

SETTING ASIDE CONVICTIONS (EXCERPT)
Act 213 of 1965

780.621c Prohibition on setting aside convictions for certain criminal cases; applicability to MCL 780.621g; inapplicable to secretary of state driving record.

Sec. 1c. (1) A person shall not apply to have set aside, and a judge shall not set aside, a conviction for any of the following:

(a) A felony for which the maximum punishment is life imprisonment or an attempt to commit a felony for which the maximum punishment is life imprisonment.

(b) A violation or attempted violation of section 136b(3), 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c, 750.145d, 750.520c, 750.520d, and 750.520g.

(c) A violation or attempted violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, if the conviction occurred on or after January 12, 2015.

(d) The following traffic offenses:

(i) Subject to subsections (3) and (4), a conviction for operating while intoxicated committed by any person.

(ii) Any traffic offense committed by an individual with an indorsement on his or her operator's or chauffeur's license to operate a commercial motor vehicle that was committed while the individual was operating the commercial motor vehicle or was in another manner a commercial motor vehicle violation.

(iii) Any traffic offense that causes injury or death.

(e) A felony conviction for domestic violence, if the person has a previous misdemeanor conviction for domestic violence.

(f) A violation of former section 462i or 462j or chapter LXVIIA or chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h and 750.543a to 750.543z.

(2) The prohibition on the setting aside of the convictions under subsection (1) upon application also applies to the setting aside of convictions without application under section 1g.

(3) The prohibition on setting aside a conviction for operating while intoxicated under subsection (1)(d)(i) does not apply to a conviction for a first violation operating while intoxicated offense if the person applying to have the first violation operating while intoxicated offense conviction set aside has not previously applied to have and had a first violation operating while intoxicated offense conviction set aside under this act. However, a conviction for a first violation operating while intoxicated offense that may be set aside upon application is not eligible for and shall not be set aside without application under section 1g.

(4) In making a determination whether to grant the petition to set aside a first violation operating while intoxicated offense conviction the reviewing court may consider whether or not the petitioner has benefited from rehabilitative or educational programs, if any were ordered by the sentencing court, or whether such steps were taken by the petitioner before sentencing for the first violation operating while intoxicated offense conviction he or she is seeking to set aside. The reviewing court is not constrained by the record made at sentencing. The reviewing court may deny the petition if it is not convinced that the petitioner has either availed himself or herself of rehabilitative or educational programming or benefited from rehabilitative or educational programming he or she has completed.

(5) An order setting aside a conviction for a traffic offense under this act must not require that the conviction be removed or expunged from the applicant's driving record maintained by the secretary of state as required under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

History: Add. 2020, Act 187, Eff. Apr. 11, 2021;—Am. 2021, Act 79, Eff. Feb. 19, 2022.