

Act No. 342
Public Acts of 1993
Approved by the Governor
January 10, 1994
Filed with the Secretary of State
January 10, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Senator Van Regenmorter

ENROLLED SENATE BILL No. 138

AN ACT to amend 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:

Section 1. Sections 1, 2, and 3 of Act No. 213 of the Public Acts of 1965, 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, are amended to read as follows:

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

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

(3) An application shall not be filed until the expiration of 5 years following imposition of the sentence for the conviction that the applicant seeks to set aside or 5 years following completion of any term of imprisonment for that conviction, whichever occurs later.

(4) The application is invalid unless it contains the following information and is signed under oath by the person whose conviction is to be set aside:

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

(b) A certified record of the conviction that is to be set aside.

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

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

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

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

(5) The applicant shall submit a copy of the application and 2 complete sets of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under section 3, and shall forward a complete set of fingerprints to the federal bureau of investigation for a comparison with the records available to that agency. The department of state police shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of conviction of the applicant, and the setting aside of any conviction of the applicant and shall report to the court any similar information obtained from the federal bureau of investigation. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(6) The copy of the application submitted to the department of state police pursuant to subsection (5) shall be accompanied by a fee of \$25.00 payable to the state of Michigan which shall be used by the department of state police to defray the expenses incurred in processing the application.

(7) A copy of the application shall be served upon the attorney general and upon the office of the prosecuting attorney who prosecuted the crime, and an opportunity shall be given to the attorney general and to the prosecuting attorney to contest the application. If the conviction was for an assaultive crime or a serious misdemeanor, the prosecuting attorney shall notify the victim of the assaultive crime or serious misdemeanor of the application pursuant to section 22a or 77a of the crime victim's rights act, Act No. 87 of the Public Acts of 1985, being sections 780.772a and 780.827a of the Michigan Compiled Laws. The notice shall be by first-class mail to the victim's last known address. The victim has the right to appear at any proceeding under this act concerning that conviction and to make a written or oral statement.

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

(9) If the court determines that the circumstances and behavior of the applicant from the date of the applicant's conviction to the filing of the application warrant setting aside the conviction and that setting aside the conviction is consistent with the public welfare, the court may enter an order setting aside the conviction. The setting aside of a conviction under this act is a privilege and conditional and is not a right.

(10) As used in this section:

(a) "Assaultive crime" means that term as defined in section 9a of chapter X of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 770.9a of the Michigan Compiled Laws.

(b) "Serious misdemeanor" means that term as defined in section 61 of the crime victim's rights act, Act No. 87 of the Public Acts of 1985, being section 780.811 of the Michigan Compiled Laws.

(c) "Victim" means that term as defined in section 2 of Act No. 87 of the Public Acts of 1985, being section 780.752 of the Michigan Compiled Laws.

Sec. 2. (1) Upon the entry of an order pursuant to section 1, the applicant, for purposes of the law, shall be considered not to have been previously convicted, except as provided in this section and section 3.

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

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

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

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

Sec. 3. (1) Upon the entry of an order pursuant to section 1, the court shall send a copy of the order to the arresting agency and the department of state police.

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

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

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

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

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

(e) Consideration by a law enforcement agency, if a person whose conviction has been set aside applies for employment with the law enforcement agency.

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

(4) The nonpublic record maintained under subsection (2) is exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

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

Section 2. This amendatory act shall take effect May 1, 1994.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

- (a) Senate Bill No. 137.
- (b) Senate Bill No. 139.
- (c) Senate Bill No. 469.
- (d) Senate Bill No. 470.
- (e) Senate Bill No. 472.
- (f) Senate Bill No. 473.

This act is ordered to take immediate effect.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved -----

Governor.