

SENATE BILL NO. 1174

December 03, 2024, Introduced by Senator BAYER and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1965 PA 213, entitled

"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,"

by amending section 3 (MCL 780.623), as amended by 2020 PA 193.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) ~~Upon~~**On** the entry of an order under section 1 or
2 le, the court shall send a copy of the order to the arresting
3 agency and the department of state police.

1 (2) The department of state police shall retain a nonpublic
2 record of the order setting aside a conviction, or other
3 notification regarding a conviction that was automatically set
4 aside under section 1g, and of the record of the arrest,
5 fingerprints, conviction, and sentence of the ~~person~~**individual** in
6 the case to which the order or other notification applies. Except
7 as provided in subsection (3), this nonpublic record ~~shall~~**must** be
8 made available only to a court of competent jurisdiction, an agency
9 of the judicial branch of state government, the department of
10 corrections, a law enforcement **or intelligence** agency **of this state**
11 **or the United States, the Michigan National Guard or the National**
12 **Guard of any other state**, a prosecuting attorney, the attorney
13 general, or the governor ~~upon~~**on** request and only for the following
14 purposes:

15 (a) Consideration in a licensing function conducted by an
16 agency of the judicial branch of state government **or by a**
17 **department or agency of the United States.**

18 (b) To show that ~~a person~~**an individual** who has filed an
19 application to set aside a conviction has previously had a
20 conviction set aside under this act.

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

24 (d) Consideration by the governor if ~~a person~~**an individual**
25 whose conviction has been set aside applies for a pardon for
26 another offense.

27 (e) Consideration by the department of corrections or a law
28 enforcement agency if ~~a person~~**an individual** whose conviction has
29 been set aside applies for employment with the department of

1 corrections or law enforcement agency.

2 (f) Consideration by a court, law enforcement agency,
3 prosecuting attorney, or the attorney general in determining
4 whether an individual required to be registered under the sex
5 offenders registration act, 1994 PA 295, MCL 28.721 to ~~28.736,~~
6 **28.730**, has violated that act, or for use in a prosecution for
7 violating that act.

8 (g) Consideration by a court, law enforcement agency,
9 prosecuting attorney, or the attorney general for use in making
10 determinations regarding charging, plea offers, and sentencing, as
11 applicable.

12 **(h) Consideration of the information by an entity of this**
13 **state or the United States described under this subsection is**
14 **required by a law or regulation of the United States.**

15 (3) A copy of the nonpublic record created under subsection
16 (2) must be provided to the ~~person~~**individual** whose conviction is
17 set aside under this act ~~upon~~**on** payment of a fee determined and
18 charged by the department of state police in the same manner as the
19 fee prescribed in section 4 of the freedom of information act, 1976
20 PA 442, MCL 15.234.

21 (4) The nonpublic record maintained under subsection (2) is
22 exempt from disclosure under the freedom of information act, 1976
23 PA 442, MCL 15.231 to 15.246.

24 (5) Except as provided in subsection (2), ~~a person,~~**an**
25 **individual**, other than the ~~person~~**individual** whose conviction was
26 set aside or a victim, who knows or should have known that a
27 conviction was set aside under this section and who divulges, uses,
28 or publishes information concerning a conviction set aside under
29 this section is guilty of a misdemeanor punishable by imprisonment

1 for not more than 90 days or a fine of not more than \$500.00, or
2 both.

3 (6) An entity is not liable for damages or subject to criminal
4 penalties under this section for reporting a public record of
5 conviction that has been ~~set-aside~~**set aside** by court order or
6 operation of law, if that record was available as a public record
7 on the date of the report.

8 (7) ~~(6)~~As used in this section, "victim" means any individual
9 who suffers direct or threatened physical, financial, or emotional
10 harm as the result of the offense that was committed by the
11 applicant.