



HOUSE BILL No. 5147

October 19, 1993, Introduced by Reps. Rivers, Dobronski, Joe Young, Jr., LeTarte and Willard 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~~
14 AND a judge SHALL NOT set aside ~~a~~ a conviction for a felony for
15 which the maximum punishment is life imprisonment or a conviction
16 for a traffic 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 is~~ to be
27 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~~ 2 complete ~~set~~ SETS of fingerprints to the department of
14 state police. ~~, which~~ THE DEPARTMENT OF STATE POLICE shall
15 compare those fingerprints with the records of the department,
16 including the nonpublic record created under section 3, and SHALL
17 FORWARD A COMPLETE SET OF FINGERPRINTS TO THE FEDERAL BUREAU OF
18 INVESTIGATION FOR A COMPARISON WITH THE RECORDS AVAILABLE TO THAT
19 AGENCY. THE DEPARTMENT OF STATE POLICE shall report to the court
20 in which the application is filed the information contained in
21 the department's records with respect to any pending charges
22 against the applicant, any record of conviction of the applicant,
23 and the setting aside of any conviction of the applicant AND
24 SHALL REPORT TO THE COURT ANY SIMILAR INFORMATION OBTAINED FROM
25 THE FEDERAL BUREAU OF INVESTIGATION. The court shall not act
26 upon the application until the department of state police reports
27 the information required by this subsection to the court.

1 (6) The copy of the application submitted to the department
2 of state police pursuant to subsection (5) shall be accompanied
3 by a fee of \$15.00 payable to the state of Michigan which shall
4 be used by the department of state police to defray the expenses
5 incurred in processing the application.

6 (7) A copy of the application shall be served upon the
7 attorney general and upon the office of the prosecuting attorney
8 who prosecuted the crime. ~~and an~~ AN opportunity shall be
9 given to the attorney general and ~~to~~ the prosecuting attorney
10 to contest the application. IF THE CONVICTION WAS FOR A SPECI-
11 FIED CRIME, THE PROSECUTING ATTORNEY SHALL NOTIFY THE VICTIM OF
12 THAT CRIME OF THE APPLICATION PURSUANT TO SECTION 22 OF THE CRIME
13 VICTIM'S RIGHTS ACT, ACT NO. 87 OF THE PUBLIC ACTS OF 1985, BEING
14 SECTION 780.772 OF THE MICHIGAN COMPILED LAWS. THE NOTICE SHALL
15 BE BY FIRST-CLASS MAIL TO THE VICTIM'S LAST KNOWN ADDRESS. THE
16 VICTIM HAS THE RIGHT TO APPEAR AT ANY PROCEEDING UNDER THIS ACT
17 CONCERNING THAT CONVICTION AND MAKE A WRITTEN OR ORAL STATEMENT.

18 (8) Upon the hearing of the application, the court may
19 require the filing of ~~such~~ affidavits and the taking of ~~such~~
20 proofs as it considers proper.

21 (9) If the court determines that the APPLICANT'S circum-
22 stances and behavior ~~of the applicant~~ from the date of the
23 applicant's conviction to the filing of the application warrant
24 setting aside the conviction and that setting aside the convic-
25 tion is consistent with the public welfare, the court may enter
26 an order setting aside the conviction. The setting aside of a

1 conviction under this act is a privilege and conditional and is
2 not a right.

3 (10) IF THE COURT DETERMINES, UPON ITS OWN MOTION OR THAT OF
4 ANY PERSON AND FOLLOWING A HEARING, THAT THE APPLICANT WAS INELI-
5 GIBLE FOR AN ORDER SETTING ASIDE A CONVICTION, THE COURT SHALL
6 ENTER AN ORDER REINSTATING THAT CONVICTION AND REQUIRING THAT ANY
7 RECORDS REMAINING IN THE CUSTODY OF THE COURT OR THE DEPARTMENT
8 OF STATE POLICE CONCERNING THE APPLICANT'S ARREST, FINGERPRINTS,
9 CONVICTION, AND SENTENCE BE MAINTAINED AS THEY WERE BEFORE THE
10 APPLICATION.

11 (11) AS USED IN THIS SECTION:

12 (A) "SPECIFIED CRIME" MEANS AN OFFENSE AGAINST AN INDIVIDUAL
13 IN VIOLATION OF SECTION 82, 84, 86, 87, 88, 321, 397, 520C, 520D,
14 520E, 520G, OR 530 OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE
15 PUBLIC ACTS OF 1931, BEING SECTIONS 750.82, 750.84, 750.86,
16 750.87, 750.88, 750.321, 750.397, 750.520C, 750.520D, 750.520E,
17 750.520G, AND 750.530 OF THE MICHIGAN COMPILED LAWS.

18 (B) "VICTIM" MEANS THAT TERM AS DEFINED IN SECTION 2 OF ACT
19 NO. 87 OF THE PUBLIC ACTS OF 1985, BEING SECTION 780.752 OF THE
20 MICHIGAN COMPILED LAWS.

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

1 (2) The applicant ~~shall~~ IS not ~~be~~ entitled to the
2 remission of any fine, costs, or other ~~sums of~~ money paid as a
3 consequence of a conviction ~~which~~ THAT is set aside.

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

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

9 (5) This act ~~shall~~ DOES not ~~be construed to~~ create a
10 right to commence an action for damages for incarceration under
11 the sentence ~~which~~ the applicant served before the conviction
12 is set aside pursuant to this act.

13 Sec. 3. (1) Upon the entry of an order pursuant to section
14 ~~+(9)-~~ 1, the court shall send a copy of the order to the arrest-
15 ing agency and the department of state police.

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

25 (a) ~~For consideration~~ CONSIDERATION in a licensing func-
26 tion conducted by an agency of the judicial branch of state
27 government.

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

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

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

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

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

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

25 (5) EACH COURT DENYING AN APPLICATION TO SET ASIDE A CONVIC-
26 TION OR ENTERING AN ORDER PURSUANT TO SECTION 1 SHALL KEEP A

1 PUBLIC RECORD CONTAINING ALL OF THE FOLLOWING INFORMATION FOR THE
2 COURT AND FOR EACH INDIVIDUAL JUDGE:

3 (A) THE TYPES OF OFFENSES SET ASIDE OR FOR WHICH AN APPLICA-
4 TION WAS DENIED.

5 (B) THE RACE, GENDER, AGE, AND CITY OR TOWNSHIP OF RESIDENCE
6 OF EACH PERSON WHOSE OFFENSE IS SET ASIDE OR WHOSE APPLICATION TO
7 SET ASIDE A CONVICTION WAS DENIED.

8 (C) THE NAME OF EACH ATTORNEY FOR AN APPLICANT WHOSE CONVIC-
9 TION IS SET ASIDE OR WHOSE APPLICATION TO SET ASIDE A CONVICTION
10 WAS DENIED.

11 (6) ~~-(5)-A~~ EXCEPT AS PROVIDED IN SUBSECTION (2), A person,
12 other than the applicant, who ~~knows or should have known that a~~
13 ~~conviction was set aside under this section, who~~ divulges, uses,
14 or publishes information concerning a conviction set aside under
15 this ~~section, except as provided in subsection (2)~~ ACT, is
16 guilty of a misdemeanor ~~—~~ IF BOTH OF THE FOLLOWING APPLY:

17 (A) THE PERSON KNOWS THE INFORMATION BECAUSE OF HIS OR HER
18 PUBLIC EMPLOYMENT.

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

21 (7) IN ANY CIVIL OR CRIMINAL ACTION BROUGHT TO ENFORCE OR IN
22 RELIANCE UPON THIS SECTION, THE COURT SHALL NOT ENTER AN ORDER
23 REQUIRING A PERSON INVOLVED IN THE GATHERING OR PREPARATION OF
24 INFORMATION FOR PUBLIC DISSEMINATION TO DISCLOSE THE IDENTITY OF
25 AN INFORMANT, ANY UNPUBLISHED INFORMATION OBTAINED FROM AN INFOR-
26 MANT, OR ANY UNPUBLISHED MATTER OR DOCUMENTATION, IN WHATEVER

1 MANNER RECORDED, RELATING TO A COMMUNICATION WITH AN INFORMANT
2 UNLESS THE COURT FINDS ALL OF THE FOLLOWING:

3 (A) A SUBSTANTIAL PROBABILITY THAT THE ORDER WILL RESULT IN
4 DISCLOSURE OF THE INFORMATION SOUGHT.

5 (B) THE INFORMATION SOUGHT IS ESSENTIAL TO THE ACTION.

6 (C) OTHER AVAILABLE ALTERNATIVE SOURCES OF THE INFORMATION
7 HAVE BEEN EXHAUSTED.

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

14 Section 2. This amendatory act shall not take effect unless
15 Senate Bill No. _____ or House Bill No. 5148 (request
16 no. 03162'93 a) of the 87th Legislature is enacted into law.