law of this State, another state, or the United States that is punishable by imprisonment for more than one year or is designated by law to be a felony.

"Misdemeanor" would mean a violation of any of the following:

- A penal law of this State, another state, an Indian tribe, or the United States that is not a felony.
- An order, rule, or regulation of a State agency that is punishable by up to one year's imprisonment and/or a fine that is not a civil fine.
- A local ordinance of a political subdivision of this State substantially corresponding to a misdemeanor listed above.
- A violation of the law of another state or political subdivision of another state substantially corresponding to a misdemeanor listed in either of the first two categories.
- A violation of U.S. law substantially corresponding to a misdemeanor listed in either of the first two categories.

Deferred & Dismissed Convictions

Under the bill, a conviction that was deferred and dismissed, whether a misdemeanor or a felony, would have to be considered a misdemeanor conviction for purposes of eligibility for expunction.

That provision would apply to deferral and dismissal under any of the following provisions:

- The Michigan Liquor Control Code, for the purchase, consumption, or possession of alcohol by a minor.
- The Revised Judicature Act, for a person who pleaded guilty to an offense that was not a traffic offense and who may be eligible for discharge and dismissal under a drug treatment court program.
- The Revised Judicature Act, for a person who completed a veterans treatment court program.
- Chapter II of the Code of Criminal Procedure, for a person assigned to youthful trainee status.
- Chapter IX of the Code of Criminal Procedure, for a first conviction of domestic assault.

- The Public Health Code, for a first conviction of certain drug-related offenses.
- The Michigan Penal Code, for a parent's taking or retaining a child for more than 24 hours with the intent to detain or conceal the child from another parent or legal guardian or from any other person who has lawful charge of the child.
- The Michigan Penal Code, for a licensed health care professional engaging in the practice of his or her profession either with a prohibited bodily alcohol content or under the influence of a controlled substance due to illegal or improper use of that substance.

The bill would require an application for expunction to include a statement listing all actions listed above that were initiated against the applicant and had been dismissed.

Expunction Prohibitions

Currently, a person may not apply to have certain convictions set aside, and a judge may not set aside those convictions. The bill also would prohibit expunction for the following:

- Second-degree child abuse, or second-degree child abuse in the presence of another child.
- Fourth-degree CSC, if the conviction occurred after the bill's effective date.
- A felony conviction for domestic violence, if the person had a previous misdemeanor conviction for domestic violence.
- A violation of Chapter 67A (Human Trafficking) of the Michigan Penal Code.
- A violation of Chapter 83-A (the Michigan Anti-Terrorism Act) of the Michigan Penal Code.

("Domestic violence" would mean that term as defined in the domestic violence prevention and treatment Act.)

Filing an Expunction Application

Under the Act, an application for expunction may not be filed until at least five years following imposition of the sentence for the conviction that the applicant seeks to set aside, or five years following completion of any term of imprisonment for that conviction, whichever occurs later.

Under the bill, instead, an application could be filed only five or more years after whichever of the following events occurred last:

- Imposition of the sentence for the conviction that the applicant sought to set aside.
- Completion of probation imposed for the conviction sought to be set aside.
- Discharge from parole imposed for the conviction sought to be set aside.
- Completion of any term of imprisonment imposed for the conviction sought to be set aside.

If the convicting court denied a petition for expunction, a person could not file another petition concerning the same conviction or convictions with that court until three years after the date of denial, unless the court specified an earlier date for filing another petition in the order denying the petition.

Nonpublic Record of Expunctions

When an order setting aside a conviction is entered, the court must send a copy of the order to the arresting agency and the Department of State Police. The MSP must retain a nonpublic record of the order and of the record of the arrest, fingerprints, conviction, and sentence to which the order applies. The nonpublic record may be made available only to certain entities for certain purposes.

The bill would require the MSP to make the record available to the Department of Corrections for consideration by the DOC if a person whose conviction had been expunged applied for employment with the DOC.

Penalty for Disclosure

Under the Act, a person who knows or should have known that a conviction was set aside and divulges, uses, or publishes information concerning an expunged conviction is guilty of a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of \$500. That penalty does not apply to the applicant for expunction. Under the bill, the penalty also would not apply to a victim. As used in this provision, "victim" would mean any individual who suffers direct or threatened physical, financial, or emotional harm as the result of the offense that was committed by the applicant.

MCL 780.621 & 780.623

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill could result in a slight increase in cost to local courts and would have no fiscal impact on the State. To the extent that numerous expungement petitions were filed due to the bill, the courts could require additional staff resources to address the requests.

Fiscal Analyst: John Maxwell

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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.