

**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Reps. Oakes, Haveman, MacMaster, Muxlow, Santana, Kandrevas, McCann, Robinson, Hobbs, Geiss, Howrylak, Banks, Kowall, Dillon, Lipton, Cavanagh, O'Brien, Barnett, Darany, Driskell, Durhal, Hovey-Wright, Irwin, Kivela, LaVoy, Lyons, Phelps, Poleski, Pscholka, Rutledge, Schor, Singh, Slavens, Smiley, Somerville, Stallworth, Stanley, Talabi, Townsend, Walsh, Yanez and Yonker

ENROLLED HOUSE BILL No. 4186

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 sections 1 and 3 (MCL 780.621 and 780.623), section 1 as amended by 2014 PA 335 and section 3 as amended by 1994 PA 294.

The People of the State of Michigan enact:

Sec. 1. (1) Except as provided in this section, a person who is convicted of not more than 1 offense may file an application with the convicting court for the entry of an order setting aside 1 or more convictions as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A violation or attempted violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, if the conviction occurred after the effective date of the amendatory act that added this subdivision.

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

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

(f) A violation of chapter LXVIIA or chapter LXXXIII-A of the Michigan penal code, 1938 PA 321, MCL 750.462a to 750.462j and 750.543a to 750.543z.

(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, 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) An application under subsection (1) shall 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.

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

(6) 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.

(7) An application under subsection (4) 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 subsection (4).

(8) An application under this section 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 subsection (1), a statement that the applicant has not been convicted of an offense other than the conviction or convictions sought to be set aside as a result of this application and any nondisqualifying misdemeanor convictions described in subsection (1)(a).

(d) A statement listing all actions enumerated in subsection (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 subsection (4), a statement that he or she meets the criteria set forth in subsection (4), 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.

(9) 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.

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

(11) A copy of the application shall 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 shall 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 shall 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.

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

(13) For an application under subsection (4), 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 (14), enter an order setting aside the conviction.

(14) If the court determines that the circumstances and behavior of an applicant under subsection (1) or (4), 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.

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

(16) As used in this section:

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

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

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

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

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

(d) "Human trafficking violation" means a violation of chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. (1) Upon the entry of an order under section 1, the court shall send a copy of the order to the arresting agency and the department of state police.

(2) The department of state police shall retain a nonpublic record of the order setting aside a conviction and of the record of the arrest, fingerprints, conviction, and sentence of the applicant in the case to which the order applies. Except as provided in subsection (3), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, the department of corrections, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) Consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) To show that a person who has filed an application to set aside a conviction has previously had a conviction set aside under this act.

(c) The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.

(d) Consideration by the governor if a person whose conviction has been set aside applies for a pardon for another offense.

(e) Consideration by the department of corrections or a law enforcement agency if a person whose conviction has been set aside applies for employment with the department of corrections or law enforcement agency.

(f) Consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general in determining whether an individual required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, has violated that act, or for use in a prosecution for violating that act.

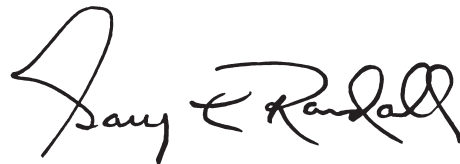
(3) A copy of the nonpublic record created under subsection (2) shall be provided to the person whose conviction is set aside under this act upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

(4) The nonpublic record maintained under subsection (2) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(5) Except as provided in subsection (2), a person, other than the applicant or a victim, who knows or should have known that a conviction was set aside under this section and who divulges, uses, or publishes information concerning a conviction set aside under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

(6) As used in this section, "victim" means any individual who suffers direct or threatened physical, financial, or emotional harm as the result of the offense that was committed by the applicant.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor