

HOUSE BILL NO. 5957

September 26, 2024, Introduced by Reps. Hope, Filler, Brixie, Byrnes, Breen, Conlin, Young, McKinney, Glanville, Brenda Carter, Wilson, O'Neal, Wegela, Andrews, Tsernoglou and Aiyash and referred to the Committee on Criminal Justice.

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, 1d, and 1e (MCL 780.621b, 780.621d, and 780.621e), section 1b as added by 2020 PA 188, section 1d as amended by 2021 PA 82, and section 1e as added by 2020 PA 192.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1b. (1) For purposes of a petition to set aside a

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

9 (a) An assaultive crime.

10 (b) A crime involving the use or possession of a dangerous
11 weapon.

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

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

16 (2) As used in this section, "dangerous weapon" means that
17 term as defined in section 110a of the Michigan penal code, 1931 PA
18 328, MCL 750.110a.

19 Sec. 1d. (1) An application under section 1 to set aside more
20 than 1 felony conviction ~~shall~~**may** only be filed 7 or more years
21 after whichever of the following events occurs last:

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

24 (b) Completion of any term of felony probation imposed for the
25 convictions that the applicant seeks to set aside.

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

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

1 (2) An application under section 1 to set aside 1 or more
2 serious misdemeanor convictions, 1 first violation operating while
3 intoxicated offense, or 1 felony conviction ~~shall~~**may** only be filed
4 5 or more years after whichever of the following events occurs
5 last:

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

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

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

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

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

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

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

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

26 (4) For an application under section 1, a court shall not
27 enter an order setting aside a conviction or convictions unless ~~all~~
28 **both** of the following apply:

29 (a) The applicable time period required under subsection (1),

1 (2), or (3) has elapsed.

2 (b) There are no criminal charges pending against the
3 applicant.

4 ~~(c) The applicant has not been convicted of any criminal~~
5 ~~offense during the applicable time period required under subsection~~
6 ~~(1), (2), or (3).~~

7 (5) If a petition under this act is denied by the convicting
8 court, a person shall not file another petition concerning the same
9 conviction or convictions with the convicting court until 3 years
10 after the date the convicting court denies the previous petition,
11 unless the court specifies an earlier date for filing another
12 petition in the order denying the petition.

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

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

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

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

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

25 **(c)** ~~(d)~~ A statement listing all actions enumerated in section
26 1(2) that were initiated against the applicant and have been
27 dismissed.

28 **(d)** ~~(e)~~ A statement as to whether the applicant has previously
29 filed an application to set aside this or other conviction and, if

1 so, the disposition of the application.

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

5 (f) ~~(g)~~—If the person is seeking to have 1 or more convictions
6 set aside under section 1(3), a statement that ~~he or she~~ **the person**
7 meets the criteria set forth in section 1(3), together with a
8 statement of the facts supporting ~~his or her~~ **the person's**
9 contention that the conviction was a direct result of ~~his or her~~
10 **the person** being a victim of human trafficking.

11 (g) ~~(h)~~—A consent to the use of the nonpublic record created
12 under section 3 to the extent authorized by section 3.

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

29 (9) The copy of the application submitted to the department of

1 state police under subsection (8) must be accompanied by a fee of
2 \$50.00 payable to the state of Michigan that must be used by the
3 department of state police to defray the expenses incurred in
4 processing the application.

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

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

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

27 (13) If the court determines that the circumstances and
28 behavior of an applicant under section 1(1) or (3), from the date
29 of the applicant's conviction or convictions to the filing of the

1 application warrant setting aside the conviction or convictions,
2 and that setting aside the conviction or convictions is consistent
3 with the public welfare, the court may enter an order setting aside
4 the conviction or convictions.

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

7 Sec. 1e. (1) Beginning on ~~January 1, 2020~~, **April 11, 2021**, a
8 person convicted of 1 or more misdemeanor marihuana offenses may
9 apply to set aside the conviction or convictions under this
10 subsection.

11 (2) An application under subsection (1) must contain all of
12 the following information:

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

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

16 (3) A copy of the application under subsection (1) must be
17 served upon the agency that prosecuted the offense or offenses the
18 applicant seeks to set aside.

19 (4) A rebuttable presumption that a conviction for a
20 misdemeanor marihuana offense sought to be set aside by an
21 applicant was based on activity that would not have been a crime if
22 committed on or after December 6, 2018 arises upon the filing of an
23 application under subsection (1). The presumption described in this
24 subsection may be rebutted by the presentation of evidence by the
25 prosecuting agency that prosecuted the case that demonstrates by a
26 preponderance of the evidence that the conduct on which the
27 applicant's conviction was or convictions were based would
28 constitute a criminal violation of the laws of this state or a
29 political subdivision of this state if it had been committed on or

1 after December 6, 2018. An answer made under this subsection must
2 be filed no later than 60 days from the date of service of the
3 application. If an answer is filed with the convicting court, the
4 answering party must serve the answer upon the other parties to the
5 matter.

6 (5) Upon the expiration of the 60-day period under subsection
7 (4), if the prosecuting agency has not filed an answer to the
8 application addressing the rebuttable presumption described in
9 subsection (4), the convicting court must within 21 days enter an
10 order setting aside the conviction or convictions and serve a copy
11 of the order upon the applicant, the arresting agency, the
12 prosecuting agency, and the department of the state police.

13 (6) If the prosecuting agency files an answer addressing the
14 rebuttable presumption in subsection (4), the convicting court must
15 promptly set the matter for a hearing no later than 30 days from
16 its receipt of the answer, and serve a notice of the hearing upon
17 the applicant. At the hearing, the prosecuting agency must prove by
18 a preponderance of the evidence that a conviction or convictions
19 sought to be set aside by an applicant were based upon conduct that
20 would constitute a criminal violation of the laws of this state or
21 a political subdivision of this state if it had been committed on
22 or after December 6, 2018. An applicant is not required to present
23 evidence that ~~his or her~~ **the applicant's** conviction was based upon
24 conduct that would not constitute a criminal violation of the laws
25 of this state or a political subdivision of this state on or after
26 December 6, 2018. The evidentiary burden under this subsection
27 rests solely on the objecting prosecuting agency. After a hearing
28 under this subsection, the court shall enter an order denying or
29 granting the application no later than 14 days after completion of

1 the hearing and serve any written opinions and orders, including an
2 order setting aside the conviction or convictions, upon the
3 parties, including the department of state police. The rules of
4 evidence do not apply to a hearing under this subsection.

5 (7) As used in this section, "misdemeanor marihuana offense"
6 means a violation of section 7403(2)(d), 7404(2)(d), or a marihuana
7 paraphernalia violation of section 7453 of the public health code,
8 1978 PA 368, MCL 333.7403, 333.7404, and 333.7453, or a violation
9 of a local ordinance substantially corresponding to section
10 7403(2)(d), 7404(2)(d), or the prohibition regarding marihuana
11 paraphernalia of section 7453 of the public health code, 1978 PA
12 368, MCL 333.7403, 333.7404, and 333.7453.