



SENATE BILL No. 1178

September 24, 1996, Introduced by Senator CISKY and referred to the Committee on Judiciary.

A bill to amend section 18e of chapter XIIIA of Act No. 288 of the Public Acts of 1939, entitled as amended

"An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state, the powers and duties of such court and the judges and other officers thereof, certain aspects of the statutes of descent and distribution of property, and the statutes governing the change of name of adults and children, the adoption of adults and children, and the jurisdiction of the juvenile division of the probate court; to prescribe the powers and duties of the juvenile division of the probate court, and the judges and other officers thereof; to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court; to prescribe pleading, evidence, practice, and procedure in actions and proceedings in the juvenile division of the probate court; to provide for appeals from the juvenile division of the probate court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties for the violation of this act,"

as amended by Act No. 257 of the Public Acts of 1996, being section 712A.18e of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 18e of chapter XIIA of Act No. 288 of
2 the Public Acts of 1939, as amended by Act No. 257 of the Public
3 Acts of 1996, being section 712A.18e of the Michigan Compiled
4 Laws, is amended to read as follows:

5 CHAPTER XIIA

6 Sec. 18e. (1) Except as provided in subsection (2), a
7 person who has been adjudicated of not more than 1 juvenile
8 offense and who has no felony convictions may file an application
9 with the adjudicating court for the entry of an order setting
10 aside the adjudication. A person may have only 1 adjudication
11 set aside under this section.

12 (2) A person shall not apply under this section to have set
13 aside, and a judge shall not under this section set aside, any of
14 the following:

15 (a) An adjudication for an offense that if committed by an
16 adult would be a felony for which the maximum punishment is life
17 imprisonment, OTHER THAN A VIOLATION OF SECTION 520B(1)(A) OF THE
18 MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931,
19 BEING SECTION 750.520B OF THE MICHIGAN COMPILED LAWS.

20 (b) An adjudication for a traffic offense under the Michigan
21 vehicle code, Act No. 300 of the Public Acts of 1949, being sec-
22 tions 257.1 to 257.923 of the Michigan Compiled Laws, or a local
23 ordinance substantially corresponding to that act, that involves
24 the operation of a vehicle and at the time of the violation is a
25 felony or misdemeanor.

1 (c) A conviction under section 2d of this chapter. This
2 subdivision does not prevent a person convicted under section 2d
3 of this chapter from having that conviction set aside as other-
4 wise provided by law.

5 (3) An application under this section shall not be filed
6 until the expiration of 5 years following imposition of the dis-
7 position for the adjudication that the applicant seeks to set
8 aside, or 5 years following completion of any term of detention
9 for that adjudication, or when the person becomes 24 years of
10 age, whichever occurs later.

11 (4) An application under this section is invalid unless it
12 contains the following information and is signed under oath by
13 the person whose adjudication is to be set aside:

14 (a) The full name and current address of the applicant.

15 (b) A certified record of the adjudication that is to be set
16 aside.

17 (c) A statement that the applicant has not been adjudicated
18 of a juvenile offense other than the one that is sought to be set
19 aside as a result of this application.

20 (d) A statement that the applicant has not been convicted of
21 any felony offense.

22 (e) A statement as to whether the applicant has previously
23 filed an application to set aside this or any other adjudication
24 and, if so, the disposition of the application.

25 (f) A statement as to whether the applicant has any other
26 criminal charge pending against him or her in any court in the
27 United States or in any other country.

1 (g) A consent to the use of the nonpublic record created
2 under subsection (13), to the extent authorized by subsection
3 (13).

4 (5) The applicant shall submit a copy of the application and
5 2 complete sets of fingerprints to the department of state
6 police. The department of state police shall compare those fin-
7 gerprints with the records of the department, including the non-
8 public record created under subsection (13), and shall forward a
9 complete set of fingerprints to the federal bureau of investiga-
10 tion for a comparison with the records available to that agency.
11 The department of state police shall report to the court in which
12 the application is filed the information contained in the
13 department's records with respect to any pending charges against
14 the applicant, any record of adjudication or conviction of the
15 applicant, and the setting aside of any adjudication or convic-
16 tion of the applicant and shall report to the court any similar
17 information obtained from the federal bureau of investigation.
18 The court shall not act upon the application until the department
19 of state police reports the information required by this subsec-
20 tion to the court.

21 (6) The copy of the application submitted to the department
22 of state police ~~pursuant to~~ UNDER subsection (5) shall be
23 accompanied by a fee of \$25.00 payable to the state of Michigan.
24 The department of state police shall use the fee to defray the
25 expenses incurred in processing the application.

26 (7) A copy of the application shall be served upon the
27 attorney general and, if applicable, upon the office of the

1 prosecuting attorney who prosecuted the offense. The attorney
2 general and the prosecuting attorney shall have an opportunity to
3 contest the application. If the adjudication was for an offense
4 that if committed by an adult would be an assaultive crime or
5 serious misdemeanor, and if the name of the victim is known to
6 the prosecuting attorney, the prosecuting attorney shall give the
7 the victim of that offense written notice of the application and
8 forward a copy of the application to the victim under section 46a
9 of the crime victim's rights act, Act No. 87 of the Public Acts
10 of 1985, being section 780.796a of the Michigan Compiled Laws.

11 The notice shall be sent by first-class mail to the victim's last
12 known address. The victim has the right to appear at any pro-
13 ceeding under this section concerning that adjudication and to
14 make a written or oral statement. As used in this subsection:

15 (a) "Assaultive crime" means that term as defined in section
16 9a of chapter X of the code of criminal procedure, Act No. 175 of
17 the Public Acts of 1927, being section 770.9a of the Michigan
18 Compiled Laws.

19 (b) "Serious misdemeanor" means that term as defined in sec-
20 tion 61 of Act No. 87 of the Public Acts of 1985, being section
21 780.811 of the Michigan Compiled Laws.

22 (c) "Victim" means that term as defined in section 31 of Act
23 No. 87 of the Public Acts of 1985, being section 780.781 of the
24 Michigan Compiled Laws.

25 (8) Upon the hearing of the application, the court may
26 require the filing of affidavits and the taking of proofs as it
27 considers proper.

1 (9) Except as provided in subsection (10), if the court
2 determines that the circumstances and behavior of the applicant
3 from the date of the applicant's adjudication to the filing of
4 the application warrant setting aside the adjudication and that
5 setting aside the adjudication is consistent with the public wel-
6 fare, the court may enter an order setting aside the
7 adjudication. Except as provided in subsection (10), the setting
8 aside of an adjudication under this section is a privilege and
9 conditional, and is not a right.

10 (10) Notwithstanding subsection (9), the court shall set
11 aside the adjudication of a person who was adjudicated for an
12 offense that if committed by an adult would be a violation or an
13 attempted violation of section 413 of the Michigan penal code,
14 Act No. 328 of the Public Acts of 1931, being section 750.413 of
15 the Michigan Compiled Laws, if the person files an application
16 with the court and otherwise meets the requirements of this
17 section.

18 (11) Upon the entry of an order under this section, the
19 applicant is considered not to have been previously adjudicated,
20 except as provided in subsection (13) and as follows:

21 (a) The applicant is not entitled to the remission of any
22 fine, costs, or other money paid as a consequence of an adjudica-
23 tion that is set aside.

24 (b) This section does not affect the right of the applicant
25 to rely upon the adjudication to bar subsequent proceedings for
26 the same offense.

1 (c) This section does not affect the right of a victim of an
2 offense to prosecute or defend a civil action for damages.

3 (d) This section does not create a right to commence an
4 action for damages for detention under the disposition that the
5 applicant served before the adjudication is set aside pursuant to
6 this section.

7 (12) Upon the entry of an order under this section, the
8 court shall send a copy of the order to the arresting agency and
9 the department of state police.

10 (13) The department of state police shall retain a nonpublic
11 record of the order setting aside an adjudication and of the
12 record of the arrest, fingerprints, adjudication, and disposition
13 of the applicant in the case to which the order applies. Except
14 as provided in subsection (14), this nonpublic record shall be
15 made available only to a court of competent jurisdiction, an
16 agency of the judicial branch of state government, a law enforce-
17 ment agency, a prosecuting attorney, the attorney general, or the
18 governor upon request and only for the following purposes:

19 (a) Consideration in a licensing function conducted by an
20 agency of the judicial branch of state government.

21 (b) Consideration by a law enforcement agency if a person
22 whose adjudication has been set aside applies for employment with
23 the law enforcement agency.

24 (c) To show that a person who has filed an application to
25 set aside an adjudication has previously had an adjudication set
26 aside under this section.

1 (d) The court's consideration in determining the sentence to
2 be imposed upon conviction for a subsequent offense that is
3 punishable as a felony or by imprisonment for more than 1 year.

4 (e) Consideration by the governor, if a person whose adjudi-
5 cation has been set aside applies for a pardon for another
6 offense.

7 (14) A copy of the nonpublic record created under subsection
8 (13) shall be provided to the person whose adjudication is set
9 aside under this section upon payment of a fee determined and
10 charged by the department of state police in the same manner as
11 the fee prescribed in section 4 of the freedom of information
12 act, Act No. 442 of the Public Acts of 1976, being section 15.234
13 of the Michigan Compiled Laws.

14 (15) The nonpublic record maintained under subsection (13)
15 is exempt from disclosure under Act No. 442 of the Public Acts of
16 1976, being sections 15.231 to 15.246 of the Michigan Compiled
17 Laws.

18 (16) Except as provided in subsection (13), a person, other
19 than the applicant, who knows or should have known that an adju-
20 dication was set aside under this section, who divulges, uses, or
21 publishes information concerning an adjudication set aside under
22 this section is guilty of a misdemeanor.