

HOUSE BILL No. 4405

February 24, 2009, Introduced by Reps. Coulouris, Johnson, Sheltroun, Warren and Robert Jones and referred to the Committee on Judiciary.

A bill to amend 1965 PA 213, entitled

"An act to provide for setting aside the conviction in certain criminal cases; to provide for the effect of such action; to provide for the retention of certain nonpublic records and their use; to prescribe the powers and duties of certain public agencies and officers; and to prescribe penalties,"

by amending sections 1, 3, and 4 (MCL 780.621, 780.623, and 780.624), section 1 as amended by 2002 PA 472, section 3 as amended by 1994 PA 294, and section 4 as added by 1982 PA 495.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) Except as provided in ~~subsection (2)~~ **THIS SECTION**,
2 a person ~~who is convicted of not more than 1 offense~~ may file an
3 application with the convicting court for the entry of an order
4 setting aside ~~the conviction.~~ **1 OR MORE CONVICTIONS AS FOLLOWS:**

5 **(A) A PERSON WHO IS CONVICTED OF NOT MORE THAN 1 FELONY**
6 **OFFENSE AND NOT MORE THAN 2 MISDEMEANOR OFFENSES MAY PETITION THE**

1 CONVICTING COURT TO SET ASIDE THE FELONY OFFENSE. FOR PURPOSES OF
2 ELIGIBILITY ONLY UNDER THIS SUBDIVISION, A TRAFFIC OFFENSE DOES NOT
3 CONSTITUTE A MISDEMEANOR, EXCEPT FOR A VIOLATION OF ANY OF THE
4 FOLLOWING:

5 (i) SECTION 625 OR 625M OF THE MICHIGAN VEHICLE CODE, 1949 PA
6 300, MCL 257.625 AND 257.625M.

7 (ii) A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO A
8 VIOLATION LISTED IN SUBPARAGRAPH (i) .

9 (iii) A LAW OF AN INDIAN TRIBE SUBSTANTIALLY CORRESPONDING TO A
10 VIOLATION LISTED IN SUBPARAGRAPH (i) .

11 (iv) A LAW OF ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO A
12 VIOLATION LISTED IN SUBPARAGRAPH (i) .

13 (v) A LAW OF THE UNITED STATES SUBSTANTIALLY CORRESPONDING TO
14 A VIOLATION LISTED IN SUBPARAGRAPH (i) .

15 (B) A PERSON WHO IS CONVICTED OF NOT MORE THAN 2 MISDEMEANOR
16 OFFENSES AND NO OTHER FELONY OR MISDEMEANOR OFFENSES MAY PETITION
17 THE CONVICTING COURT OR THE CONVICTING COURTS TO SET ASIDE 1 OR
18 BOTH OF THE MISDEMEANOR CONVICTIONS. FOR PURPOSES OF ELIGIBILITY
19 ONLY UNDER THIS SUBDIVISION, A TRAFFIC OFFENSE DOES NOT CONSTITUTE
20 A MISDEMEANOR, EXCEPT FOR A VIOLATION OF ANY OF THE FOLLOWING:

21 (i) SECTION 625 OR 625M OF THE MICHIGAN VEHICLE CODE, 1949 PA
22 300, MCL 257.625 AND 257.625M.

23 (ii) A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO A
24 VIOLATION LISTED IN SUBPARAGRAPH (i) .

25 (iii) A LAW OF AN INDIAN TRIBE SUBSTANTIALLY CORRESPONDING TO A
26 VIOLATION LISTED IN SUBPARAGRAPH (i) .

27 (iv) A LAW OF ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO A

1 VIOLATION LISTED IN SUBPARAGRAPH (i) .

2 (v) A LAW OF THE UNITED STATES SUBSTANTIALLY CORRESPONDING TO
3 A VIOLATION LISTED IN SUBPARAGRAPH (i) .

4 (2) A person shall not apply to have set aside, and a judge
5 shall not set aside, a conviction for ~~a~~ANY OF THE FOLLOWING:

6 (A) A felony for which the maximum punishment is life
7 imprisonment or an attempt to commit a felony for which the maximum
8 punishment is life imprisonment. ~~—a~~

9 (B) A ~~conviction for a~~ violation or attempted violation of
10 section 520c, 520d, or 520g of the Michigan penal code, 1931 PA
11 328, MCL 750.520c, 750.520d, and 750.520g. ~~—or a~~

12 (C) A ~~conviction for a~~ traffic offense.

13 (D) A FELONY IN WHICH THE VICTIM IS A SPOUSE, A FORMER SPOUSE,
14 AN INDIVIDUAL WITH WHOM THE PERSON HAS HAD A CHILD IN COMMON, AN
15 INDIVIDUAL WITH WHOM THE PERSON HAS OR HAS HAD A DATING
16 RELATIONSHIP, OR AN INDIVIDUAL RESIDING OR HAVING RESIDED IN THE
17 SAME HOUSEHOLD AS THE PERSON, IF THE PERSON HAS A PRIOR MISDEMEANOR
18 CONVICTION IN WHICH THE VICTIM IS A SPOUSE, A FORMER SPOUSE, AN
19 INDIVIDUAL WITH WHOM THE PERSON HAS HAD A CHILD IN COMMON, AN
20 INDIVIDUAL WITH WHOM THE PERSON HAS OR HAS HAD A DATING
21 RELATIONSHIP, OR AN INDIVIDUAL RESIDING OR HAVING RESIDED IN THE
22 SAME HOUSEHOLD AS THE PERSON.

23 (3) An application shall ~~not~~ONLY be filed ~~until at least 5~~ OR
24 MORE years following ~~imposition~~AFTER WHICHEVER OF THE FOLLOWING
25 EVENTS OCCURS LAST:

26 (A) IMPOSITION of the sentence FOR THE CONVICTION THE
27 APPLICANT SEEKS TO SET ASIDE.

1 **(B) COMPLETION OF PROBATION IMPOSED** for the conviction that
2 the applicant seeks to set aside. ~~or 5 years following completion~~

3 **(C) DISCHARGE FROM PAROLE IMPOSED FOR THE CONVICTION THAT THE**
4 **APPLICANT SEEKS TO SET ASIDE.**

5 **(D) COMPLETION** of any term of imprisonment **IMPOSED** for ~~that~~
6 **THE** conviction, ~~whichever occurs later~~ **THAT THE APPLICANT SEEKS TO**
7 **SET ASIDE.**

8 **(4) IF A PETITION UNDER THIS ACT IS DENIED BY THE CONVICTING**
9 **COURT, A PERSON SHALL NOT FILE ANOTHER PETITION CONCERNING THE SAME**
10 **CONVICTION OR CONVICTIONS WITH THE CONVICTING COURT UNTIL 3 YEARS**
11 **AFTER THE CONVICTING COURT DENIES THE PREVIOUS PETITION.**

12 **(5) ~~(4)~~ The AN** application **UNDER THIS SECTION** is invalid
13 unless it contains the following information and is signed under
14 oath by the person whose conviction is to be set aside:

15 (a) The full name and current address of the applicant.

16 (b) A certified record of ~~the~~ **EACH** conviction that is to be
17 set aside.

18 (c) A statement that the applicant has not been convicted of
19 an offense other than the ~~one~~ **CONVICTION OR CONVICTIONS** sought to
20 be set aside as a result of this application **AND ANY**
21 **NONDISQUALIFYING CONVICTIONS DESCRIBED IN THIS SECTION.**

22 **(D) A STATEMENT LISTING ALL ACTIONS ENUMERATED IN SUBSECTION**
23 **(12) THAT WERE INITIATED AGAINST THE APPLICANT AND HAVE BEEN**
24 **DISMISSED.**

25 **(E) ~~(d)~~ A** statement as to whether the applicant has previously
26 filed an application to set aside this **CONVICTION OR THESE**
27 **CONVICTIONS** or any other conviction and, if so, the disposition of

1 the application.

2 (F) ~~(e)~~—A statement as to whether the applicant has any other
3 criminal charge pending against him or her in any court in the
4 United States or in any other country.

5 (G) ~~(f)~~—A consent to the use of the nonpublic record created
6 under section 3 to the extent authorized by section 3.

7 (6) ~~(5)~~—The applicant shall submit a copy of the application
8 and ~~2 complete sets~~ **1 COMPLETE SET** of fingerprints to the
9 department of state police. The department of state police shall
10 compare those fingerprints with the records of the department,
11 including the nonpublic record created under section 3, and shall
12 forward ~~a~~ **AN ELECTRONIC COPY OF THE** complete set of fingerprints to
13 the federal bureau of investigation for a comparison with the
14 records available to that agency. The department of state police
15 shall report to the court in which the application is filed the
16 information contained in the department's records with respect to
17 any pending charges against the applicant, any record of conviction
18 of the applicant, and the setting aside of any conviction of the
19 applicant and shall report to the court any similar information
20 obtained from the federal bureau of investigation. The court shall
21 not act upon the application until the department of state police
22 reports the information required by this subsection to the court.

23 (7) ~~(6)~~—The copy of the application submitted to the
24 department of state police under subsection ~~(5)~~ **(6)** shall be
25 accompanied by a fee of \$50.00 payable to the state of Michigan
26 ~~which~~ **THAT** shall be used by the department of state police to
27 defray the expenses incurred in processing the application.

1 (8) ~~(7)~~—A copy of the application shall be served upon the
2 attorney general and upon the office of ~~the~~ **EACH** prosecuting
3 attorney who prosecuted the crime **OR CRIMES THE APPLICANT SEEKS TO**
4 **SET ASIDE**, and an opportunity shall be given to the attorney
5 general and to the prosecuting attorney to contest the application.
6 If ~~the~~ **A** conviction was for an assaultive crime or a serious
7 misdemeanor, the prosecuting attorney shall notify the victim of
8 the assaultive crime or serious misdemeanor of the application
9 pursuant to section 22a or 77a of the **WILLIAM VAN REGENMORTER** crime
10 victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The
11 notice shall be by first-class mail to the victim's last known
12 address. The victim has the right to appear at any proceeding under
13 this act concerning that conviction and to make a written or oral
14 statement.

15 (9) ~~(8)~~—Upon the hearing of the application the court may
16 require the filing of affidavits and the taking of proofs as it
17 considers proper.

18 (10) ~~(9)~~—If the court determines that the circumstances and
19 behavior of the applicant from the date of the applicant's
20 conviction **OR CONVICTIONS** to the filing of the application warrant
21 setting aside the conviction **OR CONVICTIONS** and that setting aside
22 the conviction **OR CONVICTIONS** is consistent with the public
23 welfare, **AT THE COURT'S DISCRETION** the court may enter an order
24 setting aside the conviction **OR CONVICTIONS**. The setting aside of a
25 conviction **OR CONVICTIONS** under this act is a privilege and
26 conditional and is not a right.

27 (11) **A PERSON WHO IS CONVICTED OF MORE THAN 1 MISDEMEANOR FOR**

1 ANY OF THE FOLLOWING SHALL NOT APPLY TO SET ASIDE, AND A JUDGE
2 SHALL NOT SET ASIDE, A CONVICTION FOR VIOLATING OR ATTEMPTING TO
3 VIOLATE ANY OF THE FOLLOWING:

4 (A) A CRIME IN WHICH THE VICTIM WAS A SPOUSE, A FORMER SPOUSE,
5 AN INDIVIDUAL WITH WHOM HE OR SHE HAS HAD A CHILD IN COMMON, AN
6 INDIVIDUAL WITH WHOM HE OR SHE HAS OR HAS HAD A DATING
7 RELATIONSHIP, OR AN INDIVIDUAL RESIDING OR HAVING RESIDED IN THE
8 SAME HOUSEHOLD.

9 (B) SECTION 81, 81A, 81C, 90B, 136B, 335A, OR 411H(2) (A) OF
10 THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81, 750.81A, 750.81C,
11 750.90B, 750.136B, 750.335A, AND 750.411H.

12 (12) A PERSON SHALL NOT APPLY TO SET ASIDE, AND A JUDGE SHALL
13 NOT SET ASIDE, ANY CONVICTION IF THE PERSON IS CONVICTED OF 2
14 MISDEMEANORS AND HAS HAD AN ACTION DISMISSED UNDER 1 OF THE
15 FOLLOWING:

16 (A) SECTION 703 OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998,
17 1998 PA 58, MCL 436.1703.

18 (B) SECTION 1070(1) (B) (i) OF THE REVISED JUDICATURE ACT OF
19 1961, 1961 PA 236, MCL 600.1070.

20 (C) SECTION 13 OF CHAPTER II, SECTION 4A OF CHAPTER IX, OR
21 SECTION 1 OF CHAPTER XI OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA
22 175, MCL 762.13, 769.4A, AND 771.1.

23 (D) SECTION 7411 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
24 333.7411.

25 (E) SECTION 350A OR 430 OF THE MICHIGAN PENAL CODE, 1931 PA
26 328, MCL 750.350A AND 750.430.

27 (F) ANY OTHER LAW OF THIS STATE OR OF A POLITICAL SUBDIVISION

1 OF THIS STATE SIMILAR TO THOSE LISTED IN THIS SUBSECTION THAT
2 PROVIDES FOR THE DEFERRAL AND DISMISSAL OF A FELONY OR MISDEMEANOR
3 CHARGE.

4 (13) ~~(10)~~—As used in this section:

5 (a) "Assaultive crime" means that term as defined in section
6 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
7 770.9a.

8 (B) "DATING RELATIONSHIP" MEANS THAT TERM AS DEFINED IN
9 SECTION 2950 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
10 MCL 600.2950.

11 (C) "FELONY" MEANS A VIOLATION OF A PENAL LAW OF THIS STATE,
12 OF ANOTHER STATE, OR OF THE UNITED STATES THAT IS PUNISHABLE BY
13 IMPRISONMENT FOR MORE THAN 1 YEAR OR IS EXPRESSLY DESIGNATED BY LAW
14 TO BE A FELONY. HOWEVER, THIS DEFINITION DOES NOT APPLY TO
15 SUBSECTION (1) FOR PURPOSES OF ELIGIBILITY.

16 (D) "INDIAN TRIBE" MEANS AN INDIAN TRIBE, INDIAN BAND, OR
17 ALASKAN NATIVE VILLAGE THAT IS RECOGNIZED BY FEDERAL LAW OR
18 FORMALLY ACKNOWLEDGED BY A STATE.

19 (E) "MISDEMEANOR" MEANS A VIOLATION OF ANY OF THE FOLLOWING:

20 (i) A PENAL LAW OF THIS STATE, ANOTHER STATE, AN INDIAN TRIBE,
21 OR THE UNITED STATES THAT IS NOT A FELONY.

22 (ii) AN ORDER, RULE, OR REGULATION OF A STATE AGENCY THAT IS
23 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE THAT
24 IS NOT A CIVIL FINE, OR BOTH.

25 (iii) A LOCAL ORDINANCE OF A POLITICAL SUBDIVISION OF THIS STATE
26 SUBSTANTIALLY CORRESPONDING TO A CRIME LISTED IN SUBPARAGRAPH (i) OR
27 (ii) THAT IS NOT A FELONY.

1 (iv) A VIOLATION OF THE LAW OF ANOTHER STATE OR POLITICAL
2 SUBDIVISION OF ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO A CRIME
3 LISTED UNDER SUBPARAGRAPH (i) OR (ii) THAT IS NOT A FELONY.

4 (v) A VIOLATION OF THE LAW OF THE UNITED STATES SUBSTANTIALLY
5 CORRESPONDING TO A CRIME LISTED UNDER SUBPARAGRAPH (i) OR (ii) THAT
6 IS NOT A FELONY.

7 (F) ~~(b)~~—"Serious misdemeanor" means that term as defined in
8 section 61 of the **WILLIAM VAN REGENMORTER** crime victim's rights
9 act, 1985 PA 87, MCL 780.811.

10 (G) ~~(e)~~—"Victim" means that term as defined in section 2 of
11 the **WILLIAM VAN REGENMORTER** crime victim's rights act, 1985 PA 87,
12 MCL 780.752.

13 Sec. 3. (1) Upon the entry of an order pursuant to section 1,
14 the court shall send a copy of the order to the arresting agency
15 and the department of state police.

16 (2) The department of state police shall retain a nonpublic
17 record of the order setting aside a conviction and of the record of
18 the arrest, fingerprints, conviction, and sentence of the applicant
19 in the case to which the order applies. Except as provided in
20 subsection (3), this nonpublic record shall be made available only
21 to a court of competent jurisdiction, an agency of the judicial
22 branch of state government, **THE DEPARTMENT OF CORRECTIONS**, a law
23 enforcement agency, a prosecuting attorney, the attorney general,
24 or the governor upon request and only for the following purposes:

25 (a) Consideration in a licensing function conducted by an
26 agency of the judicial branch of state government.

27 (b) To show that a person who has filed an application to set

1 aside a conviction has previously had a conviction set aside
2 pursuant to this act.

3 (c) The court's consideration in determining the sentence to
4 be imposed upon conviction for a subsequent offense that is
5 punishable as a felony or by imprisonment for more than 1 year.

6 (d) Consideration by the governor if a person whose conviction
7 has been set aside applies for a pardon for another offense.

8 (e) Consideration by **THE DEPARTMENT OF CORRECTIONS OR** a law
9 enforcement agency if a person whose conviction has been set aside
10 applies for employment with the **DEPARTMENT OF CORRECTIONS OR** law
11 enforcement agency.

12 (f) Consideration by a court, law enforcement agency,
13 prosecuting attorney, or the attorney general in determining
14 whether an individual required to be registered under the sex
15 offenders registration act, **1994 PA 295, MCL 28.721 TO 28.736**, has
16 violated that act, or for use in a prosecution for violating that
17 act.

18 (3) A copy of the nonpublic record created under subsection
19 (2) shall be provided to the person whose conviction is set aside
20 under this act upon payment of a fee determined and charged by the
21 department of state police in the same manner as the fee prescribed
22 in section 4 of the freedom of information act, ~~Act No. 442 of the~~
23 ~~Public Acts of 1976, being section 15.234 of the Michigan Compiled~~
24 ~~Laws 1976 PA 442, MCL 15.234.~~

25 (4) The nonpublic record maintained under subsection (2) is
26 exempt from disclosure under the freedom of information act, ~~Act~~
27 ~~No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246~~

1 ~~of the Michigan Compiled Laws 1976 PA 442, MCL 15.231 TO 15.246.~~

2 (5) Except as provided in subsection (2), a person, other than
3 the applicant, who knows or should have known that a conviction was
4 set aside under this section and who divulges, uses, or publishes
5 information concerning a conviction set aside under this section is
6 guilty of a misdemeanor punishable by imprisonment for not more
7 than 90 days or a fine of not more than \$500.00, or both.

8 Sec. 4. A person may have only 1 **FELONY** conviction **OR NOT MORE**
9 **THAN 2 MISDEMEANOR CONVICTIONS** set aside ~~under this act~~ **AS PROVIDED**
10 **IN SECTION 1.**