

## Organizations Supporting the 2012 Law Changes<sup>3</sup>

- ◆ Michigan Probate Judges Association (MPJA)
- ◆ Michigan State Bar Association
- ◆ Michigan Council on Crime and Delinquency
- ◆ Michigan Prosecuting Attorney's Association (PAAM)
- ◆ Criminal Defense Attorney's Association (CDAM)

Be sure to consult an attorney to determine eligibility for set-aside

## References

1. MCL 712A.18e. Michigan's Juvenile Set-Aside Law at <http://legislature.mi.gov/doc.aspx?mcl-712A-18e>
2. Information gathered from interviews with MI Probate Judges.
3. Minutes. (Dec. 4, 2012). Senate Committee on Judiciary. Michigan State Legislature.
4. Department of Justice. (1997). United States Attorneys' Manual: Title 9 - Criminal Resource Manual 116: Juvenile Delinquency Prosecution. Retrieved June 23, 2013 from [http://www.usdoj.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm00116.htm](http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm00116.htm)



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**While the Juvenile Justice and Delinquency Prevention Act of 1994** is a federal act, the act reflects the long-held beliefs of the American juvenile justice system. The purpose of this Act is "to remove juveniles from the ordinary criminal process in order to **avoid the stigma of a prior criminal conviction and to encourage treatment and rehabilitation**"<sup>4</sup> (U.S. Department of Justice, U.S. Attorney's Manual: Title 9, Manual 16, 1997).

## About the Author

This brochure was prepared by **Sharon Denniston, a Juvenile Advocate since 1994 and currently a Ph.D. student in Public Policy, with Specialization in Law and Public Policy. As a Juvenile Advocate, Sharon:**

- Works with Michigan and U.S. Legislators regarding laws impacting juveniles,
- Worked with the legislature in 2012 to amend the juvenile set-aside law, MI PA 527'12 (passing unanimously in the House and Senate),
- Serves as a resource to individuals that have been in the juvenile justice system to support their rehabilitation—a win for youth *and* society,
- Assists families in need of educational support for youth with learning disabilities,
- Works to prevent the sexual abuse and exploitation of children, and
- Provides consult to attorneys and other professionals that work with youth.

**Sharon can be contacted at:  
edumission@aol.com**

**Michigan's Juvenile Set-Aside Law  
MCL 712A.18e  
(After Dec, 28, 2012)**

# Preparing to Set-Aside a Juvenile Criminal Record



# Who's eligible for set-aside?

As of Dec. 28, 2012 changes in Michigan's juvenile set-aside law allows more than one juvenile offense to be set-aside:

- ◆ A person that has been adjudicated of not more than 3 juvenile offenses, of which not more than 1 is for a juvenile offense that is a felony, may submit application to the court requesting set-aside of any or all of those adjudications.
- ◆ Multiple juvenile adjudications arising out of a series of acts that were in a continuous time sequence of 12 hours and that displayed a single intent and goal constitute 1 offense, if none of the adjudications constituted an assaultive crime, an offense involving the use or possession of a weapon, or an offense with a maximum penalty of 10 or more years' imprisonment, if it had been committed by an adult.
- ◆ Application for set-aside may be made one year after imposition of the disposition or completion of any detention, or when the person turns 18 years old—whichever is later.
- ◆ If the person has been convicted of an adult felony, they are ineligible to have any juvenile offense set-aside.
- ◆ These offenses can not be set-aside under this law:
  - ◇ An adjudication for an offense that if committed by an adult would be a felony for which the maximum penalty is life imprisonment,
  - ◇ An adjudication for certain traffic offenses that involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor,
  - ◇ A juvenile offense resulting in a conviction in adult court can not be set-aside under the juvenile set-aside law (it may qualify under the adult law).

## Examples of Eligible Applicants

- 1) A person with 1 juvenile offense for shoplifting, that 1 year later is adjudicated for a misdemeanor MIP offense is eligible to have both set-aside (if all other requirements are met).
- 2) A juvenile late one night enters a school, vandalizes it, steals a computer, and is found to be drunk while fleeing, ends up being adjudicated for 3 felonies and 1 misdemeanor MIP offense. This qualifies as a single felony adjudication for the purpose of eligibility to apply for set-aside (if all other requirements are met). If the court grants the set-aside, all 4 adjudications are set-aside. Even if a subsequent adjudication for a misdemeanor occurs, the individual may still be eligible for set-aside because this is treated as 1 felony and 1 misdemeanor for eligibility purposes.

## Requirements When Applying

### Provide:

- ◆ Full name and current address
- ◆ Certified record of the adjudications to be set-aside
- ◆ Statement that the applicant has not been adjudicated of a juvenile offense other than the juvenile offenses eligible to be set-aside
- ◆ Statement that the applicant has not been **convicted** of a felony (as an adult)
- ◆ Statement as to whether a prior application for set-aside has been filed, and the court's decision (disposition)
- ◆ Statement as to whether there are any criminal charges pending in the U.S. or any country
- ◆ Consent to use any nonpublic record from a prior set-aside

## What Must Be Proven in Court

(if the person is eligible to apply)

**By law, the court's decision to set-aside juvenile adjudications must be based on 2 things:**

1. That the **circumstances and behavior of the applicant** from the date of the adjudication to the filing of the application **warrant setting aside the adjudications.**
2. Setting aside the adjudications is **consistent with the public welfare.**

## What Judges Want to See When Granting Set-Aside<sup>2</sup>

- ◆ They'll look at what's occurred since the adjudication; "was this a good kid that mis-stepped?"
- ◆ Provide all the good information you can; need to have as many positive activities as possible (grades, school, job, community involvement, mission work, etc.); everything is relevant!
- ◆ Keep your record clean!
- ◆ Share your specific goals with the court .
- ◆ Did the applicant graduate from high school or college?
- ◆ Have they maintained employment? Are they doing a good job?
- ◆ Are there military possibilities?
- ◆ Is the criminal record preventing the person from doing something positive or holding them back from achieving their potential? (i.e. entering military, going to college, getting a good job, career advancement, etc.)
- ◆ Letters of references that speak to the applicant's character are very helpful; preferably from non-family persons.
- ◆ Those who committed CSC or serious assaultive crimes should demonstrate rehabilitative factors; an updated psychological assessment may be helpful.
- ◆ Did treatment intervention occur? Did the person successfully complete it? What is the current status?
- ◆ Are there drug or alcohol issues?
- ◆ Prepare for the hearing!
- ◆ The applicants attitude in court during the set-aside hearing will be considered.
- ◆ As one judge said, "If they care enough to make the effort, I give it serious consideration."

## Practical Advice to the Person Applying

- ◆ **Don't waste your time and money applying to set-aside a juvenile record until you have shown consistently good behavior that demonstrates you've been rehabilitated.**
- ◆ **If the court does not grant your request, don't give up. Ask what you need to improve on. Keep striving to do good things with your life and apply again in a couple years.**
- ◆ **Be sure to consult an attorney to determine eligibility for set-aside.**