



**Michigan Supreme Court
State Court Administrative Office**

Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909
Phone: (517) 373-0130
John D. Ferry, Jr., State Court Administrator

M E M O R A N D U M

DATE: September 24, 2004

TO: Circuit, District and Municipal Court Judges
cc: Clerks of Court

FROM: John D. Ferry, Jr.

SUBJ: SCAO Administrative Memorandum 2004 - 12
Application and Hearing to Set Aside Conviction

An application to set aside a conviction pursuant to MCL 780.621 requires the applicant to submit a copy of the application and fingerprints to the Department of State Police (MSP). MSP must:

- compare those fingerprints with their records;
- forward a complete set of fingerprints to the Federal Bureau of Investigation (FBI) for a comparison with their records;
- 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
- report to the court any similar information obtained from the FBI.

In addition, the Attorney General's office and the local prosecuting attorney receive a copy of the report from MSP in order to determine whether they will contest the application.

The Criminal Justice Information Center, MSP's record repository, indicates that the time to acquire and review the state and federal records, and forward the report to the court, Attorney General, and local prosecutor, requires a minimum of 60 days between the date the application is filed and the hearing date.

Clerks of the court and other staff who schedule the hearing are hereby requested to schedule the hearing on the application no sooner than 60 days from the date the application is filed with the court. See the SCAO form [MC 227](#), Application to Set Aside Conviction used for this purpose.

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Judges are prohibited from acting upon the application until MSP reports the required information to the court. The hearing must be rescheduled if the report has not been received by the hearing date.

Implementation questions may be directed to:

Circuit Court:	Dawn Childress	517-373-3756
District and Municipal Court:	Sandi Hartnell	517-373-0122



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-4835

MEMORANDUM

DATE: May 16, 2007

TO: Judges
cc: Court Administrators, County Clerks, Clerks, and Registers

FROM: Dawn M. Childress, Management Analyst

RE: Setting Aside Convictions or Adjudications and Return of Fingerprints

In September 2004, the State Court Administrative Office issued [Administrative Memorandum 2004-12](#), explaining the statutory requirements and procedures courts should follow when reviewing applications to set aside a conviction. Recent correspondence from the Attorney General's office indicates that some courts may be unaware of this memorandum and the procedures outlined therein, and are entering orders that contain provisions contrary to statute. These orders cannot be processed by the Michigan State Police (MSP).

The Attorney General's office identifies a number of improper procedures courts use in setting aside convictions and adjudications. Most notably, some courts grant applications to set aside convictions even though the applicant has not submitted fingerprints to the MSP, has not paid the application fee, or the court has not yet received a report from the MSP advising the court of the applicant's prior criminal history.

As noted in ADM 2004-12, before a court may act upon an application to set aside a conviction, the applicant must submit a copy of the application and a set of fingerprints to the MSP. The MSP is required to perform a variety of statutorily-mandated tasks and then must issue a report of its findings to the court in which the application was filed. Upon receipt of the report, the court may proceed on the application and either grant or deny the relief requested. Failure to comply with the statutory prerequisites precludes the court from acting on an application to set aside a conviction.¹ The same application and

¹ MCL 780.621(5) "...The court shall not act upon the application until the department of state police reports the information required by this subsection to the court."

review process is to be used when an applicant moves to set aside an adjudication of a juvenile offense where there have been no felony convictions.²

Another problem noted by the Attorney General's office is that some courts, after setting aside a conviction, then order the return and/or destruction of fingerprints by modifying SCAO Approved Form MC 235, which is both contrary to law and an improper use of the form. If a court grants a request to set aside a conviction or adjudication, the applicant is not entitled to the return or destruction of his or her fingerprints and arrest card. The MSP is required to maintain that information in a nonpublic record that includes the order setting aside a conviction or adjudication, the record of the arrest, the fingerprints, information regarding the conviction or adjudication, and the sentence.^{3,4}

In addition, MC 235 is designed to be used under MCL 28.243(8) only if a defendant is found not guilty or a juvenile is adjudicated and found not to be within the provisions of the juvenile code.⁵ If a conviction and sentence have ever been imposed in a case or if the provisions of MCL 28.243(12)⁶ apply, the return of a defendant's arrest data is not permitted. The form should never be used to require the MSP to return fingerprints and/or modify a defendant's or juvenile's criminal history because a conviction or adjudication has been set aside. The statutes allowing convictions and adjudications to be set aside do not provide for records to be expunged; rather, the

² MCL 712A.18e(9) and (10)

³ MCL 780.623(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...."

⁴ MCL 712A.18e (13): "The department of state police shall retain a nonpublic record of the order setting aside an adjudication and of the record of the arrest, fingerprints, adjudication, and disposition of the applicant in the case to which the order applies...."

⁵ MCL 28.243(8): "If a juvenile is adjudicated and found not to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is found not guilty of an offense for which he or she was fingerprinted under this section, upon final disposition of the charge against the accused or juvenile, the fingerprints and arrest card shall be destroyed by the official holding those items...."

⁶ (12) The provisions of subsection (8) that require the destruction of the fingerprints and the arrest card do not apply to a person who was arraigned in circuit court or the family division of circuit court for any of the following:

- (a) The commission or attempted commission of a crime with or against a child under 16 years of age.
- (b) Rape.
- (c) Criminal sexual conduct in any degree.
- (d) Sodomy.
- (e) Gross indecency.
- (f) Indecent liberties.
- (g) Child abusive commercial activities.
- (h) A person who has a prior conviction, other than a misdemeanor traffic offense, unless a judge of a court of record, except the probate court, by express order on the record, orders the destruction or return of the fingerprints and arrest card.
- (i) A person arrested who is a juvenile charged with an offense that would constitute the commission or attempted commission of any of the crimes in this subsection if committed by an adult.

conviction or adjudication is simply made nonpublic by both the court and the MSP.

Finally, the Attorney General's office cites as a problem the fact that some courts order a defendant's criminal history record and/or fingerprints destroyed when a defendant is sentenced under MCL 333.7411, MCL 769.4a, HYTA, or when a person was arraigned in circuit court or the family division of circuit court for any of the following: the commission or attempted commission of a crime with or against a child under 16 years of age; rape; criminal sexual conduct in any degree; sodomy; gross indecency; indecent liberties; child abusive commercial activities; or a person arrested who is a juvenile charged with an offense that would constitute the commission or attempted commission of any of the aforementioned crimes if committed by an adult. For cases for which a statute provides for a one-time discharge and dismissal without an adjudication of guilt, such as MCL 333.7411 and MCL 769.4a, the MSP is required to maintain a nonpublic record of an arrest and discharge or dismissal. Similarly, charges dismissed pursuant to MCL 762.14, the Holmes Youthful Trainee Act, are required to be retained by the MSP in a nonpublic file. The MSP's nonpublic files may only be accessed for those limited purposes set forth in statute. It is improper to order the return or destruction of a defendant's fingerprints and arrest card under these circumstances.

Questions may be directed to:

Circuit Court (felony):	Dawn Childress	517-373-3756
Circuit Court (family):	Jennifer Warner	517-373-7454
District and Municipal Court:	Sandi Hartnell	517-373-0122
	or Jill Booth	517-373-2173