

SUBSTITUTE FOR
HOUSE BILL NO. 4327

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 section 1 (MCL 780.621), as amended by 2002 PA 472; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) Except as provided in ~~subsection (2)~~ **SUBSECTIONS**
2 **(2), (10), AND (11)**, a person who is convicted of ~~not more than~~ 1
3 **FELONY** offense **AND NO OTHER FELONY OR MISDEMEANOR OFFENSES, OR IS**
4 **CONVICTED OF NOT MORE THAN 2 MISDEMEANOR OFFENSES AND NO OTHER**
5 **FELONY OR MISDEMEANOR OFFENSES**, may file an application with the
6 convicting court for the entry of an order setting aside ~~the~~

1 ~~conviction~~ **EITHER THE FELONY CONVICTION OR 1 OR BOTH OF THE**
2 **MISDEMEANOR CONVICTIONS.**

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

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

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

11 (C) A conviction for a traffic offense.

12 (3) An application shall ~~not~~ **ONLY** be filed ~~until at least~~
13 **ACCORDING TO THE FOLLOWING TIME LIMITATIONS:**

14 (A) **NOT LESS THAN 5** years following imposition of the sentence
15 **OR THE COMPLETION OF PROBATION OR PAROLE IMPOSED** for ~~the~~ **A FELONY**
16 conviction that the applicant seeks to set aside or **NOT LESS THAN 5**
17 years following completion of any term of imprisonment for that
18 conviction, whichever occurs later.

19 (B) **NOT LESS THAN 2 YEARS FOLLOWING IMPOSITION OF THE SENTENCE**
20 **OR THE COMPLETION OF PROBATION IMPOSED FOR A MISDEMEANOR CONVICTION**
21 **THAT THE APPLICANT SEEKS TO SET ASIDE OR NOT LESS THAN 2 YEARS**
22 **FOLLOWING COMPLETION OF ANY TERM OF IMPRISONMENT FOR THAT**
23 **CONVICTION, WHICHEVER OCCURS LATER.**

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

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

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

3 (c) A statement ~~that the applicant has not been convicted of~~
4 ~~an offense other than the one sought to be set aside as a result of~~
5 ~~this application~~ **LISTING ALL ACTIONS ENUMERATED IN SUBSECTION (11)**
6 **THAT WERE INITIATED AGAINST THE APPLICANT AND HAVE BEEN DISMISSED.**

7 (d) A statement as to whether the applicant has previously
8 filed an application to set aside this **CONVICTION OR CONVICTIONS** or
9 any other conviction and, if so, the disposition of the
10 application.

11 (e) A statement as to whether the applicant has any other
12 criminal charge pending against him or her in any court in the
13 United States or in any other country.

14 (f) A consent to the use of the nonpublic record created under
15 section 3 to the extent authorized by section 3.

16 (5) The applicant shall submit a copy of the application and
17 ~~2 complete sets~~ **1 COMPLETE SET** of fingerprints to the department
18 of state police. The department of state police shall compare those
19 fingerprints with the records of the department, including the
20 nonpublic record created under section 3, and shall forward ~~a~~ **AN**
21 **ELECTRONIC COPY OF THE** complete set of fingerprints to the federal
22 bureau of investigation for a comparison with the records available
23 to that agency. The department of state police shall report to the
24 court in which the application is filed the information contained
25 in the department's records with respect to any pending charges
26 against the applicant, any record of conviction of the applicant,
27 and the setting aside of any conviction of the applicant and shall

1 report to the court any similar information obtained from the
2 federal bureau of investigation. The court shall not act upon the
3 application until the department of state police reports the
4 information required by this subsection to the court.

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

10 (7) A copy of the application shall be served upon the
11 attorney general and upon the office of the prosecuting attorney
12 who prosecuted the crime, and an opportunity shall be given to the
13 attorney general and to the prosecuting attorney to contest the
14 application. If ~~the~~ **A** conviction was for an assaultive crime or a
15 serious misdemeanor, the prosecuting attorney shall notify the
16 victim of the assaultive crime or serious misdemeanor of the
17 application pursuant to section 22a or 77a of the crime victim's
18 rights act, 1985 PA 87, MCL 780.772a and 780.827a. The notice shall
19 be by first-class mail to the victim's last known address. The
20 victim has the right to appear at any proceeding under this act
21 concerning that conviction and to make a written or oral statement.

22 (8) Upon the hearing of the application the court may require
23 the filing of affidavits and the taking of proofs as it considers
24 proper.

25 (9) If the court determines that the circumstances and
26 behavior of the applicant from the date of the applicant's
27 conviction **OR CONVICTIONS** to the filing of the application warrant

1 setting aside the conviction OR CONVICTIONS and that setting aside
2 the conviction OR CONVICTIONS is consistent with the public
3 welfare, AT THE COURT'S DISCRETION the court may enter an order
4 setting aside the conviction OR CONVICTIONS. The setting aside of a
5 conviction OR CONVICTIONS under this act is a privilege and
6 conditional and is not a right.

7 (10) A PERSON WHO IS CONVICTED OF MORE THAN 1 MISDEMEANOR FOR
8 ANY OF THE FOLLOWING SHALL NOT APPLY TO SET ASIDE, AND A JUDGE
9 SHALL NOT SET ASIDE, A MISDEMEANOR CONVICTION FOR VIOLATING OR
10 ATTEMPTING TO VIOLATE ANY OF THE FOLLOWING:

11 (A) A CRIME IN WHICH THE VICTIM WAS A SPOUSE, A FORMER SPOUSE,
12 AN INDIVIDUAL WITH WHOM HE OR SHE HAS HAD A CHILD IN COMMON, AN
13 INDIVIDUAL WITH WHOM HE OR SHE HAS OR HAS HAD A DATING
14 RELATIONSHIP, OR AN INDIVIDUAL RESIDING OR HAVING RESIDED IN THE
15 SAME HOUSEHOLD.

16 (B) SECTION 81, 81A, 81C, 90B, 136B, 335A, OR 411H(2)(A) OF
17 THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81, 750.81A, 750.81C,
18 750.90B, 750.136B, 750.335A, AND 750.411H.

19 (11) A PERSON SHALL NOT APPLY TO SET ASIDE, AND A JUDGE SHALL
20 NOT SET ASIDE, ANY MISDEMEANOR CONVICTION IF THE PERSON IS
21 CONVICTED OF 2 MISDEMEANOR CONVICTIONS AND HAS HAD 1 OR MORE
22 ACTIONS DISMISSED UNDER 1 OR MORE OF THE FOLLOWING:

23 (A) SECTION 703 OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998,
24 1998 PA 58, MCL 436.1703.

25 (B) SECTION 1070(B)(i) OF THE REVISED JUDICATURE ACT OF 1961,
26 1961 PA 236, MCL 600.1070.

27 (C) SECTION 13 OF CHAPTER II, SECTION 4A OF CHAPTER IX, OR

1 SECTION 1 OF CHAPTER XI OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA
2 175, MCL 762.13, 769.4A, AND 771.1.

3 (D) SECTION 7411 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
4 333.7411.

5 (E) SECTION 350A OR 430 OF THE MICHIGAN PENAL CODE, 1931 PA
6 328, MCL 750.350A AND 750.430.

7 (F) ANY OTHER LAW OF THIS STATE OR OF A POLITICAL SUBDIVISION
8 OF THIS STATE SIMILAR TO THOSE LISTED IN THIS SUBSECTION THAT
9 PROVIDES FOR THE DEFERRAL AND DISMISSAL OF A FELONY OR MISDEMEANOR
10 CHARGE.

11 (12) ~~(10)~~ As used in this section:

12 (a) "Assaultive crime" means that term as defined in section
13 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
14 770.9a.

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

18 (C) "FELONY" MEANS A VIOLATION OF A PENAL LAW OF THIS STATE,
19 OF ANOTHER STATE, OR OF THE UNITED STATES THAT IS PUNISHABLE BY
20 IMPRISONMENT FOR MORE THAN 1 YEAR OR IS EXPRESSLY DESIGNATED BY LAW
21 TO BE A FELONY.

22 (D) "MISDEMEANOR" MEANS A VIOLATION OF ANY OF THE FOLLOWING:

23 (i) A PENAL LAW OF THIS STATE, OF ANOTHER STATE, OR OF THE
24 UNITED STATES THAT IS NOT A FELONY.

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

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

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

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

10 (E) ~~-(b)-~~ "Serious misdemeanor" means that term as defined in
11 section 61 of the crime victim's rights act, 1985 PA 87, MCL
12 780.811.

13 (F) ~~-(e)-~~ "Victim" means that term as defined in section 2 of
14 the crime victim's rights act, 1985 PA 87, MCL 780.752.

15 Enacting section 1. Section 4 of 1965 PA 213, MCL 780.624, is
16 repealed.

17 Enacting section 2. This amendatory act takes effect January
18 1, 2006.