

**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 section 1g.

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 and subject to subsections**
3 **(3), (4), (5), and (8), a felony conviction must be set aside under**
4 **this section without the filing of an application under section 1**



1 if both of the following apply:

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

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

5 (ii) Completion of any term of imprisonment for the conviction.

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

8 (2) Beginning 2 years after the effective date of the
9 amendatory act that added this section and subject to subsections
10 (3), (4), (5), and (8), a misdemeanor conviction must be set aside
11 under this section without the filing of an application under
12 section 1 if both of the following apply:

13 (a) Seven years have passed from the imposition of the
14 sentence.

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

17 (3) Not more than 2 felony convictions and 4 misdemeanor
18 convictions total may be set aside under this section during the
19 lifetime of an individual.

20 (4) A conviction must not be set aside under this section
21 unless all of the following apply:

22 (a) The applicable time period required under subsection (1)
23 or (2) has elapsed.

24 (b) There are no criminal charges pending against the
25 applicant.

26 (c) The applicant has not been convicted of any criminal
27 offense during the applicable time period required under subsection
28 (1) or (2).

29 (5) Subsections (1) and (2) do not apply to an individual who



1 has more than 1 conviction for an assaultive crime.

2 (6) If the governor, the attorney general, the state court
3 administrator, the department of state police, and a designated
4 nongovernmental technical consultant agree in writing that the
5 process for setting aside a conviction without an application under
6 this section cannot be implemented by the date required under
7 subsections (1) and (2) because of technological limitations, the
8 governor may issue a directive delaying the implementation of this
9 section for not more than 180 days. The governor may issue an
10 additional directive or directives delaying the implementation of
11 this section for not more than 180 days upon the expiration of a
12 previous directive if the parties described under this subsection
13 agree to the delay in writing as provided under this subsection.

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

17 (8) Subsections (1) and (2) do not apply to a conviction for
18 an assaultive crime, a serious misdemeanor, a crime of dishonesty,
19 any other offense punishable by 10 or more years' imprisonment, a
20 violation of the laws of this state listed under chapter XVII of
21 the code of criminal procedure, 1927 PA 175, MCL 777.1 to 777.69,
22 the elements of which involve a minor, vulnerable adult, injury or
23 serious impairment, death, or any violation related to human
24 trafficking.

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



1 (10) As used in this section, "crime of dishonesty" includes a
2 felony violation of chapters XXVA and XLI, felony violations of
3 sections 174, 174a, 175, 176, 180, and 181 of the Michigan penal
4 code, 1931 PA 328, MCL 750.159f to 750.159x, 750.248 to 750.265a,
5 750.174, 750.174a, 750.175, 750.176, 750.180, and 750.181, and a
6 violation of 1979 PA 53, MCL 752.791 to 752.797.

7 Sec. 2. (1) Upon the entry of an order under section 1, **1e, or**
8 **1g**, the applicant, for purposes of the law, ~~shall be~~ **is** considered
9 not to have been previously convicted, except as provided in this
10 section and section 3.

11 (2) The applicant is not entitled to the remission of any
12 fine, costs, or other money paid as a consequence of a conviction
13 that is set aside.

14 (3) If the conviction set aside under section 1(1), **1e, or 1g**
15 is for a listed offense as defined in section 2 of the sex
16 offenders registration act, 1994 PA 295, MCL 28.722, the applicant
17 is considered to have been convicted of that offense for purposes
18 of that act.

19 (4) This act does not affect the right of the applicant to
20 rely upon the conviction to bar subsequent proceedings for the same
21 offense.

22 (5) This act does not affect the right of a victim of a crime
23 to prosecute or defend a civil action for damages.

24 (6) This act does not create a right to commence an action for
25 damages for incarceration under the sentence that the applicant
26 served before the conviction is set aside under this act.

27 **(7) This act does not relieve any obligation to pay**
28 **restitution owed to the victim of a crime nor does it affect the**
29 **jurisdiction of the convicting court with regard to enforcing an**



1 order for restitution.

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

7 (9) A conviction that is set aside under section 1, 1e, or 1g
8 may be considered a prior conviction by court, law enforcement
9 agency, prosecuting attorney, or the attorney general, as
10 applicable, for purposes of charging a crime as a second or
11 subsequent offense or for sentencing under sections 10, 11, and 12
12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL
13 769.10, 769.11, and 769.12.

14 Sec. 3. (1) Upon the entry of an order under section 1, 1e, or
15 1g, the court shall send a copy of the order to the arresting
16 agency and the department of state police.

17 (2) The department of state police shall retain a nonpublic
18 record of the order setting aside a conviction and of the record of
19 the arrest, fingerprints, conviction, and sentence of the applicant
20 in the case to which the order applies. Except as provided in
21 subsection (3), this nonpublic record shall be made available only
22 to a court of competent jurisdiction, an agency of the judicial
23 branch of state government, the department of corrections, a law
24 enforcement agency, a prosecuting attorney, the attorney general,
25 or the governor upon request and only for the following purposes:

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

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



1 this act.

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

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

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

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

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

21 (3) A copy of the nonpublic record created under subsection
22 (2) ~~shall~~**must** be provided to the person whose conviction is set
23 aside under this act upon payment of a fee determined and charged
24 by the department of state police in the same manner as the fee
25 prescribed in section 4 of the freedom of information act, 1976 PA
26 442, MCL 15.234.

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



(5) Except as provided in subsection (2), a person, other than the applicant 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) 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.

