

HOUSE BILL REPORT

HB 2729

As Reported by House Committee On:
Judiciary

Title: An act relating to vacation of records of conviction for presentencing reform act felony offenses.

Brief Description: Changing provisions relating to vacation of records of conviction for presentencing reform act felony offenses.

Sponsors: Representatives Lovick, Cairnes, Dickerson, Hurst, Campbell, Simpson, Edwards and O'Brien.

Brief History:

Committee Activity:

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

Brief Summary of Bill

- Provides that records of convictions for certain pre-Sentencing Reform Act felonies may be vacated in the same way as under the Sentencing Reform Act.
- Provides that vacation of the record of a pre-Sentencing Reform Act felony conviction allows the offender to reply on a job application that he or she has not been convicted of the crime.
- Directs that law enforcement agencies are not to disseminate vacated records of convictions except to other law enforcement agencies.

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:

Vacation of Records of Felony Convictions under the Sentencing Reform Act.

Under the Sentencing Reform Act (SRA) an offender may be able to have 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 establishing the offender score in sentencing for a subsequent offense under the SRA. 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. Once a felony record has been vacated under the SRA and is no longer a part of criminal history, the state patrol and other law enforcement agencies may not disseminate the record except to other law enforcement agencies.

However, the vacation of a record of conviction does not prevent that conviction from being used in a later criminal prosecution to impeach a witness or to establish an element of a crime. For instance, it is still possible to use a vacated prior conviction in a prosecution for a crime that becomes a more serious offense on a second or subsequent conviction.

Vacation of a felony record is at the discretion of a judge, with the following limitations:

- 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.

Pre-SRA Records of Felony Convictions.

For felonies committed before the SRA, there are no statutory provisions expressly authorizing the vacation of records. Some pre-SRA felons who successfully complete probation may be "released from all penalties and disabilities" that resulted from conviction. (RCW 9.95.240)

Convictions for certain crimes do not qualify for this release from penalties and disabilities. These crimes are:

- Murder;
- burglary in the first degree;
- arson in the first degree;
- robbery;
- rape; and
- rape of a child.

In order to qualify for these release provisions, the offender must either have been: (1) placed on probation without jail time following the suspension of the imposition of the sentence; or (2) sentenced to not more than one year in jail followed by a period of probation. The period of probation is not to exceed the longer of two years or the maximum length of the sentence that could have been imposed. In either case, the offender is allowed to petition the court after successfully completing the period of probation. (RCW 9.92.060, 9.95.210, and 9.92.066)

No statute authorizes pre-SRA felons to respond to an employment application by saying they have never been convicted of an offense. However, the state supreme court has recently held that the pre-SRA release from penalties provision is the functional equivalent of the SRA law with respect to vacations of records. The court held that a pre-SRA felon who has been released from all penalties and disabilities following successful completion of probation may respond on an employment application that he or she has not been convicted of the offense. The court also held that the effect of such a release is to direct criminal justice agencies not to release the record of conviction to prospective employers. (State v. Breazeale)

For pre-SRA felons who have been confined in prison for more than one year and who are placed on parole, the Indeterminate Sentence Review Board may grant a certificate of discharge that has the affect of restoring all civil rights except the right to possess a firearm. (RCW 9.96.050)

Summary of Bill:

A pre-SRA felon who has successfully completed probation after serving a sentence of not more than one year in jail, may apply for a vacation of the record of his or her conviction. The application for and granting of the vacation are subject to the same conditions and restrictions as apply to SRA felony convictions. The effect of a vacation is also the same as for an SRA felony, including allowing the offender to respond on an employment application that he or she has not been convicted of the crime.

The same directions are given to law enforcement agencies regarding the treatment of vacated records as apply in the case of SRA vacations.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: Justice begins with fairness. All saints have a past. All sinners have a future. It is only fair that persons convicted of felonies before the SRA should have the same right as those convicted after the SRA.

Testimony Against: None.

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