

SENATE BILL REPORT

ESB 5665

As Passed Senate, February 1, 2000

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

Brief Description: Authorizing vacation of records of convictions for misdemeanors and gross misdemeanors.

Sponsors: Senators Costa, Honeyford, Hargrove, Kline, Heavey, McCaslin and Long.

Brief History:

Committee Activity: Judiciary: 2/12/99, 2/24/99 [DP].

Passed Senate, 3/17/99, 44-0; 2/1/00, 43-2.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Hargrove, Johnson, Long, McCaslin, Roach and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: A convicted felon may petition the court to have the record of his or her conviction vacated. The court may permit the offender to withdraw his or her guilty plea or set aside a guilty verdict and then dismiss the information or indictment.

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 employment applications that he or she 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 persons convicted of misdemeanor and gross misdemeanor offenses to clear their record.

Summary of Bill: A procedure for vacating misdemeanor and gross misdemeanor convictions is created. 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 offenses may not be vacated. 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 felony conviction statute 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.

Juveniles may seal their misdemeanor and gross misdemeanor records in the same manner as class C juvenile offenses.

Additionally, all persons bringing these motions must pay for all the costs of the motion, unless they are found to be indigent.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: If a convicted felon can vacate his record, it is only fair that a person convicted of a misdemeanor should have the same opportunity. It is simply a matter of equity. Although the bill is good, it should be expanded to include pre-SRA felonies and the time lines are too long.

Testimony Against: None.

Testified: PRO: Tom McBride, WAPA; John Sinclair, WDA/WACDL.