

HOUSE BILL No. 4327

February 17, 2005, Introduced by Reps. Waters, Cushingberry, Meisner, Alma Smith, Ward, Lemmons, Jr., Gaffney, McConico and Lemmons, III 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 section 1 (MCL 780.621), as amended by 2002 PA 472; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) Except as provided in ~~subsection (2)~~ **SUBSECTIONS**
2 **(2) AND (10)**, a person who is convicted of not more than 1 **FELONY**
3 **OFFENSES** **AND NO OTHER OFFENSES OR NOT MORE THAN 2 MISDEMEANOR**
4 **OFFENSES** may file an application with the convicting court for the
5 entry of an order setting aside ~~the conviction~~ **EITHER THE FELONY**
6 **OFFENSE OR 1 OR BOTH OF THE MISDEMEANOR OFFENSES.**

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

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

6 (B) A conviction for a violation or attempted violation of
7 section 520c, 520d, or 520g of the Michigan penal code, 1931 PA
8 328, MCL 750.520c, 750.520d, and 750.520g. ~~—or a~~

9 (C) A conviction for a traffic offense.

10 (3) An application shall ~~not~~ **ONLY** be filed ~~until at least~~
11 **ACCORDING TO THE FOLLOWING TIME LIMITATIONS:**

12 (A) **NOT LESS THAN 5 years** following ~~imposition of the~~
13 ~~sentence~~ **THE SUCCESSFUL COMPLETION OF PROBATION OR PAROLE IMPOSED**
14 for ~~the~~ **A FELONY** conviction that the applicant seeks to set aside
15 or **NOT LESS THAN 5 years** following completion of any term of
16 imprisonment for that conviction, whichever occurs later.

17 (B) **NOT LESS THAN 2 YEARS FOLLOWING THE SUCCESSFUL COMPLETION**
18 **OF PROBATION IMPOSED FOR A MISDEMEANOR CONVICTION THAT THE**
19 **APPLICANT SEEKS TO SET ASIDE OR NOT LESS THAN 2 YEARS FOLLOWING**
20 **COMPLETION OF ANY TERM OF IMPRISONMENT FOR THAT CONVICTION,**
21 **WHICHEVER OCCURS LATER.**

22 (4) ~~The~~ **AN** application **UNDER THIS SECTION** is invalid unless
23 it contains the following information and is signed under oath by
24 the person whose conviction is to be set aside:

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

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

1 (c) A statement that the applicant has not been convicted of
2 an offense other than the ~~one~~ **CONVICTION OR CONVICTIONS** sought to
3 be set aside as a result of this application.

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

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

13 (5) The applicant shall submit a copy of the application and
14 ~~2 complete sets~~ **1 COMPLETE SET** of fingerprints to the department
15 of 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 (6) The copy of the application submitted to the department of
3 state police under subsection (5) shall be accompanied by a fee of
4 \$50.00 payable to the state of Michigan ~~which~~ **THAT** shall be used
5 by the department of state police to defray the expenses incurred
6 in processing the application.

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

19 (8) Upon the hearing of the application the court may require
20 the filing of affidavits and the taking of proofs as it considers
21 proper.

22 (9) If the court determines that the circumstances and
23 behavior of the applicant from the date of the applicant's
24 conviction **OR CONVICTIONS** to the filing of the application warrant
25 setting aside the conviction **OR CONVICTIONS** and that setting aside
26 the conviction **OR CONVICTIONS** is consistent with the public
27 welfare, the court may enter an order setting aside the conviction

1 OR CONVICTIONS. The setting aside of a conviction OR CONVICTIONS
2 under this act is a privilege and conditional and is not a right.

3 (10) A PERSON WHO IS CONVICTED OF MORE THAN 1 MISDEMEANOR FOR
4 ANY OF THE FOLLOWING SHALL NOT APPLY TO SET ASIDE A CONVICTION FOR,
5 AND A JUDGE SHALL NOT SET ASIDE MORE THAN 1 MISDEMEANOR CONVICTION
6 FOR, VIOLATING OR ATTEMPTING TO VIOLATE ANY OF THE FOLLOWING:

7 (A) A CRIME IN WHICH THE VICTIM WAS A SPOUSE, A FORMER SPOUSE,
8 AN INDIVIDUAL WITH WHOM HE OR SHE HAS HAD A CHILD IN COMMON, AN
9 INDIVIDUAL WITH WHOM HE OR SHE HAS OR HAS HAD A DATING
10 RELATIONSHIP, OR AN INDIVIDUAL RESIDING OR HAVING RESIDED IN THE
11 SAME HOUSEHOLD.

12 (B) SECTION 81, 81A, 8LC, 90B, 136B, OR 411H(2)(A) OF THE
13 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81, 750.81A, 750.81C,
14 750.90B, 750.136B, AND 750.411H.

15 (11) ~~-(10)-~~ As used in this section:

16 (a) "Assaultive crime" means that term as defined in section
17 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
18 770.9a.

19 (B) "DATING RELATIONSHIP" MEANS THAT TERM AS DEFINED IN
20 SECTION 2950 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
21 MCL 600.2950.

22 (C) "FELONY" MEANS A VIOLATION OF A PENAL LAW OF THIS STATE
23 THAT IS PUNISHABLE BY IMPRISONMENT FOR MORE THAN 1 YEAR OR IS
24 EXPRESSLY DESIGNATED BY LAW TO BE A FELONY.

25 (D) "MISDEMEANOR" MEANS A VIOLATION OF A PENAL LAW OF THIS
26 STATE THAT IS NOT A FELONY OR A VIOLATION OF AN ORDER, RULE, OR
27 REGULATION OF A STATE AGENCY THAT IS PUNISHABLE BY IMPRISONMENT FOR

1 NOT MORE THAN 1 YEAR OR A FINE THAT IS NOT A CIVIL FINE, OR BOTH.

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

7 Enacting section 1. Section 4 of 1965 PA 213, MCL 780.624, is
8 repealed.