

HOUSE BILL No. 5238

January 22, 2014, Introduced by Reps. Kowall, Heise, Haines, Lamonte, Hovey-Wright, Lauwers, LaVoy, Price, Rogers, Slavens, Darany, Singh, Brinks, Haveman, Zorn, Cavanagh, O'Brien, Barnett, Driskell, Haugh, Brown, Roberts, Tlaib, Howrylak, Banks, McCready, Irwin, Lyons, Kivela and Lane 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, 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

1 eligible to file an application under this section is not rendered
2 ineligible by virtue of being convicted of not more than 2 minor
3 offenses in addition to the offense for which the person files an
4 application.

5 (2) ~~A~~**EXCEPT AS PROVIDED IN SUBSECTIONS (3) AND (5),** A person
6 shall not apply to have set aside, and a judge shall not set aside,
7 a conviction for a felony for which the maximum punishment is life
8 imprisonment or an attempt to commit a felony for which the maximum
9 punishment is life imprisonment, a conviction for a violation or
10 attempted violation of section 145c, 145d, 520c, 520d, or 520g of
11 the Michigan penal code, 1931 PA 328, MCL 750.145c, 750.145d,
12 750.520c, 750.520d, and 750.520g, or a conviction for a traffic
13 offense.

14 (3) **A PERSON WHO IS CONVICTED OF A VIOLATION OF SECTION 448,**
15 **449, OR 450 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.448,**
16 **750.449, AND 750.450, MAY APPLY TO HAVE THAT CONVICTION SET ASIDE**
17 **IF HE OR SHE COMMITTED THE OFFENSE AS A DIRECT RESULT OF HIS OR HER**
18 **BEING A VICTIM OF A HUMAN TRAFFICKING VIOLATION.**

19 (4) ~~(3)~~**An application UNDER SUBSECTION (1)** shall not be filed
20 until at least 5 years following imposition of the sentence for the
21 conviction that the applicant seeks to set aside or 5 years
22 following completion of any term of imprisonment for that
23 conviction, whichever occurs later.

24 (5) **AN APPLICATION UNDER SUBSECTION (3) MAY BE FILED AT ANY**
25 **TIME FOLLOWING THE DATE OF THE CONVICTION TO BE SET ASIDE. A PERSON**
26 **MAY APPLY TO HAVE MORE THAN 1 CONVICTION SET ASIDE UNDER SUBSECTION**
27 **(3).**

1 (6) ~~(4)~~—The application is invalid unless it contains the
2 following information and is signed under oath by the person whose
3 conviction is to be set aside:

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

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

7 (c) ~~A~~ **FOR AN APPLICATION UNDER SUBSECTION (1), A** statement
8 that the applicant has not been convicted of an offense other than
9 the conviction sought to be set aside as a result of this
10 application, and not more than 2 minor offenses, if applicable.

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

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

17 **(F) IF THE PERSON IS SEEKING TO HAVE 1 OR MORE CONVICTIONS SET**
18 **ASIDE UNDER SUBSECTION (3), A STATEMENT THAT HE OR SHE MEETS THE**
19 **CRITERIA SET FORTH IN SUBSECTION (3), TOGETHER WITH A STATEMENT OF**
20 **THE FACTS SUPPORTING HIS OR HER CONTENTION THAT THE CONVICTION WAS**
21 **A DIRECT RESULT OF HIS OR HER BEING A VICTIM OF HUMAN TRAFFICKING.**

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

24 (7) ~~(5)~~—The applicant shall submit a copy of the application
25 and 2 complete sets of fingerprints to the department of state
26 police. The department of state police shall compare those
27 fingerprints with the records of the department, including the

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

13 (8) ~~(6)~~—The copy of the application submitted to the
14 department of state police under subsection ~~(5)~~—(7) shall be
15 accompanied by a fee of \$50.00 payable to the state of Michigan
16 which shall be used by the department of state police to defray the
17 expenses incurred in processing the application.

18 (9) ~~(7)~~—A copy of the application shall be served upon the
19 attorney general and upon the office of the prosecuting attorney
20 who prosecuted the crime, and an opportunity shall be given to the
21 attorney general and to the prosecuting attorney to contest the
22 application. If the conviction was for an assaultive crime or a
23 serious misdemeanor, the prosecuting attorney shall notify the
24 victim of the assaultive crime or serious misdemeanor of the
25 application pursuant to ~~UNDER~~ section 22a or 77a of the William Van
26 Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.772a and
27 780.827a. The notice shall be by first-class mail to the victim's

1 last known address. The victim has the right to appear at any
2 proceeding under this act concerning that conviction and to make a
3 written or oral statement.

4 ~~(10) (8) Upon~~ **FOR AN APPLICATION UNDER SUBSECTION (1), UPON**
5 the hearing of the application the court may require the filing of
6 affidavits and the taking of proofs as it considers proper.

7 **(11) FOR AN APPLICATION UNDER SUBSECTION (3), IF THE APPLICANT**
8 **PROVES TO THE COURT BY A PREPONDERANCE OF THE EVIDENCE THAT THE**
9 **CONVICTION WAS A DIRECT RESULT OF HIS OR HER BEING A VICTIM OF**
10 **HUMAN TRAFFICKING, THE COURT MAY, SUBJECT TO THE REQUIREMENTS OF**
11 **SUBSECTION (12), ENTER AN ORDER SETTING ASIDE THE CONVICTION.**

12 ~~(12) (9)~~ If the court determines that the circumstances and
13 behavior of ~~the~~ **AN** applicant **UNDER SUBSECTION (1) OR (3)**, from the
14 date of the applicant's conviction to the filing of the application
15 warrant setting aside the conviction, and that setting aside the
16 conviction is consistent with the public welfare, the court may
17 enter an order setting aside the conviction.

18 **(13)** The setting aside of a conviction under this act is a
19 privilege and conditional and is not a right.

20 ~~(14) (10)~~ As used in this section:

21 (a) "Assaultive crime" means that term as defined in section
22 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
23 770.9a.

24 **(B) "HUMAN TRAFFICKING VIOLATION" MEANS A VIOLATION OF CHAPTER**
25 **LXVIIIA OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.462A TO**
26 **750.462J.**

27 ~~(C) (b)~~ "Minor offense" means a misdemeanor or ordinance

1 violation for which the maximum permissible imprisonment does not
2 exceed 90 days, for which the maximum permissible fine does not
3 exceed \$1,000.00, and that is committed by a person who is not more
4 than 21 years of age.

5 (D) ~~(e)~~-"Serious misdemeanor" means that term as defined in
6 section 61 of the William Van Regenmorter crime victim's rights
7 act, 1985 PA 87, MCL 780.811.

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

11 Sec. 2. (1) Upon the entry of an order ~~pursuant to~~ **UNDER**
12 section 1, the applicant, for purposes of the law, shall be
13 considered not to have been previously convicted, except as
14 provided in this section and section 3.

15 (2) The applicant is not entitled to the remission of any
16 fine, costs, or other money paid as a consequence of a conviction
17 that is set aside.

18 (3) If the conviction set aside ~~pursuant to~~ **UNDER SECTION 1(1)**
19 **OF** this act is for a listed offense as defined in section 2 of the
20 sex offenders registration act, **1994 PA 295, MCL 28.722**, the
21 applicant is considered to have been convicted of that offense for
22 purposes of ~~the sex offenders registration~~ **THAT** act. **IF THE**
23 **CONVICTION SET ASIDE UNDER SECTION 1(3) IS FOR A LISTED OFFENSE AS**
24 **DEFINED IN SECTION 2 OF THE SEX OFFENDERS REGISTRATION ACT, 1994 PA**
25 **295, MCL 28.722, THE APPLICANT IS NOT CONSIDERED TO HAVE BEEN**
26 **CONVICTED OF THAT OFFENSE FOR PURPOSES OF THAT ACT.**

27 (4) This act does not affect the right of the applicant to

1 rely upon the conviction to bar subsequent proceedings for the same
2 offense.

3 (5) This act does not affect the right of a victim of a crime
4 to prosecute or defend a civil action for damages.

5 (6) This act does not create a right to commence an action for
6 damages for incarceration under the sentence that the applicant
7 served before the conviction is set aside ~~pursuant to~~ **UNDER** this
8 act.

9 Sec. 4. ~~A~~ **EXCEPT AS PROVIDED IN SECTION 1, A** person may have
10 only 1 conviction set aside under this act.