

HOUSE BILL NO. 5029

September 25, 2019, Introduced by Reps. Yancey, Tyrone Carter, Garrett, Brixie, Cynthia Johnson, Pagan, Byrd, Hertel, Ellison, Peterson, Cambensy, Hope, Bolden, Lasinski, Sneller, LaGrand, Stone, Hood, Rabhi 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 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



(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 traffic offense, including, but not limited to, a
27 conviction for operating while intoxicated.

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



1 (f) A violation of former section 462i or 462j or chapter
2 LXVIIIA or chapter LXXXIII-A of the Michigan penal code, ~~1938 PA~~
3 ~~321, 1931 PA 328~~, MCL 750.462a to 750.462h and 750.543a to
4 750.543z.

5 (4) A person who is convicted of a violation of section 448,
6 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448,
7 750.449, and 750.450, or a local ordinance substantially
8 corresponding to section 448, 449, or 450 of the Michigan penal
9 code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to
10 have that conviction set aside if he or she committed the offense
11 as a direct result of his or her being a victim of a human
12 trafficking violation.

13 (5) An application under subsection (1) shall only be filed 5
14 or more years after whichever of the following events occurs last:

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

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

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

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

23 (6) If a petition under this act is denied by the convicting
24 court, a person shall not file another petition concerning the same
25 conviction or convictions with the convicting court until 3 years
26 after the date the convicting court denies the previous petition,
27 unless the court specifies an earlier date for filing another
28 petition in the order denying the petition.

29 (7) An application under subsection (4) may be filed at any



1 time following the date of the conviction to be set aside. A person
2 may apply to have more than 1 conviction set aside under subsection
3 (4).

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

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

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

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

15 (d) A statement listing all actions enumerated in subsection
16 (2) that were initiated against the applicant and have been
17 dismissed.

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

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

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

29 (h) A consent to the use of the nonpublic record created under

1 section 3 to the extent authorized by section 3.

2 (9) The applicant shall submit a copy of the application and 1
3 complete set of fingerprints to the department of state police. The
4 department of state police shall compare those fingerprints with
5 the records of the department, including the nonpublic record
6 created under section 3, and shall forward an electronic copy of a
7 complete set of fingerprints to the Federal Bureau of Investigation
8 for a comparison with the records available to that agency. The
9 department of state police shall report to the court in which the
10 application is filed the information contained in the department's
11 records with respect to any pending charges against the applicant,
12 any record of conviction of the applicant, and the setting aside of
13 any conviction of the applicant and shall report to the court any
14 similar information obtained from the Federal Bureau of
15 Investigation. The court shall not act upon the application until
16 the department of state police reports the information required by
17 this subsection to the court.

18 (10) The copy of the application submitted to the department
19 of state police under subsection (9) ~~shall~~**must** be accompanied by a
20 fee of \$50.00 payable to the state of Michigan that ~~shall~~**must** be
21 used by the department of state police to defray the expenses
22 incurred in processing the application.

23 (11) A copy of the application ~~shall~~**must** be served upon the
24 attorney general and upon the office of each prosecuting attorney
25 who prosecuted the crime or crimes the applicant seeks to set
26 aside, and an opportunity ~~shall~~**must** be given to the attorney
27 general and to the prosecuting attorney to contest the application.
28 If a conviction was for an assaultive crime or a serious
29 misdemeanor, the prosecuting attorney shall notify the victim of



1 the assaultive crime or serious misdemeanor of the application
2 under section 22a or 77a of the William Van Regenmorter crime
3 victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The
4 notice ~~shall~~**must** be by first-class mail to the victim's last known
5 address. The victim has the right to appear at any proceeding under
6 this act concerning that conviction and to make a written or oral
7 statement.

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

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

16 (14) If the court determines that the circumstances and
17 behavior of an applicant under subsection (1) or (4), from the date
18 of the applicant's conviction or convictions to the filing of the
19 application warrant setting aside the conviction or convictions,
20 and that setting aside the conviction or convictions is consistent
21 with the public welfare, the court may enter an order setting aside
22 the conviction or convictions.

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

25 **(16) Beginning on January 1, 2020, a person with a conviction**
26 **for a felony or misdemeanor offense that is no longer a criminal**
27 **violation of the law of this state or political subdivision of this**
28 **state because of either of the following may apply to have that**
29 **conviction set aside under this subsection:**



1 (a) An amendment to or repeal of a law of this state or
2 political subdivision of this state.

3 (b) A ruling from the supreme court of this state or the
4 United States Supreme Court that the law is unenforceable.

5 (17) The court shall set aside a conviction under subsection
6 (16) if the court determines that the conviction was based on a law
7 that is no longer a criminal violation or enforceable as provided
8 under subsection (16) and, except as provided under this
9 subsection, that the conviction is otherwise eligible to set aside
10 under this section. The limitation on the number of convictions
11 that may be set aside under this section provided for in subsection
12 (1) does not apply to an application under subsection (16).

13 (18) ~~(16)~~—As used in this section:

14 (a) "Assaultive crime" means that term as defined in section
15 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
16 770.9a.

17 (b) "Domestic violence" means that term as defined in section
18 1 of 1978 PA 389, MCL 400.1501.

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

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

24 (ii) For purposes of identifying a prior offense, felony means
25 a violation of a penal law of this state, of another state, or of
26 the United States that is punishable by imprisonment for more than
27 1 year or is designated by law to be a felony.

28 (d) "Human trafficking violation" means a violation of chapter
29 LXVIIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to

1 750.462h, or of former sections 462i or 462j of that act.

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

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

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

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

11 (iii) A local ordinance of a political subdivision of this state
12 substantially corresponding to a crime listed in subparagraph (i) or

13 (ii) that is not a felony.

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

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

20 (g) "Operating while intoxicated" means a violation of any of
21 the following:

22 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA
23 300, MCL 257.625 and 257.625m.

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

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

28 (iv) A law of another state substantially corresponding to a



1 violation listed in subparagraph (i).

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

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

7 (i) "Victim" means that term as defined in sections 2, 31, and
8 61 of the William Van Regenmorter crime victim's rights act, 1985
9 PA 87, MCL 780.752, 780.781, and 780.811.

