

# HOUSE BILL No. 5600

May 8, 2012, Introduced by Reps. Haveman, Bumstead, Hooker, Heise, Kurtz, Genetski, Lipton, MacMaster, Wayne Schmidt, Opsommer, Foster, Pettalia, Muxlow, Shirkey, Lori and Jackson and referred to the Committee on Judiciary.

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:

### CHAPTER XIIA

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

~~—— (2) A person shall not apply under this section to have set aside, and a judge shall not under this section set aside, any of~~

1 ~~the following:~~

2 ~~—— (a) An adjudication for an offense that if committed by an~~  
3 ~~adult would be a felony for which the maximum punishment is life~~  
4 ~~imprisonment.~~

5 ~~—— (b) An adjudication for a traffic offense under the Michigan~~  
6 ~~vehicle code, Act No. 300 of the Public Acts of 1949, being~~  
7 ~~sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local~~  
8 ~~ordinance substantially corresponding to that act, that involves~~  
9 ~~the operation of a vehicle and at the time of the violation is a~~  
10 ~~felony or misdemeanor.~~

11 ~~—— (c) A conviction under section 2d of this chapter. This~~  
12 ~~subdivision does not prevent a person convicted under section 2d of~~  
13 ~~this chapter from having that conviction set aside as otherwise~~  
14 ~~provided by law.~~

15 (1) A PERSON MAY FILE AN APPLICATION WITH THE ADJUDICATING  
16 COURT FOR THE ENTRY OF AN ORDER SETTING ASIDE 1 OR MORE JUVENILE  
17 ADJUDICATIONS AS FOLLOWS:

18 (A) A PERSON WHO HAS BEEN ADJUDICATED OF NOT MORE THAN 2  
19 JUVENILE OFFENSES AND WHO HAS NO FELONY CONVICTIONS MAY FILE AN  
20 APPLICATION WITH THE ADJUDICATING COURT OR ADJUDICATING COURTS FOR  
21 THE ENTRY OF AN ORDER SETTING ASIDE 1 OR BOTH OF THE ADJUDICATIONS.  
22 FOR THE PURPOSES OF ELIGIBILITY ONLY UNDER THIS SUBDIVISION, A  
23 TRAFFIC OFFENSE IS NOT A MISDEMEANOR, EXCEPT FOR A VIOLATION OF  
24 OPERATING WHILE INTOXICATED AS THAT TERM IS DEFINED IN SECTION 625  
25 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.625.

26 (B) A PERSON WHO HAS BEEN ADJUDICATED FOR 3 OR MORE JUVENILE  
27 OFFENSES AS A RESULT OF A SINGLE COURT DISPOSITION MAY FILE AN

1 APPLICATION WITH THE ADJUDICATING COURT FOR THE ENTRY OF AN ORDER  
2 SETTING ASIDE ALL ADJUDICATIONS RELATED TO THAT DISPOSITION. A  
3 PERSON SHALL NOT FILE AN APPLICATION UNDER THIS SUBDIVISION IF THAT  
4 PERSON HAS BEEN ADJUDICATED OR CONVICTED OF A MISDEMEANOR OR FELONY  
5 OFFENSE SUBSEQUENT TO THE DISPOSITION FOR WHICH THE PERSON IS  
6 APPLYING TO SET ASIDE 3 OR MORE JUVENILE OFFENSES. FOR THE PURPOSES  
7 OF ELIGIBILITY ONLY UNDER THIS SUBDIVISION, A TRAFFIC OFFENSE IS  
8 NOT A MISDEMEANOR, EXCEPT FOR A VIOLATION OF OPERATING WHILE  
9 INTOXICATED AS THAT TERM IS DEFINED IN SECTION 625 OF THE MICHIGAN  
10 VEHICLE CODE, 1949 PA 300, MCL 257.625.

11 (2) ~~(3)~~—An application under this section shall not be filed  
12 until the expiration of 5 years following imposition of the  
13 disposition for **ANY OF** the ~~adjudication~~ **ADJUDICATIONS** that the  
14 applicant seeks to set aside, or 5 years following completion of  
15 any term of detention for ~~that~~ **THE** adjudication **THAT THE PERSON**  
16 **SEEKS TO SET ASIDE**, or when the person becomes 24 years of age,  
17 whichever occurs later.

18 (3) ~~(4)~~—An application under this section is invalid unless it  
19 contains the following information and is signed under oath by the  
20 person whose adjudication is to be set aside:

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

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

24 (c) A statement that the applicant has not been adjudicated of  
25 a juvenile offense other than the ~~one~~ **JUVENILE OFFENSES** that ~~is~~ **ARE**  
26 sought to be set aside as a result of this application **OR AS**  
27 **PERMITTED UNDER SUBSECTION (1)**.

1 (d) A statement that the applicant has not been convicted of  
2 any felony offense **IF THE APPLICANT IS APPLYING UNDER SUBSECTION**  
3 **(1) (A) .**

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

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

10 (g) A consent to the use of the nonpublic record created under  
11 subsection ~~(13)~~, **(12)**, to the extent authorized by subsection ~~(13)~~  
12 **(12) .**

13 **(H) A STATEMENT THAT THE APPLICANT HAS NOT BEEN CONVICTED OF A**  
14 **MISDEMEANOR OR FELONY CRIMINAL OFFENSE IF THE APPLICANT IS APPLYING**  
15 **UNDER SUBSECTION (1) (B) .**

16 **(4)** ~~(5)~~—The applicant shall submit a copy of the application  
17 and 2 complete sets of fingerprints to the department of state  
18 police. The department of state police shall compare those  
19 fingerprints with the records of the department, including the  
20 nonpublic record created under subsection ~~(13)~~, **(12)**, and shall  
21 forward a complete set of fingerprints to the federal bureau of  
22 investigation for a comparison with the records available to that  
23 agency. The department of state police shall report to the court in  
24 which the application is filed the information contained in the  
25 department's records with respect to any pending charges against  
26 the applicant, any record of adjudication or conviction of the  
27 applicant, and the setting aside of any adjudication or conviction

1 of the applicant and shall report to the court any similar  
2 information obtained from the federal bureau of investigation. The  
3 court shall not act upon the application until the department of  
4 state police reports the information required by this subsection to  
5 the court.

6 (5) ~~(6)~~—The copy of the application submitted to the  
7 department of state police ~~pursuant to~~ **UNDER** subsection ~~(5)~~ **(4)**  
8 shall be accompanied by a fee of \$25.00 payable to the state of  
9 Michigan. The department of state police shall use the fee to  
10 defray the expenses incurred in processing the application.

11 (6) ~~(7)~~—A copy of the application shall be served upon the  
12 attorney general and, if applicable, upon the office of the  
13 prosecuting attorney who prosecuted the offense. The attorney  
14 general and the prosecuting attorney shall have an opportunity to  
15 contest the application. If the adjudication was for an offense  
16 that if committed by an adult would be an assaultive crime or  
17 serious misdemeanor, and if the name of the victim is known to the  
18 prosecuting attorney, the prosecuting attorney shall give the  
19 victim of that offense written notice of the application and  
20 forward a copy of the application to the victim under section 46a  
21 of the **WILLIAM VAN REGENMORTER** crime victim's rights act, ~~Act No.~~  
22 ~~87 of the Public Acts of 1985, being section 780.796a of the~~  
23 ~~Michigan Compiled Laws. 1985 PA 87, MCL 780.796A.~~ The notice shall  
24 be sent by first-class mail to the victim's last known address. The  
25 victim has the right to appear at any proceeding under this section  
26 concerning that adjudication and to make a written or oral  
27 statement. As used in this subsection:

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

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

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

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

(8) ~~(9)~~ Except as provided in subsection ~~(10)~~, ~~(9)~~, if the court determines that the circumstances and behavior of the applicant from the date of the applicant's **LAST** adjudication to the filing of the application warrant setting aside the adjudication and that setting aside the adjudication is consistent with the public welfare, the court may enter an order setting aside the adjudication. Except as provided in subsection ~~(10)~~, ~~(9)~~, the setting aside of an adjudication under this section is a privilege and conditional, and is not a right.

(9) ~~(10)~~ Notwithstanding subsection ~~(9)~~, ~~(8)~~, 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

1 attempted violation of section 413 of the Michigan penal code, ~~Act~~  
2 ~~No. 328 of the Public Acts of 1931, being section 750.413 of the~~  
3 ~~Michigan Compiled Laws, 1931 PA 328, MCL 750.413~~, if the person  
4 files an application with the court and otherwise meets the  
5 requirements of this section.

6 (10) ~~(11)~~ Upon the entry of an order under this section, the  
7 applicant is considered not to have been previously adjudicated **FOR**  
8 **THE JUVENILE OFFENSES THAT WERE SET ASIDE IN THAT ORDER**, except as  
9 provided in subsection ~~(13)~~ **(12)** and as follows:

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

13 (b) This section does not affect the right of the applicant to  
14 rely upon the adjudication to bar subsequent proceedings for the  
15 same offense.

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

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

22 (11) ~~(12)~~ Upon the entry of an order under this section, the  
23 court shall send a copy of the order to the arresting agency and  
24 the department of state police.

25 (12) ~~(13)~~ The department of state police shall retain a  
26 nonpublic record of the order setting aside an adjudication and of  
27 the record of the arrest, fingerprints, adjudication, and

1 disposition of the applicant in the case to which the order  
2 applies. Except as provided in subsection ~~(14)~~, **(13)**, this  
3 nonpublic record shall be made available only to a court of  
4 competent jurisdiction, an agency of the judicial branch of state  
5 government, a law enforcement agency, a prosecuting attorney, the  
6 attorney general, or the governor upon request and only for the  
7 following purposes:

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

10 (b) Consideration by a law enforcement agency if a person  
11 whose adjudication has been set aside applies for employment with  
12 the law enforcement agency.

13 (c) To show that a person who has filed an application to set  
14 aside an adjudication has previously had an adjudication set aside  
15 under this section.

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

19 (e) Consideration by the governor, if a person whose  
20 adjudication has been set aside applies for a pardon for another  
21 offense.

22 **(13)** ~~(14)~~ A copy of the nonpublic record created under  
23 subsection ~~(13)~~ **(12)** shall be provided to the person whose  
24 adjudication is set aside under this section upon payment of a fee  
25 determined and charged by the department of state police in the  
26 same manner as the fee prescribed in section 4 of the freedom of  
27 information act, ~~Act No. 442 of the Public Acts of 1976, being~~



1 ~~section 15.234 of the Michigan Compiled Laws. 1976 PA 442, MCL~~  
2 ~~15.234.~~

3 (14) ~~(15)~~ The nonpublic record maintained under subsection  
4 ~~(13)~~ (12) is exempt from disclosure under ~~Act No. 442 of the Public~~  
5 ~~Acts of 1976, being sections 15.231 to 15.246 of the Michigan~~  
6 ~~Compiled Laws.~~ **THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL**  
7 **15.231 TO 15.246.**

8 (15) ~~(16)~~ Except as provided in subsection ~~(13)~~, (12), a  
9 person, other than the applicant, who knows or should have known  
10 that an adjudication was set aside under this section, who  
11 divulges, uses, or publishes information concerning an adjudication  
12 set aside under this section is guilty of a misdemeanor.

13 (16) **IF A PETITION UNDER THIS SECTION IS DENIED BY THE**  
14 **ADJUDICATING COURT, A PERSON SHALL NOT FILE ANOTHER PETITION**  
15 **CONCERNING THE SAME ADJUDICATION WITH THE ADJUDICATING COURT UNTIL**  
16 **3 YEARS AFTER THE ADJUDICATING COURT DENIES THE PREVIOUSLY FILED**  
17 **PETITION.**