

HOUSE BILL No. 4790

June 20, 2017, Introduced by Reps. Love, Chang, LaGrand and Neeley and referred to the Committee on Law and 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 2016 PA 336.

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

1 convicted of not more than 2 misdemeanor offenses and no other
2 felony or misdemeanor offenses may petition the convicting court or
3 the convicting courts to set aside 1 or both of the misdemeanor
4 convictions.

5 (c) A person who is convicted of a violation or an attempted
6 violation of section 520e of the Michigan penal code, 1931 PA 328,
7 MCL 750.520e, before January 12, 2015 may petition the convicting
8 court to set aside the conviction if the individual has not been
9 convicted of another offense other than not more than 2 minor
10 offenses. As used in this subdivision, "minor offense" means a
11 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-EXCEPT AS PROVIDED IN SUBSECTION (5),~~ A person shall not
11 apply to have set aside, and a judge shall not set aside, a
12 conviction for any of the following:

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

16 (b) A violation or attempted violation of section 136b(3),
17 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan
18 penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c,
19 750.145d, 750.520c, 750.520d, and 750.520g.

20 (c) A violation or attempted violation of section 520e of the
21 Michigan penal code, 1931 PA 328, MCL 750.520e, if the conviction
22 occurred on or after 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~~

~~LXVIIIA or chapter LXXXIII A of the Michigan penal code, 1938 PA 321, MCL 750.462a to 750.462h and 750.543a to 750.543z.~~**HUMAN TRAFFICKING VIOLATION.**

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

(5) A PERSON WHO IS CONVICTED OF NOT MORE THAN 2 NONVIOLENT FELONY OFFENSES MAY FILE AN APPLICATION WITH THE CONVICTING COURT FOR THE ENTRY OF AN ORDER SETTING ASIDE BOTH OF THE CONVICTIONS. A PERSON WHO IS OTHERWISE ELIGIBLE TO FILE AN APPLICATION UNDER THIS SECTION IS NOT RENDERED INELIGIBLE BY VIRTUE OF BEING CONVICTED OF NOT MORE THAN 2 MISDEMEANOR OFFENSES IN ADDITION TO THE OFFENSES FOR WHICH THE PERSON FILES AN APPLICATION.

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

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

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

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

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

3 (7) AN APPLICATION UNDER SUBSECTION (4) MAY BE FILED AT ANY
4 TIME AFTER THE DATE OF THE CONVICTION TO BE SET ASIDE. A PERSON MAY
5 APPLY TO HAVE MORE THAN 1 CONVICTION SET ASIDE UNDER SUBSECTION
6 (4) .

7 (8) AN APPLICATION TO SET ASIDE A CONVICTION FOR A SECOND
8 NONVIOLENT FELONY OFFENSE UNDER SUBSECTION (5) , OR FOR BOTH
9 NONVIOLENT FELONY OFFENSES IF THE EARLIER NONVIOLENT FELONY
10 CONVICTION HAS NOT BEEN SET ASIDE, MUST ONLY BE FILED 15 OR MORE
11 YEARS AFTER THE IMPOSITION OF SENTENCE FOR THE LATER OF THE
12 CONVICTIONS THAT THE APPLICANT SEEKS TO SET ASIDE OR 15 OR MORE
13 YEARS AFTER THE COMPLETION OF A TERM OF IMPRISONMENT FOR THAT LATER
14 CONVICTION, WHICHEVER OCCURS LATER.

15 (9) ~~(6)~~—If a petition under this act is denied by the
16 convicting court, a person shall not file another petition
17 concerning the same conviction or convictions with the convicting
18 court until 3 years after the date the convicting court denies the
19 previous petition, unless the court specifies an earlier date for
20 filing another petition in the order denying the petition.

21 ~~—— (7) An application under subsection (4) may be filed at any~~
22 ~~time following the date of the conviction to be set aside. A person~~
23 ~~may apply to have more than 1 conviction set aside under subsection~~
24 ~~(4) .~~

25 (10) ~~(8)~~—An application under this section is invalid unless
26 it contains the following information and is signed under oath by
27 the person whose conviction is or convictions are to be set aside:

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

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

4 (c) For an application under ~~subsection (1)~~, **THIS SECTION**, a
5 statement that the applicant has not been convicted of an offense
6 **OR OFFENSES** other than the conviction or convictions sought to be
7 set aside as a result of this application and any nondisqualifying
8 misdemeanor convictions described in subsection (1)(a) **OR (5)**.

9 (d) A statement listing all actions enumerated in subsection
10 (2) that were initiated against the applicant and have been
11 dismissed.

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

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

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

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

25 **(11)** ~~(9)~~ The applicant shall submit a copy of the application
26 and 1 complete set of fingerprints to the department of state
27 police. The department of state police shall compare those

1 fingerprints with the records of the department, including the
2 nonpublic record created under section 3, and shall forward an
3 electronic copy of a complete set of fingerprints to the Federal
4 Bureau of Investigation for a comparison with the records available
5 to that agency. The department of state police shall report to the
6 court in which the application is filed the information contained
7 in the department's records with respect to any pending charges
8 against the applicant, any record of conviction of the applicant,
9 and the setting aside of any conviction of the applicant and shall
10 report to the court any similar information obtained from the
11 Federal Bureau of Investigation. The court shall not act upon the
12 application until the department of state police reports the
13 information required by this subsection to the court.

14 (12) ~~(10)~~—The copy of the application submitted to the
15 department of state police under subsection ~~(9)~~ shall ~~(11)~~ **MUST** be
16 accompanied by a fee of \$50.00 payable to the state of Michigan
17 that shall be used by the department of state police to defray the
18 expenses incurred in processing the application.

19 (13) ~~(11)~~—A copy of the application shall ~~MUST~~ be served upon
20 the attorney general and upon the office of each prosecuting
21 attorney who prosecuted the crime or crimes the applicant seeks to
22 set aside, and an opportunity shall be given to the attorney
23 general and to the prosecuting attorney to contest the application.
24 If a conviction was for an assaultive crime or a serious
25 misdemeanor, the prosecuting attorney shall notify the victim of
26 the assaultive crime or serious misdemeanor of the application
27 under section 22a or 77a of the William Van Regenmorter crime

1 victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The
2 notice ~~shall~~ **MUST** be **SENT** by first-class mail to the victim's last
3 known address. The victim has the right to appear at any proceeding
4 under this act concerning that conviction and to make a written or
5 oral statement.

6 **(14)** ~~(12) For an application under subsection (1), upon~~ **UPON**
7 the hearing of ~~the~~ **AN** application **UNDER THIS ACT**, the court may
8 require the filing of affidavits and the taking of proofs as it
9 considers proper.

10 **(15)** ~~(13) For an application under subsection (4), if the~~
11 applicant proves to the court by a preponderance of the evidence
12 that the conviction ~~was~~ **OR CONVICTIONS WERE** a direct result of his
13 or her being a victim of human trafficking, the court may, subject
14 to the requirements of subsection ~~(14),~~ **(16)**, enter an order
15 setting aside the conviction **OR CONVICTIONS**.

16 **(16)** ~~(14) If the court determines that the circumstances and~~
17 behavior of an applicant under ~~subsection (1) or (4),~~ **THIS ACT**,
18 from the date of the applicant's conviction or convictions to the
19 filing of the application warrant setting aside the conviction or
20 convictions, and that setting aside the conviction or convictions
21 is consistent with the public welfare, the court may enter an order
22 setting aside the conviction or convictions.

23 **(17)** ~~(15) The setting aside of a conviction or convictions~~
24 under this act is a privilege and conditional and is not a right.

25 **(18)** ~~(16) As used in this section:~~

26 (a) "Assaultive crime" means that term as defined in section
27 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL

1 770.9a.

2 (b) "Domestic violence" means that term as defined in section
3 1 of 1978 PA 389, MCL 400.1501.

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

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

9 (ii) For purposes of identifying a prior offense, felony means
10 a violation of a penal law of this state, of another state, or of
11 the United States that is punishable by imprisonment for more than
12 1 year or is designated by law to be a felony.

13 (d) "Human trafficking violation" means a violation of chapter
14 LXVIIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to
15 750.462h, **OR FORMER SECTION 462I OR 462J OF THAT ACT.**

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

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

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

22 (ii) An order, rule, or regulation of a state agency that is
23 punishable by imprisonment for not more than 1 year or a fine that
24 is not a civil fine, or both.

25 (iii) A local ordinance of a political subdivision of this
26 state substantially corresponding to a crime listed in subparagraph

27 (i) or (ii) that is not a felony.

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

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

7 **(G) "NONVIOLENT FELONY OFFENSE" MEANS A FELONY THAT IS NOT AN**
8 **ASSAULTIVE CRIME.**

9 **(H) ~~(g)~~**—"Operating while intoxicated" means a violation of any
10 of the following:

11 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA
12 300, MCL 257.625 and 257.625m.

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

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

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

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

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

24 **(J) ~~(i)~~**—"Victim" means that term as defined in sections 2, 31,
25 and 61 of the William Van Regenmorter crime victim's rights act,
26 1985 PA 87, MCL 780.752, 780.781, and 780.811.

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

1 after the date it is enacted into law.