

SETTING ASIDE CONVICTIONS (EXCERPT)
Act 213 of 1965

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