

SENATE BILL No. 471

June 21, 2017, Introduced by Senators PROOS, CONYERS, MARLEAU, GREGORY, JONES, NOFS, KOWALL, KNEZEK, HOOD, HANSEN, ROBERTSON, SCHMIDT, BOOHER and ZORN 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 XIIIA (MCL 712A.18e), as amended by 2016 PA 337.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIIA

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 court or adjudicating courts for the entry of an order setting aside the adjudications. A person may have only 1 adjudication for

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

11 (a) An assaultive crime as that term is defined in subsection
12 (7).

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

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

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

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

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

27 (c) A conviction under section 2d of this chapter. This

1 subdivision does not prevent a person convicted under section 2d of
2 this chapter from having that conviction set aside as otherwise
3 provided by law.

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

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

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

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

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

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

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

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

27 (g) A consent to the use of the nonpublic record created under

1 subsection (13), to the extent authorized by subsection (13).

2 (5) The applicant shall submit a copy of the application and 2
3 complete sets of fingerprints to the department of state police.
4 The department of state police shall compare those fingerprints
5 with the records of the department, including the nonpublic record
6 created under subsection (13), and shall forward a complete set of
7 fingerprints to the Federal Bureau of Investigation for a
8 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 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 adjudication was for an offense

1 that if committed by an adult would be an assaultive crime or
2 serious misdemeanor, and if the name of the victim is known to the
3 prosecuting attorney, the prosecuting attorney shall give the
4 victim of that offense written notice of the application and
5 forward a copy of the application to the victim under section 46a
6 of the William Van Regenmorter crime victim's rights act, 1985 PA
7 87, MCL 780.796a. The notice shall be sent by first-class mail to
8 the victim's last known address. The victim has the right to appear
9 at any proceeding under this section concerning that adjudication
10 and to make a written or oral statement. As used in this
11 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 ~~31-61~~ of the William Van Regenmorter crime victim's rights
17 act, 1985 PA 87, MCL ~~780.781~~.**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

1 for a juvenile offense that would be a felony if committed by an
2 adult and not more than 2 adjudications for a juvenile offense that
3 would be a misdemeanor if committed by an adult or if there is no
4 adjudication for a felony if committed by an adult, not more than 3
5 adjudications for an offense that would be a misdemeanor if
6 committed by an adult and that setting aside the adjudication or
7 adjudications is consistent with the public welfare, the court may
8 enter an order setting aside the adjudication. **IF THE APPLICANT**
9 **SUBMITS TO THE COURT A CERTIFICATE OF COMPLETION FROM THE MICHIGAN**
10 **YOUTH CHALLENGE ACADEMY SHOWING THAT THE APPLICANT HAS COMPLETED**
11 **THAT PROGRAM, THE COURT SHALL DETERMINE THAT THE APPLICANT'S**
12 **CIRCUMSTANCES AND BEHAVIOR WARRANT SETTING ASIDE THE ADJUDICATION**
13 **AS PROVIDED IN THIS SUBSECTION.** Except as provided in subsection
14 (10), the setting aside of an adjudication under this section is a
15 privilege and 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 offense that if
25 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

1 ordinance substantially corresponding to section 448, 449, or 450
2 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and
3 750.450, and he or she committed the offense as a direct result of
4 his or her being a victim of a human trafficking violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 fee prescribed in section 4 of the freedom of information act, 1976
2 PA 442, MCL 15.234.

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

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

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