

FINAL BILL REPORT

SHB 1174

C 140 L 01

Synopsis as Enacted

Brief Description: Authorizing vacation of records of conviction for misdemeanor and gross misdemeanor offenses.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Hurst, Carrell, Lantz, Lovick and O'Brien).

House Committee on Judiciary
Senate Committee on Judiciary
Senate Committee on Ways & Means

Background:

Some felony convictions can be "vacated." Misdemeanor convictions cannot.

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 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.)

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.

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 misdemeanants nor pre-SRA felons are authorized to respond to an employment application by saying that they have never been convicted of an offense.

Division III of the Washington Court of Appeals has held that with respect to a felony conviction, a vacation or sealing of the record removes the conviction from the public record. (*State v. Breazeale*.) On the other hand, the State Patrol had taken the position that vacated or sealed records remain public. Under this policy, even though a person with a vacated record might answer on a job application that he or she has never been convicted, the prospective employer could nonetheless get access to the conviction record. The court of appeals decision has been accepted for review by the state supreme court.

Division II of the Washington Court of Appeals has held that there is no statutory authority for a court to vacate a misdemeanor conviction. However, the court also held that under Court Rule GR 15, upon a showing of "compelling circumstances," misdemeanor records may be "sealed." (*State v. Noel*.) Under the court rule, a "sealed" record is also still identified on the public record, but only by the defendant's name and the criminal charge, and with a notation that the record is sealed. Thus a sealed record indicates there has been a charge, but not whether there has been a conviction.

Under the Washington State Criminal Records Privacy Act, all conviction records are considered public. "Nonconviction data," on the other hand, is subject to restrictions on release and generally may only be exchanged between criminal justice agencies. Nonconviction data consists of all criminal history record information relating to an incident which has not led to a disposition adverse to the person who is the subject of the information.

Summary:

Authorization is provided for the vacation of records of misdemeanor convictions. Special rules are provided with regard to vacation of records of convictions for domestic violence misdemeanor offenses.

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. An application for the vacation of the record of a domestic violence misdemeanor conviction will be denied if any of the following is present:

- 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.

Votes on Final Passage:

House 98 0

Senate 47 1

Effective: July 22, 2001