

HOUSE BILL NO. 5958

September 26, 2024, Introduced by Reps. Filler, Hope, 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 section 1g (MCL 780.621g), as added by 2020 PA 193.

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~~ **April 11, 2023**, and subject
3 to any necessary appropriation, a misdemeanor conviction for an

1 offense for which the maximum punishment is imprisonment for not
2 more than 92 days is set aside under this section without the
3 filing of an application under section 1 if 7 years have passed
4 from the imposition of the sentence. Each court shall notify the
5 arresting law enforcement agency of each conviction on or before
6 the tenth day of each month that is set aside under this subsection
7 for the preceding month. Each law enforcement agency need not
8 retain and shall make nonpublic the notification that the
9 conviction has been set aside, and the record of the arrest,
10 fingerprinting, conviction, and sentence of the person in the case
11 to which the notification applies.

12 (2) Beginning ~~2 years after the effective date of the~~
13 ~~amendatory act that added this section~~ **April 11, 2023**, and subject
14 to any necessary appropriation and subsections (5), (6), (7), and
15 (10), a felony conviction that is recorded and maintained in the
16 department of state police database is set aside under this section
17 without the filing of an application under section 1 if both of the
18 following apply:

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

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

22 (ii) Completion of any term of imprisonment with the department
23 of corrections for the conviction.

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

26 (3) Beginning ~~2 years after the effective date of the~~
27 ~~amendatory act that added this section~~ **April 11, 2023**, and subject
28 to any necessary appropriation and subsection (10), a conviction
29 for a misdemeanor offense for which the maximum punishment is

1 imprisonment for not more than 92 days that is recorded and
 2 maintained in the department of state police database is set aside
 3 under this section without the filing of an application under
 4 section 1 if 7 years have passed from the imposition of the
 5 sentence.

6 (4) Beginning ~~2 years after the effective date of the~~
 7 ~~amendatory act that added this section~~ **April 11, 2023**, and subject
 8 to any necessary appropriation and subsections (5), (6), (7), and
 9 (10), a conviction for a misdemeanor offense for which the maximum
 10 punishment is imprisonment for 93 days or more that is recorded and
 11 maintained in the department of state police database is set aside
 12 under this section without the filing of an application under
 13 section 1 if 7 years have passed from the imposition of the
 14 sentence.

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

22 (6) A conviction is not set aside under subsection (2) or (4)
 23 unless ~~all~~ **both** of the following apply:

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

26 (b) There are no criminal charges pending in the department of
 27 state police database against the ~~applicant~~ **individual**.

28 ~~(c) The applicant has not been convicted of any criminal~~
 29 ~~offense that is recorded and maintained in the department of state~~

1 ~~police database during the applicable time period required under~~
2 ~~subsection (2) or (4).~~

3 (7) Subsections (2) and (4) do not apply to an individual who
4 has more than 1 conviction for an assaultive crime or an attempt to
5 commit an assaultive crime that is recorded and maintained in the
6 department of state police database.

7 (8) If the governor determines that the process for setting
8 aside a conviction without an application under this section cannot
9 be implemented by ~~the date required under subsections (1), (2),~~
10 ~~(3), and (4)~~ **April 11, 2023**, because of technological limitations,
11 the governor may issue a directive delaying the implementation of
12 this section for not more than 180 days. The attorney general, the
13 state court administrator, or the director of the department of
14 state police may recommend a delay of implementation to the
15 governor under this subsection.

16 (9) An individual whose conviction is set aside under this
17 section impliedly consents to the creation of the nonpublic record
18 under section 3.

19 (10) Subsections (2) and (4) do not apply to a conviction
20 recorded and maintained in the department of state police database
21 for the commission of or attempted commission of any of the
22 following:

23 (a) An assaultive crime.

24 (b) A serious misdemeanor.

25 (c) A crime of dishonesty.

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

28 (e) A violation of the laws of this state listed under chapter
29 XVII of the code of criminal procedure, 1927 PA 175, MCL 777.1 to

1 777.69, the elements of which involve a minor, vulnerable adult,
2 injury or serious impairment, or death.

3 (f) Any violation related to human trafficking.

4 (11) The department of technology, management, and budget
5 shall develop and maintain a computer-based program for the setting
6 aside of convictions under this section. In fulfilling its duty
7 under this subsection, the department of technology, management,
8 and budget may contract with a private technical consultant as
9 needed.

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

12 (13) The department of state police shall create and maintain
13 an electronically accessible record of each conviction recorded and
14 maintained in the department of state police database that was set
15 aside under this section that must be provided to or accessible by
16 each court in this state. An electronic record created as required
17 under this section may only be used as authorized under section 3
18 and by a court for purposes of updating locally maintained court
19 records.

20 (14) The implementation of the section is subject to
21 appropriation. The department of state police and the department of
22 technology, management, and budget shall begin work to implement
23 the section immediately upon appropriation.

24 (15) As used in this section, "crime of dishonesty" includes a
25 felony violation of chapters XXVA and XLI, felony violations of
26 sections 174, 174a, 175, 176, 180, and 181 of the Michigan penal
27 code, 1931 PA 328, MCL 750.159f to 750.159x, 750.248 to 750.265a,
28 750.174, 750.174a, 750.175, 750.176, 750.180, and 750.181, and a
29 violation of 1979 PA 53, MCL 752.791 to 752.797.