

# **A Guide to Set Aside / Expunge Past Criminal Convictions**



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On April 11, 2021 a new law went into effect which allowed individuals the ability to set aside more and varied past criminal offenses. While this change is the law was good; allowing an individual who has turned their life around after past criminal behavior to have another chance at a successful and productive life, this change is meaningless if that individual does not know how to reference the law to set aside past convictions. We want to make clear, **IT IS POSSIBLE** to set aside your convictions without the assistance of an attorney.

We support anyone who has changed their life and who has moved on from a life of crime. We have developed this booklet as a self-help guide to what offenses may be set aside, a kind of road map on how you may be able to proceed on your own in getting offenses expunged. However, it cannot, and does not, answer every engagement question and there may be additional material or issues that arise depending on the specific facts of each individual case. This is a general guide and in the end, you may wish to consult an attorney for other specific questions that you have.

Every person who has changed for the better deserves an opportunity to expunge their past bad behavior. The ability to obtain good employment, a home, or engage in the community may be hampered by an old criminal conviction(s) that remains on a criminal record. We hope this hope booklet, (also available electronically at [accesskent.com/prosecutor](http://accesskent.com/prosecutor)) will allow someone who qualifies, to at least start down the road, or even complete the journey, to getting their conviction(s) erased.

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## **WHAT CAN BE SET ASIDE/EXPUNGED FROM YOUR RECORD?**

A person may seek to have **not more than 3** eligible felony offenses, and an **unlimited number** of eligible misdemeanors, set aside. Additionally:

- “Felony” is defined, for this statute, as any crime with a possible punishment of more than 1-year imprisonment, or designated as a felony
- Not more than one felony of the same crime may be set aside if the maximum possible penalty for the crime was 10 years or more
- If multiple felonies or multiple misdemeanors occur within 24 hours, and arose from the same transaction, they are all considered only one felony or one misdemeanor (MCL 780.621b)

THE FOLLOWING OFFENSES **CANNOT** BE EXPUNGED OR SET ASIDE:

- Life maximum offenses, or attempts to commit them
- Child Abuse in the 2<sup>nd</sup> Degree, or attempt (MCL 750.136b or 750.136d)
- Child Sexually Abusive Activity or Material (any level), or attempt (MCL 750.145c)
- Using a Computer to Commit a Crime for certain offenses, or attempt (MCL 750.145d)
- Criminal Sexual Conduct (CSC) in the 2<sup>nd</sup> or 3<sup>rd</sup> Degree, Assault CSC, or attempt (MCL 750.520c, 520d, 520g)
- CSC in the 4<sup>th</sup> Degree if committed in 2015 or later (MCL 750.520e) (for CSC 4 prior to 2015, see MCL 780.621(1)(d))
- **A second offense for Operating While Intoxicated (MCL 780.621(4)(d))**
- Any Commercial Driver’s License offense (MCL 780.621c(1)(d)(ii))
- Any traffic violation that causes death or injury (MCL 780.621c(1)(d)(iii))
- Felony domestic violence if applicant also has a prior misdemeanor DV conviction (MCL 780.621c(1)(e))
- Forced labor, debt bondage, human trafficking (MCL 750.462a-h)

No more than **TWO** assaultive crimes may be set aside in a person’s lifetime, whether they are felony or misdemeanor. Assaultive crimes are as follows:

- Assault and Battery; Domestic Violence; Aggravated Assault; Aggravated DV; Resisting & Obstructing a DHHS Worker, Police Officer, or Utility Worker; Felonious Assault; Assault with Intent to Murder; Assault with Great Bodily Harm/Strangulation; Torture; Assault with Intent to Maim; Assault Other Felony; Assault with Intent to Rob Unarmed; Assault with Intent to Rob Armed; Sexual Intercourse Under Pretext of Medical Treatment; Assault of a Pregnant Individual/Miscarriage; related statutes (MCL 750.81-90h)
- Explosives, bomb making crimes (MCL 750.200-212)
- First- or second-degree murder, Manslaughter (MCL 750.316, .317, .321)
- Kidnapping or Unlawful Imprisonment (not parental kidnapping) (MCL 750.349, .349a)
- Home Invasion (any degree) (MCL 750.110a)

- Child Abuse (any degree) (MCL 750.136b)
- Intentional Discharge of a Firearm from a Motor Vehicle, at Dwelling, at Emergency Vehicle (MCL 750.234a, b)
- Child Enticement (MCL 750.350)
- Mayhem (MCL 750.397)
- Stalking or Aggravated Stalking (MCL 750.411h, .411i)
- Criminal Sexual Conduct 1<sup>st</sup>-4<sup>th</sup> Degree, Assaultive CSC (MCL 750.520b-g)
- Armed Robbery, Unarmed Robbery, Carjacking (MCL 750.529, .529a)
- Terrorism (MCL 750.543a-z)
- Another state or local law (not federal) corresponding to those listed

Human trafficking still has its own terms for a person looking to set aside certain prostitution related offenses (MCL 780.621(3))

### **WHEN CAN YOU SEEK A SET ASIDE/EXPUNGEMENT?**

1. If moving to set aside more than one felony, you cannot file until 7 years after your last sentence ended (finished probation, parole, or incarceration)
2. If moving to set aside one felony, it must be at least 5 years after sentence ended
3. If moving to set aside one or more serious misdemeanors (see below) **or one first violation for operating while intoxicated**, it must be at least 5 years after last sentence ended
4. If moving to set aside one or more misdemeanors that are **not** serious misdemeanors or assaultive misdemeanors, then it must be at least 3 years after sentence ended

There is nothing in the law on when a person can file to have an assaultive misdemeanor set aside, but every assaultive misdemeanor also qualifies as a serious misdemeanor.

### **HOW DO YOU GET A CONVICTION SET ASIDE/EXPUNGED?**

**STEP 1:** Complete and sign your application

An application can be found and filled out at:

<https://courts.michigan.gov/administration/scao/forms/courtforms/mc227.pdf>

Tips:

1. You may need to check ICHAT to know what is on your criminal record (there is a fee for requesting this through the Michigan State Police; search ICHAT on michigan.gov)
2. You will likely want to check local court websites to verify if any other convictions exist
3. Do **not** sign the completed application until you have a notary or court clerk witness your signature. You will need a photo ID to show them.

**STEP 2:** Get fingerprinted and get certified copies of your convictions.

Fingerprints: You can go to any police station or Michigan State Police post to have your fingerprints taken. There will be a cost. Make sure that the prints are taken on an RI-009 card. You

will need to submit this fingerprint card to the Michigan State Police along with a copy of your application.

Copies of Convictions: You need to order a certified copy of each of your convictions *from the court* where you were convicted. There will be a cost. These may also be called a judgement of sentence, abstract of conviction, or record of action.

**STEP 3:** File your application with your certified copy of conviction(s).

1. Make five copies of your application and your certified record of conviction. Take all five documents to the court clerk.
2. File the documents IN THE COURT WHERE YOU WERE CONVICTED. If you have convictions you wish to set aside in more than one court, you will need to file more than one application – one application in each court of conviction.
3. Check with the court to see what the filing process is, as each court is different and you need to file your documents as the specific court requires. Call the court clerk's office to find out their filing requirements.
4. You should get a date for a hearing to set aside about 4 months out, depending on the court.

**STEP 4:** Serve your application on the prosecutor, Attorney General, and Michigan State Police.

Only send your documents to them AFTER you get your hearing information from the court clerk.

1. Prosecutor and Michigan Attorney General: Mail a copy of your application and record of conviction to the prosecutor's office in the county in which you were convicted. Each county has their own office of the prosecuting attorney; if you do not know the name or the address of the office it can be found online at: <https://www.michiganprosecutor.org/about-us-menu/prosecutor-directory>. The address of the Attorney General can be found there as well.
2. Michigan State Police: Mail one copy of your application, record of conviction, and fingerprint card to MSP. You must also include the application fee of \$50.00, payable by check or money order. The fee is only paid to MSP; there is no fee to be paid to the prosecutor's office or the Attorney General. The documents should be sent by first class mail to:  
Michigan State Police, CJIC  
P.O. Box 30266  
Lansing, MI 48909

**TIP:** After sending your documents to all three, make sure to fill out the PROOF OF SERVICE section on your remaining copy and send this to the court clerk to show that you have sent your documents to the required agencies. Keep one copy for your records.

## **STEP 5:** The hearing

At the hearing, you have the opportunity to show the judge why your conviction(s) should be set aside. It is a good idea to have documentation to support your request, something short so the judge can examine it relatively quickly. These documents can also be sent to the court any time before the hearing date, so the judge can review the documents in advance.

Setting aside a conviction is not automatic. Under the law, it is defined as a privilege and is conditional, not a right. You must convince the court that your circumstances and behavior from the date of your conviction(s) warrant setting aside the conviction(s), and that setting aside the conviction(s) is consistent with the public welfare.

Some ideas to prepare for presentation to the judge to show your convictions should be set aside are:

1. Your employment history since you were released/discharged from probation/parole;
2. Letters of support from friends, family, employers, and volunteer organizations you are involved in;
3. Any substance abuse treatment certificates, or participation in treatment activities;
4. A statement on how removing your conviction will reduce barriers to school, work, or housing opportunities;
5. A personal statement on how your life has changed since your conviction;
6. Anything you think will convince the judge that removing your past convictions is consistent with the public welfare.

### TIPS:

1. A court “shall not” act on the application without the required Michigan State Police report, so you need to make sure MSP is mailed your application in a timely manner and the hearing date is far enough in the future to allow MSP to respond; otherwise your hearing will be delayed.
2. The prosecutor and the Michigan Attorney General must be served by mailing your application to their offices. Notice to victims is required if the conviction is for an assaultive crime or serious misdemeanor, and the victim has the right to appear and make a written or oral statement.
3. Bring a copy of a blank Order to Set Aside Conviction to the hearing. This can be found at: <https://courts.michigan.gov/administration/scao/forms/courtforms/mc228.pdf>

## **Step 6:** After the hearing:

If your application is granted: the judge should complete and sign the Order to Set Aside Conviction and you will be given a copy of the order. Ask if court clerk will send a copy to local police and Michigan State Police. If the court clerk does not send a copy to the police agencies, you must send a copy to both the local police and the Michigan State Police via first class mail.

If your application is denied: you must wait 3 years before filing for a set aside again unless the court orders less time