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Expunge an Adult Conviction

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FEEDBACK

Step-by-Step Guidance

Step 1: Understand the meaning of expungement.

Expungement has the effect of setting aside a criminal conviction, which permits the person to honestly tell potential employers and others that he or she has not been convicted of a crime. However, even an expunged criminal record can be used for some purposes. See [Additional Practice Guidance](#) for a more detailed explanation of [how an expunged conviction might still be used against a person](#).

Step 2: Research the law.

Carefully review the expungement statute, [MCL 780.621](#).

Step 3: Determine whether a conviction may be expunged.

Not all clients are eligible to have their adult convictions expunged, and not all convictions are capable of being expunged. To help you determine whether your client is eligible to have his or her particular conviction expunged, see the [flowchart](#) below. After reviewing the flowchart, if you believe the conviction is expungeable, proceed to step 4.

Step 4: Obtain a copy of the forms you need to expunge the conviction.

See SCAO form [MC 227](#), Application to Set Aside Conviction, and SCAO form [MC 228](#), Order on Application to Set Aside Conviction. Note that these forms do not mention the term *expungement*. The forms include detailed instructions on the expungement process and the information needed to file the application.

Step 5: Order a certified copy of the conviction record.

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Contact the court where the conviction occurred and order a certified copy of the conviction record. MCL 780.621(8)(b). Be patient, as records more than five years old are often in storage, converted to microfiche, or otherwise difficult to access. There may be a small charge for this process (\$10 statutory fee under MCL 28.273(2)) plus \$1 per page). Also, it never hurts to be friendly and courteous to a helpful court clerk.

The exact format of the conviction record is not critical. You may obtain a certified copy of the judgment of sentence, probation order, or register of actions. Just be sure there is something from the court that sufficiently describes both the charge and the exact date of conviction (the date of sentence or the date any term of imprisonment was completed). You will need this information for the expungement application.

In addition, you will need to make five copies of the record of conviction for use during the application process.

To obtain the prior record of conviction, it is highly recommended that you personally visit the court where it occurred. You may be able to perform this step by phone or by mail, but if you visit, you can do all of the following:

- Get the precise information about the conviction from the certified record.
- Have the court clerk notarize the application.
- Obtain a hearing date from the clerk.

Step 6: Obtain copies of the applicant's fingerprints.

To obtain fingerprints, contact your local police agency, which will generally accommodate this process (police are called upon frequently to fingerprint people for various applications, licensing procedures, or other purposes). The police department may schedule an appointment or may advise you to simply walk in during designated times.

The fingerprints will be taken on an applicant card (RI-8). Fill out the card completely. You may have to pay an application fee to the police agency.

Step 7: Complete and make copies of the application to set aside conviction.

Once you obtain a certified copy of the correction record, complete the application to set aside the conviction. Use MC 227. You will also need to make five copies of the application.

Step 8: Have the application signed under oath.

The client must sign the application under oath in front of a notary public or the court clerk. The client must bring a photo identification to show when signing the application. There may be a fee to have the application signed in front of a notary public. Either have the client sign one copy of the application form in front of the notary public or the clerk and make five additional copies of the

application form later, or print and bring all six copies of the completed and unsigned application form to sign in front of the notary public or the clerk. If you decide to have the application signed in front of a notary public, you can still file your application in person with the court.

Step 9: File the completed application with the court clerk.

File the following items with the court clerk where the original conviction was entered:

- the original signed and notarized application
- the original certified copy of the prior conviction
- five copies of both the application and the certified record of the prior conviction

The clerk will set a hearing date and return the five copies with the hearing date filled in under the "Notice of Hearing" section of the application form. The Michigan State Police (MSP) has requested that hearings be set at least 90–120 days from filing to ensure that they will have time to respond to the application.

Step 10: Assemble everything you need to mail the application to the appropriate agencies.

You will need to have the following items ready:

- five copies of the completed application to set aside the conviction, with the hearing date filled in
- five copies of the certified copy of the conviction
- one set of fingerprints (MCL 780.621(9))
- a \$50 fee payable to the State of Michigan (MCL 780.621(10))

Step 11: Mail the application materials to the required agencies.

The following materials must be mailed to these agencies:

1. To the MSP:

- a copy of the application
- a copy of the certified record of conviction
- the fingerprint card
- the \$50 fee payable to the State of Michigan

For questions or problems, call the MSP at 517-241-0606.

2. To the attorney general:

- a copy of the application
- a copy of the certified record of conviction

Use the following address for the Attorney General: Michigan

Department of Attorney General, Corrections Division, P.O. Box 30217,
Lansing, MI 48909

3. To the prosecutor's office for the county in which the applicant was convicted:

- a copy of the application
- a copy of the certified record of conviction

Obtain this address from the *Michigan Bar Journal*, from the telephone book, online, at Prosecuting Attorneys Association of Michigan, or by simply asking the court clerk.

Keep the remaining two copies of the application and the certified record of conviction.

Step 12: Complete a proof of service and file it with the court.

On one of the remaining two copies of the application, complete the section at the bottom entitled "Proof of Service." Simply check the appropriate boxes, fill in the dates, and sign and date at the bottom. Make a copy of this form with the completed proof of service for your records, and mail to or personally file the original with the court clerk.

Step 13: Prepare the order on application to set aside conviction.

Use SCAO form MC 228. Fill out the heading with your case information and print the form, leaving the body of the order to be completed by the judge. Make four copies and take it to the hearing with you.

Step 14: Prepare for the hearing.

All judges handle expungement hearings differently. Some will grant the expungement automatically if the applicant is eligible; others will want strong evidence of good character. Be ready for the latter.

- If the applicant has been in school, bring copies of transcripts.
- If the applicant has been working, bring a copy of his or her résumé and letters of reference from employers.
- If the applicant has done volunteer work or community service, bring evidence of what he or she has done and letters, if available.
- If the applicant has been rehabilitated, bring proof. This could include drug or alcohol intervention, psychological treatment, and religious or spiritual guidance from a personal place of worship.
- Have letters of support from friends, family members, or others who know the applicant well and can vouch for his or her good character. Consider bringing some of these key people to the hearing. Even if the judge does not want to hear from them, it will make an impression to

simply mention to the judge that the applicant's parents, partner, boss, and best friend are at the hearing to lend support.

If the crime to be expunged was assaultive in nature or a serious misdemeanor, the prosecutor will give the victim written notice of the request for expungement, including a copy of the application to set aside the expungement. Therefore, you should be prepared for the possibility that the victim will contact the judge concerning the expungement or even appear at the hearing. Advise the applicant to be respectful, apologetic, and contrite concerning the victim and the circumstances of the offense and to be appropriately introspective.

Serious misdemeanor is defined in MCL 780.811(1)(a) and includes a long list of offenses, including domestic violence, stalking, breaking and entering, illegal entry, child abuse, indecent exposure, injuring a worker in a work zone, and certain offenses involving minors, computer communications, firearms, and alcohol and/or personal injury accidents.

Step 15: If the judge grants the expungement, provide the appropriate follow-up.

If the judge grants the expungement, complete the process. Check with the court clerk to make sure he or she will send copies of the order to the MSP Central Records Division. You may want to send copies yourself to the attorney general and the prosecutor, to the same addresses listed in step 11.

After a couple of months, double check the applicant's record to make sure that the conviction was expunged. Check the MSP website, using the Internet Criminal History Access Tool, and if there are problems, contact the MSP Criminal Records Division, at 517-241-0600. See also the Additional Practice Guidance regarding the effect of an expungement.

Note that if the convicting court denies an expungement petition, a person cannot file another petition concerning the same conviction or convictions with the convicting court until three years after the date the court denies the previous petition, unless the court specifies an earlier date for filing another petition in its order denying the petition. MCL 780.621(6).

When to Use

Expungement of a criminal conviction has the effect of setting the conviction aside and allows the person whose conviction has been expunged to represent that he or she has not been convicted of a crime. The setting aside of the conviction can go a long way in helping a person who is trying to find employment and otherwise needs a fresh start in life. This How-To Kit provides step-by-step guidance on how to obtain an expungement of an adult conviction.

Using these materials is not a substitute for the attorney's independent judgment, drafting, and research.

Other Resources

Books

- [Michigan Criminal Procedure \(see chapter 12\)](#)

Other How-to Kits

- [Expunge a Juvenile Adjudication](#)

Other Helpful Links

- [Michigan State Police](#) (“Search, Modify, Locate, Set Aside or Expungement of Criminal History Records”)

Additional Practice Guidance

Flowchart

The following flow chart will help you determine if a conviction is expungeable.

1. Is it a felony for which the maximum punishment is life in prison?
 - If *yes*, you may not expunge the conviction (with the limited exception of human trafficking offenses noted below). [MCL 780.621\(3\)\(a\)](#).
 - If *no*, proceed to the next question.
2. Is it a violation or attempted violation of [MCL 750.520c](#), [.520d](#), and [.520g](#) (criminal sexual conduct), [MCL 750.136b\(3\)](#) (child abuse in the second degree), or [MCL 750.136d\(1\)\(b\)–\(c\)](#) (child abuse in the second degree in the presence of another child)?
 - If *yes*, you may not expunge the conviction. [MCL 780.621\(3\)\(b\)](#).
 - If *no*, proceed to the next question.
3. Is it a violation or attempted violation of [MCL 750.520e](#) (criminal sexual conduct in the fourth degree) that occurred after January 12, 2015?
 - If *yes*, you may not expunge the conviction. [MCL 780.621\(3\)\(c\)](#).
 - If *no*, proceed to the next question.
4. Is it a misdemeanor traffic offense, such as drunk driving, driving without a license, or any other criminal misdemeanor under the Michigan Vehicle Code, [MCL 257.1 et seq.](#)?
 - If *yes*, you may not expunge the conviction. [MCL 780.621\(3\)\(d\)](#).
 - If *no*, proceed to the next question.
5. Is it a felony conviction for domestic violence if the person has a previous misdemeanor conviction for domestic violence?
 - If *yes*, you may not expunge the conviction. [MCL 780.621\(3\)\(e\)](#).
 - If *no*, proceed to the next question.
6. Is it a violation of [MCL 750.462a et seq.](#) (human trafficking) or [750.543a et seq.](#) (terrorism)?
 - If *yes*, you may not expunge the conviction. [MCL 780.621\(3\)\(f\)](#).

- If *no*, proceed to the next question.

7. Does the person have more convictions than are permitted by the expungement statute?

- Before 2011 PA 64 (eff. June 23, 2011), if the person had more than one conviction, expungement was not available under MCL 780.621(1). *People v Dudas*, 134 Mich App 66, 350 NW2d 834 (1984). Expungement is unavailable even if the multiple convictions arose from the same criminal transaction and they occurred on the same date. *People v Blachura*, 176 Mich App 717, 440 NW2d 1 (1989). As amended effective January 12, 2015, the expungement statute permits a person convicted of not more than one felony and not more than two misdemeanors to petition the convicting court to set aside the felony. MCL 780.621(1)(a). A person who is convicted of not more than two misdemeanor offenses and no other felony or misdemeanor offenses may petition the convicting court or courts to set aside one or both of the misdemeanor convictions. MCL 780.621(1)(b). Also, a person who is convicted of fourth-degree criminal sexual conduct (or an attempt) before January 12, 2015, may petition to set aside the conviction if he or she has not been convicted of another offense other than not more than two minor offenses (which is defined as a misdemeanor or ordinance violation for which the maximum term of imprisonment does not exceed 90 days, the maximum fine is not more than \$1,000, and the person who committed the offense is not more than 21 years old). MCL 780.621(1)(c). The provision added in 2011 that permitted expungement if a person had no more than two minor offenses in addition to the one sought to be expunged was removed from the statute by 2014 PA 463.
- A person may seek to set aside convictions under the prostitution-related offenses of MCL 750.448–.450 or similar local ordinance if he or she committed the offense as a direct result of being a victim of a human trafficking violation. MCL 780.621(4), amended by 2016 PA 336 (Mar 14, 2017). An application under this provision may be filed at any time following the date of the conviction, and more than one conviction may be set aside. MCL 780.621(7).
- Except for human trafficking offenses, a person generally may proceed with expungement under two circumstances: (1) the person has no more than one felony and two misdemeanor convictions, or (2) the person has no more than two misdemeanor convictions. If either of these exceptions apply, proceed to the next question.

8. Effective January 12, 2015, deferred convictions (whether a misdemeanor or a felony) under the following statutes are considered a misdemeanor conviction in determining eligibility for expungement:

- MCL 436.1703 (purchase, consumption, or possession of alcoholic liquor by minor)

- MCL 600.1070 (admission into drug treatment court) and 600.1209 (veterans treatment court)
- MCL 762.13 (assignment as youthful trainee under the Holmes Youthful Trainee Act) or 769.4a (domestic violence)
- MCL 333.7411 (controlled substances)
- MCL 750.350a (taking or retaining child by adoptive or natural parent) or 750.430 (licensed health care professional engaging in practice with unlawful bodily alcohol content of .05 or more or under the influence of a controlled substance)
- any other Michigan state or local law similar in nature and applicability to those listed above that provides for the deferral and dismissal of a felony or misdemeanor charge

MCL 780.621(2).

- *Caution:* Be forewarned, however, that, in deciding whether to grant the expungement petition, the court may consider negatively any previous convictions that have already been set aside.
 - If the person is still within the limit for convictions under MCL 780.621(1), proceed to the next question.
9. Has it been at least five years since any of the following occurred last?
- imposition of the sentence for the conviction that the person seeks to set aside
 - completion of probation imposed for the conviction that the applicant seeks to set aside
 - discharge from parole imposed for the conviction that the applicant seeks to set aside
 - completion of any term of imprisonment imposed for the conviction that the applicant seeks to set aside
 - If *no*, you may not yet expunge the conviction. MCL 780.621(5).
 - If *yes*, proceed to the next question.
10. Are there any other criminal charges pending?
- If *yes*, you may not expunge the conviction. MCL 780.621(8)(f).
 - If *no*, proceed to the next question.
11. Are you still not sure of the person's criminal history? You can order Michigan criminal history records online with a credit card using the Internet Criminal History Access Tool.

Understand the Effect of Expungement

In general, once a conviction is set aside under the expungement statute, the person whose record has been expunged is legally considered not to have been convicted of a crime. For example, the person may honestly answer "no" if a potential employer asks, "Have you ever been convicted of a crime?"

That should be the end of the matter. In Michigan, most employers may not legally ask about criminal history that did not result in a conviction. See MCL 37.2205a. But there are exceptions that may cause a criminal history to haunt a person after expungement.

First, bear in mind that only the conviction has been expunged. The expungement process does not erase the arrest or the court proceedings. Accordingly, even after expungement, some employers may inquire beyond the matter of whether there is a criminal conviction and require an applicant to disclose an arrest, a plea of guilty or no contest, or a finding of guilt by a judge or jury. Many employers are specifically authorized by statute to conduct criminal history checks, and certain government or law enforcement agencies are not bound by whether a conviction was obtained.

Also, employers in other states may be bound by different laws than are Michigan employers, and they may be allowed to ask about arrests that did not result in conviction. There is no law that prohibits licensing agencies from holding an arrest record against a person, including medical, legal, financial, and even horse-racing licenses. Colleges and graduate schools are free to ask about anything to do with one's criminal history and often do. Landlords may ask about arrests on rental applications. Finally, expunged convictions are still considered convictions for purposes of immigration deportation, may not affect a Secretary of State abstract, will not alter registration as a sexual offender, and may be considered in sentencing if the person is ever convicted of another offense. See MCL 780.622 for other things unaffected by expungement.

Regardless of the law governing what may be asked about criminal history, anyone with \$10 can obtain a person's criminal history from the MSP website, Internet Criminal History Access Tool, which may still reveal the arrest.

Once again, a person whose conviction is expunged may only answer "no" to the question "Have you ever been convicted of a crime?" If an application inquires into the fact of arrest or regarding criminal dispositions taking place before expungement, your client may need to obtain separate legal advice as to whether the question may legally be asked, and if so, how to answer it. If a person does ever need to explain the circumstances of an expunged conviction, the best advice is to handle it the same way as the expungement hearing before the judge and to be prepared with strong evidence of rehabilitation since the crime occurred.

Despite the reality of expungement's limited protection, successfully setting aside a conviction can go a long way toward helping a person find employment and otherwise have a fresh start in life.

Forms and Exhibits

[Application to Set Aside Conviction \(MC227\)](#)

[Order on Application to Set Aside Conviction \(MC228\)](#)

Helpful Links:
Internet Criminal History Access Tool

Michigan State Police

Prosecuting Attorneys Association of Michigan

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RELATED RESOURCES

This resource is found under the following topics:

Criminal Law > Expungement > In General

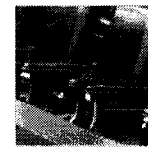
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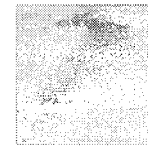
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