

# HOUSE BILL NO. 4093

February 03, 2021, Introduced by Reps. Kahle, Whitsett, Glenn, Whiteford, Calley, Brabec, Rendon, Paquette, Bollin, Wozniak, Lasinski, Clemente, Camilleri, Hammoud, Yancey, Anthony, Puri, Thanedar, Bolden, Stone and Jones 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 2020 PA 361.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XIIA  
2 Sec. 18e. (1) Except as otherwise provided in subsection (2)  
3 and section 18t of this chapter, a person who has been adjudicated  
4 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, 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) A conviction under section 2d of this chapter. This subdivision does not prevent a person convicted under section 2d of this chapter from having that conviction set aside as otherwise

1 provided by law.

2 (3) An application under this section ~~shall~~**must** not be filed  
3 until the expiration of 1 year after the termination of  
4 jurisdiction.

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

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

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

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

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

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

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

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

24 (5) Upon application, the adjudicating court or adjudicating  
25 courts shall locate any court records or documents necessary to  
26 conduct a hearing under this section.

27 (6) The applicant shall submit a copy of the application and 2  
28 complete sets of fingerprints to the department of state police.  
29 The department of state police shall compare those fingerprints

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

14 (7) A copy of the application must be served upon the attorney  
15 general and, if applicable, upon the office of the prosecuting  
16 attorney who prosecuted the offense. The attorney general and the  
17 prosecuting attorney shall have an opportunity to contest the  
18 application. If the attorney general or prosecuting attorney wishes  
19 to contest an application, the attorney general or prosecuting  
20 attorney must do so not later than 35 days after service. If the  
21 adjudication was for an offense that if committed by an adult would  
22 be an assaultive crime or serious misdemeanor, and if the name of  
23 the victim is known to the prosecuting attorney, the prosecuting  
24 attorney shall give the victim of that offense written notice of  
25 the application and forward a copy of the application to the victim  
26 under section 46a of the William Van Regenmorter crime victim's  
27 rights act, 1985 PA 87, MCL 780.796a. The notice must be sent by  
28 first-class mail to the victim's last known address. The victim has  
29 the right to appear at any proceeding under this section concerning

1 that adjudication and to make a written or oral statement. As used  
2 in this subsection:

3 (a) "Assaultive crime" means that term as defined in section  
4 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL  
5 770.9a.

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

9 (c) "Victim" means that term as defined in section 31 of the  
10 William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL  
11 780.781.

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

15 (9) Except as provided in this subsection and subsection (10),  
16 if the court determines that the circumstances and behavior of the  
17 applicant from the date of the applicant's adjudication to the  
18 filing of the application warrant setting aside the 1 adjudication  
19 for a juvenile offense that would be a felony if committed by an  
20 adult and not more than 2 adjudications for a juvenile offense that  
21 would be a misdemeanor if committed by an adult or if there is no  
22 adjudication for a felony if committed by an adult, not more than 3  
23 adjudications for an offense that would be a misdemeanor if  
24 committed by an adult and that setting aside the adjudication or  
25 adjudications is consistent with the public welfare, the court may  
26 enter an order setting aside the adjudication. If the applicant  
27 submits to the court a certificate of completion from the Michigan  
28 youth challenge academy showing that the applicant has completed  
29 that program, the court shall determine that the applicant's

1 circumstances and behavior warrant setting aside the adjudication.  
2 If the court also determines that setting aside the adjudication or  
3 adjudications is consistent with the public welfare, the court may  
4 enter an order setting aside the adjudication as provided in this  
5 subsection. Except as provided in subsection (10), the setting  
6 aside of an adjudication under this section is a privilege and  
7 conditional, and is not a right.

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

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

16 (b) The person was adjudicated for an offense that if  
17 committed by an adult would be a ~~violation or an attempted~~  
18 ~~violation of section 448, 449, or 450 of the Michigan penal code,~~  
19 ~~1931 PA 328, MCL 750.448, 750.449, and 750.450, felony, a~~  
20 **misdemeanor**, or a **violation of a** local ordinance ~~substantially~~  
21 ~~corresponding to section 448, 449, or 450 of the Michigan penal~~  
22 ~~code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, and he or she~~  
23 committed the offense as a direct result of his or her being a  
24 victim of a human trafficking violation.

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

28 (a) The applicant is not entitled to the remission of any  
29 fine, costs, or other money paid as a consequence of an

1 adjudication that is set aside.

2 (b) This section does not affect the right of the applicant to  
3 rely upon the adjudication to bar subsequent proceedings for the  
4 same offense.

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

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

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

13 (13) The department of state police shall retain a nonpublic  
14 record of the order setting aside an adjudication for a juvenile  
15 offense that would be a felony if committed by an adult and not  
16 more than 2 juvenile offenses that would be misdemeanors if  
17 committed by an adult or if there is no adjudication for a felony  
18 if committed by an adult, not more than 3 adjudications for an  
19 offense that would be a misdemeanor if committed by an adult and of  
20 the record of the arrest, fingerprints, adjudication, and  
21 disposition of the applicant in the case to which the order  
22 applies. Except as provided in subsection (14), this nonpublic  
23 record must be made available only to a court of competent  
24 jurisdiction, an agency of the judicial branch of state government,  
25 a law enforcement agency, a prosecuting attorney, the attorney  
26 general, or the governor upon request and only for the following  
27 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) To show that a person who has filed an application to set  
5 aside an adjudication has previously had an adjudication set aside  
6 under this section.

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

10 (e) Consideration by the governor, if a person whose  
11 adjudication has been set aside applies for a pardon for another  
12 offense.

13 (14) A copy of the nonpublic record created under subsection  
14 (13) must be provided to the person whose adjudication is set aside  
15 under this section upon payment of a fee determined and charged by  
16 the department of state police in the same manner as the fee  
17 prescribed in section 4 of the freedom of information act, 1976 PA  
18 442, MCL 15.234.

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

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

27 (17) An order setting aside an adjudication for a traffic  
28 offense under this section must not require that the conviction be  
29 removed or expunged from the applicant's driving record maintained



1 by the secretary of state as required under the Michigan vehicle  
2 code, 1949 PA 300, MCL 257.1 to 257.923.

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