

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 681

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 2018 PA 142, and by adding section 18t to chapter XIIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

Sec. 18e. (1) Except as **otherwise** provided in subsection (2)
and section 18t of this chapter, 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 court or adjudicating



courts for the entry of an order setting aside the adjudications. A person may have only 1 adjudication for an offense that would be a felony if committed by an adult and not more than 2 adjudications for an 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 set aside under this section. Multiple adjudications arising out of a series of acts that were in a continuous time sequence of 12 hours or less and that displayed a single intent and goal constitute 1 offense provided that none of the adjudications constitute any of the following:

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

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

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

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

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

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

(b) ~~(c)~~ A conviction under section 2d of this chapter. This 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 1 year ~~following imposition of the disposition~~
5 ~~for the adjudication that the applicant seeks to set aside, or 1~~
6 ~~year following completion of any term of detention for that~~
7 ~~adjudication, or when the person becomes 18 years of age, whichever~~
8 ~~occurs later.~~ **after the termination of jurisdiction.**

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 juvenile offenses sought to be
17 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).

28 **(5) Upon application, the adjudicating court or adjudicating**
29 **courts shall locate any court records or documents necessary to**



1 **conduct a hearing under this section.**

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

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

23 (7) A copy of the application ~~shall~~ **must** be served upon the
24 attorney general and, if applicable, upon the office of the
25 prosecuting attorney who prosecuted the offense. The attorney
26 general and the prosecuting attorney shall have an opportunity to
27 contest the application. **If the attorney general or prosecuting**
28 **attorney wishes to contest an application, the attorney general or**
29 **prosecuting attorney must do so not later than 35 days after**



1 **service.** If the adjudication was for an offense that if committed
2 by an adult would be an assaultive crime or serious misdemeanor,
3 and if the name of the victim is known to the prosecuting attorney,
4 the prosecuting attorney shall give the victim of that offense
5 written notice of the application and forward a copy of the
6 application to the victim under section 46a of the William Van
7 Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.796a.
8 The notice ~~shall~~**must** be sent by first-class mail to the victim's
9 last known address. The victim has the right to appear at any
10 proceeding under this section concerning that adjudication and to
11 make a written or oral 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, 1927 PA 175, MCL
14 770.9a.

15 (b) "Serious misdemeanor" means that term as defined in
16 section 61 of the William Van Regenmorter crime victim's rights
17 act, 1985 PA 87, MCL 780.811.

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

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

24 (9) Except as provided in this subsection and subsection (10),
25 if the court determines that the circumstances and behavior of the
26 applicant from the date of the applicant's adjudication to the
27 filing of the application warrant setting aside the 1 adjudication
28 for a juvenile offense that would be a felony if committed by an
29 adult and not more than 2 adjudications for a juvenile offense that



1 would be a misdemeanor if committed by an adult or if there is no
2 adjudication for a felony if committed by an adult, not more than 3
3 adjudications for an offense that would be a misdemeanor if
4 committed by an adult and that setting aside the adjudication or
5 adjudications is consistent with the public welfare, the court may
6 enter an order setting aside the adjudication. If the applicant
7 submits to the court a certificate of completion from the Michigan
8 youth challenge academy showing that the applicant has completed
9 that program, the court shall determine that the applicant's
10 circumstances and behavior warrant setting aside the adjudication.
11 If the court also determines that setting aside the adjudication or
12 adjudications is consistent with the public welfare, the court may
13 enter an order setting aside the adjudication as provided in this
14 subsection. Except as provided in subsection (10), the setting
15 aside of an adjudication under this section is a privilege and
16 conditional, and is not a right.

17 (10) If the person files an application with the court and he
18 or she otherwise meets all the requirements, notwithstanding
19 subsection (9), the court shall set aside the adjudication of a
20 person as follows:

21 (a) The person was adjudicated for an offense that if
22 committed by an adult would be a violation or an attempted
23 violation of section 413 of the Michigan penal code, 1931 PA 328,
24 MCL 750.413.

25 (b) The person was adjudicated for an offense that if
26 committed by an adult would be a violation or an attempted
27 violation of section 448, 449, or 450 of the Michigan penal code,
28 1931 PA 328, MCL 750.448, 750.449, and 750.450, or a local
29 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
28 the record of the arrest, fingerprints, adjudication, and
29 disposition of the applicant in the case to which the order



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

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

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

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

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

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

21 (14) A copy of the nonpublic record created under subsection
22 (13) ~~shall~~**must** be provided to the person whose adjudication is set
23 aside under this section upon payment of a fee determined and
24 charged by the department of state police in the same manner as the
25 fee prescribed in section 4 of the freedom of information act, 1976
26 PA 442, MCL 15.234.

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



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

6 (17) An order setting aside an adjudication for a traffic
7 offense under this section must not require that the conviction be
8 removed or expunged from the applicant's driving record maintained
9 by the secretary of state as required under the Michigan vehicle
10 code, 1949 PA 300, MCL 257.1 to 257.923.

11 Sec. 18t. (1) Except as otherwise provided in this section,
12 beginning 2 years after the effective date of the amendatory act
13 that added this section, an adjudication is set aside under this
14 section without filing an application under section 18e of this
15 chapter 2 years after the termination of court supervision or when
16 the person becomes 18 years of age, whichever is later.

17 (2) Subsection (1) does not apply to an adjudication for an
18 offense described under section 2(a)(1)(A) to (I) of this chapter,
19 to a conviction or adjudication as described under section 18e(2)
20 of this chapter, or to a conviction or adjudication for a violation
21 of section 81a, 82, 90, 136b, 321, 322, 397, 411h, 411i, 520d,
22 520g, or 543k of the Michigan penal code, 1931 PA 328, MCL 750.81a,
23 750.82, 750.90, 750.136b, 750.321, 750.322, 750.397, 750.411h,
24 750.411i, 750.520d, 750.520g, and 750.543k.

25 (3) The attorney general and the prosecuting attorney who
26 prosecuted the offense shall not contest the setting aside of an
27 adjudication without an application under this section.

28 (4) Upon the setting aside of an adjudication under this
29 section, the person is considered not to have been previously



1 adjudicated, except as provided in subsection (6) and as follows:

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

5 (b) This section does not affect the right of the person to
6 rely upon the adjudication to bar subsequent proceedings for the
7 same offense.

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

10 (d) This section does not create a right to commence an action
11 for damages for detention under the disposition that the person
12 served before the adjudication is set aside under this section.

13 (e) Research on the utilization and effectiveness of the set-
14 aside process.

15 (5) Upon the setting aside of an adjudication under this
16 section, the court shall notify the arresting agency and the
17 department of state police that the adjudication has been set
18 aside.

19 (6) The department of state police shall retain a nonpublic
20 record of an adjudication for a juvenile offense that is set aside
21 under this section and of the record of the arrest, fingerprints,
22 adjudication, and disposition of the person in the case. Except as
23 provided in subsection (7), this nonpublic record must be made
24 available only to a court of competent jurisdiction, an agency of
25 the judicial branch of state government, a law enforcement agency,
26 a prosecuting attorney, the attorney general, or the governor upon
27 request and only for the following purposes:

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



1 (b) Consideration by a law enforcement agency if a person
2 whose adjudication has been set aside applies for employment with
3 the law enforcement agency.

4 (c) 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 (d) Consideration by the governor, if a person whose
8 adjudication has been set aside under this section applies for a
9 pardon for another offense.

10 (7) A copy of the nonpublic record created under subsection
11 (6) must be provided to the person whose adjudication is set aside
12 under this section upon payment of a fee determined and charged by
13 the department of state police in the same manner as the fee
14 prescribed in section 4 of the freedom of information act, 1976 PA
15 442, MCL 15.234.

16 (8) The nonpublic record maintained under subsection (6) is
17 exempt from disclosure under the freedom of information act, 1976
18 PA 442, MCL 15.231 to 15.246.

19 (9) Except as provided in subsection (6), a person, other than
20 the person whose adjudication is set aside under this section or a
21 victim, who knows or should have known that an adjudication was set
22 aside under this section, and who divulges, uses, or publishes
23 information concerning an adjudication set aside under this section
24 is guilty of a misdemeanor. As used in this subsection, "victim"
25 means any individual who suffered direct or threatened physical,
26 financial, or emotional harm as the result of the offense that was
27 committed by the person whose adjudication is set aside under this
28 section.

29 (10) An adjudication set aside for a traffic offense under



1 this section must not be removed or expunged from the driving
2 record of the person whose adjudication has been set aside
3 maintained by the secretary of state as required under the Michigan
4 vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

5 (11) If the governor determines that the process for setting
6 aside an adjudication without an application under this section
7 cannot be implemented by the date required under subsection (1)
8 because of technological limitations, the governor may issue a
9 directive delaying the implementation of this section for not more
10 than 180 days. The attorney general, the state court administrator,
11 or the director of the department of state police may recommend a
12 delay of implementation to the governor under this subsection.

13 Enacting section 1. This amendatory act takes effect 180 days
14 after the date it is enacted into law.

