

SENATE BILL REPORT

SHB 1392

As Reported By Senate Committee On:
Judiciary, April 2, 1999

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

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

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

Brief History:

Committee Activity: Judiciary: 4/2/99 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Heavey, Chair; Costa, Goings, Hargrove, Johnson, Long, Roach and Thibaudeau.

Staff: Harry Steinmetz (786-7421)

Background: Under the Sentencing Reform Act, a convicted felon may petition the court to have the record of his conviction vacated. The court may permit the offender to withdraw his guilty plea or set aside a guilty verdict and, then, dismiss the information or indictment. A class A felony may not be vacated.

Before vacating a felony conviction, the court must find that the offender:

- (a) does not have any pending charges;
- (b) the offense was not a violent offense;
- (c) the offense was not a crime against persons;
- (d) the offender has no new convictions since the offender's discharge date;
- (e) if the crime was a class B felony, that 10 years have passed since discharge; and,
- (f) if the crime was a class C felony, five years have passed since discharge.

Once the court vacates the conviction, it may not be used to determine a sentence in any subsequent offense. The offender is released from all penalties resulting from the offense. The offender may state on a employment applications that he has never been convicted of that crime. However, the conviction may be used in a subsequent prosecution for a new offense.

Juveniles who have been found to have committed felonies may go through a similar process and must meet similar tests to have their records sealed. There is a five-year waiting period for class C juvenile offenses and a 10-year waiting period for class B juvenile offenses.

There is no statute allowing adults or juveniles convicted of a misdemeanor, a gross misdemeanor or a pre-SRA felony to clear their record. It has been suggested that this is unfair.

Summary of Amended Bill: A new section is created establishing a procedure for vacating misdemeanor and gross misdemeanor convictions. A misdemeanant must wait five years after completing all the terms of the sentence before bringing the motion. The judge has discretion to grant the motion. The misdemeanant may not have any new convictions or pending criminal charges in this state or any other state. Certain misdemeanors may not be vacated including violent offenses, DUI and physical control, sex offenses, obscenity or pornography, and sexual exploitation of children. The fact of the conviction may be used in a subsequent criminal prosecution for any legal purpose, including sentencing. If the motion to vacate is granted, for all other purposes the misdemeanant may state that he or she has never been convicted of that crime.

The statute allowing SRA felony conviction to be vacated is clarified by specifying that granting the motion is within the discretion of the judge. Domestic violence offenses are added to the list of convictions that may not be vacated. The language is clarified to ensure that if any one of the conditions are not met, the conviction may not be vacated. A similar procedure is created for pre-SRA felonies.

The statute allowing juveniles to seal their records is modified by treating misdemeanors and gross misdemeanors in the same manner as class C juvenile offenses. Additionally, a juvenile convicted of a class B juvenile offense, may petition the court, between five and ten years after the court's findings and order, to seal his or her record, if the juvenile can show they have no other convictions or pending charges, have a present career path that is impeded by the record, are at least 21 years old and have lived an exemplary life since the court's finding that they committed the offense.

Additionally, for all motions under this bill the person bringing the motion must pay for all the costs of the motion, unless they are found to be indigent; the person may not have a conviction vacated if they have had a previous conviction vacated; and, a vacated conviction or sealed juvenile record is to be treated as nonconviction data by the Washington State Patrol and the Federal Bureau of Investigation.

Amended Bill Compared to Substitute Bill: The list of misdemeanors that may not be vacated is expanded to include DUI and physical control, sex offenses, obscenity, pornography, and sexual exploitation of children. The fact of the conviction may be used in a subsequent criminal prosecution for any legal purpose including sentencing. The vacated conviction becomes nonconviction data for the purposes of the offender's criminal history. The person making the motion is required to pay all the costs associated with the motion. Juvenile misdemeanor and gross misdemeanor records are included in the existing statute allowing the sealing of juvenile records. A discretionary motion allowing a juvenile to petition the court to seal a class B record is included in the bill.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill is about fundamental fairness. You can have a conviction vacated for a felony, why not a misdemeanor? It is not easy. It will take a lot of work and the court will not automatically grant this motion, but it is a matter of fairness to have the opportunity to vacate your conviction. People have tried to have their misdemeanors vacated and the judges said that their hands are tied. Persons have made mistakes in the past and now find that their career plans are blocked. If a person can meet the tests in the bill and want to clear up their name, they should have that opportunity.

Concerns were expressed by those who support the bill about the time lines being the same for misdemeanors, gross misdemeanors and class C felonies.

Testimony Against: None.

Testified: PRO: Representative Christopher Hurst; Perry Lee Dyer; John Zulauf, President, WACDL; Tom McBride, WAPA.