

HOUSE BILL REPORT

HB 1174

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

Sponsors: Representatives Hurst, Carrell, Lantz, Lovick and O'Brien.

Brief History:

Committee Activity:

Judiciary: 1/30/01, 2/27/01 [DPS].

Brief Summary of Substitute Bill

- With various exceptions and limitations, allows the vacation of records of misdemeanor convictions.
- Generally prohibits dissemination of vacated records.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Carrell, Republican Co-Chair; Lantz, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Boldt, Casada, Dickerson, Esser, Lovick and McDermott.

Staff: Bill Perry (786-7123).

Background:

Some felony convictions can be vacated. Misdemeanor convictions cannot.

Under the Sentencing Reform Act (SRA) an offender may be able to get 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 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 they have never been convicted of an offense.

One division of the state 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*.) 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. This decision by Division III of the court of appeals has been accepted for review by the state supreme court.

Division II of the 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 or not 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 of Substitute Bill:

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 conviction of a domestic violence misdemeanor 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.

Substitute Bill Compared to Original Bill:

The substitute bill adds the following provisions:

- the special rules for vacation of domestic violence misdemeanor convictions;
- the prohibition on vacation if there has been any other conviction since the conviction for which vacation is sought;
- the prohibition on vacation if the applicant has ever had a previous vacation;
- the prohibition on vacation if the applicant has been subject to a restraining order in the past five years; and
- the prohibition on vacation if the offense was a sex offense.

The substitute bill also removes provisions from the original bill that would have provided statutory authorization for an applicant to have a record of conviction "sealed," and a provision that would have designated a vacated record as "nonconviction data."

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: When a person has changed his or her life, he or she can get a felony conviction vacated. It makes no sense that he or she cannot do the same for a misdemeanor. The vacation procedure is not automatic. The applicant must convince a judge that he or she has turned his or her life around and needs to clear his or her record in order to improve his or her future. The current system makes it seem as though a misdemeanant would have been better off committing a felony. The criminal justice system should be fair and equitable.

Testimony Against: (Original bill) The bill should not allow vacation of records of domestic violence. The bill should not do anything to minimize the seriousness of the domestic violence issue.

Testified: (In support) Representative Hurst, prime sponsor; and Mark Muenster and Sherry Appleton, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

(In support with suggested amendments) Tom McBride, Washington Association of Prosecuting Attorneys.

(With concerns) Suzanne Brown, Washington Coalition of Sexual Assault Programs.

(Opposed) Mary Pontarolo, Washington State Coalition Against Domestic Violence; and Rowland Thompson, Allied Daily Newspapers of Washington and Washington Newspaper Publishers Association.