
Public Safety Committee

HB 1661

Brief Description: Addressing misdemeanor marijuana offense convictions.

Sponsors: Representatives Fitzgibbon, Condotta, Roberts, Jinkins, Green, Upthegrove, Walsh, Moscoso, Tharinger, Cody, Kagi, Hunt, Appleton, Ryu, Lytton, Farrell, Pollet, Van De Wege, Ormsby, Lias, Reykdal and Stanford.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Allows for vacation of the misdemeanor offense of possession of 40 grams or less of marijuana.
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Hearing Date: 2/20/13

Staff: Sarah Koster (786-7303).

Background:

Misdemeanor Marijuana Possession.

Revised Code of Washington 69.50.4014 provides that it is a misdemeanor for a person to possess 40 grams or less of marijuana.

Under Initiative 502, which was approved by Washington voters on November 6, 2012, the possession, by a person 21 years or older, of:

- 1 ounce of useable marijuana;
- 16 ounces of marijuana-infused product in solid form; or
- 72 ounces of marijuana-infused product in liquid form, is not a violation of Washington law.

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 record of conviction for the offense. The applicant's record cannot be cleared if:

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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. less than three years has passed since the person completed the terms of the sentence, including any financial obligations;
3. the offender has been convicted of a new crime in this state, another state, or federal court since the date of conviction;
4. the applicant has ever had the record of another conviction vacated; or
5. 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.

Additionally, certain misdemeanor offenses may not be vacated or may only be vacated under additional circumstances:

- the following offenses may not be vacated: violent offenses, attempt to commit a violent offense, violations of an obscenity or pornography offense, sexual exploitation of children, or a sex offense;
- a violation of driving while under the influence, actual physical control while under the influence, or operating a railroad, etc., while intoxicated may not be vacated if the applicant has had a subsequent alcohol or drug violation within 10 years of the date of arrest; and
- domestic violence offenses, including any offense which the court determines was committed by one family member against another, may not be vacated if the applicant: (a) 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 a previous domestic violence conviction; or (c) less than five years has passed since completing the terms of the original conditions of the sentence.

Summary of Bill:

Every person convicted of the misdemeanor, marijuana possession of 40 grams or less of marijuana, may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense.

The court shall vacate 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 the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

Vacations of a record of conviction for misdemeanor marijuana possession are not subject to the restrictions applicable to vacating other misdemeanor convictions, including waiting three years after completing the terms of the sentence and disqualification if the applicant has pending or subsequent criminal convictions, or has ever vacated another record of conviction.

Appropriation: None.

Fiscal Note: Requested on February 17, 2013.

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