

REPRINT

SUBSTITUTE FOR

SENATE BILL NO. 927

(As passed the Senate May 9, 2002)

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 1996 PA 573.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. (1) Except as provided in subsection (2), a person  
2 who is convicted of not more than 1 offense may file an applica-  
3 tion with the convicting court for the entry of an order setting  
4 aside the conviction.

5           (2) A person shall not apply to have set aside, and a judge  
6 shall not set aside, a conviction for a felony for which the max-  
7 imum punishment is life imprisonment or an attempt to commit a  
8 felony for which the maximum punishment is life imprisonment, a  
9 conviction for a violation or attempted violation of section

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1 520c, 520d, or 520g of the Michigan penal code, ~~Act No. 328 of~~  
2 ~~the Public Acts of 1931, being sections 750.520c, 750.520d, and~~  
3 ~~750.520g of the Michigan Compiled Laws~~ 1931 PA 328, MCL  
4 750.520C, 750.520D, AND 750.520G, or a conviction for a traffic  
5 offense.

6 (3) An application shall not be filed until ~~the expiration~~  
7 ~~of~~ AT LEAST 5 years following imposition of the sentence for the  
8 conviction that the applicant seeks to set aside or 5 years fol-  
9 lowing completion of any term of imprisonment for that convic-  
10 tion, whichever occurs later.

11 (4) The application is invalid unless it contains the fol-  
12 lowing information and is signed under oath by the person whose  
13 conviction is to be set aside:

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

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

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

20 (d) A statement as to whether the applicant has previously  
21 filed an application to set aside this or any other conviction  
22 and, if so, the disposition of the application.

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

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

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1           (5) The applicant shall submit a copy of the application and  
2 2 complete sets of fingerprints to the department of state  
3 police. The department of state police shall compare those fin-  
4 gerprints with the records of the department, including the non-  
5 public record created under section 3, and shall forward a com-  
6 plete set of fingerprints to the federal bureau of investigation  
7 for a comparison with the records available to that agency. The  
8 department of state police shall report to the court in which the  
9 application is filed the information contained in the  
10 department's records with respect to any pending charges against  
11 the applicant, any record of conviction of the applicant, and the  
12 setting aside of any conviction of the applicant and shall report  
13 to the court any similar information obtained from the federal  
14 bureau of investigation. The court shall not act upon the appli-  
15 cation until the department of state police reports the informa-  
16 tion required by this subsection to the court.

17           (6) The copy of the application submitted to the department  
18 of state police under subsection (5) shall be accompanied by a  
19 fee of ~~-\$25.00~~ \$50.00 payable to the state of Michigan which  
20 shall be used by the department of state police to defray the  
21 expenses incurred in processing the application.

22           (7) A copy of the application shall be served upon the  
23 attorney general and upon the office of the prosecuting attorney  
24 who prosecuted the crime, and an opportunity shall be given to  
25 the attorney general and to the prosecuting attorney to contest  
26 the application. If the conviction was for an assaultive crime  
27 or a serious misdemeanor, the prosecuting attorney shall notify

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1 the victim of the assaultive crime or serious misdemeanor of the  
2 application pursuant to section 22a or 77a of the crime victim's  
3 rights act, ~~Act No. 87 of the Public Acts of 1985, being sec-~~  
4 ~~tions 780.772a and 780.827a of the Michigan Compiled Laws~~ 1985  
5 PA 87, MCL 780.772A AND 780.827A. The notice shall be by  
6 first-class mail to the victim's last known address. The victim  
7 has the right to appear at any proceeding under this act concern-  
8 ing that conviction and to make a written or oral statement.

9 (8) Upon the hearing of the application the court may  
10 require the filing of affidavits and the taking of proofs as it  
11 considers proper.

12 (9) If the court determines that the circumstances and  
13 behavior of the applicant from the date of the applicant's con-  
14 viction to the filing of the application warrant setting aside  
15 the conviction and that setting aside the conviction is consis-  
16 tent with the public welfare, the court may enter an order set-  
17 ting aside the conviction. The setting aside of a conviction  
18 under this act is a privilege and conditional and is not a  
19 right.

20 (10) As used in this section:

21 (a) "Assaultive crime" means that term as defined in section  
22 9a of chapter X of the code of criminal procedure, ~~Act No. 175~~  
23 ~~of the Public Acts of 1927, being section 770.9a of the Michigan~~  
24 ~~Compiled Laws~~ 1927 PA 175, MCL 770.9A.

25 (b) "Serious misdemeanor" means that term as defined in sec-  
26 tion 61 of the crime victim's rights act, ~~Act No. 87 of the~~

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1 ~~Public Acts of 1985, being section 780.811 of the Michigan~~  
2 ~~Compiled Laws~~ 1985 PA 87, MCL 780.811.

3 (c) "Victim" means that term as defined in section 2 of ~~Act~~  
4 ~~No. 87 of the Public Acts of 1985, being section 780.752 of the~~  
5 ~~Michigan Compiled Laws~~ THE CRIME VICTIM'S RIGHTS ACT, 1985 PA  
6 87, MCL 780.752.

7 [Enacting section 1. This amendatory act takes effect  
8 October 1, 2002.

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