

HOUSE BILL No. 5688

March 11, 1992, Introduced by Reps. Perry Bullard, Pitoniak, Gubow, Bandstra, Fitzgerald, Jondahl, Wozniak, Griffin, Emerson, Saunders, Niederstadt and Weeks and referred to the Committee on Judiciary.

A bill to amend the title and sections 1, 2, and 3 of Act No. 213 of the Public Acts of 1965, entitled as amended

"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,"

sections 1 and 2 as amended by Act No. 495 of the Public Acts of 1982 and section 3 as amended by Act No. 11 of the Public Acts of 1988, being sections 780.621, 780.622, and 780.623 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1, 2, and 3 of Act
2 No. 213 of the Public Acts of 1965, sections 1 and 2 as amended
3 by Act No. 495 of the Public Acts of 1982 and section 3 as
4 amended by Act No. 11 of the Public Acts of 1988, being sections

1 780.621, 780.622, and 780.623 of the Michigan Compiled Laws, are
2 amended to read as follows:

3 TITLE

4 An act to provide for setting aside the conviction in cer-
5 tain criminal cases; to provide for the effect of such action; to
6 provide for the retention of certain ~~nonpublic~~ records and
7 their use; to prescribe the powers and duties of certain public
8 agencies and officers; and to prescribe penalties.

9 Sec. 1. (1) Except as provided in subsection (2), a person
10 who is convicted of not more than 1 offense may file an applica-
11 tion with the convicting court for the entry of an order setting
12 aside the conviction.

13 (2) A person shall not apply to have set aside, nor may a
14 judge set aside, a conviction for a felony for which the maximum
15 punishment is life imprisonment or a conviction for a traffic
16 offense.

17 (3) An application shall not be filed until the expiration
18 of 5 years following imposition of the sentence for the convic-
19 tion ~~which~~ THAT the applicant seeks to set aside or 5 years
20 following completion of any term of imprisonment for that convic-
21 tion, whichever occurs later.

22 (4) The application shall contain the following information
23 and shall be signed under oath by the person whose conviction is
24 to be set aside:

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

26 (b) A certified record of the conviction ~~which~~ THAT is to
27 be set aside.

1 (c) A statement that the applicant has not been convicted of
2 an offense other than the one ~~which is~~ sought to be set aside
3 as a result of this application.

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

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

10 (f) A consent to the use of the nonpublic record created
11 under section 3, to the extent authorized by section 3.

12 (5) The applicant shall submit a copy of the application and
13 a complete set of fingerprints to the department of state police,
14 which shall compare those fingerprints with the records of the
15 department, including the nonpublic record created under section
16 3. ~~and~~ THE DEPARTMENT OF STATE POLICE shall report to the
17 court in which the application is filed the information contained
18 in the department's records with respect to any pending charges
19 against the applicant, any record of conviction of the applicant,
20 and the setting aside of any conviction of the applicant. The
21 court shall not act upon the application until the department of
22 state police reports the information required by this subsection
23 to the court.

24 (6) The copy of the application submitted to the department
25 of state police pursuant to subsection (5) shall be accompanied
26 by a fee of \$15.00 payable to the state of Michigan which shall

1 be used by the department of state police to defray the expenses
2 incurred in processing the application.

3 (7) A copy of the application shall be served upon the
4 attorney general and upon the office of the prosecuting attorney
5 who prosecuted the crime, and an opportunity shall be given to
6 the attorney general and to the prosecuting attorney to contest
7 the application. IF THE CONVICTION WAS FOR A CRIME AGAINST THE
8 PERSON, THE PROSECUTING ATTORNEY SHALL NOTIFY THE VICTIM OF THE
9 CRIME AGAINST THE PERSON OF THE APPLICATION PURSUANT TO
10 SECTION 22 OF THE CRIME VICTIM'S RIGHTS ACT, ACT NO. 87 OF THE
11 PUBLIC ACTS OF 1985, BEING SECTION 780.772 OF THE MICHIGAN
12 COMPILED LAWS. THE VICTIM HAS THE RIGHT TO PARTICIPATE IN ANY
13 PROCEEDING UNDER THIS ACT CONCERNING THAT CONVICTION.

14 (8) Upon the hearing of the application the court may
15 require the filing of ~~such~~ affidavits and the taking of ~~such~~
16 proofs as it considers proper.

17 (9) If the court determines that the circumstances and
18 behavior of the applicant from the date of the applicant's con-
19 viction to the filing of the application warrant setting aside
20 the conviction and that setting aside the conviction is consis-
21 tent with the public welfare, the court may enter an order set-
22 ting aside the conviction. The setting aside of a conviction
23 under this act is a privilege and conditional and is not a
24 right.

25 (10) IF THE COURT DETERMINES, UPON ITS OWN MOTION OR THAT OF
26 ANY PERSON AND FOLLOWING A HEARING, THAT THE COURT ERRED IN
27 ENTERING THE ORDER SETTING ASIDE THE CONVICTION, THE COURT SHALL

1 ENTER AN ORDER REINSTATING THE CONVICTION AND REQUIRING THAT THE
2 RECORDS CONCERNING THE APPLICANT'S ARREST, FINGERPRINTS, CONVIC-
3 TION, AND SENTENCE BE MAINTAINED AS THEY WERE BEFORE THE
4 APPLICATION.

5 (11) AS USED IN THIS SECTION:

6 (A) "CRIME AGAINST THE PERSON" MEANS A CRIME AS DEFINED IN
7 SECTION 2 OF ACT NO. 87 OF THE PUBLIC ACTS OF 1985, BEING SECTION
8 780.752 OF THE MICHIGAN COMPILED LAWS, THAT IS AN ASSAULTIVE
9 CRIME AS DEFINED IN SECTION 9A OF CHAPTER X OF THE CODE OF CRIMI-
10 NAL PROCEDURE, ACT NO. 175 OF THE PUBLIC ACTS OF 1927, BEING SEC-
11 TION 770.9A OF THE MICHIGAN COMPILED LAWS.

12 (B) "VICTIM" MEANS THAT TERM AS DEFINED IN SECTION 2 OF ACT
13 NO. 87 OF THE PUBLIC ACTS OF 1985.

14 Sec. 2. (1) Upon the entry of an order ~~as provided for in~~
15 PURSUANT TO section 1, the applicant, for purposes of the law,
16 shall be considered not to have been previously convicted, except
17 as provided in this section and section 3. THIS SUBSECTION DOES
18 NOT APPLY IF THE COURT ENTERS AN ORDER REINSTATING THE CONVICTION
19 PURSUANT TO SECTION 1.

20 (2) The applicant ~~shall~~ IS not ~~be~~ entitled to the remis-
21 sion of any fine, costs, or other ~~sums of~~ money paid as a con-
22 sequence of a conviction ~~which~~ THAT is set aside.

23 (3) This act ~~shall~~ DOES not affect the right of the appli-
24 cant to rely upon the conviction to bar subsequent proceedings
25 for the same offense.

26 (4) This act ~~shall~~ DOES not affect the right of a victim
27 of a crime to prosecute or defend a civil action for damages.

1 (5) This act ~~shall~~ DOES not ~~be construed to~~ create a
2 right to commence an action for damages for incarceration under
3 the sentence ~~which~~ THAT the applicant served before the convic-
4 tion is set aside pursuant to this act.

5 Sec. 3. (1) Upon the entry of an order pursuant to section
6 ~~+(9)-~~ 1, the court shall send a copy of the order to the arrest-
7 ing agency and the department of state police.

8 (2) The department of state police shall retain a nonpublic
9 record of the order setting aside a conviction and of the record
10 of the arrest, fingerprints, conviction, and sentence of the
11 applicant in the case to which the order applies. Except as pro-
12 vided in subsection (3), this nonpublic record shall be made
13 available only to a court of competent jurisdiction, an agency of
14 the judicial branch of state government, a law enforcement
15 agency, a prosecuting attorney, the attorney general, or the gov-
16 ernor upon request and only for the following purposes:

17 (a) ~~For consideration~~ CONSIDERATION in a licensing func-
18 tion conducted by an agency of the judicial branch of state
19 government.

20 (b) To show that a person, who has filed an application to
21 set aside a conviction, has previously had a conviction set aside
22 pursuant to this act.

23 (c) ~~For the~~ THE court's consideration in determining the
24 sentence to be imposed upon conviction for a subsequent offense
25 ~~which~~ THAT is punishable as a felony or by imprisonment for
26 more than 1 year.

1 (d) ~~For consideration~~ CONSIDERATION by the governor, if a
2 person whose conviction has been set aside applies for a pardon
3 for another offense.

4 (e) ~~For consideration~~ CONSIDERATION by a law enforcement
5 agency, if a person whose conviction has been set aside applies
6 for employment with the law enforcement agency.

7 (3) A copy of the nonpublic record created under subsection
8 (2) shall be provided to the person whose conviction is set aside
9 under this act, upon payment of a fee determined and charged by
10 the department of state police in the same manner as the fee pre-
11 scribed in section 4 of the freedom of information act, Act
12 No. 442 of the Public Acts of 1976, being section 15.234 of the
13 Michigan Compiled Laws.

14 (4) The nonpublic record maintained under subsection (2)
15 ~~shall be~~ IS exempt from disclosure under the freedom of infor-
16 mation act, Act No. 442 of the Public Acts of 1976, being sec-
17 tions 15.231 to 15.246 of the Michigan Compiled Laws.

18 (5) EACH COURT ENTERING AN ORDER PURSUANT TO SECTION 1 SHALL
19 KEEP A PUBLIC RECORD CONTAINING ALL OF THE FOLLOWING
20 INFORMATION:

21 (A) THE TYPES OF OFFENSES SET ASIDE BY THAT COURT.

22 (B) THE SPECIFIC OFFENSES SET ASIDE BY AN INDIVIDUAL JUDGE.

23 (C) THE RACE, GENDER, AGE, AND CITY OR TOWNSHIP OF RESIDENCE
24 OF EACH PERSON WHOSE OFFENSE IS SET ASIDE UNDER THIS ACT.

25 (D) THE NAME OF EACH ATTORNEY FOR AN APPLICANT WHOSE CONVIC-
26 TION IS SET ASIDE.

1 (6) ~~(5) A~~ EXCEPT AS PROVIDED IN SUBSECTION (2), A person,
 2 other than the applicant, who ~~knows or should have known that a~~
 3 ~~conviction was set aside under this section, who~~ divulges, uses,
 4 or publishes information concerning a conviction set aside under
 5 this ~~section, except as provided in subsection (2)~~ ACT, is
 6 guilty of a misdemeanor — IF BOTH OF THE FOLLOWING APPLY:

7 (A) THE PERSON KNOWS THE INFORMATION BECAUSE OF HIS OR HER
 8 PUBLIC EMPLOYMENT.

9 (B) THE PERSON KNOWS OR SHOULD HAVE KNOWN THAT THE CONVIC-
 10 TION WAS SET ASIDE UNDER THIS ACT.

11 (7) IN ANY CIVIL OR CRIMINAL ACTION BROUGHT TO ENFORCE OR IN
 12 RELIANCE UPON THIS SECTION, A PERSON INVOLVED IN THE GATHERING OR
 13 PREPARATION OF NEWS FOR BROADCAST, CABLECAST, OR PUBLICATION
 14 SHALL NOT BE REQUIRED TO DISCLOSE THE IDENTITY OF AN INFORMANT,
 15 ANY UNPUBLISHED INFORMATION OBTAINED FROM AN INFORMANT, OR ANY
 16 UNPUBLISHED MATTER OR DOCUMENTATION, IN WHATEVER MANNER RECORDED,
 17 RELATING TO A COMMUNICATION WITH AN INFORMANT.

18 (8) THIS SECTION MAY NOT BE RELIED UPON OR USED IN ANY CIVIL
 19 ACTION ALLEGING THE BROADCAST, CABLECAST, OR PUBLICATION OF
 20 TRUTHFUL INFORMATION ABOUT A CONVICTION SET ASIDE UNDER THIS ACT
 21 BROUGHT AGAINST A PERSON, PARTNERSHIP, ASSOCIATION, OR CORPORA-
 22 TION INVOLVED IN THE GATHERING OR PREPARATION OF NEWS FOR BROAD-
 23 CAST, CABLECAST, OR PUBLICATION.

24 Section 2. This amendatory act shall not take effect unless
 25 Senate Bill No. ____ or House Bill No. 5689 (request
 26 no. 04692'91 a) of the 86th Legislature is enacted into law.