

HOUSE BILL NO. 5838

June 25, 2024, Introduced by Reps. Glanville, Breen, Brenda Carter, Hope, Rheingans, Bezotte, Weiss, Koleszar, Hill, Conlin, Mentzer, Xiong, Steckloff, Pohutsky, Fitzgerald, Byrnes, Rogers, McFall, Witwer and Coffia 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~~**an individual** who has

4

been adjudicated of not more than 1 juvenile offense that would be

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

17 (a) An assaultive crime as that term is defined in subsection
18 (7).

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

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

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

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

28 (b) A conviction under section 2d of this chapter. This
29 subdivision does not prevent ~~a person~~ **an individual** convicted under

1 section 2d of this chapter from having that conviction set aside as
2 otherwise provided by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the right to appear at any proceeding under this section concerning
2 that adjudication and to make a written or oral statement. As used
3 in this subsection:

4 (a) "Assaultive crime" means that term as defined in section
5 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
6 770.9a.

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

10 (c) "Victim" means that term as defined in section 31 of the
11 William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL
12 780.781.

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

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

1 that program, the court shall determine that the applicant's
2 circumstances and behavior warrant setting aside the adjudication.
3 If the court also determines 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 as provided in this
6 subsection. Except as provided in subsection (10), the setting
7 aside of an adjudication under this section is a privilege and
8 conditional, and is not a right.

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

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

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

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

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

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

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

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

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

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

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

3 (b) Consideration by a law enforcement agency if ~~a person~~**an**
4 **individual** whose adjudication has been set aside applies for
5 employment with the law enforcement agency.

6 (c) To show that ~~a person~~**an individual** who has filed an
7 application to set aside an adjudication has previously had an
8 adjudication set aside under this section.

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

12 (e) Consideration by the governor, if ~~a person~~**an individual**
13 whose adjudication has been set aside applies for a pardon for
14 another offense.

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

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

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

29 (17) An order setting aside an adjudication for a traffic

1 offense under this section must not require that the conviction be
2 removed or expunged from the applicant's driving record maintained
3 by the secretary of state as required under the Michigan vehicle
4 code, 1949 PA 300, MCL 257.1 to 257.923.

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