

Application to Set Aside A Conviction (Generally) Checklist

If the application is to set aside a misdemeanor marijuana conviction, refer to the Michigan Judicial Institute's [Setting Aside a Misdemeanor Marijuana Conviction Checklist](#).

If the application is for a violation of [MCL 750.448](#), [MCL 750.449](#), [MCL 750.450](#), or a local ordinance substantially corresponding to one of these statutes, *and* the applicant indicates that the offense was committed as a direct result of being a victim of human trafficking, refer to the Michigan Judicial Institute's [Setting Aside A Conviction For Certain Offenses Involving Human Trafficking Victim Checklist](#).

If the application is to set aside a first violation operating while intoxicated conviction, refer to the Michigan Judicial Institute's [Setting Aside a Conviction for First OWI Checklist](#).

Note that certain convictions will be set aside by an automatic process, subject to any necessary appropriation, and beginning two years after April 11, 2021. [MCL 780.621g\(1\)](#). A "computer-based program for the [(automatic)] setting aside of convictions" will be developed by the Department of Technology, Management, and Budget. [MCL 780.621g\(11\)](#). Courts will be required to notify the arresting law enforcement agency of each conviction automatically set aside monthly. [MCL 780.621g\(1\)](#). [MCL 780.621h](#) provides a process for reinstatement of any conviction that is "improperly or erroneously" set aside by automatic process. For a detailed discussion of the automatic set aside process, see the Michigan Judicial Institute's [Criminal Proceedings Benchbook, Vol. 3](#), Chapter 3.

☐ Determine whether the conviction is for an offense listed in [MCL 780.621c](#) as a conviction that *may not be set aside*:

☐ A felony for which the maximum punishment is life imprisonment or an attempt to commit a felony for which the maximum punishment is life imprisonment.

- ☐ A violation or attempted violation of [MCL 750.136b\(3\)](#), [MCL 750.136d\(1\)\(b\)](#), [MCL 750.136d\(1\)\(c\)](#), [MCL 750.145c](#), [MCL 750.145d](#), [MCL 750.520c](#), [MCL 750.520d](#), and [MCL 750.520g](#).
- ☐ A violation or attempted violation of [MCL 750.520e](#), if the conviction occurred on or after January 12, 2015.
- ☐ The following traffic offense convictions:
 - ☐ Subject to exceptions for a first violation operating while intoxicated offense, an operating while intoxicated by any person.
 - ☐ "Any traffic offense committed by an individual with an indorsement on his or her operator's or chauffeur's license to operate a commercial motor vehicle that was committed while the individual was operating the commercial motor vehicle or was in another manner a commercial motor vehicle violation."
 - ☐ Any traffic offense that causes injury or death.
- ☐ A felony conviction for domestic violence, if the person has a previous misdemeanor conviction for domestic violence.
- ☐ A violation of former [MCL 750.462i](#) or [MCL 750.462j](#), [MCL 750.462a–MCL 750.462h](#) or [MCL 750.543a–MCL 750.543z](#).
- ☐ Determine whether the person is eligible to have the conviction set aside. A person convicted of one or more offenses may file an application with the convicting court for entry of an order setting aside one or more convictions under the following conditions:
 - ☐ The applicant was "convicted of 1 or more criminal offenses, but not more than a total of 3 felony offenses, in this state," [MCL 780.621\(1\)\(a\)](#);
 - ☐ The applicant does not have more than a total of 2 convictions for an assaultive crime set aside under this act during their lifetime, [MCL 780.621\(1\)\(b\)](#);
 - ☐ If the applicant is requesting to set aside a conviction for a felony offense punishable by more than 10 years imprisonment, they may not have more than 1 such felony conviction for the same offense set aside, [MCL 780.621\(1\)\(c\)](#).
 - ☐ Note that more than 1 felony offense or more than 1 misdemeanor offense must be treated as a single felony or misdemeanor conviction if the felony or

misdemeanor convictions were contemporaneous such that all of the felony or misdemeanor offenses occurred within 24 hours and arose from the same transaction, provided that none of those felony or misdemeanor offenses constitute any of the following: (a) an assaultive crime; (b) a crime involving the use or possession of a dangerous weapon; (c) a crime with a maximum penalty of 10 or more years' imprisonment; or (d) a conviction for a crime that if it had been obtained in this state would be for an assaultive crime. [MCL 780.621b\(1\)](#).

- ☐ If the application is to set aside more than 1 felony conviction, determine whether it has been at least seven years since (a) imposition of the sentence or (b) completion of probation, whichever occurred last. [MCL 780.621d\(1\)](#).
- ☐ If the application is to set aside 1 or more serious misdemeanor convictions, 1 first violation operating while intoxicated offense, or 1 felony conviction, determine whether it has been at least 5 years since (a) imposition of the sentence or (b) completion of probation or (c) discharge from parole or (d) completion of term of imprisonment, whichever occurred last. [MCL 780.621d\(2\)](#).
- ☐ If the application is to set aside 1 or more misdemeanor convictions that are **not** assaultive crimes, serious misdemeanors, or a first violation operating while intoxicated offense, determine whether it has been at least 3 years since (a) imposition of the sentence or (b) completion of probation or (c) completion of term of imprisonment, whichever occurred last. [MCL 780.621d\(3\)](#).
- ☐ After the applicable time period has elapsed, confirm there are no criminal charges pending against the applicant and the applicant has not been convicted of any criminal offense during the applicable time period. [MCL 780.621d\(4\)](#).
- ☐ 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 that the applicant has not been convicted of an offense during the applicable time period required under [MCL 780.621d\(1\)-\(3\)](#).

- ☐ A statement listing all actions enumerated in [MCL 780.621\(2\)](#) that were initiated against the applicant and have been dismissed:
 - ☐ A conviction that was deferred and dismissed under any of the following, whether a misdemeanor or felony, is considered a misdemeanor conviction under [MCL 780.621\(1\)](#) for purposes of determining whether the person is eligible to have any conviction set aside: [MCL 436.1703](#), [MCL 600.1070\(1\)\(b\)\(i\)](#), [MCL 600.1209](#), [MCL 762.13](#), [MCL 769.4a](#), [MCL 333.7411](#), [MCL 750.350a](#), [MCL 750.430](#), any other substantially similar law(s) of Michigan or a political subdivision of Michigan that provide for deferral and dismissal of the charge. [MCL 780.621\(2\)](#).
- ☐ A statement as to whether the applicant has previously filed an application to set aside this or another 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 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 (e.g. Attorney General, prosecutor, victim). [MCL 780.621d\(10\)](#).
- ☐ Provide an opportunity for the Attorney General and prosecuting official to contest the application. [MCL 780.621d\(10\)](#).
- ☐ Ensure that the victim's right to appear at any proceeding concerning the conviction and to make a written or oral statement is respected. [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 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 conviction being set aside is a *listed offense* as defined in [MCL 28.722](#) of the Sex Offenders Registration Act (SORA) or 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\(6\)](#).
 - ☐ The applicant is still obligated to pay any restitution owed to the victim of a crime and the court's jurisdiction and

authority to enforce an order for restitution is not affected. [MCL 780.622\(7\)](#).

- ☐ A conviction that is set aside and any records relating to it cannot be used as evidence in an action for negligent hiring, admission, or licensure against any person. [MCL 780.622\(8\)](#).
- ☐ A conviction that is set aside may still be considered for purposes of habitual offender sentencing. [MCL 780.622\(9\)](#).
- ☐ 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](#).