



## Michigan Supreme Court

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### MEMORANDUM

DATE: November 16, 2023

TO: Circuit & Probate Court Judges, Circuit Court Administrators, and Probate Registers

FROM: Thomas P. Boyd, State Court Administrator

SUBJECT: Juvenile Automatic Set Aside Updates

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#### **Background**

This memo contains updates and information regarding the automatic juvenile adjudication set aside process ([MCL 712A.18t](#)). As you are aware, the effective date of automatic juvenile set asides is December 30, 2023. The State Court Administrative Office (SCAO) developed case management programming for Judicial Information Services (JIS) to meet all statutory requirements for trial courts by the effective date. This includes all programming needed for 72 of 83 counties (86.7%) in Michigan that use JIS for juvenile case management which accounts for 56% of juvenile case filings across all trial courts in 2022. Please review the following important information regarding the process to complete implementation, relevant for both JIS courts and non-JIS courts.

#### **ALL COURTS**

##### **Update #1: What Does the Automatic Set Aside Process Do?**

MCL 712A.18t automatically sets aside all but certain ineligible offenses two years after termination of court supervision or when the juvenile turns 18 years of age, whichever occurs later.

- a. There is no limitation on the number of offenses that can be set aside.
- b. The attorney general and prosecuting attorney cannot contest the set aside.
- c. Clarifies that:
  - i. The juvenile is not entitled to the remission of any fines, costs, or other money paid as a consequence of an adjudication that is set aside.

- ii. The set aside does not affect a juvenile's right to rely upon the 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.
- d. Requires courts to notify the arresting agency and the Michigan State Police (MSP) upon the setting aside of an adjudication.
- e. Requires the MSP to maintain a nonpublic record of a juvenile's offenses that are set aside and identifies who may have access to the nonpublic MSP record and for what purpose.
- f. Requires a copy of the nonpublic record to be provided to the juvenile upon payment of a fee determined by the MSP.
- g. Makes the MSP nonpublic record exempt from access under FOIA.
- h. Provides a penalty for divulging/publishing information about adjudications that are set aside.
- i. Stipulates that setting aside an adjudication for a traffic offense does not require the Secretary of State to remove it from the driving record.

### **Update #2: Additional Ineligible Offenses**

The SCAO previously sent a memo identifying the offenses that are not eligible for automatic set aside. The SCAO added additional offenses to this list which are incorporated in the [memo](#), updated November 7, 2023.

### **Update #3: Status Offenses**

“Status offender” is the term commonly used to refer to juveniles who have allegedly committed an offense that would not be an offense but for the age of the juvenile and fall within the exclusive original jurisdiction of the Family Division pursuant to MCL 712A.2(a)(2) (runaways), MCL 712A.2(a)(3) (incorrigibles), or MCL 712A.2(a)(4) (truants).

To this point, the juvenile automatic set aside process under MCL 712A.18t is less restrictive than the manual application process under MCL 712A.18e, which describes adjudications as being juvenile offenses that “if committed by an adult” would be either a misdemeanor or felony. The automatic process under MCL 712A.18t refers to adjudications generally and does not contain the same “if committed by an adult” qualifier included in the manual process under MCL 712A.18e(1). In accordance with MCL 712A.18t, SCAO programming for JIS courts will automatically set aside all adjudications that are statutorily eligible, which includes status offenses.

### **Update #4 Dismissals**

The term “adjudication” is not defined in the Probate Code; however, the use of the term is essentially synonymous with “conviction” in the adult context. For example, MCL 712A.18t(1) states that juvenile adjudications are eligible for an automatic set aside “2 years after the termination of court supervision or when the person becomes 18 years of age, whichever is later.” The phrase “termination of court supervision” implies that there was formal court

supervision at some point in the case, which is inconsistent with a petition not being authorized or dismissed.

In the manual application process, MCL 712A.18e(17) states “[an] order setting aside an adjudication for a traffic offense...must not require that *the conviction* be removed or expunged from the applicant’s driving record[.]” (emphasis added). While perhaps legally imprecise, the use of the word *conviction* further suggests that adjudications, for the purposes of clean slate, do not include dismissals. Additionally, MCL 712A.18e(1) also states that “multiple adjudications arising out of a series of facts that were in continuous time...constitute 1 offense[.]” This also suggests an adjudication is a specific judicial finding rather than a judicial process. In accordance with this analysis, SCAO programming for JIS courts will not set aside juvenile dismissed cases.

#### **Update #5: Collection of Costs and Assessments**

When a juvenile adjudication is set aside, the juvenile is considered not to have been previously adjudicated, except for the enumerated exceptions contained in [MCL 712A.18t\(4\)](#). Upon setting aside a juvenile adjudication, the adjudication no longer exists, and SCAO is not aware of any authority for courts to continue collecting costs or assessments on an adjudicated case once a case has been set aside.<sup>1</sup>

#### **Update #6: Restitution**

Unlike costs described above, courts will need to reconcile the provisions of MCL 712A.18t(4) with [MCL 712A.30\(2\)](#) and [MCL 712A.30\(13\)](#) to determine whether there is authority to continue collecting restitution after an adjudication is set aside. MCL 712A.30(2) requires the court to order a juvenile to make full restitution as part of the court’s disposition. Additionally, MCL 712A.30(13) states an order of restitution remains in effect until it is satisfied in full.

#### **Update #7: Payment Processing**

Court staff who have questions regarding how to process existing payment plan payments or income tax garnishments should consult their chief judge.

As the implementation of automatic clean slate continues, changes have been made to the JIS case management systems to facilitate this process. Indicators have been added on the receipt processing screens when payments are being receipted into a partially or fully set aside case and new adjustment reasons have been created when adjustments need to be made due to an adjudication being set aside in both the Trial Court System (TCS) and the Probate Court System (PCS).

For courts who have a JIS case management system, JIS issued release updates that provide further information on those changes for TCS and PCS in the Announcements section of the [JIS Self-Service Portal](#). Please see the July 3, 2023, and August 7, 2023, release updates for TCS and the September 18, 2023, and October 30, 2023, updates for PCS. JIS is developing programming, event codes, and reports that will allow the tracking of waived assessments due to set asides and

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<sup>1</sup> Senate Bill 428 passed the legislature on November 9, 2023 and is en route to the Governor’s desk for her anticipated signature. This bill will prevent all future imposition and collection of certain costs and assessments for all juvenile cases and has an effective date of October 1, 2024.

those will be released once development is complete.

Courts that have a non-JIS case management system are encouraged to work with their vendor to create event codes and reports that will allow the court to track and evaluate waived assessments and any other data associated with automatic clean slate set aside cases.

### **Update #8: Access to Set Aside Juvenile Adjudication in a Case or Court Record**

Information regarding set aside juvenile adjudications contained in a case or court record are only available to the juvenile adjudicated and victim.

MCL 712A.18t requires the MSP to maintain nonpublic records of set aside juvenile adjudications. MCL 712A.18t(6) identifies a list of specific agencies and purposes under which the MSP may provide this nonpublic information. However, these disclosure exceptions only apply to MSP records—the statute does not contemplate access to case or court records.

MCL 712A.18t(9) establishes a misdemeanor penalty for any person—other than the juvenile and victim—who knows or should have known that an adjudication was set aside and who divulges, uses, or publishes information concerning the set aside adjudication. Given this misdemeanor offense and the lack of any statutory authority to disclose set aside juvenile adjudication information contained in case or court records, courts should limit access to set aside juvenile adjudications to the juvenile and victim<sup>2</sup>.

### **Update #9: Set Aside Juvenile Adjudication Reinstatement**

Unlike convictions set aside for adults, there are no statutory provisions or authority to reinstate an erroneously set aside juvenile adjudication.

MCL 780.621h provides specific authority to reinstate *adult* convictions when the conviction was set aside in error or when the defendant fails to make a good-faith effort to pay restitution. There is no similar statutory authority for reinstating a juvenile adjudication under MCL 712A.18t.

However, courts may consider authority to correct errors under MCR 3.902 and MCR 2.613. Subchapter 3.900 governs practice and procedure in all cases filed under the Juvenile Code. MCR 3.902 indicates that “[l]imitations on correction of error are governed by MCR 2.613.” MCR 2.613, in turn, states:

An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not grounds for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appear to the court inconsistent with substantial justice.

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<sup>2</sup> Victims have a constitutional right to information about the conviction, sentence, imprisonment, and release of the accused. Const 1963, art 1, § 24(1). Additionally, MCL 712A.18t(4)(c) makes clear that set aside juvenile adjudication does not affect the right of a victim of an offense to prosecute or defend a civil action for damages.

Courts will need to determine whether this constitutes sufficient authority to reinstate an adjudication that was set aside in error.

### **Update #10: Juvenile Set Aside FAQ**

The SCAO will create a Juvenile Set Aside FAQ from questions received from trial courts and make it available for your reference prior to the effective date. Questions may be submitted to your SCAO regional administrator to be reviewed and incorporated into the document.

### **JIS COURTS**

The following updates are specific to the courts that use JIS as their CMS provider. These updates are for your information only and describe how JIS will be setting aside adjudications. For courts that do not use JIS as their CMS provider, but still need to develop their own set aside processes, the below is provided in case it is helpful to you and/or your CMS provider as you work through implementation.

### **Update #11: JIS Set Aside Rules Flow Chart**

The JIS development rules will set aside all juvenile adjudicated offenses that are statutorily eligible. A flow chart outlining the rules used to determine what adjudicated offenses may be set aside is attached in [Appendix A](#).

### **Update #12: JIS Juvenile Set Aside Implementation**

JIS will begin labeling set aside juvenile adjudications in your case management system before the December 30, 2023, effective date.

JIS needs to automatically set aside thousands of eligible juvenile adjudications in numerous individual case management systems. In order not to disrupt any court systems during implementation, JIS will begin labeling set aside adjudications in early December to ensure that all adjudications are successfully set aside when the law becomes effective. During this transition period of implementation, if you have security access to see set aside data, you will begin to see events added of “*JUV Set Aside Automatically by Court*” for each charge that was set aside. You will also see a notation on each charge indicating the set aside status. **If you do not have security to see set aside data**, you will not see anything (Petition, Charge, ROA entries, ROA’s etc.) as it relates to cases containing set aside data. It is important for each court’s system administrator to grant the appropriate access in the User Security screen to ensure the appropriate staff can view the set aside data as necessary. These set aside indicators should be ignored in the CMS during the implementation period and the adjudication should NOT be treated as a set aside until the effective date, December 30, 2023.

The SCAO and MSP are currently working on a programmatic solution to automate the submission of set aside juvenile adjudications through a Modify Judicial (MJUD) submission. Until an automated solution is developed, the SCAO will submit daily files to the MSP for all JIS courts. These files contain all data trial courts are statutorily required to submit pursuant to MCL 712A.18t(5).

While the required report to MSP will be submitted by JIS, the report to the arresting agency must be submitted by the trial court. JIS has developed reporting tools which include a tool that will provide trial courts with the functionality to submit reports of juvenile set asides to the arresting agency as required by MCL 712A.18t(5). After selecting the Arresting Agency Automatic Set Asides Report, the report can quickly be exported to Excel, sorted by each arresting agency, and provided to each arresting agency. JIS previously held a training focused on reporting tools for both [TCS](#) with [slides](#) and [PCS](#) with [slides](#).

**\*\*IMPORTANT\*\*** Please note, as indicated above, although your case management system will indicate these adjudications are set aside during the transition period of implementation, **they are not legally set aside until the law takes effect on December 30, 2023**. JIS will notify each court when implementation is complete.

### **NON-JIS COURTS**

The following update is specific to courts that do not use JIS and their CMS provider, though the entirety of the memo is meant to be informative and helpful as you work with your CMS provider.

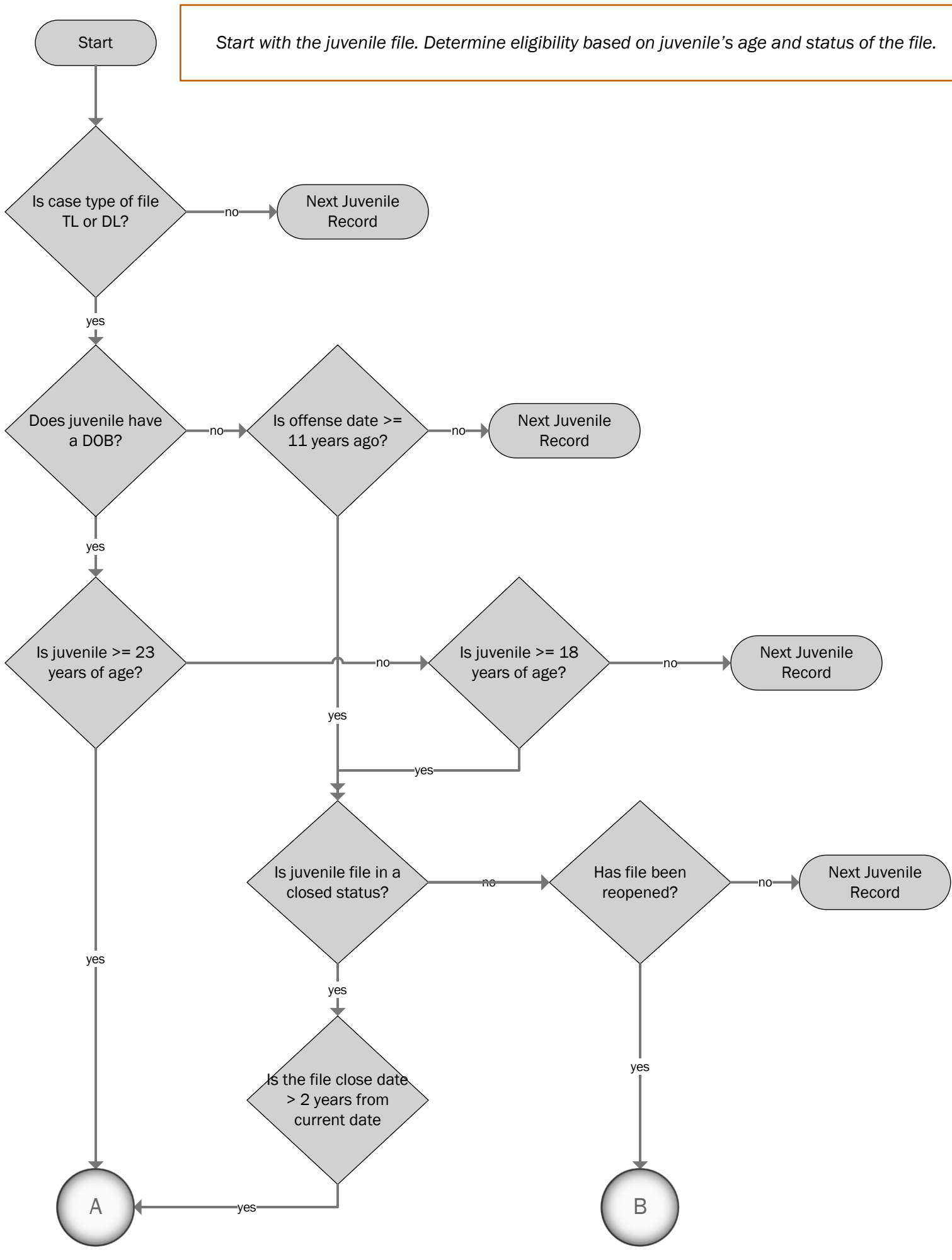
#### **Update #13: Non-JIS Court Reporting Requirements**

MCL 712A.18t(5) requires the court to notify the arresting agency and the MSP when an adjudication has been set aside. Non-JIS courts should contact the MSP to coordinate the reporting of set aside juvenile adjudications and consult their CMS provider to determine how to report juvenile set asides to the arresting agency.

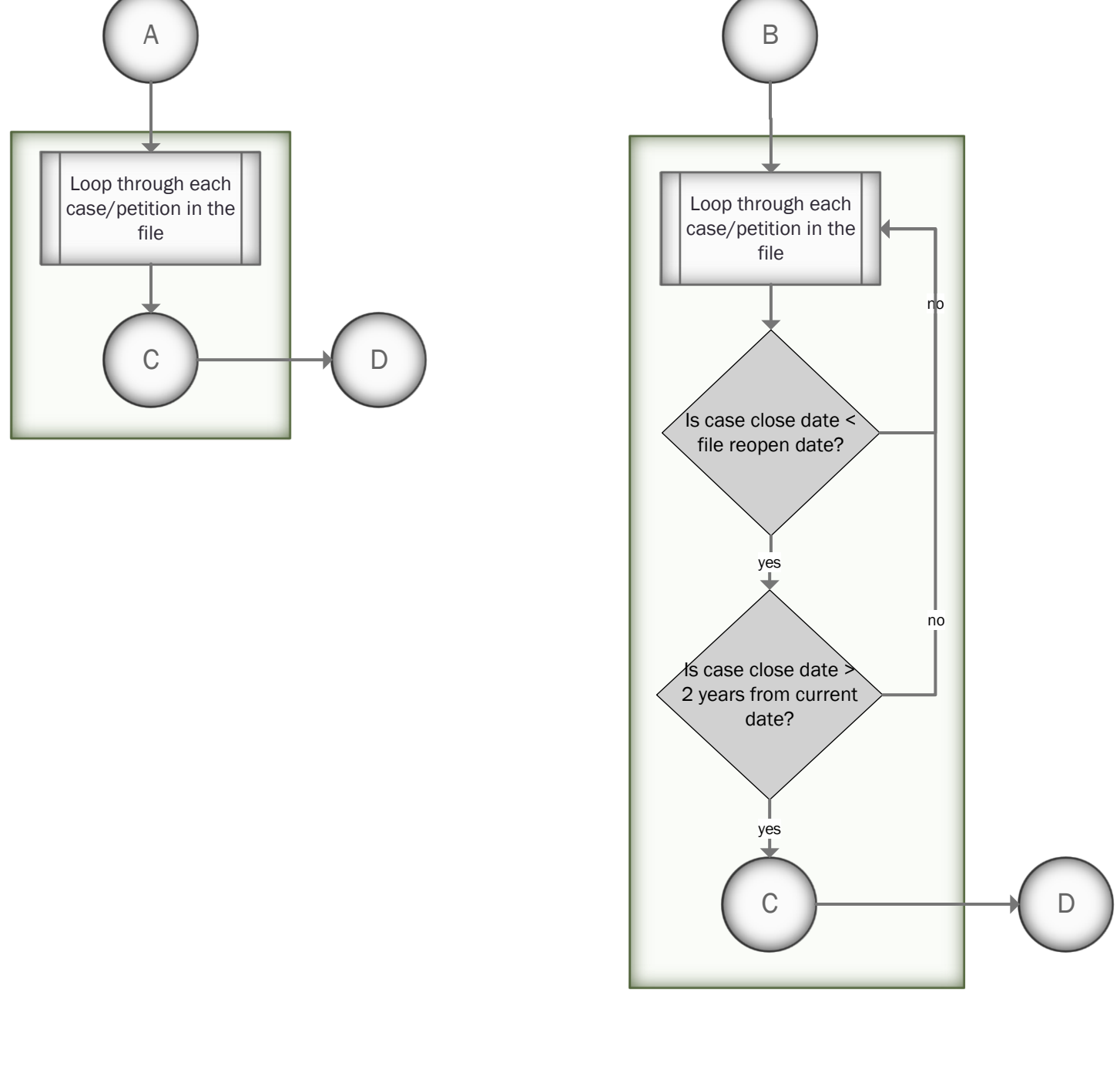
Your SCAO regional administrator emailed you a set of data fields on August 25, 2023, that are sufficient for MSP to match juvenile cases in their records. Beginning on December 30, 2023, this report will need to be transmitted to MSP on a daily basis in a format that your CMS provider confirms with MSP. If you haven't done so already, please contact MSP at [msp-crd-csaautomatic@michigan.gov](mailto:msp-crd-csaautomatic@michigan.gov) as soon as possible to make arrangements for providing this data. You will also need to work with your CMS provider to determine how you will notify the arresting agency to meet the statutory requirements.

Thank you for all of the work that you have done thus far to prepare for this implementation.

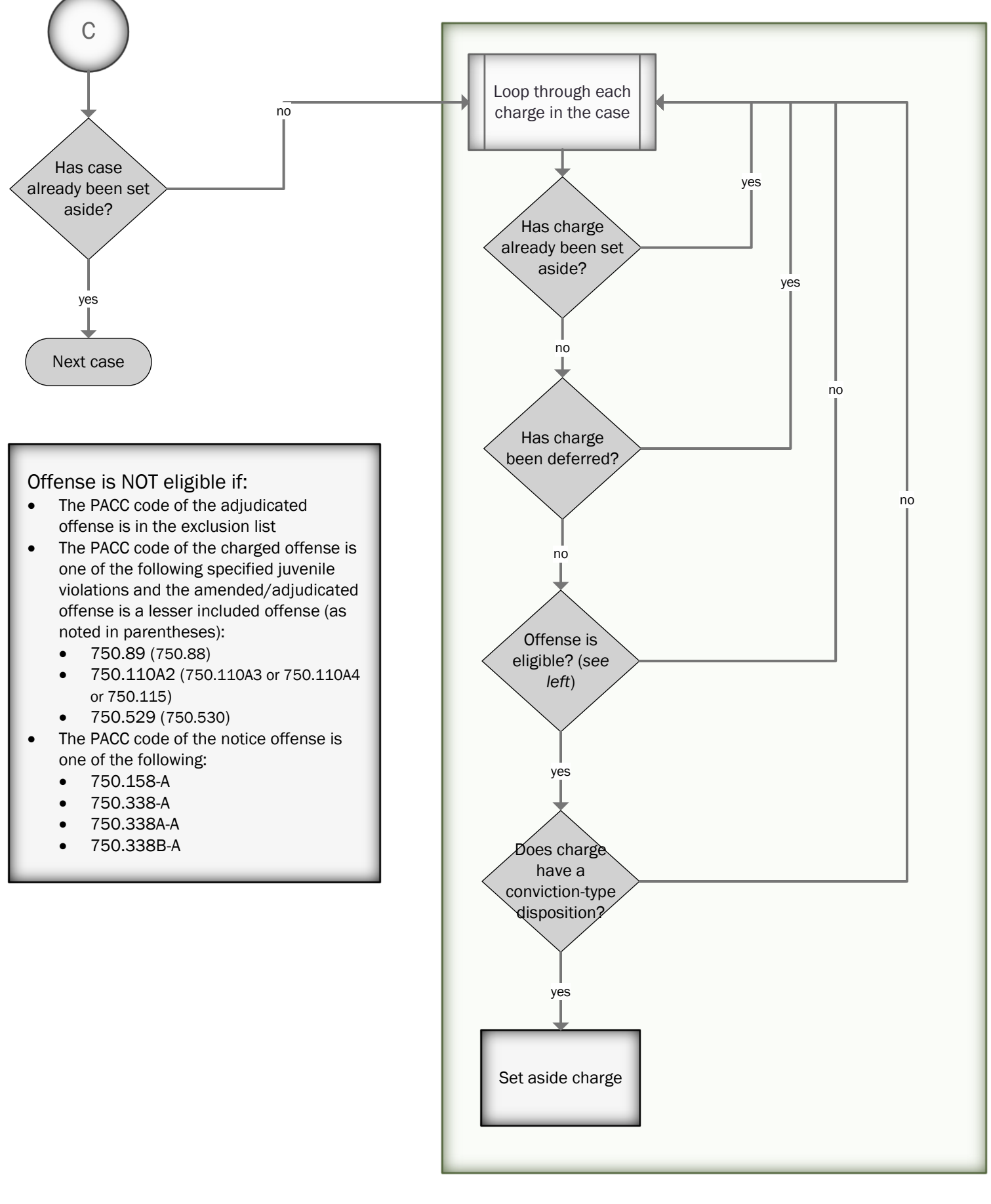
Start with the juvenile file. Determine eligibility based on juvenile's age and status of the file.



When the juvenile is 23 years or older OR when the file has been closed for more than 2 years, simply loop through each case/petition to determine set aside eligibility. For re-opened files, loop through the cases/petitions and check closure dates to determine eligibility.



Loop through each charge on the case to determine set aside eligibility.



Once a charge has been set aside, check if the case/petition and juvenile file are now eligible to be marked as set aside.

