

HOUSE BILL No. 4186

February 5, 2013, Introduced by Reps. Oakes, Haveman, MacMaster, Muxlow, Santana, Kandrevas, McCann, Robinson, Hobbs, Geiss, Howrylak, Banks, Kowall, Dillon, Lipton, Cavanagh and O'Brien 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 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~~
7 ~~offenses in addition to the offense for which the person files an~~

1 application-1 OR MORE CONVICTIONS AS FOLLOWS:

2 (A) A PERSON WHO IS CONVICTED OF NOT MORE THAN 1 FELONY
3 OFFENSE AND NOT MORE THAN 2 MISDEMEANOR OFFENSES MAY PETITION THE
4 CONVICTING COURT TO SET ASIDE THE FELONY OFFENSE. FOR PURPOSES OF
5 ELIGIBILITY ONLY UNDER THIS SUBDIVISION, A TRAFFIC OFFENSE DOES NOT
6 CONSTITUTE A MISDEMEANOR, EXCEPT FOR A VIOLATION OF OPERATING WHILE
7 INTOXICATED.

8 (B) A PERSON WHO IS CONVICTED OF NOT MORE THAN 2 MISDEMEANOR
9 OFFENSES AND NO OTHER FELONY OR MISDEMEANOR OFFENSES MAY PETITION
10 THE CONVICTING COURT OR THE CONVICTING COURTS TO SET ASIDE 1 OR
11 BOTH OF THE MISDEMEANOR CONVICTIONS. FOR PURPOSES OF ELIGIBILITY
12 ONLY UNDER THIS SUBDIVISION, A TRAFFIC OFFENSE DOES NOT CONSTITUTE
13 A MISDEMEANOR, EXCEPT FOR A VIOLATION OF OPERATING WHILE
14 INTOXICATED.

15 (2) AN ACTION DISMISSED UNDER 1 OF THE FOLLOWING SHALL BE
16 CONSIDERED A MISDEMEANOR CONVICTION UNDER SUBSECTION (1):

17 (A) SECTION 703 OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998,
18 1998 PA 58, MCL 436.1703.

19 (B) SECTION 1070(1)(B)(i) OF THE REVISED JUDICATURE ACT OF
20 1961, 1961 PA 236, MCL 600.1070.

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

23 (D) SECTION 7411 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
24 333.7411.

25 (E) SECTION 350A OR 430 OF THE MICHIGAN PENAL CODE, 1931 PA
26 328, MCL 750.350A AND 750.430.

27 (F) ANY OTHER LAW OF THIS STATE OR OF A POLITICAL SUBDIVISION

1 OF THIS STATE SIMILAR TO THOSE LISTED IN THIS SUBSECTION THAT
2 PROVIDES FOR THE DEFERRAL AND DISMISSAL OF A FELONY OR MISDEMEANOR
3 CHARGE.

4 (3) ~~(2)~~ A person shall not apply to have set aside, and a
5 judge shall not set aside, a conviction for ~~a~~ ANY OF THE FOLLOWING:

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

9 (B) A violation or attempted violation of section 145c, 145d,
10 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL
11 750.145c, 750.145d, 750.520c, 750.520d, and 750.520g. ~~, or a~~
12 conviction for a

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

15 (D) A FELONY IN WHICH THE VICTIM IS A SPOUSE, A FORMER SPOUSE,
16 AN INDIVIDUAL WITH WHOM THE PERSON HAS HAD A CHILD IN COMMON, AN
17 INDIVIDUAL WITH WHOM THE PERSON HAS OR HAS HAD A DATING
18 RELATIONSHIP, OR AN INDIVIDUAL RESIDING OR HAVING RESIDED IN THE
19 SAME HOUSEHOLD AS THE PERSON, IF THE PERSON HAS A PRIOR MISDEMEANOR
20 CONVICTION IN WHICH THE VICTIM IS A SPOUSE, A FORMER SPOUSE, AN
21 INDIVIDUAL WITH WHOM THE PERSON HAS HAD A CHILD IN COMMON, AN
22 INDIVIDUAL WITH WHOM THE PERSON HAS OR HAS HAD A DATING
23 RELATIONSHIP, OR AN INDIVIDUAL RESIDING OR HAVING RESIDED IN THE
24 SAME HOUSEHOLD AS THE PERSON.

25 (4) ~~(3)~~ An application shall ~~not ONLY~~ be filed ~~until at least~~
26 5 OR MORE years following ~~imposition~~ AFTER WHICHEVER OF THE
27 FOLLOWING EVENTS OCCURS LAST:

1 (A) **IMPOSITION** of the sentence for the conviction that the
2 applicant seeks to set aside. ~~or 5 years following completion of~~
3 ~~any term of imprisonment for that conviction, whichever occurs~~
4 ~~later.~~

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

7 (C) **DISCHARGE FROM PAROLE IMPOSED FOR THE CONVICTION THAT THE**
8 **APPLICANT SEEKS TO SET ASIDE.**

9 (D) **COMPLETION OF ANY TERM OF IMPRISONMENT IMPOSED FOR THE**
10 **CONVICTION THAT THE APPLICANT SEEKS TO SET ASIDE.**

11 (5) **IF A PETITION UNDER THIS ACT IS DENIED BY THE CONVICTING**
12 **COURT, A PERSON SHALL NOT FILE ANOTHER PETITION CONCERNING THE SAME**
13 **CONVICTION OR CONVICTIONS WITH THE CONVICTING COURT UNTIL 3 YEARS**
14 **AFTER THE DATE THE CONVICTING COURT DENIES THE PREVIOUS PETITION,**
15 **UNLESS THE COURT SPECIFIES AN EARLIER DATE FOR FILING ANOTHER**
16 **PETITION IN THE ORDER DENYING THE PETITION.**

17 (6) ~~(4) The~~ **AN** application **UNDER THIS SECTION** is invalid
18 unless it contains the following information and is signed under
19 oath by the person whose conviction ~~is~~ **OR CONVICTIONS ARE** to be set
20 aside:

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

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

24 (c) A statement that the applicant has not been convicted of
25 an offense other than the conviction **OR CONVICTIONS** sought to be
26 set aside as a result of this application, and not more than 2
27 ~~minor offenses, if applicable.~~ **NONDISQUALIFYING CONVICTIONS**

1 DESCRIBED IN SUBSECTION (2).

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

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

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

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

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

1 information required by this subsection to the court.

2 (8) ~~(6)~~—The copy of the application submitted to the
3 department of state police under subsection ~~(5)~~—(7) shall be
4 accompanied by a fee of \$50.00 payable to the state of Michigan
5 ~~which~~ **THAT** shall be used by the department of state police to
6 defray the expenses incurred in processing the application.

7 (9) ~~(7)~~—A copy of the application shall be served upon the
8 attorney general and upon the office of ~~the~~ **EACH** prosecuting
9 attorney who prosecuted the crime **OR CRIMES THE APPLICANT SEEKS TO**
10 **SET ASIDE**, and an opportunity shall be given to the attorney
11 general and to the prosecuting attorney to contest the application.
12 If ~~the~~ **A** conviction was for an assaultive crime or a serious
13 misdemeanor, the prosecuting attorney shall notify the victim of
14 the assaultive crime or serious misdemeanor of the application
15 pursuant to section 22a or 77a of the William Van Regenmorter crime
16 victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The
17 notice shall be by first-class mail to the victim's last known
18 address. The victim has the right to appear at any proceeding under
19 this act concerning that conviction and to make a written or oral
20 statement.

21 (10) ~~(8)~~—Upon the hearing of the application the court may
22 require the filing of affidavits and the taking of proofs as it
23 considers proper.

24 (11) ~~(9)~~—If the court determines that the circumstances and
25 behavior of the applicant from the date of the applicant's
26 conviction **OR CONVICTIONS** to the filing of the application warrant
27 setting aside the conviction **OR CONVICTIONS** and that setting aside

1 the conviction **OR CONVICTIONS** is consistent with the public
 2 welfare, the court may enter an order setting aside the conviction
 3 **OR CONVICTIONS**. The setting aside of a conviction **OR CONVICTIONS**
 4 under this act is a privilege and conditional and is not a right.

5 (12) ~~(10)~~ As used in this section:

6 (a) "Assaultive crime" means that term as defined in section
 7 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
 8 770.9a.

9 ~~(b) "Minor offense" means a misdemeanor or ordinance violation~~
 10 ~~for which the maximum permissible imprisonment does not exceed 90~~
 11 ~~days, for which the maximum permissible fine does not exceed~~
 12 ~~\$1,000.00, and that is committed by a person who is not more than~~
 13 ~~21 years of age.~~ **"FELONY" MEANS EITHER OF THE FOLLOWING, AS**
 14 **APPLICABLE:**

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

19 (ii) FOR PURPOSES OF IDENTIFYING A PRIOR OFFENSE, FELONY MEANS
 20 A VIOLATION OF A PENAL LAW OF THIS STATE, OF ANOTHER STATE, OR OF
 21 THE UNITED STATES THAT IS PUNISHABLE BY IMPRISONMENT FOR MORE THAN
 22 1 YEAR OR IS EXPRESSLY DESIGNATED BY LAW TO BE A FELONY.

23 (C) "INDIAN TRIBE" MEANS AN INDIAN TRIBE, INDIAN BAND, OR
 24 ALASKAN NATIVE VILLAGE THAT IS RECOGNIZED BY FEDERAL LAW OR
 25 FORMALLY ACKNOWLEDGED BY A STATE.

26 (D) "MISDEMEANOR" MEANS A VIOLATION OF ANY OF THE FOLLOWING:

27 (i) A PENAL LAW OF THIS STATE, ANOTHER STATE, AN INDIAN TRIBE,

1 OR THE UNITED STATES THAT IS NOT A FELONY.

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

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

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

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

14 (E) "OPERATING WHILE INTOXICATED" MEANS A VIOLATION OF ANY OF
15 THE FOLLOWING:

16 (i) SECTION 625 OR 625M OF THE MICHIGAN VEHICLE CODE, 1949 PA
17 300, MCL 257.625 AND 257.625M.

18 (ii) A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO A
19 VIOLATION LISTED IN SUBPARAGRAPH (i) .

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

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

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

26 (F) ~~(e)~~—"Serious misdemeanor" means that term as defined in
27 section 61 of the William Van Regenmorter crime victim's rights

1 act, 1985 PA 87, MCL 780.811.

2 (G) ~~(d)~~-"Victim" means that term as defined in section 2 of
3 the William Van Regenmorter crime victim's rights act, 1985 PA 87,
4 MCL 780.752.

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

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

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

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

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

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

27 (e) Consideration by **THE DEPARTMENT OF CORRECTIONS OR** a law

1 enforcement agency if a person whose conviction has been set aside
2 applies for employment with the **DEPARTMENT OF CORRECTIONS OR** law
3 enforcement agency.

4 (f) Consideration by a court, law enforcement agency,
5 prosecuting attorney, or the attorney general in determining
6 whether an individual required to be registered under the sex
7 offenders registration act, **1994 PA 295, MCL 28.721 TO 28.736**, has
8 violated that act, or for use in a prosecution for violating that
9 act.

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

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

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

27 Sec. 4. A person may have only 1 **FELONY** conviction **OR NOT MORE**

1 **THAN 2 MISDEMEANOR CONVICTIONS** set aside ~~under this act~~ **AS PROVIDED**
2 **IN SECTION 1.**