

HOUSE BILL No. 4847

April 29, 2009, Introduced by Reps. Cushingberry, Johnson, Smith, Tlaib, Young, Durhal, Lemmons, Nathan and Jackson 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, 1a, 2, and 3 (MCL 780.621, 780.621a, 780.622, and 780.623), section 1 as amended by 2002 PA 472, section 1a as added by 1982 PA 495, and sections 2 and 3 as amended by 1994 PA 294; 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), a~~ A person
2 ~~who is convicted of not more than 1 offense~~ may file an application
3 with the convicting court for the entry of an order setting aside
4 ~~the~~ ANY conviction.

~~1 (2) A person shall not apply to have set aside, and a judge
2 shall not set aside, a conviction for a felony for which the
3 maximum punishment is life imprisonment or an attempt to commit a
4 felony for which the maximum punishment is life imprisonment, a
5 conviction for a violation or attempted violation of section 520c,
6 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL
7 750.520c, 750.520d, and 750.520g, or a conviction for a traffic
8 offense.~~

9 (2) ~~(3)~~ An application shall not be filed **TO SET ASIDE A**
10 **CONVICTION FOR A FELONY** until at least 5 years following imposition
11 of the sentence for the conviction ~~that the applicant seeks to set~~
12 ~~aside~~ or 5 years following completion of any term of imprisonment
13 for that conviction, whichever occurs later. **AN APPLICATION SHALL**
14 **NOT BE FILED TO SET ASIDE A CONVICTION FOR A MISDEMEANOR UNTIL AT**
15 **LEAST 5 YEARS FOLLOWING IMPOSITION OF SENTENCE FOR THE CONVICTION**
16 **OR 3 YEARS FOLLOWING COMPLETION OF ANY TERM OF IMPRISONMENT FOR**
17 **THAT CONVICTION, WHICHEVER OCCURS LATER.**

18 (3) ~~(4)~~ The application is invalid unless it contains the
19 following information and is signed under oath by the person whose
20 conviction is to be set aside:

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

22 (b) A certified record of the conviction that is to be set
23 aside.

24 ~~(c) A statement that the applicant has not been convicted of~~
25 ~~an offense other than the one sought to be set aside as a result of~~
26 ~~this application.~~

27 (C) ~~(d)~~ A statement as to whether the applicant has previously

1 filed an application to set aside ~~this or any other~~ **THE** conviction
2 and, if so, the disposition of the application.

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

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

8 (4) ~~(5)~~—The applicant shall submit a copy of the application
9 and 2 complete sets of fingerprints to the department of state
10 police. The department of state police shall compare those
11 fingerprints with the records of the department, including the
12 nonpublic record created under section 3, and shall forward a
13 complete set of fingerprints to the federal bureau of investigation
14 for a comparison with the records available to that agency. The
15 department of state police shall report to the court in which the
16 application is filed the information contained in the department's
17 records with respect to any pending charges against the applicant,
18 any record of conviction of the applicant, and the setting aside of
19 any conviction of the applicant and shall report to the court any
20 similar information obtained from the federal bureau of
21 investigation. The court shall not act upon the application until
22 the department of state police reports the information required by
23 this subsection to the court.

24 (5) ~~(6)~~—The copy of the application submitted to the
25 department of state police under subsection ~~(5)~~—(4) shall be
26 accompanied by a fee of \$50.00 payable to the state of Michigan
27 which shall be used by the department of state police to defray the

1 expenses incurred in processing the application.

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

15 (7) ~~(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 (8) ~~(9)~~—If the court determines that the circumstances and
19 behavior of the applicant from the date of the applicant's
20 conviction to the filing of the application warrant setting aside
21 the conviction and that setting aside the conviction is consistent
22 with the public welfare, the court may enter an order setting aside
23 the conviction. The setting aside of a conviction under this act is
24 a privilege and conditional and is not a right.

25 (9) ~~(10)~~—As used in this section:

26 (a) "Assaultive crime" means that term as defined in section
27 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL

1 770.9a.

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

5 (c) "Victim" means that term as defined in section 2 of the
6 **WILLIAM VAN REGENMORTER** crime victim's rights act, 1985 PA 87, MCL
7 780.752.

8 Sec. 1a. As used in this act, +

9 ~~—— (a) "Conviction"~~ **"CONVICTION"** means a judgment entered by a
10 court upon a plea of guilty, guilty but mentally ill, or nolo
11 contendere, or upon a jury verdict or court finding that a
12 defendant is guilty or guilty but mentally ill.

13 ~~—— (b) "Traffic offense" means a violation of the Michigan~~
14 ~~vehicle code, Act No. 300 of the Public Acts of 1949, being~~
15 ~~sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local~~
16 ~~ordinance substantially corresponding to that act, which violation~~
17 ~~involves the operation of a vehicle and at the time of the~~
18 ~~violation is a felony or misdemeanor.~~

19 Sec. 2. (1) Upon the entry of an order ~~pursuant to~~ **UNDER**
20 section 1, the applicant, for purposes of the law, shall be
21 considered not to have been previously convicted, except as
22 provided in this section and section 3.

23 (2) The applicant is not entitled to the remission of any
24 fine, costs, or other money paid as a consequence of a conviction
25 that is set aside.

26 (3) If the conviction set aside ~~pursuant to~~ **UNDER** this act is
27 for a listed offense as defined in section 2 of the sex offenders

1 registration act, 1994 PA 295, MCL 28.722, the applicant is
2 considered to have been convicted of that offense for purposes of
3 the sex offenders registration act.

4 (4) This act does not affect the right of the applicant to
5 rely upon the conviction to bar subsequent proceedings for the same
6 offense.

7 (5) This act does not affect the right of a victim of a crime
8 to prosecute or defend a civil action for damages.

9 (6) This act does not create a right to commence an action for
10 damages for incarceration under the sentence that the applicant
11 served before the conviction is set aside pursuant to this act.

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

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

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

26 ~~—— (b) To show that a person who has filed an application to set~~
27 ~~aside a conviction has previously had a conviction set aside~~

1 ~~pursuant to this act.~~

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

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

8 (D) ~~(e)~~—Consideration by a law enforcement agency if a person
9 whose conviction has been set aside applies for employment with the
10 law enforcement agency.

11 (E) ~~(f)~~—Consideration by a court, law enforcement agency,
12 prosecuting attorney, or the attorney general in determining
13 whether an individual required to be registered under the sex
14 offenders registration act has violated that act, or for use in a
15 prosecution for violating that act.

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

23 (4) The nonpublic record maintained under subsection (2) is
24 exempt from disclosure under the freedom of information act, ~~Act~~
25 ~~No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246~~
26 ~~of the Michigan Compiled Laws 1976 PA 442, MCL 15.231 TO 15.246.~~

27 (5) Except as provided in subsection (2), a person, other than

1 the applicant, who knows or should have known that a conviction was
2 set aside under this section and who divulges, uses, or publishes
3 information concerning a conviction set aside under this section is
4 guilty of a misdemeanor punishable by imprisonment for not more
5 than 90 days or a fine of not more than \$500.00, or both.

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

8 Enacting section 2. This amendatory act takes effect January
9 1, 2010.