

EXPUNGEMENT

Presentation provided by the Access to Justice Clinic at Thomas M. Cooley Law School

What is Expungement?

- A lawsuit against the state to set aside a conviction.
 - ▣ Setting aside a conviction has the effect of removing it from a criminal record.
 - This does NOT mean that it never existed.
- Expungement has the effect of setting aside a criminal conviction, which permits the person to honestly tell potential employers and others that he or she has not been convicted of a crime.
 - ▣ However, even an expunged criminal record can be used for some purposes.

Understanding Expungement

- In general, once a conviction is set aside under the expungement statute, the person whose record has been expunged is legally considered not to have been convicted of a crime.
 - ▣ For example, the person may honestly answer “no” if a potential employer asks, “Have you ever been convicted of a crime?”

Important Notes on Expungement

- The expungement process does not erase the arrest or the court proceedings.
- Expunged convictions are still considered convictions for purposes of
 - ▣ immigration deportation,
 - ▣ will not alter registration as a sexual offender, and
 - ▣ may be considered in sentencing if the person is ever convicted of another offense
- Regardless of the law governing what may be asked about criminal history, anyone with \$10 can obtain a person's criminal history from the state police website, which may still reveal the arrest.
 - ▣ (<http://apps.michigan.gov/IC/HAT/Home.aspx>)
- Expungement is not available if the multiple convictions arose from the same criminal transaction, and they occurred on the same date.

Employers and Expungement

- May an employer ask about a **criminal conviction** in connection with an application for employment?
 - ▣ No. (See MCL 37.2205a.)
 - But there are exceptions that may cause a criminal history to haunt a person after expungement.
 - Many employers are specifically authorized by statute to conduct criminal history checks, and certain government or law enforcement agencies are not bound by whether a conviction was obtained.
- A person whose conviction is expunged may only answer “no” to the question “Have you ever been convicted of a crime?”
- If an application inquires into the fact of arrest or regarding criminal dispositions taking place before expungement, you may need to obtain separate legal advice as to whether the question may legally be asked and how to answer it.

How to get an Expungement

- 1) Determine whether a conviction may be expunged
- 2) Obtain a copy of the forms you need to expunge the conviction
- 3) Order a certified copy of the conviction record
- 4) Complete the application to set aside conviction
- 5) File the completed application with the court clerk
- 6) Obtain copies of the applicant's fingerprints
- 7) Assemble everything you need to mail the application to the appropriate agencies
- 8) Mail the application materials to the required agencies
- 9) Complete a proof of service
- 10) Prepare the order on application to set aside conviction
- 11) Prepare for the hearing
- 12) If the judge grants the expungement, provide the appropriate follow-up

JUVENILE EXPUNGMENTS

- SAME AS ADULT IN MANY WAYS
- Crime(s) CANNOT BE SPECIFICALLY PRECLUDED BY STATUTE
- LIFE IMPRISONMENT AND TRAFFIC OFFENSES EXCLUDED
- PLUS ANY CONVICTIONS WHERE THE JUVENILE WAS TRIED AS AN ADULT

Step 1: Determine whether a conviction may be expunged

1. Is it a felony for which the maximum punishment is life in prison?
If *YES*, you may **NOT** expunge the conviction.
2. Is it a violation or attempted violation of Michigan's Criminal Sexual Conduct (CSC) Laws?
If *YES*, you may **NOT** expunge the conviction.
3. Is it a misdemeanor traffic offense, such as drunk driving, driving without a license, or any other criminal misdemeanor under the Michigan Vehicle Code?
If *YES*, you may **NOT** expunge the conviction.

Step 1: Determine whether a conviction may be expunged

- 1. Is the adjudication for an offense that if committed by an adult would be a felony for which the maximum penalty is life imprisonment? If yes, no expungement. MCL 712A.18e(2)(a).
- 2. Is the adjudication for a traffic offense, such as drunk driving, driving without a license or any other criminal traffic code criminal offense? If yes, no expungement.

Step 1: Determine whether a conviction may be expunged

- 3. Is the adjudication for an offense for which the juvenile was tried as an adult and it resulted in a conviction under MCL 712A.2d? If yes, no expungement under the Juvenile expungement procedure BUT may be set aside under the adult expungement statute, MCL 780.621)
- 4. Does the client have more than one juvenile offense that would be a felony committed by an adult and more than three juvenile offenses (of which not more than one could be an offense considered a felony if convicted as an adult.) If yes, no expungement.

Step 1: Determine whether a conviction may be expunged

- Multiple adjudications arising out of the same incident could be set aside if they occurred within 12 hours as long as none were assaultive crimes including weapons possession or a crime with a 10 year maximum.
- 5. Does the client have any adult convictions for felonies in addition to the adjudication the client wants to have expunged?

Step 1: Determine whether a conviction may be expunged

- ***6. Has it been less than one year (reduced from 5 years as of 12/28/2012)? If yes, you may not expunge.
- 7. Is it a violation or attempted violation of Michigan's Criminal Sexual Conduct (CSC) Laws? If *YES*, you may **NOT** expunge the conviction.

□

Step 1 Continued (Determine whether a conviction may be expunged)

8. In addition to the conviction the person wants to have expunged, are there any other convictions that have already been set aside due to a deferred sentence, plea under advisement, or Holmes Youthful Training Act (HYTA)?

It does not matter how many other convictions the applicant has had set aside by other means, such as HYTA; as long as the applicant has only one conviction *presently* on his or her record, *you may proceed with expungement.*

- However, in deciding whether to grant the expungement petition, the court **may** negatively consider any previous convictions that have already been set aside.
- If previous convictions have already been set aside by other means, and the person still has just one conviction (not counting up to two minor offenses), proceed to the next question.

Step 2: Obtain a copy of the forms you need to expunge the conviction

- Application to Set Aside Conviction, and
 - SCAO form MC 227
- Order on Application to Set Aside Conviction
 - SCAO form MC 228
- Note that these forms do not mention the term *expungement*.
- The forms do include an “application checklist” that includes the information needed for the application

Step 3: Order a certified copy of the conviction record

- Contact the court where the conviction occurred and order a certified copy of the conviction record.
 - ▣ Be patient, as records more than five years old are often in storage, converted to microfiche, or otherwise difficult to access.
 - ▣ There may be a small charge for this process (\$10 base fee, plus \$1 per page).
 - ▣ The exact format of the conviction record is not critical. You may obtain a certified copy of the judgment of sentence, probation order, or register of actions. Just be sure there is something from the court that sufficiently describes both the charge and the exact date of conviction (the date of sentence, or the date any term of imprisonment was completed).
 - ▣ In addition, you will need to make four copies of the record of conviction for use during the application process.

Steps 4 and 5

Step 4: Complete the application to set aside conviction

Once you obtain a certified copy of the correction record, complete the application to set aside the conviction. Use MC 227. You will also need to make five copies of the application.

Step 5: File the completed application with the court clerk

File the following items with the court clerk where the original conviction was entered:

- the original signed and notarized application,
- the original certified copy of the prior conviction, and
- five copies of the application and four copies of the certified record of the prior conviction.

The clerk will set a hearing date and return the five copies with the hearing date filled in under the “Notice of Hearing” section of the application form. The State Police have requested that hearings be set at least 90–120 days from filing to ensure that they will have time to respond to the application.

Step 6: Obtain copies of the applicant's fingerprints

- Before proceeding further with the application you must obtain two copies of the applicant's fingerprints.
- Go to the local police departments and get fingerprinted.
 - ▣ The police department may schedule an appointment or may advise you to simply walk in during designated times.
- These fingerprints will be taken on an applicant card (RI-8). Fill out the card completely. You may have to pay an application fee to the police agency.

Step 7: Assemble everything

You will need to have the following items ready:

- Five copies of the completed application to set aside the conviction, with the hearing date filled in,
- Four copies of the certified copy of the conviction,
- Two sets of fingerprints, and
- A \$50 fee payable to the state of Michigan.

Step 8: Mail the application materials to the required agencies

The following materials must be mailed to these agencies:

- To the Michigan State Police:
 - ▣ a copy of the application
 - ▣ a copy of the certified record of conviction
 - ▣ both fingerprint cards
 - ▣ the \$50 fee payable to the State of Michigan
 - ▣ Michigan State Police
Criminal Justice Information Center
P.O. Box 30634
Lansing, MI 48909
- To the Attorney General:
 - ▣ a copy of the application
 - ▣ a copy of the certified record of conviction
 - ▣ Attorney General's Office
Corrections Division
P.O. Box 30217
Lansing, MI 48909
- To the Prosecutor's office for the county in which the applicant was convicted:
 - ▣ a copy of the application
 - ▣ a copy of the certified record of conviction
- Obtain this address from the Internet, or ask the court clerk.
- Keep for yourself:
 - ▣ the remaining two copies of the application
 - ▣ a copy of the certified record of conviction

Steps 9 and 10

Step 9: Complete a proof of service

- On one of the remaining two copies of the application, complete the section at the bottom entitled “Proof of Service.” Simply check the appropriate boxes, fill in the dates, and sign and date at the bottom.
 - ▣ Make a copy of this form with the completed proof of service for your records, and mail to or personally file the original with the court clerk.

Step 10: Prepare the order on application to set aside conviction

- Use SCAO form MC 228.
 - ▣ Fill out the heading with your case information and print the form, leaving the body of the order to be completed by the judge.
 - ▣ Make four copies and take it to the hearing with you.

Step 11: Prepare for the hearing

All judges handle expungement hearings differently. Some will grant the expungement automatically if the applicant is eligible; others will want strong evidence of good character. Be ready for the latter.

- If the applicant has been in school, bring copies of transcripts.
- If the applicant has been working, bring a copy of their resume and letters of reference from employers.
- If the applicant has done volunteer work or community service, bring evidence of what they has done and letters if available.
- If the applicant has been rehabilitated, bring proof.
 - ▣ This could include drug or alcohol intervention, psychological treatment, and/or religious or spiritual guidance from a personal place of worship.
- Have letters of support from friends, family members, or others who know the applicant well and can vouch for his or her good character.
 - ▣ Consider bringing some of these key people to the hearing.

Step 11 Continued (Prepare for the hearing)

- If the crime to be expunged was assaultive in nature or a serious misdemeanor, the prosecutor will give the victim written notice of the request for expungement, including a copy of the application to set aside the expungement. Therefore, you should be prepared for the possibility that the victim will contact the judge concerning the expungement or even appear at the hearing.

Step 12: Follow-up

- If the judge grants the expungement, complete the process. Check with the court clerk to make sure that they send copies of the order to the State Police Central Records Division.
 - ▣ You may want to send copies yourself to the Attorney General and the Prosecutor.
- After a couple of months, double check the your record to make sure that the conviction was expunged.

Disclaimer

- *Using these materials is not a substitute for the attorney's independent judgment, drafting, and research. The content of this presentation must not be considered legal advice. This presentation was designed for informational purposes only.*

Sources

- ICLE How-To Kit: How to Expunge an Adult Conviction
 - <https://www.icle.org/modules/howtokits/how-to-kit.aspx?kit=2004tk2019&lib=criminal&q=expungement>
- ICLE How-To Kit: How to Expunge a Juvenile Conviction
 - https://www.icle.org/modules/howtokits/how-to-kit_print.aspx?kit=2006TK2018&lib=criminal
- MCL 712A.18e
- MCL 780.621
- SCAO Forms MC 227 and MC 228

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