

HOUSE BILL REPORT

SHB 1346

As Passed Legislature

Title: An act relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

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

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase).

Brief History:

Committee Activity:

Judiciary: 2/6/03, 2/25/03 [DPS].

Floor Activity:

Passed House: 3/13/03, 96-0.

Passed Senate: 4/9/03, 45-0.

Passed Legislature.

Brief Summary of Substitute Bill

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

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Bill Perry (786-7123).

Background:

Vacation of Records of Felony Convictions under the SRA.

Under the 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 July 1, 1984, there are no statutory provisions expressly authorizing the vacation of records.

However, for pre-SRA felons who have successfully completed parole after a prison sentence, the Indeterminate Sentence Review Board (ISRB) may issue a certificate of discharge if the ISRB determines that the person's final release "is not incompatible with the best interests of society and the welfare of the paroled individual." A certificate of discharge has the effect of "restoring all civil rights" (RCW 9.96.050).

Some pre-SRA felons were not sentenced to prison, but instead served suspended sentences and a period of probation. If a felon successfully completed the period of probation he or she could be "released from all penalties and disabilities" that resulted from conviction. However, a release does not prevent the record of conviction from being used in a subsequent prosecution. An application for release must be made "prior to the expiration of the maximum period of punishment for the offense" (RCW 9.95.210 and 9.95.240). Under another provision, a pre-SRA felon who received a suspended sentence may apply for "restoration of his civil rights" (RCW 9.92.066).

Convictions for certain crimes do not qualify for this restoration of rights. (RCW 9.92.060) These crimes are:

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

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)

Summary of Substitute Bill:

A pre-SRA felon who has successfully completed a suspended sentence and probation 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: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Every saint has a past and every sinner has a future. The bill is just a matter of fairness since SRA felons are able to get some convictions vacated. In fact, this bill will grant this same opportunity to those with the longest track record of good behavior since their offenses.

Testimony Against: (Original Bill) The bill should not change existing provisions that apply to dismissing indictments or restoring rights. The bill should just do for pre-SRA felons what current law already allows for SRA felons.

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

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