

# MICHIGAN

Juvenile adjudications are not considered criminal convictions. MICH. COMP. LAWS § 712A.1(2).

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## Juvenile Record Contents

Michigan's statute for "setting aside" records applies to the Department of State Police's files, which include any pending charges against the juvenile, and any record related to an adjudication. MICH. COMP. LAWS 712A.18e(5).

In juvenile court, "confidential" files can include diversion records, testimony, reports, and social files, including child welfare information. Mich. Ct. R. 3.903(A)(3). Records can also include the clerk of the court's files, which contain pleadings, process, written opinions and findings, orders, and judgments. Mich. Ct. R. 8.119(D)(1)(c)-(d).

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## Confidentiality of Law Enforcement Records

No distinction is made between law enforcement and court records.

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## Confidentiality of Court Records

The family court maintains records of all cases brought before it, and such records are generally available to the public. MICH. COMP. LAWS § 712A.28. Diversion records are confidential and may only be released in limited circumstances. MICH. COMP. LAWS § 712A.28.

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## Exceptions to Confidentiality

All court and law enforcement records are available to the public. MICH. COMP. LAWS § 712A.28.

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## Availability of Records Online or in Commercial Background Reports

Juvenile records are not available online.

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## Consequences for Unlawfully Sharing Confidential Information

No information found.

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## Sealing or Expungement

**Setting aside** (akin to sealing): Sealing means that a judge orders the record to be nonpublic.

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## Excluded Offenses

The following offenses are excluded (MICH. COMP. LAWS § 712A.18e(1)):

- offenses that if committed by an adult would be a felony for which the maximum punishment is life imprisonment
- offenses that if committed by an adult would be an assaultive crime against a person, offenses involving the use or possession of a weapon, or offenses with a maximum penalty of 10 or more years imprisonment
- traffic offenses or substantially corresponding local ordinance violations that involve the operation of a vehicle that at the time of the violation was a felony or misdemeanor

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## Automatic (without application)

**Fingerprints and arrest records:** If no petition is authorized under Mich. Ct. R. 3.936(D) or if the petition is dismissed or the juvenile is found not guilty of the charged offense, fingerprints and arrest records will automatically be destroyed. MICH. COMP. LAWS § 28.243(8). If the records have not been destroyed as provided by MICH. COMP. LAWS §§ 28.243(7)-(8), a motion can be filed, and the court shall issue an order directing the Department of State Police, or other official holding the information, to destroy the fingerprints and arrest card of the juvenile pertaining to the offense, other than an offense as listed in MICH. COMP. LAWS § 28.243(12).

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## Eligibility

Juveniles with not more than three juvenile adjudications and who have no felony convictions can ask the adjudicating court to have their records “set aside” as long as not more than one of the adjudications was for an offense that would be a felony if committed by an adult. In other words, a young person may have set aside only one adjudication for an offense that would be a felony if committed by an adult and not more than two adjudications for an offense that would be a misdemeanor if committed by an adult. MICH. COMP. LAWS § 712A.18e.

Juveniles who have: 1) waited at least one year after the judge imposes the adjudication that the juvenile seeks to have set aside; 2) waited at least one year after exiting detention for that adjudication; or 3) have turned 18—whichever is later, may apply to have their records set aside, but the setting aside of an adjudication is a privilege and is conditional; it is not a right. MICH. COMP. LAWS § 712A.18e(3). A person who has an adult felony conviction cannot apply. MICH. COMP. LAWS § 712A.18e.

Diversion records: Diversion records may be destroyed when the juvenile becomes seventeen years of age. Mich. Ct. R. 3.925(E)(3)(a).

Records of cases heard on the consent calendar: Records of cases heard on the consent calendar may be destroyed at the time the juvenile is released from the court’s supervision—Mich. Ct. R. 3.932(C)(7)—or within twenty-eight days of the juvenile turning seventeen years of age, or after the end of court supervision, whichever is later, unless the juvenile subsequently is placed under the court’s supervision on the formal calendar. Mich. Ct. R. 3.925(E)(3)(b).

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## Legal Records and Social Records

The court can destroy the other legal records pertaining to a person’s juvenile offenses when that person turns age 30. The social records (as defined in Mich Ct. R. 3.903A(3)) in the case files pertaining to the juvenile offense may be destroyed three years after entry of the order terminating jurisdiction of the person or when the person turns 18 (whichever is later). Mich Ct. R. 3.925(E)(3)(c).

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## Petition/Application

An application to set aside (and/or expunge) must be signed under oath by the juvenile and must include each of the following:

- full name and current address;
- a certified record of the adjudication;
- a statement that the applicant has not been adjudicated of a juvenile offense other than those that are sought to be set aside;
- a statement that the applicant has not been convicted of any felony offense;
- a statement as to whether the applicant has previously filed an application to set aside this or any other adjudication and, if so, the disposition of the application;
- 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; and
- consent to use the nonpublic record.

MICH. COMP. LAWS § 712A.18e(4). The juvenile must submit the application with two complete sets of fingerprints to the Department of State Police, which generates a record report. MICH. COMP. LAWS §§ 712A.18e(5)-(6). The application and notice of the hearing date is served on the Attorney General of the State of Michigan and, if possible, the prosecutor who prosecuted the case.

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## Hearing

Once an application is filed, the court will hold a hearing, and may require the filing of affidavits and the taking of proofs as it considers proper. MICH. COMP. LAWS § 712A.18e(8). The hearing cannot be held until the court receives the Michigan State Police report, including records of both the department and the FBI in relation to any pending charges against the juvenile. MICH. COMP. LAWS § 712A.18e(5). The Attorney General and the prosecuting attorney shall have an opportunity to contest the application, and the victim of the offense has a right to appear and make a statement if the offense was an “assaultive crime” or “serious misdemeanor.” The court will consider the circumstances and behavior of the applicant after the adjudication, and determine whether setting aside the adjudication is consistent with the public welfare. MICH. COMP. LAWS § 712A.18e(9).

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## Court Process

The court may set aside an adjudication if: 1) the individual has filed a motion requesting it; and 2) the court determines that the circumstances and behavior of the applicant from the date of the adjudication(s) to the filing of the application warrant setting aside the adjudication(s). MICH. COMP. LAWS 712A.18e(9). More generally, under Michigan law, a record may not be set aside without a showing of good cause considering a) the interests of the parties, including, where there is an allegation of domestic violence, the safety of the alleged or potential victim of the domestic violence; (b) the interest of the public; and providing any interested person the opportunity to be heard concerning the setting aside of the record; and c) that there is no less restrictive means of protecting the juvenile defendant's interest. Mich Ct. R. 8.119(l).

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## Effect

Once the setting aside order is entered, the Department of State Police shall remove the public record and 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. MICH. COMP. LAWS 712A.18e(12)-(13).

After the record is set aside, the applicant is considered not to have been previously adjudicated, but is not entitled to the remission of any fine, costs, or other money paid as a consequence of an adjudication that is set aside. MICH. COMP. LAWS 712A.18e(11). Additionally, this relief does not prevent the victim from filing a civil suit for damages, nor does it create a right to commence an action for damages for detention under the disposition that the applicant served before the adjudication is set aside. MICH. COMP. LAWS 712A.18e(11).

The 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 limited purposes, related to determining eligibility for a later application for setting aside an adjudication, employment with a law enforcement agency, or for a pardon request. MICH. COMP. LAWS 712A.18e(12). The youth also may receive a copy of the nonpublic record if he or she pays a fee. Act No. 442 of the Public Acts of 1976. MICH. COMP. LAWS 712A.18e(13).

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## Consequences for Sharing Sealed/Expunged Information

It is a misdemeanor to reveal information from records that have been set aside. Anyone who knows or should have known that an adjudication was set aside and divulges, uses, or publishes information concerning an adjudication set aside is guilty of a misdemeanor. MICH. COMP. LAWS 712A.18e(16).

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## Fee

A \$25.00 fee payable to the state of Michigan is required when the petition for setting aside is submitted. MICH. COMP. LAWS. § 712A.18e(5)-(6).

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## Resources

MICHIGAN COURTS, *Application to Set Aside an Adjudication*, available at <http://courts.mi.gov/Administration/SCAO/Forms/courtforms/juvenile/jc66.pdf>.

MICHIGAN STATE POLICE, *Procedure to Set Aside a Conviction*, [http://www.michigan.gov/msp/o,1607,7-123-1589\\_1878\\_8311-10418--,00.html](http://www.michigan.gov/msp/o,1607,7-123-1589_1878_8311-10418--,00.html).

MICH. STATE CT. ADMIN. OFFICE, *How Can I Make My Michigan Juvenile Adjudication Nonpublic?*, <http://courts.mi.gov/self-help/center/casetype/pages/setasideja.aspx>.

MICHIGAN REENTRY LAW WIKI, *Cleaning up Criminal Records: Expungement*, [http://reentry.mplp.org/reentry/index.php/Cleaning\\_Up\\_Criminal\\_Records:\\_Expungement](http://reentry.mplp.org/reentry/index.php/Cleaning_Up_Criminal_Records:_Expungement).