

HOUSE BILL NO. 5836

June 25, 2024, Introduced by Reps. Breen, Brenda Carter, Hope, Rheingans, Bezotte, Wozniak, Koleszar, Weiss, Glanville, Hill, Conlin, Mentzer, Xiong, Steckloff, Pohutsky, Fitzgerald, Byrnes, Rogers, McFall, Witwer and Coffia 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 2023 PA 205.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. (1) Except as otherwise provided in this act, a person
2 who is convicted of 1 or more criminal offenses may file an

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

3 (a) Except as provided in subdivisions (b) and (c), a person
4 convicted of 1 or more criminal offenses, but not more than a total
5 of 3 felony offenses, in this state, may apply to have all of the
6 applicant's convictions from this state set aside.

7 (b) An applicant may not have more than a total of 2
8 convictions for an assaultive crime set aside under this act during
9 the applicant's lifetime.

10 (c) An applicant may not have more than 1 felony conviction
11 for the same offense set aside under this section if the offense is
12 punishable by more than 10 years imprisonment.

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

21 (i) The maximum permissible term of imprisonment does not
22 exceed 90 days.

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

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

26 (2) A conviction that was deferred and dismissed under any of
27 the following, whether a misdemeanor or a felony, is considered a
28 misdemeanor conviction under subsection (1) for purposes of
29 determining whether a person is eligible to have any conviction set

1 aside under this act:

2 (a) Section 703 of the Michigan liquor control code of 1998,
3 1998 PA 58, MCL 436.1703.

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

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

8 (d) Section 7411 of the public health code, 1978 PA 368, MCL
9 333.7411.

10 (e) Section 350a or 430 of the Michigan penal code, 1931 PA
11 328, MCL 750.350a and 750.430.

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

16 (3) **A-Notwithstanding any other provision of this act and**
17 **except as to a conviction for an offense prohibited from being set**
18 **aside under section 1c, a person who is convicted of a violation of**
19 ~~section 448, 449, or 450 of the Michigan penal code, 1931 PA 328,~~
20 ~~MCL 750.448, 750.449, and 750.450, or a local ordinance~~
21 ~~substantially corresponding to section 448, 449, or 450 of the~~
22 ~~Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and~~
23 ~~750.450, any crime~~ **may apply to have that conviction set aside if**
24 **the person committed the offense as a direct result of the person**
25 **being a victim of a human trafficking violation. The limitations**
26 **provided for under subsection (1) apply to an application under**
27 **this subsection.**

28 (4) As used in this act:

29 (a) "Assaultive crime" includes any of the following:

1 (i) A violation described in section 9a of chapter X of the
2 code of criminal procedure, 1927 PA 175, MCL 770.9a.

3 (ii) A violation of chapter XI of the Michigan penal code, 1931
4 PA 328, MCL 750.81 to 750.90g, not otherwise included in
5 subparagraph (i) .

6 (iii) A violation of section 110a, 136b, 234a, 234b, 234c, 349b,
7 or 411h(2)(a) of the Michigan penal code, 1931 PA 328, MCL
8 750.110a, 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, or
9 750.411h, or any other violent felony.

10 (iv) A violation of a law of another state or of a political
11 subdivision of this state or of another state that substantially
12 corresponds to a violation described in subparagraph (i), (ii), or
13 (iii) .

14 (b) "Domestic violence" means that term as defined in section
15 1 of 1978 PA 389, MCL 400.1501.

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

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

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

25 (d) "First violation operating while intoxicated offense"
26 means a violation of any of the following committed by an
27 individual who at the time of the violation has no prior
28 convictions for violating section 625 of the Michigan vehicle code,
29 1949 PA 300, MCL 257.625:

(i) Section 625(1), (2), (3), (6), or (8) of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

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

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

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

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

(e) "Human trafficking violation" means a violation of chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h, or of former section 462i or 462j of that act.

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

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

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

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

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

(ii) that is not a felony.

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

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

4 (h) "Operating while intoxicated" means a violation of any of
5 the following that is not a first violation operating while
6 intoxicated offense:

7 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA
8 300, MCL 257.625 and 257.625m.

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

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

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

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

17 (i) "Serious misdemeanor" means that term as defined in
18 section 61 of the William Van Regenmorter crime victim's rights
19 act, 1985 PA 87, MCL 780.811.

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

23 (k) "Violent felony" means that term as defined in section 36
24 of the corrections code of 1953, 1953 PA 232, MCL 791.236.

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