

HOUSE BILL REPORT

HB 1661

As Reported by House Committee On:
Public Safety
Appropriations Subcommittee on General Government

Title: An act relating to misdemeanor marijuana offense convictions.

Brief Description: Addressing misdemeanor marijuana offense convictions.

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

Brief History:

Committee Activity:

Public Safety: 2/20/13, 2/21/13 [DP];

Appropriations Subcommittee on General Government: 2/25/13 [DPS].

Brief Summary of Substitute Bill

- Limits restrictions on vacation of misdemeanor marijuana possession to those instances in which the possession which formed the basis of the offense was less than one ounce.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 6 members: Representatives Goodman, Chair; Roberts, Vice Chair; Appleton, Moscoso, Pettigrew and Takko.

Minority Report: Do not pass. Signed by 5 members: Representatives Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Holy, Hope and Ross.

Staff: Sarah Koster (786-7303).

Background:

Misdemeanor Marijuana Possession.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Section 69.50.4014 RCW 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: (a) 1 ounce of useable marijuana; (b) 16 ounces of marijuana-infused product in solid form; or (c) 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:

- there are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court;
- less than three years has passed since the person completed the terms of the sentence, including any financial obligations;
- the offender has been convicted of a new crime in this state, another state, or federal court since the date of conviction;
- the applicant has ever had the record of another conviction vacated; or
- 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, attempts 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, 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: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) The voters of this state legalized possession of small amounts of marijuana, which had been a misdemeanor. Some county prosecutors dismissed pending misdemeanor possession charges, but for thousands with these convictions on their record, dismissal is not an option. Some are concerned with giving them a second chance at life. There is no doubt they made a mistake, as possession was illegal at that time. Voters made it clear that possession of small amounts of marijuana should not ruin lives. Since 2008 there have been 19,367 marijuana misdemeanor convictions and for 1,828 of those individuals, it was the only conviction. This is a plant that used to be one of the most valuable plants to human cultures around the world. It was a moral injustice to ever put someone in jail for possession of cannabis; this is the first step towards righting the wrongs that have been done to the citizens of this country by the government with regard to cannabis prohibition. Often low-income people and minority groups are caught up in the system. They may have taken a plea bargain to go on with their lives, but with good defense, this may not have been the case. Let us allow these people to get on with their lives. Possession should not be more damaging to an individual than use of a drug itself. This bill looks to the past to remedy the lingering damage to an adult citizen convicted of marijuana possession. Youth and minorities have been struck hardest, but medical marijuana patients have been hurt as well. This will restore the public faith in the court system and the Legislature.

(With concerns) Recognizing that voters voted to get rid of this law and that there are many people who would like to get rid of those past convictions and move on, there are concerns that the current misdemeanor goes beyond what is allowed under Initiative 502. There is a question of whether that was really the intent of the bill. These are technical and policy questions to consider. If this was not the intent, the bill should be narrowed.

(Opposed) There is a process already in place to vacate convictions, including misdemeanor marijuana possession. It requires individuals to be three years crime free and this is the appropriate period. Some question if this is different from the mistake that a person made in trespassing or breaking a window. Initiative 502 did not change the fact that possession between 28 and 40 grams is illegal or that it is illegal for those under 21 years. No one here thinks that the laws in Washington are perfect. What is important is that we commit to live by those laws until we amend those laws. The question is why should the vacation for this one crime be accelerated; marijuana is not that special, so some ask why those convictions should be treated differently.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; Ezra Eickmeyer, Washington Cannabis Association; Michael Wilson and Keith Henson, National Organization for the Reform of Marijuana Laws; and John Novak, Cannabis Defense Coalition.

(With concerns) Candice Bock, Association of Washington Cities.

(Opposed) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: Rose Eilts, National Organization for the Reform of Marijuana Laws; and Stefani Quane, Cannabis Business Law.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hudgins, Chair; Dunshee, Hunt, Pedersen and Springer.

Minority Report: Do not pass. Signed by 4 members: Representatives Parker, Ranking Minority Member; Buys, Chandler and Taylor.

Staff: Wendy Polzin (786-7137).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government Compared to Recommendation of Committee On Public Safety:

The Appropriations Subcommittee on General Government recommends limiting the conviction vacation provisions to those instances of marijuana possession which are legal under current law (less than one ounce).

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) People caught in these circumstances tend to be low-income and part of minority groups. If these individuals can clear their names, they will be able to get jobs. It will be a benefit to the state to pass this bill. The Legislature is urged to at least allow misdemeanor convictions to be vacated, if not other convictions.

(Opposed) None.

Persons Testifying: Michael Wilson, Normal; and Kirk Ludden, Real Legalization.

Persons Signed In To Testify But Not Testifying: None.