HB-5025, As Passed House, October 2, 2014HB-5025, As Passed Senate, October 2, 2014

SENATE SUBSTITUTE FOR HOUSE BILL NO. 5025

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, 2, and 4 (MCL 780.621, 780.622, and 780.624), section 1 as amended by 2011 PA 64, section 2 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 SUBSECTIONS (2)
- 2 AND (3), 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.
- 3 (2) A-EXCEPT AS PROVIDED IN SUBSECTIONS (3) AND (5), A person
- 4 shall not apply to have set aside, and a judge shall not set aside,
- 5 a conviction for a felony for which the maximum punishment is life
- 6 imprisonment or an attempt to commit a felony for which the maximum
- 7 punishment is life imprisonment, a conviction for a violation or
- 8 attempted violation of section 145c, 145d, 520c, 520d, or 520g of
- 9 the Michigan penal code, 1931 PA 328, MCL 750.145c, 750.145d,
- 10 750.520c, 750.520d, and 750.520g, or a conviction for a traffic
- 11 offense.
- 12 (3) A PERSON WHO IS CONVICTED OF A VIOLATION OF SECTION 448,
- 13 449, OR 450 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.448,
- 14 750.449, AND 750.450, MAY APPLY TO HAVE THAT CONVICTION SET ASIDE
- 15 IF HE OR SHE COMMITTED THE OFFENSE AS A DIRECT RESULT OF HIS OR HER
- 16 BEING A VICTIM OF A HUMAN TRAFFICKING VIOLATION.
- 17 (4) (3)—An application UNDER SUBSECTION (1) shall not be filed
- 18 until at least 5 years following imposition of the sentence for the
- 19 conviction that the applicant seeks to set aside or 5 years
- 20 following completion of any term of imprisonment for that
- 21 conviction, whichever occurs later.
- 22 (5) AN APPLICATION UNDER SUBSECTION (3) MAY BE FILED AT ANY
- 23 TIME FOLLOWING THE DATE OF THE CONVICTION TO BE SET ASIDE. A PERSON
- 24 MAY APPLY TO HAVE MORE THAN 1 CONVICTION SET ASIDE UNDER SUBSECTION
- 25 (3).
- 26 (6) (4)—The application is invalid unless it contains the
- 27 following information and is signed under oath by the person whose

- 1 conviction is to be set aside:
- 2 (a) The full name and current address of the applicant.
- 3 (b) A certified record of the conviction that is to be set
- 4 aside.
- 5 (c) A-FOR AN APPLICATION UNDER SUBSECTION (1), A statement
- 6 that the applicant has not been convicted of an offense other than
- 7 the conviction sought to be set aside as a result of this
- 8 application, and not more than 2 minor offenses, if applicable.
- 9 (d) A statement as to whether the applicant has previously
- 10 filed an application to set aside this or any other conviction and,
- 11 if so, the disposition of the application.
- 12 (e) A statement as to whether the applicant has any other
- 13 criminal charge pending against him or her in any court in the
- 14 United States or in any other country.
- 15 (F) IF THE PERSON IS SEEKING TO HAVE 1 OR MORE CONVICTIONS SET
- 16 ASIDE UNDER SUBSECTION (3), A STATEMENT THAT HE OR SHE MEETS THE
- 17 CRITERIA SET FORTH IN SUBSECTION (3), TOGETHER WITH A STATEMENT OF
- 18 THE FACTS SUPPORTING HIS OR HER CONTENTION THAT THE CONVICTION WAS
- 19 A DIRECT RESULT OF HIS OR HER BEING A VICTIM OF HUMAN TRAFFICKING.
- 20 (G) (f)—A consent to the use of the nonpublic record created
- 21 under section 3 to the extent authorized by section 3.
- 22 (7) (5)—The applicant shall submit a copy of the application
- 23 and 2 complete sets of fingerprints to the department of state
- 24 police. The department of state police shall compare those
- 25 fingerprints with the records of the department, including the
- 26 nonpublic record created under section 3, and shall forward a
- 27 complete set of fingerprints to the federal bureau of investigation

- 1 for a comparison with the records available to that agency. The
- 2 department of state police shall report to the court in which the
- 3 application is filed the information contained in the department's
- 4 records with respect to any pending charges against the applicant,
- 5 any record of conviction of the applicant, and the setting aside of
- 6 any conviction of the applicant and shall report to the court any
- 7 similar information obtained from the federal bureau of
- 8 investigation. The court shall not act upon the application until
- 9 the department of state police reports the information required by
- 10 this subsection to the court.
- 11 (8) (6) The copy of the application submitted to the
- 12 department of state police under subsection $\frac{(5)}{(7)}$ shall be
- 13 accompanied by a fee of \$50.00 payable to the state of Michigan
- 14 which shall be used by the department of state police to defray the
- 15 expenses incurred in processing the application.
- 16 (9) (7)—A copy of the application shall be served upon the
- 17 attorney general and upon the office of the prosecuting attorney
- 18 who prosecuted the crime, and an opportunity shall be given to the
- 19 attorney general and to the prosecuting attorney to contest the
- 20 application. If the conviction was for an assaultive crime or a
- 21 serious misdemeanor, the prosecuting attorney shall notify the
- 22 victim of the assaultive crime or serious misdemeanor of the
- 23 application pursuant to UNDER section 22a or 77a of the William Van
- 24 Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.772a and
- 25 780.827a. The notice shall be by first-class mail to the victim's
- 26 last known address. The victim has the right to appear at any
- 27 proceeding under this act concerning that conviction and to make a

- 1 written or oral statement.
- 2 (10) (8) Upon FOR AN APPLICATION UNDER SUBSECTION (1), UPON
- 3 the hearing of the application the court may require the filing of
- 4 affidavits and the taking of proofs as it considers proper.
- 5 (11) FOR AN APPLICATION UNDER SUBSECTION (3), IF THE APPLICANT
- 6 PROVES TO THE COURT BY A PREPONDERANCE OF THE EVIDENCE THAT THE
- 7 CONVICTION WAS A DIRECT RESULT OF HIS OR HER BEING A VICTIM OF
- 8 HUMAN TRAFFICKING, THE COURT MAY, SUBJECT TO THE REQUIREMENTS OF
- 9 SUBSECTION (12), ENTER AN ORDER SETTING ASIDE THE CONVICTION.
- 10 (12) (9)—If the court determines that the circumstances and
- 11 behavior of the AN applicant UNDER SUBSECTION (1) OR (3), from the
- 12 date of the applicant's conviction to the filing of the application
- 13 warrant setting aside the conviction, and that setting aside the
- 14 conviction is consistent with the public welfare, the court may
- 15 enter an order setting aside the conviction.
- 16 (13) The setting aside of a conviction under this act is a
- 17 privilege and conditional and is not a right.
- 18 (14) $\frac{(10)}{}$ As used in this section:
- 19 (a) "Assaultive crime" means that term as defined in section
- 20 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
- **21** 770.9a.
- 22 (B) "HUMAN TRAFFICKING VIOLATION" MEANS A VIOLATION OF CHAPTER
- 23 LXVIIA OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.462A TO
- 24 750.462H.
- 25 (C) (b)—"Minor offense" means a misdemeanor or ordinance
- 26 violation for which the maximum permissible imprisonment does not
- 27 exceed 90 days, for which the maximum permissible fine does not

- 1 exceed \$1,000.00, and that is committed by a person who is not more
- 2 than 21 years of age.
- 3 (D) (c) "Serious misdemeanor" means that term as defined in
- 4 section 61 of the William Van Regenmorter crime victim's rights
- 5 act, 1985 PA 87, MCL 780.811.
- 6 (E) (d)—"Victim" means that term as defined in section 2 of
- 7 the William Van Regenmorter crime victim's rights act, 1985 PA 87,
- 8 MCL 780.752.
- 9 Sec. 2. (1) Upon the entry of an order pursuant to UNDER
- 10 section 1, the applicant, for purposes of the law, shall be
- 11 considered not to have been previously convicted, except as
- 12 provided in this section and section 3.
- 13 (2) The applicant is not entitled to the remission of any
- 14 fine, costs, or other money paid as a consequence of a conviction
- 15 that is set aside.
- 16 (3) If the conviction set aside pursuant to this act UNDER
- 17 SECTION 1(1) is for a listed offense as defined in section 2 of the
- 18 sex offenders registration act, 1994 PA 295, MCL 28.722, the
- 19 applicant is considered to have been convicted of that offense for
- 20 purposes of the sex offenders registration THAT act.
- 21 (4) This act does not affect the right of the applicant to
- 22 rely upon the conviction to bar subsequent proceedings for the same
- 23 offense.
- 24 (5) This act does not affect the right of a victim of a crime
- 25 to prosecute or defend a civil action for damages.
- 26 (6) This act does not create a right to commence an action for
- 27 damages for incarceration under the sentence that the applicant

- 1 served before the conviction is set aside pursuant to UNDER this
- 2 act.
- 3 Sec. 4. A-EXCEPT AS PROVIDED IN SECTION 1, A person may have
- 4 only 1 conviction set aside under this act.
- 5 Enacting section 1. This amendatory act takes effect 90 days
- 6 after the date it is enacted into law.
- 7 Enacting section 2. This amendatory act does not take effect
- 8 unless House Bill No. 5234 of the 97th Legislature is enacted into
- 9 law.