

HOUSE BILL REPORT

HB 2533

As Reported by House Committee On:
Judiciary

Title: An act relating to vacation of records of conviction for misdemeanor and gross misdemeanor offenses.

Brief Description: Adjusting time requirements for vacation of convictions.

Sponsors: Representatives Lovick, Cairnes, Veloria, Edwards, Hunt, Chase, Kenney and Hurst.

Brief History:

Committee Activity:

Judiciary: 2/5/02, 2/7/02 [DP].

Brief Summary of Bill

- Changes two restrictions on the vacation of a record of conviction for a misdemeanor by:
- Lessening a restriction that absolutely prohibits vacation if there has been a subsequent offense and instead allowing the vacation if at least three years have passed since the completion of the sentence for the subsequent offense;
- Removing a restriction that prohibits vacation if the offender has ever had any other conviction vacated.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 5 members: Representatives Lantz, Chair; Hurst, Vice Chair; Dickerson, Lovick and Lysen.

Minority Report: Do not pass. Signed by 4 members: Representatives Carrell, Ranking Minority Member; Boldt, Esser and Jarrett.

Staff: Bill Perry (786-7123).

Background:

In 2001, legislation was enacted that generally gives misdemeanor offenders an opportunity similar to what felons have under the Sentencing Reform Act for getting records of conviction vacated.

Under that legislation, some restrictions apply to misdemeanor convictions generally that don't apply to felonies, and special rules apply with regard to vacation of records of convictions for domestic violence misdemeanors.

Vacation of Misdemeanors Generally.

Once a person has completed all the terms of a misdemeanor sentence, he or she may petition a court for the vacation of the record of conviction.

The court has discretion to grant or deny the petition, but may not grant the petition if:

- the applicant has any outstanding criminal charges;
- the misdemeanor conviction was for a violent offense, or attempted violent offense;
- the misdemeanor conviction was for drunk driving, or a related offense;
- the misdemeanor conviction was for pornography or sexual exploitation of children;
- the misdemeanor conviction was for a sex offense;
- less than three years have passed since completion of all terms of the sentence, including financial obligations;
- the applicant has been convicted of another offense since the conviction for which vacation is sought;
- the applicant has been the subject of a restraining, no-contact, or antiharassment order within the previous five years; or
- the applicant has previously had any record of conviction vacated.

Once a conviction has been vacated, it may not be used in sentencing for any subsequent offense. Upon the issuance of the vacation, the court is to notify law enforcement agencies to update criminal records accordingly. The record of a vacated conviction may not be disseminated by a law enforcement agency except to another agency. The person whose record has been vacated is released from all disabilities resulting from the conviction, and he or she may respond to employment or housing application questions that he or she has not been convicted of the crime.

All costs of a vacation are to be paid by the applicant, unless he or she is indigent.

Vacation of Domestic Violence Misdemeanors in Particular.

Special restrictions apply in the case of conviction for a domestic violence misdemeanor. These restrictions are in addition to those that apply to misdemeanors generally. An application for the vacation of the record of a domestic violence misdemeanor conviction will be denied if any of the following has occurred:

- the applicant has failed to notify the prosecuting attorney of the application;
- the applicant has previously had a domestic violence conviction vacated;
- the applicant has said under penalty of perjury that he or she has not previously been convicted of a domestic violence offense, and a criminal history check reveals that he or she has been so convicted; or
- less than five years have passed since the applicant completed all terms of his or her sentence.

Differences from Felony Record Vacation Restrictions.

At least two of the restrictions that apply to all misdemeanor offenses have no equivalent in the felony record vacation law. These are the restrictions that prevent vacation if the offender has been subsequently convicted of any offense, or if the offender has ever previously had a record vacated.

Summary of Bill:

Two restrictions that apply to the vacation of any misdemeanor conviction are eliminated or relaxed.

The prohibition against vacation if the applicant has ever had another vacation is removed.

The prohibition against vacation if the applicant has been conviction of any offense after the conviction for which vacation is sought applies only if less than three years have passed since the completion of the terms of the sentence for the subsequent conviction.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: The bill is a simple matter of equity and fairness. There is no reason not to afford misdemeanants the same opportunity that felons have to start a new life. The Legislature made a step in the right direction last year. This bill just makes the situation more equitable.

Testimony Against: None.

Testified: Representative Lovick, prime sponsor; and Mark Muenster, Washington Defender Association and Washington Association of Criminal Defense Lawyers.