

SETTING ASIDE CONVICTIONS (EXCERPT)
Act 213 of 1965

780.623 Sending copy of order to arresting agency and department of state police; retention and availability of nonpublic record of order and other records; providing copy of nonpublic record to person whose conviction set aside; fee; nonpublic record exempt from disclosure; prohibited conduct; misdemeanor; penalty; liability; "victim" defined.

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

(2) The department of state police shall retain a nonpublic record of the order setting aside a conviction, or other notification regarding a conviction that was automatically set aside under section 1g, and of the record of the arrest, fingerprints, conviction, and sentence of the person in the case to which the order or other notification applies. Except as provided in subsection (3), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, the department of corrections, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) Consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) To show that a person who has filed an application to set aside a conviction has previously had a conviction set aside under this act.

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

(d) Consideration by the governor if a person whose conviction has been set aside applies for a pardon for another offense.

(e) Consideration by the department of corrections or a law enforcement agency if a person whose conviction has been set aside applies for employment with the department of corrections or law enforcement agency.

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

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

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

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

(5) Except as provided in subsection (2), a person, other than the person whose conviction was set aside or a victim, who knows or should have known that a conviction was set aside under this section and who divulges, uses, or publishes information concerning a conviction set aside under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

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

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

History: Add. 1982, Act 495, Eff. Mar. 30, 1983;—Am. 1988, Act 11, Imd. Eff. Feb. 8, 1988;—Am. 1993, Act 342, Eff. May 1, 1994;—Am. 1994, Act 294, Eff. Oct. 1, 1995;—Am. 2014, Act 463, Imd. Eff. Jan. 12, 2015;—Am. 2020, Act 193, Eff. Apr. 11, 2021.

Compiler's note: Subsection (6) beginning with "As used in this section," evidently should be numbered (7).