

## SETTING ASIDE CONVICTIONS Act 213 of 1965

AN ACT to provide for setting aside the conviction in certain criminal cases; to provide for the effect of such action; to provide for the retention of certain nonpublic records and their use; to prescribe the powers and duties of certain public agencies and officers; and to prescribe penalties.

**History:** 1965, Act 213, Imd. Eff. July 16, 1965;—Am. 1982, Act 495, Eff. Mar. 30, 1983.

*The People of the State of Michigan enact:*

### **780.621 Application for order setting aside conviction; felony or misdemeanor conviction; setting aside of certain convictions prohibited; victim of human trafficking violation; definitions.**

Sec. 1. (1) Except as otherwise provided in this act, a person who is convicted of 1 or more criminal offenses may file an application with the convicting court for the entry of an order setting aside 1 or more convictions as follows:

(a) Except as provided in subdivisions (b) and (c), a person convicted of 1 or more criminal offenses, but not more than a total of 3 felony offenses, in this state, may apply to have all of his or her convictions from this state set aside.

(b) An applicant may not have more than a total of 2 convictions for an assaultive crime set aside under this act during his or her lifetime.

(c) An applicant may not have more than 1 felony conviction for the same offense set aside under this section if the offense is punishable by more than 10 years imprisonment.

(d) A person who is convicted of a violation or an attempted violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, before January 12, 2015 may petition the convicting court to set aside the conviction if the individual has not been convicted of another offense other than not more than 2 minor offenses. As used in this subdivision, "minor offense" means a misdemeanor or ordinance violation to which all of the following apply:

(i) The maximum permissible term of imprisonment does not exceed 90 days.

(ii) The maximum permissible fine is not more than \$1,000.00.

(iii) The person who committed the offense is not more than 21 years old.

(2) A conviction that was deferred and dismissed under any of the following, whether a misdemeanor or a felony, is considered a misdemeanor conviction under subsection (1) for purposes of determining whether a person is eligible to have any conviction set aside under this act:

(a) Section 703 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703.

(b) Section 1070(1)(b)(i) or 1209 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1070 and 600.1209.

(c) Section 13 of chapter II or section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 762.13 and 769.4a.

(d) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.

(e) Section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

(f) Any other law or laws of this state or of a political subdivision of this state similar in nature and applicability to those listed in this subsection that provide for the deferral and dismissal of a felony or misdemeanor charge.

(3) A person who is convicted of a violation of section 448, 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, or a local ordinance substantially corresponding to section 448, 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to have that conviction set aside if he or she committed the offense as a direct result of his or her being a victim of a human trafficking violation.

(4) As used in this act:

(a) "Assaultive crime" includes any of the following:

(i) A violation described in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(ii) A violation of chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90h, not otherwise included in subparagraph (i).

(iii) A violation of section 110a, 136b, 234a, 234b, 234c, 349b, or 411h(2)(a) of the Michigan penal code, 1931 PA 328, MCL 750.110a, 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, or 750.411h, or any other

violent felony.

(iv) A violation of a law of another state or of a political subdivision of this state or of another state that substantially corresponds to a violation described in subparagraph (i), (ii), or (iii).

(b) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(c) "Felony" means either of the following, as applicable:

(i) For purposes of the offense to be set aside, felony means a violation of a penal law of this state that is punishable by imprisonment for more than 1 year or that is designated by law to be a felony.

(ii) For purposes of identifying a prior offense, felony means a violation of a penal law of this state, of another state, or of the United States that is punishable by imprisonment for more than 1 year or is designated by law to be a felony.

(d) "First violation operating while intoxicated offense" means a violation of any of the following committed by an individual who at the time of the violation has no prior convictions for violating section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625:

(i) Section 625(1), (2), (3), (6), or (8) of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

(ii) A local ordinance substantially corresponding to a violation listed in subparagraph (i).

(iii) A law of an Indian tribe substantially corresponding to a violation listed in subparagraph (i).

(iv) A law of another state substantially corresponding to a violation listed in subparagraph (i).

(v) A law of the United States substantially corresponding to a violation listed in subparagraph (i).

(e) "Human trafficking violation" means a violation of chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h, or of former section 462i or 462j of that act.

(f) "Indian tribe" means an Indian tribe, Indian band, or Alaskan native village that is recognized by federal law or formally acknowledged by a state.

(g) "Misdemeanor" means a violation of any of the following:

(i) A penal law of this state, another state, an Indian tribe, or the United States that is not a felony.

(ii) An order, rule, or regulation of a state agency that is punishable by imprisonment for not more than 1 year or a fine that is not a civil fine, or both.

(iii) A local ordinance of a political subdivision of this state substantially corresponding to a crime listed in subparagraph (i) or (ii) that is not a felony.

(iv) A violation of the law of another state or political subdivision of another state substantially corresponding to a crime listed under subparagraph (i) or (ii) that is not a felony.

(v) A violation of the law of the United States substantially corresponding to a crime listed under subparagraph (i) or (ii) that is not a felony.

(h) "Operating while intoxicated" means a violation of any of the following that is not a first violation operating while intoxicated offense:

(i) Section 625 or 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625 and 257.625m.

(ii) A local ordinance substantially corresponding to a violation listed in subparagraph (i).

(iii) A law of an Indian tribe substantially corresponding to a violation listed in subparagraph (i).

(iv) A law of another state substantially corresponding to a violation listed in subparagraph (i).

(v) A law of the United States substantially corresponding to a violation listed in subparagraph (i).

(i) "Serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

(j) "Victim" means that term as defined in sections 2, 31, and 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.752, 780.781, and 780.811.

(k) "Violent felony" means that term as defined in section 36 of the corrections code of 1953, 1953 PA 232, MCL 791.236.

**History:** 1965, Act 213, Imd. Eff. July 16, 1965;—Am. 1982, Act 495, Eff. Mar. 30, 1983;—Am. 1993, Act 342, Eff. May 1, 1994;—Am. 1996, Act 573, Eff. Apr. 1, 1997;—Am. 2002, Act 472, Eff. Oct. 1, 2002;—Am. 2011, Act 64, Imd. Eff. June 23, 2011;—Am. 2014, Act 335, Eff. Jan. 14, 2015;—Am. 2014, Act 463, Imd. Eff. Jan. 12, 2015;—Am. 2016, Act 336, Eff. Mar. 14, 2017;—Am. 2020, Act 191, Eff. Apr. 11, 2021;—Am. 2021, Act 78, Eff. Feb. 19, 2022.

## **780.621a Definitions.**

Sec. 1a. As used in this act:

(a) "Conviction" means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere, or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

(b) "Traffic offense" means a violation of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local ordinance substantially corresponding to that act, which violation involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

**History:** Add. 1982, Act 495, Eff. Mar. 30, 1983.

**780.621b Setting aside multiple criminal offenses arising out of same transaction; exceptions.**

Sec. 1b. (1) For purposes of a petition to set aside a conviction under section 1 or 1e, 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.
- (d) A conviction for a crime that if it had been obtained in this state would be for an assaultive crime.

(2) As used in this section, "dangerous weapon" means that term as defined in section 110a of the Michigan penal code, 1931 PA 328, MCL 750.110a.

**History:** Add. 2020, Act 188, Eff. Apr. 11, 2021.

**780.621c Prohibition on setting aside convictions for certain criminal cases; applicability to MCL 780.621g; inapplicable to secretary of state driving record.**

Sec. 1c. (1) A person shall not apply to have set aside, and a judge shall not set aside, a conviction for any of the following:

(a) 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.

(b) A violation or attempted violation of section 136b(3), 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c, 750.145d, 750.520c, 750.520d, and 750.520g.

(c) A violation or attempted violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, if the conviction occurred on or after January 12, 2015.

(d) The following traffic offenses:

(i) Subject to subsections (3) and (4), a conviction for operating while intoxicated committed by any person.

(ii) 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.

(iii) Any traffic offense that causes injury or death.

(e) A felony conviction for domestic violence, if the person has a previous misdemeanor conviction for domestic violence.

(f) A violation of former section 462i or 462j or chapter LXVIIA or chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h and 750.543a to 750.543z.

(2) The prohibition on the setting aside of the convictions under subsection (1) upon application also applies to the setting aside of convictions without application under section 1g.

(3) The prohibition on setting aside a conviction for operating while intoxicated under subsection (1)(d)(i) does not apply to a conviction for a first violation operating while intoxicated offense if the person applying to have the first violation operating while intoxicated offense conviction set aside has not previously applied to have and had a first violation operating while intoxicated offense conviction set aside under this act. However, a conviction for a first violation operating while intoxicated offense that may be set aside upon application is not eligible for and shall not be set aside without application under section 1g.

(4) In making a determination whether to grant the petition to set aside a first violation operating while intoxicated offense conviction the reviewing court may consider whether or not the petitioner has benefited from rehabilitative or educational programs, if any were ordered by the sentencing court, or whether such steps were taken by the petitioner before sentencing for the first violation operating while intoxicated offense conviction he or she is seeking to set aside. The reviewing court is not constrained by the record made at sentencing. The reviewing court may deny the petition if it is not convinced that the petitioner has either availed himself or herself of rehabilitative or educational programming or benefited from rehabilitative or educational programming he or she has completed.

(5) An order setting aside a conviction for a traffic offense under this act must not require that the conviction be removed or expunged from the applicant's driving record maintained by the secretary of state as required under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

**History:** Add. 2020, Act 187, Eff. Apr. 11, 2021;—Am. 2021, Act 79, Eff. Feb. 19, 2022.

\*\*\*\*\* 780.621d THIS SECTION IS AMENDED EFFECTIVE MARCH 9, 2022: See 780.621d.amended  
\*\*\*\*\*

**780.621d Application and procedures for setting aside felonies and serious misdemeanor convictions.**

Sec. 1d. (1) An application under section 1 to set aside more than 1 felony conviction shall only be filed 7 or more years after whichever of the following events occurs last:

- (a) Imposition of the sentence for the convictions that the applicant seeks to set aside.
- (b) Completion of any term of felony probation imposed for the convictions that the applicant seeks to set aside.
- (c) Discharge from parole imposed for the convictions that the applicant seeks to set aside.
- (d) Completion of any term of imprisonment imposed for the convictions that the applicant seeks to set aside.

(2) An application under section 1 to set aside 1 or more serious misdemeanor convictions or 1 felony conviction shall only be filed 5 or more years after whichever of the following events occurs last:

- (a) Imposition of the sentence for the conviction or convictions that the applicant seeks to set aside.
- (b) Completion of probation imposed for the conviction or convictions that the applicant seeks to set aside.
- (c) Discharge from parole imposed for the conviction that the applicant seeks to set aside, if applicable.
- (d) Completion of any term of imprisonment imposed for the conviction or convictions that the applicant seeks to set aside.

(3) An application under section 1 to set aside 1 or more misdemeanor convictions, other than an application to set aside a serious misdemeanor or any other misdemeanor conviction for an assaultive crime, shall only be filed 3 or more years after whichever of the following events occurs last:

- (a) Imposition of the sentence for the conviction that the applicant seeks to set aside.
- (b) Completion of any term of imprisonment imposed for the conviction that the applicant seeks to set aside.

(c) Completion of probation imposed for the conviction or convictions that the applicant seeks to set aside.

(4) For an application under section 1, a court shall not enter an order setting aside a conviction or convictions unless all of the following apply:

- (a) The applicable time period required under subsection (1), (2), or (3) has elapsed.
- (b) There are no criminal charges pending against the applicant.
- (c) The applicant has not been convicted of any criminal offense during the applicable time period required under subsection (1), (2), or (3).

(5) If a petition under this act is denied by the convicting court, a person shall not file another petition concerning the same conviction or convictions with the convicting court until 3 years after the date the convicting court denies the previous petition, unless the court specifies an earlier date for filing another petition in the order denying the petition.

(6) An application under section 1(3) may be filed at any time following the date of the conviction to be set aside. A person may apply to have more than 1 conviction set aside under section 1(3).

(7) An application under section 1 is invalid unless it contains the following information and is signed under oath by the person whose conviction is or convictions are to be set aside:

- (a) The full name and current address of the applicant.
- (b) A certified record of each conviction that is to be set aside.
- (c) For an application under section 1(1), a statement that the applicant has not been convicted of an offense during the applicable time period required under subsection (1), (2), or (3).

(d) A statement listing all actions enumerated in section 1(2) that were initiated against the applicant and have been dismissed.

(e) 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.

(f) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(g) If the person is seeking to have 1 or more convictions set aside under section 1(3), a statement that he or she meets the criteria set forth in section 1(3), together with a statement of the facts supporting his or her contention that the conviction was a direct result of his or her being a victim of human trafficking.

(h) A consent to the use of the nonpublic record created under section 3 to the extent authorized by section 3.



(8) The applicant shall submit a copy of the application and 1 complete set of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under section 3, and shall forward an electronic copy of a complete set of fingerprints to the Federal Bureau of Investigation for a comparison with the records available to that agency. The department of state police shall report to the court in which the application is filed 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 and shall report to the court any similar information obtained from the Federal Bureau of Investigation. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(9) The copy of the application submitted to the department of state police under subsection (8) must be accompanied by a fee of \$50.00 payable to the state of Michigan that must be used by the department of state police to defray the expenses incurred in processing the application.

(10) A copy of the application must be served upon the attorney general and upon the office of each prosecuting attorney who prosecuted the crime or crimes the applicant seeks to set aside, and an opportunity must be given to the attorney general and to the prosecuting attorney to contest the application. If a conviction was for an assaultive crime or a serious misdemeanor, the prosecuting attorney shall notify the victim of the assaultive crime or serious misdemeanor of the application under section 22a or 77a of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The notice must be by first-class mail to the victim's last known address. The victim has the right to appear at any proceeding under this act concerning that conviction and to make a written or oral statement.

(11) For an application under section 1(1), upon the hearing of the application the court may require the filing of affidavits and the taking of proofs as it considers proper.

(12) For an application under section 1(3), if the applicant proves to the court by a preponderance of the evidence that the conviction was a direct result of his or her being a victim of human trafficking, the court may, subject to the requirements of subsection (13), enter an order setting aside the conviction.

(13) If the court determines that the circumstances and behavior of an applicant under section 1(1) or (3), from the date of the applicant's conviction or convictions to the filing of the application warrant setting aside the conviction or convictions, and that setting aside the conviction or convictions is consistent with the public welfare, the court may enter an order setting aside the conviction or convictions.

(14) The setting aside of a conviction or convictions under this act is a privilege and conditional and is not a right.

**History:** Add. 2020, Act 190, Eff. Apr. 11, 2021.

\*\*\*\*\* 780.621d.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 9, 2022 \*\*\*\*\*

#### **780.621d.amended Application and procedures for setting aside felonies and serious misdemeanor convictions.**

Sec. 1d. (1) An application under section 1 to set aside more than 1 felony conviction shall only be filed 7 or more years after whichever of the following events occurs last:

- (a) Imposition of the sentence for the convictions that the applicant seeks to set aside.
- (b) Completion of any term of felony probation imposed for the convictions that the applicant seeks to set aside.
- (c) Discharge from parole imposed for the convictions that the applicant seeks to set aside.
- (d) Completion of any term of imprisonment imposed for the convictions that the applicant seeks to set aside.

(2) An application under section 1 to set aside 1 or more serious misdemeanor convictions, 1 first violation operating while intoxicated offense, or 1 felony conviction shall only be filed 5 or more years after whichever of the following events occurs last:

- (a) Imposition of the sentence for the conviction or convictions that the applicant seeks to set aside.
- (b) Completion of probation imposed for the conviction or convictions that the applicant seeks to set aside.
- (c) Discharge from parole imposed for the conviction that the applicant seeks to set aside, if applicable.
- (d) Completion of any term of imprisonment imposed for the conviction or convictions that the applicant seeks to set aside.

(3) An application under section 1 to set aside 1 or more misdemeanor convictions, other than an application to set aside a serious misdemeanor, a first violation operating while intoxicated offense, or any other misdemeanor conviction for an assaultive crime, shall only be filed 3 or more years after whichever of the following events occurs last:

- (a) Imposition of the sentence for the conviction that the applicant seeks to set aside.
- (b) Completion of any term of imprisonment imposed for the conviction that the applicant seeks to set aside.
- (c) Completion of probation imposed for the conviction or convictions that the applicant seeks to set aside.
- (4) For an application under section 1, a court shall not enter an order setting aside a conviction or convictions unless all of the following apply:
  - (a) The applicable time period required under subsection (1), (2), or (3) has elapsed.
  - (b) There are no criminal charges pending against the applicant.
  - (c) The applicant has not been convicted of any criminal offense during the applicable time period required under subsection (1), (2), or (3).
- (5) If a petition under this act is denied by the convicting court, a person shall not file another petition concerning the same conviction or convictions with the convicting court until 3 years after the date the convicting court denies the previous petition, unless the court specifies an earlier date for filing another petition in the order denying the petition.
- (6) An application under section 1(3) may be filed at any time following the date of the conviction to be set aside. A person may apply to have more than 1 conviction set aside under section 1(3).
- (7) An application under section 1 is invalid unless it contains the following information and is signed under oath by the person whose conviction is or convictions are to be set aside:
  - (a) The full name and current address of the applicant.
  - (b) A certified record of each conviction that is to be set aside.
  - (c) For an application under section 1(1), a statement that the applicant has not been convicted of an offense during the applicable time period required under subsection (1), (2), or (3).
  - (d) A statement listing all actions enumerated in section 1(2) that were initiated against the applicant and have been dismissed.
  - (e) 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.
  - (f) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.
  - (g) If the person is seeking to have 1 or more convictions set aside under section 1(3), a statement that he or she meets the criteria set forth in section 1(3), together with a statement of the facts supporting his or her contention that the conviction was a direct result of his or her being a victim of human trafficking.
  - (h) A consent to the use of the nonpublic record created under section 3 to the extent authorized by section 3.
- (8) The applicant shall submit a copy of the application and 1 complete set of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under section 3, and shall forward an electronic copy of a complete set of fingerprints to the Federal Bureau of Investigation for a comparison with the records available to that agency. The department of state police shall report to the court in which the application is filed 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 and shall report to the court any similar information obtained from the Federal Bureau of Investigation. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.
- (9) The copy of the application submitted to the department of state police under subsection (8) must be accompanied by a fee of \$50.00 payable to the state of Michigan that must be used by the department of state police to defray the expenses incurred in processing the application.
- (10) A copy of the application must be served upon the attorney general and upon the office of each prosecuting attorney who prosecuted the crime or crimes the applicant seeks to set aside, and an opportunity must be given to the attorney general and to the prosecuting attorney to contest the application. If a conviction was for an assaultive crime or a serious misdemeanor, the prosecuting attorney shall notify the victim of the assaultive crime or serious misdemeanor of the application under section 22a or 77a of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The notice must be by first-class mail to the victim's last known address. The victim has the right to appear at any proceeding under this act concerning that conviction and to make a written or oral statement.
- (11) For an application under section 1(1), upon the hearing of the application the court may require the filing of affidavits and the taking of proofs as it considers proper.
- (12) For an application under section 1(3), if the applicant proves to the court by a preponderance of the evidence that the conviction was a direct result of his or her being a victim of human trafficking, the court

may, subject to the requirements of subsection (13), enter an order setting aside the conviction.

(13) If the court determines that the circumstances and behavior of an applicant under section 1(1) or (3), from the date of the applicant's conviction or convictions to the filing of the application warrant setting aside the conviction or convictions, and that setting aside the conviction or convictions is consistent with the public welfare, the court may enter an order setting aside the conviction or convictions.

(14) The setting aside of a conviction or convictions under this act is a privilege and conditional and is not a right.

**History:** Add. 2020, Act 190, Eff. Apr. 11, 2021;—Am. 2021, Act 82, Eff. Mar. 9, 2022.

#### **780.621e Application to set aside misdemeanor marihuana offenses; requirements; rebuttable presumption; order; "misdemeanor marihuana offense" defined.**

Sec. 1e. (1) Beginning on January 1, 2020, a person convicted of 1 or more misdemeanor marihuana offenses may apply to set aside the conviction or convictions under this subsection.

(2) An application under subsection (1) must contain all of the following information:

(a) The full name and current address of the applicant.

(b) A certified record of each conviction that is to be set aside.

(3) A copy of the application under subsection (1) must be served upon the agency that prosecuted the offense or offenses the applicant seeks to set aside.

(4) A rebuttable presumption that a conviction for a misdemeanor marihuana 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 arises upon the filing of an application under subsection (1). The presumption described in this subsection may be rebutted by the presentation of evidence by the prosecuting agency that prosecuted the case that demonstrates by a preponderance of the evidence that the conduct on which the applicant's conviction was or convictions were based would constitute a criminal violation of the laws of this state or a political subdivision of this state if it had been committed on or after December 6, 2018. An answer made under this subsection must be filed no later than 60 days from the date of service of the application. If an answer is filed with the convicting court, the answering party must serve the answer upon the other parties to the matter.

(5) Upon the expiration of the 60-day period under subsection (4), if the prosecuting agency has not filed an answer to the application addressing the rebuttable presumption described in subsection (4), the convicting court must within 21 days enter an order setting aside the conviction or convictions and serve a copy of the order upon the applicant, the arresting agency, the prosecuting agency, and the department of the state police.

(6) If the prosecuting agency files an answer addressing the rebuttable presumption in subsection (4), the convicting court must promptly set the matter for a hearing no later than 30 days from its receipt of the answer, and serve a notice of the hearing upon the applicant. At the hearing, the prosecuting agency must prove by a preponderance of the evidence that a conviction or convictions sought to be set aside by an applicant were based upon conduct that would constitute a criminal violation of the laws of this state or a political subdivision of this state if it had been committed on or after December 6, 2018. An applicant is not required to present evidence that his or her conviction was based upon conduct that would not constitute a criminal violation of the laws of this state or a political subdivision of this state on or after December 6, 2018. The evidentiary burden under this subsection rests solely on the objecting prosecuting agency. After a hearing under this subsection, the court shall enter an order denying or granting the application no later than 14 days after completion of the hearing and serve any written opinions and orders, including an order setting aside the conviction or convictions, upon the parties, including the department of state police. The rules of evidence do not apply to a hearing under this subsection.

(7) As used in this section, "misdemeanor marihuana offense" means a violation of section 7403(2)(d), 7404(2)(d), or a marihuana paraphernalia violation of section 7453 of the public health code, 1978 PA 368, MCL 333.7403, 333.7404, and 333.7453, or a violation of a local ordinance substantially corresponding to section 7403(2)(d), 7404(2)(d), or the prohibition regarding marihuana paraphernalia of section 7453 of the public health code, 1978 PA 368, MCL 333.7403, 333.7404, and 333.7453.

**History:** Add. 2020, Act 192, Eff. Apr. 11, 2021.

#### **780.621f Procedures for setting aside certain marihuana offenses under MCL 780.621e.**

Sec. 1f. (1) If an application to set aside a conviction or convictions under section 1e is granted, the arresting agency and the department of the state police shall maintain the nonpublic record created under section 3 for use as authorized under section 3.

(2) If an application to set aside a conviction or convictions is granted under section 1e, the applicant may not thereafter seek resentencing in another criminal case the applicant was sentenced for during which the conviction or convictions at issue were used in determining an appropriate sentence for the applicant, whether

or not the setting aside of the conviction or convictions would have changed the scoring of a prior record variable for purposes of the sentencing guidelines or otherwise.

(3) A party aggrieved by the ruling of the convicting court considering an application under section 1e may seek a rehearing or reconsideration under the applicable rules of the convicting court or may file an appeal with the circuit court or, if applicable, the court of appeals in accordance with the rules of those courts.

(4) The setting aside of a conviction under section 1e does not entitle the applicant to the return of any fines, costs, or fees imposed as part of the applicant's sentence for the conviction or convictions or of 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 as a result of the conviction itself.

**History:** Add. 2020, Act 189, Eff. Apr. 11, 2021.

#### **780.621g Setting aside certain convictions without application; requirements; exceptions; implementation date; reinstatement; "crime of dishonesty" defined.**

Sec. 1g. (1) Beginning 2 years after the effective date of the amendatory act that added this section and subject to any necessary appropriation, a misdemeanor conviction for an offense for which the maximum punishment is imprisonment for not more than 92 days is set aside under this section without the filing of an application under section 1 if 7 years have passed from the imposition of the sentence. Each court shall notify the arresting law enforcement agency of each conviction on or before the tenth day of each month that is set aside under this subsection for the preceding month. Each law enforcement agency need not retain and shall make nonpublic the notification that the conviction has been set aside, and the record of the arrest, fingerprinting, conviction, and sentence of the person in the case to which the notification applies.

(2) Beginning 2 years after the effective date of the amendatory act that added this section and subject to any necessary appropriation and subsections (5), (6), (7), and (10), a felony conviction that is recorded and maintained in the department of state police database is set aside under this section without the filing of an application under section 1 if both of the following apply:

(a) Ten years have passed from whichever of the following events occurs last:

(i) Imposition of the sentence for the conviction.

(ii) Completion of any term of imprisonment with the department of corrections for the conviction.

(b) The conviction or convictions are otherwise eligible to be set aside under section 1.

(3) Beginning 2 years after the effective date of the amendatory act that added this section and subject to any necessary appropriation and subsection (10), a conviction for a misdemeanor offense for which the maximum punishment is imprisonment for not more than 92 days that is recorded and maintained in the department of state police database is set aside under this section without the filing of an application under section 1 if 7 years have passed from the imposition of the sentence.

(4) Beginning 2 years after the effective date of the amendatory act that added this section and subject to any necessary appropriation and subsections (5), (6), (7), and (10), a conviction for a misdemeanor offense for which the maximum punishment is imprisonment for 93 days or more that is recorded and maintained in the department of state police database is set aside under this section without the filing of an application under section 1 if 7 years have passed from the imposition of the sentence.

(5) Except as otherwise provided in this subsection, not more than 2 felony convictions and 4 misdemeanor convictions total that are recorded and maintained in the department of state police database may be set aside under this section during the lifetime of an individual. The limit on the number of misdemeanor convictions that may be set aside under this subsection does not apply to the setting aside of convictions described under subsection (1) or (3).

(6) A conviction is not set aside under subsection (2) or (4) unless all of the following apply:

(a) The applicable time period required under subsection (2) or (4) has elapsed.

(b) There are no criminal charges pending in the department of state police database against the applicant.

(c) The applicant has not been convicted of any criminal offense that is recorded and maintained in the department of state police database during the applicable time period required under subsection (2) or (4).

(7) Subsections (2) and (4) do not apply to an individual who has more than 1 conviction for an assaultive crime or an attempt to commit an assaultive crime that is recorded and maintained in the department of state police database.

(8) If the governor determines that the process for setting aside a conviction without an application under this section cannot be implemented by the date required under subsections (1), (2), (3), and (4) because of technological limitations, the governor may issue a directive delaying the implementation of this section for not more than 180 days. The attorney general, the state court administrator, or the director of the department of state police may recommend a delay of implementation to the governor under this subsection.

(9) An individual whose conviction is set aside under this section impliedly consents to the creation of the



nonpublic record under section 3.

(10) Subsections (2) and (4) do not apply to a conviction recorded and maintained in the department of state police database for the commission of or attempted commission of any of the following:

(a) An assaultive crime.

(b) A serious misdemeanor.

(c) A crime of dishonesty.

(d) Any other offense, not otherwise listed under this subsection, that is punishable by 10 or more years' imprisonment.

(e) A violation of the laws of this state listed under chapter XVII of the code of criminal procedure, 1927 PA 175, MCL 777.1 to 777.69, the elements of which involve a minor, vulnerable adult, injury or serious impairment, or death.

(f) Any violation related to human trafficking.

(11) The department of technology, management, and budget shall develop and maintain a computer-based program for the setting aside of convictions under this section. In fulfilling its duty under this subsection, the department of technology, management, and budget may contract with a private technical consultant as needed.

(12) The setting aside of a conviction without an application under this section is subject to reinstatement under section 1h.

(13) The department of state police shall create and maintain an electronically accessible record of each conviction recorded and maintained in the department of state police database that was set aside under this section that must be provided to or accessible by each court in this state. An electronic record created as required under this section may only be used as authorized under section 3 and by a court for purposes of updating locally maintained court records.

(14) The implementation of the section is subject to appropriation. The department of state police and the department of technology, management, and budget shall begin work to implement the section immediately upon appropriation.

(15) As used in this section, "crime of dishonesty" includes a felony violation of chapters XXVA and XLI, felony violations of sections 174, 174a, 175, 176, 180, and 181 of the Michigan penal code, 1931 PA 328, MCL 750.159f to 750.159x, 750.248 to 750.265a, 750.174, 750.174a, 750.175, 750.176, 750.180, and 750.181, and a violation of 1979 PA 53, MCL 752.791 to 752.797.

**History:** Add. 2020, Act 193, Eff. Apr. 11, 2021.

#### **780.621h Reinstatement of conviction set aside without application.**

Sec. 1h. (1) Upon the occurrence of 1 of the circumstances under subsection (2) or (3), a conviction that was set aside by operation of law under section 1g shall be reinstated by the court as provided in this section.

(2) If it is determined that a conviction was improperly or erroneously set aside under section 1g because the conviction was not eligible to be set aside under section 1g or any other provision of this act, the court shall, on its own motion, reinstate the conviction.

(3) Upon a motion by a person owed restitution, or on its own motion, the court shall reinstate a conviction that was set aside under section 1g for which the individual whose conviction was set aside was ordered to pay restitution if the court determines that the individual has not made a good-faith effort to pay the ordered restitution.

**History:** Add. 2020, Act 193, Eff. Apr. 11, 2021.

#### **780.621i Michigan set aside fund; creation; expenditures.**

Sec. 1i. (1) The Michigan set aside fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The state treasurer shall be the administrator of the fund for auditing purposes.

(5) The department of state police, the department of technology, management, and budget, and the state court administrative office shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) Implementation costs associated with changes made to this act by the amendatory act that added this section.

(b) System upgrades necessitated by the changes made to this act by the amendatory act that added this

section.

(c) Staffing needs necessitated by the changes made to this act by the amendatory act that added this section.

**History:** Add. 2020, Act 193, Eff. Apr. 11, 2021.

#### **780.622 Entry of order; effect; use of set aside conviction; "applicant" defined.**

Sec. 2. (1) Upon the entry of an order under section 1 or 1e, or upon the automatic setting aside of a conviction under section 1g, the applicant, for purposes of the law, is considered not to have been previously convicted, except as provided in this section and section 3.

(2) 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.

(3) If the conviction set aside under section 1(1), 1e, or 1g is for a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the applicant is considered to have been convicted of that offense for purposes of that act.

(4) This act does not affect the right of the applicant to rely upon the conviction to bar subsequent proceedings for the same offense.

(5) This act does not affect the right of a victim of a crime to prosecute or defend a civil action for damages.

(6) This act does not create a right to commence an action for damages for incarceration under the sentence that the applicant served before the conviction is set aside under this act.

(7) This act does not relieve any obligation to pay restitution owed to the victim of a crime nor does it affect the jurisdiction of the convicting court or the authority of any court order with regard to enforcing an order for restitution.

(8) A conviction, including any records relating to the conviction and any records concerning a collateral action, that has been set aside under this act cannot be used as evidence in an action for negligent hiring, admission, or licensure against any person.

(9) A conviction that is set aside under section 1, 1e, or 1g may be considered a prior conviction by court, law enforcement agency, prosecuting attorney, or the attorney general, as applicable, for purposes of charging a crime as a second or subsequent offense or for sentencing under sections 10, 11, and 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

(10) As used in this section, "applicant" includes an individual who has applied under this act to have his or her conviction or convictions set aside and an individual whose conviction or convictions have been set aside without an application under section 1g.

**History:** 1965, Act 213, Imd. Eff. July 16, 1965;—Am. 1982, Act 495, Eff. Mar. 30, 1983;—Am. 1993, Act 342, Eff. May 1, 1994;—Am. 1994, Act 294, Eff. Oct. 1, 1995;—Am. 2014, Act 335, Eff. Jan. 14, 2015;—Am. 2020, Act 193, Eff. Apr. 11, 2021.

#### **780.623 Sending copy of order to arresting agency and department of state police; retention and availability of nonpublic record of order and other records; providing copy of nonpublic record to person whose conviction set aside; fee; nonpublic record exempt from disclosure; prohibited conduct; misdemeanor; penalty; liability; "victim" defined.**

Sec. 3. (1) Upon the entry of an order under section 1 or 1e, the court shall send a copy of the order to the arresting agency and the department of state police.

(2) The department of state police shall retain a nonpublic record of the order setting aside a conviction, or other notification regarding a conviction that was automatically set aside under section 1g, and of the record of the arrest, fingerprints, conviction, and sentence of the person in the case to which the order or other notification applies. Except as provided in subsection (3), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, the department of corrections, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) Consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) To show that a person who has filed an application to set aside a conviction has previously had a conviction set aside under this act.

(c) The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.

(d) Consideration by the governor if a person whose conviction has been set aside applies for a pardon for another offense.

(e) Consideration by the department of corrections or a law enforcement agency if a person whose

conviction has been set aside applies for employment with the department of corrections or law enforcement agency.

(f) Consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general in determining whether an individual required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, has violated that act, or for use in a prosecution for violating that act.

(g) Consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general for use in making determinations regarding charging, plea offers, and sentencing, as applicable.

(3) A copy of the nonpublic record created under subsection (2) must be provided to the person whose conviction is set aside under this act upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

(4) The nonpublic record maintained under subsection (2) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(5) Except as provided in subsection (2), a person, other than the person whose conviction was set aside or a victim, who knows or should have known that a conviction was set aside under this section and who divulges, uses, or publishes information concerning a conviction set aside under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

(6) An entity is not liable for damages or subject to criminal penalties under this section for reporting a public record of conviction that has been set-aside by court order or operation of law, if that record was available as a public record on the date of the report.

(6) As used in this section, "victim" means any individual who suffers direct or threatened physical, financial, or emotional harm as the result of the offense that was committed by the applicant.

**History:** Add. 1982, Act 495, Eff. Mar. 30, 1983;—Am. 1988, Act 11, Imd. Eff. Feb. 8, 1988;—Am. 1993, Act 342, Eff. May 1, 1994;—Am. 1994, Act 294, Eff. Oct. 1, 1995;—Am. 2014, Act 463, Imd. Eff. Jan. 12, 2015;—Am. 2020, Act 193, Eff. Apr. 11, 2021.

**Compiler's note:** Subsection (6) beginning with "As used in this section," evidently should be numbered (7).

#### **780.624 Setting aside of convictions; limitation.**

Sec. 4. Except as provided in sections 1, 1e, and 1g, a person may have only 1 conviction set aside under this act.

**History:** Add. 1982, Act 495, Eff. Mar. 30, 1983;—Am. 2014, Act 335, Eff. Jan. 14, 2015;—Am. 2020, Act 193, Eff. Apr. 11, 2021.