

Frequently Asked Questions and Guidance Regarding the Clean Slate for Kids Legislation

On January 4, 2021, the Legislature enacted a series of bills aimed at juvenile justice reform. The Clean Slate for Kids package, as Public Act 361 and Public Act 362 have been referred to, makes juvenile records nonpublic and amends the current set aside application process, while also creating an automatic set aside process to be implemented by July 2023.

The information below summarizes the Clean Slate for Kids package, and also offers initial guidance to courts about the package's implementation. The State Court Administrative Office (SCAO) is continuing to identify and address issues relating to case management systems, court rules, and court procedures. Future communications will follow.

Public Act 361 of 2020 – Set Aside

1. What is the effective date?

There are actually two effective dates. The first effective date, July 3, 2021, relates to the amendments of the existing set aside process. The second effective date, July 3, 2023, relates to the automatic set aside process.

2. How is the current set aside application process affected beginning July 3, 2021?

- a. The statute applies to juvenile adjudications.
- b. A person can file an application for set aside of a juvenile adjudication one year after termination of court jurisdiction over the person.
- c. Certain traffic offenses will no longer be ineligible for set aside.
- d. The \$25 fee for the Michigan State Police (MSP) is deleted.
- e. The attorney general or prosecuting attorney must contest the application no later than 35 days after service, if they choose to do so.
- f. Setting aside an adjudication for a traffic offense does not require the Secretary of State to remove it from the driving record.

3. What does the automatic set aside process do that takes effect July 3, 2023?

- a. Automatically sets aside certain offenses 2 years after termination of court supervision or when the juvenile turns 18 years of age – whichever comes later.
- b. Removes the limitation on the number of offenses that can be set aside.
- c. Does not apply to status offenses.
- d. Removes the ability for the attorney general or prosecuting attorney to contest the set aside.
- e. Clarifies that:
 - i. A person is not entitled to remission of fines, costs, etc.
 - ii. The set aside does not affect a person's right to rely upon adjudication to bar subsequent proceedings for the same offense.
 - iii. The set aside does not affect the right of the victim to prosecute or defend a civil action for damages.
 - iv. The set aside does not create a right to commence an action for damages for detention.
- f. Requires courts to notify the arresting agency and MSP upon the setting aside of an adjudication.
- g. Requires MSP to maintain a nonpublic record of a juvenile's offenses that are set aside, and lists those who may have access to the nonpublic MSP record and for what purpose.
- h. Requires a copy of the nonpublic record to be provided to the juvenile upon payment of a fee determined by MSP.

- i. Makes the MSP nonpublic record exempt from access under FOIA.
- j. Provides a penalty for divulging/publishing information about adjudications that are set aside.
- k. Stipulates that setting aside an adjudication for a traffic offense does not require the Secretary of State to remove it from the driving record.

Public Act 362 of 2020 – Nonpublic Status of Juvenile Records

1. What is the effective date?

March 24, 2021.

2. What case types are included?

All cases under the Juvenile Code (DL, NA, DJ, JG, PJ, VF, and TL) are included.

3. Are district court records of a case concerning a juvenile nonpublic where the circuit court and district court have agreed to waive such cases to district court?

No. The new language makes records “of a case brought before the court” nonpublic, and “court” is defined to be the family division of circuit court. In jurisdictions where the district court handles civil infractions committed by juveniles (MCL 712A.2e), records would be available as previously allowed.

4. Are court hearings nonpublic?

Hearings remain public unless specifically closed by statute or under the court rules.

5. Are audio and video recordings of court hearings non-public?

Yes.

6. Should a separate “social file” still be maintained?

Yes. Courts should continue to maintain a separate “social file” as required under MCR 3.903(A)(3)(b).

7. Does this new mandate cover all records of open and closed cases?

With regard to the effective date of the restrictions, the statute indicates that “[b]eginning [March 24, 2021], except as otherwise provided, records of a case brought before the court are not open to the general public”¹

8. Will courts have to manually enter nonpublic codes in the Case Management System (CMS)?

Effective March 19, 2021, Judicial Information Services (JIS) has updated all of its case management systems making any existing cases and petitions for the affected case types nonpublic, whether in open, adjudicated, or closed status. The Probate Court System (PCS) application has also been updated to ensure any future cases and petitions entered are nonpublic. JIS will communicate any other system updates when they are released to the courts. In the interim, it is each court’s responsibility to ensure that cases entered are

¹ Although the act defines the effective date as January 1, 2021, the act was not passed with immediate effect and as a result, it is effective March 24, 2021.

flagged as nonpublic. For those courts with a non-JIS CMS vendor, the court will need to work with that vendor to ensure that these cases are nonpublic.

9. Who can have access to the nonpublic record?

The act limits access to persons with a legitimate interest, which is defined as including but not limited to the:

- a. Juvenile,
- b. Juvenile's parent(s),
- c. Juvenile's guardian(s)/legal custodian(s),
- d. Counsel for the juvenile,
- e. Department or a licensed child caring institution or child placing agency under contract with the Department to provide care and supervision of the child if related to an investigation of child abuse or child neglect,
- f. Law enforcement personnel,
- g. Prosecutor,
- h. Member of the foster care review board,
- i. Indian child's tribe, and/or
- j. Court of this state.

10. Can the court allow access to others not specifically included on the list of persons who are defined to have a legitimate interest?

Yes. Courts may grant access to others because the statute defines those with legitimate interest as "including but not limited to" a specific list. [MCL 712A.28](#). That access would be provided under the procedure in MCR 3.925(D).

11. Must a person file a motion to request access to court records?

The court should develop a process that allows a person to request access to the records of a case and enables the court to make the required determination whether the person has a legitimate interest in the case. Neither the statute nor court rule requires a form to make this request, nor requires use of a SCAO-approved form. At this time, there is no SCAO-approved form.

12. Does access to records in consent calendar and diversion cases change?

No. Existing statutes (MCL 712A.2f and MCL 722.828) describe how these case type files are maintained and who may have access.

13. Will MSP also need to make juvenile cases nonpublic?

The statutory amendments to MCL 712A.28 only address records of the court, not MSP.