

# HOUSE BILL No. 5493

February 10, 2004, Introduced by Reps. Waters and Hardman and referred to the Committee on Criminal Justice.

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.

## 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~~ **felony offense or**  
3 **not more than 2 misdemeanor offenses** may file an application with  
4 the convicting court for the entry of an order setting aside ~~the~~  
5 ~~conviction~~ **either the felony offense or 1 or both of the**  
6 **misdemeanor offenses.**

7       (2) A person shall not apply to have set aside, and a judge  
8 shall not set aside, a conviction for ~~a~~ **any of the following:**

9       **(a) A felony for which the maximum punishment is life**

1 imprisonment or an attempt to commit a felony for which the  
2 maximum punishment is life imprisonment. ~~—a~~

3       **(b) A conviction for ~~a violation or attempted violation of~~**  
4 ~~section 520e, 520d, or 520g of the Michigan penal code, 1931 PA~~  
5 ~~328, MCL 750.520e, 750.520d, and 750.520g, or a conviction for a~~  
6 ~~traffic offense~~ **an assaultive crime or an attempt to commit an**  
7 **assaultive crime.**

8       **(c) A conviction for a violation of section 625(1), (3), or**  
9 **(8) of the Michigan vehicle code, 1949 PA 300, MCL 257.625.**

10       (3) An application shall not be filed until at least 5 years  
11 following imposition of the sentence for ~~the~~ **each** conviction  
12 that the applicant seeks to set aside or 5 years following  
13 completion of any term of imprisonment for that conviction,  
14 whichever occurs later.

15       (4) The application is invalid unless it contains the  
16 following information and is signed under oath by the person  
17 whose conviction is to be set aside:

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

19       (b) A certified record of ~~the~~ **each** conviction that is to be  
20 set aside.

21       (c) A statement that the applicant has not been convicted of  
22 an offense other than the ~~one~~ **conviction or convictions** sought  
23 to be set aside as a result of this application.

24       (d) A statement as to whether the applicant has previously  
25 filed an application to set aside this **conviction or convictions**  
26 or any other conviction and, if so, the disposition of the  
27 application.

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

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

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

22 (6) The copy of the application submitted to the department  
23 of state police under subsection (5) shall be accompanied by a  
24 fee of \$50.00 payable to the state of Michigan ~~which~~ **that** shall  
25 be used by the department of state police to defray the expenses  
26 incurred in processing the application.

27 (7) A copy of the application shall be served upon the

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

13 (8) Upon the hearing of the application the court may require  
14 the filing of affidavits and the taking of proofs as it considers  
15 proper.

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

25 (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,

1 MCL 770.9a.

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

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