

# HOUSE BILL NO. 4983

September 17, 2019, Introduced by Reps. Rabhi, Filler, Webber, Bellino, Wittenberg, O'Malley, Wentworth, Sabo, Leutheuser, Hertel, Cynthia Johnson, Coleman, Yancey, Whitsett, Peterson, Brenda Carter, Brann, Cherry, Manoogian, Sowerby, Garza, Inman, Wendzel, Tyrone Carter, Gay-Dagnogo, Koleszar, Sheppard, Wozniak, Rendon, Bolden, Kahle, Garrett, Jones, Tate, Cambensy, Crawford, Slagh, Anthony, Camilleri, Guerra, Mueller, Meerman, Hoadley, Kuppa, Brixie, Hood, Lilly, Pohutsky, Reilly and Robinson 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 **otherwise** provided in this section, a
- 2 person who is convicted of not more than 1 offense 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) A person who is convicted of not more than 1 felony  
3 offense and not more than 2 misdemeanor offenses may petition the  
4 convicting court to set aside the felony offense.

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

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

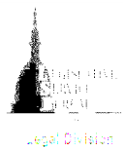
18 (i) The maximum permissible term of imprisonment does not  
19 exceed 90 days.

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

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

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

28 (a) Section 703 of the Michigan liquor control code of 1998,  
29 1998 PA 58, MCL 436.1703.



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

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

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

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

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

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

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

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

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

25 (d) A traffic offense, including, but not limited to, a  
26 conviction for operating while intoxicated.

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

29 (f) A violation of former section 462i or 462j or chapter



LXVIIIA or chapter LXXXIIII-A of the Michigan penal code, ~~1938 PA 321,~~ **1931 PA 328**, MCL 750.462a to 750.462h and 750.543a to 750.543z.

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

(5) An application under subsection (1) ~~shall to set aside a~~ **felony offense must** only be filed 5 or more years after whichever of the following events occurs last:

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

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

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

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

**(6) An application under subsection (1) to set aside a misdemeanor offense must only be filed 3 or more years after whichever of the following events occurs last:**

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

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



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

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

5       (7) ~~(6)~~—If a petition under this act is denied by the  
6 convicting court, a person shall not file another petition  
7 concerning the same conviction or convictions with the convicting  
8 court until 3 years after the date the convicting court denies the  
9 previous petition, unless the court specifies an earlier date for  
10 filing another petition in the order denying the petition.

11       (8) ~~(7)~~—An application under subsection (4) may be filed at  
12 any time following the date of the conviction to be set aside. A  
13 person may apply to have more than 1 conviction set aside under  
14 subsection (4).

15       (9) ~~(8)~~—An application under this section is invalid unless it  
16 contains the following information and is signed under oath by the  
17 person whose conviction is or convictions are to be set aside:

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

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

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

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

29       (e) A statement as to whether the applicant has previously



1 filed an application to set aside this or other conviction and, if  
2 so, the disposition of the application.

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

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

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

13 **(10)** ~~(9)~~ The applicant shall submit a copy of the application  
14 and 1 complete set of fingerprints to the department of state  
15 police. The department of state police shall compare those  
16 fingerprints with the records of the department, including the  
17 nonpublic record created under section 3, and shall forward an  
18 electronic copy of a complete set of fingerprints to the Federal  
19 Bureau of Investigation for a comparison with the records available  
20 to that agency. The department of state police shall report to the  
21 court in which the application is filed the information contained  
22 in the department's records with respect to any pending charges  
23 against the applicant, any record of conviction of the applicant,  
24 and the setting aside of any conviction of the applicant and shall  
25 report to the court any similar information obtained from the  
26 Federal Bureau of Investigation. The court shall not act upon the  
27 application until the department of state police reports the  
28 information required by this subsection to the court.

29 **(11)** ~~(10)~~ The copy of the application submitted to the



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

5 **(12)** ~~(11)~~ A copy of the application ~~shall~~**must** be served upon  
6 the attorney general and upon the office of each prosecuting  
7 attorney who prosecuted the crime or crimes the applicant seeks to  
8 set aside, and an opportunity ~~shall~~**must** be given to the attorney  
9 general and to the prosecuting attorney to contest the application.  
10 If a conviction was for an assaultive crime or a serious  
11 misdemeanor, the prosecuting attorney shall notify the victim of  
12 the assaultive crime or serious misdemeanor of the application  
13 under section 22a or 77a of the William Van Regenmorter crime  
14 victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The  
15 notice ~~shall~~**must** be by first-class mail to the victim's last known  
16 address. The victim has the right to appear at any proceeding under  
17 this act concerning that conviction and to make a written or oral  
18 statement.

19 **(13)** ~~(12)~~ For an application under subsection (1), upon the  
20 hearing of the application the court may require the filing of  
21 affidavits and the taking of proofs as it considers proper.

22 **(14)** ~~(13)~~ For an application under subsection (4), if the  
23 applicant proves to the court by a preponderance of the evidence  
24 that the conviction was a direct result of his or her being a  
25 victim of human trafficking, the court may, subject to the  
26 requirements of subsection ~~(14)~~, **(15)**, enter an order setting aside  
27 the conviction.

28 **(15)** ~~(14)~~ If the court determines that the circumstances and  
29 behavior of an applicant under subsection (1) or (4), from the date



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

6 (16) ~~(15)~~—The setting aside of a conviction or convictions  
7 under this act is a privilege and conditional and is not a right.

8 (17) ~~(16)~~—As used in this section:

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

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 LXVIIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to  
25 750.462h, **or of former sections 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.

