

---

## Public Safety Committee

---

### HB 1041

**Brief Description:** Providing for the vacation of misdemeanor marijuana offense convictions.

**Sponsors:** Representatives Fitzgibbon, Appleton, Gregerson, Reykdal, Cody, Moeller, Santos, Ormsby, Farrell, Walkinshaw, Pollet and Riccelli.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Allows a person to vacate a misdemeanor conviction for marijuana possession from his or her record of criminal history.</li></ul>
---



**Hearing Date:** 1/16/15

**Staff:** Yvonne Walker (786-7841).

**Background:**

Misdemeanor Marijuana Possession.

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

Initiative 502 (I-502) was a ballot measure approved by Washington voters in November of 2012. The passage of the initiative legalized the recreational use of marijuana and created a comprehensive regulatory scheme that includes provisions legalizing the possession of up to 1 ounce of marijuana and related products for personal use. Persons over 21 years old may purchase up to 1 ounce of useable marijuana, 16 ounces of solid marijuana-infused product, and 72 ounces of liquid marijuana-infused product at a licensed retailer.

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;

---

*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.*

- 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 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.

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. In addition, an offense may not be vacated if the offense is considered a "prior offense" as defined in statute, and the applicant has had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense; 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.

Once the court vacates a record of conviction, the person is released from all penalties and disabilities resulting from the offense and the fact that the person has been convicted of the offense is not included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated may state that the person has never been convicted of that crime. This does not affect or prevent the use of an offender's prior conviction in a later criminal prosecution.

### **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 person must have been the age of 21 years of age or older at the time of 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:** Available.

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