

SUBSTITUTE FOR  
HOUSE BILL NO. 5493

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; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. (1) Except as provided in ~~subsection (2)~~  
2 **subsections (2) and (10)**, a person who is convicted of not more  
3 than 1 **felony offense and no other offenses or not more than 2**  
4 **misdemeanor offenses** may file an application with the convicting  
5 court for the entry of an order setting aside ~~the conviction~~  
6 **either the felony offense or 1 or both of the misdemeanor**  
7 **offenses.**

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

1 shall not set aside, a conviction for ~~a~~ **any of the following:**

2       **(a) A** felony for which the maximum punishment is life  
3 imprisonment or an attempt to commit a felony for which the  
4 maximum punishment is life imprisonment. ~~—a~~

5       **(b) A** conviction for a violation or attempted violation of  
6 section 520c, 520d, or 520g of the Michigan penal code, 1931 PA  
7 328, MCL 750.520c, 750.520d, and 750.520g. ~~—, or a~~

8       **(c) A** conviction for a traffic offense.

9       (3) An application shall ~~not~~ **only** be filed ~~until at least~~  
10 **according to the following time limitations:**

11       **(a) Not less than 5** years following ~~imposition of the~~  
12 ~~sentence~~ **the successful completion of probation or parole**  
13 **imposed** for ~~the~~ **a felony** conviction that the applicant seeks to  
14 set aside or **not less than 5** years following completion of any  
15 term of imprisonment for that conviction, whichever occurs  
16 later.

17       **(b) Not less than 2** years following the successful completion  
18 of probation imposed for a misdemeanor conviction that the  
19 applicant seeks to set aside or **not less than 2** years following  
20 completion of any term of imprisonment for that conviction,  
21 whichever occurs later.

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

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

26       (b) A certified record of ~~the~~ **each** conviction that is to be  
27 set aside.

1 (c) A statement that the applicant has not been convicted of  
2 an offense other than the ~~one~~ **conviction or convictions** sought  
3 to be set aside as a result of this application.

4 (d) A statement as to whether the applicant has previously  
5 filed an application to set aside this **conviction or convictions**  
6 or any other conviction and, if so, the disposition of the  
7 application.

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

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

13 (5) The applicant shall submit a copy of the application and  
14 ~~2 complete sets~~ **1 complete set** of fingerprints to the  
15 department of state police. The department of state police shall  
16 compare those fingerprints with the records of the department,  
17 including the nonpublic record created under section 3, and shall  
18 forward ~~a~~ **an electronic copy of the** complete set of  
19 fingerprints to the federal bureau of investigation for a  
20 comparison with the records available to that agency. The  
21 department of state police shall report to the court in which the  
22 application is filed the information contained in the  
23 department's records with respect to any pending charges against  
24 the applicant, any record of conviction of the applicant, and the  
25 setting aside of any conviction of the applicant and shall report  
26 to the court any similar information obtained from the federal  
27 bureau of investigation. The court shall not act upon the

1 application until the department of state police reports the  
2 information required by this subsection to the court.

3 (6) The copy of the application submitted to the department  
4 of state police under subsection (5) shall be accompanied by a  
5 fee of \$50.00 payable to the state of Michigan ~~which~~ **that** shall  
6 be used by the department of state police to defray the expenses  
7 incurred in processing the application.

8 (7) A copy of the application shall be served upon the  
9 attorney general and upon the office of the prosecuting attorney  
10 who prosecuted the crime, and an opportunity shall be given to  
11 the attorney general and to the prosecuting attorney to contest  
12 the application. If ~~the~~ **a** conviction was for an assaultive  
13 crime or a serious misdemeanor, the prosecuting attorney shall  
14 notify the victim of the assaultive crime or serious misdemeanor  
15 of the application pursuant to section 22a or 77a of the crime  
16 victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The  
17 notice shall be by first-class mail to the victim's last known  
18 address. The victim has the right to appear at any proceeding  
19 under this act concerning that conviction and to make a written  
20 or oral statement.

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

24 (9) If the court determines that the circumstances and  
25 behavior of the applicant from the date of the applicant's  
26 conviction **or convictions** to the filing of the application  
27 warrant setting aside the conviction **or convictions** and that

1 setting aside the conviction **or convictions** is consistent with  
2 the public welfare, the court may enter an order setting aside  
3 the conviction **or convictions**. The setting aside of a conviction  
4 **or convictions** under this act is a privilege and conditional and  
5 is not a right.

6 (10) A person who is convicted of more than 1 misdemeanor for  
7 any of the following shall not apply to set aside a conviction  
8 for, and a judge shall not set aside more than 1 misdemeanor  
9 conviction for, violating or attempting to violate any of the  
10 following:

11 (a) A crime in which the victim was a spouse, a former  
12 spouse, an individual with whom he or she has had a child in  
13 common, an individual with whom he or she has or has had a dating  
14 relationship, or an individual residing or having resided in the  
15 same household.

16 (b) Section 81, 81a, 81c, 90b, 136b, or 411h(2)(a) of the  
17 Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.81c,  
18 750.90b, 750.136b, and 750.411h.

19 (11) ~~-(10)-~~ As used in this section:

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

23 (b) "Dating relationship" means that term as defined in  
24 section 2950 of the revised judicature act of 1961, 1961 PA 236,  
25 MCL 600.2950.

26 (c) "Felony" means a violation of a penal law of this state  
27 that is punishable by imprisonment for more than 1 year or is

1 expressly designated by law to be a felony.

2 (d) "Misdemeanor" means a violation of a penal law of this  
3 state that is not a felony or a violation of an order, rule, or  
4 regulation of a state agency that is punishable by imprisonment  
5 for not more than 1 year or a fine that is not a civil fine, or  
6 both.

7 (e) ~~(b)~~ "Serious misdemeanor" means that term as defined in  
8 section 61 of the crime victim's rights act, 1985 PA 87, MCL  
9 780.811.

10 (f) ~~(e)~~ "Victim" means that term as defined in section 2 of  
11 the crime victim's rights act, 1985 PA 87, MCL 780.752.

12 Enacting section 1. Section 4 of 1965 PA 213, MCL 780.624,  
13 is repealed.