



# Michigan Clean Slate

Setting Aside Convictions without Application

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## MCL 780.621g – Convictions Set Aside Without Application (Automatically)

- Requires:
  - MSP to develop a process to automatically set aside no more than two eligible felonies and four eligible misdemeanors within the MSP Criminal History Record (CHR) (Michigan's computerized criminal history record).
  - MSP and Courts to automatically set aside eligible 92 day or less misdemeanors. There is no maximum limit.
  - MSP to provide or make accessible the set aside offenses to the courts.
  - MSP to retain a nonpublic record of the conviction that has been automatically set aside and can only be made available for specific purposes outlined in the statute.
- Does not require:
  - An order from the court.
  - The individual (applicant) of record to take any action.
  - Notification to the applicant.

## MCL 780.621g – Convictions Set Aside Without Application (Automatically)

- Rules Engine:
  - After applying the criteria within the statute, the rules engine will automatically set aside eligible offense until it meets the maximum threshold.
    - A maximum of four 93 day or more misdemeanors; 7 years from date of conviction.
    - A maximum of two felony convictions: 10 years from date of conviction or completion of any term of imprisonment with the Michigan Department of Corrections (MDOC), whichever is later.
  - Disqualifying Offenses:
    - An assaultive crime, MCL 780.621(4)(a) defines assaultive crime.
    - A serious misdemeanor, MCL 780.621(4)(i)
    - A crime of dishonesty, MCL 780.621g(15)
    - Any other offense punishable by ten or more years imprisonment.
    - A crime with elements involving a minor, a vulnerable adult, injury or serious impairment of a person, or death of a person.
    - A conviction that involves human trafficking, MCL 780.621(4)(d)
    - Any conviction that cannot be set aside under MCL 780.621c.
  - Other Requirements:
    - There are no criminal charges pending in the CHR. (e.g., an individual has been arrested and charged, but the case has not been adjudicated yet)
    - The applicant has not been convicted of any other criminal offense during the applicable time period; 7 years for misdemeanors and 10 years for felonies. For ease of discussion, these are referred to as “intervening offenses” in this presentation.

## How it will work on April 11, 2023

(Criminal history with no intervening offenses)

- The rules engine will start by looking at the oldest offenses in the CHR and apply the criteria provided in MCL 780.621g
- Individual's criminal history
  1. October 5, 1995 – misdemeanor
  2. December 3, 2003 – misdemeanor
  3. May 3, 2011 – one felony
  4. July 8, 2022 – one misdemeanor
- In this scenario, convictions 1 through 3 will be set aside by the rules engine on first pass through the system.
- Conviction 4, on July 8, 2022, will not be automatically set aside because seven years have not passed yet. It will be eligible to be automatically set aside on July 9, 2029, provided the set aside is permissible at that time per MCL 780.621g.

## How it will work on April 11, 2023

(Person has multiple convictions with **some** being intervening offenses under MCL 780.621g (6) (c))

- The rules engine will start by looking at the oldest offenses and apply the criteria.
- Individual's criminal history
  1. October 5, 2000 – misdemeanor
  2. December 3, 2009 - misdemeanor
  3. April 20, 2010 - felony
  4. June 27, 2010 - misdemeanor
  5. June 1, 2011 – misdemeanor
  6. May 3, 2012 – one misdemeanor and
  7. one felony (felony entered last)

- The order of setting aside would be:
  1. October 5, 2000 – misdemeanor

Because there are intervening offenses per MCL 780.621g (6) (c), the rules engine cannot set aside 2-7 in order. In that scenario, the rules engine will then apply MCL 780.622: “upon the automatic setting aside of a conviction under section 1g, the applicant ... is considered not to have been previously convicted...”

7. May 3, 2012 – felony
6. May 3, 2012 – misdemeanor
5. June 1, 2011 – misdemeanor
4. June 27, 2010 – misdemeanor
3. April 20, 2010 – felony

2. **The December 3, 2009 misdemeanor would remain on the record due to the maximum allowance being reached.**

## How it will work on April 11, 2023

(Person with multiple convictions **all** within the time period described in MCL 780.621g (6) (c))

An individual has the following convictions:

1. October 5, 2009 – misdemeanor
2. December 3, 2009 - misdemeanor
3. April 20, 2010 - felony
4. June 27, 2010 - misdemeanor
5. June 1, 2011 – misdemeanor
6. May 3, 2012 – one misdemeanor and
7. one felony (felony entered last)

Using the criteria provided in both MCL 780.621g and 780.622, the convictions would be set aside in this order:

\*note, the rules engine always begins by looking at the oldest conviction and works forward until it identifies a conviction eligible to be automatically set aside.

7. May 3, 2012 – Felony
6. May 3, 2012 – Misdemeanor
5. June 1, 2011 – Misdemeanor
4. June 27, 2010 – Misdemeanor
3. April 20, 2010 – Felony
2. December 3, 2009 – Misdemeanor

1. **The October 5, 2009 misdemeanor would remain on the record due to the maximum number of automatic set asides allowed under MCL 780.621g being reached.**

## How it works after April 11, 2023

- Beginning on April 12, 2023, the rules engine will run once daily. Any convictions eligible for automatic set aside will be set aside pursuant to MCL 780.621g
  - The rules engine will run in this manner in perpetuity.
- However, due to the parameters set forth in MCL 780.621g and the application of MCL 780.622, an individual in the unique scenario of having multiple convictions occurring on the same date, will have one conviction set aside each day until they hit the statutory maximum.
- Example
  - An individual has the following convictions eligible for automatic set aside:
    - April 11, 2012 – two misdemeanors and one felony (felony entered last) – with **NO OTHER CONVICTIONS ON THEIR RECORD**

Using the criteria provided in both MCL 780.621g and MCL 780.622, the convictions would be set aside in this order:

1. April 12, 2023 – felony conviction set aside
2. April 13, 2023 – misdemeanor conviction set aside
3. April 14, 2023 – misdemeanor conviction set aside

## Additional Notes

- An individual may apply to have their convictions set aside under MCL 780.621. Automatic set aside does not impact this process.
- For offenses that are 92-day misdemeanors or less, if the conviction is in the CHR, it will be set aside automatically as provided in MCL 780.621g (1) and (3), if 7 years have passed
- For offenses that are not contained in the CHR (most 92-day misdemeanors, other offenses where fingerprints were not taken and submitted to the CHR, etc.), MSP is not able to take any action. (The convictions are not in the CHR and are not covered by statutory directive to MSP.)
- The courts are required to notify law enforcement agencies if a 92-day or less misdemeanor conviction is set aside by the court under MCL 780.621g (1).



# How does an individual check to see if their conviction has been automatically set aside

There are three ways for an individual to check.

1. Visit [Search, Expunge, Modify, or Update Criminal History Records](#) on the MSP webpage and follow the procedure to search criminal history records for personal records check.
    - This process requires fingerprints and a \$30.00 processing fee.
    - The results will include all criminal history record information associated with the fingerprints submitted, both public and nonpublic information.
  2. Go to [ICHAT](#) to view any publicly available criminal history information. This is an online name-based search and requires a \$10.00 payment per search at the time of checkout.
  3. Check with the court of conviction.
- More information may be found at <https://www.michigan.gov/cleanslate> which also has a number of FAQs regarding automatic set aside.

## Impact of Automatic Set Aside (preliminary numbers as of today)

- There are currently over 2.8 million people with active criminal records in the CHR, this includes both public and nonpublic records.
- Based on the eligibility and initial testing runs of the rules engine, it is estimated that over 1 million people of the 2.8 million (roughly 35%) will have offenses automatically set aside on April 11, 2023.
  - Approximately 400,000 (40%) of the 1 million will be conviction free.
- Other items to note:
  - In CY2022, the MSP processed 16,283 applications to set aside convictions, this is an increase from the 2,500 average.
  - Over 500,000 individuals will never be eligible based on disqualifying offenses.

