

# Legislative Analysis



## SET ASIDES AND AFFIRMATIVE DEFENSE FOR HUMAN TRAFFICKING VICTIMS

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<http://www.house.mi.gov/hfa>

**House Bill 4091 as introduced**  
**Sponsor: Rep. Mary Whiteford**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4092 as introduced**  
**Sponsor: Rep. Graham Filler**

**House Bill 4093 as introduced**  
**Sponsor: Rep. Bronna Kahle**

**Committee: Judiciary**  
**Revised 6-4-21**

### SUMMARY:

House Bill 4091 would allow, with some exceptions, a victim of human trafficking to apply to set aside a conviction for any crime (rather than only certain prostitution-related offenses) if the crime had been committed as a direct result of being a victim of a human trafficking violation.

House Bill 4092 would create an affirmative defense that commission of a crime was a direct result of the defendant's being a victim of human trafficking. The defendant would have to prove the defense by a preponderance of the evidence.

House Bill 4093 would, if all requirements were otherwise met, require a court to set aside the adjudication of a felony, misdemeanor, or violation of a local ordinance committed by a juvenile as a direct result of being a victim of a human trafficking violation.

**House Bill 4091** would amend 1965 PA 213, which establishes the criteria for expungement of certain criminal convictions.

Generally speaking, a person convicted of one or more criminal offenses, but not more than a total of three felony offenses, may apply to have all of his or her convictions from Michigan set aside, and a person convicted of fourth-degree criminal sexual conduct (CSC), or an attempt, before January 12, 2015, may—if certain conditions apply—petition to set aside the CSC conviction. Convictions for certain felony offenses and traffic offenses are not currently eligible for expungement. In addition, an applicant may not have more than two convictions for an assaultive crime set aside during his or her lifetime and may have only one conviction for the same offense set aside if the offense is punishable by more than 10 years' imprisonment.

Exceptions to the expungement act described above were added by 2014 PA 335 and 2016 PA 336 to allow a person 16 years of age or older convicted of certain prostitution-related crimes and local ordinances to have one or more of those convictions set aside if the offense or offenses were committed while the person was a victim of a human trafficking violation and were committed only because of the person's status as a victim of that human trafficking violation. The exception applies to convictions for a violation of section 448 (soliciting, accosting, or enticing prostitution), section 449 (admitting another to a place of prostitution), and/or section 450 (aiding, assisting, or abetting prostitution) of the Michigan Penal Code.

The bill would expand the eligibility to apply to set aside felony and misdemeanor convictions by victims of human trafficking to apply to convictions of any crime, not just the prostitution-related offenses described above. This would apply notwithstanding any other provision related to eligibility for expungement, but would exclude a conviction for an assaultive crime or a traffic offense.

The bill would retain the requirement that the person committed the crime for which a set-aside is sought as a direct result of being a victim of a human trafficking violation. Further, the act provides that if the person proves by a preponderance of the evidence that the conviction was a direct result of being a victim of human trafficking, and if the court determines that the circumstances and behavior of the person warrant setting aside the conviction or convictions and that doing so is consistent with the public welfare, the court may enter an order setting aside the conviction. This provision would be retained as well.

The bill lists an effective date of April 11, 2021.

MCL 780.621 and 780.621a

**House Bill 4092** would add a new section to Chapter VIII (Trials) of the Code of Criminal Procedure. Chapter VIII provides, among other things, for procedures in trials of persons for criminal offenses. The bill would provide that it is an affirmative defense in a prosecution for a felony or misdemeanor violation of a Michigan law that the defendant committed the offense as a direct result of his or her being a victim of human trafficking under provisions of Chapter LXVIIA (“Human Trafficking”) of the Michigan Penal Code. The defendant would bear the burden of proving the affirmative defense by a preponderance of the evidence.

The bill would take effect 90 days after its enactment.

Proposed MCL 768.21d

**House Bill 4093** would amend Chapter XIIA of the Probate Code, known as the juvenile code. Unlike adults or juveniles tried as adults in adult court, who are *convicted* when found guilty of an offense, juveniles tried as juveniles in the Family Division of Circuit Court are found *responsible*, and the process is referred to as an *adjudication*. Currently, a court has discretion to set aside (expunge) certain juvenile adjudications, but is required to set aside an adjudication for a violation or attempted violation of section 448 (soliciting, accosting, or enticing prostitution), section 449 (admitting another to a place of prostitution), and/or section 450 (aiding, assisting, or abetting prostitution) of the Michigan Penal Code or a local ordinance substantially corresponding to those offenses. This only applies if the person committed the offense as a direct result of being a victim of a human trafficking violation and meets all other requirements for an expungement.

The bill would delete the references to the prostitution-related crimes and instead require to be set aside, if all other requirements are met, an offense that if committed by an adult would be a felony, a misdemeanor, or a violation of a local ordinance if the juvenile committed the offense as a direct result of being a victim of a human trafficking violation.

The bill would take effect 90 days after its enactment.

MCL 712A.18e

## **FISCAL IMPACT:**

House Bills 4091, 4092, and 4093 would have an indeterminate fiscal impact on the state and on local units of government. The number of felony and misdemeanor convictions that would be set aside under provisions of the bills is not known. Setting aside felony convictions would result in reduced costs related to the state correctional system and state probation supervision. Setting aside misdemeanor convictions would result in reduced costs related to county jails and/or local misdemeanor probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bills affected court caseloads and related administrative costs. There could also be a decrease in penal fine revenue resulting in a decrease in funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

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