

Setting Aside A Conviction For Certain Violations Involving Human Trafficking Victim Checklist

This particular application may be made at any time after conviction, and a person may apply to have more than one conviction set aside. [MCL 780.621d\(6\)](#).

- ☐ Ensure the application is to set aside a conviction for violating [MCL 750.448](#), [MCL 750.449](#), [MCL 750.450](#), or a local ordinance substantially corresponding to one of these statutes. [MCL 780.621\(3\)](#). If the person is seeking to set aside a conviction for a violation of another statute, see the Michigan Judicial Institute's *Setting Aside a Conviction Generally Checklist*.
- ☐ Determine whether the application to set aside a conviction is valid, i.e., is signed under oath by the person whose conviction(s) is/are to be set aside and contains the following information required by [MCL 780.621d\(7\)](#):
 - ☐ The full name and current address of the applicant.
 - ☐ A certified record of each conviction that is to be set aside.
 - ☐ A statement listing all actions enumerated in [MCL 780.621\(2\)](#) that were initiated against the applicant and have been dismissed.
 - ☐ A statement as to whether the applicant has previously filed an application to set aside this or other conviction and, if so, the disposition of the application.
 - ☐ A statement as to whether the applicant has any other criminal charge pending against him/her in any court in the United States or in any other country.

- ☐ A statement that he/she meets the criteria set out in [MCL 780.621\(3\)](#), together with a statement of the facts supporting his/her contention that the conviction was a direct result of his/her being a victim of human trafficking.
- ☐ A consent to the use of the nonpublic record created under [MCL 780.623](#) to the extent authorized by [MCL 780.623](#).
- ☐ Verify receipt of a report from the Department of State police with 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. [MCL 780.621d\(8\)](#).
 - ☐ Action on the application is prohibited until the Department of State Police reports the required information to the court. [MCL 780.621d\(8\)](#).
- ☐ Schedule a hearing.
- ☐ Determine whether appropriate notice was served upon the Attorney General and prosecuting attorney. [MCL 780.621d\(10\)](#).
- ☐ Provide an opportunity for the Attorney General and prosecuting attorney to contest the application. [MCL 780.621d\(10\)](#).
- ☐ Upon the hearing of the application, require the filing of affidavits and taking of proofs as the court considers proper. [MCL 780.621d\(11\)](#).
- ☐ State that the setting aside of (a) conviction(s) is a privilege and conditional and is not a right. [MCL 780.621d\(14\)](#).
- ☐ Determine whether the applicant has proven by a preponderance of the evidence that the conviction was a direct result of his/her being a victim of human trafficking. [MCL 780.621d\(12\)](#).
- ☐ Determine whether the post-conviction circumstances and behavior of the applicant justify setting aside the conviction(s). [MCL 780.621d\(13\)](#).
- ☐ Determine whether setting aside the conviction(s) is consistent with the public welfare. [MCL 780.621d\(13\)](#).
- ☐ If the application is denied, state whether the applicant may file another application to have the conviction set aside:
 - ☐ Three years after the date of the order; OR

- ☐ Earlier than three years after the date of the order, but no sooner than _____. [MCL 780.621d\(5\)](#).
- ☐ If the application is granted, state that the conviction is set aside, and explain the effect of the entry of the order:
 - ☐ The applicant, for purposes of the law, is considered not to have been previously convicted, unless the set aside conviction is being considered for one of the limited purposes set out in [MCL 780.623](#) (addressing nonpublic records retained by the Department of State Police). [MCL 780.622\(1\)](#); [MCL 780.622\(3\)](#).
 - ☐ 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. [MCL 780.622\(2\)](#).
 - ☐ The applicant's double jeopardy rights are not affected. See [MCL 780.622\(4\)](#).
 - ☐ The victim's right to prosecute or defend a civil action for damages is not affected. [MCL 780.622\(5\)](#).
 - ☐ There is no right created to commence an action for damages for incarceration under the sentence that the applicant served before the conviction was set aside. [MCL 780.622\(6\)](#).
- ☐ Upon the entry of an order under [MCL 780.621](#), send a copy of the order to the arresting agency and to the Department of State Police. [MCL 780.623\(1\)](#); [MCL 769.16a](#).

