

SENATE BILL NO. 400

April 28, 2021, Introduced by Senator MCBROOM and referred to the Committee on Judiciary and Public Safety.

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 1d (MCL 780.621d), as added by 2020 PA 190.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1d. (1) An application under section 1 to set aside more
- 2 than 1 felony conviction shall only be filed 7 or more years after
- 3 whichever of the following events occurs last:

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

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

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

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

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

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

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

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

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

21 (3) An application under section 1 to set aside 1 or more
22 misdemeanor convictions, other than an application to set aside a
23 serious misdemeanor, **a first violation operating while intoxicated**
24 **offense**, or any other misdemeanor conviction for an assaultive
25 crime, shall only be filed 3 or more years after whichever of the
26 following events occurs last:

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

29 (b) Completion of any term of imprisonment imposed for the

1 conviction that the applicant seeks to set aside.

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

4 (4) For an application under section 1, a court shall not
5 enter an order setting aside a conviction or convictions unless all
6 of the following apply:

7 (a) The applicable time period required under subsection (1),
8 (2), or (3) has elapsed.

9 (b) There are no criminal charges pending against the
10 applicant.

11 (c) The applicant has not been convicted of any criminal
12 offense during the applicable time period required under subsection
13 (1), (2), or (3).

14 (5) If a petition under this act is denied by the convicting
15 court, a person shall not file another petition concerning the same
16 conviction or convictions with the convicting court until 3 years
17 after the date the convicting court denies the previous petition,
18 unless the court specifies an earlier date for filing another
19 petition in the order denying the petition.

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

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

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

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

29 (c) For an application under section 1(1), a statement that

1 the applicant has not been convicted of an offense during the
2 applicable time period required under subsection (1), (2), or (3).

3 (d) A statement listing all actions enumerated in section 1(2)
4 that were initiated against the applicant and have been dismissed.

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

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

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

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

18 (8) The applicant shall submit a copy of the application and 1
19 complete set of fingerprints to the department of state police. The
20 department of state police shall compare those fingerprints with
21 the records of the department, including the nonpublic record
22 created under section 3, and shall forward an electronic copy of a
23 complete set of fingerprints to the Federal Bureau of Investigation
24 for a comparison with the records available to that agency. The
25 department of state police shall report to the court in which the
26 application is filed the information contained in the department's
27 records with respect to any pending charges against the applicant,
28 any record of conviction of the applicant, and the setting aside of
29 any conviction of the applicant and shall report to the court any

1 similar information obtained from the Federal Bureau of
2 Investigation. The court shall not act upon the application until
3 the department of state police reports the information required by
4 this subsection to the court.

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

10 (10) A copy of the application must be served upon the
11 attorney general and upon the office of each prosecuting attorney
12 who prosecuted the crime or crimes the applicant seeks to set
13 aside, and an opportunity must be given to the attorney general and
14 to the prosecuting attorney to contest the application. If a
15 conviction was for an assaultive crime or a serious misdemeanor,
16 the prosecuting attorney shall notify the victim of the assaultive
17 crime or serious misdemeanor of the application under section 22a
18 or 77a of the William Van Regenmorter crime victim's rights act,
19 1985 PA 87, MCL 780.772a and 780.827a. The notice must be by first-
20 class mail to the victim's last known address. The victim has the
21 right to appear at any proceeding under this act concerning that
22 conviction and to make a written or oral statement.

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

26 (12) For an application under section 1(3), if the applicant
27 proves to the court by a preponderance of the evidence that the
28 conviction was a direct result of his or her being a victim of
29 human trafficking, the court may, subject to the requirements of

1 subsection (13), enter an order setting aside the conviction.

2 (13) If the court determines that the circumstances and
3 behavior of an applicant under section 1(1) or (3), from the date
4 of the applicant's conviction or convictions to the filing of the
5 application warrant setting aside the conviction or convictions,
6 and that setting aside the conviction or convictions is consistent
7 with the public welfare, the court may enter an order setting aside
8 the conviction or convictions.

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

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

13 Enacting section 2. This amendatory act does not take effect
14 unless all of the following bills of the 101st Legislature are
15 enacted into law:

16 (a) House Bill No. 4219.

17 (b) House Bill No. 4220.