



Michigan Supreme Court

State Court Administrative Office
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Thomas P. Boyd
State Court Administrator

MEMORANDUM

DATE: June 8, 2021

TO: All Judges
All Court Administrators
County Clerks

FROM: Bobbi Morrow, Management Analyst

RE: New and Revised Forms for Set Aside of Adult Convictions
(MC 227, MC 227a, MC 227b, MC 228, MC 228a, MC 228b)

In October 2020, the Legislature enacted a group of bills collectively known as the [“Clean Slate” package](#). These bills became effective on April 11, 2021, and amended the rules and procedures for setting aside convictions. As a result of these changes, existing forms were revised and new forms were developed in order to assist applicants and courts in the filing and processing of requests for set aside. On March 23, a [memo](#) was sent to courts regarding the specific changes made to each of the above-referenced forms.

Please see the following procedural information as it relates to the new and amended forms:

- **There are three different types of applications for setting aside convictions.** The original application, [MC 227](#), is the standard application used to set aside misdemeanor and felony convictions. [MC 227a](#) is the application used to set aside misdemeanor marijuana convictions only. [MC 227b](#) is the application used to set aside convictions that were committed as the direct result of an applicant being a victim of human trafficking. All of the forms contain a, “Use Note” under the caption explaining which application should be used depending on what type of conviction the applicant is seeking to have set aside.

It was necessary to create three separate applications because the amended statutes provide for different requirements depending on the type of conviction sought to be set aside. [MC 228](#), [MC 228a](#), and [MC 228b](#) are the corresponding orders for those applications.

- **Multiple convictions can be included on one application.**

Before the amendment, MCL 780.621 only allowed one felony (as long as the applicant did not have more than two additional misdemeanor convictions) or two misdemeanor convictions to be set aside. The previous form (MC 227) only allowed an applicant to submit one conviction per application and each application required a \$50.00 processing fee made payable to the Department of State Police. The newly amended [MCL 780.621](#) allows an applicant to set aside convictions for up to three felonies and unlimited misdemeanors. The Department of State Police provides the same criminal history records report regardless of how many convictions are included on the application. As such, the set aside applications were amended to allow individuals to request set asides for multiple convictions ***provided the convictions are all in the same court.*** The instructions on the forms warn applicants that they ***must use a separate application for each court.***

Court clerks may want to pay special attention to the application at the time of filing to ensure that convictions from different courts are not included on the same application, as only the convicting court has jurisdiction to set aside the conviction. Additionally, while multiple convictions may only involve one court, the convictions could involve multiple case files or judges. Courts will need to determine whether to place a copy of the application in each case file or alternatively, make an entry in the register of actions (ROA) that a document has been filed, but is stored in another location.¹ Courts may also want to consider creating special dockets for set asides, so that one judge within the court may consider an application involving multiple convictions for an applicant sentenced by several judges. This approach may reduce the number of hearings required for an applicant and assist the court in keeping track of how many convictions are sought to be set aside.

- **There are different waiting periods for filing the application depending on what type of offense the applicant is attempting to set aside.**

Before the amendments, MCL 780.621(5) required an applicant to wait five or more years after whichever occurred last; the imposition of sentence, completion of probation, discharge from parole, or completion of any term of imprisonment. The newly amended [MCL 780.621d](#) requires a different waiting period depending on whether the applicant is requesting set aside of convictions for multiple felonies, one felony, one or more serious misdemeanors, or one or more misdemeanors. The applicant must choose the appropriate check box on the application (MC 227). Clerks may want to flag filings for judicial review, if the conviction(s) listed on the application do not conform to the applicable waiting periods. While this is not a reason to reject a filing,² it could be flagged and brought to the court's attention so that it can be addressed during the hearing.

- **Traffic offenses can now be set aside.**

Before the amendments, MCL 780.621 prohibited a court from setting aside a conviction for a traffic offense. The newly amended [MCL 780.621c](#) allows courts to set aside ***all***

¹ See SCAO's [Michigan Trial Court Records Management Standards](#), Section 3.3.1.8.

² See MCR 8.119(C).

convictions for traffic offenses except for; 1) a conviction for OWI; 2) any traffic offense involving a commercial motor vehicle; and 3) any traffic offense that causes injury or death.³ Page three of the Order on Application to Set Aside Conviction(s) ([MC 228](#)) lists, “Convictions that May Not Be Set Aside,” which has been amended to include the exception for the specified traffic offenses. Courts should be mindful that proposed legislation permitting set aside of OWI convictions is currently pending in the legislature and if enacted, would allow the setting aside of a conviction for a first violation of OWI (See [SB 400](#), [HB 4219](#), [HB 4220](#)).

- **An applicant must submit a certified record of each conviction that is to be set aside.** The instructions for filing and serving an Application to Set Aside Conviction(s) include an instruction that the applicant will make five copies of the application (and any attachments) and take the copies to the court clerk *first*, before serving them on any of the other parties. This should give clerks the opportunity to identify applications that include convictions from other courts and to advise the applicant of any other deficiencies. Additionally, the applicant is required to obtain a certified record of each conviction from the court. A certified record of each conviction should consist of a copy of the judgment of sentence (or a ROA if the case file has been destroyed pursuant to the record retention schedule) and include a certified copy stamp, which provides that the document is the full and correct copy of the original on file in the court.⁴ If the certified record of conviction is declared by law to be evidence, it must also be attested by the seal of the court.⁵ Because the court accepts the original application and attachments, it should receive the certified record of conviction, including the stamp and seal. All *copies* of the application and attachments can thereafter be distributed to the other parties by the applicant pursuant to the distribution instructions.
- **There are resources available to help applicants complete and file the Application to Set Aside Conviction(s).** In addition to the instructions on the forms, courts can direct applicants to [Michigan Legal Help](#), which has an excellent [tool kit](#) that can assist the applicant in determining eligibility and filing the application. Additionally, the Michigan Department of Attorney General (AG) has [checklists](#) for setting aside convictions as well as information about local expungement fairs beginning in June 2021.

If you have any questions, please contact fieldservices@courts.mi.gov.

³ Note that although a court can set aside a traffic offense from the applicant’s criminal record, it will not be removed from the applicant’s driving record. See MCL 780.621c(3).

⁴ See SCAO’s [Michigan Trial Court Records Management Standards](#), Sections 3.3.1.10 and 3.3.1.13.

⁵ See MCL 600.2129.