

**SUBSTITUTE FOR
SENATE BILL NO. 970**

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 sections 1b, 1c, 1d, 2, and 3 (MCL 780.621b, 780.621c,
780.621d, 780.622, and 780.623), section 1b as added by 2020 PA
188, section 1c as amended by 2021 PA 79, section 1d as amended by
2021 PA 82, and sections 2 and 3 as amended by 2020 PA 193, and by
adding section 1j; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1b. (1) For purposes of a petition to set aside a
2 conviction under section 1 or 1e, more than 1 felony offense or

1 more than 1 misdemeanor offense must be treated as a single felony
2 or misdemeanor conviction if the felony or misdemeanor convictions
3 were contemporaneous such that all of the felony or misdemeanor
4 offenses occurred within 24 hours and arose from the same
5 transaction, provided that none of those felony or misdemeanor
6 offenses constitute any of the following:

7 (a) An assaultive crime.

8 (b) A crime involving the use or possession of a dangerous
9 weapon.

10 (c) A crime with a maximum penalty of 10 or more years'
11 imprisonment.

12 (d) A conviction for a crime that if it had been obtained in
13 this state would be for an assaultive crime.

14 **(2) For purposes of a petition to set aside a conviction under**
15 **section 1j, a felony offense and 1 or more misdemeanor offenses**
16 **must be treated as a single felony conviction if the felony and**
17 **misdemeanor convictions were contemporaneous such that all of the**
18 **offenses occurred within 24 hours and arose from the same**
19 **transaction.**

20 **(3) ~~(2)~~**As used in this section, "dangerous weapon" means that
21 term as defined in section 110a of the Michigan penal code, 1931 PA
22 328, MCL 750.110a.

23 Sec. 1c. (1) A **Except as otherwise provided in section 1j, a**
24 person shall not apply to have set aside, and a judge shall not set
25 aside, a conviction for any of the following:

26 (a) A felony for which the maximum punishment is life
27 imprisonment or an attempt to commit a felony for which the maximum
28 punishment is life imprisonment.

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

24 Sec. 1d. (1) An application under section 1 to set aside more
25 than 1 felony conviction shall only be filed 7 or more years after
26 whichever of the following events occurs last:

27 (a) Imposition of the sentence for the convictions that the
28 applicant seeks to set aside.

29 (b) Completion of any term of felony probation imposed for the

1 convictions that the applicant seeks to set aside.

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

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

6 (2) An application under section 1 to set aside 1 or more
7 serious misdemeanor convictions, 1 first violation operating while
8 intoxicated offense, or 1 felony conviction shall only be filed 5
9 or more years after whichever of the following events occurs last:

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

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

14 (c) Discharge from parole imposed for the conviction that the
15 applicant seeks to set aside, if applicable.

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

18 (3) An application under section 1 to set aside 1 or more
19 misdemeanor convictions, other than an application to set aside a
20 serious misdemeanor, a first violation operating while intoxicated
21 offense, or any other misdemeanor conviction for an assaultive
22 crime, shall only be filed 3 or more years after whichever of the
23 following events occurs last:

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

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

28 (c) Completion of probation imposed for the conviction or
29 convictions that the applicant seeks to set aside.

1 (4) For an application under section 1, a court shall not
2 enter an order setting aside a conviction or convictions unless all
3 of the following apply:

4 (a) The applicable time period required under subsection (1),
5 (2), or (3) has elapsed.

6 (b) There are no criminal charges pending against the
7 applicant.

8 (c) The applicant has not been convicted of any criminal
9 offense during the applicable time period required under subsection
10 (1), (2), or (3).

11 (5) ~~If~~**Except as provided in section 1j, if** a petition under
12 this act is denied by the convicting court, a person shall not file
13 another petition concerning the same conviction or convictions with
14 the convicting court until 3 years after the date the convicting
15 court denies the previous petition, unless the court specifies an
16 earlier date for filing another petition in the order denying the
17 petition.

18 (6) An application under section 1(3) may be filed at any time
19 following the date of the conviction to be set aside. A person may
20 apply to have more than 1 conviction set aside under section 1(3).

21 (7) An application under section 1 is invalid unless it
22 contains the following information and is signed under oath by the
23 person whose conviction is or convictions are to be set aside:

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

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

27 (c) For an application under section 1(1), a statement that
28 the applicant has not been convicted of an offense during the
29 applicable time period required under subsection (1), (2), or (3).

1 (d) A statement listing all actions enumerated in section 1(2)
2 that were initiated against the applicant and have been dismissed.

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

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

9 (g) If the person is seeking to have 1 or more convictions set
10 aside under section 1(3), a statement that he or she meets the
11 criteria set forth in section 1(3), together with a statement of
12 the facts supporting his or her contention that the conviction was
13 a direct result of his or her being a victim of human trafficking.

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

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

1 application until the department of state police reports the
2 information required by this subsection to the court.

3 (9) The copy of the application submitted to the department of
4 state police under subsection (8) must be accompanied by a fee of
5 \$50.00 payable to the state of Michigan that must be used by the
6 department of state police to defray the expenses incurred in
7 processing the application.

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

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

25 (12) For an application under section 1(3), if the applicant
26 proves to the court by a preponderance of the evidence that the
27 conviction was a direct result of his or her being a victim of
28 human trafficking, the court may, subject to the requirements of
29 subsection (13), enter an order setting aside the conviction.

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

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

10 **Sec. 1j. (1) For offenses otherwise ineligible for a set aside**
11 **under section 1c, an individual may file an application with the**
12 **convicting court to set aside a felony conviction, if all of the**
13 **following conditions apply:**

14 (a) The applicant committed the felony before the applicant's
15 eighteenth birthday.

16 (b) The applicant has been successfully discharged from the
17 department of corrections.

18 (c) Fifteen years have passed since the applicant's release
19 from incarceration.

20 (d) The applicant has not been convicted of a criminal charge
21 on or after the applicant's eighteenth birthday or had any other
22 conviction set aside under this act.

23 (e) The applicant does not have a pending criminal charge.

24 (f) The applicant has not tested positive for the illegal use
25 of a controlled substance since the felony conviction to be set
26 aside.

27 (g) The applicant can demonstrate a record and reputation that
28 shows the applicant is not likely to act in a manner that is a
29 danger to the safety of others.

1 (h) The felony conviction to be set aside is not a listed
2 offense as defined in section 2 of the sex offenders registration
3 act, 1994 PA 295, MCL 28.722.

4 (2) An individual applying for the setting aside of a
5 conviction or convictions under subsection (1) shall file an
6 application to the convicting court that includes all of the
7 following, if applicable:

8 (a) The applicant's signature, under oath, affirmatively
9 stating that the applicant qualifies under subsection (1).

10 (b) A certified record of each conviction that is requested to
11 be set aside.

12 (c) A complete set of fingerprints and copy of the application
13 sent to the department of state police, in accordance with section
14 1d(8).

15 (d) A resume or curriculum vitae.

16 (e) Reference letters.

17 (f) Academic credentials.

18 (g) An internet criminal history access tool report.

19 (h) A driving record from this state or another state.

20 (i) A personal letter of interest.

21 (j) Community involvement.

22 (k) Elected offices or appointments.

23 (l) Assumed name and business information.

24 (m) Ties to the community.

25 (n) Awards and recognitions.

26 (o) Media coverage.

27 (p) A \$150.00 fee to be paid to the Michigan set aside fund
28 created under section 1i.

29 (3) The court shall review the application and determine if

1 the application should be granted. If the application is granted,
2 the court shall enter an order setting aside the conviction or
3 convictions. If the application is denied by the convicting court,
4 the applicant may reapply under subsection (1) 1 year after the
5 date the convicting court denies the previous application, unless
6 the court specifies an earlier date.

7 (4) As used in this section, except for marihuana used in
8 compliance with the laws of this state, "controlled substance"
9 means that term as defined in section 7104 of the public health
10 code, 1978 PA 368, MCL 333.7104.

11 Sec. 2. (1) Upon the entry of an order **by the court** under
12 section 1, ~~or 1e~~, **or 1j**, or upon the automatic setting aside of a
13 conviction under section 1g, the applicant, for purposes of the
14 law, is considered not to have been previously convicted, except as
15 provided in this section and section 3.

16 (2) The applicant is not entitled to the remission of any
17 fine, costs, or other money paid as a consequence of a conviction
18 that is set aside.

19 (3) If the conviction set aside under section 1(1), 1e, or 1g
20 is for a listed offense as defined in section 2 of the sex
21 offenders registration act, 1994 PA 295, MCL 28.722, the applicant
22 is considered to have been convicted of that offense for purposes
23 of that act.

24 (4) This act does not affect the right of the applicant to
25 rely upon the conviction to bar subsequent proceedings for the same
26 offense.

27 (5) This act does not affect the right of a victim of a crime
28 to prosecute or defend a civil action for damages.

29 (6) This act does not create a right to commence an action for

1 damages for incarceration under the sentence that the applicant
2 served before the conviction is set aside under this act.

3 (7) This act does not relieve any obligation to pay
4 restitution owed to the victim of a crime nor does it affect the
5 jurisdiction of the convicting court or the authority of any court
6 order with regard to enforcing an order for restitution.

7 (8) A conviction, including any records relating to the
8 conviction and any records concerning a collateral action, that has
9 been set aside under this act cannot be used as evidence in an
10 action for negligent hiring, admission, or licensure against any
11 person.

12 (9) A conviction that is set aside under section 1, 1e, ~~or 1g~~,
13 **or 1j** may be considered a prior conviction by court, law
14 enforcement agency, prosecuting attorney, or the attorney general,
15 as applicable, for purposes of charging a crime as a second or
16 subsequent offense or for sentencing under sections 10, 11, and 12
17 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL
18 769.10, 769.11, and 769.12.

19 (10) As used in this section, "applicant" includes an
20 individual who has applied under this act to have his or her
21 conviction or convictions set aside and an individual whose
22 conviction or convictions have been set aside without an
23 application under section 1g.

24 Sec. 3. (1) Upon the entry of an order under section 1, ~~or 1e~~,
25 **or 1j**, the court shall send a copy of the order to the arresting
26 agency and the department of state police.

27 (2) The department of state police shall retain a nonpublic
28 record of the order setting aside a conviction, or other
29 notification regarding a conviction that was automatically set

1 aside under section 1g, and of the record of the arrest,
2 fingerprints, conviction, and sentence of the person in the case to
3 which the order or other notification applies. Except as provided
4 in subsection (3), this nonpublic record shall be made available
5 only to a court of competent jurisdiction, an agency of the
6 judicial branch of state government, the department of corrections,
7 a law enforcement agency, a prosecuting attorney, the attorney
8 general, or the governor upon request and only for the following
9 purposes:

10 (a) Consideration in a licensing function conducted by an
11 agency of the judicial branch of state government.

12 (b) To show that a person who has filed an application to set
13 aside a conviction has previously had a conviction set aside under
14 this act.

15 (c) The court's consideration in determining the sentence to
16 be imposed upon conviction for a subsequent offense that is
17 punishable as a felony or by imprisonment for more than 1 year.

18 (d) Consideration by the governor if a person whose conviction
19 has been set aside applies for a pardon for another offense.

20 (e) Consideration by the department of corrections or a law
21 enforcement agency if a person whose conviction has been set aside
22 applies for employment with the department of corrections or law
23 enforcement agency.

24 (f) Consideration by a court, law enforcement agency,
25 prosecuting attorney, or the attorney general in determining
26 whether an individual required to be registered under the sex
27 offenders registration act, 1994 PA 295, MCL 28.721 to ~~28.736,~~
28 **28.730**, has violated that act, or for use in a prosecution for
29 violating that act.

1 (g) Consideration by a court, law enforcement agency,
2 prosecuting attorney, or the attorney general for use in making
3 determinations regarding charging, plea offers, and sentencing, as
4 applicable.

5 (3) A copy of the nonpublic record created under subsection
6 (2) must be provided to the person whose conviction is set aside
7 under this act upon payment of a fee determined and charged by the
8 department of state police in the same manner as the fee prescribed
9 in section 4 of the freedom of information act, 1976 PA 442, MCL
10 15.234.

11 (4) The nonpublic record maintained under subsection (2) is
12 exempt from disclosure under the freedom of information act, 1976
13 PA 442, MCL 15.231 to 15.246.

14 (5) Except as provided in subsection (2), a person, other than
15 the person whose conviction was set aside or a victim, who knows or
16 should have known that a conviction was set aside under this
17 section and who divulges, uses, or publishes information concerning
18 a conviction set aside under this section is guilty of a
19 misdemeanor punishable by imprisonment for not more than 90 days or
20 a fine of not more than \$500.00, or both.

21 (6) An entity is not liable for damages or subject to criminal
22 penalties under this section for reporting a public record of
23 conviction that has been ~~set-aside~~**set aside** by court order or
24 operation of law, if that record was available as a public record
25 on the date of the report.

26 **(7)** ~~(6)~~As used in this section, "victim" means any individual
27 who suffers direct or threatened physical, financial, or emotional
28 harm as the result of the offense that was committed by the
29 applicant.

1 Enacting section 1. Section 4 of 1965 PA 213, MCL 780.624, is
2 repealed.