

EXPUNGEMENT CHECKLIST

MISDEMEANOR MARIJUANA OFFENSES

April 11, 2021 and forward

- STEP 1: Obtain a certified copy of your misdemeanor or local ordinance marijuana conviction.**
 - You will get this from the court where the conviction occurred, whether a district court or a circuit court.

- STEP 2: Create or fill out an application to set aside the conviction**
 - The application must contain your full name and current address.
 - There is no requirement that you ask the Michigan State Police for a copy of your criminal history or that you be fingerprinted.

- STEP 3: Attach the certified copy of your conviction to your application.**

- STEP 4: Mail or personally deliver the application packet to the court where the conviction occurred.**
 - If you would like a time-stamped copy of the application packet for your file, include a second copy of the application packet and ask the court to mail a time-stamped copy back to you (or include a self-addressed/selfstamped envelope).

- STEP 5: Serve a copy of the application on the agency (prosecutor's office or local city attorney's office) that issued/prosecuted your case. You can do this either by mail or by personal delivery.**
 - Note that you do *not* need to serve the police agency that handled your case, the Michigan State Police or the Michigan Attorney General with a copy of your application.

- **STEP 6: Await an answer from the prosecuting agency.**
 - The prosecuting agency has sixty (60) days to file an opposition to your application and mail a copy to you. Generally, the only basis for an opposition will be that your conviction is not an offense for which the underlying conduct would be legal after December 6, 2018 (in other words, a “misdemeanor marijuana conviction” as defined by MCL 780.621e(7)).
 - If you receive an answer opposing your application, *skip to STEP 8.*

- **STEP 7: If the prosecuting agency *does not* file an opposition to your application within the required sixty (60) days, the court then has twenty-one (21) days within which to issue an order granting your application. The court is required to send a copy of the order granting your application to you, the police agency that handled your case, the prosecuting agency, and the Michigan State Police.**
 - *You* do not need to do anything if the prosecuting agency does not file an opposition within sixty (60) days.
 - If three or more months passes and you have not received a copy of an order setting aside your conviction, contacting the clerk of the court where you sent or delivered a copy of your application.
 - Your misdemeanor marijuana conviction will be expunged once the Michigan State Police processes the order from the court.

- **STEP 8: If the prosecuting agency *does* file an opposition to your application, await receipt of a notice of hearing from the court. The court has thirty (30) days from the time it receives the opposition to schedule the application for a hearing before the court. The court is required to send you a copy of a notice telling you the date, time, and place of the hearing.**

- **STEP 9: Appear before the court on at the date, time, and place indicated on the notice of hearing that you were provided.**
 - You will likely not have to speak in court. Rather, the prosecuting agency must demonstrate at this hearing that your conviction did not involve conduct which would now be legal in Michigan after December 6, 2018 (or, in other words, is not a “misdemeanor marijuana conviction” under the new law).
 - If the prosecutor is able to meet his/her burden, the court may or may not ask you to respond to the prosecutor’s allegations. The court may not make a decision on your application at that time but may do so in writing within fourteen (14) days of the hearing date.
 - If the prosecutor meets his or her required burden, the court will sign an order *denying* your application and will provide a copy to you. *Skip to STEP 10.*
 - If the prosecutor does not meet his or her required burden, the court will issue an order *granting* your application and will provide a copy to you.
 - In addition to providing you with a copy of the order granting your application, the court is required to send a copy of the order to the arresting police agency, the prosecuting agency, and the Michigan State Police.
 - Your misdemeanor marijuana conviction will be expunged once the Michigan State Police processes the order from the court. This may take several weeks or months.

- **STEP 10: The court has denied your application. What can you do from there if you believe that the court incorrectly did so? One of two things:**
 1. You can ask the court to *reconsider* its decision within twenty-one (21) days of the date of the order, by preparing and filing a motion for rehearing. This motion will need to explain why the court is wrong. You will need to send or deliver a copy of your motion to the court and to the prosecuting agency.

2. You can *appeal* the court's order to the next highest court. If you are in a state district court, you will need to appeal to the county circuit court for your area. If you are in a state circuit court, you will need to appeal to the Court of Appeals. The rules for such appeals differ depending on whether you are appealing a district court decision or a circuit court decision. There are fees for both kinds of appeals. It may be best to consult with an attorney before taking an appeal to either the circuit court or the Court of Appeals.