

Forms MC 227 and MC 228

APPLICATION TO SET ASIDE CONVICTION AND ORDER

Use this form to ask the court to make a Michigan adult criminal conviction nonpublic.

APPLICATION CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

1. Read all the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/intro/criminal/setaside_help.htm YES
2. Determine your eligibility to have a conviction made nonpublic? See page 3. YES
3. Get a certified copy of your conviction? See page 4. YES
4. Get fingerprinted? See page 4. YES
5. Complete the application form? See page 9 for instructions. YES
6. Sign the application form in front of a notary public or clerk of the court? See pages 4 and 5. YES
7. File the application packet with the court? See page 5. YES
8. Mail (serve) a copy of the application packet to the prosecuting official, the Attorney General's office, and the Michigan State Police (with fingerprints)? See page 6. YES
9. Complete and file the proof of service with the clerk's office **after** you mailed the application packets? See page 6. YES
10. Keep one copy of the application packet for yourself? YES

If you cannot answer "yes" to all the above steps, a hearing on your application may be delayed or your application may be dismissed.

By using this form packet you are representing yourself in a court action to try to make your conviction nonpublic. You must follow the instructions in this packet. If you fail to do even one of the required steps, the order you get from the court may not give you what you want.

If you have questions about any step in the process, refer to pages 3 through 8 of this booklet for details and review the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/intro/criminal/setaside_help.htm. You may wish to consult an attorney.

**INSTRUCTIONS FOR USING FORM MC 227
FILING AND SERVING AN APPLICATION**

»» DEFINITION: Setting Aside a Conviction

Setting aside a conviction removes an adult criminal conviction under Michigan law from the public record of the Michigan State Police. In terms of criminal law, you are an adult at age 17.

»» FILING AN APPLICATION

1. Determine Your Eligibility to Apply

A person who applies to have a conviction made nonpublic must meet certain conditions. To find out if you are eligible, read the following and answer the seven questions that follow.

- Although not required, it is highly recommended you get a copy of your criminal record from ICHAT at <http://apps.michigan.gov/ICHAT/home.aspx>. There is a cost for this. You can find out what crime(s) you were convicted of from your criminal record .
- A criminal complaint can have more than one count or charge on it. If you were convicted of more than one charge, you have more than one conviction. For example, if you were charged with and convicted of **Possession of a Firearm** and **Assault and Battery** in the same case, you have two convictions.
- If you were charged with a crime for which judgment of guilt was deferred and the case was dismissed upon you successfully completing probation, there is no conviction for that offense. A record of this is maintained by the Michigan State Police and the courts, but it is nonpublic.

Answer the following seven questions by checking the correct box, yes or no.

1. Do you have a criminal conviction from a federal court? Yes No
2. Do you have a criminal conviction in another state? Yes No
3. Do you have another adult criminal conviction in Michigan, excluding those for which judgment of guilt was deferred and excluding up to two minor offenses as defined in MCL 780.621(10)(b)? Yes No
4. Were you convicted of a felony or an attempt to commit a felony for which the maximum punishment is life imprisonment? Yes No
5. Were you convicted of felony criminal sexual conduct (first, second, or third degree), or assault with intent to commit criminal sexual conduct? Yes No
6. Is the conviction you want to have set aside a misdemeanor or felony traffic offense? A traffic offense is a violation of the Michigan Vehicle Code or a local ordinance substantially corresponding to that act that involves the operation of a vehicle. Yes No
7. Has it been less than five years since the date of your conviction, or if you were imprisoned, has it been less than five years since you were released? Yes No

If all the above questions are checked **no**, you may be eligible to have your conviction set aside. If any box is checked yes, you are not eligible to have your Michigan criminal conviction set aside. If you are unsure if you are eligible, you should consult an attorney.

2. Do You Need An Attorney?

In order to apply to make your conviction nonpublic, you must file an application with the court in which you were convicted. You can either hire an attorney or you can represent yourself. If you can follow all the steps outlined in this packet, you may not need an attorney. However, if after reading this packet you think you need assistance, you should call an attorney.

If you decide to represent yourself, complete the checklist on page 2 to make sure you have done everything that is required.

3. What Does it Cost?

This can cost you over \$100.00. It costs about \$10.00 to get your criminal record from ICHAT. Some law enforcement agencies may fingerprint you without a charge, but if not, it could cost from \$10.00 to \$25.00. It costs \$10.00 for a certified copy of your conviction record from the court, plus \$1.00 for each page of that record. It costs \$50.00 for the application fee to the Michigan State Police. There may be a cost to have your application notarized by a notary public. There may be a cost for the form if you get it from the court instead of the website.

4. Get a Certified Copy of Your Conviction

If after reviewing your criminal record you determine you are eligible to apply to have your conviction set aside, order a certified record of that conviction from the clerk of the court where you were convicted. This record can be either a certified copy of the "Judgment of Sentence," a certified copy of the "Order of Probation," or a certified copy of the case history ("Register of Actions"). There is a \$10.00 fee for getting a certified copy of a record plus \$1.00 for every page of that record. There is no fee for filing the application with the court.

5. Get Fingerprinted

Go to the local law enforcement agency for a fingerprint card and to get fingerprinted on the applicant card (R 1-8). There may be a fee for fingerprinting. Fill out the card completely. The Michigan State Police will use this fingerprint card to check your records against its files and those of the Federal Bureau of Investigation. Do not make copies of the fingerprint card because only the Michigan State Police need the card.

6. Complete Form MC 227, Application to Set Aside Conviction

Complete form MC 227, Application to Set Aside Conviction, using the information from the certified copy of your conviction to fill in the blanks. Follow the instructions on page 9. Make five copies of the certified copy of your conviction. You will need these later. Do not sign the form until you are in front of a notary public or the clerk of the court. See item 7 below.

7. Signing the Application Under Oath

Now that the application (form MC 227) is completed, you must sign your application under oath in front of a notary public (you can find one at a bank) or the clerk of the court. You must bring your photo identification with you when you sign the application. There may be a fee to have your application signed in front of a notary public.

You can either sign one copy of the application form in front of the notary public or the clerk of the court and make five additional copies of the application form later or you can print and bring all six copies of the completed and unsigned application form to sign in front of the notary public or the clerk of the court.

Generally, it is a good idea to file your application in person with the court. That way, if you have forgotten something or need to change something, you can take care of it right away. Because of this, it is more practical to sign your application in front of the clerk of the court. However, if you decide to sign your application in front of a notary public, you can still file your application packet in person with the court.

8. Filing the Application With the Court

File your application with the court where you were convicted. **Follow the directions in either 8a or 8b below.** As stated in item 7, it is a good idea to file your application in person with the court. At the time of filing, the clerk of the court will write the name of the judge assigned to your case on all six copies of your application (form MC 227).

After the court returns the five remaining copies of the application to you, individually staple each of the copies to the five copies of the certified record of conviction that you kept as directed above. You will need three of these remaining five stapled packets for the Attorney General, the prosecuting official, and the Michigan State Police. See page 6 for details on serving the application packets.

Depending on the local practice of the court, the clerk of the court may set a hearing date at the time of filing. If a hearing date is set at the time of filing, the clerk of the court will complete the **Notice of Hearing** section. If no hearing date is set at the time of filing, you should contact the court to schedule a hearing date when you receive the report from the Michigan State Police. Ask the court how notice of the hearing will be given to the Attorney General and the prosecuting official.

8a Filing in Person

If you signed your application (form MC 227) in front of the clerk of the court, you can file it at the same time. If you signed your application in front of a notary public, you can still file it in person with the clerk of the court. Take all six copies of the application form and all six copies of the certified record of conviction to the clerk of the court. The clerk of the court will keep one copy of the application and the certified record of conviction for the court file and return to you the remaining five copies of both the application and the certified record of conviction.

8b Filing by Mail

If you decide to mail your application to the court, mail to the court all six copies of the application form, the certified record of conviction, and one self-addressed, postage-paid envelope. Keep the remaining five copies of your certified record of conviction in a safe place because you will need them later. The clerk of the court will keep one copy of the application and the certified record of conviction for the court file and return to you the remaining five copies of the application in the self-addressed envelope that you provided.

9. Make Out a Money Order or Check to the State of Michigan for the Application

The application fee is \$50.00, made out to the State of Michigan in the form of a money order or a check. This fee is sent with the application packet to the Michigan State Police for processing.

»» SERVING THE APPLICATION

1. Serve the Application Packet on the Michigan State Police

A copy of the application packet, **application fee** (see item 9), **and the fingerprint card** (see item 5) must be served on (mailed to) the Michigan State Police by first-class mail. The address is:

Michigan State Police
Criminal Justice Information Center
PO Box 30634
Lansing, Michigan 48909

2. Serve the Application Packet on the Attorney General

A copy of the application packet must be served on (mailed to) the Attorney General of the State of Michigan by first-class mail. The address is:

Office of the Attorney General
Corrections Division
PO Box 30217
Lansing, Michigan 48909

3. Serve the Application Packet on the Prosecuting Official

A copy of the application packet must be served on (mailed to) the correct prosecuting official (county, city, or township) by first-class mail. Get the address from the court clerk or see www.michiganprosecutor.org.

4. Fill Out the Proof of Service and File With the Court

You should have two copies of the application packet left. One of these copies is for you to keep for your records. The other copy is for filing proof of service with the court where you were convicted.

On both copies of the application, fill in the **Proof of Service** at the bottom of the form. Write in the date that you mailed the application packets to the prosecuting official, the Attorney General, and the Michigan State Police. Then date and sign the **Proof of Service**.

After you fill out and sign the **Proof of Service**, mail or take one of the remaining application packets with the completed **Proof of Service** to the court. This shows the court that you mailed copies to the prosecuting official, the Attorney General, and the Michigan State Police.

»» INFORMATION ABOUT THE APPLICATION PROCESS

The Attorney General of the State of Michigan will review your application along with your criminal history report as provided by the Michigan State Police to determine whether you qualify to have your conviction set aside. The Attorney General is given the opportunity to object to the application at the hearing. The Attorney General may or may not appear at the hearing.

The prosecuting official will review your application and your criminal history record as well and also has the opportunity to object to the application at the hearing. The prosecuting official may or may not appear at the hearing. In addition, the prosecuting official is required to notify the victim of an assaultive crime or serious misdemeanor when an application has been filed to set aside the conviction of that assaultive crime or serious misdemeanor. The victim has the right to appear at the hearing on the application and to make a written or oral statement.

When the Michigan State Police receives the application, it will prepare a report from its records and the records of the Federal Bureau of Investigation and will send a copy to you and a copy to the court. The report will show: 1) your criminal history, 2) if you have more than one conviction, 3) if there are any pending charges against you, and 4) whether or not you have previously had a conviction set aside. **The court cannot hold the hearing on your application until the Michigan State Police has submitted its report to the court.**

»» PREPARING FOR THE HEARING

Most courts will schedule a hearing date at the time you file the application. In the Third Circuit Court of Wayne County, a hearing is scheduled after the Michigan State Police and the Attorney General respond. The hearing cannot be held until the court receives the Michigan State Police report required by MCL 780.621(5). Because it can often take several weeks for the Michigan State Police to prepare the report, it is common for the court to schedule the hearing to be held on a date several months after you file the application. Contact the clerk of the court two days before the scheduled hearing date to make sure the Michigan State Police report has been received and that the hearing will proceed as scheduled and to find out whether to go directly to the courtroom or to check in with the clerk first.

If no hearing date was set by the court when you filed your application packet, you should contact the court to schedule a hearing date when you receive the report from the Michigan State Police. Ask the court how notice of the hearing will be given to the Attorney General and the prosecuting official.

On the hearing date, any of the following may happen:

- The prosecuting official and/or a representative from the Attorney General's office may attend the hearing to object to the application. In that case, the court will hear what each has to say before making its decision.
- If neither the prosecuting official nor a representative of the Attorney General attends the hearing to object to the application, the court will make its decision based on the report from the Michigan State Police and the court's own records, as well as any response that may have been filed on behalf of the Attorney General or the prosecuting official.
- If the charge for which you were convicted was an assaultive crime or a serious misdemeanor, and the victim of that crime attends the hearing and/or provides an oral or a written statement, the court will consider that statement before making its decision.
- You will have the opportunity to speak to the court at the hearing. If you do not appear, your application may be dismissed.
- You may be asked to prove to the judge that you deserve to have your conviction set aside and that you have been rehabilitated. Therefore, you may want to gather evidence to present to the court at the hearing to show that you are a good person and that you have changed since you committed your crime. This evidence might be your work history, drug or alcohol treatment, educational achievements, or other successes you have had since your conviction. Examples of evidence may include resumes, letters of recommendation, certificates of award, school transcripts, and witness affidavits. You may also bring witnesses to court to testify on your behalf.

Bring your copy of the application packet, any evidence you have gathered, and form MC 228 (Order on Application to Set Aside Conviction) when you go to the court for the hearing.

»» INFORMATION ABOUT ATTENDING THE HEARING

The hearing will usually take place at the court where the application was filed. Read the notice of hearing to see the date and place of the hearing. It is important for you to arrive at the court on time; if you file an application and are not in court when your case is called, the application may be denied. **Bring the Order on Application to Set Aside Conviction (form MC 228) with you to the hearing.** Also bring your application packet and any witnesses who are willing to testify.

1. If you are representing yourself, you are expected to conduct yourself as an attorney and to follow the same general rules as an attorney.
2. Make a list of information you think is important for the judge to know. You can use this list as a reminder to bring up the points you think are important.
3. Go to the court on the scheduled day and time. Dress neatly. Arrive 10 or 15 minutes early. Be prepared to spend half a day in court. Bring any witnesses with you.
4. Go to the clerk and tell him/her your name and that you are there for a hearing. Follow the clerk's directions and do not interrupt any hearing in progress.
5. The court will call the case and you will have the opportunity to explain your request to the judge. Be prepared to tell the judge why you think it is in the public's interest to set aside the conviction.
6. When your case is called, go to the front of the courtroom and follow the directions of the judge. Answer the judge's questions clearly and directly. If the judge wants to hear from the witnesses, ask them to tell the court what they know about you.
7. The judge will ask the prosecuting official and the representative from the Attorney General's Office, if present, to state any objections.
8. If the judge determines that your circumstances and behavior since the date of your conviction warrant setting aside the conviction, and that setting aside the conviction is consistent with the public welfare, the court may enter an order setting aside your conviction.

»» GETTING YOUR ORDER

The court prepares and signs the Order on Application to Set Aside Conviction, form MC 228, after the hearing. The court will provide you with a copy of the order. Normally, the court will send a copy to the arresting agency and the Michigan State Police. However, you should check with the court clerk to make sure of this. If the court agreed to make your conviction nonpublic, the Michigan State Police will receive a copy of the order setting aside a conviction and your record will be maintained as nonpublic. If the court denied your request to set aside your conviction, the record will remain public.

»» CHECKING YOUR CRIMINAL RECORD

Thirty days after an order setting aside your conviction is signed, make sure your record is clear. Check that the record has been updated by searching ICHAT at <http://apps.michigan.gov/ICHAT/home.aspx>. If your record is not clear, contact the Michigan State Police Criminal Records Division at 517-241-0600. See the Followup section of http://courts.michigan.gov/scao/selfhelp/intro/criminal/setaside_help.htm.

INSTRUCTIONS FOR COMPLETING "APPLICATION TO SET ASIDE CONVICTION"

Please print neatly.

Items A through I must be completed before your application can be filed with the court. Please read the instructions for each item. Fill in the correct information for that item on the form.

- A** Before you fill in the Case No., get the court papers of your conviction and copy the Case No. from those court papers onto this form.
- B** Use your court papers to write in the ORI and Police Report Number, if available.
- C** Use your court papers to fill in the boxes. Copy the names from these court papers onto this form. You are the defendant.
- D** Use your court papers to write in the date of your conviction and the offense for which you were convicted. If you were not imprisoned for this offense, check the first box. If you were imprisoned for this offense, check the second box and write in the date you completed your term of imprisonment.
- E** Check the first box if this is the only application you have filed to get a conviction set aside. Check the second box if you have previously filed an application to get a conviction set aside, and then check the box to indicate whether it was for this same conviction or another conviction. If it was for another conviction, write in the offense for that conviction and the result (granted, denied, dismissed, withdrawn, etc.).
- F** Make sure that these statements are true. If they are true, you are eligible to apply to have your conviction set aside. Pursuant to MCL 780.621(4)(c), you are eligible to apply to have your conviction set aside even if you were also convicted of two minor offenses that were committed by you before you were 22 years of age, as defined in MCL 780.621(10)(b). If you have been convicted of not more than two minor offenses as defined in MCL 780.621(10)(b), check the box. Otherwise, leave the box blank.
- G** Make sure that you agree with this statement.
- H** **DO NOT SIGN YOUR NAME** until you are standing in front of a notary or the clerk of the court.
- I** **DO NOT WRITE IN THIS SECTION.** The notary public or clerk of the court will complete this section.
- J** File your application with the court. The clerk of the court will complete the Notice of Hearing. See page 5 of this packet for details.
- K** Read page 6 of this packet for details on mailing this form to the prosecuting official, Michigan State Police, and Attorney General. Then write in the dates you mailed the application packets to the prosecuting official, the Michigan State Police, and the Attorney General.
- L** On the date you mail the copies, write in the date and sign your name on the remaining two copies. Mail or take one copy to the clerk of the court. See page 6 of this packet for details.

You must read this booklet for directions on the legal process. Statutes and court rules and information about following up after an order is entered is available on the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/intro/criminal/setaside_help.htm.

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	ORDER ON APPLICATION TO SET ASIDE CONVICTION	CASE NO.
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ORI MI- Police Report No.	Court address	Court telephone no.
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THE PEOPLE OF	<input type="checkbox"/> The State of Michigan <input type="checkbox"/> _____ _____
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v

Defendant's name, address, and telephone no.		
CTN/TCN	SID	DOB
Date of Offense	Charge	

Instructions: An order may not be entered until receipt of the report of the Michigan State Police. Copies of the order must be sent to the Michigan State Police and the prosecuting official.

THE COURT FINDS:

- 1. The Michigan State Police has reported to the court required information from the department's records.
- 2. The applicant has not been convicted of more than one criminal offense except as otherwise permitted by MCL 780.621(10)(b).
- 3. The conviction is not a traffic offense or a felony for which the maximum punishment is life imprisonment.
- 4. It has been at least five years since the sentence was imposed or since the defendant was discharged from imprisonment for the conviction.
- 5. An opportunity has been given to the Attorney General and prosecuting official to contest the application.
- 6. Circumstances and behavior of the applicant justify setting aside the conviction, and it is consistent with the public welfare.

IT IS ORDERED: (If any item from 1 through 6 is not checked, then item 7 must be checked.)

- 7. The application is denied.
- 8. The conviction in this case is set aside. Under MCL 780.623 the court clerk, the arresting agency, and the Michigan State Police shall maintain a **nonpublic record** of the order setting aside conviction and of the arrest, fingerprints, conviction, and sentence in this case. If the conviction is for a nontraffic offense that was reportable to the Secretary of State in accordance with MCL 257.732(22), the driving record shall not be expunged.

Date	Judge	Bar no.
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NOTE: Pursuant to MCL 780.622, if this order sets aside a conviction for a listed offense as defined in MCL 28.722 of the Sex Offenders Registration Act, you are still considered to have been convicted of that offense and you must comply with the registration and reporting requirements of the act.

Pursuant to MCL 769.16a the clerk of the court shall advise the Michigan State Police Criminal Justice Information Center of the disposition.