

HOUSE BILL REPORT

HB 2668

As Reported by House Committee On:
Public Safety

Title: An act relating to vacating convictions arising from offenses committed as a result of being a victim of trafficking, promoting prostitution, or promoting commercial sexual abuse of a minor.

Brief Description: Vacating convictions arising from offenses committed as a result of being a victim of trafficking, promoting prostitution, or promoting commercial sexual abuse of a minor.

Sponsors: Representatives Orwall, Goodman, Senn, Riccelli and Ormsby.

Brief History:

Committee Activity:

Public Safety: 1/26/16, 2/5/16 [DP].

Brief Summary of Bill

- Allows a person to vacate a conviction for prostitution even if he or she has committed other crimes since the date of conviction if those crimes were the result of being a victim of a trafficking or a prostitution-related offense.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 8 members: Representatives Goodman, Chair; Orwall, Vice Chair; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

Minority Report: Do not pass. Signed by 1 member: Representative Klippert, Ranking Minority Member.

Staff: Kelly Leonard (786-7147) and Ellie Page (786-7291).

Background:

Vacating a Conviction.

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.

In select circumstances, a person's record of conviction may be vacated by a sentencing judge. The judge may vacate a conviction by permitting the applicant to withdraw his or her guilty plea and enter a not guilty plea, or set aside the guilty verdict and dismiss the information, indictment, complaint or citation against the applicant, and vacate the judgment and sentence. Once the court vacates a record of conviction, the offense is no longer included in the person's criminal history for sentencing purposes in any subsequent conviction. A person may say that he or she has never been convicted of that crime, for example, in a background check for housing or employment purposes.

Vacation for Misdemeanors and Gross Misdemeanors.

Every person convicted of a misdemeanor or gross misdemeanor who has completed all the terms of the sentence may apply to the sentencing court for a vacation of the record of his or her conviction. A person is prohibited from having a record vacated if:

- he or she applies for vacation less than three years after he or she completed his or her sentence, including any financial obligations;
- there are any pending criminal charges against the applicant in any state or federal court;
- the applicant has been convicted of a new crime in any state or federal court since the date of conviction;
- the applicant has had the record of another conviction vacated;
- the applicant has been the subject of a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order within the five years prior to applying for the vacation; or
- the conviction was for one of the select offenses that may not be vacated, for example, a violent offense, Driving Under the Influence, or Obscenity and Pornography.

There are additional requirements for a person seeking to have his or her record vacated for a domestic violence offense.

Vacation for a Prostitution Conviction.

A person convicted of Prostitution may have the record of his or her conviction vacated if he or she can prove, by a preponderance of the evidence, each element of one of the following offenses, and that the prostitution conviction was a result of being a victim of one of the following crimes:

1. *Trafficking.* A person recruited, harbored, transported, provided, obtained, bought, purchased, or received the applicant, either knowingly or in reckless disregard that force, fraud, or coercion would be used to cause the applicant to engage in a sexually explicit act or that the applicant was under 18 years old and would be caused to engage in a sexually explicit act.
2. *Promoting Prostitution in the First Degree.* A person knowingly compelled the applicant by threat or force to engage in prostitution, or a person knowingly compelled an applicant with a mental incapacity or developmental disability that renders him or her incapable of consent, to engage in prostitution.
3. *Promoting Commercial Sexual Abuse of a Minor.* A person knowingly advanced commercial sexual abuse or a sexually explicit act of the applicant when he or she was under 18 years old.

4. *Trafficking in Persons Under the Trafficking Victims Protection Act of 2000.* The applicant was induced by force, fraud or coercion to engage in a commercial sex act, or the applicant was induced to engage in a commercial sex act when he or she was under 18 years old.

The applicant may not have the record of conviction for Prostitution vacated if:

- there are any pending criminal charges, excluding prostitution charges, against the applicant in any state or federal court; or
- the applicant has been convicted of another crime, except prostitution, in any state or federal court since the date of conviction.

Summary of Bill:

In select circumstances, a person convicted of Prostitution may vacate the record of his or her conviction even if he or she has been convicted of another crime since the date of the prostitution conviction. The person must prove by a preponderance of the evidence that he or she committed the other crime as a result of being a victim of:

- Trafficking;
- Promoting Prostitution in the first degree;
- Promoting Commercial Sexual Abuse of a Minor; or
- Trafficking in persons under the Trafficking Victims Protection Act of 2000.

A person applies to vacate a Prostitution conviction by submitting a signed affidavit with a motion to vacate to the court.

Appropriation: None.

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) Many survivors of prostitution have tried to vacate their prostitution convictions, but have been unable to do so because they have been convicted of another crime since their prostitution conviction. Numerous crimes, such as theft and possession of drugs, are often committed as a result of being trafficked or prostituted, and should not be an impediment to vacating a prostitution conviction. Background checks make it extremely difficult for survivors to find housing and employment if they are unable to vacate their prostitution convictions, which makes them susceptible to re-victimization. The bill could encourage survivors to better themselves and make them feel less like criminals. It is an important step in the victim's healing process that the community acknowledge the crime was not the victim's.

The bill would also help protect domestic victims of commercial sexual exploitation, who are not always protected under the federal Trafficking Victims Protection Act.

The affidavits are an effective way to allow victims to record their experiences. However, the affidavits should not be public record so as to prevent re-traumatization.

(Opposed) None.

Persons Testifying: Representative Orwall, prime sponsor; Jeri Moomaw, Washington Engage; Amber Walker; Stephanie Harris; Debra Boyer, Organization for Prostitution Survivors; Robert Beiser, Seattle Against Slavery; and Heidi Sargent, Seattle City Attorney's Office.

Persons Signed In To Testify But Not Testifying: None.