

Setting Aside a Conviction For Misdemeanor Marijuana Offense

A person convicted of one or more misdemeanor marijuana offenses may apply to set aside the conviction or convictions under [MCL 780.621e](#).

Misdemeanor marijuana offense means a violation of [MCL 333.7403\(2\)\(d\)](#) (possession), [MCL 333.7404\(2\)\(d\)](#) (use), [MCL 333.7453](#) (marijuana paraphernalia), or a local ordinance substantially corresponding to any of those sections. [MCL 780.621e\(7\)](#).

Note that a person is not entitled to resentencing in another criminal case if their misdemeanor marijuana conviction is set aside—even if the set aside conviction was used in determining the sentence in another case. [MCL 780.621f\(2\)](#). Similarly, having a misdemeanor marijuana conviction set aside does not entitle the applicant to the return of any fines, costs, or fees imposed as part of the sentence or any money or property forfeited. [MCL 780.621f\(4\)](#).

- Ensure that the application contains:
 - the full name and current address of the applicant; and
 - a certified record of each conviction that is to be set aside. [MCL 780.621e\(2\)](#).
- Ensure a copy of the application was served on the agency that prosecuted the offense(s) the applicants seeks to set aside. [MCL 780.621e\(3\)](#).
- Rebuttable presumption.** Be aware of the rebuttable presumption that arises upon the individual filing an application: The misdemeanor marijuana conviction was based on activity that would not have been a crime if committed on or after December 6, 2018. [MCL 780.621e\(4\)](#).

- Ensure any answer filed by the prosecuting agency rebutting the presumption is timely (60 days after being served with application) and served on all other parties. See [MCL 780.621e\(4\)](#).
- If no answer is timely filed, enter an order setting aside the conviction(s) within 21 days. [MCL 780.621e\(5\)](#).
 - The court must serve a copy of the order on the applicant, the arresting agency, the prosecuting agency, and the department of state police. [MCL 780.621e\(5\)](#).
 - If a timely answer is filed to rebut the presumption, hold a hearing no later than 30 days from its receipt of the answer. [MCL 780.621e\(6\)](#). The rules of evidence do not apply. *Id.*
 - Serve a notice of the hearing on the applicant. The applicant has no obligation to present evidence at the hearing. [MCL 780.621e\(6\)](#).
 - Determine whether the prosecuting agency has proven by a preponderance of the evidence that the conviction sought to be set aside was based on conduct that would be a crime if committed on or after December 6, 2018. [MCL 780.621e\(6\)](#).
 - After the hearing, enter an order denying or granting the application to set aside within 14 days, and serve any written opinions or orders—including an order to set aside the conviction or convictions—upon the parties. [MCL 780.621e\(6\)](#).
- Send a copy of the order setting aside the conviction to the arresting agency and to the Michigan State Police upon entry of the order. [MCL 780.623\(1\)](#).
- Upon entry of the order setting aside the conviction, the applicant is, for purposes of the law, considered not to have been previously convicted—except as provided in [MCL 780.622](#) and [MCL 780.623](#). [MCL 780.622\(1\)](#).