

EXPUNCTION OF CRIMINAL RECORD: REVISE CRITERIA

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House Bill 4106

Sponsor: Rep. Stacy Erwin Oakes

Committee: Judiciary

Complete to 3-23-11

A SUMMARY OF HOUSE BILL 4106 AS INTRODUCED 1-18-11

The bill would allow a person, under certain circumstances, to apply to have a felony conviction expunged even if that person had also been convicted of one or two misdemeanor offenses, and would allow a person convicted of not more than two misdemeanor offenses to apply for the expunction of either or both misdemeanors.

Michigan law allows a person with only one criminal conviction to apply to have that conviction set aside (expunged), but the person must wait at least five years from the date of sentencing or the completion of imprisonment, whichever is later, before applying for an expungement. Certain crimes, such as murder, rape, and traffic offenses are not eligible to be set aside.

Public Act 213 of 1965 provides a mechanism by which a person who has only one criminal conviction (a felony or a misdemeanor) can apply to the court for an order setting aside the conviction. As stated above, a conviction cannot be set aside for a felony that is punishable by life imprisonment (or an attempt to commit such a felony), for a conviction for a violation or attempted violation of the criminal sexual conduct (CSC) statutes (with the exception of CSC in the fourth degree), or for a traffic offense.

House Bill 4405 would amend Public Act 213 (MCL 780.621, 780.623, and 780.624) to instead allow a person to file an application with the convicting court for an order setting aside one or more convictions as follows:

- A person convicted of one felony offense and not more than two misdemeanor offenses could petition to set aside the felony offense.
- A person convicted of not more than two misdemeanor offenses and no other felony or misdemeanor offenses could apply to have either or both of the misdemeanor convictions set aside.
- A person who had not been convicted of a felony offense but who had been convicted of not more than one misdemeanor offense for causing damage or injury to another person or to property could petition to set aside that misdemeanor conviction.

For purposes of eligibility only, under any of these provisions a traffic offense would not constitute a misdemeanor, except for a violation of operating while intoxicated. "Operating while intoxicated" would mean a violation of the drunk driving laws (including commercial drivers) and any substantially corresponding local ordinance, tribal law, law of another state, or federal law.

(For instance, a person who had been convicted of one felony and three misdemeanors with one of the misdemeanors being a traffic offense that was not related to driving under the influence or while impaired, would be eligible under the bill to petition to have the felony set aside. In another example, a person who had two misdemeanor convictions, but no felony convictions, could petition to have both expunged if neither involved operating while intoxicated (DWI); if one misdemeanor was for DWI, the person could petition to have the non-DWI conviction expunged. A person having three misdemeanor convictions, one of which was a non-DWI traffic offense and the other two being non-traffic offenses, could petition to have either or both of the non-traffic convictions expunged because the non-DWI traffic offense would not count as a misdemeanor for purposes of eligibility under the bill; however, if the third misdemeanor did involve a DWI conviction, the person would be ineligible to have any of the misdemeanors set aside.)

Definition of misdemeanor and felony. The bill would define a "misdemeanor" as being: (1) a violation of a Michigan, state, federal, or tribal penal law that is not a felony; (2) a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment for not more than one year or a fine that is not a civil fine, or both; (3) a violation of a local ordinance in this state that substantially corresponds to (1) or (2) that is not a felony; (4) a violation of the law of another state or political subdivision of another state substantially corresponding to a violation listed in (1)-(3) that is not a felony; or a similar violation of (1) or (2) under federal law. "Indian tribe" would mean an Indian tribe, Indian band, or Alaskan Native Village recognized by federal law or formally acknowledged by a state.

"Felony" would mean either of the following, as applicable: (1) for purposes of the offense to be set aside, a violation of a Michigan penal law punishable by imprisonment for more than one year or expressly designated by law to be a felony; or, (2) for purposes of identifying a prior offense, a violation of a penal law of this state, of another state, or the U.S. that is punishable by imprisonment for more than one year or is expressly designated by law to be a felony. (Some crimes designated as a misdemeanor carry a maximum penalty of two years' imprisonment and so would be counted under this provision as a felony.)

When felonies cannot be set aside. The bill would keep the current exclusion for expunction of a felony offense punishable by life imprisonment (which includes CSC in the 1st degree); for convictions for CSC in the 2nd or 3rd degree or assault with the intent to commit CSC in the 1st, 2nd, or 3rd degree; and for traffic offenses. However, the bill would add to the list of offenses that could not be set aside, a conviction that is a felony involving domestic violence if the person had a prior misdemeanor conviction for

domestic violence. (This provision would pertain to convictions for crimes in which the victim is a spouse, a former spouse, an individual with whom the person has or has had a dating relationship, or an individual residing or who had resided in the same household as the person. "Dating relationship" would mean that term as defined in Section 2950 of the Revised Judicature Act.)

When expungement does not apply. Except as otherwise permitted under the bill, a person could not apply to set aside, and a judge could not set aside, any conviction if a person had been convicted of two misdemeanors and in addition to those convictions had had one action previously dismissed under one of the statutory provisions that allow for the deferral and dismissal of charges.

These provisions include Section 703 of the Michigan Liquor Control Act (purchase, possession, and consumption by a minor); Section 1070(1)(B)(i) of the Revised Judicature Act (completion of drug treatment program); sections of the Code of Criminal Procedure dealing with (a) assignment of youthful trainees, (b) domestic violence, or (c) cases of delayed sentencing; Section 7411 of the Public Health Code relating to first time drug offenses; Section 350a of the Michigan Penal Code, which deals with the taking or retaining of a child by an adoptive or natural parent with the intent to conceal from another with parenting rights; Section 430 of the Penal Code, which deals with health professionals working under the influence of alcohol or controlled substances; or a dismissal under any other Michigan law or of one of its political subdivisions similar to these that provides for the deferral and dismissal of a felony or misdemeanor charge.

Time limitations. Currently, an application to set aside a conviction can be made five years after the sentence is imposed or five years after completion of any term of imprisonment imposed for that conviction, whichever is later. House Bill 4106 would revise the time limitations. Under the bill, to set aside either a felony or misdemeanor conviction, a person would have to wait until at least five years after the imposition of the sentence, or five years after the completion of the probation or discharge from parole imposed for that felony or misdemeanor, or at least five years after completing imprisonment for that conviction, whichever occurred later.

Application for expunction. The act requires certain information to be included on the application for setting aside a conviction. The bill would make several revisions to these requirements; most are minor. However, the statement that the applicant has not been convicted of an offense other than the conviction or convictions sought to be set aside as a result of the application would have to include any nondisqualifying convictions described in the bill. The bill would also require the applicant to include a statement listing all actions enumerated in the bill pertaining to deferral and dismissal that had been initiated against the applicant and have been dismissed.

If a petition to expunge a conviction is denied by the convicting court, the person must wait at least three years from the date of the denial before filing another petition concerning the same conviction or convictions.

Fingerprints. The bill would require an applicant to submit just one complete set of fingerprints to the Department of State Police instead of two as currently required. (This change reflects the current practice of the department to send a copy of the fingerprints to the Federal Bureau of Investigation via electronic transmission. Therefore, two sets are no longer needed.)

Retention of Safeguards. The bill would not affect safeguards currently contained in the law. A copy of the application for expunction would still have to be served on the attorney general and the office of the prosecutor who prosecuted the crime. The attorney general and local prosecutor would still have an opportunity to contest the application. A notice of the application would still have to be sent to the victim of an assaultive crime, and he or she could still appear at any proceeding concerning that conviction and could still make written or oral statements. The bill would clarify that it would be "at the court's discretion" to enter an order setting aside the conviction or convictions, but the court would still have to determine that the expunction was warranted and consistent with the public welfare.

FISCAL IMPACT:

The bill would have little to no fiscal impact on the Judiciary. Although there could be increased administrative time to process applications, it is not believed that this would increase costs to the state or local units of government.

The bill would have an indeterminate fiscal impact on the Department of State Police. The cost for processing fingerprints is \$54, and this bill would change the requirement for an applicant from submitting two sets of fingerprints to submitting one set of fingerprints to the State Police. It is unknown how many applicants would submit their fingerprints to the State Police for this purpose. This bill also requires the State Police to forward an electronic copy of the applicant's fingerprints to the FBI and this could generate some staff costs and other administrative costs.

BACKGROUND INFORMATION:

The issue of expanding eligibility for expunction of criminal convictions has been discussed for many years. Similar legislation was introduced in the previous four legislative sessions. House Bill 4327 in the 2005-2006 session and House Bill 5493 in the 2003-2004 session were passed by the House but failed to see action in the Senate. House Bill 5213 in the 2006-2007 session and House Bill 4405 from last session were reported from committee but died on the House floor.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.