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BILL



ANALYSIS

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Senate Bill 244 (Substitute S-1 as reported)  
Sponsor: Senator Rick Jones  
Committee: Judiciary

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. Until recently, a person was not eligible for expunction if he or she had been convicted of more than one offense. Under amendments enacted by Public Act 64 of 2011, a person may be eligible to have a conviction set aside if he or she was convicted of one or two minor offenses in addition to the conviction sought to be expunged. ("Minor offense" means a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 90 days, for which the permissible fine does not exceed \$1,000, and that is committed by a person who is not more than 21 years old.) Some people believe that an individual should be eligible to have a conviction set aside if he or she had committed not more than one crime punishable by imprisonment for more than 90 days and not more than two violations punishable up to 90 days' imprisonment, a noncivil fine, or a dismissal.

- **Prohibit expunction of a domestic violence conviction, if the person had a prior domestic violence conviction.**
- **Revise the time period after a conviction before a person may apply for expunction.**
- **Require an application for expunction to include certain actions against the applicant that had been dismissed.**
- **Allow a nonpublic record of an expunction to be disclosed to the Department of Corrections for consideration of an applicant for employment.**

### **Major & Minor Offenses**

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, and a person who is otherwise eligible to file an application is not ineligible because he or she was convicted of one or two minor offenses (as defined above) in addition to the offense for which the person files an application.

### **CONTENT**

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

- **Allow a person who was convicted of not more than one "major offense" and not more than two "minor offenses" to apply for expunction of the major offense or one or both of the minor offenses.**

The bill, instead, would allow a person to file an application with the convicting court for the entry of an order setting aside one or more convictions. A person who had been convicted of not more than one major offense and not more than two minor offenses (as that term would be defined by the bill) could petition the convicting court to expunge the major offense or one or both minor offenses. For purposes of eligibility only, a traffic offense would not constitute a minor offense.

The Act specifies that a person may have only one conviction set aside. Under the bill, a person could have only one conviction for a major offense or not more than two convictions for a minor offense set aside.

For purposes of the offense to be set aside, the bill would define "major offense" as a violation of a penal law of this State that is punishable by imprisonment for more than 90 days or that is designated by law to be a felony. For purposes of identifying a prior offense, "major offense" would mean a violation of a penal law of this State, of another state, or of the United States that is punishable by imprisonment for more than 90 days or is expressly designated by law to be a felony.

The bill would define "minor offense" as a violation of a penal law of this State, another state, an Indian tribe, or the United States that is not a major offense; an order, rule, or regulation of a State agency that is punishable by imprisonment for not more than 90 days or a fine that is not a civil fine, or both; or a substantially corresponding local ordinance, law of another state, or U.S. law that is not a major offense. The term also would include an action dismissed under various provisions of Michigan law that allow the deferral and dismissal of criminal charges under certain circumstances.

#### Offenses Ineligible for Expunction

The Act prohibits the expunction of 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. Pursuant to Public Act 64 of 2011, the Act also prohibits expunction of a conviction for involvement in child sexually abusive material, or for using the internet or a computer to communicate with another for the purpose of committing or attempting to commit certain crimes.

In addition, under the bill, a person could not apply to have set aside, and a judge could not set aside, a conviction in which the victim was a spouse, a former spouse, an individual with whom the person had a child in common, an individual with whom the person currently or previously had a dating relationship, or an individual residing or having resided in the same household as the person, if the person had a prior conviction

in which the victim had such a relationship with the person.

#### Application for Expunction

Currently, an application to set aside a conviction 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. Under the bill, an application could only be filed five or more years after the last of the following events with respect to the conviction the applicant sought to set aside:

- Imposition of the sentence.
- Completion of probation.
- Discharge from parole.
- Completion of any term of imprisonment.

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 and not more than two minor offenses. The bill would require a statement that the applicant had not been convicted of an offense other than the conviction or convictions sought to be set aside as a result of the application and any nondisqualifying convictions. The bill also would require an application to include a list of all actions that were initiated against the applicant and dismissed.

MCL 780.621 et al.

#### **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**

When a person has been convicted of one or more crimes, that record can present significant barriers to his or her becoming a productive member of society long after the person served the sentence for the conviction. The stigma of having been convicted follows that person throughout his or her life and, often, the avenues that past offenders seek to further their lives are closed due to a conviction. They may be unable to find suitable housing and employment or serve in the military, for example, even after years of living crime-free. Michigan law provides an opportunity for some rehabilitated ex-offenders to have

their convictions set aside, but many people are unable to pursue expunction because they have multiple convictions. While recent amendments to that law allow a criminal conviction to be set aside if an offender has one or two youthful minor offenses in addition to the conviction subject to an expunction application, the law generally allows expunction only if a person does not have more than one conviction on his or her record.

These restrictions can stifle a person's ability to move past earlier transgressions and lead a successful, productive, and law-abiding lifestyle. For instance, some individuals who were convicted as long as 40 years ago reportedly are having difficulty qualifying for senior housing. In another example, according to a recent *Detroit Free Press* column, a retired autoworker was doing well in college, seeking to pursue a second career in nursing, only to find that a felony conviction is grounds for denial of a health care license under the Public Health Code ("Too late for one Detroiter, expunge bill could still help thousands", 5-17-11). Reportedly, in 1999, the man pleaded no contest to a felony charge of attempting to carry a concealed weapon, after transporting a registered handgun in a duffel bag in the back seat of his car, rather than in the trunk as required by law. He evidently could not get the conviction expunged because his record also included an earlier misdemeanor for driving with a suspended license. These are not isolated instances. According to the *Free Press* article, which cites Michigan State Police data, roughly 1.8 million people in Michigan have criminal records and almost 1.3 million of them have felony convictions.

The ability to have a conviction expunged allows for improved reintegration into society for past offenders who have clearly demonstrated that they have been rehabilitated. Michigan law is too restrictive in outlining who may apply to have a conviction set aside. By allowing a person who has not more than one major offense and not more than two minor offenses to apply for expunction of the major offense or one or both of the minor offenses, the bill would give an opportunity to many more people to get their lives on track. Expunction would not be automatic or easy, however. Having a conviction set aside would continue to be based on specific criteria; the sentencing court would maintain

jurisdiction and discretion to review each case based on its individual merits; and convictions for many serious crimes would continue to be ineligible for expunction.

### **Opposing Argument**

Criteria for the expunction of criminal convictions should be tighter, not looser as the bill proposes. Concerns for the victims of crime should always override concerns for criminals. The recidivism rate is high for many violent and nonviolent offenses, suggesting a danger that a convicted criminal will violate the law again. Past convictions should not be easily set aside. In addition, even more offenses should be excluded from eligibility for expunction. Crimes involving abuse of fiduciary duties and the public trust, especially those committed by public officials, should never be expunged. A corrupt official should not be allowed to erase his or her conviction, only to pursue public office again with a supposedly clean record.

Moreover, statutory provisions protecting expunction records from public disclosure should be eliminated. The Act actually prohibits and provides a criminal penalty for divulging that a conviction was set aside. The secrecy of the expunction process infringes on the public's right to know and the freedom of the press to report who committed what criminal violations and when they did it. The best policy on criminal matters is complete disclosure. While there may be valid reasons for expunction in some cases, applications to have convictions set aside also should be open to public scrutiny and review, so victims and the public can object to setting aside convictions.

**Response:** The Act requires that a copy of an application for expunction be given to the Attorney General and the prosecuting attorney's office that prosecuted the crime, and that they be given an opportunity to contest the application. If the conviction was for an assaultive crime or a serious misdemeanor, the prosecuting attorney must notify the victim pursuant to the Crime Victim's Rights Act, and the victim has the right to appear at any proceeding and to make a written or oral statement. Further, the Act specifies that setting aside a conviction is a conditional privilege and not a right. A court is not required to grant an application to have a conviction set aside, but may do so if it determines that the circumstances and behavior of the applicant

from the date of conviction to the filing of the application warrant setting aside the conviction and that doing so is consistent with the public welfare.

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.