

SENATE BILL NO. 416

August 20, 2019, Introduced by Senators IRWIN and CHANG and referred to the Committee on Judiciary and Public Safety.

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

1 with the convicting court for the entry of an order setting aside 1
2 or more convictions as follows:

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

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

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

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

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

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

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

29 (a) Section 703 of the Michigan liquor control code of 1998,

1 1998 PA 58, MCL 436.1703.

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

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

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

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

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

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

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

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

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

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

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

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

5 (4) A person who is convicted of a violation of section 448,
6 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448,
7 750.449, and 750.450, or a local ordinance substantially
8 corresponding to section 448, 449, or 450 of the Michigan penal
9 code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to
10 have that conviction set aside if he or she committed the offense
11 as a direct result of his or her being a victim of a human
12 trafficking violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (11) A copy of the application ~~shall~~**must** be served upon the
25 attorney general and upon the office of each prosecuting attorney
26 who prosecuted the crime or crimes the applicant seeks to set
27 aside, and an opportunity ~~shall~~**must** be given to the attorney
28 general and to the prosecuting attorney to contest the application.
29 If a conviction was for an assaultive crime or a serious

1 misdemeanor, the prosecuting attorney shall notify the victim of
2 the assaultive crime or serious misdemeanor of the application
3 under section 22a or 77a of the William Van Regenmorter crime
4 victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The
5 notice ~~shall~~**must** be by first-class mail to the victim's last known
6 address. The victim has the right to appear at any proceeding under
7 this act concerning that conviction and to make a written or oral
8 statement.

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

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

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

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

26 **(16) Beginning on January 1, 2020, the conviction or**
27 **convictions of a person who was convicted of 1 or more of the**
28 **following offenses having to do with marihuana shall have those**
29 **convictions set aside under this subsection without an application**

1 under subsection (1):

2 (a) A violation of section 7403(2)(d) of the public health
3 code, 1978 PA 368, MCL 333.7403.

4 (b) A violation of section 7404(2)(d) of the public health
5 code, 1978 PA 368, MCL 333.7404.

6 (17) Beginning on January 1, 2020, a person who was convicted
7 of 1 or more offenses in violation of section 7401(2)(d) of the
8 public health code, 1978 PA 368, MCL 333.7401, having to do with
9 marihuana, may apply to have those convictions set aside. If the
10 court determines that the activity that the applicant engaged in
11 resulting in the conviction would not violate the Michigan
12 regulation and taxation of marihuana act, 2018 IL 1, MCL 333.27951
13 to 333.27967, the court shall grant the application.

14 (18) Beginning on January 1, 2020, a person who was convicted
15 of 1 or more offenses having to do with marihuana in violation of
16 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
17 333.7545, not described under subsection (16) or (17) that occurred
18 because the person attempted but failed to comply with the
19 requirements under the Michigan Medical Marihuana Act, 2008 IL 1,
20 MCL 333.26421 to 333.26430, may apply to have those convictions set
21 aside.

22 (19) The court shall grant an application made under
23 subsection (18) if the court determines by a preponderance of the
24 evidence that the person obtained the convictions despite the
25 person's good-faith attempt to comply with the Michigan Medical
26 Marihuana Act, 2008 IL 1, MCL 333.26421 to 333.26430. In making its
27 determination under this subsection, the court shall consider
28 whether the applicant sought legal advice, kept records,
29 communicated openly with local government officials, or took other

1 actions in a manner that indicates a good-faith attempt to comply
2 with the requirements of the Michigan Medical Marihuana Act, 2008
3 IL 1, MCL 333.26421 to 333.26430.

4 (20) Notwithstanding any provision of law to the contrary, a
5 court shall not charge a fee of more than \$25.00 to file an
6 application under this section.

7 (21) ~~(16)~~—As used in this section:

8 (a) "Assaultive crime" means that term as defined in section
9 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
10 770.9a.

11 (b) "Domestic violence" means that term as defined in section
12 1 of 1978 PA 389, MCL 400.1501.

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

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

18 (ii) For purposes of identifying a prior offense, felony means
19 a violation of a penal law of this state, of another state, or of
20 the United States that is punishable by imprisonment for more than
21 1 year or is designated by law to be a felony.

22 (d) "Human trafficking violation" means a violation of chapter
23 LXVIIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to
24 750.462h, **or former section 462i or 462j of that act.**

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

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

29 (i) A penal law of this state, another state, an Indian tribe,

1 or the United States that is not a felony.

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

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

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

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

14 (g) "Operating while intoxicated" means a violation of any of
15 the following:

16 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA
17 300, MCL 257.625 and 257.625m.

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

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

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

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

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

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

4 Enacting section 1. This amendatory act takes effect 90 days
5 after the date it is enacted into law.