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BILL ANALYSIS



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Senate Bill 244 (as introduced 3-8-11)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 5-10-11

CONTENT

The bill would amend Public Act 213 of 1965, which provides for the setting aside (expunction) of certain criminal convictions, to allow a person to apply for the expunction of one or more conviction, under certain circumstances, rather than only a single conviction. The bill would do all of the following:

- **Allow a person to apply for expunction of a felony conviction if he or she had only one felony conviction and not more than two misdemeanor convictions.**
- **Allow a person to apply for expunction of up to two misdemeanor convictions if he or she had no other convictions.**
- **Allow a person to apply for expunction of one misdemeanor for causing property damage or personal injury if he or she had no other convictions.**
- **Include a conviction for drunk driving in the Act's prohibition against expunction of a traffic offense.**
- **Prohibit expunction of a conviction for a domestic violence felony, if the person had a prior domestic violence conviction.**
- **Revise the time period after a conviction before a person may apply for expunction.**
- **Prohibit a person from reapplying for expunction of a criminal record for three years after an application had been denied.**
- **Require an application for expunction to include certain actions against the applicant that had been dismissed.**
- **Prohibit expunction of any conviction if the person had two misdemeanor convictions and had an action dismissed under certain provisions.**
- **Allow a nonpublic record of an expunction to be disclosed to the Department of Corrections for employment purposes.**

Offenses Eligible for Expunction

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. 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, as follows:

- A person who was convicted of not more than one felony and not more than two misdemeanors could petition the court to set aside the felony conviction.

- A person who was convicted of not more than two misdemeanors, and no felony or other misdemeanor, could petition the convicting court or courts to set aside one or both of the misdemeanor convictions.
- A person who was not convicted of a felony but who was convicted of not more than one misdemeanor for causing damage or injury to another person or to property could petition the convicting court to set aside that misdemeanor conviction.

For purposes of setting aside a misdemeanor conviction, as described above, a traffic offense would not constitute a misdemeanor, except for a violation of operating a motor vehicle or commercial motor vehicle while intoxicated.

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. Under the bill, a traffic offense would include a conviction for operating a motor vehicle or commercial motor vehicle while intoxicated.

In addition, under the bill, a person could not apply to have set aside, and a judge could not set aside, a conviction for a felony in which the victim was a spouse, a former spouse, an individual with whom the person had had a child in common, an individual with whom the person had 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 misdemeanor 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.

The bill specifies that, if the convicting court denied a petition, a person could not file another petition concerning the same conviction or convictions until three years after the date the court denied the previous petition.

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. 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 described below that were initiated against the applicant and had been dismissed.

Dismissal of Criminal or Juvenile Action

Under the bill, except as otherwise permitted for a misdemeanor causing damage or injury, a person could not apply to set aside, and a judge could not set aside, any conviction if the person were convicted of two misdemeanors and had an action dismissed under one of the following:

- Section 703 of the Michigan Liquor Control Code, which prohibits a minor from purchasing, consuming, or possessing alcohol (or attempting to do so), or having any

bodily alcohol content, and allows a court to place the minor on probation, without entering a judgment of guilt or a determination of juvenile delinquency, and defer further proceedings.

- Section 1070(1)(b)(i) of the Revised Judicature Act, which deals with an individual admitted into a drug treatment court who may be eligible for discharge and dismissal pursuant to an agreement with the court and prosecutor upon successful completion of the drug treatment court program.
- Section 13 of Chapter II of the Code of Criminal Procedure, which provides for the assignment of youthful trainee status, under which charges may be deferred and dismissed.
- Section 4a of Chapter IX of the Code of Criminal Procedure, which allows the deferral and dismissal of certain domestic violence charges.
- Section 1 of Chapter XI of the Code of Criminal Procedure, which allows a court to place a convicted person on probation and delay sentencing for up to one year, under certain circumstances.
- Section 7411 of the Public Health Code, which allows a court to place a person convicted of certain controlled substance violations on probation and defer further proceedings without entering a judgment of guilt.
- Section 350a of the Michigan Penal Code, which allows a court to place a person convicted of parental kidnapping on probation and defer further proceedings without entering a judgment of guilt, under certain circumstances.
- Section 430 of the Michigan Penal Code, which allows a court to place a health professional convicted of practicing under the influence on probation and defer further proceedings without entering a judgment of guilt, under certain circumstances.
- Any other law of this State or of a political subdivision of the State similar to those listed above that provides for the deferral and dismissal of a felony or misdemeanor.

Disclosure of Nonpublic Record

Upon entry of an order setting aside a conviction, the court must send a copy of the order to the arresting agency and the Department of State Police, which must retain a nonpublic record of the order. The nonpublic record may be made available only to a court of competent jurisdiction, an agency of the judicial branch of State government, a law enforcement agency, a prosecuting attorney, the Attorney General, or the Governor, upon request and only for certain purposes. One of those purposes is consideration by a law enforcement agency if a person whose conviction has been set aside applies for employment with the agency. The bill also would allow the nonpublic record to be available to the Department of Corrections for the same purpose.

MCL 780.621 et al.

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.