

Legislative Analysis



EXPAND & CLARIFY ELIGIBILITY FOR SET-ASIDE OF JUVENILE ADJUDICATIONS

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5600 (Substitute H-3)

Sponsor: Rep. Joe Haveman

Committee: Judiciary

First Analysis (10-26-12)

BRIEF SUMMARY: The bill would allow an individual to have more than one adjudication for a juvenile offense set aside under certain conditions. (Unlike adults, who are *convicted* when found guilty of an offense, juveniles are found *responsible*, and the process is referred to as an *adjudication*.)

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the Judiciary. The bill allows for multiple adjudications to be set aside where current law only allows for setting aside one adjudication for a juvenile offense. Thus, the total number of applications filed could increase. This would result in an increase in administrative workload for both the local court and Department of State Police, though applicants pay a \$25.00 fee to the State Police to defray these costs. However, courts may also see fewer repeat petitions under this section due to the requirement that repeat petitions be filed at least three years after a previous petition's denial.

THE APPARENT PROBLEM:

Traditionally, the emphasis in the juvenile justice system has been on rehabilitation. However, beginning in the late 1980s and continuing through the 1990s, the trend shifted toward treating juvenile offenders more harshly. This was due, at least in part, to a rise in serious juvenile crime. Laws across the country were changed to reduce judicial discretion for certain offenses, resulting in more juveniles being tried as adults. Even those remaining in the juvenile justice system faced more punitive treatment than before.

One result has been that juveniles who have turned their lives around are finding it difficult, if not impossible, to move forward. With their juvenile record following them into adulthood, these now-responsible citizens are blocked from joining the military, going to college, and finding employment. As the trend across the nation has begun to shift in the other direction, back to an emphasis on rehabilitation, some states have amended their expungement laws to make it easier for youth who have demonstrated change to clear their records. It has been suggested that Michigan review its treatment of juvenile offenders who were adjudicated in the juvenile justice system (not those tried as adults in adult court) to make it easier for deserving individuals to put their past behind them.

THE CONTENT OF THE BILL:

House Bill 5600 would amend the Probate Code to revise criteria under which a person may petition to have an adjudication for a juvenile offense to be set aside. Currently, an individual may apply to have an adjudication for a juvenile offense set aside if it is the individual's only juvenile adjudication, and the individual has no felony convictions.

(As noted earlier, whereas adults are *convicted* when found guilty of an offense, juveniles are found *responsible*, and the process is referred to as an *adjudication*.)

However, an adjudication for certain offenses cannot be set aside. These include adjudications for an offense that if committed by an adult would be a felony for which the maximum punishment is life imprisonment; criminal traffic offenses whether under state law or local ordinances; and a conviction under Section 2d (juvenile tried and convicted as an adult), although a conviction may be eligible for expungement under other sections of law.

House Bill 5600 would delete the above provisions and would instead allow a person to file an application with the adjudicating court for the entry of an order setting aside one or more juvenile adjudications as follows:

**** If adjudicated of not more than three juvenile offenses only one of which may be a felony conviction, the person could apply to set aside one, two, or all of the adjudications.**

An adjudication could not be set aside for an offense that if committed by an adult would be a felony that carried a maximum punishment of life imprisonment. A statement would have to be included in the set-aside application that the applicant has not been convicted of such a felony.

**** If not otherwise eligible under the above provision, a person adjudicated for two or more juvenile offenses as a result of a single court disposition, a person could apply to have all the adjudications related to that disposition set aside.**

However, a person who had been subsequently adjudicated or convicted of misdemeanor or felony offense after the disposition for which a set-aside was being sought would be ineligible for that set-aside. A statement would have to be included in the application testifying that the applicant has not been convicted of a subsequent misdemeanor or felony criminal offense. Also, as before, there could be no set-aside for an offense that if committed by an adult would be a felony that carried a maximum punishment of life imprisonment.

If a petition is denied, a person could not file another petition concerning the same adjudication for at least three years after the denial.

In addition, the bill would shorten the time period before a person could apply to have an adjudication set aside. Currently, a person must wait to apply until five years after the

disposition for that adjudication, or five years after any term of detention for that adjudication had been completed, or the person turns 24 years of age, whichever occurs later. The bill would reduce both of the five-year waiting periods to just one year, and lower the minimum age from 24 to 17 years of age.

ARGUMENTS:

For:

Recent advances in the study of neurobiological and psychosocial factors, and the effects those factors have on the development and competency of juveniles, are spurring legislatures across the country to review their juvenile justice policies. As more and more becomes known about the drivers behind juvenile crime, and the potential for rehabilitation, it is clearer what works and what doesn't. One result is that juvenile crime has been decreasing over the past decade.

However, it is a known contributor to recidivism if the offender, once rehabilitated and returned to society, does not have the opportunity to build a new life. In particular, because juvenile records now follow individuals throughout life, some young adults are unable to enlist in the military, are blocked from entering many professions (especially those requiring licensing), and may not be eligible for financial aid or even entry into higher education. The inability to access employment or education, as well as social rejection, increases the likelihood of an individual reoffending.

The bill would address this issue by revising statutory eligibility for an ex-juvenile offender to apply to have records expunged. Currently, a person can wipe the slate clean only if he or she had no more than one juvenile adjudication, had no felony convictions (meaning the person had been tried and convicted as an adult), and if that one adjudication had not been for an offense for which the maximum penalty were life imprisonment if committed by an adult. (Unlike adults, who are convicted when found guilty, juveniles are found responsible and the process is referred to as an adjudication.)

Under the bill, a person would be eligible to set aside one or more juvenile adjudications, as long as the person had three or fewer adjudications, and not more than one of the three was for a felony. The bill would also allow a person who had two or more juvenile offenses as a result of a single court disposition to apply to set aside all of the adjudications related to that disposition. For example, if the juvenile drank several beers, broke into a house, stole a television set, and pushed the homeowner to the floor while escaping, the charges could include minor in possession, breaking and entering, larceny, and assault. Thus, under the bill, a person who was successfully rehabilitated would no longer have to have his or her life ruined by a single night of bad judgment.

As with current law, an adjudication could not be set aside for offenses that if committed by an adult would carry a life sentence. This would exclude from consideration certain criminal sexual conduct offenses and murder, as well as other serious felonies.

Set-asides of juvenile adjudications would not be automatic upon application. Courts would still retain discretion to review all pertinent facts of each adjudication sought to be set aside, as well as the recent efforts and success of the individual. If a court denied the application, the person could reapply in three years. The public's safety would not be compromised.

House Bill 5600 would not be soft on youthful criminals. Instead, the bill appropriately recognizes that youth are more easily rehabilitated than adults, and gives those who have worked hard to rehabilitate a chance for a more normal and productive life.

For:

The bill also would shorten the time period before a person could apply to have a juvenile adjudication set aside. Currently a person must wait for the later of five years after a disposition was imposed, detention completed, or reaching the age of 24. The bill would shorten the five years to one year, and the minimum age to 17. This will allow youths who have completed detention or otherwise demonstrated that they have indeed turned their lives around by 17 to join the military, go to college, or start careers at the same time as their peers.

Against:

The committee substitute continues the current exclusion on setting aside a juvenile offense that if committed by an adult would carry a maximum sentence of life, whereas the bill as introduced would have allowed any juvenile adjudication to be eligible to be set aside. This means that certain sex crimes could not be set aside, regardless of the facts of the case or the age of the juvenile offender when the crime was committed.

According to court staff and other advocates who work with juvenile sex offenders, the elements of juvenile sex crimes differ from those of adult offenses. They maintain that the sexual conduct statutes were created to punish adult crimes against children. Therefore, even sexual contact with a child 12 and under can be a life offense. Yet, when children commit sex crimes, their victims are almost always the same age or younger than they are, usually being 12 or under. Thus a 10-year-old having sexual contact with another 10-year-old could not set aside the adjudication. Even if there were only one offense, even if the child received counseling and had been offense-free for over a decade, and even with a recidivism rate for some programs of approximately five percent (lower for female offenders), a child who was found responsible for certain criminal sexual conduct offenses would never have a chance at building a normal life. This simply does not represent what current research supports regarding the ability of children to be rehabilitated.

Since judges would retain the ability to deny a person's application if there were red flags, there is no reason to withhold the opportunity for a review of the elements of the case and the efforts towards rehabilitation by the applicant.

Against:

The bill is much more far-reaching than adult expungements, both in the number of offenses that could be set aside, and the types of offenses. For instance, the bill would

allow criminal traffic offenses, including drunk driving offenses, to be wiped off a juvenile offender's slate. Adults are prohibited from expunging any traffic offenses.

POSITIONS:

A representative of the Michigan Probate Judges Association testified in support of the bill. (9-27-12)

The Criminal Defense Attorneys of Michigan (CDAM) indicated support for the bill. (9-27-12)

Representatives of the 17th Circuit Court-Family Division Adolescent Sex Offender submitted testimony in support of the bill as introduced. (9-25-12)

The Prosecuting Attorneys Association of Michigan (PAAM) supports the concept of the bill. (9-27-12)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Erik Jonasson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.