

# HOUSE BILL No. 5213

September 15, 2007, Introduced by Reps. Coulouris, Johnson, Constan, Alma Smith, Byrnes, Melton, Meadows, Condino, Bieda, Virgil Smith, Meisner, Tobocman 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 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)~~ **SUBJECT TO**  
2 **SUBSECTIONS (2), (10), AND (11)**, a person ~~who is convicted of not~~  
3 ~~more than 1 offense~~ may file an application with the convicting  
4 court for the entry of an order setting aside ~~the conviction.~~ **1 OR**  
5 **MORE CONVICTIONS AS FOLLOWS:**

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

1 SET ASIDE THE FELONY OFFENSE. FOR PURPOSES OF ELIGIBILITY ONLY  
2 UNDER THIS SUBDIVISION, A TRAFFIC OFFENSE DOES NOT CONSTITUTE A  
3 MISDEMEANOR, EXCEPT FOR VIOLATIONS OF SECTION 625 OF THE MICHIGAN  
4 VEHICLE CODE, 1949 PA 300, MCL 257.625.

5 (B) A PERSON WHO IS CONVICTED OF NOT MORE THAN 2 MISDEMEANOR  
6 OFFENSES AND NO OTHER FELONY OR MISDEMEANOR OFFENSES MAY PETITION  
7 TO SET ASIDE 1 OR BOTH OF THE MISDEMEANOR CONVICTIONS.

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

10 (A) A felony for which the maximum punishment is life  
11 imprisonment or an attempt to commit a felony for which the maximum  
12 punishment is life imprisonment. ~~or a~~

13 (B) A conviction for a violation or attempted violation of  
14 section 520c, 520d, or 520g of the Michigan penal code, 1931 PA  
15 328, MCL 750.520c, 750.520d, and 750.520g. ~~or a~~

16 (C) A conviction for a traffic offense.

17 (3) An application shall ~~not ONLY~~ be filed ~~until at least~~ **NOT**  
18 **LESS THAN** 5 years following imposition of the sentence **OR THE**  
19 **COMPLETION OF PROBATION OR PAROLE IMPOSED** for the conviction that  
20 the applicant seeks to set aside or **NOT LESS THAN** 5 years following  
21 completion of any term of imprisonment for that conviction,  
22 whichever occurs later.

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

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

27 (b) A certified record of ~~the~~ **EACH** conviction that is to be

1 set aside.

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

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

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

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

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

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

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

9 (7) A copy of the application shall be served upon the  
10 attorney general and upon the office of ~~the~~**EACH** prosecuting  
11 attorney who prosecuted the crime **OR CRIMES**, and an opportunity  
12 shall be given to the attorney general and to the prosecuting  
13 attorney to contest the application. If ~~the~~**A** conviction was for an  
14 assaultive crime or a serious misdemeanor, the prosecuting attorney  
15 shall notify the victim of the assaultive crime or serious  
16 misdemeanor of the application pursuant to section 22a or 77a of  
17 the **WILLIAM VAN REGENMORTER** crime victim's rights act, 1985 PA 87,  
18 MCL 780.772a and 780.827a. The notice shall be by first-class mail  
19 to the victim's last known address. The victim has the right to  
20 appear at any proceeding under this act concerning that conviction  
21 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 SECTION 81, 81A, 81C, 90B, 136B, 335A, OR  
11 411H(2) (A) OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81,  
12 750.81A, 750.81C, 750.90B, 750.136B, 750.335A, AND 750.411H.

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

17 (A) SECTION 703 OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998,  
18 1998 PA 58, MCL 436.1703.

19 (B) SECTION 1070(1) (B) (i) OF THE REVISED JUDICATURE ACT OF  
20 1961, 1961 PA 236, MCL 600.1070.

21 (C) SECTION 13 OF CHAPTER II, SECTION 4A OF CHAPTER IX, OR  
22 SECTION 1 OF CHAPTER XI OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA  
23 175, MCL 762.13, 769.4A, AND 771.1.

24 (D) SECTION 7411 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL  
25 333.7411.

26 (E) SECTION 350A OR 430 OF THE MICHIGAN PENAL CODE, 1931 PA  
27 328, MCL 750.350A AND 750.430.

1 (F) ANY OTHER LAW OF THIS STATE OR OF A POLITICAL SUBDIVISION  
2 OF THIS STATE SIMILAR TO THOSE LISTED IN THIS SUBSECTION THAT  
3 PROVIDES FOR THE DEFERRAL AND DISMISSAL OF A FELONY OR MISDEMEANOR  
4 CHARGE.

5 (12) ~~(10)~~—As used in this section:

6 (a) "Assaultive crime" means that term as defined in section  
7 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL  
8 770.9a.

9 (B) "FELONY" MEANS A VIOLATION OF A PENAL LAW OF THIS STATE,  
10 OF ANOTHER STATE, OR OF THE UNITED STATES THAT IS PUNISHABLE BY  
11 IMPRISONMENT FOR MORE THAN 1 YEAR OR IS EXPRESSLY DESIGNATED BY LAW  
12 TO BE A FELONY.

13 (C) "MISDEMEANOR" MEANS A VIOLATION OF ANY OF THE FOLLOWING:

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

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

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

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

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

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

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

7           Enacting section 1. Section 4 of 1965 PA 213, MCL 780.624, is  
8 repealed.