

SENATE BILL REPORT

SB 6071

As of January 19, 2012

Title: An act relating to vacating records.

Brief Description: Concerning the vacation of records.

Sponsors: Senators Kline and Pridemore.

Brief History:

Committee Activity: Judiciary: 1/18/12.

SENATE COMMITTEE ON JUDICIARY

Staff: Aldo Melchiori (786-7439)

Background: Vacation of Misdemeanors and Gross Misdemeanors. Every person convicted of a misdemeanor or gross misdemeanor who has completed all terms of the sentence may apply for a vacation of the applicant's record of conviction for the offense. The offender's record cannot be cleared if:

1. there are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court;
2. the offense was a violent offense or an attempt to commit a violent offense, as defined in RCW 9.94A.030;
3. the offense was a violation for driving while under the influence, actual physical control while under the influence, or operating a railroad, etc., while intoxicated;
4. the offense was any misdemeanor or gross misdemeanor violation, including an attempt, of obscenity and pornography, sexual exploitation of children, or a sex offense;
5. the applicant was convicted of a misdemeanor or gross misdemeanor domestic violence offense; or the court determines after a review of the court file that the offense was committed by one family member or household member against another; or the court determines that the offense involved domestic violence, and any one of the following factors exist:
 - a. the applicant has not provided written notification of the vacation petition to the prosecuting attorney's office that prosecuted the offense for which vacation is sought or has not provided that notification to the court;
 - b. the applicant has previously had a conviction for domestic violence. For purposes of this subsection, however, if the current application is for more

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- than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction;
- c. the applicant has signed an affidavit under penalty of perjury affirming that the applicant has not previously had a conviction for a domestic violence offense and a criminal history check reveals that the applicant has had such a conviction; or
 - d. less than five years have elapsed since the person completed the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment ordered as a condition of sentencing;
6. for any offense other than those offences involving domestic violence, as described above, less than three years have passed since the person completed the terms of the sentence, including any financial obligations;
 7. the offender has been convicted of a new crime in this state, another state, or federal court since the date of conviction;
 8. the applicant has ever had the record of another conviction vacated; or
 9. the applicant is currently restrained or has been restrained within five years prior to the vacation application by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order which restrains one party from contacting the other party.

If the offender meets these tests, the court may clear the record of conviction by permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or, if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

Vacation of Felony Offenses. In the case of felony offenders, a discharged offender may apply to the sentencing court for a vacation of the conviction record. The offender's record cannot be cleared if:

1. any criminal charges are pending against the offender in any court in this state, another state or federal court;
2. the offense was a violent offense;
3. the offense was a crime against persons;
4. the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge;
5. the offense was a Class B felony, and less than ten years have passed since the date of discharge;
6. the offense was a Class C felony, other than felony Driving Under the Influence of Intoxicating Liquor or Drugs or felony Physical Control While Under the Influence of Intoxicating Liquor or Drugs and less than five years have passed since the date the applicant was discharged; or
7. the offense was felony Driving Under the Influence of Intoxicating Liquor or Drugs or felony Physical Control While Under the Influence of Intoxicating Liquor or Drugs, and less than ten years have passed since the applicant was discharged.

If the offender meets these tests, the court may clear the record of conviction by allowing the offender to withdraw the guilty plea and to enter a plea of not guilty or setting aside the

guilty verdict, if the offender was convicted after a plea of not guilty; and then dismissing the information or indictment against the offender.

Consequences of Vacation. Once the court vacates a record of conviction, the offender's conviction may not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender must be released from all penalties and disabilities resulting from the offenses. For all purposes, including responding to questions on employment applications, an offender whose record of conviction has been vacated may state that the offender has never been convicted of that crime. However, a vacated conviction record may be used as an element of a crime in a later criminal prosecution.

The sentencing guidelines also allow automatic wash-out of prior convictions that meet the requirements of vacation of conviction. This policy allows offenders who do not formally apply to the court to have eligible offenses excluded from their criminal history in subsequent convictions.

Summary of Bill: An offender convicted for a misdemeanor, gross misdemeanor, or felony may apply for a vacation of the criminal record regardless of whether the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge.

Appropriation: None.

Fiscal Note: Requested on January 12, 2012.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: We should allow people to vacate offenses after the requisite time period has passed. Sometimes people stumble on the way back to the straight and narrow. A limited number of types of offenses can be vacated. We need to help people get back on their feet after they lose their way and have completed the terms of their sentences.

CON: The present scheme was an intended consequence to only allow offenders to vacate their most recent offense after a time period that shows they are not committing more crimes. Vacating misdemeanors is not as concerning because they are not generally considered when determining the sentence consequences for subsequent felonies.

Persons Testifying: PRO: Senator Kline, prime sponsor; Bob Cooper, WA Defenders Assn., WA Assn. of Criminal Defense Lawyers.

CON: Tom McBride, WA Assn. of Prosecuting Attorneys.