

**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021**

Introduced by Senator McBroom

ENROLLED SENATE BILL No. 400

AN ACT 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 added by 2020 PA 190.

The People of the State of Michigan enact:

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

- (a) Imposition of the sentence for the convictions that the applicant seeks to set aside.
- (b) Completion of any term of felony probation imposed for the convictions that the applicant seeks to set aside.
- (c) Discharge from parole imposed for the convictions that the applicant seeks to set aside.
- (d) Completion of any term of imprisonment imposed for the convictions that the applicant seeks to set aside.

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

- (a) Imposition of the sentence for the conviction or convictions that the applicant seeks to set aside.
- (b) Completion of probation imposed for the conviction or convictions that the applicant seeks to set aside.
- (c) Discharge from parole imposed for the conviction that the applicant seeks to set aside, if applicable.
- (d) Completion of any term of imprisonment imposed for the conviction or convictions that the applicant seeks to set aside.

(3) An application under section 1 to set aside 1 or more misdemeanor convictions, other than an application to set aside a serious misdemeanor, a first violation operating while intoxicated offense, or any other misdemeanor conviction for an assaultive crime, shall only be filed 3 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 any term of imprisonment imposed for the conviction that the applicant seeks to set aside.
- (c) Completion of probation imposed for the conviction or convictions that the applicant seeks to set aside.
- (4) For an application under section 1, a court shall not enter an order setting aside a conviction or convictions unless all of the following apply:

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

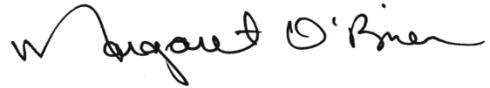
- (b) There are no criminal charges pending against the applicant.
- (c) The applicant has not been convicted of any criminal offense during the applicable time period required under subsection (1), (2), or (3).
- (5) If a petition under this act is denied by the convicting court, a person shall not file another petition concerning the same conviction or convictions with the convicting court until 3 years after the date the convicting court denies the previous petition, unless the court specifies an earlier date for filing another petition in the order denying the petition.
- (6) An application under section 1(3) may be filed at any time following the date of the conviction to be set aside. A person may apply to have more than 1 conviction set aside under section 1(3).
- (7) An application under section 1 is invalid unless it contains the following information and is signed under oath by the person whose conviction is or convictions are to be set aside:
 - (a) The full name and current address of the applicant.
 - (b) A certified record of each conviction that is to be set aside.
 - (c) For an application under section 1(1), a statement that the applicant has not been convicted of an offense during the applicable time period required under subsection (1), (2), or (3).
 - (d) A statement listing all actions enumerated in section 1(2) that were initiated against the applicant and have been dismissed.
 - (e) A statement as to whether the applicant has previously filed an application to set aside this or other conviction and, if so, the disposition of the application.
 - (f) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.
 - (g) If the person is seeking to have 1 or more convictions set aside under section 1(3), a statement that he or she meets the criteria set forth in section 1(3), together with a statement of the facts supporting his or her contention that the conviction was a direct result of his or her being a victim of human trafficking.
 - (h) A consent to the use of the nonpublic record created under section 3 to the extent authorized by section 3.
- (8) The applicant shall submit a copy of the application and 1 complete set of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under section 3, and shall forward an electronic copy of a complete set of fingerprints to the Federal Bureau of Investigation for a comparison with the records available to that agency. The department of state police shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of conviction of the applicant, and the setting aside of any conviction of the applicant and shall report to the court any similar information obtained from the Federal Bureau of Investigation. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.
- (9) The copy of the application submitted to the department of state police under subsection (8) must be accompanied by a fee of \$50.00 payable to the state of Michigan that must be used by the department of state police to defray the expenses incurred in processing the application.
- (10) A copy of the application must be served upon the attorney general and upon the office of each prosecuting attorney who prosecuted the crime or crimes the applicant seeks to set aside, and an opportunity must be given to the attorney general and to the prosecuting attorney to contest the application. If a conviction was for an assaultive crime or a serious misdemeanor, the prosecuting attorney shall notify the victim of the assaultive crime or serious misdemeanor of the application under section 22a or 77a of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The notice must be by first-class mail to the victim's last known address. The victim has the right to appear at any proceeding under this act concerning that conviction and to make a written or oral statement.
- (11) For an application under section 1(1), upon the hearing of the application the court may require the filing of affidavits and the taking of proofs as it considers proper.
- (12) For an application under section 1(3), if the applicant proves to the court by a preponderance of the evidence that the conviction was a direct result of his or her being a victim of human trafficking, the court may, subject to the requirements of subsection (13), enter an order setting aside the conviction.
- (13) If the court determines that the circumstances and behavior of an applicant under section 1(1) or (3), from the date of the applicant's conviction or convictions to the filing of the application warrant setting aside the conviction or convictions, and that setting aside the conviction or convictions is consistent with the public welfare, the court may enter an order setting aside the conviction or convictions.
- (14) The setting aside of a conviction or convictions under this act is a privilege and conditional and is not a right.

Enacting section 1. This amendatory act takes effect 180 days after the date it is enacted into law.

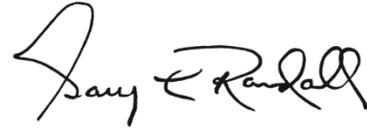
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 101st Legislature are enacted into law:

- (a) House Bill No. 4219.
- (b) House Bill No. 4220.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor