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Senate Bills 681 and 682 (as introduced 12-5-19)
Sponsor: Senator Jeff Irwin (S.B. 681)
Senator Peter J. Lucido (S.B. 682)
Committee: Judiciary and Public Safety

Date Completed: 6-24-20

CONTENT

Senate Bill 681 would amend the juvenile code to do the following:

- Delete a provision prohibiting a person from 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 the Vehicle Code, that involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.
- Modify a provision specifying when an application to set aside an adjudication may be filed.
- Require the adjudicating court to locate, upon application, any court records or documents necessary to conduct a hearing on the application.
- Delete a provision requiring a copy of an application and a \$25 fee be submitted to the Department of State Police (MSP).
- Specify that if the Attorney General or prosecuting attorney wished to contest an application they would have 35 days after service or after the application was completed.
- Require an adjudication be set aside without filing an application two years after the termination of court supervision or when the individual turned 18 years of age, whichever was later.
- Prohibit the Attorney General and the prosecuting attorney from contesting the setting aside of an adjudication without application.
- Specify that, upon the entry of an order to set aside an adjudication, the person would not be considered to have been previously adjudicated, except as otherwise provided.
- Require the MSP to retain a nonpublic record of the order setting aside an adjudication and the record of arrest, fingerprints, adjudication, and disposition of the person in the case to which the order applied.
- Specify that the nonpublic record would have to be made available only to certain government entities for certain specified purposes.
- Specify that a person, other than the applicant, who knew or should have known that an adjudication was set aside and who divulged, used, or published information concerning an adjudication set aside would be guilty of a misdemeanor.

Senate Bill 682 would amend the juvenile code to do the following:

- **Specify that a provision requiring records of a case brought before the court be open to the general public would apply only until December 31, 2020.**
- **Specify that, beginning January 1, 2021, records of a case brought before the court would not be open to the general public.**
- **Modify the definition of "persons having a legitimate interest".**

Senate Bill 681

Setting Aside Adjudication by Application

Generally, the juvenile code specifies that a person who has been adjudicated of not more than one juvenile offense that would be a felony if committed by an adult and not more than three juvenile offenses, of which not more than one 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 for the entry of an order setting aside an adjudication.

A person may not apply to have set aside, and a judge may not set aside, either of the following:

- An adjudication for an offense that if committed by an adult would be felony for which the maximum punishment is life imprisonment.
- A conviction under Section 2d of the code (Section 2d generally governs juveniles to be tried as adults).

This provision does not prevent a person convicted under Section 2d from having that conviction set aside as otherwise provided by law.

Additionally, a person may not apply to have set aside, and a judge may not set aside, an adjudication for a traffic offense under the Michigan Vehicle Code, or a local ordinance substantially corresponding to the Vehicle Code, that involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor. The bill would delete this provision.

Under the code, an application to set aside an adjudication may not be filed until one year following imposition of the disposition for the adjudication that the applicant seeks to set aside, or one year following the completion of any term of detention for that adjudication, or when the person reaches 18 years of age, whichever occurs later. Instead, under the bill, an application to set aside an adjudication could not be filed until one year after the termination of court supervision.

The code specifies that an application to set aside an adjudication is not valid unless it contains certain information, including a certified record of the adjudication that was to be set aside, and is signed under oath by the person whose adjudication is to be set aside. The bill would delete the reference to a certified record of the adjudication that is to be set aside. Also, upon application, the adjudicating court or adjudicating courts would have to locate any court records or documents necessary to conduct a hearing on the application.

The code requires an applicant to submit a copy of the application and two complete sets of fingerprints to the MSP.

The copy of the application submitted to the MSP must be accompanied by a \$25 fee payable to the State of Michigan. The MSP must use the fee to defray the expenses incurred in processing the application. The bill would delete this provision.

The code also requires a copy of the application to be served upon the Attorney General and, if applicable, upon the office of the prosecuting attorney who prosecuted the offense. The Attorney General and the prosecuting attorney must have an opportunity to contest the application. Under the bill, if the Attorney General or prosecuting attorney wished to contest the application, they would have to do so within 35 days after service of the application was completed.

Setting Aside Adjudication without Application

Under the bill, except as otherwise provided, an adjudication would have to be set aside without filing an application two years after the termination of court supervision or when the individual turned 18 years of age, whichever was later. This requirement would not apply to an adjudication for an offense that if committed by an adult would be a felony for which the maximum punishment was life imprisonment or to an adjudication for a conviction under which the juvenile was to be tried in the same manner as an adult.

The Attorney General and the prosecuting attorney who prosecuted the offense could not contest the setting aside of an adjudication without an application.

After the entry of an order to set aside an adjudication, the person would be considered not to have been previously adjudicated, except as otherwise provided 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 was set aside.
- This provision would not affect the right of the person to rely on the adjudication to bar subsequent proceedings for the same offense.
- This provision would not affect the right of a victim of an offense to prosecute or defend a civil action for damages.
- This provision would not create a right to commence an action for damages for detention under the disposition that the person served before the adjudication was set aside.

After the entry of an order to set aside an adjudication, the court would have to send a copy of the order to the arresting agency and the MSP. The MSP would have to retain a nonpublic record of the order setting aside an adjudication for a juvenile offense and of the record of the arrest, fingerprints, adjudication, and disposition of the person in the case to which the order applied. Except as otherwise provided below, the nonpublic record would have to be made available only 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 by an agency of the judicial branch of State government.
- Consideration by a law enforcement agency if a person whose adjudication had been set aside applied for employment with the law enforcement agency.
- The court's consideration in determining the sentence to be imposed after conviction for a subsequent offense that was punishable as a felony or by imprisonment for up to one year.
- Consideration by the Governor, if a person whose adjudication had been set aside applied for a pardon for another offense.

A copy of the nonpublic record would have to be provided to a person whose adjudication was set aside upon payment of a fee determined and charged by the 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.

Except as otherwise provided, a person, other than the applicant, who knew or should have known that an adjudication was set aside and who divulged, used, or published information concerning an adjudication set aside would be guilty of a misdemeanor.

Senate Bill 682

The juvenile code requires a court to maintain records of all cases brought before it and as provided in the Juvenile Diversion Act. Except as otherwise provided, records of a case brought before the court are open to the general public. Under the bill, this provision would apply until December 31, 2020.

Additionally, under the bill, beginning January 1, 2021, records of a case brought before the court would not be open to the general public. Diversion records would be open only as provided in the Juvenile Diversion Act. Except as provided in Section 49 of the Crime Victim's Rights Act, if the hearing of a case brought before the court were closed under Section 17 of the code, the records of that hearing would be open only by court order to persons having a legitimate interest.

Under the code, "persons having a legitimate interest" includes a member of a local foster care review board established under Public Act 422 of 1984. Instead, under the bill, the term would include the juvenile, the juvenile's parent, the juvenile's guardian or legal custodian, the guardian ad litem, counsel for the juvenile, the Department of Health and Human Services if related to an investigation of child neglect or child abuse, law enforcement personnel, a prosecutor, and a Michigan court.

MCL 712A.18e et al. (S.B. 681)
712A.28

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 681

The bill would have an indeterminate, though likely negative, fiscal impact on local courts.

Additional costs would come from the cost of record recovery when a court received an application to set aside a minor's adjudication or conviction. Under current statute, the applicant must provide a certified copy of the criminal record to be included with the application to set aside the adjudication or conviction. The bill would shift the responsibility to provide records to the adjudicating court system, which would have to recover them, potentially from multiple State agencies, after receiving a valid application.

Additionally, an insignificant amount of revenue would be lost from the removal of the \$25 fee currently required to accompany an application. The bill would remove this fee, which is statutorily dedicated to MSP for the cost of processing an application to set aside a conviction or adjudication. Only \$3,525 in fees were collected in 2019.

The bill also would add an automatic procedure by which a minor's adjudication or conviction would be set aside two years after the termination of supervision. It is not clear if local courts have systems in place to set aside these adjudications or convictions automatically. Additional costs would be likely if these systems had to be implemented.

Additional costs would be incurred when adjudications or convictions were set aside, as the bill would require copies to be sent to arresting agencies and the MSP.

Additionally, new misdemeanor arrests and convictions under the bill could increase resource demands on law enforcement, court systems, community supervision, and jails. However, it is unknown how many people would be prosecuted under the bill's provisions. Any additional revenue from imposed fines would go to local libraries.

Senate Bill 682

Minor costs would be likely as a result of the bill's language. While the bill would restrict access to certain criminal records, the State and local court systems could have to amend or update current record-keeping processes to ensure compliance with the proposed statutory language.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.