

HOUSE BILL No. 6445

September 11, 2008, Introduced by Rep. Gaffney 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 sections 1 and 1a (MCL 780.621 and 780.621a), section 1 as amended by 2002 PA 472 and section 1a as added by 1982 PA 495.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) Except as provided in subsection (2), a person who
2 is convicted of not more than 1 offense may file an application
3 with the convicting court for the entry of an order setting aside
4 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
7 maximum punishment is life imprisonment or an attempt to commit a

1 felony for which the maximum punishment is life imprisonment, **OR** a
2 conviction for a violation or attempted violation of section 520c,
3 520d, or 520g of the Michigan penal code, 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 at least 5 years
7 following imposition of the sentence for the conviction that the
8 applicant seeks to set aside or 5 years following completion of any
9 term of imprisonment for that conviction, whichever occurs later.

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

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

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

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

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

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

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

27 (5) The applicant shall submit a copy of the application and 2

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

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

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

1 application pursuant to section 22a or 77a of the **WILLIAM VAN**
2 **REGENMORTER** crime victim's rights act, 1985 PA 87, MCL 780.772a and
3 780.827a. The notice shall be by first-class mail to the victim's
4 last known address. The victim has the right to appear at any
5 proceeding under this act concerning that conviction and to make a
6 written or oral statement.

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

10 (9) If the court determines that the circumstances and
11 behavior of the applicant from the date of the applicant's
12 conviction to the filing of the application warrant setting aside
13 the conviction and that setting aside the conviction is consistent
14 with the public welfare, the court may enter an order setting aside
15 the conviction. The setting aside of a conviction under this act is
16 a privilege and conditional and is not a right.

17 (10) As used in this section:

18 (a) "Assaultive crime" means that term as defined in section
19 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
20 770.9a.

21 (b) "Serious misdemeanor" means that term as defined in
22 section 61 of the **WILLIAM VAN REGENMORTER** crime victim's rights
23 act, 1985 PA 87, MCL 780.811.

24 (c) "Victim" means that term as defined in section 2 of the
25 **WILLIAM VAN REGENMORTER** crime victim's rights act, 1985 PA 87, MCL
26 780.752.

27 Sec. 1a. As used in this act, ÷

1 ~~—— (a) "Conviction"~~ **"CONVICTION"** means a judgment entered by a
2 court upon a plea of guilty, guilty but mentally ill, or nolo
3 contendere, or upon a jury verdict or court finding that a
4 defendant is guilty or guilty but mentally ill.

5 ~~—— (b) "Traffic offense" means a violation of the Michigan~~
6 ~~vehicle code, Act No. 300 of the Public Acts of 1949, being~~
7 ~~sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local~~
8 ~~ordinance substantially corresponding to that act, which violation~~
9 ~~involves the operation of a vehicle and at the time of the~~
10 ~~violation is a felony or misdemeanor.~~