

**SUBSTITUTE FOR  
SENATE BILL NO. 970**

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 sections 1b, 1c, 1d, 2, and 3 (MCL 780.621b, 780.621c,  
780.621d, 780.622, and 780.623), section 1b as added by 2020 PA  
188, section 1c as amended by 2021 PA 79, section 1d as amended by  
2021 PA 82, and sections 2 and 3 as amended by 2020 PA 193, and by  
adding section 1j; and to repeal acts and parts of acts.

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

1       Sec. 1b. (1) For purposes of a petition to set aside a  
2 conviction under section 1 or 1e, more than 1 felony offense or



1 more than 1 misdemeanor offense must be treated as a single felony  
2 or misdemeanor conviction if the felony or misdemeanor convictions  
3 were contemporaneous such that all of the felony or misdemeanor  
4 offenses occurred within 24 hours and arose from the same  
5 transaction, provided that none of those felony or misdemeanor  
6 offenses constitute any of the following:

7 (a) An assaultive crime.

8 (b) A crime involving the use or possession of a dangerous  
9 weapon.

10 (c) A crime with a maximum penalty of 10 or more years'  
11 imprisonment.

12 (d) A conviction for a crime that if it had been obtained in  
13 this state would be for an assaultive crime.

14 **(2) For purposes of a petition to set aside a conviction under**  
15 **section 1j, a felony offense and 1 or more misdemeanor offenses**  
16 **must be treated as a single felony conviction if the felony and**  
17 **misdemeanor convictions were contemporaneous such that all of the**  
18 **offenses occurred within 24 hours and arose from the same**  
19 **transaction.**

20 **(3) ~~(2)~~**As used in this section, "dangerous weapon" means that  
21 term as defined in section 110a of the Michigan penal code, 1931 PA  
22 328, MCL 750.110a.

23 Sec. 1c. (1) **A**~~Except as otherwise provided in section 1j, a~~  
24 person shall not apply to have set aside, and a judge shall not set  
25 aside, a conviction for any of the following:

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

29 (b) A violation or attempted violation of section 136b(3),



1 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan  
2 penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c,  
3 750.145d, 750.520c, 750.520d, and 750.520g.

4 (c) A violation or attempted violation of section 520e of the  
5 Michigan penal code, 1931 PA 328, MCL 750.520e, if the conviction  
6 occurred on or after January 12, 2015.

7 (d) The following traffic offenses:

8 (i) Subject to subsections (3) and (4), a conviction for  
9 operating while intoxicated committed by any person.

10 (ii) Any traffic offense committed by an individual with an  
11 indorsement on his or her operator's or chauffeur's license to  
12 operate a commercial motor vehicle that was committed while the  
13 individual was operating the commercial motor vehicle or was in  
14 another manner a commercial motor vehicle violation.

15 (iii) Any traffic offense that causes injury or death.

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

18 (f) A violation of former section 462i or 462j or chapter  
19 LXVIIIA or chapter LXXXIII-A of the Michigan penal code, 1931 PA  
20 328, MCL 750.462a to 750.462h and 750.543a to 750.543z.

21 (2) The prohibition on the setting aside of the convictions  
22 under subsection (1) upon application also applies to the setting  
23 aside of convictions without application under section 1g.

24 (3) The prohibition on setting aside a conviction for  
25 operating while intoxicated under subsection (1)(d)(i) does not  
26 apply to a conviction for a first violation operating while  
27 intoxicated offense if the person applying to have the first  
28 violation operating while intoxicated offense conviction set aside  
29 has not previously applied to have and had a first violation



1 operating while intoxicated offense conviction set aside under this  
2 act. However, a conviction for a first violation operating while  
3 intoxicated offense that may be set aside upon application is not  
4 eligible for and shall not be set aside without application under  
5 section 1g.

6 (4) In making a determination whether to grant the petition to  
7 set aside a first violation operating while intoxicated offense  
8 conviction, the reviewing court may consider whether or not the  
9 petitioner has benefited from rehabilitative or educational  
10 programs, if any were ordered by the sentencing court, or whether  
11 such steps were taken by the petitioner before sentencing for the  
12 first violation operating while intoxicated offense conviction he  
13 or she is seeking to set aside. The reviewing court is not  
14 constrained by the record made at sentencing. The reviewing court  
15 may deny the petition if it is not convinced that the petitioner  
16 has either availed himself or herself of rehabilitative or  
17 educational programming or benefited from rehabilitative or  
18 educational programming he or she has completed.

19 (5) An order setting aside a conviction for a traffic offense  
20 under this act must not require that the conviction be removed or  
21 expunged from the applicant's driving record maintained by the  
22 secretary of state as required under the Michigan vehicle code,  
23 1949 PA 300, MCL 257.1 to 257.923.

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

27 (a) Imposition of the sentence for the convictions that the  
28 applicant seeks to set aside.

29 (b) Completion of any term of felony probation imposed for the



1 convictions that the applicant seeks to set aside.

2 (c) Discharge from parole imposed for the convictions that the  
3 applicant seeks to set aside.

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

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

10 (a) Imposition of the sentence for the conviction or  
11 convictions that the applicant seeks to set aside.

12 (b) Completion of probation imposed for the conviction or  
13 convictions that the applicant seeks to set aside.

14 (c) Discharge from parole imposed for the conviction that the  
15 applicant seeks to set aside, if applicable.

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

18 (3) An application under section 1 to set aside 1 or more  
19 misdemeanor convictions, other than an application to set aside a  
20 serious misdemeanor, a first violation operating while intoxicated  
21 offense, or any other misdemeanor conviction for an assaultive  
22 crime, shall only be filed 3 or more years after whichever of the  
23 following events occurs last:

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

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

28 (c) Completion of probation imposed for the conviction or  
29 convictions that the applicant seeks to set aside.



1 (4) For an application under section 1, a court shall not  
2 enter an order setting aside a conviction or convictions unless all  
3 of the following apply:

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

6 (b) There are no criminal charges pending against the  
7 applicant.

8 (c) The applicant has not been convicted of any criminal  
9 offense during the applicable time period required under subsection  
10 (1), (2), or (3).

11 (5) ~~If~~**Except as provided in section 1j, if** a petition under  
12 this act is denied by the convicting court, a person shall not file  
13 another petition concerning the same conviction or convictions with  
14 the convicting court until 3 years after the date the convicting  
15 court denies the previous petition, unless the court specifies an  
16 earlier date for filing another petition in the order denying the  
17 petition.

18 (6) An application under section 1(3) may be filed at any time  
19 following the date of the conviction to be set aside. A person may  
20 apply to have more than 1 conviction set aside under section 1(3).

21 (7) An application under section 1 is invalid unless it  
22 contains the following information and is signed under oath by the  
23 person whose conviction is or convictions are to be set aside:

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

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

27 (c) For an application under section 1(1), a statement that  
28 the applicant has not been convicted of an offense during the  
29 applicable time period required under subsection (1), (2), or (3).



1 (d) A statement listing all actions enumerated in section 1(2)  
2 that were initiated against the applicant and have been dismissed.

3 (e) A statement as to whether the applicant has previously  
4 filed an application to set aside this or other conviction and, if  
5 so, the disposition of the application.

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

9 (g) If the person is seeking to have 1 or more convictions set  
10 aside under section 1(3), a statement that he or she meets the  
11 criteria set forth in section 1(3), together with a statement of  
12 the facts supporting his or her contention that the conviction was  
13 a direct result of his or her being a victim of human trafficking.

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

16 (8) ~~The~~**An** applicant **under this act** shall submit a copy of the  
17 application and 1 complete set of fingerprints to the department of  
18 state police. The department of state police shall compare those  
19 fingerprints with the records of the department, including the  
20 nonpublic record created under section 3, and shall forward an  
21 electronic copy of a complete set of fingerprints to the Federal  
22 Bureau of Investigation for a comparison with the records available  
23 to that agency. The department of state police shall report to the  
24 court in which the application is filed the information contained  
25 in the department's records with respect to any pending charges  
26 against the applicant, any record of conviction of the applicant,  
27 and the setting aside of any conviction of the applicant and shall  
28 report to the court any similar information obtained from the  
29 Federal Bureau of Investigation. The court shall not act upon the



1 application until the department of state police reports the  
2 information required by this subsection to the court.

3 (9) The copy of the application submitted to the department of  
4 state police under subsection (8) must be accompanied by a fee of  
5 \$50.00 payable to the state of Michigan that must be used by the  
6 department of state police to defray the expenses incurred in  
7 processing the application.

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

22 (11) For an application under section 1(1), upon the hearing  
23 of the application the court may require the filing of affidavits  
24 and the taking of proofs as it considers proper.

25 (12) For an application under section 1(3), if the applicant  
26 proves to the court by a preponderance of the evidence that the  
27 conviction was a direct result of his or her being a victim of  
28 human trafficking, the court may, subject to the requirements of  
29 subsection (13), enter an order setting aside the conviction.





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

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

10 **Sec. 1j. (1) For offenses otherwise ineligible for a set aside**  
11 **under section 1c, an individual may file an application with the**  
12 **convicting court to set aside a felony conviction, if all of the**  
13 **following conditions apply:**

14 (a) The applicant committed the felony before the applicant's  
15 eighteenth birthday.

16 (b) The applicant has been successfully discharged from the  
17 department of corrections.

18 (c) Fifteen years have passed since the applicant's release  
19 from incarceration.

20 (d) The applicant has not been convicted of a criminal charge  
21 on or after the applicant's eighteenth birthday or had any other  
22 conviction set aside under this act.

23 (e) The applicant does not have a pending criminal charge.

24 (f) The applicant has not tested positive for the illegal use  
25 of a controlled substance since the felony conviction to be set  
26 aside.

27 (g) The applicant can demonstrate a record and reputation that  
28 shows the applicant is not likely to act in a manner that is a  
29 danger to the safety of others.



1 (h) The felony conviction to be set aside is not a listed  
2 offense as defined in section 2 of the sex offenders registration  
3 act, 1994 PA 295, MCL 28.722.

4 (2) An individual applying for the setting aside of a  
5 conviction or convictions under subsection (1) shall file an  
6 application to the convicting court that includes all of the  
7 following, if applicable:

8 (a) The applicant's signature, under oath, affirmatively  
9 stating that the applicant qualifies under subsection (1).

10 (b) A certified record of each conviction that is requested to  
11 be set aside.

12 (c) A complete set of fingerprints and copy of the application  
13 sent to the department of state police, in accordance with section  
14 1d(8).

15 (d) A resume or curriculum vitae.

16 (e) Reference letters.

17 (f) Academic credentials.

18 (g) An internet criminal history access tool report.

19 (h) A driving record from this state or another state.

20 (i) A personal letter of interest.

21 (j) Community involvement.

22 (k) Elected offices or appointments.

23 (l) Assumed name and business information.

24 (m) Ties to the community.

25 (n) Awards and recognitions.

26 (o) Media coverage.

27 (p) A \$150.00 fee to be paid to the Michigan set aside fund  
28 created under section 1i.

29 (3) The court shall review the application and determine if



1 the application should be granted. If the application is granted,  
2 the court shall enter an order setting aside the conviction or  
3 convictions. If the application is denied by the convicting court,  
4 the applicant may reapply under subsection (1) 1 year after the  
5 date the convicting court denies the previous application, unless  
6 the court specifies an earlier date.

7 (4) As used in this section, except for marihuana used in  
8 compliance with the laws of this state, "controlled substance"  
9 means that term as defined in section 7104 of the public health  
10 code, 1978 PA 368, MCL 333.7104.

11 Sec. 2. (1) Upon the entry of an order **by the court** under  
12 section 1, ~~or 1e~~, **or 1j**, or upon the automatic setting aside of a  
13 conviction under section 1g, the applicant, for purposes of the  
14 law, is considered not to have been previously convicted, except as  
15 provided in this section and section 3.

16 (2) The applicant is not entitled to the remission of any  
17 fine, costs, or other money paid as a consequence of a conviction  
18 that is set aside.

19 (3) If the conviction set aside under section 1(1), 1e, or 1g  
20 is for a listed offense as defined in section 2 of the sex  
21 offenders registration act, 1994 PA 295, MCL 28.722, the applicant  
22 is considered to have been convicted of that offense for purposes  
23 of that act.

24 (4) This act does not affect the right of the applicant to  
25 rely upon the conviction to bar subsequent proceedings for the same  
26 offense.

27 (5) This act does not affect the right of a victim of a crime  
28 to prosecute or defend a civil action for damages.

29 (6) This act does not create a right to commence an action for



1 damages for incarceration under the sentence that the applicant  
2 served before the conviction is set aside under this act.

3 (7) This act does not relieve any obligation to pay  
4 restitution owed to the victim of a crime nor does it affect the  
5 jurisdiction of the convicting court or the authority of any court  
6 order with regard to enforcing an order for restitution.

7 (8) A conviction, including any records relating to the  
8 conviction and any records concerning a collateral action, that has  
9 been set aside under this act cannot be used as evidence in an  
10 action for negligent hiring, admission, or licensure against any  
11 person.

12 (9) A conviction that is set aside under section 1, ~~le~~, ~~or 1g~~,  
13 **or 1j** may be considered a prior conviction by court, law  
14 enforcement agency, prosecuting attorney, or the attorney general,  
15 as applicable, for purposes of charging a crime as a second or  
16 subsequent offense or for sentencing under sections 10, 11, and 12  
17 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL  
18 769.10, 769.11, and 769.12.

19 (10) As used in this section, "applicant" includes an  
20 individual who has applied under this act to have his or her  
21 conviction or convictions set aside and an individual whose  
22 conviction or convictions have been set aside without an  
23 application under section 1g.

24 Sec. 3. (1) Upon the entry of an order under section 1, ~~or 1e~~,  
25 **or 1j**, the court shall send a copy of the order to the arresting  
26 agency and the department of state police.

27 (2) The department of state police shall retain a nonpublic  
28 record of the order setting aside a conviction, or other  
29 notification regarding a conviction that was automatically set



1 aside under section 1g, and of the record of the arrest,  
2 fingerprints, conviction, and sentence of the person in the case to  
3 which the order or other notification applies. Except as provided  
4 in subsection (3), this nonpublic record shall be made available  
5 only to a court of competent jurisdiction, an agency of the  
6 judicial branch of state government, the department of corrections,  
7 a law enforcement agency, a prosecuting attorney, the attorney  
8 general, or the governor upon request and only for the following  
9 purposes:

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

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

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

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

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

24 (f) Consideration by a court, law enforcement agency,  
25 prosecuting attorney, or the attorney general in determining  
26 whether an individual required to be registered under the sex  
27 offenders registration act, 1994 PA 295, MCL 28.721 to ~~28.736,~~  
28 **28.730**, has violated that act, or for use in a prosecution for  
29 violating that act.



1 (g) Consideration by a court, law enforcement agency,  
2 prosecuting attorney, or the attorney general for use in making  
3 determinations regarding charging, plea offers, and sentencing, as  
4 applicable.

5 (3) A copy of the nonpublic record created under subsection  
6 (2) must be provided to the person whose conviction is set aside  
7 under this act upon payment of a fee determined and charged by the  
8 department of state police in the same manner as the fee prescribed  
9 in section 4 of the freedom of information act, 1976 PA 442, MCL  
10 15.234.

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

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

21 (6) An entity is not liable for damages or subject to criminal  
22 penalties under this section for reporting a public record of  
23 conviction that has been ~~set aside~~ **set aside** by court order or  
24 operation of law, if that record was available as a public record  
25 on the date of the report.

26 (7) ~~(6)~~ As used in this section, "victim" means any individual  
27 who suffers direct or threatened physical, financial, or emotional  
28 harm as the result of the offense that was committed by the  
29 applicant.



1 Enacting section 1. Section 4 of 1965 PA 213, MCL 780.624, is  
2 repealed.

