

HOUSE BILL NO. 6547

December 18, 2020, Introduced by Reps. Yancey, Gay-Dagnogo, Brenda Carter and Garrett 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 2016 PA 336; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) Except as provided in this section, a person who

1 is convicted of not more than 1 offense may file an application
2 with the convicting court for the entry of an order setting aside 1
3 or more convictions as follows:

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

7 (b) Except as provided in subdivision (c), a person who is
8 convicted of not more than 2 misdemeanor offenses and no other
9 felony or misdemeanor offenses may petition the convicting court or
10 the convicting courts to set aside 1 or both of the misdemeanor
11 convictions.

12 (c) A person who is convicted of a violation or an attempted
13 violation of section 520e of the Michigan penal code, 1931 PA 328,
14 MCL 750.520e, before January 12, 2015 may petition the convicting
15 court to set aside the conviction if the individual has not been
16 convicted of another offense other than not more than 2 minor
17 offenses. As used in this subdivision, "minor offense" means a
18 misdemeanor or ordinance violation to which all of the following
19 apply:

20 (i) The maximum permissible term of imprisonment does not
21 exceed 90 days.

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

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

25 (2) A conviction that was deferred and dismissed under any of
26 the following, whether a misdemeanor or a felony, ~~shall be~~ **is**
27 considered a misdemeanor conviction under subsection (1) for
28 purposes of determining whether a person is eligible to have any
29 conviction set aside under this act:

1 (a) Section 703 of the Michigan liquor control code of 1998,
2 1998 PA 58, MCL 436.1703.

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

5 (c) Section 13 of chapter II or section 4a of chapter IX of
6 the code of criminal procedure, 1927 PA 175, MCL 762.13 and 769.4a.

7 (d) Section 7411 of the public health code, 1978 PA 368, MCL
8 333.7411.

9 (e) Section 350a or 430 of the Michigan penal code, 1931 PA
10 328, MCL 750.350a and 750.430.

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

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

17 (a) A felony for which the maximum punishment is life
18 imprisonment or an attempt to commit a felony for which the maximum
19 punishment is life imprisonment.

20 (b) A violation or attempted violation of section 136b(3),
21 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan
22 penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c,
23 750.145d, 750.520c, 750.520d, and 750.520g.

24 (c) A violation or attempted violation of section 520e of the
25 Michigan penal code, 1931 PA 328, MCL 750.520e, if the conviction
26 occurred on or after January 12, 2015.

27 (d) ~~A~~**Except as provided in subsection (5),** a traffic offense,
28 including, but not limited to, a conviction for operating while
29 intoxicated.

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

3 (f) A violation of former section 462i or 462j or chapter
4 LXVIIIA or chapter LXXXIII-A of the Michigan penal code, ~~1938 PA~~
5 ~~321,~~**1931 PA 328**, MCL 750.462a to 750.462h and 750.543a to
6 750.543z.

7 (4) A person who is convicted of a violation of section 448,
8 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448,
9 750.449, and 750.450, or a local ordinance substantially
10 corresponding to section 448, 449, or 450 of the Michigan penal
11 code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to
12 have that conviction set aside if he or she committed the offense
13 as a direct result of his or her being a victim of a human
14 trafficking violation.

15 **(5) A person who was convicted under section 602a of the**
16 **Michigan vehicle code, 1949 PA 300, MCL 257.602a, as that section**
17 **existed before the effective date of the amendatory act that**
18 **amended this subsection may apply to have that conviction set aside**
19 **as provided under subsection (1).**

20 **(6)** ~~(5)~~An application under subsection (1) ~~shall~~**must** only be
21 filed 5 or more years after whichever of the following events
22 occurs last:

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

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

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

29 (d) Completion of any term of imprisonment imposed for the

1 conviction that the applicant seeks to set aside.

2 (7) ~~(6)~~—If a petition under this act is denied by the
3 convicting court, a person shall not file another petition
4 concerning the same conviction or convictions with the convicting
5 court until 3 years after the date the convicting court denies the
6 previous petition, unless the court specifies an earlier date for
7 filing another petition in the order denying the petition.

8 (8) ~~(7)~~—An application under subsection (4) may be filed at
9 any time ~~following~~**after** the date of the conviction to be set
10 aside. A person may apply to have more than 1 conviction set aside
11 under subsection (4).

12 (9) ~~(8)~~—An application under this section is invalid unless it
13 contains the following information and is signed under oath by the
14 person whose conviction is or convictions are to be set aside:

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

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

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

23 (d) A statement listing all actions enumerated in subsection
24 (2) that were initiated against the applicant and have been
25 dismissed.

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

29 (f) A statement as to whether the applicant has any other

1 criminal charge pending against him or her in any court in the
2 United States or in any other country.

3 (g) If the person is seeking to have 1 or more convictions set
4 aside under subsection (4), a statement that he or she meets the
5 criteria set forth in subsection (4), together with a statement of
6 the facts supporting his or her contention that the conviction was
7 a direct result of his or her being a victim of human trafficking.

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

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

26 **(11)** ~~(10)~~—The copy of the application submitted to the
27 department of state police under subsection ~~(9)~~ shall **(10) must** be
28 accompanied by a fee of \$50.00 payable to the state of Michigan
29 that ~~shall~~ **must** be used by the department of state police to defray

1 the expenses incurred in processing the application.

2 (12) ~~(11)~~ A copy of the application ~~shall~~**must** be served upon
3 the attorney general and upon the office of each prosecuting
4 attorney who prosecuted the crime or crimes the applicant seeks to
5 set aside, and an opportunity ~~shall~~**must** be given to the attorney
6 general and to the prosecuting attorney to contest the application.
7 If a conviction was for an assaultive crime or a serious
8 misdemeanor, the prosecuting attorney shall notify the victim of
9 the assaultive crime or serious misdemeanor of the application
10 under section 22a or 77a of the William Van Regenmorter crime
11 victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The
12 notice ~~shall~~**must** be by first-class mail to the victim's last known
13 address. The victim has the right to appear at any proceeding under
14 this act concerning that conviction and to make a written or oral
15 statement.

16 (13) ~~(12)~~ For an application under subsection (1), upon the
17 hearing of the application the court may require the filing of
18 affidavits and the taking of proofs as it considers proper.

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

25 (15) ~~(14)~~ If the court determines that the circumstances and
26 behavior of an applicant under subsection (1) or (4), from the date
27 of the applicant's conviction or convictions to the filing of the
28 application warrant setting aside the conviction or convictions,
29 and that setting aside the conviction or convictions is consistent

1 with the public welfare, the court may enter an order setting aside
2 the conviction or convictions.

3 (16) ~~(15)~~—The setting aside of a conviction or convictions
4 under this act is a privilege and conditional and is not a right.

5 (17) ~~(16)~~—As used in this section:

6 (a) "Assaultive crime" means that term as defined in section
7 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
8 770.9a.

9 (b) "Domestic violence" means that term as defined in section
10 1 of 1978 PA 389, MCL 400.1501.

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

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

16 (ii) For purposes of identifying a prior offense, felony means
17 a violation of a penal law of this state, of another state, or of
18 the United States that is punishable by imprisonment for more than
19 1 year or is designated by law to be a felony.

20 (d) "Human trafficking violation" means a violation of chapter
21 LXVIIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to
22 750.462h **or of former sections 462i or 462j of that act.**

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

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

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

29 (ii) An order, rule, or regulation of a state agency that is

1 punishable by imprisonment for not more than 1 year or a fine that
2 is not a civil fine, or both.

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

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

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

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

14 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA
15 300, MCL 257.625 and 257.625m.

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

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

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

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

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

27 (i) "Victim" means that term as defined in sections 2, 31, and
28 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. Section 602a of the Michigan vehicle code,
3 1949 PA 300, MCL 257.602a, is repealed.

4 Enacting section 2. This amendatory act takes effect 90 days
5 after the date it is enacted into law.