

TRIBAL CODE

CHAPTER 77:

SETTING ASIDE TRIBAL CONVICTIONS

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HISTORY NOTE:

Current Ordinance:

Resolution 2015-191, adopted August 18, 2015, adopts Tribal Code 77: Setting Aside Tribal Convictions.
Effective immediately.

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CHAPTER 77:

SETTING ASIDE TRIBAL CONVICTIONS

77.101 Application to Set Aside Conviction.

(1) A person who has been convicted of not more than one (1) criminal offense under Chapter 71 of the Tribal Code may file an application for the entry of an order setting aside that criminal conviction provided that:

(a) At least five years have passed following imposition of the sentence for the tribal court conviction or following completion of any term of probation, imprisonment, and/or parole for that conviction, whichever occurs later;

(b) The person has not been convicted of and has no pending charges for any other criminal offense in tribal court or in the courts of any jurisdiction in the United States or in any other country;

(c) The conviction sought to be set aside is not homicide in violation of §71.708, abuse of office in violation of §71.1101, or any degree of criminal sexual conduct in violation of §71.1801-1804 or any sexual offense that requires registration as a sex offender under the provisions of Chapter 72 of the Tribal Code, entitled the Sex Offender Registration and Notification Code; and

(d) The conviction sought to be set aside is not for attempt or conspiracy to commit any of the crimes listed or described in subsection (c); and

(e) The conviction sought to be set aside is not a traffic offense.

(2) A person may have only one (1) conviction set aside under this section.

77.102 Contents of Application.

An application to set aside a conviction may be considered only if 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) The case number of the tribal court conviction that is to be set aside.

(c) A statement that, except for the tribal court conviction sought to be set aside, the applicant has not been convicted of any other criminal offense in tribal court or in the courts of any other jurisdiction in the United States or in any other country.

(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 that 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) Two complete sets of fingerprints.

77.103 Review and Consideration of Application.

(1) The applicant shall submit the completed application to Sault Tribe Law Enforcement (“STLE”) together with a fee of \$50.00 payable to the Sault Ste. Marie Tribe of Chippewa Indians to be used by STLE to defray the expenses incurred in processing the application. STLE shall review its own records, shall conduct a LEIN search for any records relating to the applicant, and shall forward a complete set of finger prints to the Federal Bureau of Investigation for a comparison with the records available to the agency. Upon completion of this review process, STLE shall forward the application to the tribal court and to the tribal prosecutor together with a report describing any information STLE has discovered regarding any pending charges against the applicant, any record of conviction of the applicant, and the setting aside of any conviction of the applicant, including any similar information obtained by STLE from the Federal Bureau of Investigation. .

(2) Upon receipt of a copy of the completed application and STLE report, the tribal prosecutor shall review any files and records maintained by the prosecutor regarding the applicant, shall attempt to identify the victim or victims of the crime and, if such persons are identified, shall attempt to notify the victim or victims of the application. The notice shall be by first-class mail to the victim’s last known address and the tribal prosecutor shall file a proof of service with the tribal court and/or a statement indicating that such persons were unable to be identified or located. The victim or victims shall have the right to appear at any hearing held by the court concerning the application and to make a written or oral statement.

(3) After the application is complete, including the filing of the STLE report and the tribal prosecutor’s proof of service on any victim or victims, the tribal court may require the filing of affidavits and the taking of such proofs as it considers proper. The tribal prosecutor shall be given notice of any such proceedings and shall be provided the opportunity to contest the application.

(4) 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 and any actual applicable trial court cost as determined by the tribal court. The setting aside of a conviction under this section is a privilege and conditional; it is not a right and the determination is vested in the sound discretion of the tribal court judge.

77.104 Implementation and Effect of Order

(1) If the court enters an order setting aside a conviction pursuant to Section 1, the applicant, for purpose of tribal law, shall be considered not to have been previously convicted, subject to the limitations and exceptions provided in this section.

(2) Upon the entry of an order pursuant to Section 1, the court shall send a copy of the order to the tribal prosecutor and to STLE. STLE and the tribal prosecutor shall each retain a nonpublic record of the order setting aside a conviction and of the record of the arrest, fingerprints, conviction, and sentence of the applicant in the case to which the order applies. This nonpublic record shall be kept strictly confidential and may be made available only to the extent and in the circumstances provided in this section.

(3) If an order to set aside a conviction under section 1 involves a conviction that has been previously reported to outside state or federal record services such as the LEIN system, STLE shall make a reasonable, good faith effort to remove the record from that record service, if such removal is permitted by the service, assuring that the record will no longer appear as part of the applicant's criminal history under that service. If removal of the record of conviction is not permitted by the outside record service or is otherwise not achievable, STLE shall instead post the set aside order to that outside system.

(4) Except as provided in subsection (3), the nonpublic record described in subsection (2) may be disclosed only for the following purposes:

(a) By STLE and the tribal prosecutor to show that a person who has filed an application to set aside a tribal court criminal conviction has previously had a conviction set aside pursuant to this act.

(b) For consideration by STLE if a person whose conviction has been set aside applies for employment with STLE.

(c) To the person whose conviction has been set aside by the order.

(5) Notwithstanding the provisions of subsection (1):

(a) The applicant is not entitled to the remission of any fine, costs, or other money paid as a consequence of a conviction that is set aside.

(b) This act does not affect the right of the applicant to rely upon the conviction to bar subsequent proceedings for the same offense.

(c) This act does not affect the right of a victim of a crime to prosecute or defend a civil action for damages.

(d) This act does not create a right to commence an action for damages for incarceration under the sentence that the applicant served before the conviction is set aside pursuant to this act.