

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4980**

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 2, 3, and 4 (MCL 780.622, 780.623, and
780.624), sections 2 and 4 as amended by 2014 PA 335 and section 3
as amended by 2014 PA 463, and by adding sections 1g, 1h, and 1i.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 1g. (1) Beginning 2 years after the effective date of the**
2 **amendatory act that added this section, a misdemeanor conviction**
3 **for an offense for which the maximum punishment is imprisonment for**
4 **not more than 92 days is set aside under this section without the**



1 filing of an application under section 1 if 7 years have passed
2 from the imposition of the sentence. Each court shall notify the
3 arresting law enforcement agency of each conviction on or before
4 the tenth day of each month that is set aside under this subsection
5 for the preceding month. Each law enforcement agency need not
6 retain and shall make nonpublic the notification that the
7 conviction has been set aside, and the record of the arrest,
8 fingerprinting, conviction, and sentence of the person in the case
9 to which the notification applies.

10 (2) Beginning 2 years after the effective date of the
11 amendatory act that added this section and subject to subsections
12 (5), (6), (7), and (10), a felony conviction that is recorded and
13 maintained in the department of state police database is set aside
14 under this section without the filing of an application under
15 section 1 if both of the following apply:

16 (a) Ten years have passed from whichever of the following
17 events occurs last:

18 (i) Imposition of the sentence for the conviction.

19 (ii) Completion of any term of imprisonment with the department
20 of corrections for the conviction.

21 (b) The conviction or convictions are otherwise eligible to be
22 set aside under section 1.

23 (3) Beginning 2 years after the effective date of the
24 amendatory act that added this section and subject to subsection
25 (10), a conviction for a misdemeanor offense for which the maximum
26 punishment is imprisonment for not more than 92 days that is
27 recorded and maintained in the department of state police database
28 is set aside under this section without the filing of an
29 application under section 1 if 7 years have passed from the



1 imposition of the sentence.

2 (4) Beginning 2 years after the effective date of the
3 amendatory act that added this section and subject to subsections
4 (5), (6), (7), and (10), a conviction for a misdemeanor offense for
5 which the maximum punishment is imprisonment for 93 days or more
6 that is recorded and maintained in the department of state police
7 database is set aside under this section without the filing of an
8 application under section 1 if 7 years have passed from the
9 imposition of the sentence.

10 (5) Except as otherwise provided in this subsection, not more
11 than 2 felony convictions and 4 misdemeanor convictions total that
12 are recorded and maintained in the department of state police
13 database may be set aside under this section during the lifetime of
14 an individual. The limit on the number of misdemeanor convictions
15 that may be set aside under this subsection does not apply to the
16 setting aside of convictions described under subsection (1) or (3).

17 (6) A conviction is not set aside under subsection (2) or (4)
18 unless all of the following apply:

19 (a) The applicable time period required under subsection (2)
20 or (4) has elapsed.

21 (b) There are no criminal charges pending in the department of
22 state police database against the applicant.

23 (c) The applicant has not been convicted of any criminal
24 offense that is recorded and maintained in the department of state
25 police database during the applicable time period required under
26 subsection (2) or (4).

27 (7) Subsections (2) and (4) do not apply to an individual who
28 has more than 1 conviction for an assaultive crime or an attempt to
29 commit an assaultive crime that is recorded and maintained in the



1 department of state police database.

2 (8) If the governor determines that the process for setting
3 aside a conviction without an application under this section cannot
4 be implemented by the date required under subsections (1), (2),
5 (3), and (4) because of technological limitations, the governor may
6 issue a directive delaying the implementation of this section for
7 not more than 180 days. The attorney general, the state court
8 administrator, or the director of the department of state police
9 may recommend a delay of implementation to the governor under this
10 subsection.

11 (9) An individual whose conviction is set aside under this
12 section impliedly consents to the creation of the nonpublic record
13 under section 3.

14 (10) Subsections (2) and (4) do not apply to a conviction
15 recorded and maintained in the department of state police database
16 for the commission of or attempted commission of any of the
17 following:

18 (a) An assaultive crime.

19 (b) A serious misdemeanor.

20 (c) A crime of dishonesty.

21 (d) Any other offense, not otherwise listed under this
22 subsection, that is punishable by 10 or more years' imprisonment.

23 (e) A violation of the laws of this state listed under chapter
24 XVII of the code of criminal procedure, 1927 PA 175, MCL 777.1 to
25 777.69, the elements of which involve a minor, vulnerable adult,
26 injury or serious impairment, or death.

27 (f) Any violation related to human trafficking.

28 (11) The department of technology, management, and budget
29 shall develop and maintain a computer-based program for the setting



1 aside of convictions under this section. In fulfilling its duty
2 under this subsection, the department of technology, management,
3 and budget may contract with a private technical consultant as
4 needed.

5 (12) The setting aside of a conviction without an application
6 under this section is subject to reinstatement under section 1h.

7 (13) As used in this section, "crime of dishonesty" includes a
8 felony violation of chapters XXVA and XLI, felony violations of
9 sections 174, 174a, 175, 176, 180, and 181 of the Michigan penal
10 code, 1931 PA 328, MCL 750.159f to 750.159x, 750.248 to 750.265a,
11 750.174, 750.174a, 750.175, 750.176, 750.180, and 750.181, and a
12 violation of 1979 PA 53, MCL 752.791 to 752.797.

13 Sec. 1h. (1) Upon the occurrence of 1 of the circumstances
14 under subsection (2) or (3), a conviction that was set aside by
15 operation of law under section 1g shall be reinstated by the court
16 as provided in this section.

17 (2) If it is determined that a conviction was improperly or
18 erroneously set aside under section 1g because the conviction was
19 not eligible to be set aside under section 1g or any other
20 provision of this act, the court shall, on its own motion,
21 reinstate the conviction.

22 (3) Upon a motion by a person owed restitution, or on its own
23 motion, the court shall reinstate a conviction that was set aside
24 under section 1g for which the individual whose conviction was set
25 aside was ordered to pay restitution if the court determines that
26 the individual has not made a good-faith effort to pay the ordered
27 restitution.

28 Sec. 1i. (1) The Michigan set aside fund is created within the
29 state treasury.



1 (2) The state treasurer may receive money or other assets from
2 any source for deposit into the fund. The state treasurer shall
3 direct the investment of the fund. The state treasurer shall credit
4 to the fund interest and earnings from fund investments.

5 (3) Money in the fund at the close of the fiscal year shall
6 remain in the fund and shall not lapse to the general fund.

7 (4) The state treasurer shall be the administrator of the fund
8 for auditing purposes.

9 (5) The department of state police and the department of
10 technology, management, and budget shall expend money from the
11 fund, upon appropriation, only for 1 or more of the following
12 purposes:

13 (a) Implementation costs associated with changes made to this
14 act by the amendatory act that added this section.

15 (b) System upgrades necessitated by the changes made to this
16 act by the amendatory act that added this section.

17 (c) Staffing needs necessitated by the changes made to this
18 act by the amendatory act that added this section.

19 Sec. 2. (1) Upon the entry of an order under section 1 **or 1e**,
20 **or upon the automatic setting aside of a conviction under section**
21 **1g**, the applicant, for purposes of the law, ~~shall be~~ **is** considered
22 not to have been previously convicted, except as provided in this
23 section and section 3.

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

27 (3) If the conviction set aside under section 1(1), **1e**, **or 1g**
28 is for a listed offense as defined in section 2 of the sex
29 offenders registration act, 1994 PA 295, MCL 28.722, the applicant



1 is considered to have been convicted of that offense for purposes
2 of that act.

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

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

8 (6) This act does not create a right to commence an action for
9 damages for incarceration under the sentence that the applicant
10 served before the conviction is set aside under this act.

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

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

20 (9) A conviction that is set aside under section 1, 1e, or 1g
21 may be considered a prior conviction by court, law enforcement
22 agency, prosecuting attorney, or the attorney general, as
23 applicable, for purposes of charging a crime as a second or
24 subsequent offense or for sentencing under sections 10, 11, and 12
25 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL
26 769.10, 769.11, and 769.12.

27 (10) As used in this section, "applicant" includes an
28 individual who has applied under this act to have his or her
29 conviction or convictions set aside and an individual whose



1 **conviction or convictions have been set aside without an**
 2 **application under section 1g.**

3 Sec. 3. (1) Upon the entry of an order under section 1 ~~or~~
 4 **le**, the court shall send a copy of the order to the arresting
 5 agency and the department of state police.

6 (2) The department of state police shall retain a nonpublic
 7 record of the order setting aside a conviction, **or other**
 8 **notification regarding a conviction that was automatically set**
 9 **aside under section 1g**, and of the record of the arrest,
 10 fingerprints, conviction, and sentence of the ~~applicant~~**person** in
 11 the case to which the order **or other notification** applies. Except
 12 as provided in subsection (3), this nonpublic record shall be made
 13 available only to a court of competent jurisdiction, an agency of
 14 the judicial branch of state government, the department of
 15 corrections, a law enforcement agency, a prosecuting attorney, the
 16 attorney general, or the governor upon request and only for the
 17 following purposes:

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

20 (b) To show that a person who has filed an application to set
 21 aside a conviction has previously had a conviction set aside under
 22 this act.

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

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

28 (e) Consideration by the department of corrections or a law
 29 enforcement agency if a person whose conviction has been set aside



1 applies for employment with the department of corrections or law
2 enforcement agency.

3 (f) Consideration by a court, law enforcement agency,
4 prosecuting attorney, or the attorney general in determining
5 whether an individual required to be registered under the sex
6 offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, has
7 violated that act, or for use in a prosecution for violating that
8 act.

9 (g) **Consideration by a court, law enforcement agency,
10 prosecuting attorney, or the attorney general for use in making
11 determinations regarding charging, plea offers, and sentencing, as
12 applicable.**

13 (3) A copy of the nonpublic record created under subsection
14 (2) ~~shall~~**must** be provided to the person whose conviction is set
15 aside under this act upon payment of a fee determined and charged
16 by the department of state police in the same manner as the fee
17 prescribed in section 4 of the freedom of information act, 1976 PA
18 442, MCL 15.234.

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

22 (5) Except as provided in subsection (2), a person, other than
23 the ~~applicant~~**person whose conviction was set aside** or a victim,
24 who knows or should have known that a conviction was set aside
25 under this section and who divulges, uses, or publishes information
26 concerning a conviction set aside under this section is guilty of a
27 misdemeanor punishable by imprisonment for not more than 90 days or
28 a fine of not more than \$500.00, or both.

29 (6) As used in this section, "victim" means any individual who



1 suffers direct or threatened physical, financial, or emotional harm
2 as the result of the offense that was committed by the applicant.

3 Sec. 4. Except as provided in ~~section~~**sections 1, 1e, and 1g,**
4 a person may have only 1 conviction set aside under this act.

5 Enacting section 1. This amendatory act takes effect 180 days
6 after the date it is enacted into law.

7 Enacting section 2. This amendatory act does not take effect
8 unless all of the following bills of the 100th Legislature are
9 enacted into law:

- 10 (a) House Bill No. 4981.
- 11 (b) House Bill No. 4982.
- 12 (c) House Bill No. 4983.
- 13 (d) House Bill No. 4984.
- 14 (e) House Bill No. 4985.
- 15 (f) House Bill No. 5120.

