

Legislative Analysis



EXPUNGEMENT OF JUVENILE CONVICTIONS

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Senate Bill 681 (H-1) as reported from House committee
Sponsor: Sen. Jeff Irwin

Analysis available at
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Senate Bill 682 (H-1) as reported from House committee
Sponsor: Sen. Peter J. Lucido

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 12-16-20

(Enacted as Public Acts 361 and 362 of 2020)

SUMMARY:

Senate Bill 681 would revise amend provisions regarding the setting aside of juvenile adjudications, including the ability to set aside a traffic offense. In addition, the bill would require, beginning two years after its enactment, automatic set-asides (without filing an application) for certain offenses. The bill would take effect 180 days after enactment.

Senate Bill 682 would make most juvenile court records unavailable to the general public, beginning January 1, 2021. The bill would also expand the list of persons eligible to access records closed under the William Van Regenmorter Crime Victim's Rights Act to include, among others, the juvenile, parents or legal guardians, guardians ad litem, the juvenile's counsel, and certain listed entities such as law enforcement and, if the juvenile is an Indian child, the child's tribe.

Senate Bill 681 would amend Chapter XIIA of the Probate Code, known as the juvenile code. 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. 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*. (Beginning October 1, 2021, when the Raise the Age legislation takes effect, *juvenile* will refer to a person who is under 18 years of age.) The bill would make the following changes to the expungement process for a juvenile adjudication:

- Remove the prohibition on a person applying to have set aside, and a judge from setting aside, an adjudication for a traffic offense under the Michigan Vehicle Code, or a local ordinance substantially corresponding to that act, that involves the operation of a vehicle and at the time of the violation is a felony or a misdemeanor. An order setting aside an adjudication for a traffic offense could not require that the conviction be removed or expunged from the applicant's driving record that is maintained by the secretary of state as required under the Vehicle Code.
- Specify that an application for a set aside could not be filed until the expiration of one year after the termination of jurisdiction. (Currently, the application cannot be filed until one year after the imposition of the disposition for the adjudication that

the applicant seeks to set aside, or one year following completion of any term of detention for that adjudication, or when the person becomes 18 years of age, whichever occurs later.)

- Require, upon application, the adjudicating court or courts to locate any court records or documents necessary to conduct a hearing under this section of the act.
- Delete a provision requiring a fee of \$25 to be submitted with the application for a set aside. (Currently, the fee must be used by the Department of State Police (MSP) to defray the expenses incurred in processing the application.)
- If the attorney general or prosecuting attorney wishes to contest an application, require the attorney general or prosecuting attorney to do so no later than 35 days after service of the application.

Automatic expungement

The bill would also add a new section 18t to require automatic set-asides of certain offenses. Beginning two years after the bill's effective date, an adjudication would be set aside without filing an application two years after the termination of court supervision or when the person becomes 18 years of age, whichever is later. The attorney general and the prosecuting attorney who prosecuted the offense could not contest the setting aside of an adjudication without an application. The bill specifies that an adjudication set aside for a traffic offense could not be removed or expunged from the applicant's driving record maintained by the secretary of state.

Upon the automatic setting aside of an adjudication, the person would be considered not to have been previously adjudicated except for inclusion on a nonpublic record (see below) and as follows:

- The person would not be entitled to the remission of any fine, costs, or other money paid as a consequence of an adjudication that is set aside.
- The right of the person to rely on the adjudication to bar subsequent proceedings for the same offense would not be affected.
- The right of a victim of an offense to prosecute or defend a civil action for damages would not be affected.
- A right to commence an action for damages for detention under the disposition that the person served before the adjudication is set aside would not be created.
- For research on the utilization and effectiveness of the set-aside process.

The court would be required, upon the setting aside of an adjudication, to notify the arresting agency and MSP.

Automatic set-asides would not apply to the following offenses:

- Offenses listed in section 2 of the juvenile code that include arson, first degree criminal sexual conduct, first degree murder, and carjacking, among others.
- An adjudication or conviction for an offense that if committed by an adult would be a felony for which the maximum punishment is life imprisonment.
- An adjudication or conviction for offenses for which the juvenile was tried as an adult. (However, the person could seek a set aside for that conviction as otherwise provided by law.)

- An adjudication or conviction for certain offenses listed in the bill that include, among other offenses, felonious assault, sexual intercourse under the pretext of medical treatment, child abuse, manslaughter, willful killing of a unborn quick child by injury to the mother, death due to explosives, mayhem, and stalking.

Nonpublic record of juvenile set asides

MSP would have to retain a nonpublic record of an adjudication for a juvenile offense that is automatically set aside and of the record of the arrest, fingerprints, adjudication, and disposition of the person in the case. The nonpublic record could only be made available to a court of competent jurisdiction, an agency of the judicial branch of state government, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

- Consideration in a licensing function conducted by an agency of the judicial branch of state government.
- Consideration by a law enforcement agency if a person whose adjudication has been set aside applies for employment with the law enforcement agency.
- The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than one year.
- Consideration by the governor, if a person whose adjudication has been set aside under the bill applies for a pardon for another offense.

The person whose adjudication is set aside would have to be provided a copy of the nonpublic record upon payment of fee determined and charged by MSP in the same manner as the fee prescribed in section 4 of the Freedom of Information Act (FOIA). The nonpublic record would be exempt from disclosure under FOIA.

Penalties

A person who knows or should have known that an adjudication was set aside under section 18t and who divulges, uses, or publishes information concerning an adjudication would be guilty of a misdemeanor. (A misdemeanor for which a punishment is not specified is punishable by incarceration for up to 30 days or a fine of up to \$500, or both.) The penalty for disclosure would not apply to the person whose adjudication is set aside or a *victim*.

Victim would mean any individual who suffered direct or threatened physical, financial, or emotional harm as the result of the offense committed by the applicant.

Delayed implementation

If the governor determined that the process for setting aside an adjudication without an application could not be implemented by the date required (two years from the bill's effective date) due to technological limitations, the governor could issue a directive delaying the implementation of section 18t for up to 180 days. The attorney general, state court administrator, or director of MSP could recommend a delay of implementation to the governor.

MCL 712A.18e and proposed MCL 712A.18t

Senate Bill 682 would amend a provision in the juvenile code pertaining to the records of juvenile dispositions. The Family Division of Circuit Court has been responsible for maintaining records of all cases brought before it and as provided in the Juvenile Diversion Act. Since June 1, 1988, with some exceptions, the case records have been open to the public. Senate Bill 682 would sunset this provision (provide for it to expire) on December 31, 2020.

Beginning January 1, 2021, except as otherwise provided, records of a case brought before the court would not be open to the general public and would be open only to *persons having a legitimate interest*. Diversion records would be open as provided in the Juvenile Diversion Act (this is current law). Except as provided in section 49 of the William Van Regenmorter Crime Victim's Rights Act, if the hearing of a case brought before the court had been closed under section 17 of the juvenile code, the hearing records would be open only by court order to persons having a legitimate interest (also current law).

Persons having a legitimate interest currently includes a member of a local foster care review board established under 1984 PA 422. The bill would revise the definition to additionally include, without limitation, the juvenile, the juvenile's parent, the juvenile's guardian or legal custodian, the juvenile's guardian ad litem, counsel for the juvenile, DHHS or a licensed child caring institution or *child placing agency* under contract with DHHS to provide for the juvenile's care and supervision if related to an investigation of child neglect or child abuse, law enforcement personnel, a prosecutor, the *Indian child's tribe* if the juvenile is an *Indian child*, and a Michigan court.

Child placing agency would mean that term as defined in section 1 of 1973 PA 116.

Indian child and *Indian child's tribe* would mean those terms as defined in section 3 of the Michigan Indian Family Preservation Act, Chapter XIIB of the Probate Code.

MCL 712A.28

FISCAL IMPACT:

Senate Bill 681 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, courts would be required to set aside a juvenile's adjudication or conviction two years after the termination of court supervision. Costs would be incurred if local courts had to implement systems in order for automatic set-aside of adjudications or convictions to occur. The bill would require courts, upon entry of the order to set aside adjudication or conviction, to send a copy to the arresting agency and to MSP. This, too, could result in additional costs for local courts.

The bill would eliminate the \$25 application fee that accompanies current set-aside applications and is expended by MSP to defray costs associated with application

processing, pursuant to statute. In FY 2018-19, total revenue from the fee totaled \$3,525. The bill would allow MSP to charge a fee to provide a copy of the nonpublic record of an adjudication set aside to the person who is the subject of the set-aside. The fee would be determined and charged in the same manner as fees under the Freedom of Information Act. Neither of these changes would be expected to have a significant fiscal impact on MSP.

Also, under the bill, a person who knows or should have known that an adjudication was set aside and who divulges, uses, or publishes information concerning the adjudication would be guilty of a misdemeanor. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

Senate Bill 682 would restrict access by the general public to most juvenile court records, but would expand the list of people eligible to access closed records under the Crime Victim's Rights Act. The bill could have an indeterminate fiscal impact on the state and on local units of government that would depend on current record keeping systems and any changes needed to implement these provisions.

POSITIONS:

The following entities indicated support for the bills (12-15-20):

- Criminal Defense Attorneys of Michigan
- Safe and Just Michigan
- Illumine Research, Analysis and Consulting
- Wayne County

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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.