

# SENATE BILL No. 1005

May 31, 2016, Introduced by Senators HERTEL and JONES 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 1 (MCL 780.621), as amended by 2014 PA 463.

**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 ~~the effective date of the amendatory act that~~  
8 ~~added this subdivision~~, **JANUARY 12, 2015** may petition the  
9 convicting court to set aside the conviction if the individual has  
10 not been convicted of another offense other than not more than 2  
11 minor offenses. As used in this subdivision, "minor offense" means  
12 a misdemeanor or ordinance violation to which all of the following  
13 apply:

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

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

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

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

24 (a) Section 703 of the Michigan liquor control code of 1998,  
25 1998 PA 58, MCL 436.1703.

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

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

3 (d) Section 7411 of the public health code, 1978 PA 368, MCL  
4 333.7411.

5 (e) Section 350a or 430 of the Michigan penal code, 1931 PA  
6 328, MCL 750.350a and 750.430.

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

11 (3) A person shall not apply to have set aside, and a judge  
12 shall not set aside, a 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 ~~136(d)(1)(B) or (C), 136D(1)(B) OR (C)~~, 145c, 145d, 520c, 520d, or  
18 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b,  
19 750.136d, 750.145c, 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 after ~~the effective date of the amendatory act that added~~  
23 ~~this subdivision.~~ **JANUARY 12, 2015.**

24 (d) ~~A~~ **EXCEPT AS PROVIDED IN SUBSECTION (5), A** traffic offense.  
25 ~~, including, but not limited to, a conviction for operating while~~  
26 ~~intoxicated.~~

27 (e) A felony conviction for domestic violence, if the person

1 has a previous misdemeanor conviction for domestic violence.

2 (f) A violation of chapter LXVIIIA or chapter LXXXIII-A of the  
3 Michigan penal code, 1938 PA 321, MCL 750.462a to 750.462j and  
4 750.543a to 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, may apply to have that conviction set aside  
8 if he or she committed the offense as a direct result of his or her  
9 being a victim of a human trafficking violation.

10 (5) A PERSON WHO IS CONVICTED OF OPERATING A MOTOR VEHICLE  
11 WHILE INTOXICATED OR IMPAIRED UNDER SECTION 625(1) OR (3) OF THE  
12 MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.625, IF BOTH OF THE  
13 FOLLOWING REQUIREMENTS ARE MET:

14 (A) NOT LESS THAN 20 YEARS HAVE ELAPSED SINCE THE PERSON'S  
15 MOST RECENT CRIMINAL CONVICTION.

16 (B) ALL FINES AND RESTITUTION FOR THE CONVICTION HAVE BEEN  
17 PAID.

18 (6) ~~(5)~~—An application under subsection (1) shall only be  
19 filed 5 or more years after whichever of the following events  
20 occurs last:

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

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

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

27 (d) Completion of any term of imprisonment imposed for the

1 conviction that the applicant seeks to set aside.

2 (7) ~~(6)~~—If a petition under this act is denied by the  
3 convicting court, a person shall not file another petition  
4 concerning the same conviction or convictions with the convicting  
5 court until 3 years after the date the convicting court denies the  
6 previous petition, unless the court specifies an earlier date for  
7 filing another petition in the order denying the petition.

8 (8) ~~(7)~~—An application under subsection (4) may be filed at  
9 any time ~~following~~ **AFTER** the date of the conviction to be set  
10 aside. A person may apply to have more than 1 conviction set aside  
11 under subsection (4).

12 (9) ~~(8)~~—An application under this section is invalid unless it  
13 contains the following information and is signed under oath by the  
14 person whose conviction is or convictions are to be set aside:

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

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

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

23 (d) A statement listing all actions enumerated in subsection  
24 (2) that were initiated against the applicant and have been  
25 dismissed.

26 (e) A statement as to whether the applicant has previously  
27 filed an application to set aside this or other conviction and, if

1 so, the disposition of the application.

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

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

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

12 (10) ~~(9)~~—The applicant shall submit a copy of the application  
13 and 1 complete set of fingerprints to the department of state  
14 police. The department of state police shall compare those  
15 fingerprints with the records of the department, including the  
16 nonpublic record created under section 3, and shall forward an  
17 electronic copy of a complete set of fingerprints to the ~~federal~~  
18 ~~bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** for a  
19 comparison with the records available to that agency. The  
20 department of state police shall report to the court in which the  
21 application is filed the information contained in the department's  
22 records with respect to any pending charges against the applicant,  
23 any record of conviction of the applicant, and the setting aside of  
24 any conviction of the applicant and shall report to the court any  
25 similar information obtained from the ~~federal bureau of~~  
26 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION**. The court shall not  
27 act upon the application until the department of state police

1 reports the information required by this subsection to the court.

2       (11) ~~(10)~~—The copy of the application submitted to the  
3 department of state police under subsection ~~(9)~~—(10) shall be  
4 accompanied by a fee of \$50.00 payable to the state of Michigan  
5 that shall be used by the department of state police to defray the  
6 expenses incurred in processing the application.

7       (12) ~~(11)~~—A copy of the application shall be served upon the  
8 attorney general and upon the office of each prosecuting attorney  
9 who prosecuted the crime or crimes the applicant seeks to set  
10 aside, and an opportunity shall be given to the attorney general  
11 and to the prosecuting attorney to contest the application. If a  
12 conviction was for an assaultive crime or a serious misdemeanor,  
13 the prosecuting attorney shall notify the victim of the assaultive  
14 crime or serious misdemeanor of the application under section 22a  
15 or 77a of the William Van Regenmorter crime victim's rights act,  
16 1985 PA 87, MCL 780.772a and 780.827a. The notice shall be by  
17 first-class mail to the victim's last known address. The victim has  
18 the right to appear at any proceeding under this act concerning  
19 that conviction and to make a written or oral statement.

20       (13) ~~(12)~~—For an application under subsection (1), upon the  
21 hearing of the application the court may require the filing of  
22 affidavits and the taking of proofs as it considers proper.

23       (14) ~~(13)~~—For an application under subsection (4), if the  
24 applicant proves to the court by a preponderance of the evidence  
25 that the conviction was a direct result of his or her being a  
26 victim of human trafficking, the court may, subject to the  
27 requirements of subsection ~~(14)~~—(15), enter an order setting aside

1 the conviction.

2 (15) ~~(14)~~—If the court determines that the circumstances and  
3 behavior of an applicant under subsection (1) or (4), from the date  
4 of the applicant's conviction or convictions to the filing of the  
5 application warrant setting aside the conviction or convictions,  
6 and that setting aside the conviction or convictions is consistent  
7 with the public welfare, the court may enter an order setting aside  
8 the conviction or convictions.

9 (16) ~~(15)~~—The setting aside of a conviction or convictions  
10 under this act is a privilege and conditional and is not a right.

11 (17) ~~(16)~~—As used in this section:

12 (a) "Assaultive crime" means that term as defined in section  
13 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL  
14 770.9a.

15 (b) "Domestic violence" means that term as defined in section  
16 1 of 1978 PA 389, MCL 400.1501.

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

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

22 (ii) For purposes of identifying a prior offense, felony means  
23 a violation of a penal law of this state, of another state, or of  
24 the United States that is punishable by imprisonment for more than  
25 1 year or is designated by law to be a felony.

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



1 750.462h.

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

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

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

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

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

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

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

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

22 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA  
23 300, MCL 257.625 and 257.625m.

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

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

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

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

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

8           (i) "Victim" means that term as defined in sections 2, 31, and  
9 61 of the William Van Regenmorter crime victim's rights act, 1985  
10 PA 87, MCL 780.752, 780.781, and 780.811.

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