

—
**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:

Sec. 1g. (1) Beginning 2 years after the effective date of the
amendatory act that added this section and subject to any necessary
appropriation, a misdemeanor conviction for an offense for which the maximum
punishment is imprisonment for not more than 92 days is set aside under this
section without the filing of an application under section 1 if 7 years have
passed from the imposition of the sentence. Each court shall notify the
arresting law enforcement agency of each conviction on or before the tenth day
of each month that is set aside under this subsection for the preceding month.
Each law enforcement agency need not retain and shall make nonpublic the
notification that the conviction has been set aside, and the record of the
arrest, fingerprinting, conviction, and sentence of the person in the case to
which the notification applies.

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

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

(i) Imposition of the sentence for the conviction.

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

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

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

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

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

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

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

(b) There are no criminal charges pending in the department of state

police database against the applicant.

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

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

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

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

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

(a) An assaultive crime.

(b) A serious misdemeanor.

(c) A crime of dishonesty.

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

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

(f) Any violation related to human trafficking.

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

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

(13) The department of state police shall create and maintain an

electronically accessible record of each conviction recorded and maintained in the department of state police database that was set aside under this section that must be provided to or accessible by each court in this state. An electronic record created as required under this section may only be used **as authorized under section 3 and** by a court for purposes of updating locally maintained court records.

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

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

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

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

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

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

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

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

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

(5) The department of state police, the department of technology, management, and budget, **and the state court administrative office** shall expend

money from the fund, upon appropriation, only for 1 or more of the following purposes:

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

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

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

Sec. 2. (1) Upon the entry of an order under section 1 or 1e, or upon the automatic setting aside of a conviction under section 1g, the applicant, for purposes of the law, ~~shall be~~ is 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), 1e, or 1g 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.

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

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

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

(10) As used in this section, "applicant" includes an individual who has applied under this act to have his or her conviction or convictions set aside and an individual whose conviction or convictions have been set aside without an application under section 1g.

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

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

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

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

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

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

(e) Consideration by the department of corrections or a law enforcement agency if a person whose conviction has been set aside applies for employment with the department of corrections or law enforcement agency.

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

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

(3) A copy of the nonpublic record created under subsection (2) ~~shall~~ **must** be provided to the person whose conviction is set aside under this act

upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

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

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

(6) An entity is not liable for damages or subject to criminal penalties under this section for reporting a public record of conviction that has been set-aside by court order or operation of law, if that record was available as a public record on the date of the report.

(6) As used in this section, "victim" means any individual who suffers direct or threatened physical, financial, or emotional harm as the result of the offense that was committed by the applicant.

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

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

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

- (a) House Bill No. 4981.
- (b) House Bill No. 4982.
- (c) House Bill No. 4983.
- (d) House Bill No. 4984.
- (e) House Bill No. 4985.
- (f) House Bill No. 5120.