



SENATE BILL No. 138

January 13, 1993, Introduced by Senator VAN REGENMORTER
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 pro-
vide for the retention of certain nonpublic records and their
use; to prescribe the powers and duties of certain public agen-
cies 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; TO PROHIBIT CERTAIN COURT ORDERS; TO PRO-
9 VIDE IMMUNITY FOR CERTAIN CIVIL ACTIONS; and to prescribe
10 penalties.

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

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

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

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

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

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

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

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

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

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

15 (5) The applicant shall submit a copy of the application and
16 ~~a~~ 2 complete ~~set~~ SETS of fingerprints to the department of
17 state police. ~~which~~ THE DEPARTMENT OF STATE POLICE shall
18 compare those fingerprints with the records of the department,
19 including the nonpublic record created under section 3, and SHALL
20 FORWARD A COMPLETE SET OF FINGERPRINTS TO THE FEDERAL BUREAU OF
21 INVESTIGATION FOR A COMPARISON WITH THE RECORDS AVAILABLE TO THAT
22 AGENCY. THE DEPARTMENT OF STATE POLICE shall report to the court
23 in which the application is filed the information contained in
24 the department's records with respect to any pending charges
25 against the applicant, any record of conviction of the applicant,
26 and the setting aside of any conviction of the applicant AND
27 SHALL REPORT TO THE COURT ANY SIMILAR INFORMATION OBTAINED FROM

1 THE FEDERAL BUREAU OF INVESTIGATION. The court shall not act
2 upon the application until the department of state police reports
3 the information required by this subsection to the court.

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

9 (7) A copy of the application shall be served upon the
10 attorney general and upon the office of the prosecuting attorney
11 who prosecuted the crime, and an opportunity shall be given to
12 the attorney general and to the prosecuting attorney to contest
13 the application. IF THE CONVICTION WAS FOR AN ASSAULTIVE CRIME,
14 THE PROSECUTING ATTORNEY SHALL NOTIFY THE VICTIM OF THE ASSAULT-
15 IVE CRIME OF THE APPLICATION PURSUANT TO SECTION 22A OR 77A OF
16 THE CRIME VICTIM'S RIGHTS ACT, ACT NO. 87 OF THE PUBLIC ACTS OF
17 1985, BEING SECTIONS 780.772A AND 780.827A OF THE MICHIGAN
18 COMPILED LAWS. THE NOTICE SHALL BE BY FIRST-CLASS MAIL TO THE
19 VICTIM'S LAST KNOWN ADDRESS. THE VICTIM HAS THE RIGHT TO APPEAR
20 AT ANY PROCEEDING UNDER THIS ACT CONCERNING THAT CONVICTION AND
21 MAKE A WRITTEN OR ORAL STATEMENT.

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

25 (9) If the court determines that the circumstances and
26 behavior of the applicant from the date of the applicant's
27 conviction to the filing of the application warrant setting aside

1 the conviction and that setting aside the conviction is
2 consistent with the public welfare, the court may enter an order
3 setting aside the conviction. The setting aside of a conviction
4 under this act is a privilege and conditional and is not a
5 right.

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

14 (11) AS USED IN THIS SECTION:

15 (A) "ASSAULTIVE CRIME" MEANS THAT TERM AS DEFINED IN SECTION
16 9A OF CHAPTER X OF THE CODE OF CRIMINAL PROCEDURE, ACT NO. 175 OF
17 THE PUBLIC ACTS OF 1927, BEING SECTION 770.9A OF THE MICHIGAN
18 COMPILED LAWS.

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

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~~ THAT the applicant served before the convic-
12 tion is set aside pursuant to this act.

13 Sec. 3. (1) Upon the entry of an order pursuant to section
14 ~~1(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~~ THAT is punishable as a felony or by imprisonment for
7 more 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 ENTERING AN ORDER PURSUANT TO SECTION 1 SHALL
26 KEEP A PUBLIC RECORD CONTAINING ALL OF THE FOLLOWING
27 INFORMATION:

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

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

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

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

7 (6) ~~-(5)-A~~ EXCEPT AS PROVIDED IN SUBSECTION (2), A person,
8 other than the applicant, who ~~knows or should have known that a~~
9 ~~conviction was set aside under this section, who~~ divulges, uses,
10 or publishes information concerning a conviction set aside under
11 this ~~section, except as provided in subsection (2)~~ ACT, is
12 guilty of a misdemeanor ~~—~~ IF BOTH OF THE FOLLOWING APPLY:

13 (A) THE PERSON KNOWS THE INFORMATION BECAUSE OF HIS OR HER
14 PUBLIC EMPLOYMENT.

15 (B) THE PERSON KNOWS OR SHOULD HAVE KNOWN THE CONVICTION WAS
16 SET ASIDE UNDER THIS ACT.

17 (7) IN ANY CIVIL OR CRIMINAL ACTION BROUGHT TO ENFORCE OR IN
18 RELIANCE UPON THIS SECTION, THE COURT SHALL NOT ENTER AN ORDER
19 REQUIRING A PERSON INVOLVED IN THE GATHERING OR PREPARATION OF
20 INFORMATION FOR PUBLIC DISSEMINATION TO DISCLOSE THE IDENTITY OF
21 AN INFORMANT, ANY UNPUBLISHED INFORMATION OBTAINED FROM AN INFOR-
22 MANT, OR ANY UNPUBLISHED MATTER OR DOCUMENTATION, IN WHATEVER
23 MANNER RECORDED, RELATING TO A COMMUNICATION WITH AN INFORMANT
24 UNLESS THE COURT FINDS ALL OF THE FOLLOWING:

25 (A) A SUBSTANTIAL PROBABILITY THE ORDER WILL RESULT IN DIS-
26 CLOSURE OF THE INFORMATION SOUGHT.

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

2 (C) OTHER AVAILABLE ALTERNATIVE SOURCES OF THE INFORMATION
3 HAVE BEEN EXHAUSTED.

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

10 Section 2. This amendatory act shall not take effect unless
11 Senate Bill No. 137

12 of the 87th Legislature is enacted into law.