

# HOUSE BILL NO. 5020

September 25, 2019, Introduced by Rep. Eisen and referred to the Committee on Judiciary.

A bill to create the nonviolent firearm-related felony set aside act; to provide for setting aside the conviction in certain criminal cases; to provide for the effect of such action; to prescribe the powers and duties of certain public agencies and officers; and to prescribe penalties.

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

- 1           Sec. 1. This act shall be known and may be cited as the  
2 "nonviolent firearm-related felony set aside act".  
3           Sec. 2. As used in this act, "nonviolent firearm-related



1 felony" means a violation of the laws of this state that is either  
2 punishable by imprisonment for more than 1 year, or that is  
3 expressly designated as a felony, and that involves the possession  
4 of a firearm by the defendant but that does not involve the use of  
5 a firearm by the defendant in a violent manner.

6 Sec. 3. (1) A person who is convicted of not more than 1  
7 nonviolent firearm-related felony may file an application with the  
8 convicting court for the entry of an order setting aside that  
9 conviction if he or she has not been convicted of any other felony  
10 or misdemeanor since his or her last conviction for a nonviolent  
11 firearm-related felony.

12 (2) An application under subsection (1) may only be filed 10  
13 or more years after whichever of the following events occurs last:

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

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

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

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

22 (3) If a petition under this act is denied by the convicting  
23 court, a person shall not file another petition concerning the same  
24 conviction with the convicting court until 1 year after the date  
25 the convicting court denies the previous petition, unless the court  
26 specifies an earlier date for filing another petition in the order  
27 denying the petition. If a petition under this act is denied, the  
28 court shall provide a written reason for the denial by mail to the  
29 applicant not more than 10 days after denying the petition.



1 (4) An application under this section is invalid unless it  
2 contains the following information and is signed under oath by the  
3 person whose conviction is to be set aside:

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

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

7 (c) A statement that the applicant has not been convicted of  
8 an offense other than the conviction sought to be set aside as a  
9 result of this application.

10 (d) A statement as to whether the applicant has previously  
11 filed an application to set aside this or another conviction and,  
12 if so, the disposition of the application.

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

16 (5) The applicant shall submit a copy of the application and 1  
17 complete set of fingerprints to the department of state police. The  
18 department of state police shall compare those fingerprints with  
19 the records of the department and shall forward an electronic copy  
20 of a complete set of fingerprints to the Federal Bureau of  
21 Investigation for a comparison with the records available to that  
22 agency. The department of state police shall report to the court in  
23 which the application is filed the information contained in the  
24 department's records with respect to any pending charges against  
25 the applicant, any record of conviction of the applicant, and the  
26 setting aside of any conviction of the applicant and shall report  
27 to the court any similar information obtained from the Federal  
28 Bureau of Investigation. The court shall not act upon the  
29 application until the department of state police reports the



1 information required by this subsection to the court.

2 (6) The copy of the application submitted to the department of  
3 state police under subsection (5) must be accompanied by a fee of  
4 not more than \$100.00, as determined by the department of state  
5 police, payable to the state of Michigan that must be used by the  
6 department of state police to defray the expenses incurred in  
7 processing the application.

8 (7) A copy of the application must be served upon the attorney  
9 general and upon the office of each prosecuting attorney who  
10 prosecuted the crime the applicant seeks to set aside, and an  
11 opportunity must be given to the attorney general and to the  
12 prosecuting attorney to contest the application.

13 (8) Upon the hearing of the application, the court may require  
14 the filing of affidavits and the taking of proofs as it considers  
15 proper.

16 (9) If the court determines that the circumstances and  
17 behavior of an applicant from the date of the applicant's  
18 conviction to the filing of the application warrant setting aside  
19 the conviction, and that setting aside the conviction is consistent  
20 with the public welfare, the court may enter an order setting aside  
21 the conviction.

22 (10) The setting aside of a conviction under this act is a  
23 privilege and conditional and is not a right.

24 Sec. 4. (1) Upon the entry of an order under section 3, the  
25 applicant, for purposes of the law, including but not limited for  
26 purposes of obtaining a concealed pistol license under 1927 PA 372,  
27 MCL 28.421 to 28.435, or a license issued under part 435 of the  
28 natural resources and environmental protection act, 1994 PA 451,  
29 MCL 324.43501 to 324.43561, is considered not to have been



1 previously convicted.

2 (2) The applicant is not entitled to the remission of any  
3 fine, costs, or other money paid as a consequence of a conviction  
4 that is set aside.

5 (3) This act does not affect the right of the applicant to  
6 rely upon the conviction to bar subsequent proceedings for the same  
7 offense.

8 (4) This act does not affect the right of a victim of a crime  
9 to prosecute or defend a civil action for damages.

10 (5) This act does not create a right to commence an action for  
11 damages for incarceration under the sentence that the applicant  
12 served before the conviction is set aside under this act.

13 Enacting section 1. This act takes effect 90 days after the  
14 date it is enacted into law.

15 Enacting section 2. This act does not take effect unless  
16 Senate Bill No. \_\_\_\_ or House Bill No. 5021 (request no. 00179'19 a)  
17 of the 100th Legislature is enacted into law.

