

# HOUSE BILL No. 6227

June 12, 2018, Introduced by Reps. Neeley, Sneller, Ellison, LaGrand, Rabhi, Phelps, Moss, Hoadley, Pagan and Jones and referred to the Committee on Law and 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 1 (MCL 780.621), as amended by 2016 PA 336.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. (1) Except as provided in this section, a person who  
2 is convicted of not more than 1 offense may file an application  
3 with the convicting court for the entry of an order setting aside 1  
4 or more convictions as follows:

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

8           (b) Except as provided in subdivision (c), a person who is

1 convicted of not more than 2 misdemeanor offenses and no other  
2 felony or misdemeanor offenses may petition the convicting court or  
3 the convicting courts to set aside 1 or both of the misdemeanor  
4 convictions.

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

13 (i) The maximum permissible term of imprisonment does not  
14 exceed 90 days.

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

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

18 (2) A conviction that was deferred and dismissed under any of  
19 the following, whether a misdemeanor or a felony, ~~shall~~**MUST** be  
20 considered a misdemeanor conviction under subsection (1) for  
21 purposes of determining whether a person is eligible to have any  
22 conviction set aside under this act:

23 (a) Section 703 of the Michigan liquor control code of 1998,  
24 1998 PA 58, MCL 436.1703.

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

27 (c) Section 13 of chapter II or section 4a of chapter IX of

1 the code of criminal procedure, 1927 PA 175, MCL 762.13 and 769.4a.

2 (d) Section 7411 of the public health code, 1978 PA 368, MCL  
3 333.7411.

4 (e) Section 350a or 430 of the Michigan penal code, 1931 PA  
5 328, MCL 750.350a and 750.430.

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

10 (3) A person shall not apply to have set aside, and a judge  
11 shall not set aside, a conviction for any of the following:

12 (a) A felony for which the maximum punishment is life  
13 imprisonment or an attempt to commit a felony for which the maximum  
14 punishment is life imprisonment.

15 (b) A violation or attempted violation of section 136b(3),  
16 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan  
17 penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c,  
18 750.145d, 750.520c, 750.520d, and 750.520g.

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

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

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

26 (f) A violation of former section 462i or 462j or chapter  
27 LXVIIIA or chapter LXXXIII-A of the Michigan penal code, 1938 PA

1 321, MCL 750.462a to 750.462h and 750.543a to 750.543z.

2 (4) A person who is convicted of a violation of section 448,  
3 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448,  
4 750.449, and 750.450, or a local ordinance substantially  
5 corresponding to section 448, 449, or 450 of the Michigan penal  
6 code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to  
7 have that conviction set aside if he or she committed the offense  
8 as a direct result of his or her being a victim of a human  
9 trafficking violation.

10 (5) An application under subsection (1) ~~shall~~**MUST** only be  
11 filed 5 or more years after whichever of the following events  
12 occurs last:

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

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

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

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

21 (6) If a petition under this act is denied by the convicting  
22 court, a person shall not file another petition concerning the same  
23 conviction or convictions with the convicting court until 3 years  
24 after the date the convicting court denies the previous petition,  
25 unless the court specifies an earlier date for filing another  
26 petition in the order denying the petition.

27 (7) An application under subsection (4) may be filed at any

1 time following the date of the conviction to be set aside. A person  
2 may apply to have more than 1 conviction set aside under subsection  
3 (4).

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

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

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

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

15 (d) A statement listing all actions enumerated in subsection  
16 (2) that were initiated against the applicant and have been  
17 dismissed.

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

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

24 (g) If the person is seeking to have 1 or more convictions set  
25 aside under subsection (4), a statement that he or she meets the  
26 criteria set forth in subsection (4), together with a statement of  
27 the facts supporting his or her contention that the conviction was

1 a direct result of his or her being a victim of human trafficking.

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

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

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

25 (11) A copy of the application ~~shall~~**MUST** be served upon the  
26 attorney general and upon the office of each prosecuting attorney  
27 who prosecuted the crime or crimes the applicant seeks to set

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

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

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

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

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

1           (16) SUBJECT TO SUBSECTION (18), A PERSON WHO WAS CONVICTED OF  
2 1 OR MORE OFFENSES UNDER PART 74 OF THE PUBLIC HEALTH CODE, 1978 PA  
3 368, MCL 333.7401 TO 333.7461, AND WHO OTHERWISE COMPLIES WITH THE  
4 REQUIREMENTS FOR MAKING AN APPLICATION UNDER SUBSECTION (1) MAY  
5 MAKE AN APPLICATION UNDER THIS SUBSECTION TO HAVE THOSE OFFENSES  
6 SET ASIDE.

7           (17) SUBJECT TO SUBSECTION (18), THE COURT SHALL GRANT AN  
8 APPLICATION MADE UNDER SUBSECTION (16) IF THE APPLICATION IS FOR 1  
9 OR MORE OFFENSES IN VIOLATION OF PART 74 OF THE PUBLIC HEALTH CODE,  
10 1978 PA 368, MCL 333.7401 TO 333.7461.

11           (18) SUBSECTIONS (16) AND (17) DO NOT APPLY IF THE MICHIGAN  
12 REGULATION AND TAXATION OF MARIHUANA ACT IS NOT APPROVED BY A  
13 MAJORITY OF THE QUALIFIED ELECTORS OF THIS STATE VOTING ON THE  
14 QUESTION AT AN ELECTION TO BE HELD ON THE NOVEMBER REGULAR ELECTION  
15 DATE IN 2018 OR THE OFFENSES CREATED UNDER PART 74 OF THE PUBLIC  
16 HEALTH CODE, 1974 PA 368, MCL 333.7401 TO 333.7461, BASED UPON THE  
17 POSSESSION OF MARIHUANA ARE AMENDED SUCH THAT THEY NO LONGER  
18 CONSTITUTE CRIMINAL VIOLATIONS OF THE LAW.

19           (19) ~~(16)~~—As used in this section:

20           (a) "Assaultive crime" means that term as defined in section  
21 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL  
22 770.9a.

23           (b) "Domestic violence" means that term as defined in section  
24 1 of 1978 PA 389, MCL 400.1501.

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

26           (i) For purposes of the offense to be set aside, felony means  
27 a violation of a penal law of this state that is punishable by

1 imprisonment for more than 1 year or that is designated by law to  
2 be a felony.

3 (ii) For purposes of identifying a prior offense, felony means  
4 a violation of a penal law of this state, of another state, or of  
5 the United States that is punishable by imprisonment for more than  
6 1 year or is designated by law to be a felony.

7 (d) "Human trafficking violation" means a violation of chapter  
8 LXVIIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to  
9 750.462h.

10 (e) "Indian tribe" means an Indian tribe, Indian band, or  
11 Alaskan native village that is recognized by federal law or  
12 formally acknowledged by a state.

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

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

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

19 (iii) A local ordinance of a political subdivision of this  
20 state substantially corresponding to a crime listed in subparagraph  
21 (i) or (ii) that is not a felony.

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

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

1 (g) "Operating while intoxicated" means a violation of any of  
2 the following:

3 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA  
4 300, MCL 257.625 and 257.625m.

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

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

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

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

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

16 (i) "Victim" means that term as defined in sections 2, 31, and  
17 61 of the William Van Regenmorter crime victim's rights act, 1985  
18 PA 87, MCL 780.752, 780.781, and 780.811.

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