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Senate Bill 78 (as introduced 2-12-25)

(Senate-passed version)

Sponsor: Senator Sylvia Santana

Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 4-14-25

CONTENT

The bill would amend Public Act (PA) 213 of 1965, which provides for setting aside convictions in certain criminal cases, to do the following:

- **Allow an individual to file an application with the convicting court to set aside a felony conviction currently ineligible to be set aside if the individual committed the felony before the individual was 18 years old and met certain conditions.**
- **Prescribe the requirements of an application.**
- **Require the court to review an application and approve or deny it.**
- **Allow an applicant to reapply one year after a denial of a previous application unless the court specified an earlier date.**

The bill also would repeal Section 4 of PA 213 of 1965, which specifies that except as otherwise provided a person may only have one conviction set aside under the Act.

The Act prohibits the setting aside of a conviction for any of the following:

- A felony for which the maximum punishment is life imprisonment or an attempt to commit a felony for which the maximum is life imprisonment.
- A violation or attempted violation of Sections 136b(3), 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Penal Code.¹
- A violation or attempted violation of criminal sexual misconduct (CSC) of the fourth-degree of the Penal Code, if the violation occurred on or after January 12, 2015.
- A felony conviction for domestic violence, if the person has a previous misdemeanor conviction for domestic violence.
- A violation of former Section 462i or 462j or Chapter 67A (Human Trafficking) or Chapter 83-A (the Michigan Anti-Terrorism Act) of the Penal Code.²

Specifically, the bill would allow an individual to file an application with the convicting court to set aside an otherwise ineligible felony conviction described above if the following applied:

¹ Sections 136b(3), 136d(1)(b), and 136d(1)(c) of the Penal Code prescribe the following offenses, respectively: second-degree child abuse, second-degree child abuse in the presence of another child, and contributing to neglect or delinquency of children. Section 145c prescribes certain offenses related to child pornography. Section 145d prohibits a person from using the internet or a computer, computer program, computer network, or computer system to communicate with any person for the purpose of committing certain crimes. Sections 520c, 520d, and 520g of the Penal Code prescribe penalties for second- and third-degree CSC and assault with intent to commit CSC, respectively.

² Former Section 462i pertained to kidnapping or attempted kidnapping, CSC or attempted CSC, and attempts to kill. Former Section 462j pertained to providing or obtaining labor or services by force, fraud, or coercion as crime and recruiting, harboring, transporting, providing, or obtaining person for involuntary servitude or debt bondage as crime.

- The applicant committed the felony before the applicant's eighteenth birthday.
- The applicant was successfully discharged from the Michigan Department of Corrections.
- Fifteen years had passed since the applicant's release from incarceration.
- The applicant had not been convicted of a criminal charge on or after the applicant's eighteenth birthday or had any other conviction set aside under the Act.
- The applicant did not have a pending criminal charge.
- The applicant had not tested positive for the illegal use of a controlled substance since the felony conviction to be set aside.
- The applicant could demonstrate a record and reputation that showed the applicant was not likely to act in a manner that was a danger to the safety of others.
- The conviction was not an offense of Section 2 of the Sex Offenders Registration Act.³

"Controlled substance" would mean a drug, substance, or immediate precursor included in Schedules one to five of Part 72 (Standards and Schedules) of the Public Health Code. The term would not include marihuana used in compliance with State law.

An individual would have to file an application that included the following, if applicable:

- The applicant's signature, under oath, affirmatively stating that the applicant qualified under the requirements described above.
- A certified record of each conviction that was requested to be set aside.
- A complete set of fingerprints and copy of the application sent to the Department of State Police, in accordance with the Act.
- A resume or curriculum vitae.
- Reference letters.
- Academic credentials.
- An internet criminal history access tool report.
- A driving record from the State or another state.
- A personal letter of interest.
- Community involvement.
- Elected offices or appointments.
- Assumed name and business information.
- Ties to the community.
- Awards and recognitions.
- Media coverage.
- A \$150 fee to be paid to the Michigan Set Aside Fund.

The court would have to review the application and determine if the application should be granted. If the application were granted, the court would have to enter an order setting aside the conviction or convictions. If the application were denied by the convicting court, the applicant could reapply one year after the date the convicting court denied the previous application, unless the court specified an earlier date.

In the setting aside provided by the bill, a felony offense and one or more misdemeanor offenses would have to be treated as a single felony conviction if the felony and misdemeanor were contemporaneous in that all the offenses occurred within 24 hours and arose from the same transaction.

MCL 780.621b et al.

³ Section 2 of the Sex Offenders Act classifies offenders into three tiers based on the severity of the violation, ranging from possession of child sexually abusive material to criminal sexual misconduct of a minor, among other violations.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is a reintroduction of Senate Bill 970 of the 2023-2024 Legislative Session. Senate Bill 970 passed the Senate and was referred to the House Committee on Government Operations but received no further action.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bill could increase operational costs for courts if there were a significant increase in expungement requests and related expungement hearings. Some of these costs could potentially be covered by the Michigan Set Aside Fund, created by PA 193 of 2020. The Fund is accessible to the State Court Administrative Office (SCAO), upon appropriation, for operational and staffing needs associated with expungement costs. After an initial transfer of \$24.0 million from the Marijuana Registry Fund, collected fees, and subsequent appropriations, the Michigan Set Aside Fund currently has an unappropriated balance of \$7.2 million. To date, SCAO has not received an appropriation from the Fund.

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.