

SENATE BILL NO. 760

January 29, 2020, Introduced by Senators WOJNO, IRWIN, CHANG, BULLOCK, ANANICH, GEISS, POLEHANKI, MCMORROW, SANTANA, ALEXANDER, BAYER and HOLLIER and referred to the Committee on Judiciary and Public Safety.

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.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XIIA
2 Sec. 18e. (1) Except as **otherwise** provided in subsection (2),
3 a person who has been adjudicated of not more than 1 juvenile
4 offense that would be a felony if committed by an adult and not

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

16 (a) An assaultive crime as that term is defined in subsection
 17 (7).

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

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

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

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

27 (b) An adjudication for a traffic offense under the Michigan
 28 vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a local
 29 ordinance substantially corresponding to that act, that involves

1 the operation of a vehicle and at the time of the violation is a
2 felony or misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

24 (7) A copy of the application ~~shall~~**must** be served upon the
25 attorney general and, if applicable, upon the office of the
26 prosecuting attorney who prosecuted the offense. The attorney
27 general and the prosecuting attorney shall have an opportunity to
28 contest the application. If the adjudication was for an offense
29 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, 1985 PA
6 87, MCL 780.796a. The notice ~~shall~~**must** be sent by first-class mail
7 to the victim's last known address. The victim has the right to
8 appear at any proceeding under this section concerning that
9 adjudication and to make a written or oral statement. As used in
10 this subsection:

11 (a) "Assaultive crime" means that term as defined in section
12 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
13 770.9a.

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

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

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

23 (9) Except as provided in this subsection and subsection (10),
24 if the court determines that the circumstances and behavior of the
25 applicant from the date of the applicant's adjudication to the
26 filing of the application warrant setting aside the 1 adjudication
27 for a juvenile offense that would be a felony if committed by an
28 adult and not more than 2 adjudications for a juvenile offense that
29 would be a misdemeanor if committed by an adult or if there is no

1 adjudication for a felony if committed by an adult, not more than 3
 2 adjudications for an offense that would be a misdemeanor if
 3 committed by an adult and that setting aside the adjudication or
 4 adjudications is consistent with the public welfare, the court may
 5 enter an order setting aside the adjudication. If the applicant
 6 submits to the court a certificate of completion from the Michigan
 7 youth challenge academy showing that the applicant has completed
 8 that program, the court shall determine that the applicant's
 9 circumstances and behavior warrant setting aside the adjudication.
 10 If the court also determines that setting aside the adjudication or
 11 adjudications is consistent with the public welfare, the court may
 12 enter an order setting aside the adjudication as provided in this
 13 subsection. Except as provided in subsection (10), the setting
 14 aside of an adjudication under this section is a privilege and
 15 conditional, and is not a right.

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

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

24 (b) The person was adjudicated for ~~an~~ **a juvenile** offense ~~that~~
 25 ~~if committed by an adult would be a violation or an attempted~~
 26 ~~violation of section 448, 449, or 450 of the Michigan penal code,~~
 27 ~~1931 PA 328, MCL 750.448, 750.449, and 750.450, or a local~~
 28 ~~ordinance substantially corresponding to section 448, 449, or 450~~
 29 ~~of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and~~

1 ~~750.450,~~ and he or she committed the offense as a direct result of
2 his or her being a victim of a human trafficking violation.

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

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

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

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

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

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

20 (13) The department of state police shall retain a nonpublic
21 record of the order setting aside an adjudication for a juvenile
22 offense that would be a felony if committed by an adult and not
23 more than 2 juvenile offenses that would be misdemeanors if
24 committed by an adult or if there is no adjudication for a felony
25 if committed by an adult, not more than 3 adjudications for an
26 offense that would be a misdemeanor if committed by an adult and of
27 the record of the arrest, fingerprints, adjudication, and
28 disposition of the applicant in the case to which the order
29 applies. Except as provided in subsection (14), this nonpublic

1 record ~~shall~~**must** be made available only to a court of competent
2 jurisdiction, an agency of the judicial branch of state government,
3 a law enforcement agency, a prosecuting attorney, the attorney
4 general, or the governor upon request and only for the following
5 purposes:

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

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

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

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

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

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

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

29 (16) Except as provided in subsection (13), a person, other

1 than the applicant, who knows or should have known that an
2 adjudication was set aside under this section, who divulges, uses,
3 or publishes information concerning an adjudication set aside under
4 this section is guilty of a misdemeanor.

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