

**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:

1 **Sec. 1g. (1) Beginning 2 years after the effective date of the**
2 **amendatory act that added this section and subject to any necessary**
3 **appropriation, a misdemeanor conviction for an offense for which**
4 **the maximum punishment is imprisonment for not more than 92 days is**

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

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

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

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

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

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

25 (3) Beginning 2 years after the effective date of the
26 amendatory act that added this section and subject to any necessary
27 appropriation and subsection (10), a conviction for a misdemeanor
28 offense for which the maximum punishment is imprisonment for not
29 more than 92 days that is recorded and maintained in the department

1 of state police database is set aside under this section without
2 the filing of an application under section 1 if 7 years have passed
3 from the imposition of the sentence.

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

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

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

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

23 (b) There are no criminal charges pending in the department of
24 state police database against the applicant.

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

29 (7) Subsections (2) and (4) do not apply to an individual who

1 has more than 1 conviction for an assaultive crime or an attempt to
2 commit an assaultive crime that is recorded and maintained in the
3 department of state police database.

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

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

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

20 (a) An assaultive crime.

21 (b) A serious misdemeanor.

22 (c) A crime of dishonesty.

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

25 (e) A violation of the laws of this state listed under chapter
26 XVII of the code of criminal procedure, 1927 PA 175, MCL 777.1 to
27 777.69, the elements of which involve a minor, vulnerable adult,
28 injury or serious impairment, or death.

29 (f) Any violation related to human trafficking.

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

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

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

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

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

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

1 as provided in this section.

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

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

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

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

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

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

23 (5) The department of state police, the department of
24 technology, management, and budget, and the state court
25 administrative office shall expend money from the fund, upon
26 appropriation, only for 1 or more of the following purposes:

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

29 (b) System upgrades necessitated by the changes made to this

1 act by the amendatory act that added this section.

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

4 Sec. 2. (1) Upon the entry of an order under section 1 **or 1e**,
5 **or upon the automatic setting aside of a conviction under section**
6 **1g**, the applicant, for purposes of the law, ~~shall be~~ **is** considered
7 not to have been previously convicted, except as provided in this
8 section and section 3.

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

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

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

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

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

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

29 (8) A conviction, including any records relating to the

1 conviction and any records concerning a collateral action, that has
2 been set aside under this act cannot be used as evidence in an
3 action for negligent hiring, admission, or licensure against any
4 person.

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

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

17 Sec. 3. (1) Upon the entry of an order under section 1 ~~or~~
18 1e, the court shall send a copy of the order to the arresting
19 agency and the department of state police.

20 (2) The department of state police shall retain a nonpublic
21 record of the order setting aside a conviction, **or other**
22 **notification regarding a conviction that was automatically set**
23 **aside under section 1g**, and of the record of the arrest,
24 fingerprints, conviction, and sentence of the ~~applicant~~**person** in
25 the case to which the order **or other notification** applies. Except
26 as provided in subsection (3), this nonpublic record shall be made
27 available only to a court of competent jurisdiction, an agency of
28 the judicial branch of state government, the department of
29 corrections, a law enforcement agency, a prosecuting attorney, the

1 attorney general, or the governor upon request and only for the
2 following purposes:

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

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

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

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

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

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

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

27 (3) A copy of the nonpublic record created under subsection
28 (2) ~~shall~~**must** be provided to the person whose conviction is set
29 aside under this act upon payment of a fee determined and charged

1 by the department of state police in the same manner as the fee
2 prescribed in section 4 of the freedom of information act, 1976 PA
3 442, MCL 15.234.

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

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

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

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

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

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

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

29 (a) House Bill No. 4981.

- 1 (b) House Bill No. 4982.
- 2 (c) House Bill No. 4983.
- 3 (d) House Bill No. 4984.
- 4 (e) House Bill No. 4985.
- 5 (f) House Bill No. 5120.