

HOUSE BILL No. 5545

May 6, 2014, Introduced by Reps. Leonard, Haveman, Tlaib, Oakes, Santana, Schor and Howrylak 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 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) A PERSON WHO IS CONVICTED OF NOT MORE THAN 2 MISDEMEANOR
7 OFFENSES AND NO OTHER FELONY OR MISDEMEANOR OFFENSES MAY PETITION
8 THE CONVICTING COURT OR THE CONVICTING COURTS TO SET ASIDE 1 OR
9 BOTH OF THE MISDEMEANOR CONVICTIONS.

10 (2) A CONVICTION THAT WAS DEFERRED AND DISMISSED UNDER ANY OF
11 THE FOLLOWING, WHETHER A MISDEMEANOR OR A FELONY, SHALL BE
12 CONSIDERED A MISDEMEANOR CONVICTION UNDER SUBSECTION (1) FOR
13 PURPOSES OF DETERMINING WHETHER A PERSON IS ELIGIBLE TO HAVE ANY
14 CONVICTION SET ASIDE UNDER THIS ACT:

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

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

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

21 (D) SECTION 7411 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
22 333.7411.

23 (E) SECTION 350A OR 430 OF THE MICHIGAN PENAL CODE, 1931 PA
24 328, MCL 750.350A AND 750.430.

25 (F) ANY OTHER LAW OR LAWS OF THIS STATE OR OF A POLITICAL
26 SUBDIVISION OF THIS STATE SIMILAR IN NATURE AND APPLICABILITY TO
27 THOSE LISTED IN THIS SUBSECTION THAT PROVIDE FOR THE DEFERRAL AND

1 **DISMISSAL OF A FELONY OR MISDEMEANOR CHARGE.**

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

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

7 (B) A violation or attempted violation of section **136B(3),**
8 **136D(1)(B) OR (C),** 145c, 145d, 520c, 520d, **520E,** or 520g of the
9 Michigan penal code, 1931 PA 328, **MCL 750.136B, 750.136D,** 750.145c,
10 750.145d, 750.520c, 750.520d, **750.520E,** and 750.520g. ~~—or a~~
11 ~~conviction for a~~

12 (C) A traffic offense, **INCLUDING, BUT NOT LIMITED TO, A**
13 **CONVICTION FOR OPERATING WHILE INTOXICATED.**

14 (D) A **FELONY CONVICTION FOR DOMESTIC VIOLENCE, IF THE PERSON**
15 **HAS A PREVIOUS MISDEMEANOR CONVICTION FOR DOMESTIC VIOLENCE.**

16 (E) A VIOLATION OF CHAPTER LXVIIIA OR CHAPTER LXXXIII-A OF THE
17 MICHIGAN PENAL CODE, 1938 PA 321, MCL 750.462A TO 750.462J AND
18 750.543A TO 750.543Z.

19 (4) ~~(3)~~—An application shall ~~not~~**ONLY** be filed ~~until at least~~
20 **5 OR MORE** years ~~following imposition~~**AFTER WHICHEVER OF THE**
21 **FOLLOWING EVENTS OCCURS LAST:**

22 (A) **IMPOSITION** of the sentence for the conviction that the
23 applicant seeks to set aside. ~~or 5 years following completion of~~
24 ~~any term of imprisonment for that conviction, whichever occurs~~
25 ~~later.~~

26 (B) **COMPLETION OF PROBATION IMPOSED FOR THE CONVICTION THAT**
27 **THE APPLICANT SEEKS TO SET ASIDE.**

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

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

5 (5) IF A PETITION UNDER THIS ACT IS DENIED BY THE CONVICTING
6 COURT, A PERSON SHALL NOT FILE ANOTHER PETITION CONCERNING THE SAME
7 CONVICTION OR CONVICTIONS WITH THE CONVICTING COURT UNTIL 3 YEARS
8 AFTER THE DATE THE CONVICTING COURT DENIES THE PREVIOUS PETITION,
9 UNLESS THE COURT SPECIFIES AN EARLIER DATE FOR FILING ANOTHER
10 PETITION IN THE ORDER DENYING THE PETITION.

11 (6) ~~(4) The~~ AN application UNDER THIS SECTION is invalid
12 unless it contains the following information and is signed under
13 oath by the person whose conviction ~~is~~ OR CONVICTIONS ARE to be set
14 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 conviction OR CONVICTIONS sought to be
20 set aside as a result of this application, ~~and not more than 2~~
21 ~~minor offenses, if applicable.~~ ANY NONDISQUALIFYING MISDEMEANOR
22 CONVICTIONS DESCRIBED IN SUBSECTION (1) (A).

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

26 (E) ~~(d)~~ A statement as to whether the applicant has previously
27 filed an application to set aside this or any ~~other~~ conviction and,

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

23 (8) ~~(6)~~—The copy of the application submitted to the
24 department of state police under subsection ~~(5)~~ ~~(7)~~ 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 (9) ~~(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~~ **UNDER** section 22a or 77a of the William Van Regenmorter
10 crime victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a.
11 The 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 (10) ~~(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 (11) ~~(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, the court may enter an order setting aside the conviction
24 **OR CONVICTIONS**. The setting aside of a conviction **OR CONVICTIONS**
25 under this act is a privilege and conditional and is not a right.

26 (12) ~~(10)~~—As used in this section:

27 (a) "Assaultive crime" means that term as defined in section

1 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
2 770.9a.

3 (b) ~~"Minor offense" means a misdemeanor or ordinance violation~~
4 ~~for which the maximum permissible imprisonment does not exceed 90~~
5 ~~days, for which the maximum permissible fine does not exceed~~
6 ~~\$1,000.00, and that is committed by a person who is not more than~~
7 ~~21 years of age.~~ "DOMESTIC VIOLENCE" MEANS THAT TERM AS DEFINED IN
8 SECTION 1 OF 1978 PA 389, MCL 400.1501.

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

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

14 (ii) FOR PURPOSES OF IDENTIFYING A PRIOR OFFENSE, FELONY MEANS
15 A VIOLATION OF A PENAL LAW OF THIS STATE, OF ANOTHER STATE, OR OF
16 THE UNITED STATES THAT IS PUNISHABLE BY IMPRISONMENT FOR MORE THAN
17 1 YEAR OR IS DESIGNATED BY LAW TO BE A FELONY.

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

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

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

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

27 (iii) A LOCAL ORDINANCE OF A POLITICAL SUBDIVISION OF THIS STATE

1 SUBSTANTIALLY CORRESPONDING TO A CRIME LISTED IN SUBPARAGRAPH (i) OR
2 (ii) THAT IS NOT A FELONY.

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

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

9 (F) "OPERATING WHILE INTOXICATED" MEANS A VIOLATION OF ANY OF
10 THE FOLLOWING:

11 (i) SECTION 625 OR 625M OF THE MICHIGAN VEHICLE CODE, 1949 PA
12 300, MCL 257.625 AND 257.625M.

13 (ii) A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO A
14 VIOLATION LISTED IN SUBPARAGRAPH (i).

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

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

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

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

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

27 Sec. 3. (1) Upon the entry of an order ~~pursuant to~~ **UNDER**

1 section 1, the court shall send a copy of the order to the
2 arresting agency and the department of state police.

3 (2) The department of state police shall retain a nonpublic
4 record of the order setting aside a conviction and of the record of
5 the arrest, fingerprints, conviction, and sentence of the applicant
6 in the case to which the order applies. Except as provided in
7 subsection (3), this nonpublic record shall be made available only
8 to a court of competent jurisdiction, an agency of the judicial
9 branch of state government, **THE DEPARTMENT OF CORRECTIONS**, a law
10 enforcement agency, a prosecuting attorney, the attorney general,
11 or the governor upon request and only for the following purposes:

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

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

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

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

22 (e) Consideration by **THE DEPARTMENT OF CORRECTIONS OR** a law
23 enforcement agency if a person whose conviction has been set aside
24 applies for employment with the **DEPARTMENT OF CORRECTIONS OR** law
25 enforcement agency.

26 (f) Consideration by a court, law enforcement agency,
27 prosecuting attorney, or the attorney general in determining

1 whether an individual required to be registered under the sex
2 offenders registration act, 1994 PA 295, MCL 28.721 TO 28.736, has
3 violated that act, or for use in a prosecution for violating that
4 act.

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

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

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

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

26 Sec. 4. A person may have only 1 **FELONY** conviction **OR NOT MORE**
27 **THAN 2 MISDEMEANOR CONVICTIONS** set aside ~~under this act-AS PROVIDED~~

1 IN SECTION 1.