

HOUSE BILL No. 5542

April 12, 2016, Introduced by Rep. Cox 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 section 1 (MCL 780.621), as amended by 2014 PA 463.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) Except as provided in this section, 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 1
4 or more convictions as follows:

5 (a) A person who is convicted of not more than 1 felony
6 offense and not more than 2 misdemeanor offenses may petition the
7 convicting court to set aside the felony offense.

8 (b) Except as provided in subdivision (c), a person who is
9 convicted of not more than 2 misdemeanor offenses and no other

1 felony or misdemeanor offenses may petition the convicting court or
2 the convicting courts to set aside 1 or both of the misdemeanor
3 convictions.

4 (c) A person who is convicted of a violation or an attempted
5 violation of section 520e of the Michigan penal code, 1931 PA 328,
6 MCL 750.520e, before ~~the effective date of the amendatory act that~~
7 ~~added this subdivision~~, **JANUARY 12, 2015** may petition the
8 convicting court to set aside the conviction if the individual has
9 not been convicted of another offense other than not more than 2
10 minor offenses. As used in this subdivision, "minor offense" means
11 a misdemeanor or ordinance violation to which all of the following
12 apply:

13 (i) The maximum permissible term of imprisonment does not
14 exceed 90 days.

15 (ii) The maximum permissible fine is not more than \$1,000.00.

16 (iii) The person who committed the offense is not more than 21
17 years old.

18 (2) A conviction that was deferred and dismissed under any of
19 the following, whether a misdemeanor or a felony, shall be
20 considered a misdemeanor conviction under subsection (1) for
21 purposes of determining whether a person is eligible to have any
22 conviction set aside under this act:

23 (a) Section 703 of the Michigan liquor control code of 1998,
24 1998 PA 58, MCL 436.1703.

25 (b) Section 1070(1)(b)(i) or 1209 of the revised judicature
26 act of 1961, 1961 PA 236, MCL 600.1070 and 600.1209.

27 (c) Section 13 of chapter II or section 4a of chapter IX of

1 the code of criminal procedure, 1927 PA 175, MCL 762.13 and 769.4a.

2 (d) Section 7411 of the public health code, 1978 PA 368, MCL
3 333.7411.

4 (e) Section 350a or 430 of the Michigan penal code, 1931 PA
5 328, MCL 750.350a and 750.430.

6 (f) Any other law or laws of this state or of a political
7 subdivision of this state similar in nature and applicability to
8 those listed in this subsection that provide for the deferral and
9 dismissal of a felony or misdemeanor charge.

10 (3) A person shall not apply to have set aside, and a judge
11 shall not set aside, a conviction for any of the following:

12 (a) A felony for which the maximum punishment is life
13 imprisonment or an attempt to commit a felony for which the maximum
14 punishment is life imprisonment.

15 (b) A violation or attempted violation of section 136b(3),
16 ~~136(d)(1)(B) or (C), 136D(1)(B) OR (C)~~, 145c, 145d, 520c, 520d, or
17 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b,
18 750.136d, 750.145c, 750.145d, 750.520c, 750.520d, and 750.520g.

19 (c) A violation or attempted violation of section 520e of the
20 Michigan penal code, 1931 PA 328, MCL 750.520e, if the conviction
21 occurred **ON OR** after ~~the effective date of the amendatory act that~~
22 ~~added this subdivision.~~ **JANUARY 12, 2015.**

23 (d) A traffic offense, including, but not limited to, a
24 conviction for operating while intoxicated.

25 (e) A felony conviction for domestic violence, if the person
26 has a previous misdemeanor conviction for domestic violence.

27 (f) A violation of **FORMER SECTION 462I OR 462J OR** chapter

1 LXVIIIA or chapter LXXXIII-A of the Michigan penal code, 1938 PA
2 321, MCL 750.462a to ~~750.462j~~ **750.462H** and 750.543a to 750.543z.

3 (4) A person who is convicted of a violation of section 448,
4 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448,
5 750.449, and 750.450, **OR A LOCAL ORDINANCE SUBSTANTIALLY**
6 **CORRESPONDING TO SECTION 448, 449, OR 450 OF THE MICHIGAN PENAL**
7 **CODE, 1931 PA 328, MCL 750.448, 750.449, AND 750.450**, may apply to
8 have that conviction set aside if he or she committed the offense
9 as a direct result of his or her being a victim of a human
10 trafficking violation.

11 (5) An application under subsection (1) shall only be filed 5
12 or more years after whichever of the following events occurs last:

13 (a) Imposition of the sentence for the conviction that the
14 applicant seeks to set aside.

15 (b) Completion of probation imposed for the conviction that
16 the applicant seeks to set aside.

17 (c) Discharge from parole imposed for the conviction that the
18 applicant seeks to set aside.

19 (d) Completion of any term of imprisonment imposed for the
20 conviction that the applicant seeks to set aside.

21 (6) If a petition under this act is denied by the convicting
22 court, a person shall not file another petition concerning the same
23 conviction or convictions with the convicting court until 3 years
24 after the date the convicting court denies the previous petition,
25 unless the court specifies an earlier date for filing another
26 petition in the order denying the petition.

27 (7) An application under subsection (4) may be filed at any

1 time following the date of the conviction to be set aside. A person
2 may apply to have more than 1 conviction set aside under subsection
3 (4).

4 (8) An application under this section is invalid unless it
5 contains the following information and is signed under oath by the
6 person whose conviction is or convictions are to be set aside:

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

8 (b) A certified record of each conviction that is to be set
9 aside.

10 (c) For an application under subsection (1), a statement that
11 the applicant has not been convicted of an offense other than the
12 conviction or convictions sought to be set aside as a result of
13 this application and any nondisqualifying misdemeanor convictions
14 described in subsection (1)(a).

15 (d) A statement listing all actions enumerated in subsection
16 (2) that were initiated against the applicant and have been
17 dismissed.

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

21 (f) 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 (g) If the person is seeking to have 1 or more convictions set
25 aside under subsection (4), a statement that he or she meets the
26 criteria set forth in subsection (4), together with a statement of
27 the facts supporting his or her contention that the conviction was

1 a direct result of his or her being a victim of human trafficking.

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

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

21 (10) The copy of the application submitted to the department
22 of state police under subsection (9) shall be accompanied by a fee
23 of \$50.00 payable to the state of Michigan that shall be used by
24 the department of state police to defray the expenses incurred in
25 processing the application.

26 (11) A copy of the application shall be served upon the
27 attorney general and upon the office of each prosecuting attorney

1 who prosecuted the crime or crimes the applicant seeks to set
2 aside, and an opportunity shall be given to the attorney general
3 and to the prosecuting attorney to contest the application. If a
4 conviction was for an assaultive crime or a serious misdemeanor,
5 the prosecuting attorney shall notify the victim of the assaultive
6 crime or serious misdemeanor of the application under section 22a
7 or 77a of the William Van Regenmorter crime victim's rights act,
8 1985 PA 87, MCL 780.772a and 780.827a. The notice shall be by
9 first-class mail to the victim's last known address. The victim has
10 the right to appear at any proceeding under this act concerning
11 that conviction and to make a written or oral statement.

12 (12) For an application under subsection (1), upon the hearing
13 of the application the court may require the filing of affidavits
14 and the taking of proofs as it considers proper.

15 (13) For an application under subsection (4), if the applicant
16 proves to the court by a preponderance of the evidence that the
17 conviction was a direct result of his or her being a victim of
18 human trafficking, the court may, subject to the requirements of
19 subsection (14), enter an order setting aside the conviction.

20 (14) If the court determines that the circumstances and
21 behavior of an applicant under subsection (1) or (4), from the date
22 of the applicant's conviction or convictions to the filing of the
23 application warrant setting aside the conviction or convictions,
24 and that setting aside the conviction or convictions is consistent
25 with the public welfare, the court may enter an order setting aside
26 the conviction or convictions.

27 (15) The setting aside of a conviction or convictions under

1 this act is a privilege and conditional and is not a right.

2 (16) As used in this section:

3 (a) "Assaultive crime" means that term as defined in section
4 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
5 770.9a.

6 (b) "Domestic violence" means that term as defined in section
7 1 of 1978 PA 389, MCL 400.1501.

8 (c) "Felony" means either of the following, as applicable:

9 (i) For purposes of the offense to be set aside, felony means
10 a violation of a penal law of this state that is punishable by
11 imprisonment for more than 1 year or that is designated by law to
12 be a felony.

13 (ii) For purposes of identifying a prior offense, felony means
14 a violation of a penal law of this state, of another state, or of
15 the United States that is punishable by imprisonment for more than
16 1 year or is designated by law to be a felony.

17 (d) "Human trafficking violation" means a violation of chapter
18 LXVIIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to
19 750.462h.

20 (e) "Indian tribe" means an Indian tribe, Indian band, or
21 Alaskan native village that is recognized by federal law or
22 formally acknowledged by a state.

23 (f) "Misdemeanor" means a violation of any of the following:

24 (i) A penal law of this state, another state, an Indian tribe,
25 or the United States that is not a felony.

26 (ii) An order, rule, or regulation of a state agency that is
27 punishable by imprisonment for not more than 1 year or a fine that

1 is not a civil fine, or both.

2 (iii) A local ordinance of a political subdivision of this
3 state substantially corresponding to a crime listed in subparagraph
4 (i) or (ii) that is not a felony.

5 (iv) A violation of the law of another state or political
6 subdivision of another state substantially corresponding to a crime
7 listed under subparagraph (i) or (ii) that is not a felony.

8 (v) A violation of the law of the United States substantially
9 corresponding to a crime listed under subparagraph (i) or (ii) that
10 is not a felony.

11 (g) "Operating while intoxicated" means a violation of any of
12 the following:

13 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA
14 300, MCL 257.625 and 257.625m.

15 (ii) A local ordinance substantially corresponding to a
16 violation listed in subparagraph (i).

17 (iii) A law of an Indian tribe substantially corresponding to
18 a violation listed in subparagraph (i).

19 (iv) A law of another state substantially corresponding to a
20 violation listed in subparagraph (i).

21 (v) A law of the United States substantially corresponding to
22 a violation listed in subparagraph (i).

23 (h) "Serious misdemeanor" means that term as defined in
24 section 61 of the William Van Regenmorter crime victim's rights
25 act, 1985 PA 87, MCL 780.811.

26 (i) "Victim" means that term as defined in sections 2, 31, and
27 61 of the William Van Regenmorter crime victim's rights act, 1985

1 PA 87, MCL 780.752, 780.781, and 780.811.

2 Enacting section 1. This amendatory act takes effect 90 days

3 after the date it is enacted into law.