

Second Chances
Setting Aside a Juvenile Adjudication

Why Expunge an Adjudication (aren't juvenile records sealed)?

- It is often assumed that a juvenile adjudication is a private sanction with a built in second chance.
- Difference between adult convictions and adjudication
 - An adjudication is not a conviction
 - The law provides a mechanism for convicting juvenile offenders in criminal court when warranted
 - Adjudications in family court historically have had the more rehabilitative aim of steering kids in the right direction and keeping them out of the criminal justice system.

Why Expunge an Adjudication (aren't juvenile records sealed)?

- Juvenile records are often accessible to the public.
 - Court proceedings are public unless the court decides to close them.
 - Juvenile adjudication records are available to be viewed at the family court clerk's office.
 - Availability of juvenile records can affect job prospects, military service, etc.

Eligibility – Number of adjudications

- A person may file an application to set aside an adjudication if:
 - They have no more than one (1) adjudication that would be considered a felony if committed by an adult.
 - They have no more than three (3) adjudications all together.
 - In sum, one can have one "would be" felony and two "would be" misdemeanors, or three "would be" misdemeanors.

Eligibility – Multiple Adjudications Arising Out of One Series of Events

- Multiple adjudications arising out of a series of acts that were in a continuous time sequence of 12 hours or less and that displayed a single intent and goal constitute one offense provide that the none of the offenses constitute any of the following:
 - An assaultive crime
 - An offense involving the use of a weapon
 - An offense with a maximum penalty of ten years or more

What is an "Assaultive Crime?"

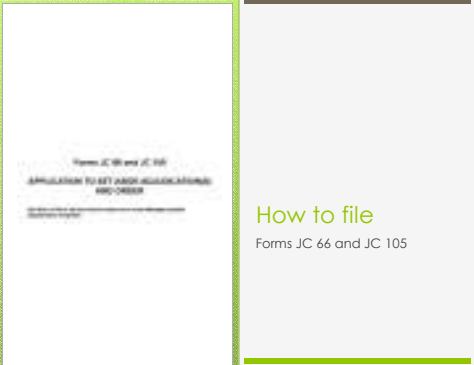
- The definition of "assaultive crime" can be found in MCL 770.9a.
- It includes crimes such as:
 - Stalking
 - Assault with intent to rob or steal
 - Attempted murder
 - Kidnapping
 - Criminal Sexual Conduct
 - Armed larceny

Eligibility – Limits

- A person is not eligible to petition to set aside:
 - An adjudication for an offense that if committed by an adult would be a felony for which the maximum punishment is life imprisonment.
 - An adjudication for a traffic offense that is a felony or misdemeanor (as opposed to a civil infraction).
 - An offense for which the child was tried as an adult (expungement under the adult statute may be possible, however)

Eligibility – Timing

- An application shall not be filed until the expiration of one year following disposition, one year following completion of the term of detention for the adjudication, or when the person turns 18 years of age, whichever is later.



How to file
Forms JC 66 and JC 105

Then What?

- If the adjudication was for an offense that if committed by an adult would be an assaultive crime or serious misdemeanor, the prosecutor will give notice of the application to any known victims.
- The court will hold a hearing to determine whether the circumstances and behavior of the applicant from the date of the adjudication to filing of the application warrant setting aside the adjudication is consistent with the public welfare.

Keep in Mind

- The setting aside of an adjudication is a privilege and conditional, and is not a right (this language comes right from the statute).
- An application to set aside an adjudication is not an appeal of the adjudication. It is rather a petition asking the court to exercise its discretion to remove the conviction from the public record.

The Petition is Granted – What Does that Mean?

- Upon an order setting aside an adjudication, the applicant is considered not to have been previously adjudicated, except:
 - The applicant still has to pay any costs or fines.
 - Expungement does not affect the right of a victim to initiate or defend a civil action for damages.
 - The statute does not create right to commence an action for damages for detention.

Removed From Public View

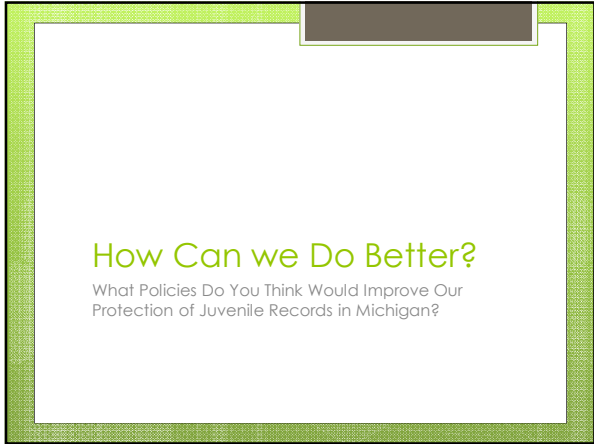
- Once the court grants the petition to set aside the adjudication(s), the clerk's office seals the record from public view and will not answer inquiries about the applicant.
- Only the applicant has access to the file, and must go to the clerk's office in person with a photo ID

But - The Record is Not Completed Erased

- The state police shall retain a nonpublic record of the order setting aside an adjudication.
- The record shall be made available only to:
 - A court of competent jurisdiction
 - An agency of the judicial branch of the state government
 - A law enforcement agency
 - A prosecuting attorney
 - The attorney general
 - The governor

The Adjudication(s) Can Still Be Considered for Limited Purposes

- Consideration by a law enforcement agency if an applicant applies for employment with a law enforcement agency
- The Court's consideration in determining a sentence for a subsequent offense
- Consideration by the governor if the applicant applies for a pardon for another offense



How Can we Do Better?
What Policies Do You Think Would Improve Our
Protection of Juvenile Records in Michigan?
