General Information:

· Some adult registerable convictions may qualify to be set-aside (expunged).

o 4th degree (750.520e)

o Should check into the possibility of expunging any registerable offense other than 1st, 2nd, 3rd or Assault with attempt to commit CSC (750.520b, 750.520c, 750.520d, and 750.520g). Look at list of registerable offenses under "Registration Responsibilities"

· An expungement does NOT release an individual from their registration requirements, but we are hoping that will change.

· Can only have ONE conviction on your record.

· An application cannot be filed until 5 years following the imposition (start) of sentencing.

· If the expungement is denied it looks as though you can go back at a later time and try again. There is no time limit imposed.

· To look up a specific MCL (Michigan Compiled Law) number go to the Michigan Legislature website .

· **Form:** Application to Set Aside Conviction . Page 2 of this document has an instruction sheet.

· **Form**: Order on Application to Set Aside Conviction – Final disposition on an application to set aside (expunge) a conviction.

· **Pertinent information regarding an Adult expungement is in red below. Explanations are in {brackets}.**

SETTING ASIDE CONVICTIONS

Act 213 of 1965

AN ACT to provide for setting aside the conviction in certain criminal cases; to provide for the effect of such action; to provide for the retention of certain nonpublic records and their use; to prescribe the powers and duties of certain public agencies and officers; and to prescribe penalties.

History: 1965, Act 213, Imd. Eff. July 16, 1965;—Am. 1982, Act 495, Eff. Mar. 30, 1983.

The People of the State of Michigan enact:

780.621 Application for order setting aside conviction; setting aside of certain convictions prohibited; time and contents of application; submitting application and fingerprints to department of state police; report; application fee; contest of application by attorney general or prosecuting attorney; notice to victim; affidavits and proofs; court order; definitions.

Sec. 1.

(1) Except as provided in subsection (2), **a person who is convicted of not more than 1 offense may file an application with the convicting court for the entry of an order setting aside the conviction.**

(2) A person shall not apply to have set aside, and a judge shall not set aside, a conviction for a felony for which the maximum punishment is life imprisonment {1st degree} or an attempt to commit a felony for which the maximum punishment is life imprisonment, a conviction for a violation or attempted violation of section 520c {2nd Degree}, 520d {3rd Degree}, or 520g {Assault w/ attempt to commit CSC} of the Michigan penal code, 1931 PA 328, MCL 750.520c, 750.520d, and 750.520g, or a conviction for a traffic offense. {4th degree, or any other registerable offense potentially qualifies for expungement, as they are not excluded}

(3) An application shall not be filed until at least 5 years following imposition of the

sentence for the conviction that the applicant seeks to set aside **or 5 years following completion of any term of imprisonment**
for that conviction,
whichever occurs later.

(4) The application is invalid unless it contains the following information and is signed under oath by the person whose conviction is to be set aside:

(a) The full name and current address of the applicant.

(b) A certified record of the conviction that is to be set aside.

(c) A statement that the applicant has not been convicted of an offense other than the one sought to be set aside as a result of this application.

(d) A statement as to whether the applicant has previously filed an application to set aside this or any other conviction and, if so, the disposition of the application.

(e) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(f) A consent to the use of the nonpublic record created under section 3 to the extent

authorized by section 3.

(5) The applicant shall submit a copy of the application and 2 complete sets of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under section 3, and shall forward a complete set of fingerprints to the federal bureau of investigation for a comparison with the records available to that agency. The department of state police shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of conviction of the applicant, and the setting aside of any conviction of the applicant and shall report to the court any similar information obtained from the federal bureau of investigation. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(6) The copy of the application submitted to the department of state police under subsection (5) shall be accompanied by a fee of $50.00 payable to the state of Michigan w hich shall be used by the department of state police to defray the expenses incurred in processing the application.

(7) A copy of the application shall be served upon the attorney general and upon the office of the prosecuting attorney who prosecuted the crime, and an opportunity shall be given to the attorney general and to the prosecuting attorney to contest the application. If the conviction was for an assaultive crime or a serious misdemeanor, the prosecuting attorney shall notify the victim
of the assaultive crime or serious misdemeanor
of the application
pursuant to section 22a or 77a of the crime victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a.
{Victims of a registerable offenses are notified about the application, if possible}.
The notice shall be by first-class mail to the victim's last known address.
The victim has the right to appear at any proceeding under this act concerning that conviction and to make a written or oral statement.

(8) Upon the hearing of the application the court may require the filing of affidavits and the taking of proofs as it considers proper.

(9) If the court determines that the circumstances and behavior of the applicant from the date of the applicant's conviction to the filing of the application warrant setting aside the conviction and that setting aside the conviction is consistent with the public welfare, the court may enter an order setting aside the conviction. The setting aside of a conviction under this act is a privilege and conditional and is not a right.

(10) As used in this section:

(a) “Assaultive crime” means that term as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(b) “Serious misdemeanor” means that term as defined in section 61 of the crime victim's rights act, 1985 PA 87, MCL 780.811.

(c) “Victim” means that term as defined in section 2 of the crime victim's rights act, 1985 PA 87, MCL 780.752.

History: 1965, Act 213, Imd. Eff. July 16, 1965;—Am. 1982, Act 495, Eff. Mar. 30, 1983;—Am. 1993, Act 342, Eff. May 1, 1994;—Am. 1996, Act 573, Eff. Apr. 1, 1997;—Am. 2002, Act 472, Eff. Oct. 1, 2002.

780.621a Definitions.

Sec. 1a. As used in this act:

(a) “Conviction” means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere, or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

(b) “Traffic offense” means a violation of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local ordinance substantially corresponding to that act, which violation involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

History: Add. 1982, Act 495, Eff. Mar. 30, 1983.

780.622 Entry of order; effect.

Sec. 2.

(1) Upon the entry of an order pursuant to section 1, the applicant, for purposes of the law, shall be considered not to have been previously convicted, except as provided in this section and section 3.

(2) The applicant is not entitled to the remission of any fine, costs, or other money paid as a consequence of a conviction that is set aside.

(3) If the conviction set aside pursuant to this act is for a listed offense as defined in section 2 of the sex offenders registration act, the applicant is considered to have been convicted of that offense for purposes of the sex offenders registration act. {This means that you would still be required to abide by the SORA}

(4) This act does not affect the right of the applicant to rely upon the conviction to bar subsequent proceedings for the same offense.

(5) This act does not affect the right of a victim of a crime to prosecute or defend a civil action for damages.

(6) This act does not create a right to commence an action for damages for incarceration under the sentence that the applicant served before the conviction is set aside pursuant to this act.

History: 1965, Act 213, Imd. Eff. July 16, 1965;—Am. 1982, Act 495, Eff. Mar. 30, 1983;—Am. 1993, Act 342, Eff. May 1, 1994;—Am. 1994, Act 294, Eff. Oct. 1, 1995.

780.623 Sending copy of order to arresting agency and department of state police; retention and availability of nonpublic record of order and other records; providing copy of nonpublic record to person whose conviction set aside; fee; nonpublic record exempt from disclosure;

prohibited conduct; misdemeanor; penalty.

Sec. 3.

(1) Upon the entry of an order pursuant to section 1, the court shall send a copy of the order to the arresting agency and the department of state police.

(2) The department of state police shall retain a nonpublic record of the order setting aside a conviction and of the record of the arrest, fingerprints, conviction, and sentence of the applicant in the case to which the order applies.
Except as provided in subsection (3), this nonpublic record shall be made available only

to a court of competent jurisdiction, an agency of the judicial branch of state government, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) Consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) To show that a person who has filed an application to set aside a conviction has previously had a conviction set aside pursuant to this act.

(c) The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.

(d) Consideration by the governor if a person whose conviction has been set aside applies for a pardon for another offense.

(e) Consideration by a law enforcement agency if a person whose conviction has been set aside applies for employment with the law enforcement agency.

(f) Consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general in determining whether an individual required to be registered under the sex offenders registration act has violated that act, or for use in a prosecution for violating that act.

(3) A copy of the nonpublic record created under subsection (2) shall be provided to the person whose conviction is set aside under this act upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.234 of the Michigan Compiled Laws.

(4) The nonpublic record maintained under subsection (2) is exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(5) Except as provided in subsection (2), a person, other than the applicant, who knows or should have known that a conviction was set aside under this section and who divulges, uses, or publishes information concerning a conviction set aside under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

History: Add. 1982, Act 495, Eff. Mar. 30, 1983;—Am. 1988, Act 11, Imd. Eff. Feb. 8, 1988;—Am. 1993, Act 342, Eff. May 1, 1994;—Am. 1994, Act 294, Eff. Oct. 1, 1995.

780.624 Setting aside of convictions; limitation.

Sec. 4. A person may have only 1 conviction set aside under this act.

History: Add. 1982, Act 495, Eff. Mar. 30, 1983.