

Act No. 573
Public Acts of 1996
Approved by the Governor
January 15, 1997
Filed with the Secretary of State
January 16, 1997

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Senators Rogers, Hoffman, Schwarz, Bullard, Shugars and Steil

ENROLLED SENATE BILL No. 1177

AN ACT 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:

Section 1. Section 1 of Act No. 213 of the Public Acts of 1965, as amended by Act No. 342 of the Public Acts of 1993, being section 780.621 of the Michigan Compiled Laws, is 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, and a judge shall not set aside, a conviction for a felony for which the maximum punishment is life imprisonment or an attempt to commit a felony for which the maximum punishment is life imprisonment, a conviction for a violation or attempted violation of section 520c, 520d, or 520g of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.520c, 750.520d, and 750.520g of the Michigan Compiled Laws, 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 under 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.

Section 2. This amendatory act shall take effect April 1, 1997.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved _____

Governor.