



SENATE BILL No. 1177

September 24, 1996, Introduced by Senators ROGERS, HOFFMAN, SCHWARZ, BULLARD, SHUGARS and STEIL and referred to the Committee on Judiciary.

A bill to amend section 1 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,"

as amended by Act No. 342 of the Public Acts of 1993, being section 780.621 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1 of Act No. 213 of the Public Acts of
2 1965, as amended by Act No. 342 of the Public Acts of 1993, being
3 section 780.621 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 1. (1) Except as provided in subsection (2), a person
6 who is convicted of not more than 1 offense may file an

1 application with the convicting court for the entry of an order
2 setting aside the conviction.

3 (2) A person shall not apply to have set aside, ~~nor may~~
4 AND a judge SHALL NOT set aside, a conviction for a felony for
5 which the maximum punishment is life imprisonment, A CONVICTION
6 FOR A VIOLATION OR ATTEMPTED VIOLATION OF SECTION 520B, 520C,
7 520D, OR 520G OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE
8 PUBLIC ACTS OF 1931, BEING SECTIONS 750.520B, 750.520C, 750.520D,
9 AND 750.520G OF THE MICHIGAN COMPILED LAWS, or a conviction for a
10 traffic offense.

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

16 (4) The application is invalid unless it contains the fol-
17 lowing information and is signed under oath by the person whose
18 conviction is to be set aside:

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

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

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

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

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

4 (f) A consent to the use of the nonpublic record created
5 under section 3 ~~7~~ to the extent authorized by section 3.

6 (5) The applicant shall submit a copy of the application and
7 2 complete sets of fingerprints to the department of state
8 police. The department of state police shall compare those fin-
9 gerprints with the records of the department, including the non-
10 public record created under section 3, and shall forward a com-
11 plete set of fingerprints to the federal bureau of investigation
12 for a comparison with the records available to that agency. The
13 department of state police shall report to the court in which the
14 application is filed the information contained in the
15 department's records with respect to any pending charges against
16 the applicant, any record of conviction of the applicant, and the
17 setting aside of any conviction of the applicant and shall report
18 to the court any similar information obtained from the federal
19 bureau of investigation. The court shall not act upon the appli-
20 cation until the department of state police reports the informa-
21 tion required by this subsection to the court.

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

1 (7) A copy of the application shall be served upon the
2 attorney general and upon the office of the prosecuting attorney
3 who prosecuted the crime, and an opportunity shall be given to
4 the attorney general and to the prosecuting attorney to contest
5 the application. If the conviction was for an assaultive crime
6 or a serious misdemeanor, the prosecuting attorney shall notify
7 the victim of the assaultive crime or serious misdemeanor of the
8 application pursuant to section 22a or 77a of the crime victim's
9 rights act, Act No. 87 of the Public Acts of 1985, being sections
10 780.772a and 780.827a of the Michigan Compiled Laws. The notice
11 shall be by first-class mail to the victim's last known address.
12 The victim has the right to appear at any proceeding under this
13 act concerning that conviction and to make a written or oral
14 statement.

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

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

26 (10) As used in this section:

1 (a) "Assaultive crime" means that term as defined in section
2 9a of chapter X of the code of criminal procedure, Act No. 175 of
3 the Public Acts of 1927, being section 770.9a of the Michigan
4 Compiled Laws.

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

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