
Judiciary Committee

PSHB 2087

Title: An act relating to allowing the vacation of domestic violence misdemeanor and gross misdemeanor convictions.

Brief Description: Allowing the vacation of domestic violence misdemeanor and gross misdemeanor convictions.

Sponsors: Representatives Lantz and Linville.

Brief Summary of Substitute Bill
<ul style="list-style-type: none">Allows vacation of one or more misdemeanor and gross misdemeanor domestic violence offenses if certain conditions are met and the court finds by clear and convincing evidence that there are exceptional and compelling circumstances justifying vacation.

Hearing Date: 2/28/05

Staff: Trudes Tango Hutcheson (786-7384).

Background:

A person convicted of a misdemeanor or gross misdemeanor who has completed all the terms of the sentence may apply to the court to vacate the record of conviction. A person may not have a domestic violence offense vacated if:

- the person has had a previous domestic violence conviction or has lied to the court about the previous conviction;
- fewer than five years have passed since the person completed the terms of the sentence;
- the person has not notified the prosecuting attorney's office in writing of the vacation application;
- the person has criminal charges pending or has been convicted of a new crime;
- the person has had a previous conviction vacated; or
- the person is currently restrained, or has been restrained within five years prior to the vacation application, by a domestic violence protection order, no-contact, or other related order.

Domestic violence includes certain crimes when committed by one family member or household member against another. Those crimes include assaults, rape, residential burglary, stalking, criminal trespass, malicious mischief, kidnapping, unlawful imprisonment, and violations of a no-contact, restraining, or protection order prohibiting one person from knowingly coming within a certain distance from another person.

Family or household members means spouses, former spouses, persons who have a child in common, adult persons related by blood or marriage, adult persons living together or who have lived together in the past, persons 16 years old or older who have or had a dating relationship, persons 16 years old or older who have or had a dating relationship and are or were living together, and persons who have a biological or legal parent-child relationship, such as stepparents and stepchildren.

There are various types of orders available to help protect victims of domestic violence. These include: (a) criminal no-contact orders, which may be imposed when a person is arrested or charged with a domestic violence offense; (b) civil domestic violence protection orders, which are not dependent on a criminal action, may be imposed where there is allegations of domestic violence, and may be broader in scope than no-contact orders; (c) civil restraining orders, which are broad and may be imposed during dissolution proceedings; (d) anti-harassment orders, which can either be civil or criminal and are more commonly imposed when the victim and perpetrator are not "family or household members;" and (e) vulnerable adult protection orders, which are similar to the domestic violence protection orders.

It is a gross misdemeanor if a person knowingly violates the restraint provisions of a domestic violence protection order, no-contact order, restraining order, or anti-harassment order. However, it becomes a class C felony if the person has had two previous violations, whether or not the violations are of the same order or regarding the same victim.

Summary of Substitute Bill:

A person may have one or more domestic violence misdemeanor or gross misdemeanor records of convictions vacated, in addition to the one vacation of a domestic violence misdemeanor or gross misdemeanor under current law, if certain conditions are met.

The court may vacate a person's record of conviction if:

- there are no criminal charges pending;
- the applicant is not currently under a restraining order and has not been under a restraining order within five years prior to the vacation application;
- the applicant has been crime free for five years since the completion of the terms of the sentence; and
- the court finds by clear and convincing evidence that there are exceptional and compelling circumstances justifying vacation.

In determining exceptional and compelling circumstances, the court must consider factors including, but not limited to, whether:

- the person completed a domestic violence perpetrator program;
- the prosecutor consents to the vacation;
- there is clear and convincing evidence the person is remorseful; and
- the court's denial would cause hardship to the person's immediate family.

In cases where family members have committed domestic violence against each other, the court may find as an exceptional and compelling circumstance the fact that the person was not the primary physical aggressor.

A vacated record cannot be used as criminal history, except if the vacated offense is a violation of a domestic violence protection order, no-contact order, restraining order, or anti-harassment order.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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