

HOUSE BILL No. 5543

April 12, 2016, Introduced by Rep. Howell and referred to the Committee on Criminal Justice.

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 2012 PA 527.

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 that
would be a felony if committed by an adult and not more than 3
juvenile offenses, of which not more than 1 may be a juvenile
offense that would be a felony if committed by an adult and who has
no felony convictions may file an application with the adjudicating

1 court or adjudicating courts for the entry of an order setting
2 aside the adjudications. A person may have only 1 adjudication for
3 an offense that would be a felony if committed by an adult and not
4 more than 2 adjudications for an offense that would be a
5 misdemeanor if committed by an adult or if there is no adjudication
6 for a felony if committed by an adult, not more than 3
7 adjudications for an offense that would be a misdemeanor if
8 committed by an adult set aside under this section. Multiple
9 adjudications arising out of a series of acts that were in a
10 continuous time sequence of 12 hours or less and that displayed a
11 single intent and goal constitute 1 offense provided that none of
12 the adjudications constitute any of the following:

13 (a) An assaultive crime as that term is defined in subsection
14 (7).

15 (b) An offense involving the use or possession of a weapon.

16 (c) An offense with a maximum penalty of 10 or more years
17 imprisonment.

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

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

24 (b) An adjudication for a traffic offense under the Michigan
25 vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a local
26 ordinance substantially corresponding to that act, that involves
27 the operation of a vehicle and at the time of the violation is a

1 felony or misdemeanor.

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

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

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

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

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

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

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

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

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

1 United States or in any other country.

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

4 (5) The applicant shall submit a copy of the application and 2
5 complete sets of fingerprints to the department of state police.

6 The department of state police shall compare those fingerprints
7 with the records of the department, including the nonpublic record
8 created under subsection (13), and shall forward a complete set of
9 fingerprints to the ~~federal bureau of investigation~~ **FEDERAL BUREAU**

10 **OF INVESTIGATION** for a comparison with the records available to

11 that agency. The department of state police shall report to the

12 court in which the application is filed the information contained

13 in the department's records with respect to any pending charges

14 against the applicant, any record of adjudication or conviction of

15 the applicant, and the setting aside of any adjudication or

16 conviction of the applicant and shall report to the court any

17 similar information obtained from the ~~federal bureau of~~

18 ~~investigation.~~ **FEDERAL BUREAU OF INVESTIGATION.** The court shall not

19 act upon the application until the department of state police

20 reports the information required by this subsection to the court.

21 (6) The copy of the application submitted to the department of

22 state police under subsection (5) shall be accompanied by a fee of

23 \$25.00 payable to the state of Michigan. The department of state

24 police shall use the fee to defray the expenses incurred in

25 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 the
6 prosecuting attorney, the prosecuting attorney shall give the
7 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 William Van Regenmorter crime victim's rights act, 1985 PA
10 87, MCL 780.796a. The notice shall be sent by first-class mail to
11 the victim's last known address. The victim has the right to appear
12 at any proceeding under this section concerning that adjudication
13 and to make a written or oral statement. As used in this
14 subsection:

15 (a) "Assaultive crime" means that term as defined in section
16 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
17 770.9a.

18 (b) "Serious misdemeanor" means that term as defined in
19 section ~~61-31~~ 31 of the William Van Regenmorter crime victim's rights
20 act, 1985 PA 87, MCL 780.781.

21 (c) "Victim" means that term as defined in section 31 of the
22 William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL
23 780.781.

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

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~~ **IF THE PERSON FILES AN APPLICATION WITH THE COURT AND HE OR SHE OTHERWISE MEETS ALL THE REQUIREMENTS, NOTWITHSTANDING** subsection (9), the court shall set aside the adjudication of a person ~~who~~ **AS FOLLOWS:**

(A) THE PERSON 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, 1931 PA 328, MCL 750.413. ~~, if the person files an application with the court and otherwise meets the requirements of this section.~~

(B) THE PERSON WAS ADJUDICATED FOR AN OFFENSE THAT IF COMMITTED BY AN ADULT WOULD BE A VIOLATION OR AN ATTEMPTED VIOLATION OF SECTION 448, 449, OR 450 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.448, 750.449, AND 750.450, OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO SECTION 448, 449, OR 450

1 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.448, 750.449, AND
2 750.450, AND HE OR SHE COMMITTED THE OFFENSE AS A DIRECT RESULT OF
3 HIS OR HER BEING A VICTIM OF A HUMAN TRAFFICKING VIOLATION.

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

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

10 (b) This section does not affect the right of the applicant to
11 rely upon the adjudication to bar subsequent proceedings for the
12 same offense.

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

15 (d) This section does not create a right to commence an action
16 for damages for detention under the disposition that the applicant
17 served before the adjudication is set aside under this section.

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

21 (13) The department of state police shall retain a nonpublic
22 record of the order setting aside an adjudication for a juvenile
23 offense that would be a felony if committed by an adult and not
24 more than 2 juvenile offenses that would be misdemeanors if
25 committed by an adult or if there is no adjudication for a felony
26 if committed by an adult, not more than 3 adjudications for an
27 offense that would be a misdemeanor if committed by an adult and of

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

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

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

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

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

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

23 (14) A copy of the nonpublic record created under subsection
24 (13) shall be provided to the person whose adjudication is set
25 aside under this section upon payment of a fee determined and
26 charged by the department of state police in the same manner as the
27 fee prescribed in section 4 of the freedom of information act, 1976

1 PA 442, MCL 15.234.

2 (15) The nonpublic record maintained under subsection (13) is
3 exempt from disclosure under the freedom of information act, 1976
4 PA 442, MCL 15.231 to 15.246.

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

10 Enacting section 1. This amendatory act takes effect 90 days
11 after the date it is enacted into law.