

# Setting Aside a Conviction For First Violation Operating While Intoxicated Offense

An operating while intoxicated (OWI) offense conviction generally cannot be set aside, [MCL 780.621c\(1\)\(d\)\(i\)](#); however, the prohibition of setting aside a conviction for operating while intoxicated does not apply to a conviction for a first violation operating while intoxicated offense, [MCL 780.621c\(3\)](#).

*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 . . . [MCL 257.625](#):

(i) [[MCL 257.625\(1\)](#), [MCL 257.625\(2\)](#), [MCL 257.625\(3\)](#), [MCL 257.625\(6\)](#), or [MCL 257.625\(8\)](#)].

(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).” [MCL 780.621\(4\)\(d\)](#).

- Confirm that the person applying to set aside a first violation operating while intoxicated offense has not previously applied to have and had a first violation operating while intoxicated offense conviction set aside. [MCL 780.621c\(3\)](#).
- In making the determination, the court may consider any evidence, including evidence that is not in the record made at sentencing to determine:

- whether or not the petitioner has benefited from rehabilitative or educational programs, if any were ordered by the sentencing court; and
- 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. [MCL 780.621c\(4\)](#).
- The reviewing court may deny the petition if:
  - it is not convinced that the petitioner has availed himself or herself of rehabilitative or educational programming; or
  - it is not convinced that the petitioner has benefited from rehabilitative or educational programming he or she has completed. [MCL 780.621c\(4\)](#).