Michigan Clean State Legislation Overview

In October 2020, the Legislature enacted a group of bills collectively known as the "Clean Slate" package. These bills impact the rules and procedures an individual may use to have a prior conviction set aside. In addition to making several changes to the existing paper application processes and eligible offenses, the Clean Slate package also created a new automatic process to set aside eligible offenses without requiring an individual to file an application. Due to the necessary technical changes, implementation of the automatic set aside process is contingent upon appropriation for the necessary technology. The legislation also provides for a two-year development process before implementation of the automatic set aside process.

This resource provides an overview of the legislation included in the Clean Slate package and is divided into general topic areas. You can use the table of contents below to explore a particular topic area. Please be sure to review the text of the Public Act itself for the complete details of the legislation.

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[1] The implementation of the automatic set aside will occur subject to the necessary appropriations, but not until 2 years after the effective date of the bill. Therefore, the earliest implementation of the automatic set aside process is April 2023.

Paper Application Set Aside

Statute Citation (pre-2020 amendments):	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621(1) 2020 PA 191 HB 4984	A person may apply to set aside 1 felony and 2 misdemeanor convictions under certain circumstances. Certain offenses were excluded.	Increases the number of felony offenses that can be set aside from 1 to 3 and establishes that not more than 2 can be for an assaultive crime. MCL 780.621(1)(a)-(b). Prohibits an applicant from having more than 1 felony conviction for the same offense set aside if it is punishable by more than 10 years in prison. MCL 780.621(1)(c). Allows an applicant to apply to have a conviction for a violation or attempted violation of MCL 750.520e set aside if the conviction was before January 12, 2015, and the person has not been convicted of more than two minor offenses.[2] MCL 780.621(1)(d).
MCL 780.621(2)	Provided that a misdemeanor or felony conviction that was deferred and dismissed is considered a misdemeanor conviction under MCL 780.621(1) for purposes of determining whether the person is eligible to have any conviction set aside under the act.	The amended text of subsection (2) is substantially the same as the pre-amendment text.
MCL 780.621(3)	This subsection specified that a person could not apply for and a judge could not grant the setting aside of a conviction for a list of specified convictions. This subsection was removed from this section of the statute.	The previous text of subsection (3) was amended, and is now included in MCL 780.621c.

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[2] MCL 780.621(1)(d) defines a "minor offense" for the purposes of this section as a misdemeanor or ordinance violation for which the maximum permissible term of imprisonment does not exceed 90 days, the maximum permissible fine is not more than $1,000, and the person who committed the offense is not more than 21 years old.

MCL 780.621(4)	This subsection provided for the process of setting aside convictions for victims of human trafficking.	The previous text of this subsection was renumbered as subsection (3). The amended subsection (4) includes definitions used throughout the statute, which were formerly in MCL 780.621(16).
MCL 780.621(5)	This subsection provided that an application to be set aside could only be filed 5 or more years after completion of the sentence of the conviction the person wished to set aside.	This subsection was removed from MCL 780.621, was amended, and is now included in MCL 780.621d.
MCL 780.621(6)	The person could not file a new application to set aside convictions less than 3 years after the convicting court denied the previous petition unless the court specified a lesser period of time.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(5). The text remains the same.
MCL 780.621(7)	A person who committed 1 or more crimes as a victim of human trafficking could apply to have 1 or more convictions set aside at any time.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(6). The text remains the same.
MCL 780.621(8)	This subsection detailed the information required to submit a valid application to set aside a conviction.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(7). The text remains substantially the same.
MCL 780.621(9)	The subsection required an applicant to submit a copy of the application and fingerprints to the MSP, who was required to provide a criminal history to the court.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(8). The text remains the same.
MCL 780.621(10)	The subsection required a $50 fee be paid to the MSP to process the application.	This subsection was removed from MCL 78.621 and is now included in MCL 780.621d(9). The text remains the same.
MCL 780.621(11)	The subsection required that a copy of the application be served on the attorney general and each prosecuting attorney who prosecuted the crime(s). It provided an opportunity for the AG and PA to contest the application and provided that the victim had a right to appear and make a statement.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(10). The text remains substantially the same.
MCL 780.621(12)	The court could require the filing of affidavits and the taking of proofs on an application.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(11). The text remains substantially the same.

MCL 780.621(13)	The court could enter an order setting aside the conviction of an applicant if the applicant proves by a preponderance of the evidence that he or she was a victim of human trafficking when committing the crime.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(12). The text remains substantially the same.
MCL 780.621(14)	The court may set aside the conviction if the court determines it is consistent with the public welfare.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(13). The text remains substantially the same.
MCL 780.621(15)	The subsection stated that the setting aside of a conviction was a privilege and conditional and not a right.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(14). The text remains the same.
MCL 780.621(16)	This subsection contained the definitions relevant throughout this statute.	The contents of this subsection, along with additional statutory references, were moved into MCL 780.621(4) when the statute was renumbered.

Offenses That Cannot be Set Aside

Statute Citation:	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621c 2020 PA 187 HB 4981	This is a new section.	Convictions for the following cannot be set aside: 1. A felony or attempted felony where the punishment is life imprisonment. 2. Certain offenses related to the exploitation and delinquency of minors.[3] 3. A violation or attempted violation of fourth-degree CSC if convicted on or after January 12, 2015. 4. Certain traffic offenses, including operating while intoxicated, committing a traffic offense as a person with a CDL operating a commercial vehicle, or any traffic offense that involves injury or death.

[3] Offenses listed are MCL 750.136b(3), 750.136d(1)(b) or (c), 750.145c, 750.145d, 750.520c, 750.520d, and 750.520g. MCL 780.621c(1)(b).

		5. Felony domestic violence, if the applicant has a previous misdemeanor conviction for domestic violence.
		6. Human trafficking offenses.[4] MCL 780.621c(1)(a)-(f).
		These prohibitions on setting aside a conviction also apply to the automatic set aside provision of MCL 780.621g. MCL 780.621c(2).
		An order setting aside a traffic offense does not require the SOS to remove it from the defendant's driving record. MCL 780.621c(3).

back to TOC	**"One Bad Night" – Counting Multiple Offenses within 24 Hours**	
Statute Citation:	**What the statute required prior to the 2020 amendments:**	**What the new statute requires post the 2020 amendments:**
MCL 780.621b 2020 PA 188 HB 4985	This is a new section.	Also known as "One Bad Night." Multiple felony or misdemeanor convictions must be treated as one felony or one misdemeanor conviction if they occurred with a 24-hour period and arose out of the same transaction. Exceptions include: 1. an assaultive crime, 2. a crime involving the use or possession of a dangerous weapon, 3. a crime with a maximum penalty of 10 years or more imprisonment, and 4. a conviction for a crime that if it had been obtained in this state would be for an assaultive crime.

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[4] Offenses listed are a violation of former MCL 750.462i or MCL 750.462j and MCL 750.462a to 750.462h and 750.543a to 750.543z. MCL 780.621c(1)(f).

Timing for Filing Set Aside Application

Statute Citation:	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621d 2020 PA 190 HB 4983	This is a new section.	This is a new section that contains many provisions from the pre-2020 amendments version of MCL 780.621 noted above. Changes include: 1. An application to set aside more than 1 felony conviction shall only be filed 7 or more years after whichever occurs last: imposition of the sentence, completion of probation, discharge from parole, or completion of any term of imprisonment. MCL 780.621d(1)(a)-(d). 2. An application to set aside 1 or more serious misdemeanor or 1 felony conviction(s) shall only be filed 5 or more years after whichever occurs last: imposition of the sentence, completion of probation, discharge from parole, or completion of any term of imprisonment. MCL 780.621d(2)(a)-(d). 3. An application to set aside 1 or more misdemeanor convictions shall only be filed 3 or more years after whichever occurs last: the imposition of a sentence, completion of any term of imprisonment, or completion of probation. MCL 780.621d(3)(a)-(c). Amended subsections 4 – 14 are substantially the same as the pre-2020 amendment version of MCL 780.621(5) – (15).

Nonpublic Status of Set Aside Convictions

Statute Citation (pre-2020 amendments):	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.623 2020 PA 193 HB 4980	Makes a conviction that was set aside a nonpublic record.	Includes reference to MCL 780.621e and MCL 780.621g; allows the use of a nonpublic record for making determinations about charging, plea offers, and sentencing; and creates a liability exception for reporting a conviction that was set aside if it was in the public record on the date of the report.
MCL 780.623(1)	Upon entry of an order under MCL 780.621, the court must send a copy of the order to the arresting agency and MSP.	Includes an order entered under MCL 780.621e (misdemeanor marihuana).
MCL 780.623(2)	MSP must retain a nonpublic record of the order setting aside a conviction, and of the records of the arrest, fingerprints, conviction, and sentence of the person.	Also includes any other notification regarding a conviction that was automatically set aside under MCL 780.621g.
MCL 780.623(2)(g)	Subsection (2) provides who a nonpublic record can be made available to. Subdivision (g) is new.	Clarifies that the nonpublic record may be made available for consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general for use in making determinations regarding charging, plea offers, and sentencing.
MCL 780.623(6)	New subsection.	Creates an exception that an entity is not liable for reporting a public record of conviction that was set aside, as described in MCL 780.623(5), if that record was available as a public record on the date of the report.

Treatment of Convictions That Are Set Aside

Statute Citation (pre-2020 amendments):	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.622 2020 PA 193 HB 4980	Clarified how convictions that were set aside were supposed to be treated.	Adds new language regarding restitution, using a set aside conviction as evidence, and using for purposes of charging a second or subsequent crime.

MCL 780.622(1)	Upon entry of an order setting aside a conviction under MCL 780.621, the applicant is considered not to have been previously convicted, except as provided in MCL 780.622 and MCL 780.623.	Also includes orders for convictions set aside under MCL 780.621e (misdemeanor marihuana) and MCL 780.621g (automatic set aside).
MCL 780.622(3)	If the conviction was set aside under MCL 780.621 and involves a listed offense under the sex offender registration act, the applicant is considered to have been convicted for that offense for purposes of SORA.	Also includes orders for convictions set aside under MCL 780.621e (misdemeanor marihuana) and MCL 780.621g (automatic set aside).
MCL 780.622(7)	New subsection.	Clarifies that the act does not relieve any obligation to pay restitution owed to the victim, nor does it affect the jurisdiction of the court regarding enforcement of an order of restitution.
MCL 780.622(8)	New subsection.	A conviction that was set aside cannot be used as evidence in any action for negligent hiring, admission, or licensure against any person.
MCL 780.622(9)	New subsection.	A conviction set aside under MCL 780.621, MCL 780.621e (misdemeanor marihuana), or MCL 780.621g (automatic set aside) may be considered a prior conviction for purposes of charging a crime as a second or subsequent offense.
MCL 780.622(10)	New subsection.	Defines "applicant" as an individual who has applied under the act to have his or her conviction(s) set aside or an individual whose conviction(s) was set aside without an application under MCL 780.621g.

back to TOC	**Marihuana Related Set Aside**	
Statute Citation:	**What the statute required prior to the 2020 amendments:**	**What the new statute requires post the 2020 amendments:**
MCL 780.621e 2020 PA 192 HB 4982	This is a new section.	Creates a set aside process for certain marihuana-related offenses.

Questions:	Answers with Citation Reference:
Are misdemeanor marihuana convictions automatically set aside, or will an application have to be submitted?	A person convicted of 1 or more misdemeanor marihuana offenses may **apply** to set aside the conviction(s). MCL 780.621e(1).
How is a misdemeanor marihuana conviction different than other misdemeanor convictions that can be set aside under MCL 780.621 or MCL 780.621g?	The statute specifies that there is a rebuttable presumption that a conviction for a misdemeanor marihuana offense sought to be set aside by an applicant was based on activity that would not have been a crime if committed on or after December 6, 2018. This rebuttable presumption arises upon filing of an application listed under subsection (1). MCL 780.621e(4).
How does a prosecuting attorney rebut the presumption?	The prosecuting attorney must present evidence that demonstrates by a preponderance of the evidence that the conduct on which the applicant's conviction(s) was based *would* constitute a criminal violation of the laws of this state or political subdivision if it had been committed on or after December 6, 2018. The prosecuting attorney must present this evidence in an answer filed no later than 60 days from the date of service of the application. MCL 780.621e(4).
If the prosecuting attorney files an answer rebutting the presumption, what does the court have to do?	The court must promptly set the matter for a hearing no later than 30 days from its receipt of the prosecuting attorney's answer. MCL 780.621e(6).
What happens at the hearing on the rebuttable presumption?	The prosecuting attorney must prove by a preponderance of the evidence that the conviction(s) sought to be set aside were based on conduct that *would* constitute a criminal violation of the laws of this state or political subdivision if it had been committed on or after December 6, 2018. The applicant is **not required** to present evidence. The evidentiary burden rests solely on the prosecuting attorney. MCL 780.621e(6).
After the hearing, how long does the court have to enter an order denying or granting the application?	The court must enter an order denying or granting the application no later than 14 days after completion of the hearing and serve the order on the parties, including MSP. MCL 780.621e(6).
Do the rules of evidence apply during the hearing?	The rules of evidence do not apply to a hearing under this subsection. MCL 780.621e(6).
What if the prosecutor does not file an answer rebutting the presumption before expiration of the 60-day period?	The convicting court must enter an order setting aside the conviction(s) within 21 days and serve a copy on the applicant, arresting agency, prosecuting attorney, and MSP. MCL 780.621e(5).

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What is considered a misdemeanor marihuana conviction under this section?	"Misdemeanor marihuana offense" means a violation of MCL 333.7403(2)(d) (possession), MCL 333.7404(2)(d) (use), or MCL 333.7453 (selling marihuana paraphernalia), or a violation of a local ordinance substantially corresponding to one of those statutes. MCL 780.621e(7).

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Marihuana Set Aside, No Resentencing

Statute Citation:	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621f 2020 PA 189 HB 5120	This is a new section.	It clarifies that misdemeanor marihuana convictions that were set aside under MCL 780.621e do not entitle the applicant to resentencing in another criminal case where the conviction(s) were used in determining an appropriate sentence; that an applicant is not entitled to the return of any fines, costs, or fees imposed as part of the applicant's sentence; and requires the conviction to be maintained as a nonpublic record.

Questions:	Answers with Citation Reference:
Are misdemeanor marihuana conviction(s) that are set aside under MCL 780.621e maintained as a nonpublic record like other set aside convictions?	The arresting agency and MSP must maintain the nonpublic record just the same as provided in MCL 780.623. MCL 780.621f(1).
Can an applicant seek resentencing in another criminal case if the misdemeanor marihuana conviction(s) was used in determining an appropriate sentence for that offense?	The applicant may not seek resentencing in another criminal case if the misdemeanor marihuana conviction(s) at issue was used in determining an appropriate sentence in that case. MCL 780.621f(2).
What if an aggrieved party (of the court's ruling to set aside the conviction) wants to challenge the set aside?	The party aggrieved by the ruling of the convicting court may seek rehearing or reconsideration under the applicable rules of the convicting court. The aggrieved party may also file an appeal with the circuit court or, if applicable, the court of appeals. MCL 780.621f(3).

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Can an applicant request the return of fines, costs, or fees related to the misdemeanor marihuana conviction(s) that is set aside?	The applicant is not entitled to the return of any fines, costs, or fees imposed as part of the applicant's sentence for the misdemeanor marihuana conviction(s), or any money or property forfeited by the prosecuting agency or any law enforcement agency as a result of the conduct leading to the conviction or the misdemeanor marihuana conviction itself. MCL 780.621f(4).

back to TOC   **Number of Offenses to Set Aside**

Statute Citation (pre-2020 amendments):	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.624 2020 PA 193 HB 4980	Provides that, except as provided in MCL 780.621, a person may only have 1 conviction set aside.	Now states that, except as provided in MCL 780.621 AND MCL 780.621e (misdemeanor marihuana) and MCL 780.621g (automatic set aside), a person may only have 1 conviction set aside. MCL 780.624.

back to TOC   **Automatic Set Aside (New)**

Statute Citation:	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621g 2020 PA 193 HB 4980	This is a new section. There was no automatic set aside process prior to this new statute. Every request for set aside had to be requested by application.	Requires MSP and courts to automatically set aside certain convictions without the filing of an application.
Questions:	**Answers with Citation Reference:**	
When does the automatic set aside statute become effective?	The statue becomes effective beginning two years after the effective date of the amendatory act, subject to appropriation. MCL 780.621g(1)-(4), (14).	
When will a **felony** conviction be automatically set aside by MSP?	A felony conviction will be automatically set aside 10 years after either imposition of the sentence for the conviction or completion of any term of imprisonment with MDOC, whichever occurs later and the conviction is otherwise eligible. MCL 780.621g(2).	
When will a **93-day or more misdemeanor** be automatically set aside by MSP?	MSP will automatically set aside all 93-day or more misdemeanors 7 years after the imposition of sentence. MCL 780.621g(4).	

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When will a **92-day or less misdemeanor** be automatically set aside by MSP (e.g. fingerprints were submitted to MSP)?	If the conviction is recorded and maintained in the MSP database, MSP will set aside the conviction 7 years after the imposition of sentence. MCL 780.621g(3).
When will a **92-day or less misdemeanor** be automatically set aside by the court (e.g. no fingerprints were submitted to MSP)?	If the conviction is maintained only in the court's case management system, the court must set aside the conviction 7 years after the imposition of sentence. MCL 780.621g(1).
If the court automatically sets aside a 92-day or less misdemeanor, how will the arresting agency be notified?	The court must notify the arresting law enforcement agency of each conviction set aside on or before the tenth day of each month for the preceding month. MCL 780.621g(1).
How many convictions can be automatically set aside?	Not more than 2 felony convictions and 4 misdemeanor (≥93 days) convictions total can be automatically set aside. The limit on the number of misdemeanor convictions that may be set aside does not apply to 92-day or less misdemeanors set aside under subsection (1) or (3). MCL 780.621g(5).
What convictions (including attempt) cannot be automatically set aside?	1) An assaultive crime;[5] 2) A serious misdemeanor;[6] 3) A crime of dishonesty;[7] 4) Any other offense, not otherwise listed in this subsection that is punishable by 10 or more years' imprisonment; 5) A crime with elements involving a minor, vulnerable adult, injury or serious impairment, or death; or 6) Any violation related to human trafficking[8]. MCL 780.621g(10).
How will the court know what convictions have been set aside by MSP?	DTMB will develop a computer-based program for the setting aside of convictions. Also, MSP will create and maintain an electronically accessible record of each conviction recorded and maintained in the state's database that was set aside and will make it accessible by each court in the state. MCL 780.621g(11) and (13).

[5] MCL 780.621(4)(a) defines assaultive crime.
[6] MCL 780.621(4)(h) defines serious misdemeanor.
[7] MCL 780.621g(15) defines crime of dishonesty.
[8] MCL 780.621(4)(d) defines human trafficking violation.

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What other requirements are necessary to automatically set aside a felony or 93-day or more misdemeanor?	1) The applicable time period (felony - 10 years) or (≥93 day misdemeanor - 7 years) has elapsed; 2) There are no criminal charges pending in LEIN; and 3) The applicant has not been convicted of any criminal offense during the applicable time period required under subsection (2) or (4). MCL 780.621g(6).

Reinstatement of Convictions

Statute Citation:	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621h 2020 PA 193 HB 4980	This is a new section.	Allows for a conviction(s) set under MCL 780.621g (automatic set aside) to be reinstated if it was improperly set aside or if the court determines that the individual has not made a good-faith effort to pay the ordered restitution.
Questions:	**Answers with Citation Reference:**	
What happens if a conviction was improperly or erroneously set aside?	If it is determined that a conviction was improperly set aside under MCL 780.621g (automatic) because the conviction was not eligible, the court, on its own motion, must reinstate the conviction. MCL 780.621h(1)-(2).	
What happens if a conviction was set aside, but the defendant still owes restitution?	If a conviction was set aside under MCL 780.621g (automatic), and a motion by a person owed restitution is filed, or on the court's own motion, the court must reinstate the conviction if it determines that the individual has not made a good-faith effort to pay the ordered restitution. MCL 780.621h(3).	

Michigan Set Aside Fund

Statute Citation:	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621i 2020 PA 193 HB 4980	This is a new section.	Creates the Michigan set aside fund[9].

[9] 2020 PA 400 provides that for the fiscal year ending September 30, 2021, $24,000,000 of the money in the marihuana registry fund will be transferred to and deposited into the Michigan set aside fund created under MCL 780.621i. See MCL 333.26426(l).

Questions:	Answers with Citation Reference:
How will the court know what convictions to set aside?	SCAO will work with MSP and DTMB to implement system upgrades necessitated by the automatic set aside process. MCL 780.621i.