



## Michigan Supreme Court

State Court Administrative Office  
Michigan Hall of Justice  
P.O. Box 30048  
Lansing, Michigan 48909

### *Automatic Set Aside (Clean Slate) Q&As*

Please note that the following Q&As are applicable to automatic set asides.

#### **General Legal Authority**

**Q: When do automatic set asides start? What will be set aside by that date?**

A: The automatic set aside process will begin on April 11, 2023. The first batch of convictions that are set aside will include all eligible convictions in the Michigan State Police (MSP) database as of April 11, 2023. Additionally, courts are also required to set aside all eligible 92-day or less misdemeanor convictions in their respective case management systems and notify the arresting law enforcement agency on or before the tenth day of the preceding month. [MCL 780.621g\(1\)](#).

**Q: Is a person prohibited from having any assaultive crimes automatically set aside, or just not more than one?**

A: [MCL 780.621g\(10\)\(a\)](#) prohibits an assaultive crime from being automatically set aside under subsections (2) and (4). Additionally, [MCL 780.621g\(7\)](#) prohibits automatically setting aside *any* convictions under subsection (2) and (4) if an individual has more than one conviction for an assaultive crime or an attempt to commit an assaultive crime that is recorded and maintained in the MSP database. However, an assaultive conviction might, under certain circumstances, be eligible for set aside under the application process.

**Q: Does the limitation on two felony and four misdemeanor convictions apply to each jurisdiction or statewide?**

A: For eligible offenses, [MCL 780.621g\(5\)](#) allows for a maximum total of two felony and four misdemeanor (93 day or more) convictions to be automatically set aside “that are *recorded and maintained in the department of state police database*...during the lifetime of an individual.” (emphasis added). There is no limit on how many 92-day or less (nonprintable) misdemeanors can be automatically set aside under [MCL 780.621g\(5\)](#).

**Q: How will a conviction that predates an electronic case management system be automatically set aside?**

A: [MCR 8.119\(H\)\(9\)](#) requires courts to redact all information related to the set aside conviction or convictions before making the case record available to the public in any format. The MSP will notify courts through CJIC Reporter of any set aside convictions that are contained in the MSP database. Additionally, seven years after sentencing, courts need to make nonpublic any misdemeanor conviction that is punishable by 92 days or less. Courts need to implement appropriate methods to protect set aside convictions contained in paper (non-electronic) case files. This may involve marking each case file indicating it contains set aside convictions, or, if information about the set aside convictions does not reside anywhere but the paper case file, creating an index of set aside convictions that staff can consult if the case file is requested.

**Q: Will an individual's conviction be eligible for automatic set aside if the individual owes fines, costs, restitution, or if there is an active warrant for the individual's arrest?**

A: Both [MCL 780.621g\(10\)](#) and [MCL 780.621c](#)<sup>1</sup> identify offenses that are ineligible for an automatic set aside. [MCL 780.621g\(6\)](#) provides a list of other requirements that must be met before a conviction is eligible for automatic set aside, but the statutes do not preclude an automatic set aside because of outstanding fines, costs, restitution, or active warrants.

- **Warrants**

A case will not be automatically set aside unless a conviction has been entered. [MCL 780.621g\(1\)-\(4\)](#). As such, a case with an active **pre-adjudication** warrant is not eligible for an automatic set aside. However, [MCL 780.621g](#) does not prohibit an automatic set aside if there is an active bench warrant issued **post-adjudication**. As such, courts must determine whether they will recall post-adjudication bench warrants after a case has been automatically set aside.

- **Fines and Costs**

[MCL 780.621g](#) does not prohibit an automatic set aside for unpaid fines and costs. Furthermore, a court must not reinstate a set aside conviction for unpaid fines or costs. [MCL 780.621h](#).

- **Restitution**

[MCL 780.621g](#) does not prohibit an automatic set aside for unpaid restitution. However, [MCL 780.621h\(3\)](#) states a court shall reinstate a conviction that was set aside under [MCL 780.621g](#) “if the court determines that the individual has not made a good-faith effort to pay the ordered restitution.” Additionally, a set aside conviction “does not relieve any obligation to pay restitution owed to the victim of a crime nor does it affect the jurisdiction of the convicting court or the authority of any court order with regard to enforcing an order for restitution.” [MCL 780.622\(7\)](#).

---

<sup>1</sup> The list of ineligible convictions in [MCL 780.621c](#) “applies to the setting aside of convictions without application under section 1g.” [MCL 780.621c\(2\)](#).

**Q: How many convictions can be automatically set aside?**

A: [MCL 780.621g](#) provides not more than two felony and four misdemeanor (punishable by 93 days in jail or more) convictions can be automatically set aside. There is no limit on how many 92-day or less (nonprintable) misdemeanors can be automatically set aside under [MCL 780.621g\(5\)](#).

**Q: When can a conviction be automatically set aside?**

A: For a **felony** conviction, **10 years** must pass from the imposition of sentence or completion of imprisonment with MDOC, whichever occurs last. For a **misdemeanor** conviction, **7 years** must pass from the imposition of sentence. [MCL 780.621g\(1\)-\(4\)](#).

**Q: Can a judge stop a conviction from being automatically set aside? For example, if the defendant still owes court costs, fines, or restitution.**

A: No. All eligible convictions are automatically set aside by operation of law and do not require a court order. [MCL 780.621g](#). Courts are only authorized to reinstate a conviction if it was set aside in error or after the court determines the individual has not made a good faith effort to pay the ordered restitution. [MCL 780.621h](#)

**Q: Are circuit courts required to notify arresting agencies of felony convictions that have been automatically set aside?**

A: [MCL 780.621g\(1\)](#) specifies that for **92-day or less (nonprintable) misdemeanors** “each court shall notify the arresting law enforcement agency of each conviction on or before the tenth day of each month that is set aside under this subsection for the preceding month.”

**Q: If a conviction has been automatically set aside, can the court continue to collect unpaid fines and costs?**

A: An applicant “is not entitled to the remission of any fine, costs, or other money *paid* as a consequence of a conviction that is set aside.” [MCL 780.622\(2\)](#) (emphasis added). However, an automatic set aside “does not relieve any obligation to *pay restitution* owed to the victim of a crime nor does it affect the jurisdiction of the convicting court or the authority of any court order with regard to enforcing an order for restitution.” [MCL 780.622\(7\)](#). The statute explicitly references a continuing obligation to pay restitution but does not mention fines and costs.

**Q: If there is a bench warrant issued for a probation violation, can the court still proceed on it if the conviction has been automatically set aside?**

A: Except as otherwise provided in [MCL 780.622](#) and [MCL 780.623](#), upon the automatic setting aside of a conviction, “the applicant, for purposes of the law, is considered not to

have been previously convicted[.]” [MCL 780.622\(1\)](#). Furthermore, a court may only reinstate a set aside conviction in the limited circumstances articulated in MCL 780.621h. Courts must review [MCL 780.621 et seq.](#) and other relevant authorities to determine whether the court may proceed with a probation violation warrant on a case that has been automatically set aside.

**Q: How will the prosecutor's office be notified of cases that have been automatically set aside?**

A: Prosecutors may access set aside convictions for the reasons articulated in [MCL 780.623\(2\)](#). See also [MCR 8.119\(H\)\(9\)](#). However, [MCL 780.621g et seq.](#) does not require MSP or the court to notify prosecutors when charges are automatically set aside.

**Q: How can a defendant, defense attorney, or legal aid office confirm whether a charge has been automatically set aside?**

A: [MCL 780.623\(3\)](#) requires the MSP (upon the payment of a fee) to provide a copy of the set aside conviction to the person whose conviction is set aside. Additionally, anyone can conduct a public criminal history search using the Internet Criminal History Access Tool (ICHAT) available through the MSP. Individuals may also contact the court of record to determine if there is a public record of the set aside conviction.

**Q: Are courts required to confirm the accuracy of each conviction set aside by the MSP rules engine?**

A: No. All eligible convictions will be *automatically* set aside by *operation of law*, which will not require any judicial action. However, if a court determines that the conviction was improperly or erroneously set aside, “the court shall, on its own motion, reinstate the conviction.” [MCL 780.621h\(1\)](#). See also [MCR 6.451](#).

**Q: Are courts able to consider set aside convictions when setting bond?**

A: [MCL 780.623\(2\)](#) identifies the circumstances under which a court may consider a set aside conviction. A “court of competent jurisdiction” may consider a set aside conviction for:

- The court’s consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.
- Determining whether an individual required to be registered under the sex offenders registration act has violated that act, or for use in a prosecution for violating that act.
- Making determinations regarding charging, plea offers, and sentencing, as applicable.

The list of appropriate purposes for using nonpublic, set aside convictions does not expressly include use in setting bond. Additionally, [MCL 780.622\(1\)](#) provides that an

individual who has had a conviction automatically set aside “for purposes of the law, is considered not to have been previously convicted<sup>2</sup>.”

**Q: How can a court use a set aside conviction to determine PRV scores and not also violate MCL 780.623(5)?**

A: [MCL 780.623\(2\)](#) authorizes a court to consider an automatically set aside conviction in making determinations for sentencing. [MCL 780.623\(5\)](#) establishes a misdemeanor offense for a person who divulges, uses, or publishes nonpublic information concerning a conviction, *except as provided in [MCL 780.623\(2\)](#)*. As such, courts may use nonpublic set aside conviction information to the extent authorized in [MCL 780.623\(2\)](#).

**Q: Is Retail Fraud or Organized Retail Crime considered a “crime of dishonesty” and therefore ineligible for an automatic set aside?**

A: No. Retail Fraud or Organized Retail Crime are not considered a “crime of dishonesty” under the definition contained in [MCL 780.621g\(15\)](#).

**Q: Can an Operating While Intoxicated (OWI) conviction be automatically set aside?**

A: No. A conviction “for a first violation operating while intoxicated offense that may be set aside upon application is *not* eligible for and shall not be set aside without an application under section 1g.” [MCL 780.621c\(3\)](#) (emphasis added). For the purposes of criminal set asides, “operating while intoxicated” is defined in [MCL 780.621\(4\)\(h\)](#).

**Q: Can an OWI conviction for operating a boat, snowmobile, or ORV be automatically set aside?**

A: Yes. [MCL 780.621\(4\)\(h\)](#) defines “operating while intoxicated” as a violation of [MCL 257.625](#) and [MCL 257.625m](#), including a local ordinance, law of an Indian tribe, law of another state, or law of the United States that is substantially corresponding to [MCL 257.625](#) and [MCL 257.625m](#).

For the purposes of set asides, the definition of “operating while intoxicated” does not include offenses under the Natural Resources and Environmental Protection Act for operating a boat ([MCL 324.80176](#)), snowmobile ([MCL 324.82127](#)), or ORV ([MCL 324.81134](#)) while under the influence of alcohol or controlled substances.

---

<sup>2</sup> Except as provided in [MCL 780.622](#) and [MCL 780.623](#).

## **Records Issues, Nonpublic Status, and Access**

**Q: How long after receiving the Set Aside Report (from CJIC Reporter or through the CMS) does the court have to mark cases as non-public?**

A: Courts must ensure convictions become nonpublic immediately upon receiving the set aside report. The MSP rules engine will run each day and update the Set Aside Report in CJIC Reporter. The JIS case management system will pull data from the CJIC Reporter each day and automatically mark eligible convictions as nonpublic. If they haven't already done so, non-JIS courts should consider developing a similar automated process to reduce staff processing times and workloads.

**Q: Will background check companies or authorized individuals under MCR 1.109 have access to set aside convictions similar to PPII?**

A: No. [MCL 780.623\(2\)](#) limits access to nonpublic, set aside convictions to “a court of competent jurisdiction, an agency of the judicial branch of state government, the department of corrections, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request” and only for the specific purposes identified in the statute. See also [MCR 8.119\(H\)\(9\)](#).

**Q: If an individual has multiple charges in a single case, but not all charges are automatically set aside, does the entire case need to be nonpublic or only those specific charges?**

A: The court must allow access to all public aspects of the case file, including charges that have not been set aside. However, the court must redact all information related to the set aside conviction or convictions before making the case record available to the public in any format. [MCR 8.119\(H\)\(9\)](#).

**Q: After April 11, 2023, will the Register of Actions (ROA) for cases that contain both public and nonpublic convictions become nonpublic until the nonpublic information is redacted?**

A: A court must display public information on the ROA, but redact all information related to the set aside conviction or convictions before making it available to the public. [MCR 8.119\(H\)\(9\)](#).

**Q: For cases that contain both public and nonpublic convictions, can the court remove all charge information from online search engines?**

A: Courts are not required to display case information in an online search engine and may therefore choose to limit what case information is displayed. However, if courts do display case information online or through a public access terminal, they must redact all nonpublic information. [MCR 8.119\(H\)\(9\)](#).

**Q: Will an individual who has a conviction automatically set aside have access to their nonpublic record?**

A: Yes. Access may be provided to the individual whose conviction was set aside and that individual's attorney. [MCR 8.119\(H\)\(9\)](#). Additionally, [MCL 780.623\(3\)](#) provides that a copy of the nonpublic record retained by MSP "must be provided to the person whose conviction is set aside." Accordingly, the defendant can obtain a copy of the nonpublic record from MSP or the court.

**Q: Can the military access set aside convictions?**

A: [MCL 780.623\(2\)](#) provides that the "nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, the department of corrections, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request" and only for the specific purposes identified in the statute.

Upon the request of a federal agency defined in [5 USC 9101\(a\)\(6\)](#) and with the written consent of the individual, the court shall make available all criminal history record information regarding individuals under investigation by that federal agency, but only for the purposes identified in [5 USC 9101\(b\)](#). Criminal history record information includes records that are sealed pursuant to law if such records are accessible by state and local criminal justice agencies for the purposes of conducting background checks.

## **Reinstatement**

**Q: Why would a court reinstate a conviction that was automatically set aside?**

A: The court must reinstate an automatically set aside conviction if it is determined the conviction was improperly or erroneously set aside *or* if the court determines the individual whose conviction was set aside has not made a good-faith effort to pay restitution. [MCL 780.621h](#). There are no other circumstances in which the court may reinstate an automatically set aside conviction. See also [MCR 6.451](#).

**Q: How will automatic set asides and reinstatement of convictions impact caseloads?**

A: For purposes of caseload, a criminal case begins when a complaint is filed and it is disposed when there is a verdict, guilty plea, dismissal, etc. As a result, a conviction has already been counted in the caseload when the conviction was entered. Automatic set asides or reinstatement of convictions based on error or non-payment of restitution do not require reopening a case and will not impact caseloads.

## **MSP Processes and Responsibilities**

**Q: In what order will the MSP rules engine automatically set aside convictions?**

A: The rules engine will run in chronological order, starting with the oldest eligible conviction. Each case is likely to have unique differences based on individual convictions and timeframes—questions on specific cases should be directed to MSP.

**Q: What are open records?**

A: An open record is an incomplete criminal record which occurs when arrest fingerprints are submitted, but information from the prosecutor and/or court is missing. An open record is not considered a pending case and will not disqualify other convictions from being automatically set aside. However, an open record in the MSP database might allow a conviction to be automatically set aside that would have otherwise been ineligible if the open record was reported as a conviction. If a defendant was arrested, but never charged, the arresting agency has the responsibility to notify MSP. [MCL 28.243\(7\)](#).

**Q: I believe a conviction should have been automatically set aside, but it is still publicly available. Who should I contact?**

A: For any convictions still available on ICHAT, the individual needs to contact the MSP. MSP has provided the following email address for questions: [MSP-CRD-CSAAUTOMATIC@michigan.gov](mailto:MSP-CRD-CSAAUTOMATIC@michigan.gov). For any convictions that are not on ICHAT, but still available in the court record, the individual should contact the court of record.

**Q: Will individuals be notified when their conviction(s) are automatically set aside?**

A: No. Individuals will not be notified when their conviction(s) are automatically set aside. However, individuals may confirm whether their conviction has been set aside by (1) searching their name in ICHAT; (2) requesting a [personal record review](#) through the MSP; or (3) contacting and requesting the record from the court where the conviction occurred.

**Q: How much does a personal record review cost?**

A: According to MSP's [website](#), a personal record review requires the submission of fingerprints and a \$30.00 processing fee in the form of a money order or check made payable to the State of Michigan.

**Q: How much does running a criminal history record in ICHAT cost?**

A: According to the MSP, running an ICHAT report costs \$10.00 per search.



**Q: What is the difference between running a criminal history record in ICHAT and requesting a personal record review?**

A: ICHAT is the MSP's public records database. An individual running a criminal history record in ICHAT will only have access to public records—they are unable to view or access set aside convictions. A personal record review requires the individual to submit fingerprints and a \$30.00 processing fee but will include a complete criminal history record including both public and nonpublic convictions.

**Q: How does a court obtain access to the CJIC Reporter?**

A: Please see the [memo](#) from MSP regarding how to obtain access to CJIC Reporter. The memo is also posted on the One Court of Justice website on the [Clean Slate webpage](#).

**Q: If you have access to CJIC Reporter due to LEIN validation, do you still need to register for the Set Aside and CHR applications?**

A: Yes. Courts still need to request access to the Set Aside and CHR portions of CJIC Reporter. There are two items to check when submitting the RI-092A MiCJIN Administrator/Application Request Form. For set asides, select the CSA box and for open case reports, select the CHR box in either the Direct LEIN or Indirect LEIN Access portion, whichever applies to your court. See also the [memo](#) from MSP.

**Q: Who is responsible for keeping track of the total number of set aside convictions?**

A: The MSP rules engine determines eligibility based on the number of convictions that have been automatically set aside for each individual.

**Q: How will courts run reports in CJIC Reporter?**

A: The next training for courts on [Conviction Set Aside and CJIC Reporter Application Training](#) will be presented by MSP on April 4, 2023. Registration must be completed in [MI-TRAIN](#) using course code 1108977. Topics for the MSP training include:

- **Topic: Automatic Set Aside Overview – Preparing for April 2023**

The goal of this session is to help prepare courts for the implementation of the automatic set aside process. This training will provide details of the workflow. It will include an overview of the eligibility criteria, the plan for communicating eligible offenses to the courts from MSP (including timeline), and how MSP will receive, and process ineligible offenses identified by the courts.

- **Topic: CJIC Reporter Application**

This training will introduce you to the "CJIC Reporter" application. For courts that don't already have access, MSP will supply you with information on how to gain access to the CJIC Reporter application and how to use it. MSP will also provide

instructions to courts on how to use the CJIC Reporter application for conviction set asides.

**Q: What impact will registering for CJIC Reporter have on courts that do not make their own entries in LEIN?**

A: Requesting access to CJIC Reporter through MiCJIN will only allow courts to access the Set Aside Report and the Open Case Records Report—it will not require the court to start making its own entries in LEIN or add any additional responsibilities for courts.

## **JIS Process for Automatic Set Asides**

**Q: How will JIS courts receive their list of set aside convictions?**

A: JIS will ingest data from CJIC Reporter for each JIS court and create a report that courts can run that identifies which convictions were set aside in the court. JIS will automatically make all convictions set aside by MSP nonpublic in the case management system and write to the ROA that the conviction is set aside. JIS will generate an exception report for all convictions that are automatically set aside but that are not found or do not match records in the electronic case management system.

JIS will also develop a rules engine to identify all eligible 92-day or less (nonprintable) misdemeanors in the electronic case management system and automatically make them nonpublic. Non-JIS courts will need to coordinate with their individual case management system providers. For all convictions not in the electronic case management system, courts will need to manually keep track of convictions that have been set aside (please review *How will a conviction that predates an electronic case management system be automatically set aside?* on [page 2](#) for a more detailed discussion).

**Q: Does a JIS court need to access CJIC Reporter if the court already has access to MiCOURT Portal or Web TCS?**

A: Yes. CJIC Reporter is still necessary for JIS courts to resolve open case records and to reinstate convictions under [MCL 780.621h](#).

**Q: If a conviction is automatically set aside and the case was opened prior to the creation of the court's electronic case management system, should the court enter the old case in JIS so that the conviction can be marked as set aside?**

A: No. SCAO **does not** recommend opening a new case in the case management system only to set it aside. Reentering old cases into your CMS risks incorrect caseload reporting. Please review the question *How will a conviction that predates an electronic case management system be automatically set aside?* on [page 2](#) for additional information.

**Q: Can a MiCJIN portal be created in JIS similar to the courts' access to LEIN in JIS?**

A: No. This is not possible between the JIS systems and LEIN at this time.

**Q: If a court is not a web based JIS court, will reports still be generated out of MiCOURT and will there be instructions on where to go and how to run these reports?**

A: All JIS courts have access to the MiCOURT portal regardless of whether they use the JIS web-based CMS. If your court has not contacted JIS to configure an account and receive training, please email [implementation@courts.mi.gov](mailto:implementation@courts.mi.gov).

## **JIS Exception Report**

**Q: What is the purpose of the Exception Report?**

A: The Exception Report includes a list of convictions that were set aside automatically by MSP but that did not map directly to a corresponding conviction in your JIS CMS.

**Q: Why did these convictions not map directly to the corresponding conviction in the JIS CMS?**

A: There are many possible explanations for this issue. The most common of which is that the conviction set aside automatically by MSP pertains to a conviction that occurred prior to your court implementing your current CMS. These records could be stored in paper format or on a legacy CMS. Some courts find it helpful to sort the Exception Report by date; allowing them to focus on those offenses appearing on the Exception Report that are currently in the CMS rather than those cases that predate the CMS. If you are unsure when your court started using the JIS CMS, please contact the JIS help desk to inquire.

Another common occurrence is that there was an error in the data entered into a data field in your CMS that did not match the corresponding data in the MSP records.

**Q: I have accessed my Exception Report, what am I supposed to do now?**

A: Each conviction that appears on your Exception Report has a matching court record that contains the conviction.

If the conviction listed on the Exception Report corresponds to a record that does not currently live on your CMS (e.g. paper only files), your court should establish a policy that protects this non-public information from being released in any record searches.

If the conviction listed on the Exception Report corresponds to a record that does live on your CMS and can be located, your court should manually set aside this conviction in your CMS. If the conviction was improperly set aside by MSP, follow the process identified in MCR 6.451 to reinstate the conviction. Your court should also try to determine if this is an

ongoing issue with data entry and, if so, implement policies that would correct this issue for future cases.

**Q: What does reviewing the Exception Report have to do with getting JIS to remove the 7-year filter on the MICOURT [Public Case Search](#) for criminal data?**

A: It is important to complete a review of your court's Exception Report when you receive notification from JIS that your court is fully set up for daily processing. Courts should review the Exception Report for accuracy to ensure that no cases will appear in a public case search that should have been set aside in the CMS but were not. Once the review is complete and you are ready to remove all filters and re-enable full functionality of the MiCOURT public case search, please contact [jis@courts.mi.gov](mailto:jis@courts.mi.gov) to process that request.

**Q: Am I finished with the Exception Report after JIS has our court on daily processing?"**

A: No, as time goes forward additional charges will be set aside regularly through the automated processing, and your court should check the Exception Report regularly to determine if there are any issues that need to be addressed. The frequency of that review should be determined by your court leadership.

## **Non-JIS Reimbursement Process**

**Q: Are all CMS providers that support non-JIS courts eligible to submit invoices and receive reimbursement directly through SCAO? Does this include providers who could not come to a contract agreement with SCAO?**

A: If a CMS provider has a signed contract with SCAO, the CMS provider can submit invoices for reimbursement for the necessary system upgrades and implementation costs. The invoice can be submitted for one or multiple courts. However, any CMS providers who do not have a signed contract with SCAO must work directly with the court and the court will need to submit the invoice and supporting documentation.

## **Judicial Data Warehouse (JDW)**

**Q: JDW will use the "P" code to indicate when a court approves an application for set aside. But the "P" code is already a method code the court uses when a plea is entered. Would it be better to have a code for judgment rather than method?**

A: The "P" code to be used in the JDW to indicate that a court approved an application for set aside is captured in the new data field, Set Aside. The Set Aside data field captures the method by which an offense was set aside or denied. This data field does not capture the disposition method or judgment and, therefore, should not conflict with the use of "P" to indicate that a plea was accepted.