

# SENATE BILL REPORT

## SB 5831

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As of February 12, 2015

**Title:** An act relating to the restoration of firearms rights.

**Brief Description:** Allowing for the restoration of firearms rights under certain conditions.

**Sponsors:** Senators Honeyford, Hatfield, Rivers, Becker, Schoesler, King, Roach, Warnick, Hewitt and Angel.

**Brief History:**

**Committee Activity:** Law & Justice: 2/12/15.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Aldo Melchiori (786-7439)

**Background:** A person convicted of a misdemeanor or gross misdemeanor who has completed all of the terms of the sentence may apply to the sentencing court for a vacation of the record of conviction for that offense. The court may vacate the record of conviction by: (1) 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 (2) dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

A person may not have the record of conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present:

1. there are any pending criminal charges against the applicant in any state or federal court;
2. the offense was a violent offense or an attempt to commit a violent offense;
3. the offense was a violation for driving while under the influence, physical control of a vehicle while under the influence, operating a railroad, etc. while intoxicated; or the offense is considered a prior offense and the applicant had a subsequent alcohol or drug violation within ten years of the date of arrest for the prior offense;
4. the offense was any misdemeanor or gross misdemeanor violation, including 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;

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or the court, after considering the damage to person or property that resulted in the conviction, any prior convictions for domestic violence crimes, or for comparable offenses in any state or federal court, and the totality of the records under review regarding the conviction being considered for vacation, 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;
  - b. the applicant previously had a conviction for domestic violence; or
  - c. less than five years 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 described in (5), less than three years 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 any court since the date of conviction;
  8. the applicant 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.

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.

A person is guilty of the crime of unlawful possession of a firearm in the second degree if the person owns, has possession of, or has control of any firearm after having previously been convicted or found not guilty by reason of insanity of any felony not specifically identified for the first degree offense, or any of the following crimes when committed by one family or household member against another: assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence.

For the purposes of unlawful firearm possession, the person has been convicted, whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty is accepted, or a verdict of guilty is filed, including sentencing or disposition, post-trial or post-factfinding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension, or deferral of sentence.

A person is not precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

**Summary of Bill:** When a court vacates a misdemeanor or gross misdemeanor record of domestic violence, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (1) violating the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or daycare; or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location; or (2) stalking. A vacated conviction is not considered a conviction for the purposes of firearm possession under federal law.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**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: It is currently easier to vacate a felony conviction than it is to vacate a misdemeanor. These offenders have done everything they have been ordered to do and they are trying to turn their lives around. This will help some people get their lives back. The federal government does not recognize the vacation of misdemeanors from Washington, for the purposes of restoring a person's right to possess a firearm, because the state law prohibits the use of the vacated conviction for the purposes of determining the sentence in a subsequent conviction rather than the use of the vacated conviction in a later criminal prosecution.

**Persons Testifying:** PRO: Senator Honeyford, prime sponsor; Glen Warren, citizen.