

HOUSE BILL No. 5821

April 17, 2018, Introduced by Reps. Kesto and Chang and referred to the Committee on Law and Justice.

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 2016 PA 336.

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

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

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

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

18 (D) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A
19 PERSON WHO SATISFACTORILY COMPLETES A VETERANS TREATMENT COURT
20 PROGRAM MAY FILE AN APPLICATION TO SET ASIDE NOT MORE THAN 2 FELONY
21 CONVICTIONS AND AN UNLIMITED NUMBER OF MISDEMEANOR CONVICTIONS
22 LIMITED ONLY AS FOLLOWS:

23 (i) EXCEPT AS PROVIDED IN SUBPARAGRAPH (ii), THIS SUBDIVISION
24 DOES NOT APPLY TO CONVICTIONS FOR WHICH SET-ASIDE IS PRECLUDED
25 UNDER SUBSECTION (3).

26 (ii) NOTWITHSTANDING SUBSECTION (3) (D), CONVICTIONS THAT MAY
27 BE SET ASIDE UNDER THIS SUBDIVISION INCLUDE 1 OR MORE CONVICTIONS

1 **FOR VIOLATING SECTION 904 OF THE MICHIGAN VEHICLE CODE, 1949 PA**
2 **300, MCL 257.904.**

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

8 (a) Section 703 of the Michigan liquor control code of 1998,
9 1998 PA 58, MCL 436.1703.

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

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

14 (d) Section 7411 of the public health code, 1978 PA 368, MCL
15 333.7411.

16 (e) Section 350a or 430 of the Michigan penal code, 1931 PA
17 328, MCL 750.350a and 750.430.

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

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

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

27 (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) ~~A-EXCEPT AS PROVIDED IN SUBSECTION (1)(D), A~~ traffic
8 offense, including, but not limited to, a conviction for operating
9 while intoxicated.

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

12 (f) A violation of former section 462i or 462j or chapter
13 LXVIIIA or chapter LXXXIII-A of the Michigan penal code, 1938 PA
14 321, MCL 750.462a to 750.462h and 750.543a to 750.543z.

15 (4) A person who is convicted of a violation of section 448,
16 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448,
17 750.449, and 750.450, or a local ordinance substantially
18 corresponding to section 448, 449, or 450 of the Michigan penal
19 code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to
20 have that conviction set aside if he or she committed the offense
21 as a direct result of his or her being a victim of a human
22 trafficking violation.

23 (5) An application under subsection (1) ~~shall~~**MUST** only be
24 filed 5 or more years after whichever of the following events
25 occurs last:

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

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

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

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

7 **(E) COMPLETION OF ANY TERM OF REPORTING SUPERVISION ORDERED BY**
8 **A VETERANS TREATMENT COURT.**

9 (6) If a petition under this act is denied by the convicting
10 court, a person shall not file another petition concerning the same
11 conviction or convictions with the convicting court until 3 years
12 after the date the convicting court denies the previous petition,
13 unless the court specifies an earlier date for filing another
14 petition in the order denying the petition.

15 (7) An application under subsection (4) may be filed at any
16 time following the date of the conviction to be set aside. A person
17 may apply to have more than 1 conviction set aside under subsection
18 (4).

19 (8) An application under this section is invalid unless it
20 contains the following information and is signed under oath by the
21 person whose conviction is or convictions are to be set aside:

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

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

25 (c) For an application under subsection (1), a statement that
26 the applicant has not been convicted of an offense other than the
27 conviction or convictions sought to be set aside as a result of

1 this application and any nondisqualifying misdemeanor convictions
2 described in subsection (1)(a).

3 (d) A statement listing all actions enumerated in subsection
4 (2) that were initiated against the applicant and have been
5 dismissed.

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

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

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

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

19 (9) The applicant shall submit a copy of the application and 1
20 complete set of fingerprints to the department of state police. The
21 department of state police shall compare those fingerprints with
22 the records of the department, including the nonpublic record
23 created under section 3, and shall forward an electronic copy of a
24 complete set of fingerprints to the Federal Bureau of Investigation
25 for a comparison with the records available to that agency. The
26 department of state police shall report to the court in which the
27 application is filed the information contained in the department's

1 records with respect to any pending charges against the applicant,
2 any record of conviction of the applicant, and the setting aside of
3 any conviction of the applicant and shall report to the court any
4 similar information obtained from the Federal Bureau of
5 Investigation. The court shall not act upon the application until
6 the department of state police reports the information required by
7 this subsection to the court.

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

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

27 (12) For an application under subsection (1), upon the hearing

1 of the application the court may require the filing of affidavits
2 and the taking of proofs as it considers proper.

3 (13) For an application under subsection (4), if the applicant
4 proves to the court by a preponderance of the evidence that the
5 conviction was a direct result of his or her being a victim of
6 human trafficking, the court may, subject to the requirements of
7 subsection ~~(14)~~, **(15)**, enter an order setting aside the conviction.

8 **(14) IN REVIEWING AN APPLICATION UNDER SUBSECTION (1) (D), THE**
9 **COURT SHALL CONSIDER THE SUCCESSFUL COMPLETION OF THE VETERANS**
10 **TREATMENT COURT PROGRAM.**

11 **(15)** ~~(14)~~—If the court determines that the circumstances and
12 behavior of an applicant under subsection (1) or (4), from the date
13 of the applicant's conviction or convictions to the filing of the
14 application warrant setting aside the conviction or convictions,
15 and that setting aside the conviction or convictions is consistent
16 with the public welfare, the court may enter an order setting aside
17 the conviction or convictions.

18 **(16)** ~~(15)~~—The setting aside of a conviction or convictions
19 under this act is a privilege and conditional and is not a right.

20 **(17)** ~~(16)~~—As used in this section:

21 (a) "Assaultive crime" means that term as defined in section
22 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
23 770.9a.

24 (b) "Domestic violence" means that term as defined in section
25 1 of 1978 PA 389, MCL 400.1501.

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

27 (i) For purposes of the offense to be set aside, felony means

1 a violation of a penal law of this state that is punishable by
2 imprisonment for more than 1 year or that is designated by law to
3 be a felony.

4 (ii) For purposes of identifying a prior offense, felony means
5 a violation of a penal law of this state, of another state, or of
6 the United States that is punishable by imprisonment for more than
7 1 year or is designated by law to be a felony.

8 (d) "Human trafficking violation" means a violation of chapter
9 LXVIIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to
10 750.462h.

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

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

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

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

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

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

26 (v) A violation of the law of the United States substantially
27 corresponding to a crime listed under subparagraph (i) or (ii) that

1 is not a felony.

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

4 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA
5 300, MCL 257.625 and 257.625m.

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

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

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

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

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

17 **(I) "VETERANS TREATMENT COURT" MEANS THAT TERM AS DEFINED IN**
18 **SECTION 1200 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,**
19 **MCL 600.1200.**

20 **(J) ~~(i)~~**"Victim" means that term as defined in sections 2, 31,
21 and 61 of the William Van Regenmorter crime victim's rights act,
22 1985 PA 87, MCL 780.752, 780.781, and 780.811.

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