

**SUBSTITUTE FOR
HOUSE BILL NO. 4220**

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 1c (MCL 780.621c), as added by 2020 PA 187.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1c. (1) A person shall not apply to have set aside, and a
2 judge shall not set aside, a conviction for any of the following:

3 (a) A felony for which the maximum punishment is life
4 imprisonment or an attempt to commit a felony for which the maximum
5 punishment is life imprisonment.

6 (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) ~~A~~**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) ~~(3)~~—An order setting aside a conviction for a traffic
20 offense under this act must not require that the conviction be
21 removed or expunged from the applicant's driving record maintained
22 by the secretary of state as required under the Michigan vehicle
23 code, 1949 PA 300, MCL 257.1 to 257.923.

24 Enacting section 1. This amendatory act takes effect April 11,
25 2021.

26 Enacting section 2. This amendatory act does not take effect
27 unless House Bill No. 4219 of the 101st Legislature is enacted into
28 law.