

# HOUSE BILL REPORT

## SHB 1392

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### As Amended by the Senate

**Title:** An act relating to vacation of records of conviction.

**Brief Description:** Revising provisions relating to vacation of records of conviction.

**Sponsors:** By House Committee on Judiciary (Originally sponsored by Representatives Hurst, Constantine, Sheahan and McDonald).

### Brief History:

#### Committee Activity:

Judiciary: 2/4/99, 2/16/99 [DPS].

#### Floor Activity:

Passed House: 3/8/99, 97-0.

Senate Amended.

Passed Senate: 4/14/99, 49-0.

House (House refused to concur)

Senate (Senate receded)

Senate Amended.

Passed Senate: 4/24/99, 42-2.

House (House refused to concur)

Senate (Senate receded)

Senate Amended.

Passed Senate: 4/24/99, 42-6.

### Brief Summary of Substitute Bill

- Provides the same method for vacating an offender's record of conviction whether the offender was convicted of a crime before or after the Sentencing Reform Act, and whether the offense was a felony or a misdemeanor.
- Prohibits a person from seeking a vacation of record for a crime committed after the person has received a vacation for another crime.

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HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

**Staff:** Bill Perry (786-7123).

**Background:**

Under the Sentencing Reform Act (SRA) an offender may be able to get his or her record of a felony conviction "vacated" after a certain amount of time has passed. Vacation of the record has the effect of removing "all penalties and disabilities" that resulted from the offense. It also prevents the offense from being used as "criminal history" for purposes of sentencing for a subsequent offense. Finally, vacation of the record allows the offender to respond on an employment application that he or she has never been convicted of that crime. However, the vacation of a record of conviction does not prevent that conviction from being used in a later criminal prosecution for a crime in which one element is a prior conviction. (For instance, it is still possible to use a vacated prior conviction in a prosecution for a crime that becomes a felony on a second or subsequent conviction.)

There are several limitations on an offender's ability to get a record of conviction vacated:

- No vacation is possible for any class A felony, any violent offense, or any "crime against persons." (These categories cover many crimes, including all murders, all felony sex offenses, all assaults, and many other crimes that are covered by the Washington State Patrol's background check authority regarding prospective employees who may have contact with children.)
- No vacation is possible if the offender has any criminal charges pending.
- No vacation is possible if the offender has been convicted of any other crime since completion of his or her sentence for the offense for which vacation is being sought.
- At least 10 years must have passed since completion of the sentence if the offense was a class B felony.
- At least five years must have passed since completion of the sentence if the offense was a class C felony.

These vacation of record provisions apply only to offenders sentenced under the SRA. The SRA applies only to felonies committed on or after July 1, 1984.

For felonies committed before the SRA, and for misdemeanor and gross misdemeanor offenses, there are no provisions equivalent to this vacation of record procedure. Pre-SRA felons may be "released from all penalties and disabilities" that resulted from conviction, and misdemeanants may have their charges "dismissed" after successful completion of a suspended sentence. However, neither pre-SRA felons nor misdemeanants are authorized to respond to an employment application by saying they have never been convicted of an offense.

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**Summary of Bill:**

A procedure for vacation of the record of conviction is established for pre-SRA felons and for misdemeanants. The procedure and the criteria are basically the same as for SRA vacations of records.

The vacation of a misdemeanor or gross misdemeanor record of conviction can occur only if at least five years have passed since completion of the sentence. If the crime was one such as DUI for which a longer record-keeping period is already required, then the longer period also applies to the vacation procedure.

A person may not seek vacation of a record of conviction for any crime committed after a person has already received a vacation for another crime.

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**EFFECT OF SENATE AMENDMENT(S):** The Senate amendment differs from the Substitute House Bill in the following ways:

(1) With respect to misdemeanors and gross misdemeanors:

- The amendment prohibits DUI convictions from ever being vacated, whereas the Substitute House Bill allows vacation after seven years;
- The amendment prohibits vacation of records for several additional specified misdemeanors and gross misdemeanors. These crimes include operating a railroad while under the influence, attempts to commit a sex offense, obscenity and pornography offenses, and sexual exploitation of children;
- The amendment allows domestic violence offenses to be vacated after 10 years (instead of five years), but does not allow vacation if the defendant's behavior in committing the crime had been "particularly egregious;"
- The amendment requires the person asking for a vacation of record to pay the costs incurred by the court, unless the person is indigent;
- The amendment states that a vacated record is "nonconviction data" for purposes of the state patrol's criminal records, and the patrol is to notify the FBI of the vacation as well.

(2) With respect to SRA felonies and Pre-SRA felonies:

- The amendment allows domestic violence felonies under the SRA, that are not other wise ineligible, to be vacated after 10 years, but does not allow vacation if the defendant's behavior in committing the crime had been "particularly egregious;"
- The amendment makes the same provisions for SRA felonies as it makes for misdemeanors and gross misdemeanors regarding paying for costs and regarding designation of vacated records as nonconviction data;
- The amendment removes the prohibition against using vacated convictions as criminal history under the SRA for purposes of increasing the presumptive sentence.

(3) The amendment adds a provision dealing with Sealing Juvenile Records of Disposition that:

- Allows sealing of a record of a class B felony after five years (current law requires 10 years), but only if the court finds the person has (a) committed no additional offenses, (b) has no criminal charges pending, (c) has a "career path that is impeded by the record," (d) is at least 21 years old, and (e) has lived and "exemplary life" since the disposition of the class B felony.
- Allows sealing of a record of a misdemeanor or gross misdemeanor after five years under the same circumstances as current law provides for in the case of a class C felony.
- Makes the same provisions as are made for adult felonies, misdemeanors and gross misdemeanors regarding paying for costs and regarding designation of vacated records as nonconviction data.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** (Proposed substitute bill) Simple equity demands passage. It is completely unfair that persons with very old felonies and persons with misdemeanors cannot get records vacated when persons with more recent felonies can. The law has plenty of protection. It will continue to be difficult to get a vacation of a record, but under this bill all offenders will be covered by the same rules.

**Testimony Against:** None.

**Testified:** Representative Hurst, prime sponsor; Tom McBride, Washington Association of Prosecuting Attorneys; and Bill Jaquette, Washington Association of Criminal Defense Lawyers.