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Getting an Adult Criminal Conviction Removed (Expungement)

The following is a brief description about getting a conviction set aside, followed by specific information on processing an application to set aside a conviction.

“Setting Aside a Conviction” Defined

Setting aside a conviction removes a criminal conviction from the public record of the Michigan State Police, and is sometimes referred to as an expungement. The law that allows a person to apply to have a conviction set aside provides that the record be made nonpublic as that any criminal record check, made by someone other than those agencies specified in the law, would reveal no conviction.

Conditions for Applying

A person may apply to have a conviction set aside for any crime except: 1) a conviction of a felony or an attempted felony punishable by life imprisonment; 2) a violation or attempted violation of criminal sexual conduct under MCL 750.520c, MCL 750.520d, or MCL 750.520g; or 3) a traffic offense. **A person who has had more than one conviction for any offense cannot apply.** A person may have only one conviction set aside.

A person who has been convicted of a nontraffic offense that is reported to the Secretary of State may apply to have the conviction set aside, but if the application is granted, the court cannot order the removal of the offense from the Secretary of State’s records.

A person may apply to have a conviction set aside when 5 years have passed since the date he or she was sentenced for the conviction, as long as he or she was not imprisoned. If the person was imprisoned, he or she may apply to have the conviction set aside when 5 years have passed since being released from the term of imprisonment for that conviction.

Processing Steps

The following information will take you through the steps necessary to get a conviction set aside.

Using Court Forms

Court forms are available for use in a proceeding to set aside a conviction. **The standardized court forms you will need can be obtained from your county clerk's office. They are MC 277, Proof of Service forms and MC 228.** These forms follow the procedures stated in the Michigan Compiled Laws and Michigan Court Rules and can be used without the assistance of an attorney.

When using forms, you are required to provide the total number of copies for use by the court, the parties, and any other person or organization that must receive the form. See the upper right hand corner of each form to determine the mandatory number of copies and who must receive those copies. If you do not provide the court with the correct number of copies, the court might reject the form for nonconformance under the authority of Michigan Court Rule 8.119(C). Unless specifically required by court rule or statute, the court is not responsible for making copies of forms for you.

Instructions for completing and processing the form are provided with the form. The order is completed by the court, but you may be required to provide the order form. Ask the clerk whether you must provide the order, and if so, complete only the top of the form above item 1. Make sure you read all the instructions and follow them carefully.

How to Begin

Call the court clerk in the court where the conviction took place to find out the exact date of the conviction and the criminal charge. Complete the application (form MC 227) using this information. You must sign the application before a notary public or the clerk of the court. You must attach a certified record of the conviction. This record can be either a certified copy of the judgment of sentence or a certified copy of the probation order, or a certified copy of the case history (register of actions). You will need to file the application with the court and get a hearing date, so you can get the certified copy of the conviction at that time. 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.

Serving the Application

The application and notice of the hearing date must be served on the Attorney General of the State of Michigan, the prosecuting official of the county or political subdivision who prosecuted the case, and the Michigan State Police. You must also send a fingerprint card and a processing fee with the copy served on the Michigan State Police. Be sure to ask the local law enforcement agency the amount of the application fee. Instructions for getting a fingerprint card are included with the application form. You can either mail or personally deliver the application. Addresses for the Attorney General's Office and the Michigan State Police are provided in the application form.

The Attorney General, the Prosecutor and Michigan State Police

The Attorney General of the State of Michigan reviews each application to determine whether it qualifies. Both the attorney general and the prosecuting official are given the opportunity to contest (object to) the application at the hearing. In addition, the prosecuting official will notify the victim of an assaultive crime or serious misdemeanor. The victim has the right to appear at the hearing on the application and/or to make a written or oral statement. The Michigan State Police receives the application so that it can prepare a report for the court from its records and the records of the Federal Bureau of Investigation as to any pending charges against you (the applicant). The court cannot act upon your application until the Michigan State Police has submitted its report to the court.

Preparing for the Hearing

The court will schedule the hearing date for you when you file the application. 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 a bit of time for the report to be prepared, it will not be uncommon for the court to schedule the hearing to be held on a date several months after you file the application. On the hearing date, any of the following may happen:

1. The prosecuting official and/or a representative from the Attorney General's Office may attend the hearing to contest the application. In that case, the court will hear what each has to say before making its decision.
2. If neither the prosecuting official nor the attorney general attend the hearing to contest the application, the court will make its decision based on the report from the Michigan State Police and the court's own record.
3. 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 written statement, the court will consider that statement before making its decision.
4. If you do not appear, the case will be dismissed.

When you go to court for the hearing, take with you your copy of the application and a copy of the record of your conviction.

Attending the Hearing

The hearing will usually take place at the court where the application was filed. It is important for you to be there on time; if you file an application and are not in court when your case is called, the application will be denied. Bring all of your relevant papers.

The court clerk will call the case and you will appear before the judge to state your request. The judge will ask the prosecuting official and the representative from the Attorney General's Office, if present, to state any objections. The court may require the filing of affidavits and taking of proofs.

If a judge determines that your circumstances and behavior from the date of your conviction to the filing of the application 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.

Order

The court prepares 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 and will send a copy to the arresting agency and the Michigan State Police. Based on the order, the Michigan State Police will continue to maintain your record as either public or nonpublic. If the order granted your request, the record will become nonpublic. If the order denied your request, the record will remain public.