

HOUSE BILL NO. 5634

March 12, 2020, Introduced by Reps. Whiteford, Rendon, Glenn, Afendoulis, Kahle, Calley, Bollin, Bellino, Filler, Leutheuser, Allor, Farrington, Yaroch, Hammoud, Whitsett, Crawford, Alexander and Cambensy 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 sections 1 and 1a (MCL 780.621 and 780.621a), section 1 as amended by 2016 PA 336 and section 1a as added by 1982 PA 495.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) Except as provided in this section, a person who



1 is convicted of ~~not more than 1 offense~~ **or more criminal offenses**
2 may file an application with the convicting court for the entry of
3 an order setting aside 1 or more convictions as follows:

4 (a) A person who is convicted of not more than 1 felony
5 offense and not more than 2 misdemeanor offenses may petition the
6 convicting court to set aside the felony offense.

7 (b) Except as provided in subdivision (c), a person who is
8 convicted of not more than 2 misdemeanor offenses and no other
9 felony or misdemeanor offenses may petition the convicting court or
10 the convicting courts to set aside 1 or both of the misdemeanor
11 convictions.

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

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

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

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

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



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

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

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

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

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

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

15 (3) ~~A~~**Except as provided in subsection (4),** a person shall not
16 apply to have set aside, and a judge shall not set aside, a
17 conviction for any of the following:

18 (a) A felony for which the maximum punishment is life
19 imprisonment or an attempt to commit a felony for which the maximum
20 punishment is life imprisonment.

21 (b) A violation or attempted violation of section 136b(3),
22 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan
23 penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c,
24 750.145d, 750.520c, 750.520d, and 750.520g.

25 (c) A violation or attempted violation of section 520e of the
26 Michigan penal code, 1931 PA 328, MCL 750.520e, if the conviction
27 occurred on or after January 12, 2015.

28 (d) A traffic offense, including, but not limited to, a
29 conviction for operating while intoxicated.



1 (e) A felony conviction for domestic violence, if the person
2 has a previous misdemeanor conviction for domestic violence.

3 (f) A violation of former section 462i or 462j or chapter
4 LXVIIIA or chapter LXXXIII-A of the Michigan penal code, ~~1938 PA~~
5 ~~321, 1931 PA 328~~, MCL 750.462a to 750.462h and 750.543a to
6 750.543z.

7 (4) ~~A Notwithstanding any other provision of this section and~~
8 ~~except as to a conviction for an assaultive crime or a traffic~~
9 ~~offense, a person who is convicted of a violation of section 448,~~
10 ~~449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448,~~
11 ~~750.449, and 750.450, or a local ordinance substantially~~
12 ~~corresponding to section 448, 449, or 450 of the Michigan penal~~
13 ~~code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, any crime,~~
14 may apply to have that conviction set aside if he or she committed
15 the offense as a direct result of his or her being a victim of a
16 human trafficking violation.

17 (5) An application under subsection (1) ~~shall~~ **must** only be
18 filed 5 or more years after whichever of the following events
19 occurs last:

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

22 (b) Completion of probation imposed for the conviction that
23 the applicant seeks to set aside.

24 (c) Discharge from parole imposed for the conviction that the
25 applicant seeks to set aside.

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

28 (6) If a petition under this act is denied by the convicting
29 court, a person shall not file another petition concerning the same



1 conviction or convictions with the convicting court until 3 years
2 after the date the convicting court denies the previous petition,
3 unless the court specifies an earlier date for filing another
4 petition in the order denying the petition.

5 (7) An application under subsection (4) may be filed at any
6 time following the date of the conviction to be set aside. A person
7 may apply to have more than 1 conviction set aside under subsection
8 (4).

9 (8) An application under this section is invalid unless it
10 contains the following information and is signed under oath by the
11 person whose conviction is or convictions are to be set aside:

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

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

15 (c) For an application under subsection (1), a statement that
16 the applicant has not been convicted of an offense other than the
17 conviction or convictions sought to be set aside as a result of
18 this application and any nondisqualifying misdemeanor convictions
19 described in subsection (1)(a).

20 (d) A statement listing all actions enumerated in subsection
21 (2) that were initiated against the applicant and have been
22 dismissed.

23 (e) A statement as to whether the applicant has previously
24 filed an application to set aside this or ~~other~~**another** conviction
25 and, if so, the disposition of the application.

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

29 (g) If the person is seeking to have 1 or more convictions set



1 aside under subsection (4), a statement that he or she meets the
2 criteria set forth in subsection (4), together with a statement of
3 the facts supporting his or her contention that the conviction was
4 a direct result of his or her being a victim of human trafficking.

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

7 (9) The applicant shall submit a copy of the application and 1
8 complete set of fingerprints to the department of state police. The
9 department of state police shall compare those fingerprints with
10 the records of the department, including the nonpublic record
11 created under section 3, and shall forward an electronic copy of a
12 complete set of fingerprints to the Federal Bureau of Investigation
13 for a comparison with the records available to that agency. The
14 department of state police shall report to the court in which the
15 application is filed the information contained in the department's
16 records with respect to any pending charges against the applicant,
17 any record of conviction of the applicant, and the setting aside of
18 any conviction of the applicant and shall report to the court any
19 similar information obtained from the Federal Bureau of
20 Investigation. The court shall not act upon the application until
21 the department of state police reports the information required by
22 this subsection to the court.

23 (10) The copy of the application submitted to the department
24 of state police under subsection (9) ~~shall~~**must** be accompanied by a
25 fee of \$50.00 payable to the state of Michigan that ~~shall~~**must** be
26 used by the department of state police to defray the expenses
27 incurred in processing the application.

28 (11) A copy of the application ~~shall~~**must** be served upon the
29 attorney general and upon the office of each prosecuting attorney



1 who prosecuted the crime or crimes the applicant seeks to set
2 aside, and an opportunity ~~shall~~**must** be given to the attorney
3 general and to the prosecuting attorney to contest the application.
4 If a conviction was for an assaultive crime or a serious
5 misdemeanor, the prosecuting attorney shall notify the victim of
6 the assaultive crime or serious misdemeanor of the application
7 under section 22a or 77a of the William Van Regenmorter crime
8 victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The
9 notice ~~shall~~**must** be by first-class mail to the victim's last known
10 address. The victim has the right to appear at any proceeding under
11 this act concerning that conviction and to make a written or oral
12 statement.

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

16 (13) For an application under subsection (4), if the applicant
17 proves to the court by a preponderance of the evidence that the
18 conviction was a direct result of his or her being a victim of
19 human trafficking, the court may, subject to the requirements of
20 subsection (14), enter an order setting aside the conviction.

21 (14) If the court determines that the circumstances and
22 behavior of an applicant under subsection (1) or (4), from the date
23 of the applicant's conviction or convictions to the filing of the
24 application warrant setting aside the conviction or convictions,
25 and that setting aside the conviction or convictions is consistent
26 with the public welfare, the court may enter an order setting aside
27 the conviction or convictions.

28 (15) The setting aside of a conviction or convictions under
29 this act is a privilege and conditional and is not a right.



1 ~~(16) As used in this section:~~

2 ~~(a) "Assaultive crime" means that term as defined in section~~
3 ~~9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL~~
4 ~~770.9a.~~

5 ~~(b) "Domestic violence" means that term as defined in section~~
6 ~~1 of 1978 PA 389, MCL 400.1501.~~

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

8 ~~(i) For purposes of the offense to be set aside, felony means a~~
9 ~~violation of a penal law of this state that is punishable by~~
10 ~~imprisonment for more than 1 year or that is designated by law to~~
11 ~~be a felony.~~

12 ~~(ii) For purposes of identifying a prior offense, felony means~~
13 ~~a violation of a penal law of this state, of another state, or of~~
14 ~~the United States that is punishable by imprisonment for more than~~
15 ~~1 year or is designated by law to be a felony.~~

16 ~~(d) "Human trafficking violation" means a violation of chapter~~
17 ~~LXVIIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to~~
18 ~~750.462h.~~

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

22 ~~(f) "Misdemeanor" means a violation of any of the following:~~

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

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

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



1 ~~(ii) that is not a felony.~~

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

5 ~~(v) A violation of the law of the United States substantially~~
6 ~~corresponding to a crime listed under subparagraph (i) or (ii) that~~
7 ~~is not a felony.~~

8 ~~(g) "Operating while intoxicated" means a violation of any of~~
9 ~~the following:~~

10 ~~(i) Section 625 or 625m of the Michigan vehicle code, 1949 PA~~
11 ~~300, MCL 257.625 and 257.625m.~~

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

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

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

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

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

23 ~~(i) "Victim" means that term as defined in sections 2, 31, and~~
24 ~~61 of the William Van Regenmorter crime victim's rights act, 1985~~
25 ~~PA 87, MCL 780.752, 780.781, and 780.811.~~

26 Sec. 1a. As used in this act:

27 **(a) "Assaultive crime" means that term as defined in section**
28 **9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL**



1 770.9a.

2 (b) ~~(a)~~—"Conviction" means a judgment entered by a court upon
3 a plea of guilty, guilty but mentally ill, or nolo contendere, or
4 upon a jury verdict or court finding that a defendant is guilty or
5 guilty but mentally ill.

6 (c) "Domestic violence" means that term as defined in section
7 1 of 1978 PA 389, MCL 400.1501.

8 (d) "Felony" means either of the following, as applicable:

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

13 (ii) For purposes of identifying a prior offense, felony means
14 a violation of a penal law of this state, of another state, or of
15 the United States that is punishable by imprisonment for more than
16 1 year or is designated by law to be a felony.

17 (e) "Human trafficking violation" means a violation of chapter
18 LXVIIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to
19 750.462h, or of former section 462i or 462j of that act.

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

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

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

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

29 (iii) A local ordinance of a political subdivision of this state



1 substantially corresponding to a crime listed in subparagraph (i) or
2 (ii) that is not a felony.

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

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

9 (h) "Operating while intoxicated" means a violation of any of
10 the following:

11 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA
12 300, MCL 257.625 and 257.625m.

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

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

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

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

21 (i) ~~(b)~~ "Traffic offense" means a violation of the Michigan
22 vehicle code, Act No. 300 of the Public Acts of 1949, being
23 sections 257.1 to 257.923 of the Michigan Compiled Laws, 1949 PA
24 300, MCL 257.1 to 257.923, or a local ordinance substantially
25 corresponding to that act, which violation involves the operation
26 of a vehicle and at the time of the violation is a felony or
27 misdemeanor.

28 (j) "Serious misdemeanor" means that term as defined in



1 section 61 of the William Van Regenmorter crime victim's rights
2 act, 1985 PA 87, MCL 780.811.

3 (k) "Victim" means that term as defined in sections 2, 31, and
4 61 of the William Van Regenmorter crime victim's rights act, 1985
5 PA 87, MCL 780.752, 780.781, and 780.811.

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

