

# SENATE BILL No. 159

February 16, 2011, Introduced by Senator JONES 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.

## 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. **A PERSON WHO IS OTHERWISE ELIGIBLE TO FILE AN**  
5       **APPLICATION UNDER THIS SECTION IS NOT RENDERED INELIGIBLE BY VIRTUE**  
6       **OF BEING CONVICTED OF NOT MORE THAN 2 MINOR OFFENSES IN ADDITION TO**  
7       **THE OFFENSE FOR WHICH THE PERSON FILES AN APPLICATION.**

8       (2) A person shall not apply to have set aside, and a judge

1 shall not set aside, a conviction for a felony for which the  
2 maximum punishment is life imprisonment or an attempt to commit a  
3 felony for which the maximum punishment is life imprisonment, a  
4 conviction for a violation or attempted violation of section 520c,  
5 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL  
6 750.520c, 750.520d, and 750.520g, or a conviction for a traffic  
7 offense.

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

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

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

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

18 (c) A statement that the applicant has not been convicted of  
19 an offense other than the ~~one~~ **CONVICTION** sought to be set aside as  
20 a result of this application, **AND NOT MORE THAN 2 MINOR OFFENSES,**  
21 **IF APPLICABLE.**

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

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

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

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

19 (6) The copy of the application submitted to the department of  
20 state police under subsection (5) shall be accompanied by a fee of  
21 \$50.00 payable to the state of Michigan which shall be used by the  
22 department of state police to defray the expenses incurred in  
23 processing the application.

24 (7) A copy of the application shall be served upon the  
25 attorney general and upon the office of the prosecuting attorney  
26 who prosecuted the crime, and an opportunity shall be given to the  
27 attorney general and to the prosecuting attorney to contest the

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

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

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

20 (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) **"MINOR OFFENSE" MEANS A MISDEMEANOR OR ORDINANCE VIOLATION**  
25 **FOR WHICH THE MAXIMUM PERMISSIBLE IMPRISONMENT DOES NOT EXCEED 90**  
26 **DAYS, FOR WHICH THE MAXIMUM PERMISSIBLE FINE DOES NOT EXCEED**  
27 **\$1,000.00, AND THAT IS COMMITTED BY A PERSON WHO IS NOT MORE THAN**

1 21 YEARS OF AGE.

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

5 (D) ~~(e)~~ "Victim" means that term as defined in section 2 of  
6 the **WILLIAM VAN REGENMORTER** crime victim's rights act, 1985 PA 87,  
7 MCL 780.752.