

# **IS YOUR CRIMINAL RECORD HOLDING YOU BACK?**

## **Tips on how to expunge your criminal record**

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**The publication was supported by a grant from the  
Soros Justice Fellowship Program of the Open Society Institute**

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This publication is not intended to replace the advice of an attorney.  
Because laws and procedures on expungement can change, and because every individual's situation is different, Western Michigan Legal Services cannot ensure that the information in this manual is current, nor be responsible for any use to which this information is put.

## **What is an Expungement?**

Expunging your criminal record means that your prior conviction is set aside. If you have a conviction expunged, you are considered not to have been convicted for most purposes. For example, you can honestly tell potential employers that you have a clean criminal record. Your conviction can only be used for very limited purposes, such as increasing your sentence if you are convicted of a new offense. An expunged conviction is not supposed to appear on your rap sheet. (If it does, contact an attorney.)

Getting your criminal record expunged can make it much easier for you to get a job, housing, or credit. Many employers won't hire you if you have a criminal record. Many landlords won't rent to you. And a criminal record may prevent you from getting subsidized housing or public benefits. If you have a criminal record, you probably already know how much harder it makes many things in life. If you can get your record expunged, the law treats you – in most cases – as if you had never been convicted.

## How Do I Know if I Can Get an Expungement?

Both adult convictions and juvenile adjudications can be expunged. However, not everyone can get their criminal record expunged. To be eligible for an expungement, you must meet very specific criteria.

To see if you are eligible to expunge a conviction or juvenile adjudication in the state of Michigan, take the test below. *If the answer to **all** of the questions is **no**, you may be eligible for an expungement.* If you have convictions in another state, or if you have a federal conviction, different rules will apply. If, after taking the test, you are unsure whether you can get an expungement, you should consult an attorney.

### 1. Do you have more than one adult criminal conviction or more than one juvenile adjudication?

**Yes:** You *cannot* get your criminal record expunged. It does not matter if only one of the crimes is a felony. Even if only one of the crimes is serious, you cannot get an expungement. Even if you just have two misdemeanor convictions, you cannot get them expunged.

**No:** You *may* be able to get your record expunged. Go on to question 2.

**Notes:** Sometimes people have more than one conviction or adjudication in the same case. For example, if the cops arrested you for driving on a suspended license and then found pot in your car, you could have convictions both for driving on a suspended license and for possession. Even though you only got arrested once, and only went to court for that one case, if you were convicted on both the suspended license and the possession charges, you have two convictions. Therefore, you cannot get an expungement. Before you file for an expungement, get a copy of your criminal record and check it carefully to make sure there is only one conviction.

If you have one adult conviction and one juvenile adjudication, you should consult an attorney. If you have questions about how many convictions/adjudications you have, get a copy of your criminal record and show it to an attorney.

### 2. Were you convicted of a felony or an attempt to commit a felony that is punishable by life imprisonment?

**Yes:** You *cannot* get your criminal record expunged.

**No:** You *may* be able to get your record expunged. Go on to question 3.

**Notes:** It does not matter whether or not you were sentenced to life imprisonment. The question is whether you were convicted of an offense for which you could have gotten a life sentence. For example, if you received a ten-year sentence, but you *could have* gotten a life sentence, you cannot get an expungement. If you were adjudicated as a juvenile, the question is whether your crime was one that, if committed by an adult, would carry a maximum life sentence. Even if you were tried as a juvenile, if you could have gotten a life sentence if you had been tried as an adult,

then you cannot get your juvenile record expunged. If you do not know what the maximum sentence was for your crime, consult an attorney.

**3. Were you convicted of felony criminal sexual conduct (first, second, or third degree), or assault with intent to commit criminal sexual conduct?**

**Yes:** You *cannot* get your criminal record expunged.

**No:** You *may* be able to get your record expunged. Go on to question 4.

**Notes:** You may be eligible for an expungement if you were convicted of misdemeanor criminal sexual conduct. If you have a juvenile record for criminal sexual conduct, consult an attorney.

**4. Were you convicted of or adjudicated for a traffic offense, or a non-traffic offense reportable to the Secretary of State?**

**Yes:** You *cannot* get your criminal record expunged.

**No:** You *may* be able to get your record expunged. Go on to question 5.

**Notes:** In general, “traffic offenses” involve the operation of a motor vehicle and are contained within a special section of the law called the Motor Vehicle Code. If you are unsure whether your conviction is for a “traffic offense,” consult an attorney.

**5. Has it been less than five years since the date of your conviction or adjudication?**

**Yes:** You *cannot* get your criminal record expunged *now*. You must wait until five years have passed from the date of your conviction or from the date of your juvenile adjudication. You may be able to get an expungement once the five years are up.

**No:** You *may* be able to get your record expunged. Go on to question 6.

**6. If you were imprisoned, has it been less than five years since you were released?**

**Yes:** You *cannot* get your criminal record expunged *now*. You must wait until five years have passed from the date of your release from prison or jail. You may be able to get an expungement once the five years are up.

**No:** You *may* be able to get your record expunged. Go on to question 7.

**7. If you are applying to set aside a juvenile adjudication, are you under 24?**

**Yes:** You *cannot* get your juvenile adjudication expunged now. You must wait until you are at least 24 to apply for an expungement.

**No:** You *may* be able to get your record expunged. See the instructions below on how to expunge your record.

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If you answered *no* to *all* of the questions in the test above, you should try to get an expungement.

## **How Do I Get an Expungement?**

In order to apply for an expungement, you must file a motion with the court in which you were convicted, or in which you were adjudicated as a juvenile. This may mean that you go back in front of the judge who sentenced you. Sometimes, however, cases are transferred to a different judge. You can find out what judge is assigned to your case by calling the clerk of the court in which you were convicted or adjudicated.

To file your expungement, you can either use an attorney, or you can file on your own.

### **A. Finding an Attorney**

If you have questions about filing an expungement, or if you want help in the process, you should contact an attorney. If you can afford an attorney, hire one who has experience handling expungement cases.

If you cannot afford an attorney, call the Legal Aid office in the county where you were convicted to see if you are eligible for free legal help. Some, but not all, legal aid offices provide help with expungements.

#### **Lakeshore Legal Aid**

Huron, Macomb, Sanilac, St. Clair & Tuscola

1-888-783-8190

#### **Legal Aid & Defender Association**

Wayne, Oakland, & Macomb

1-313-965-9419

#### **Legal Services of Eastern Michigan**

Arenac, Clare, Genesee, Gladwin, Gratiot, Isabella, Lapeer

Midland & Saginaw

1-800-339-9513

#### **Legal Services of Northern Michigan**

Alcona, Alpena, Montmorency & Presque Isle

1-888-356-9009

Delta, Menominee & Schoolcraft

1-888-786-2303

Crawford, Kalkaska, Otsego & Roscommon

1-888-645-9993

Houghton, Keweenaw & Baraga

1-888-482-2343

Alger, Marquette, Dickinson & Iron

1-888-228-5590

Charlevoix, Cheboygan & Emmet

1-888-347-5520

Chippewa, Luce & Mackinac

1-888-632-9313

Antrim, Benzie, Grand Traverse, Leelanau, Manistee

Missaukee & Wexford

1-888-632-9313

**Legal Services of South Central Michigan**

Branch, Calhoun, Hillsdale, Jackson, Lenawee, Monroe

Washtenaw

1-734-665-6181

Berry, Clinton, Eaton, Ingham, & Shiawassee

1-517-394-3121

**Western Michigan Legal Services**

Kent, Ionia & Montcalm

1-800-442-2777

Lake, Mecosta, Newaygo & Osceola

1-800-968-4878

Cass, Kalamazoo, St. Joseph, & Van Buren

1-269-344-8113

Mason, Muskegon, & Oceana

1-800-968-4887

Allegan & Ottawa

1-800-681-8016

Berrien

1-888-418-1311

**Wayne County Neighborhood Legal Services**

Wayne

1-313-831-3000

**B. Filing for an Expungement on Your Own**

If you cannot find an attorney or if you prefer to file an expungement on your own, follow the steps below. Filing for an expungement is not particularly difficult, and is mostly a matter of getting the proper forms together and sending them to the right people. However, you must make sure that you have done everything correctly. Otherwise, your motion will be denied.

**1. Get together all of your documents and the necessary fees.**

In order to get an expungement, you will need to get the following:

- a. Two complete sets of fingerprints.** You can get your fingerprints taken at your local police station. Ask that your fingerprints be put on an RI-8 card. You must have two sets of prints if you are applying to set aside an adult conviction. You only need one set of prints if you are applying to set aside a juvenile adjudication.
- b. A certified copy of your judgment of sentence or order of disposition.** In an adult criminal case, you need a certified copy of the judgment. In a juvenile case, you need a certified copy of the order of disposition. You can get these documents from the court where you were sentenced as an adult or adjudicated as a juvenile.
- c. A money order made out to the Michigan State Police for the appropriate fee.** As of April 2003, the fee for a criminal records check was \$50 for an application to set aside an adult conviction. The fee for an application to set aside a juvenile adjudication was \$30. However, this fee is subject to change. You should check with the Michigan State Police Criminal Records Division to determine the current fee. Call 517-322-5531 to find out the current fee. If you cannot afford the fee, and if you are receiving public assistance

(such as food stamps or FIP), ask your FIA or Michigan Works caseworker whether funds are available to help pay for the costs of an expungement.

## **2. Fill out the Application to Set Aside Conviction or the Application to Set Aside Adjudication.**

If you are applying to set aside an adult conviction, use the form called “Application to Set Aside Conviction.” If you are applying to set aside a juvenile adjudication, use the form called “Application to Set Aside Adjudication.” If you were a juvenile who was tried as an adult, you need to use the Application to Set Aside Conviction form.

Copies of the Application to Set Aside Conviction and of the Application to Set Aside Adjudication are attached to this packet. You can also get copies from the court.

### ***a. Filling out the Application to Set Aside Conviction***

Look at your certified copy of the judgment of sentence. The information on the top of the judgment is the same information that you will fill out at the top of Application to Set Aside Conviction. Make sure to include your case number. Answer questions 1 and 2 on the form. Make sure that the statements under numbers 3 and 4 are true.

Sign and date the form in front of a notary. If you take the form to the court clerk, you can usually have it notarized there.

### ***b. Filling out the Application to Set Aside Adjudication***

Look at your certified copy of the order of disposition. The information on the top of the order is the same information that you will fill out at the top of Application to Set Aside Adjudication. Make sure to include your case number. Answer questions 1 - 2 and 5 - 7 on the form. Make sure that the statements under numbers 3 - 5 and 8 - 9 are true.

Sign and date the form in front of a notary. If you take the form to the court clerk, you can usually have it notarized there.

**3. Make five copies of the Application and four copies of the Certified Copy of your Judgment of Sentence (for an adult conviction) or the Certified Order of Disposition (for a juvenile adjudication).**

**4. Mail or deliver the *original* Application, plus five copies, to the court clerk in the court in which you were convicted or adjudicated. Also include the *original* certified Judgment (for an adult conviction) or the *original* certified Order of Disposition (for a juvenile adjudication).**

The court clerk will fill in the Notice of Hearing Section of your Application, and return four copies of your Application to you. The Notice of Hearing is the date on which the court will

hear your request to have your record expunged. You must appear in court on that date. Generally, it is a good idea to file your Application in person. That way, if you have forgotten something, or if you need to change the court date, you can take care of that right away.

**5. Once you have gotten your five extra copies of the Application back from the court, you must mail out copies as follows:**

**a. Send these items to the Michigan State Police**

- The fingerprint cards
- The application fee
- A copy of your Application
- A copy of your Judgment of Sentence or Order of Disposition

The address is: Michigan State Police  
Criminal Justice Information Center  
7150 Harris Drive  
Lansing, MI 48913

The Michigan State Police will conduct a criminal record check. The police will report to the court what your criminal record is, if you have more than one conviction/adjudication, if you have pending criminal charges, and whether or not you have previously had a conviction/adjudication set aside.

The police should send you a copy of the same report that they send to the court. If the report says that you cannot get an expungement and you do not understand why, consult an attorney.

**b. Send these items to the Attorney General's Office:**

- A copy of your Application
- A copy of your Judgment of Sentence or Order of Disposition

The address is: Attorney General's Office  
Criminal Division  
PO Box 30218  
East Lansing, MI 48823

**c. Send these items to the Prosecutor's Office in the county where you were prosecuted:**

- A copy of your Application
- A copy of your Judgment of Sentence or Order of Disposition

If you are unsure of the address of your local Prosecutor's Office, ask the court clerk. You should know that if you committed an assaultive crime or serious misdemeanor, the prosecutor will notify the victim in your case. The victim has the right to make a written statement or appear in court.

## **6. Fill out the Proof of Service and Send it back to the Court.**

At this point you should have two copies of the Application. (You should also have one copy of the judgment or order of disposition, which is a copy for your records.) One of the copies of the Application is for your records. On the other copy of the Application, fill in the section entitled “Proof of Service.” On the Application to Set Aside Conviction, the “Proof of Service” section is at the bottom of the first page. On the Application to Set Aside Adjudication, the “Proof of Service” section is at the bottom of the second page. By sending in the proof of service you show the court that you mailed copies to the police, attorney general, and prosecutor’s office. After you fill out and sign the proof of service section, make another copy for your records. Then, mail the proof of service back to the court.

## **7. Fill out the Draft Order on Application to Set Aside Conviction and Make Copies**

Attached to this packet you will find a Draft Order on Application to Set Aside Conviction. This Draft Order has already been partially completed with the Court’s “findings.” You need to fill out the rest of the Draft Order, using the same information that is on your Judgment of Sentence and on your Application to Set Aside Conviction. You only need to do this if you are filing to set aside an adult conviction. Make a few copies, and bring them to court with you.

If you are filing to set aside a juvenile adjudication, the order is already on the same page as your Application. Make a couple of extra copies of the Application, and bring them to court with you.

## **8. On your court date, go to court and answer any questions the court has.**

Different judges handle expungement hearings differently. Some judges will grant expungements in almost all cases where the applicant meets the legal criteria for an expungement. Other judges may want to hear what you have done to rehabilitate yourself. Some judges are very strict, and will not grant an expungement unless you can prove that you have led a model life since your conviction. The judge’s reaction may depend on whether the prosecutor or Attorney General’s office objects to the expungement.

It is a good idea to bring evidence of your work history, drug or alcohol treatment, educational achievements, or other successes you have had since your conviction. Whether the judge will consider this information depends a lot on how expungements are handled by that court and that county. While some judges don’t ask for proof of rehabilitation, it is better to be prepared. Think about what you can use to convince the judge that you aren’t the same person you were when you were convicted, and that you deserve a second chance. Can you show the judge evidence of the jobs you’ve held? If you’ve worked in the same place for a long time, make sure to mention that. Did you earn a diploma or vocational certificate? Can you bring in letters of appreciation for volunteering at your church, children’s school, or kids’ soccer team? If you used to have a substance abuse problem, can you provide evidence that you’ve completed treatment, or proof that you’ve been free from drugs or alcohol? Letters of support can be helpful, especially if they

are from people like ministers, counselors, teachers, or others professionals. But if you don't have professional references, get letters from friends.

If you want the judge to review this material ahead of time, attach it to your Application to Set Aside Conviction. (You will have to mail copies not just to the court, but to the prosecutor and the Attorney General.) Finally, if you think the judge is going to be strict, you may want to bring friends or family to the courtroom to show that you have a lot of community support. Although most judges are unlikely to hear testimony during an expungement motion, you can offer to the judge that these people would be willing to testify about your character.

### **9. If the Judge Grants Your Request for an Expungement, Make Sure a Copy Goes to the State Police Central Records Division**

The court will keep the original copy of the Order. Normally, the Court will also send a copy to the State Police Central Records Division. You should check with the court clerk to make sure that they will send the copy, since your record is kept by the State Police Central Records Division. Also make sure that the prosecutor and the Attorney General get a copy of the final order. If your expungement request was granted, get a copy of your criminal record a month or two after the expungement to make sure that your conviction/adjudication no longer shows up on your record. If it does, contact the MI State Police Criminal Records Division at 517-322-5531.

### **What if I Can't Get an Expungement?**

Even if you can't get an expungement, there are things you can do to make life easier, despite your criminal history.

- Clean up your rap sheet. Many rap sheets have errors, or make your criminal history look worse than it is. For advice on how to clean up your rap sheet, get a copy of your rap sheet and show it to an attorney.
- Show prospective employers or landlords evidence of rehabilitation. Emphasize the positive, like that you got a GED while in prison, completed drug/alcohol treatment, or haven't been convicted of any new crimes in the last five years.
- Be careful about answering questions regarding your criminal history so that you don't provide more negative information than necessary. For example, if an employer asks if you've ever been convicted of a felony, and you've only been convicted of misdemeanors, you can honestly answer "no." If you only have a juvenile record, you can say that you do not have any criminal convictions, since juvenile adjudications are not criminal convictions. (But be aware that your juvenile record may show up on a background check, if one is done.) Read and listen to questions carefully. But be honest, because if you lie on a job application, you could get fired, lose unemployment benefits (if you do get fired), or even face criminal penalties.

STATE OF MICHIGAN  JUDICIAL DISTRICT JUDICIAL CIRCUIT	APPLICATION TO SET ASIDE CONVICTION	CASE NO.
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ORI  
MI-  
Police Report No.

Court address

Court telephone no.

THE PEOPLE OF <u>    </u> THE STATE OF MICHIGAN ---	V	Defendant's name, address, and telephone number  _____ _____ _____		
		CTN	SID	DOB

**Before completing this form, please see other side for instructions**

1. On \_\_\_\_\_ I was convicted of the following offense: \_\_\_\_\_.  
 A certified copy of this conviction is attached.  
 I was not imprisoned for this offense.  I was discharged from imprisonment for this offense on \_\_\_\_.
2.  No other application has been filed or set aside this or any other conviction. **OR**  
 An application was filed to set aside  this conviction  
 a conviction for \_\_\_\_  
 The application was disposed of as follows: \_\_\_\_
3. At least five years have elapsed from the date of conviction. No other criminal charges are pending against me.  
 I have not been convicted of any other offense.
4. I request that the court issue an order to set aside the above conviction as provided by law. I consent to the use  
 of any nonpublic record created by law to the extent authorized.

\_\_\_\_\_ Date Applicant signature

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
Date

My commission expires on \_\_\_\_\_ Signature: \_\_\_\_\_  
Date Deputy clerk/notary public

**NOTICE OF HEARING**

**The hearing cannot be held until the court receives the Michigan State Police report required under MCL 780.621(5).**

TO: Michigan Attorney General and \_\_\_\_\_  
Prosecuting official

Take notice that on \_\_\_\_\_ at \_\_\_\_\_ m., at \_\_\_\_\_ the above location, courtroom \_\_\_\_\_ or  
 a hearing before Judge \_\_\_\_\_ will be held on the above application to set aside conviction.

**PROOF OF SERVICE**

I certify that I served this application and notice of hearing upon the  
 prosecuting official on \_\_\_\_\_ by first class mail or by leaving it at his/her office.  
 Attorney General on \_\_\_\_\_ by first class mail or by leaving it at his/her office.

I certify that I also served a copy of this application and a complete set of fingerprints, accompanied by the required  
 fee, on the Michigan State Police on \_\_\_\_\_ by first class mail or by leaving it at the department.  
Date

\_\_\_\_\_ Date Applicant/attorney signature

**MC 227 (6/95) APPLICATION TO SET ASIDE CONVICTION**

## INSTRUCTIONS

### **To The Applicant:**

1. You may not apply to have a conviction set aside for:
  - a) a felony punishable by life imprisonment; or
  - b) a traffic offense; or
  - c) a non-traffic offense reportable to the Secretary of State.If you have had more than one conviction for any offense, you cannot apply.
2. You may not apply until:
  - a) 5 years have passed since the conviction if you were not imprisoned; or
  - b) If you were imprisoned, 5 years have passed since release from a term of imprisonment for the conviction.
3. Find out the exact date of conviction and the charge from the court clerk and fill in the application. Obtain a certified copy of the judgment of conviction and attach it to the application.
4. Swear to the truth of the statements in the application in the presence of the court clerk or a notary public.
5. Present the application with all copies to the court clerk and request a hearing date.
6. The court clerk will complete the notice of hearing on the application and return copies to you.
7. Mail or deliver a copy of the application with the hearing date filled in to the Attorney General of the State of Michigan and the prosecuting official of the county or political subdivision who prosecuted the case.
8. Go to the local law enforcement agency for fingerprinting applicant cards (1 state applicant card and 1 federal applicant card).
9. Mail or deliver a copy of the application, the 2 fingerprint cards, and a \$25.00 fee to the Michigan State Police. The \$25.00 fee payable to the State of Michigan must accompany the application.
10. After you have mailed or delivered the copies to the Attorney General, prosecuting official, and Michigan State Police, complete the proof of service on the return copy, and file it with the court clerk.

Attorney General's Office Law Building - Seventh Floor 525 West Ottawa Lansing, MI 48913	Michigan State Police Central Records Division 7150 Harris Drive Lansing, MI 48913
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11. Appear at the hearing.
12. If the name of the victim of an assaultive crime is known by the prosecuting attorney, the prosecuting attorney will give that victim written notice of this application and will forward a copy of this application to the victim.

<b>STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT</b>	<b>ORDER ON APPLICATION TO SET ASIDE CONVICTION</b>	<b>CASE NO.</b>
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ORI \_\_\_\_\_ Court address \_\_\_\_\_ Court telephone no. \_\_\_\_\_  
 MI- \_\_\_\_\_  
 Police Report No. \_\_\_\_\_

_____ THE STATE OF MICHIGAN THE PEOPLE OF _____
---

V

Defendant's name, address, and telephone number		
CTN	SID	DOB
Date of Offense	Charge	

**Instructions:** An order may not be entered until receipt of the report of the Michigan State Police. Copies of the order must be sent to the Michigan State Police and the prosecuting official.

**THE COURT FINDS:**

1. The Michigan State Police has reported to the court required information from the department's records.
2. The applicant    has   X   has not been convicted of more than one criminal offense.
3. The conviction    is   X   is not a traffic offense, a non-traffic offense reportable to the Secretary of State, or a felony for which the maximum punishment is life imprisonment.
4. It   X   has    has not been at least five years since the sentence was imposed or since the defendant was discharged from imprisonment for the conviction.
5. An opportunity   X   has    has not been given to the Attorney General and prosecuting official to contest the application.
6. Circumstances and behavior of the applicant   X   do    do not justify setting aside the conviction, and it is consistent with the public welfare.

**IT IS ORDERED:**

7. The application is denied.
- X   8. The conviction in this case is set aside. Under MCL 780.623 the court clerk, the arresting agency, and the Michigan State Police shall maintain a **nonpublic record** of the order setting aside conviction and of the arrest, fingerprints, conviction, and sentence in this case.

\_\_\_\_\_ Date \_\_\_\_\_ Judge \_\_\_\_\_ Bar no. \_\_\_\_\_

Under MCL 769.16a the clerk of the court shall send a copy of this order to the Michigan State Police Central Records Division to create a criminal history record.

**MC 228 (6/95) ORDER ON APPLICATION TO SET ASIDE CONVICTION**

MCL 780.621; MSA 28.1274(101), MCL 780.623; MSA 28.1274(103)