

SENATE BILL REPORT

SHB 1174

As Reported By Senate Committee On:
Judiciary, March 27, 2001
Ways & Means, April 2, 2001

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

Brief History:

Committee Activity: Judiciary: 3/20/01, 3/27/01 [DP].
Ways & Means: 4/2/01 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

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

Staff: Lilah Amos (786-7421)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Brown, Chair; Constantine, Vice Chair; Fairley, Vice Chair; Honeyford, Kline, Kohl-Welles, Long, Rasmussen, Regala, Roach, Rossi, Sheahan, B. Sheldon, Snyder, Spanel, Thibaudeau and Winsley.

Staff: Bryon Moore (786-7726)

Background: Under the Sentencing Reform Act, a convicted felon can petition the court to have the record of his conviction vacated. Class A felonies cannot be vacated. For class B felonies, ten years must have passed since completing sentencing requirements and being discharged. For class C felonies, five years must have passed since completing sentencing requirements and being discharged. The record of conviction cannot be cleared if the offender has any criminal charges pending against him, if the prior offense was a violent offense or a crime against a person, or if the offender has been convicted of a new crime since the date of discharge. An offender whose conviction is vacated may respond on employment applications that no conviction of the vacated crime occurred. The crime is not included in the offender's criminal history to determine a sentence in a subsequent conviction.

However, a vacated conviction can be used in a later criminal prosecution. No provision is made for sealing the records of felons whose convictions have been vacated.

Under current Washington law, courts are not given statutory authority to vacate the convictions of persons who are convicted of misdemeanor and gross misdemeanor offenses.

Summary of Bill: With some exceptions, persons convicted of misdemeanors or gross misdemeanors can apply for vacation of the record of conviction if at least three years have passed since the offender completed the terms of sentence, including payment of financial obligations. The court is permitted to vacate the convictions using the same procedure as is used for felony convictions.

The record of conviction of misdemeanors and gross misdemeanors may not be vacated if:

- (1) criminal charges are pending against the offender;
- (2) the offense is a violent offense;
- (3) the conviction is for driving while under the influence, actual physical control while under the influence, or operating a railroad, steam vessel, or vehicle while intoxicated;
- (4) the conviction is for violation of obscenity and pornography statutes;
- (5) the conviction is for a sex offense or a violation of laws prohibiting sexual exploitation of children;
- (6) the offender has been restrained or a no-contact order has been issued against the offender within the past five years; or
- (7) the offender has previously had a conviction vacated.

A domestic violence conviction can only be vacated if:

- (1) at least five years have passed since successful completion of the terms of the sentence;
- (2) the prosecutor's office which prosecuted the offender is notified in writing of the petition to vacate and has provided that notification to the court;
- (3) the applicant has not had a prior domestic violence conviction; and
- (4) the applicant signed an affidavit denying the existence of a prior domestic violence conviction which is proven false by a criminal history check.

A vacated conviction cannot be included in criminal history for purposes of determining a sentence in any subsequent conviction. The offender is permitted to state for all purposes, including employment and housing applications, that he or she has not been convicted of that crime. The order vacating the conviction will be transmitted to the Washington state patrol and law enforcement. The conviction cannot be disclosed to anyone except criminal justice agencies.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For (Judiciary): Since some felony offenses can currently be vacated, it is unfair to prohibit the vacation of convictions of lesser crimes. Many persons convicted of misdemeanor and gross misdemeanor crimes would like the opportunity to have their convictions vacated. These persons are sometimes unemployable in their chosen profession as a result of a youthful misdemeanor conviction, or are subject to deportation. This bill addresses concerns about vacating domestic violence convictions and places additional restrictions on their vacation.

Testimony Against (Judiciary): None.

Testified (Judiciary): Representative Hurst, prime sponsor; Judge Kip Stilz, District and Municipal Court Judges' Assn.(pro); Mark Muenster, WACDL (pro); Sherry Appleton (pro); Vilaska Nguyen, Commission on Asian Pacific American Affairs (pro).

Testimony For (Ways & Means): This bill fixes a loophole in current law and will allow people to get their record cleared for isolated incidents in their past. Given the bill allows for the recovery of costs of the vacation, the actual impact should be fairly minimal. Most of the people that are anticipated to request a vacation are not indigent and therefore they would be able to pay for the costs of the process.

Testimony Against (Ways & Means): None.

Testified (Ways & Means): Representative Hurst, prime sponsor; Melanie Stewart, District and Municipal Court Judges' Assn.; Sherry Appleton, WACDL; Victor Moore, Office of the Administrator for the Courts.