

HOUSE BILL NO. 6315

June 30, 2022, Introduced by Reps. Rabhi, Brabec, Aiyash, Young, Weiss, Hope, LaGrand and Thanedar 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 1d (MCL 780.621d), as amended by 2021 PA 82.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1d. (1) An application under section 1 to set aside more
- 2 than 1 felony conviction ~~shall~~**must** only be filed 7 or more years
- 3 after whichever of the following events occurs last:

1 (a) Imposition of the sentence for the convictions that the
2 applicant seeks to set aside.

3 (b) Completion of any term of felony probation imposed for the
4 convictions that the applicant seeks to set aside.

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

7 (d) Completion of any term of imprisonment imposed for the
8 convictions that the applicant seeks to set aside.

9 (2) An application under section 1 to set aside 1 or more
10 serious misdemeanor convictions, 1 first violation operating while
11 intoxicated offense, or 1 felony conviction ~~shall~~**must** only be
12 filed 5 or more years after whichever of the following events
13 occurs last:

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

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

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

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

22 (3) An application under section 1 to set aside 1 or more
23 misdemeanor convictions, other than an application to set aside a
24 serious misdemeanor, a first violation operating while intoxicated
25 offense, or any other misdemeanor conviction for an assaultive
26 crime, ~~shall~~**must** only be filed 3 or more years after whichever of
27 the following events occurs last:

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

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

3 (c) Completion of probation imposed for the conviction or
4 convictions that the applicant seeks to set aside.

5 (4) For an application under section 1, a court shall not
6 enter an order setting aside a conviction or convictions unless all
7 of the following apply:

8 (a) The applicable time period required under subsection (1),
9 (2), or (3) has elapsed.

10 (b) There are no criminal charges pending against the
11 applicant.

12 (c) The applicant has not been convicted of any criminal
13 offense during the applicable time period required under subsection
14 (1), (2), or (3).

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

21 (6) An application under section 1(3) may be filed at any time
22 following the date of the conviction to be set aside. A person may
23 apply to have more than 1 conviction set aside under section 1(3).

24 (7) An application under section 1 is invalid unless it
25 contains the following information and is signed under oath by the
26 person whose conviction is or convictions are to be set aside:

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

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

1 (c) For an application under section 1(1), a statement that
2 the applicant has not been convicted of an offense during the
3 applicable time period required under subsection (1), (2), or (3).

4 (d) A statement listing all actions enumerated in section 1(2)
5 that were initiated against the applicant and have been dismissed.

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

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

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

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

19 (8) The applicant shall submit a copy of the application and 1
20 complete set of fingerprints to the department of state police. The
21 department of state police shall compare those fingerprints with
22 the records of the department, including the nonpublic record
23 created under section 3, and shall forward an electronic copy of a
24 complete set of fingerprints to the Federal Bureau of Investigation
25 for a comparison with the records available to that agency. The
26 department of state police shall report to the court in which the
27 application is filed the information contained in the department's
28 records with respect to any pending charges against the applicant,
29 any record of conviction of the applicant, and the setting aside of

1 any conviction of the applicant and shall report to the court any
2 similar information obtained from the Federal Bureau of
3 Investigation. The court shall not act upon the application until
4 the department of state police reports the information required by
5 this subsection to the court.

6 ~~(9) The copy of the application submitted to the department of~~
7 ~~state police under subsection (8) must be accompanied by a fee of~~
8 ~~\$50.00 payable to the state of Michigan that must be used by the~~
9 ~~department of state police to defray the expenses incurred in~~
10 ~~processing the application.~~

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

24 **(10)** ~~(11)~~—For an application under section 1(1), upon the
25 hearing of the application the court may require the filing of
26 affidavits and the taking of proofs as it considers proper.

27 **(11)** ~~(12)~~—For an application under section 1(3), if the
28 applicant proves to the court by a preponderance of the evidence
29 that the conviction was a direct result of his or her being a

1 victim of human trafficking, the court may, subject to the
2 requirements of subsection ~~(13)~~, **(12)**, enter an order setting aside
3 the conviction.

4 **(12)** ~~(13)~~—If the court determines that the circumstances and
5 behavior of an applicant under section 1(1) or (3), from the date
6 of the applicant's conviction or convictions to the filing of the
7 application warrant setting aside the conviction or convictions,
8 and that setting aside the conviction or convictions is consistent
9 with the public welfare, the court may enter an order setting aside
10 the conviction or convictions.

11 **(13)** ~~(14)~~—The setting aside of a conviction or convictions
12 under this act is a privilege and conditional and is not a right.

13 Enacting section 1. This amendatory act takes effect March 9,
14 2022.