



Project Clean Slate

EXPUNGEMENT LEGISLATION OVERVIEW

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Petition Set Aside (effective April 11, 2021)

Individuals with no more than three felony convictions may be eligible to expunge those felonies and an unlimited number of misdemeanors. No more than two of those convictions can be for an assaultive crime.

An applicant is prohibited from having more than 1 felony conviction for the same offense set aside if it is punishable by more than 10 years in prison.

Convictions that Cannot be Set Aside

Convictions for the following cannot be set aside:

1. A felony or attempted felony where the punishment is life imprisonment.
2. Certain offenses related to the exploitation and delinquency of minors.
3. A violation or attempted violation of fourth-degree CSC if convicted on or after January 12, 2015.
4. Subsequent Operating While Intoxicated/Impaired (OWI/OWVI). Only a first Operating While Intoxicated (OWI) conviction may be eligible.
5. Any traffic offense committed while operating a commercial vehicle with a commercial driver's license (CDL), or any traffic offense that resulted in injury or death.

6. Felony domestic violence, if the applicant has a previous misdemeanor conviction for domestic violence.
7. Human trafficking offenses.

These prohibitions on setting aside a conviction also apply to automatic set aside. An order setting aside a traffic offense does not require the SOS to remove it from the defendant's driving record.

One Bad Night

Multiple felony or misdemeanor convictions must be treated as one felony or one misdemeanor conviction if they occurred within a 24-hour period and arose out of the same transaction. Exceptions include:

1. Assaultive crimes;
2. Crimes involving the use or possession of a dangerous weapon;
3. Crimes with a maximum penalty of 10 years or more imprisonment;
4. A conviction for a crime that if it had been obtained in this state would be for an assaultive crime.

Waiting Periods

An application to set aside more than 1 felony conviction shall only be filed 7 or more years after whichever occurs last:

- imposition of the sentence,
- completion of probation,
- discharge from parole, or
- completion of any term of imprisonment.

An application to set aside 1 or more serious misdemeanor or 1 felony conviction(s) shall only be filed 5 or more years after whichever occurs last:

- imposition of the sentence,
- completion of probation,
- discharge from parole, or
- completion of any term of imprisonment.

An application to set aside 1 or more misdemeanor convictions shall only be filed 3 or more years after whichever occurs last: the imposition of a sentence, completion of any term of imprisonment, or completion of probation.

Non-Public Status of Set Aside Convictions

A non-public conviction can be used for making determinations about charging, plea offers, and sentencing.

Upon entry of an order regarding a set aside conviction, the court must send a copy of the order to the arresting agency and the Michigan State Police (MSP).

MSP must retain a nonpublic record of the order setting aside a conviction, and of the records of the arrest, fingerprints, conviction, and sentence of the person.

A nonpublic record may be made available for consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general for use in making determinations regarding charging, plea offers, and sentencing.

Treatment of Convictions that are Set Aside

Upon entry of an order setting aside a conviction an applicant is considered not to have been previously convicted.

Any obligation to pay restitution owed to the victim is not affected by set aside, nor is the court's jurisdiction regarding enforcement of an order of restitution affected by set aside.

A conviction that was set aside cannot be used as evidence in any action for negligent hiring, admission, or licensure against any person.

Marijuana Related Set Aside (Petition)

A person convicted of 1 or more misdemeanor marijuana offenses may apply to set aside the conviction(s).

How is a misdemeanor marijuana conviction different than other misdemeanor convictions that can be set aside under MCL 780.621 or MCL 780.621g? The statute specifies that there is a rebuttable presumption that a conviction for a misdemeanor marijuana offense sought to be set aside by an applicant was based on activity that would not have been a crime if committed on or after December 6, 2018. This rebuttable

presumption arises upon filing of an application listed under subsection (1). MCL 780.621e(4).

How does a prosecuting attorney rebut the presumption? The prosecuting attorney must present evidence that demonstrates by a preponderance of the evidence that the conduct on which the applicant's conviction(s) was based would constitute a criminal violation of the laws of this state or political subdivision if it had been committed on or after December 6, 2018. The prosecuting attorney must present this evidence in an answer filed no later than 60 days from the date of service of the application. MCL 780.621e(4).

If the prosecuting attorney files an answer rebutting the presumption, what does the court have to do? The court must promptly set the matter for a hearing no later than 30 days from its receipt of the prosecuting attorney's answer. MCL 780.621e(6).

What happens at the hearing on the rebuttable presumption? The prosecuting attorney must prove by a preponderance of the evidence that the conviction(s) sought to be set aside were based on conduct that would constitute a criminal violation of the laws of this state or political subdivision if it had been committed on or after December 6, 2018. The applicant is not required to present evidence. The evidentiary burden rests solely on the prosecuting attorney. MCL 780.621e(6).

After the hearing, how long does the court have to enter an order denying or granting the application? The court must enter an order denying or granting the application no later than 14 days after completion of the hearing and serve the order on the parties, including MSP. MCL 780.621e(6).

Do the rules of evidence apply during the hearing? The rules of evidence do not apply to a hearing under this subsection. MCL 780.621e(6).

What if the prosecutor does not file an answer rebutting the presumption before expiration of the 60-day period? The convicting court must enter an order setting aside the conviction(s) within 21 days and serve a copy on the applicant, arresting agency, prosecuting attorney, and MSP. MCL 780.621e(5).

What is considered a misdemeanor marijuana conviction under this section?

Misdemeanor marijuana offense" means a violation of MCL 333.7403(2)(d) (possession), MCL 333.7404(2)(d) (use), or MCL 333.7453 (selling marijuana paraphernalia), or a violation of a local ordinance substantially corresponding to one of those statutes.

Can an applicant request the return of fines, costs, or fees related to the misdemeanor marijuana conviction(s) that is set aside? The applicant is not entitled to the return of any fines, costs, or fees imposed as part of the applicant's sentence for the

misdemeanor marihuana conviction(s), or any money or property forfeited by the prosecuting agency or any law enforcement agency as a result of the conduct leading to the conviction or the misdemeanor marihuana conviction itself. MCL 780.621f(4).

Automatic Set Aside (effective April 2023)

The Michigan State Police (MSP) and courts are required to automatically set aside certain convictions without the filing of an application.

- A felony conviction will be automatically set aside by the MSP 10 years after either imposition of the sentence for the conviction or completion of any term of imprisonment with MDOC, whichever occurs later and the conviction is otherwise eligible.
- A 93-day or more misdemeanor will be automatically set aside by MSP 7 years after the imposition of sentence.
- A 92-day or less misdemeanor will be automatically set aside by MSP (e.g. fingerprints were submitted to MSP) 7 years after the imposition of sentence if the conviction is recorded and maintained in the MSP database.
- A 92-day or less misdemeanor will be automatically set aside by the court (e.g. no fingerprints were submitted to MSP) 7 years after the imposition of sentence. If a court automatically sets aside a 92-day or less misdemeanor, the court must notify the arresting law enforcement agency of each conviction set aside on or before the tenth day of each month for the preceding month.

No more than 2 felony convictions and 4 misdemeanor (≥ 93 days) convictions can be automatically set aside. The limit on the number of misdemeanor convictions that may be set aside does not apply to 92-day or less misdemeanors set aside.

Convictions (including attempt) that cannot be automatically set aside:

1. An assaultive crime;
2. A serious misdemeanor;
3. A crime of dishonesty;
4. Any other offense, not otherwise listed in this subsection that is punishable by 10 or more years' imprisonment;
5. A crime with elements involving a minor, vulnerable adult, injury or serious impairment, or death; or
6. Any violation related to human trafficking

Other requirements necessary to automatically set aside a felony or 93-day or more misdemeanor include:

1. Elapsing of the applicable time period (felony - 10 years) or (\geq 93 day misdemeanor - 7 years);
2. No criminal charges pending in LEIN;
3. The applicant has not been convicted of any criminal offense during the applicable time period required; and
4. The applicant has no more than one conviction for an assaultive crime (or attempt to commit an assaultive crime).