

HOUSE BILL No. 5019

September 26, 2013, Introduced by Reps. Johnson, Leonard, Lauwers, Daley, Robinson,
Somerville and MacGregor and referred to the Committee on Criminal Justice.

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 2012 PA 527.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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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

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

12 (a) An assaultive crime as that term is defined in subsection
13 (7).

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (f) A statement as to whether the applicant has any other
26 criminal charge pending against him or her in any court in the
27 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 be accompanied by a fee of
21 \$25.00 payable to the state of Michigan. The department of state
22 police shall use the fee to defray the expenses incurred in
23 processing the application.

24 (7) A copy of the application shall 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~~

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

13 (a) "Assaultive crime" means that term as defined in section
14 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
15 770.9a.

16 (b) "Serious misdemeanor" means that term as defined in
17 section 61 of the William Van Regenmorter crime victim's rights
18 act, 1985 PA 87, MCL 780.781.

19 (c) "Victim" means that term as defined in section 31 of the
20 William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL
21 780.781.

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

25 (9) Except as provided in subsection (10), **THE COURT MAY SET**
26 **ASIDE AN ADJUDICATION AS PROVIDED IN SUBSECTION (1)** if the court
27 determines that the circumstances and behavior of the applicant

1 from the date of the applicant's adjudication to the filing of the
2 application warrant setting aside the ~~1~~ adjudication ~~for a juvenile~~
3 ~~offense that would be a felony if committed by an adult and not~~
4 ~~more than 2 adjudications for a juvenile offense that would be a~~
5 ~~misdemeanor if committed by an adult or if there is no adjudication~~
6 ~~for a felony if committed by an adult, not more than 3~~
7 ~~adjudications for an offense that would be a misdemeanor if~~
8 ~~committed by an adult and that setting aside the adjudication or~~
9 ~~adjudications is consistent with the public welfare. , the court~~
10 ~~may enter an order setting aside the adjudication.~~ Except as
11 provided in subsection (10), the setting aside of an adjudication
12 under this section is a privilege and conditional, and is not a
13 right.

14 (10) Notwithstanding subsection (9), the court shall set aside
15 the adjudication of a person who was adjudicated for an offense
16 that if committed by an adult would be a violation or an attempted
17 violation of section 413 of the Michigan penal code, 1931 PA 328,
18 MCL 750.413, if the person files an application with the court and
19 otherwise meets the requirements of this section.

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

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

26 (b) This section does not affect the right of the applicant to
27 rely upon the adjudication to bar subsequent proceedings for the

1 same offense.

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

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

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

10 (13) The department of state police shall retain a nonpublic
11 record of the order setting aside ~~an adjudication for a juvenile~~
12 ~~offense that would be a felony if committed by an adult and not~~
13 ~~more than 2 juvenile offenses that would be misdemeanors if~~
14 ~~committed by an adult or if there is no adjudication for a felony~~
15 ~~if committed by an adult, not more than 3 adjudications for an~~
16 ~~offense that would be a misdemeanor if committed by an adult~~ **1 OR**
17 **MORE ADJUDICATIONS AS PROVIDED IN SUBSECTION (1)** and of the record
18 of the arrest, fingerprints, adjudication, and disposition of the
19 applicant in ~~the~~ **EACH** case to which the order applies. Except as
20 provided in subsection (14), this nonpublic record shall be made
21 available only to a court of competent jurisdiction, an agency of
22 the judicial branch of state government, a law enforcement agency,
23 a prosecuting attorney, the attorney general, or the governor upon
24 request and only for the following purposes:

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

27 (b) Consideration by a law enforcement agency if a person

1 whose adjudication has been set aside applies for employment with
2 the law enforcement agency.

3 (c) To show that a person who has filed an application to set
4 aside an adjudication has previously had an adjudication set aside
5 under this section.

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

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

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

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

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