

Legislative Analysis



SET ASIDE OF JUVENILE OFFENSE

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House Bill 4768 (H-1) as reported from committee

Sponsor: Rep. John Bizon, M.D.

Committee: Judiciary

Complete to 10-23-17

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 142 of 2018)

BRIEF SUMMARY: The bill would require a certificate of completion from the Michigan Youth ChalleNGe Academy to satisfy one of the elements a court considers in determining whether to enter an order setting aside a juvenile adjudication.

FISCAL IMPACT: The bill would not have a fiscal impact on the state or on local units of governments.

THE APPARENT PROBLEM:

Much research over the past few years has revealed that the adolescent brain does not fully develop until the mid-twenties. Though this means that young people are more susceptible to making bad judgments, it also means that when they do, they are more amenable to change. With appropriate consequences and guidance, the young have an extensive capacity for rehabilitation. Unfortunately, interactions with the criminal justice system can have lifelong implications, even for those with just juvenile records.

There is a process, described below, by which a juvenile can expunge or set aside all or part of his or her juvenile record. It has a 2-prong test, where the juvenile must first demonstrate that his or her circumstances and behavior since the time of the adjudication warrant the adjudication being set aside. Secondly, a court must determine that setting aside the adjudication is in the public welfare. Even then, a court can deny the request to expunge the juvenile record.

Some feel that completion of the Michigan Youth ChalleNGe Academy, in which participation is voluntary (not court ordered) should be sufficient to demonstrate circumstances and behavior changes warranting a set aside. The Academy, located in Battle Creek, is operated by the Michigan National Guard. The program is intensive, with both a residency and a community component. The program's 8 core elements are designed to encourage physical, mental, and moral development. At least 28 states have similar programs and all of them have a specific statute giving authority to the courts to consider successful completion of the program in making a determination whether to expunge a juvenile's record. Michigan is the only state without such statutory authority.

THE CONTENT OF THE BILL:

The bill would amend Chapter XIIA of the Probate Code, known as the Juvenile Code, to require that successful completion of the Michigan Youth ChalleNGe Academy be determined by the court as circumstances and behavior warranting the court to set aside the

adjudication. Warranting a set aside based on circumstances and behavior is just one prong of a 2-prong test that must be met when a court considers whether to set aside 1 or more juvenile adjudications. The court must also find that the set aside is consistent with the public safety. Even if both prongs are met, the court still has discretion whether to set aside the adjudication or adjudications.

Unlike adults or juveniles tried as adults in adult court, who are *convicted* when found guilty of a criminal offense, a person under 17 years of age tried as a juvenile in the Family Division of Circuit Court is found *responsible*, and the process is referred to as an *adjudication*.

Currently, a court has discretion to set aside (expunge) certain juvenile adjudications if the person files an application with the court and otherwise meets the requirements for a set-aside. A person may apply to set aside 1 adjudication for a juvenile offense that would be a felony if committed by an adult and not more than 2 offenses that would be misdemeanors if committed by an adult. If there were no felony adjudication, the person could apply to set aside not more than 3 adjudications for an offense that would be a misdemeanor if committed by an adult. 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 adjudication and the set aside is consistent with the public welfare, the court may enter an order setting aside the adjudication.

House Bill 4768 would require, under the provision described above, that if the applicant submits a certificate of completion from the Michigan Youth ChalleNGe Academy, the court to determine that the applicant's circumstances and behavior warrant setting aside the adjudication. If the court also determines that setting aside the adjudication or adjudications is consistent with the public welfare, the court could (but would not be required to) enter an order setting aside the adjudication.

The bill would take effect 90 days after enactment.

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BACKGROUND INFORMATION:

The Michigan Youth ChalleNGe Academy is a 17.5 month program that affords eligible youths ages 16 to 18 who have dropped out or are at risk of dropping out of high school an opportunity to complete a GED, earn a semester of high school credits, or earn college credits; learn self-discipline; receive computer training; undergo physical training; and develop life-coping skills. Participants spend the first phase of the program living in barracks at Fort Custer near Battle Creek and the post-residential phase in their communities under the oversight of a mentor.

According to the Academy's website, it is funded by the U.S. Department of Defense and the state of Michigan and administered by the Michigan National Guard. There is no cost to participate in the program.

ARGUMENTS:

For:

The Michigan Youth ChalleNGe Academy is a highly successful program that enables many troubled youth to turn their lives around. This voluntary, military-style program offers some a last opportunity to get the support and discipline needed to complete high school, start college, find employment, or enlist in the armed services. In short, the intensive program is a great wake-up call to youths who have few chances left to avoid a lifetime of interactions with the criminal justice system. The graduation rate is high, recidivism is low, and the mentoring provided after participants leave the program results in most becoming productive members of their communities.

The program is not open to youths with convictions for violent offenses. And the bill would apply only to offenses adjudicated in juvenile, not adult, court. The bill would not require a court to approve an expungement of a juvenile record because the applicant completed the Academy's program. It merely requires the court to consider completion as demonstration that the applicant's circumstances and behavior warrant a set aside. The court still must determine if the set aside is in the public welfare. Even so, the court still would retain discretion to approve or deny the expungement.

Simply put, the bill would enable some deserving young people to have a fresh start. It would also create parity with other states which give a statutory nod to completion of similar programs.

POSITIONS:

Representatives of the Michigan Youth ChalleNGe Academy testified in support of the bill. (10-10-17)

The Michigan Judges Association indicated support for the bill. (10-10-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.