

SUBSTITUTE FOR

HOUSE BILL NO. 5600

(As amended December 13, 2012)

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 18e of chapter XIIA (MCL 712A.18e), as amended
by 1996 PA 257.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER XIIA

2

Sec. 18e. (1) Except as provided in subsection (2), a person

3

who has been adjudicated of not more than 1 juvenile offense **THAT**

4

WOULD BE A FELONY IF COMMITTED BY AN ADULT AND NOT MORE THAN <<3

5

**JUVENILE OFFENSES, OF WHICH NOT MORE THAN 1 MAY BE A JUVENILE OFFENSE
THAT WOULD BE A FELONY >> IF COMMITTED BY AN**

6

ADULT and who has no felony convictions may file an application

7

with the adjudicating court **<<OR ADJUDICATING COURTS>>** for the entry
of an order setting aside

8

the ~~adjudication~~ **ADJUDICATIONS**. A person may have only 1

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1 adjudication FOR AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY
 2 AN ADULT AND NOT MORE THAN 2 ADJUDICATIONS FOR AN OFFENSE THAT
 3 WOULD BE A MISDEMEANOR IF COMMITTED BY AN ADULT <<OR IF THERE IS
 NO ADJUDICATION FOR A FELONY IF COMMITTED BY AN ADULT, NOT MORE
 THAN 3 ADJUDICATIONS FOR AN OFFENSE THAT WOULD BE A MISDEMEANOR IF
 COMMITTED BY AN ADULT>> set aside under
 4 this section. MULTIPLE ADJUDICATIONS ARISING OUT OF A SERIES OF
 5 ACTS THAT WERE IN A CONTINUOUS TIME SEQUENCE OF 12 HOURS OR LESS
 6 AND THAT DISPLAYED A SINGLE INTENT AND GOAL CONSTITUTE 1 OFFENSE
 7 PROVIDED THAT NONE OF THE ADJUDICATIONS CONSTITUTE ANY OF THE
 8 FOLLOWING:

9 (A) AN ASSAULTIVE CRIME AS THAT TERM IS DEFINED IN SUBSECTION
 10 (7).

11 (B) AN OFFENSE INVOLVING THE USE OR POSSESSION OF A WEAPON.

12 (C) AN OFFENSE WITH A MAXIMUM PENALTY OF 10 OR MORE YEARS
 13 IMPRISONMENT.

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

17 (a) An adjudication for an offense that if committed by an
 18 adult would be a felony for which the maximum punishment is life
 19 imprisonment.

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

26 (c) A conviction under section 2d of this chapter. This
 27 subdivision does not prevent a person convicted under section 2d of

1 this chapter from having that conviction set aside as otherwise
2 provided by law.

3 (3) An application under this section shall not be filed until
4 the expiration of ~~5 years~~ **1 YEAR** following imposition of the
5 disposition for the adjudication that the applicant seeks to set
6 aside, or ~~5 years~~ **1 YEAR** following completion of any term of
7 detention for that adjudication, or when the person becomes ~~24~~ **18**
8 years of age, whichever occurs later.

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

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

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

15 (c) A statement that the applicant has not been adjudicated of
16 a juvenile offense other than the ~~one that is~~ **JUVENILE OFFENSES**
17 sought to be set aside as a result of this application.

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

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

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

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

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

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

22 (7) A copy of the application shall be served upon the
23 attorney general and, if applicable, upon the office of the
24 prosecuting attorney who prosecuted the offense. The attorney
25 general and the prosecuting attorney shall have an opportunity to
26 contest the application. If the adjudication was for an offense
27 that if committed by an adult would be an assaultive crime or

1 serious misdemeanor, and if the name of the victim is known to the
2 prosecuting attorney, the prosecuting attorney shall give the
3 victim of that offense written notice of the application and
4 forward a copy of the application to the victim under section 46a
5 of the **WILLIAM VAN REGENMORTER** crime victim's rights act, ~~Act No.~~
6 ~~87 of the Public Acts of 1985, being section 780.796a of the~~
7 ~~Michigan Compiled Laws 1985 PA 87, MCL 780.796A.~~ The notice shall
8 be sent by first-class mail to the victim's last known address. The
9 victim has the right to appear at any proceeding under this section
10 concerning that adjudication and to make a written or oral
11 statement. As used in this subsection:

12 (a) "Assaultive crime" means that term as defined in section
13 9a of chapter X of the code of criminal procedure, ~~Act No. 175 of~~
14 ~~the Public Acts of 1927, being section 770.9a of the Michigan~~
15 ~~Compiled Laws 1927 PA 175, MCL 770.9A.~~

16 (b) "Serious misdemeanor" means that term as defined in
17 section 61 of ~~Act No. 87 of the Public Acts of 1985, being section~~
18 ~~780.811 of the Michigan Compiled Laws~~ **THE WILLIAM VAN REGENMORTER**
19 **CRIME VICTIM'S RIGHTS ACT, 1985 PA 87, MCL 780.781.**

20 (c) "Victim" means that term as defined in section 31 of ~~Act~~
21 ~~No. 87 of the Public Acts of 1985, being section 780.781 of the~~
22 ~~Michigan Compiled Laws~~ **THE WILLIAM VAN REGENMORTER CRIME VICTIM'S**
23 **RIGHTS ACT, 1985 PA 87, MCL 780.781.**

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

27 (9) Except as provided in subsection (10), if the court

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determines that the circumstances and behavior of the applicant from the date of the applicant's adjudication to the filing of the application warrant setting aside the 1 adjudication **FOR A JUVENILE OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT AND NOT MORE THAN 2 ADJUDICATIONS FOR A JUVENILE OFFENSE THAT WOULD BE A MISDEMEANOR IF COMMITTED BY AN ADULT <<OR IF THERE IS NO ADJUDICATION FOR A FELONY IF COMMITTED BY AN ADULT, NOT MORE THAN 3 ADJUDICATIONS FOR AN OFFENSE THAT WOULD BE A MISDEMEANOR IF COMMITTED BY AN ADULT>>** and that setting aside the adjudication **OR ADJUDICATIONS** is consistent with the public welfare, the court may enter an order setting aside the adjudication. Except as provided in subsection (10), the setting aside of an adjudication under this section is a privilege and conditional, and is not a right.

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

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

(a) The applicant is not entitled to the remission of any fine, costs, or other money paid as a consequence of an adjudication that is set aside.

(b) This section does not affect the right of the applicant to rely upon the adjudication to bar subsequent proceedings for the

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1 same offense.

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

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

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

11 (13) The department of state police shall retain a nonpublic
12 record of the order setting aside an adjudication **FOR A JUVENILE**
13 **OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT AND NOT**
14 **MORE THAN 2 JUVENILE OFFENSES THAT WOULD BE MISDEMEANORS IF**
15 **COMMITTED BY AN ADULT <<OR IF THERE IS NO ADJUDICATION FOR A**
FELONY IF COMMITTED BY AN ADULT, NOT MORE THAN 3 ADJUDICATIONS FOR
AN OFFENSE THAT WOULD BE A MISDEMEANOR IF COMMITTED BY AN ADULT>>
and of the record of the arrest,

16 fingerprints, adjudication, and disposition of the applicant in the
17 case to which the order applies. Except as provided in subsection
18 (14), this nonpublic record shall be made available only to a court
19 of competent jurisdiction, an agency of the judicial branch of
20 state government, a law enforcement agency, a prosecuting attorney,
21 the attorney general, or the governor upon request and only for the
22 following purposes:

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

25 (b) Consideration by a law enforcement agency if a person
26 whose adjudication has been set aside applies for employment with
27 the law enforcement agency.

1 (c) To show that a person who has filed an application to set
2 aside an adjudication has previously had an adjudication set aside
3 under this section.

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

7 (e) Consideration by the governor, if a person whose
8 adjudication has been set aside applies for a pardon for another
9 offense.

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

17 (15) The nonpublic record maintained under subsection (13) is
18 exempt from disclosure under ~~Act No. 442 of the Public Acts of~~
19 ~~1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws~~
20 **THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.**

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