

# SENATE BILL No. 1468

September 10, 2008, Introduced by Senator SWITALSKI 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 4 (MCL 780.621 and 780.624), section 1 as amended by 2002 PA 472 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), a person who  
2       is convicted of not more than 1 offense **AS DESCRIBED IN SECTION 4**  
3       may file an application with the convicting court for the entry of  
4       an order setting aside 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  
8       felony for which the maximum punishment is life imprisonment, a

1 conviction for a violation or attempted violation of section 520c,  
2 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL  
3 750.520c, 750.520d, and 750.520g, or a conviction for a traffic  
4 offense.

5 (3) An application shall not be filed until at least 5 years  
6 following imposition of the sentence for the conviction that the  
7 applicant seeks to set aside or 5 years following completion of any  
8 term of imprisonment for that conviction, whichever occurs later.

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

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

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

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

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

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

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

26 (5) The applicant shall submit a copy of the application and 2  
27 complete sets of fingerprints to the department of state police.

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

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

20 (7) A copy of the application shall be served upon the  
21 attorney general and upon the office of the prosecuting attorney  
22 who prosecuted the crime, and an opportunity shall be given to the  
23 attorney general and to the prosecuting attorney to contest the  
24 application. If the conviction was for an assaultive crime or a  
25 serious misdemeanor, the prosecuting attorney shall notify the  
26 victim of the assaultive crime or serious misdemeanor of the  
27 application pursuant to section 22a or 77a of the **WILLIAM VAN**

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

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

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

16 (10) As used in this section:

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

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

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

26 Sec. 4. (1) ~~A~~**EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2),**  
27 **A** person may have only 1 conviction set aside under this act.

1           (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), IF 2 OR  
2 MORE CONVICTIONS RESULT FROM OR ARE CONNECTED WITH THE SAME ACT OR  
3 RESULT FROM OFFENSES COMMITTED AT THE SAME TIME, THEY SHALL BE  
4 COUNTED AS 1 CONVICTION UNDER THIS ACT.

5           (3) SUBSECTION (2) DOES NOT APPLY IF MORE THAN 1 OF THE  
6 CONVICTIONS IS EITHER OF THE FOLLOWING:

7           (A) A FELONY.

8           (B) A MISDEMEANOR THAT IS AN ASSAULTIVE CRIME AS THAT TERM IS  
9 DEFINED IN SECTION 4A OF CHAPTER IX OF THE CODE OF CRIMINAL  
10 PROCEDURE, 1927 PA 175, MCL 769.4A.