

Act No. 335
Public Acts of 2014
Approved by the Governor
October 15, 2014
Filed with the Secretary of State
October 16, 2014
EFFECTIVE DATE: January 14, 2015

**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Reps. Heise, Kowall, Zorn, Jenkins, Cavanagh, Tlaib, Crawford and Goike

ENROLLED HOUSE BILL No. 5025

AN ACT 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 1, 2, and 4 (MCL 780.621, 780.622, and 780.624), section 1 as amended by 2011 PA 64, section 2 as amended by 1994 PA 294, and section 4 as added by 1982 PA 495.

The People of the State of Michigan enact:

Sec. 1. (1) Except as provided in subsections (2) and (3), a person who is convicted of not more than 1 offense may file an application with the convicting court for the entry of an order setting aside the conviction. A person who is otherwise eligible to file an application under this section is not rendered ineligible by virtue of being convicted of not more than 2 minor offenses in addition to the offense for which the person files an application.

(2) Except as provided in subsections (3) and (5), a person shall not apply to have set aside, and a judge shall not set aside, a conviction for a felony for which the maximum punishment is life imprisonment or an attempt to commit a felony for which the maximum punishment is life imprisonment, a conviction for a violation or attempted violation of section 145c, 145d, 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145c, 750.145d, 750.520c, 750.520d, and 750.520g, or a conviction for a traffic offense.

(3) A person who is convicted of a violation of section 448, 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to have that conviction set aside if he or she committed the offense as a direct result of his or her being a victim of a human trafficking violation.

(4) An application under subsection (1) shall not be filed until at least 5 years following imposition of the sentence for the conviction that the applicant seeks to set aside or 5 years following completion of any term of imprisonment for that conviction, whichever occurs later.

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

(6) The application is invalid unless it contains the following information and is signed under oath by the person whose conviction is to be set aside:

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

(b) A certified record of the conviction that is to be set aside.

(c) For an application under subsection (1), a statement that the applicant has not been convicted of an offense other than the conviction sought to be set aside as a result of this application, and not more than 2 minor offenses, if applicable.

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

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

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

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

(7) The applicant shall submit a copy of the application and 2 complete sets of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under section 3, and shall forward a complete set of fingerprints to the federal bureau of investigation for a comparison with the records available to that agency. The department of state police shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of conviction of the applicant, and the setting aside of any conviction of the applicant and shall report to the court any similar information obtained from the federal bureau of investigation. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(8) The copy of the application submitted to the department of state police under subsection (7) shall be accompanied by a fee of \$50.00 payable to the state of Michigan which shall be used by the department of state police to defray the expenses incurred in processing the application.

(9) A copy of the application shall be served upon the attorney general and upon the office of the prosecuting attorney who prosecuted the crime, and an opportunity shall be given to the attorney general and to the prosecuting attorney to contest the application. If the conviction was for an assaultive crime or a serious misdemeanor, the prosecuting attorney shall notify the victim of the assaultive crime or serious misdemeanor of the application under section 22a or 77a of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The notice shall be by first-class mail to the victim's last known address. The victim has the right to appear at any proceeding under this act concerning that conviction and to make a written or oral statement.

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

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

(12) If the court determines that the circumstances and behavior of an applicant under subsection (1) or (3), from the date of the applicant's conviction to the filing of the application warrant setting aside the conviction, and that setting aside the conviction is consistent with the public welfare, the court may enter an order setting aside the conviction.

(13) The setting aside of a conviction under this act is a privilege and conditional and is not a right.

(14) As used in this section:

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

(b) "Human trafficking violation" means a violation of chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h.

(c) "Minor offense" means a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 90 days, for which the maximum permissible fine does not exceed \$1,000.00, and that is committed by a person who is not more than 21 years of age.

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

(e) "Victim" means that term as defined in section 2 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.752.

Sec. 2. (1) Upon the entry of an order under section 1, the applicant, for purposes of the law, shall be considered not to have been previously convicted, except as provided in this section and section 3.

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

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

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

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

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

Sec. 4. Except as provided in section 1, a person may have only 1 conviction set aside under this act.

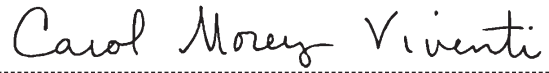
Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5234 of the 97th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor