

SUBSTITUTE FOR  
HOUSE BILL NO. 5545

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 2011 PA 64, 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**  
2 **SECTION**, a person ~~who is convicted of not more than 1 offense~~ may  
3 file an application with the convicting court for the entry of an  
4 order setting aside ~~the conviction. A person who is otherwise~~  
5 ~~eligible to file an application under this section is not rendered~~  
6 ~~ineligible by virtue of being convicted of not more than 2 minor~~

1 ~~offenses in addition to the offense for which the person files an~~  
2 ~~application.~~ 1 OR MORE CONVICTIONS AS FOLLOWS:

3 (A) A PERSON WHO IS CONVICTED OF NOT MORE THAN 1 FELONY  
4 OFFENSE AND NOT MORE THAN 2 MISDEMEANOR OFFENSES MAY PETITION THE  
5 CONVICTING COURT TO SET ASIDE THE FELONY OFFENSE.

6 (B) EXCEPT AS PROVIDED IN SUBDIVISION (C), A PERSON WHO IS  
7 CONVICTED OF NOT MORE THAN 2 MISDEMEANOR OFFENSES AND NO OTHER  
8 FELONY OR MISDEMEANOR OFFENSES MAY PETITION THE CONVICTING COURT OR  
9 THE CONVICTING COURTS TO SET ASIDE 1 OR BOTH OF THE MISDEMEANOR  
10 CONVICTIONS.

11 (C) A PERSON WHO IS CONVICTED OF A VIOLATION OR AN ATTEMPTED  
12 VIOLATION OF SECTION 520E OF THE MICHIGAN PENAL CODE, 1931 PA 328,  
13 MCL 750.520E, BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
14 ADDED THIS SUBDIVISION, MAY PETITION THE CONVICTING COURT TO SET  
15 ASIDE THE CONVICTION IF THE INDIVIDUAL HAS NOT BEEN CONVICTED OF  
16 ANOTHER OFFENSE OTHER THAN NOT MORE THAN 2 MINOR OFFENSES. AS USED  
17 IN THIS SUBDIVISION, "MINOR OFFENSE" MEANS A MISDEMEANOR OR  
18 ORDINANCE VIOLATION TO WHICH ALL OF THE FOLLOWING APPLY:

19 (i) THE MAXIMUM PERMISSIBLE TERM OF IMPRISONMENT DOES NOT  
20 EXCEED 90 DAYS.

21 (ii) THE MAXIMUM PERMISSIBLE FINE IS NOT MORE THAN \$1,000.00.

22 (iii) THE PERSON WHO COMMITTED THE OFFENSE IS NOT MORE THAN 21  
23 YEARS OLD.

24 (2) A CONVICTION THAT WAS DEFERRED AND DISMISSED UNDER ANY OF  
25 THE FOLLOWING, WHETHER A MISDEMEANOR OR A FELONY, SHALL BE  
26 CONSIDERED A MISDEMEANOR CONVICTION UNDER SUBSECTION (1) FOR  
27 PURPOSES OF DETERMINING WHETHER A PERSON IS ELIGIBLE TO HAVE ANY

1 CONVICTION SET ASIDE UNDER THIS ACT:

2 (A) SECTION 703 OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998,  
3 1998 PA 58, MCL 436.1703.

4 (B) SECTION 1070(1)(B)(i) OR 1209 OF THE REVISED JUDICATURE ACT  
5 OF 1961, 1961 PA 236, MCL 600.1070 AND 600.1209.

6 (C) SECTION 13 OF CHAPTER II OR SECTION 4A OF CHAPTER IX OF  
7 THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 762.13 AND 769.4A.

8 (D) SECTION 7411 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL  
9 333.7411.

10 (E) SECTION 350A OR 430 OF THE MICHIGAN PENAL CODE, 1931 PA  
11 328, MCL 750.350A AND 750.430.

12 (F) ANY OTHER LAW OR LAWS OF THIS STATE OR OF A POLITICAL  
13 SUBDIVISION OF THIS STATE SIMILAR IN NATURE AND APPLICABILITY TO  
14 THOSE LISTED IN THIS SUBSECTION THAT PROVIDE FOR THE DEFERRAL AND  
15 DISMISSAL OF A FELONY OR MISDEMEANOR CHARGE.

16 (3) ~~(2)~~A person shall not apply to have set aside, and a  
17 judge shall not set aside, a conviction for ~~a~~ANY OF THE FOLLOWING:

18 (A) A felony for which the maximum punishment is life  
19 imprisonment or an attempt to commit a felony for which the maximum  
20 punishment is life imprisonment. ~~—a conviction for a~~

21 (B) A violation or attempted violation of section 136B(3),  
22 136D(1)(B) OR (C), 145c, 145d, 520c, 520d, 520E, or 520g of the  
23 Michigan penal code, 1931 PA 328, MCL 750.136B, 750.136D, 750.145c,  
24 750.145d, 750.520c, 750.520d, 750.520E, and 750.520g. ~~—or a~~  
25 conviction for a

26 (C) A VIOLATION OR ATTEMPTED VIOLATION OF SECTION 520E OF THE  
27 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520E, IF THE CONVICTION

1 OCCURRED AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED  
2 THIS SUBDIVISION.

3 (D) A traffic offense, INCLUDING, BUT NOT LIMITED TO, A  
4 CONVICTION FOR OPERATING WHILE INTOXICATED.

5 (E) A FELONY CONVICTION FOR DOMESTIC VIOLENCE, IF THE PERSON  
6 HAS A PREVIOUS MISDEMEANOR CONVICTION FOR DOMESTIC VIOLENCE.

7 (F) A VIOLATION OF CHAPTER LXVIIA OR CHAPTER LXXXIII-A OF THE  
8 MICHIGAN PENAL CODE, 1938 PA 321, MCL 750.462A TO 750.462J AND  
9 750.543A TO 750.543Z.

10 (4) ~~(3)~~An application shall ~~not ONLY~~ be filed ~~until at least~~  
11 5 OR MORE years ~~following imposition~~ AFTER WHICHEVER OF THE  
12 FOLLOWING EVENTS OCCURS LAST:

13 (A) IMPOSITION of the sentence for the conviction that the  
14 applicant seeks to set aside. ~~or 5 years following completion of~~  
15 ~~any term of imprisonment for that conviction, whichever occurs~~  
16 ~~later.~~

17 (B) COMPLETION OF PROBATION IMPOSED FOR THE CONVICTION THAT  
18 THE APPLICANT SEEKS TO SET ASIDE.

19 (C) DISCHARGE FROM PAROLE IMPOSED FOR THE CONVICTION THAT THE  
20 APPLICANT SEEKS TO SET ASIDE.

21 (D) COMPLETION OF ANY TERM OF IMPRISONMENT IMPOSED FOR THE  
22 CONVICTION THAT THE APPLICANT SEEKS TO SET ASIDE.

23 (5) IF A PETITION UNDER THIS ACT IS DENIED BY THE CONVICTING  
24 COURT, A PERSON SHALL NOT FILE ANOTHER PETITION CONCERNING THE SAME  
25 CONVICTION OR CONVICTIONS WITH THE CONVICTING COURT UNTIL 3 YEARS  
26 AFTER THE DATE THE CONVICTING COURT DENIES THE PREVIOUS PETITION,  
27 UNLESS THE COURT SPECIFIES AN EARLIER DATE FOR FILING ANOTHER

1 **PETITION IN THE ORDER DENYING THE PETITION.**

2 (6) ~~(4) The~~ **AN** application **UNDER THIS SECTION** is invalid  
3 unless it contains the following information and is signed under  
4 oath by the person whose conviction ~~is~~ **OR CONVICTIONS ARE** to be set  
5 aside:

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

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

9 (c) A statement that the applicant has not been convicted of  
10 an offense other than the conviction **OR CONVICTIONS** sought to be  
11 set aside as a result of this application, ~~and not more than 2~~  
12 ~~minor offenses, if applicable.~~ **ANY NONDISQUALIFYING MISDEMEANOR**  
13 **CONVICTIONS DESCRIBED IN SUBSECTION (1) (A).**

14 (D) **A STATEMENT LISTING ALL ACTIONS ENUMERATED IN SUBSECTION**  
15 **(2) THAT WERE INITIATED AGAINST THE APPLICANT AND HAVE BEEN**  
16 **DISMISSED.**

17 (E) ~~(d)~~ A statement as to whether the applicant has previously  
18 filed an application to set aside this or any ~~other~~ conviction and,  
19 if so, the disposition of the application.

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

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

25 (7) ~~(5)~~ The applicant shall submit a copy of the application  
26 and ~~2-1~~ complete ~~sets~~ **SET** of fingerprints to the department of  
27 state police. The department of state police shall compare those

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

14 (8) ~~(6)~~The copy of the application submitted to the  
15 department of state police under subsection ~~(5)~~**(7)** shall be  
16 accompanied by a fee of \$50.00 payable to the state of Michigan  
17 ~~which~~**THAT** shall be used by the department of state police to  
18 defray the expenses incurred in processing the application.

19 (9) ~~(7)~~A copy of the application shall be served upon the  
20 attorney general and upon the office of ~~the~~**EACH** prosecuting  
21 attorney who prosecuted the crime **OR CRIMES THE APPLICANT SEEKS TO**  
22 **SET ASIDE**, and an opportunity shall be given to the attorney  
23 general and to the prosecuting attorney to contest the application.  
24 If ~~the~~**A** conviction was for an assaultive crime or a serious  
25 misdemeanor, the prosecuting attorney shall notify the victim of  
26 the assaultive crime or serious misdemeanor of the application  
27 ~~pursuant to~~**UNDER** section 22a or 77a of the William Van Regenmorter

1 crime victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a.  
2 The notice shall be by first-class mail to the victim's last known  
3 address. The victim has the right to appear at any proceeding under  
4 this act concerning that conviction and to make a written or oral  
5 statement.

6 (10) ~~(8)~~—Upon the hearing of the application the court may  
7 require the filing of affidavits and the taking of proofs as it  
8 considers proper.

9 (11) ~~(9)~~—If the court determines that the circumstances and  
10 behavior of the applicant from the date of the applicant's  
11 conviction **OR CONVICTIONS** to the filing of the application warrant  
12 setting aside the conviction **OR CONVICTIONS** and that setting aside  
13 the conviction **OR CONVICTIONS** is consistent with the public  
14 welfare, the court may enter an order setting aside the conviction  
15 **OR CONVICTIONS**. The setting aside of a conviction **OR CONVICTIONS**  
16 under this act is a privilege and conditional and is not a right.

17 (12) ~~(10)~~—As used in this section:

18 (a) "Assaultive crime" means that term as defined in section  
19 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL  
20 770.9a.

21 ~~(b) "Minor offense" means a misdemeanor or ordinance violation~~  
22 ~~for which the maximum permissible imprisonment does not exceed 90~~  
23 ~~days, for which the maximum permissible fine does not exceed~~  
24 ~~\$1,000.00, and that is committed by a person who is not more than~~  
25 ~~21 years of age.~~ **"DOMESTIC VIOLENCE" MEANS THAT TERM AS DEFINED IN**  
26 **SECTION 1 OF 1978 PA 389, MCL 400.1501.**

27 (C) **"FELONY" MEANS EITHER OF THE FOLLOWING, AS APPLICABLE:**

1           (i) FOR PURPOSES OF THE OFFENSE TO BE SET ASIDE, FELONY MEANS A  
2 VIOLATION OF A PENAL LAW OF THIS STATE THAT IS PUNISHABLE BY  
3 IMPRISONMENT FOR MORE THAN 1 YEAR OR THAT IS DESIGNATED BY LAW TO  
4 BE A FELONY.

5           (ii) FOR PURPOSES OF IDENTIFYING A PRIOR OFFENSE, FELONY MEANS  
6 A VIOLATION OF A PENAL LAW OF THIS STATE, OF ANOTHER STATE, OR OF  
7 THE UNITED STATES THAT IS PUNISHABLE BY IMPRISONMENT FOR MORE THAN  
8 1 YEAR OR IS DESIGNATED BY LAW TO BE A FELONY.

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

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

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

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

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

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

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

27           (F) "OPERATING WHILE INTOXICATED" MEANS A VIOLATION OF ANY OF



1 THE FOLLOWING:

2 (i) SECTION 625 OR 625M OF THE MICHIGAN VEHICLE CODE, 1949 PA  
3 300, MCL 257.625 AND 257.625M.

4 (ii) A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO A  
5 VIOLATION LISTED IN SUBPARAGRAPH (i) .

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

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

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

12 (G) ~~(e)~~—"Serious misdemeanor" means that term as defined in  
13 section 61 of the William Van Regenmorter crime victim's rights  
14 act, 1985 PA 87, MCL 780.811.

15 (H) ~~(d)~~—"Victim" means that term as defined in ~~section~~  
16 **SECTIONS 2, 31, AND 61** of the William Van Regenmorter crime  
17 victim's rights act, 1985 PA 87, MCL 780.752, **780.781, AND 780.811.**

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

21 (2) The department of state police shall retain a nonpublic  
22 record of the order setting aside a conviction and of the record of  
23 the arrest, fingerprints, conviction, and sentence of the applicant  
24 in the case to which the order applies. Except as provided in  
25 subsection (3), this nonpublic record shall be made available only  
26 to a court of competent jurisdiction, an agency of the judicial  
27 branch of state government, **THE DEPARTMENT OF CORRECTIONS**, a law

1 enforcement agency, a prosecuting attorney, the attorney general,  
2 or the governor upon request and only for the following purposes:

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

5 (b) To show that a person who has filed an application to set  
6 aside a conviction has previously had a conviction set aside  
7 ~~pursuant to~~ **UNDER** this act.

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

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

13 (e) Consideration by **THE DEPARTMENT OF CORRECTIONS OR** a law  
14 enforcement agency if a person whose conviction has been set aside  
15 applies for employment with the **DEPARTMENT OF CORRECTIONS OR** law  
16 enforcement agency.

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

23 (3) A copy of the nonpublic record created under subsection  
24 (2) shall be provided to the person whose conviction is set aside  
25 under this act upon payment of a fee determined and charged by the  
26 department of state police in the same manner as the fee prescribed  
27 in section 4 of the freedom of information act, ~~Act No. 442 of the~~

1 ~~Public Acts of 1976, being section 15.234 of the Michigan Compiled~~  
2 ~~Laws.1976 PA 442, MCL 15.234.~~

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

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

14 (6) **AS USED IN THIS SECTION, "VICTIM" MEANS ANY INDIVIDUAL WHO**  
15 **SUFFERS DIRECT OR THREATENED PHYSICAL, FINANCIAL, OR EMOTIONAL HARM**  
16 **AS THE RESULT OF THE OFFENSE THAT WAS COMMITTED BY THE APPLICANT.**

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