

# HOUSE BILL No. 4433

March 29, 2017, Introduced by Reps. Neeley, Jones, Sneller, Rabhi and Durhal and referred to the Committee on Law and 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 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

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 none of  
11 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)~~, **(14)**, to the extent authorized by subsection  
3 ~~(13)~~. **(14)**.

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

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

26 (7) A copy of the application shall be served upon the  
27 attorney general and, if applicable, upon the office of the

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

15 (a) "Assaultive crime" means that term as defined in section  
16 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL  
17 770.9a.

18 (b) "Serious misdemeanor" means that term as defined in  
19 section ~~31-61~~ of the William Van Regenmorter crime victim's rights  
20 act, 1985 PA 87, MCL ~~780.781-780.811~~.

21 (c) "Victim" means that term as defined in section ~~31-61~~ of  
22 the William Van Regenmorter crime victim's rights act, 1985 PA 87,  
23 MCL ~~780.781-780.811~~.

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

27 (9) Except as provided in ~~subsection (10)~~, **SUBSECTIONS (10)**

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

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

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

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

1 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and  
2 750.450, and he or she committed the offense as a direct result of  
3 his or her being a victim of a human trafficking violation.

4 **(11) NOTWITHSTANDING SUBSECTION (9), THE COURT SHALL, WITHOUT**  
5 **HOLDING A HEARING, SET ASIDE THE ADJUDICATION OF A PERSON WHO WAS**  
6 **ADJUDICATED FOR ANY OF THE FOLLOWING OFFENSES IF THE PERSON FILES**  
7 **AN APPLICATION WITH THE COURT AND OTHERWISE MEETS THE REQUIREMENTS**  
8 **OF THIS SECTION:**

9 (A) AN OFFENSE THAT IS NOT AN ASSAULTIVE CRIME AS THAT TERM IS  
10 DEFINED IN SUBSECTION (7).

11 (B) AN OFFENSE THAT DID NOT INVOLVE THE USE OR POSSESSION OF A  
12 WEAPON.

13 (C) AN OFFENSE THAT DOES NOT CARRY A MAXIMUM PENALTY OF 10 OR  
14 MORE YEARS IMPRISONMENT.

15 **(12)** ~~(11)~~—Upon the entry of an order under this section, the  
16 applicant is considered not to have been previously adjudicated,  
17 except as provided in subsection ~~(13)~~ **(14)** and as follows:

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

21 (b) This section does not affect the right of the applicant to  
22 rely upon the adjudication to bar subsequent proceedings for the  
23 same offense.

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

26 (d) This section does not create a right to commence an action  
27 for damages for detention under the disposition that the applicant

1 served before the adjudication is set aside under this section.

2 (13) ~~(12)~~ Upon the entry of an order under this section, the  
3 court shall send a copy of the order to the arresting agency and  
4 the department of state police.

5 (14) ~~(13)~~ The department of state police shall retain a  
6 nonpublic record of the order setting aside an adjudication for a  
7 juvenile offense that would be a felony if committed by an adult  
8 and not more than 2 juvenile offenses that would be misdemeanors if  
9 committed by an adult or if there is no adjudication for a felony  
10 if committed by an adult, not more than 3 adjudications for an  
11 offense that would be a misdemeanor if committed by an adult and of  
12 the record of the arrest, fingerprints, adjudication, and  
13 disposition of the applicant in the case to which the order  
14 applies. Except as provided in subsection ~~(14)~~, **(15)**, this  
15 nonpublic record shall be made available only to a court of  
16 competent jurisdiction, an agency of the judicial branch of state  
17 government, a law enforcement agency, a prosecuting attorney, the  
18 attorney general, or the governor upon request and only for the  
19 following purposes:

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

22 (b) Consideration by a law enforcement agency if a person  
23 whose adjudication has been set aside applies for employment with  
24 the law enforcement agency.

25 (c) To show that a person who has filed an application to set  
26 aside an adjudication has previously had an adjudication set aside  
27 under this section.



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

4 (e) Consideration by the governor, if a person whose  
5 adjudication has been set aside applies for a pardon for another  
6 offense.

7 **(15)** ~~(14)~~—A copy of the nonpublic record created under  
8 subsection ~~(13)~~ **(14)** shall be provided to the person whose  
9 adjudication is set aside under this section upon payment of a fee  
10 determined and charged by the department of state police in the  
11 same manner as the fee prescribed in section 4 of the freedom of  
12 information act, 1976 PA 442, MCL 15.234.

13 **(16)** ~~(15)~~—The nonpublic record maintained under subsection  
14 ~~(13)~~ **(14)** is exempt from disclosure under the freedom of  
15 information act, 1976 PA 442, MCL 15.231 to 15.246.

16 **(17)** ~~(16)~~—Except as provided in subsection ~~(13)~~, **(14)**, a  
17 person, other than the applicant, who knows or should have known  
18 that an adjudication was set aside under this section, who  
19 divulges, uses, or publishes information concerning an adjudication  
20 set aside under this section is guilty of a misdemeanor.

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