

# HOUSE BILL NO. 4981

September 17, 2019, Introduced by Reps. Wendzel, Filler, Webber, Rabhi, Kahle, Bellino, Berman, O'Malley, Wentworth, Sabo, Leutheuser, Hertel, Cynthia Johnson, Coleman, Yancey, Whitsett, Peterson, Brenda Carter, Brann, Cherry, Manoogian, Sowerby, Garza, Inman, Gay-Dagnogo, Tyrone Carter, Koleszar, Sheppard, Wozniak, Rendon, Bolden, Garrett, Tate, Cambensy, Jones, Crawford, Slagh, Anthony, Camilleri, Guerra, Mueller, Meerman, Wittenberg, Hoadley, Kuppa, Brixie, Hood, Lilly, Yaroch, Robinson, Pohutsky and Reilly 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 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



1 with the convicting court for the entry of an order setting aside 1  
2 or more convictions as follows:

3 (a) A person who is convicted of not more than 1 felony  
4 offense and not more than 2 misdemeanor offenses may petition the  
5 convicting court to set aside the felony offense.

6 (b) Except as provided in subdivision (c), a person who is  
7 convicted of not more than 2 misdemeanor offenses and no other  
8 felony or misdemeanor offenses may petition the convicting court or  
9 the convicting courts to set aside 1 or both of the misdemeanor  
10 convictions.

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

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

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

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

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

29 (a) Section 703 of the Michigan liquor control code of 1998,



1 1998 PA 58, MCL 436.1703.

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

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

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

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

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

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

16 (a) A felony for which the maximum punishment is life  
17 imprisonment or an attempt to commit a felony for which the maximum  
18 punishment is life imprisonment.

19 (b) A violation or attempted violation of section 136b(3),  
20 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan  
21 penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c,  
22 750.145d, 750.520c, 750.520d, and 750.520g.

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

26 (d) ~~A-The following~~ traffic offense, including, but not  
27 limited to, ~~a-offenses:~~

28 (i) A conviction for operating while intoxicated by any person.

29 (ii) Any traffic offense committed by an individual with an

1 indorsement on his or her operator's or chauffeur's license to  
 2 operate a commercial motor vehicle.

3 (iii) A violation of section 601b, 601c, or 601d of the Michigan  
 4 vehicle code, 1949 PA 300, MCL 257.601b, 257.601c, and 257.601d.

5 (iv) A violation of section 602a of the Michigan vehicle code,  
 6 1949 PA 300, MCL 257.602a.

7 (v) A violation of section 617(2) or (3) of the Michigan  
 8 vehicle code, 1949 PA 300, MCL 257.617.

9 (vi) A violation of section 626(3) or (4) of the Michigan  
 10 vehicle code, 1949 PA 300, MCL 257.626.

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

13 (f) A violation of former section 462i or 462j or chapter  
 14 LXVIIIA or chapter LXXXIII-A of the Michigan penal code, ~~1938 PA~~  
 15 ~~321, 1931 PA 328~~, MCL 750.462a to 750.462h and 750.543a to  
 16 750.543z.

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

25 (5) An application under subsection (1) ~~shall~~**must** only be  
 26 filed ~~5-4~~ or more years after whichever of the following events  
 27 occurs last:

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

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

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

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

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

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

28 (d) A statement listing all actions enumerated in subsection  
29 (2) that were initiated against the applicant and have been

1 dismissed.

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

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

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

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

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

1 this subsection to the court.

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

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

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

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

29 (14) If the court determines that the circumstances and

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

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

9 (16) As used in this section:

10 (a) "Assaultive crime" means that term as defined in section  
11 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL  
12 770.9a.

13 (b) "Domestic violence" means that term as defined in section  
14 1 of 1978 PA 389, MCL 400.1501.

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

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

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

24 (d) "Human trafficking violation" means a violation of chapter  
25 LXVIIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to  
26 750.462h, **or of former section 462i or 462j of that act.**

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





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

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

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

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

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

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

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

18 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA  
19 300, MCL 257.625 and 257.625m.

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

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

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

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

28 (h) "Serious misdemeanor" means that term as defined in

1 section 61 of the William Van Regenmorter crime victim's rights  
2 act, 1985 PA 87, MCL 780.811.

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

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