

SENATE BILL REPORT

SB 5323

As Reported By Senate Committee On:
Judiciary, February 27, 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: Senators Kline, Constantine, Hargrove and Thibaudeau.

Brief History:

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

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5323 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senator Zarelli.

Staff: Lilah Amos (786-7421)

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 Substitute 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 used for felony convictions. A domestic violence conviction can be vacated one time only if at least five years have passed since successful completion of the terms of sentence and the prosecutor's office which prosecuted the offender is notified.

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, a violation of laws prohibiting sexual exploitation of children, or laws regarding criminal mistreatment and abandonment;
- (6) the offender has been restrained or a no-contact order has been issued against the offender within the past five years.

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.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Requested on January 24, 2001.

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

Testimony For: Persons convicted of misdemeanors and gross misdemeanors who have been crime-free for several years frequently want to have their convictions vacated to allow them to qualify for jobs where licensing is required and to represent to landlords that they do not have a conviction. Convictions for some felonies can be vacated, and it is unfair to treat misdemeanants more harshly. Youthful offenders who have not reoffended should be able to free themselves of the consequence of a conviction.

Testimony Against: Domestic violence convictions should not be vacated because they usually occur when there is an ongoing pattern of that behavior. Effectiveness of treatment of domestic violence offenders is questionable. It is often difficult to get a domestic violence conviction, so the conviction should remain on the record. Many domestic violence misdemeanors began as felony offenses which were bargained to lesser crimes. A statute allowing vacation of misdemeanors and gross misdemeanors should be the same as the felony vacation statute. Court records should not be sealed, the conviction should not be

nonconviction data, and the conviction should be available in subsequent proceedings for purposes other than criminal history.

Testified: Mark Muenster, WACDL & WDA (pro); Sherry Appleton, WDA & WACDL (pro); Tom McBride, WAPA (pro w/amend.); Sharon Case, Wash. State Coalition Against Domestic Violence (con).