
Public Safety Committee

HB 2793

Brief Description: Vacating criminal records.

Sponsors: Representatives Hansen and Irwin.

Brief Summary of Bill

- Creates a court-driven process for reviewing and vacating criminal convictions based on current statutory eligibility requirements, beginning July 1, 2022.
- Requires the Administrative Office of the Courts (AOC) to assess the types of information that should be reported or entered into judicial information systems in order to improve the reliability of the process, and requires the AOC to report its findings by December 1, 2020.

Hearing Date: 2/3/20

Staff: Kelly Leonard (786-7147).

Background:

A person may apply to the sentencing court to have his or her conviction vacated in certain circumstances. If the court vacates a record of conviction, the offense is no longer included in the person's criminal history. Criminal history is a factor in sentencing, professional licensing, employment, housing, and other matters. A person whose conviction has been vacated may state that he or she has never been convicted of that crime, including when responding to questions pertaining to licensing, employment, and housing applications.

In order for the court to vacate a conviction, the person must meet certain statutory eligibility requirements, which vary depending on the nature of the conviction. Certain types of convictions do not qualify to be vacated. In addition, for most applications, the decision to vacate the offense is discretionary on the part of the sentencing court.

A person may not have a felony conviction vacated if:

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- the person has not received a certificate of discharge for the offense, including payment of legal financial obligations;
- the offense was a violent offense, crime against persons, or felony DUI, except for Assault in the second degree, Assault in the third degree not involving a law enforcement officer, and Robbery in the second degree may be vacated, so long as the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement;
- there are any criminal charges against the person pending in any state or federal court;
- the offense is a class B felony and the person has been convicted of a new crime in the 10 years prior to the application, or less than 10 years have passed since the later of: release from community custody; release from full and partial confinement; or sentencing; or
- the offense is a class C felony and the person has been convicted of a new crime in the five years prior to the application, or less than five years have passed since the later of: release from community custody; release from full and partial confinement; or sentencing.

A person may not have a gross misdemeanor or misdemeanor conviction vacated if:

- the person has not completed the conditions of his or her sentence, including payment of legal financial obligations;
- the conviction was for one of the select offenses that may not be vacated, including, for example, a violent offense, a sex offense, or a DUI offense;
- the person has any criminal charges pending in any state or federal court;
- the person has been convicted of a new crime in any state, federal, or tribal court since the date of conviction;
- less than three years have passed since the person completed the terms of the sentence, including any financial obligations, or the person has been convicted of a new crime in the three years prior to the application; or
- the person does not meet certain requirements pertaining to no-contact orders or protection orders.

Additional restrictions apply to certain types offenses, including, for example domestic violence offenses. However, a misdemeanor marijuana possession offense is exempted from any restrictions for vacation, provided that the offense was committed when the person was age 21 or older. The person need only have a qualifying possession conviction to apply for a vacation.

Summary of Bill:

Administrative Office of the Courts Review of Records. Beginning July 1, 2022, the Administrative Office of the Courts (AOC) must develop a process by which criminal convictions occurring on or after January 1, 2000, are reviewed to determine whether those convictions should be scheduled for administrative vacation hearings. The process must rely upon records available to the AOC through judicial information systems and other sources.

The AOC must determine whether available records indicate that a defendant is currently incarcerated for a criminal offense and/or is precluded from qualifying to vacate his or her conviction under current requirements. If he or she is not incarcerated or precluded, the AOC must notify sentencing courts to schedule an administrative hearing. The AOC must review records and provide notifications on a monthly or quarterly basis.

Court Review and Approval. Beginning July 1, 2022, sentencing courts are required to conduct regularly scheduled vacation hearings.

A sentencing court must schedule an administrative hearing when it receives a notification from the AOC. At an administrative vacation hearing, the court must determine whether to vacate the conviction based on current requirements for the particular offense. The defendant is presumed to meet the requirements and the court must vacate the conviction, unless court records indicate that the defendant does not meet the requirements or the prosecutor objects on the basis that the defendant does not meet the requirements, in which case the court must set a contested hearing to be conducted on the record. In addition, a defendant is disqualified if he or she is currently incarcerated for a criminal offense.

The contested hearing must be set no sooner than 18 days after notice has been provided to the defendant. At a contested hearing, the court must vacate the record, unless the court determines the defendant does not meet the requirements. A defendant is not required to appear at an administrative or contested hearing for the court to vacate a conviction.

If the court vacates a conviction, it is processed in the same manner and has the same effect as provided in current law. Regardless of whether a hearing has previously occurred or is scheduled at a future date, a defendant may still independently apply to the court to vacate a conviction under current statute or seal his or her records under court rule.

Beginning July 1, 2022, the AOC must regularly collect and report certain information with respect to convictions where notifications were sent to sentencing courts. The AOC may include the information in publicly available caseload reports or submit a quarterly or annual report to the Governor and appropriate committees of the Legislature.

Administrative Office of the Courts Study. The AOC must submit a report with its findings to the Governor and the appropriate committees of the Legislature by December 1, 2020, with an evaluation of:

- the types of data currently available to assess eligibility;
- any additional types of information that should be reported to courts or directly to the AOC to improve the reliability of notifications sent to courts;
- any additional types of information that should be reported through judicial information systems by clerks and court administrators to improve the reliability of notifications sent to courts; and
- any changes to laws, policies, or practices or additional resources necessary to improve the reliability of notifications sent to courts.

The AOC may consult with county clerks and court administrators, judges, prosecuting attorneys, defense attorneys, the Department of Corrections, county and city departments, and any other entities with relevant records.

Appropriation: None.

Fiscal Note: Requested on February 1, 2020.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1 through 3, relating to the vacating process, which take effect July 1, 2022.