

# HOUSE BILL NO. 4091

February 03, 2021, Introduced by Reps. Whiteford, Whitsett, Glenn, Beson, Fink, Calley, Brabec, Kahle, Rendon, Paquette, Bollin, Wozniak, Lasinski, Clemente, Camilleri, Hammoud, Yancey, Anthony, Puri, Bezotte, Thanedar, Bolden, Stone 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 2020 PA 191.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. (1) Except as otherwise provided in this act, a person  
2 who is convicted of 1 or more criminal offenses may file an  
3 application with the convicting court for the entry of an order

1 setting aside 1 or more convictions as follows:

2 (a) Except as provided in subdivisions (b) and (c), a person  
3 convicted of 1 or more criminal offenses, but not more than a total  
4 of 3 felony offenses, in this state, may apply to have all of his  
5 or her convictions from this state set aside.

6 (b) An applicant may not have more than a total of 2  
7 convictions for an assaultive crime set aside under this act during  
8 his or her lifetime.

9 (c) An applicant may not have more than 1 felony conviction  
10 for the same offense set aside under this section if the offense is  
11 punishable by more than 10 years imprisonment.

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

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

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

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

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

1 (a) Section 703 of the Michigan liquor control code of 1998,  
2 1998 PA 58, MCL 436.1703.

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

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

7 (d) Section 7411 of the public health code, 1978 PA 368, MCL  
8 333.7411.

9 (e) Section 350a or 430 of the Michigan penal code, 1931 PA  
10 328, MCL 750.350a and 750.430.

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

15 (3) ~~A~~ **Notwithstanding any other provision of this act and**  
16 **except as to a conviction for an assaultive crime or a traffic**  
17 **offense prohibited to be set aside under section 1c**, a person who  
18 is convicted of ~~a violation of section 448, 449, or 450 of the~~  
19 ~~Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and~~  
20 ~~750.450, or a local ordinance substantially corresponding to~~  
21 ~~section 448, 449, or 450 of the Michigan penal code, 1931 PA 328,~~  
22 ~~MCL 750.448, 750.449, and 750.450,~~ **any crime** may apply to have that  
23 conviction set aside if he or she committed the offense as a direct  
24 result of his or her being a victim of a human trafficking  
25 violation.

26 (4) As used in this act:

27 (a) "Assaultive crime" includes any of the following:

28 (i) A violation described in section 9a of chapter X of the  
29 code of criminal procedure, 1927 PA 175, MCL 770.9a.

1           (ii) A violation of chapter XI of the Michigan penal code, 1931  
2 PA 328, MCL 750.81 to 750.90h, not otherwise included in  
3 subparagraph (i).

4           (iii) A violation of section 110a, 136b, 234a, 234b, 234c, 349b,  
5 or 411h(2)(a) of the Michigan penal code, 1931 PA 328, MCL  
6 750.110a, 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, or  
7 750.411h, or any other violent felony.

8           (iv) A violation of a law of another state or of a political  
9 subdivision of this state or of another state that substantially  
10 corresponds to a violation described in subparagraph (i), (ii), or  
11 (iii).

12           (b) "Domestic violence" means that term as defined in section  
13 1 of 1978 PA 389, MCL 400.1501.

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

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

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

23           (d) "Human trafficking violation" means a violation of chapter  
24 LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to  
25 750.462h, or of former section 462i or 462j of that act.

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

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

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

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

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

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

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

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

17           (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA  
18 300, MCL 257.625 and 257.625m.

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

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

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

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

27           (h) "Serious misdemeanor" means that term as defined in  
28 section 61 of the William Van Regenmorter crime victim's rights

1 act, 1985 PA 87, MCL 780.811.

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

5 (j) "Violent felony" means that term as defined in section 36  
6 of the corrections code of 1953, 1953 PA 232, MCL 791.236.

7 Enacting section 1. This amendatory act takes effect April 11,  
8 2021.