

HOUSE BILL REPORT

HB 2793

As Reported by House Committee On:

Public Safety
Appropriations

Title: An act relating to vacating criminal records.

Brief Description: Vacating criminal records.

Sponsors: Representatives Hansen and Irwin.

Brief History:

Committee Activity:

Public Safety: 2/3/20, 2/6/20 [DPS];

Appropriations: 2/10/20 [DP2S(w/o sub PS)].

Brief Summary of Second Substitute Bill

- Creates a court-driven process for reviewing and vacating criminal convictions based on current statutory eligibility requirements.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Sutherland, Assistant Ranking Minority Member; Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

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

Minority Report: Without recommendation. Signed by 1 member: Representative Graham.

Staff: Kelly Leonard (786-7147).

Background:

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.

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:

- 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 Driving Under the Influence (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 of 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 Substitute 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 are reviewed to determine whether those convictions should be scheduled for administrative vacation hearings. The process must review convictions beginning at the earliest period for which electronic court records are reliable, provided that the review applies to all convictions beginning no later than January 1, 2000. Further, 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.

The AOC must also develop a process by which a person may submit an inquiry with supporting information and documentation to the AOC in order to assist or otherwise expedite a review of his or her conviction.

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.

Implementation 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.

Substitute Bill Compared to Original Bill:

The AOC must review convictions beginning at the earliest period for which electronic court records are reliable, provided that the review applies to all convictions beginning no later than January 1, 2000 (rather than limiting the review to all convictions beginning January 1, 2000). The review process must rely upon records available to the AOC through judicial information systems and state agencies (rather than judicial information systems and other sources).

The substitute bill adds language providing that, when the AOC conducts an initial determination as whether available records indicate that a conviction qualifies for vacation, the following apply:

- whether a person is currently incarcerated for a criminal offense is determined by reviewing the term of confinement reflected in the judgment and sentence document for his or her most recent criminal conviction;
- whether a person has completed his or her sentencing conditions, excluding legal financial obligations, and satisfied the base waiting period is determined by adding the waiting period to the terms of confinement and community custody reflected in the applicable judgment and sentence document; and
- the crime-free waiting period is determined based on the date of the query conducted by the AOC, rather than the date of application.

The AOC must also create a process by which a person may submit an inquiry with supporting information and documentation in order to assist or otherwise expedite a review of his or her conviction.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: 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.

Staff Summary of Public Testimony:

(In support) Last year, the Legislature passed The New Hope Act, which expanded eligibility to vacate criminal convictions. Despite the fact that potentially hundreds of thousands of people may qualify, very few people have petitioned the courts. Most people do not know about the process, and even for those who do know, their ability to access the process is limited by resources. Filing a petition can cost thousands of dollars in attorneys' fees. There are limited pro bono attorneys available, and even where someone obtains an attorney's help, the process is messy and slow. Different counties and judges approach it differently. Most of the necessary documents are held by the courts and are inaccessible to the public. This process is simply infeasible for most people.

It is time to take the next step. Other states have adopted "Clean Slate," a policy where convictions are sealed or expunged automatically. However, Washington is unique due to its court system. This bill takes into account the court system and the implementation challenges. It has a long onramp for implementation. This is the right approach for Washington. Beginning in 2022, people who are currently entitled to relief will actually be able to access it. If rehabilitated and reformed persons can get jobs and housing, it is better for everyone. It reduces the burden on taxpayers, and it improves the economy. Simply put, this is good for America.

There are countless examples of persons with prior convictions who have repaid their debt to society and become productive members of their communities. But those persons are still held back by their criminal records. A criminal record can prevent someone from obtaining housing, employment, and professional licensing, even if that person has become a model citizen. There are examples of persons who can obtain a top security clearance with the federal government, but cannot find a landlord to rent them an apartment. A criminal record can be a massive, insurmountable barrier for otherwise good, reformed people.

The bill does not expand eligibility for vacating convictions. This is about providing access to those who already qualify under current law. This is an access-to-justice issue. Vacating a criminal conviction is the most effective way to resolve the collateral consequences of a conviction.

There is a national effort to enact Clean Slate, and Washington has an opportunity to be the gold standard for the nation. Even from a conservative perspective, this is good policy. There is nothing more intrusive than a criminal record. Government is standing in the way of persons who have already paid their debt to society. If America is a great nation, then it should do right by its most vulnerable citizens.

The bill may need some changes to address implementation issues. Some stakeholders would like to see the process even more streamlined and automated.

(Opposed) None.

(Other) The policy is a good idea, but there are likely going to be many implementation issues. Other states that have adopted Clean Slate have unified court systems. Washington does not have a unified court system. The AOC has limited access to local court documents and information. There have been previous efforts to establish a statewide court records system, but it has been very challenging. It is unlikely that this could be implemented statewide on this timeline and with this framework. The Legislature should consider starting with a pilot project in a single county.

Persons Testifying: (In support) Representative Hansen, prime sponsor; Representative Irwin; Tarra Simmons, Civil Survival Project; Arthur Rizer, R Street; Christopher Poulos, Washington Statewide Reentry Council; Jacob Kuykendall, King County Bar Association; Tom Pierson, Tacoma Pierce County Chamber; Paul Benz, Faith Action Network; Carolina Landa; Sarai Cook; and Crystal Nelson.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 30 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Corry, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Macri, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Mosbrucker.

Minority Report: Do not pass. Signed by 1 member: Representative Kraft.

Staff: Yvonne Walker (786-7841).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Public Safety:

The second substitute bill:

- removes requirements for the Administrative Office for the Courts (AOC) to review records held by other state agencies, thereby providing that the initial review conducted by the AOC relies upon available court records in judicial information systems;

- modifies the provision restricting the vacation of a record if the person is currently incarcerated for a criminal offense by: (1) providing that the prosecutor may object on the basis that a person is currently incarcerated (rather than generally providing that a person is disqualified on that basis); and (2) specifies that the court cannot vacate a record at a contested hearing if it determines that the person is currently incarcerated;
- requires the AOC to conduct a pilot program from July 1, 2021, through June 30, 2022, to deploy the vacating process in a single county (before launching the process statewide on July 1, 2022, as required in the underlying bill). Requires the AOC to select the county for the pilot in consultation with sentencing courts, and requires sentencing courts participating in the pilot to comply with the process in the underlying bill; and
- requires the AOC to report the following to the Governor and Legislature:
 - an initial implementation plan on the pilot program by December 1, 2021 (in addition to the evaluation of the process, as required in the underlying bill);
 - a status update on the pilot program and a statewide implementation plan by December 1, 2021; and
 - a final update on the pilot program and status update on statewide implementation by December 1, 2022.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second 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) The goal of this project is to streamline the process to allow people with prior criminal records to get the relief to which they are entitled. The automated vacation process provided in this bill has been done successfully in other states.

A criminal record can prevent a person from earning an honest living, accessing safe and affordable housing, and integrating fully into society. Although Washington's economy is strong, job seekers with a criminal record are less likely to get a call back for a job offer and are frequently barred from the job they seek. People who have paid their debt to society in order to remain crime free should not be continually held back due to a criminal conviction on their record. When people turn their lives around, they deserve a second chance.

Streamlining and automating the record vacation process makes sense for defendants and for Washington's finances. This bill will allow more people to contribute to the workforce and will make our communities safer.

(Opposed) None.

(Other) The mechanism that the Administrative Office for the Courts (AOC) will go through for determining which of these cases are eligible for vacation is not fully complete as the

AOC does not currently have full access to such records. As a result, this bill will create a hybrid system. The AOC must be provided with enough funding so that they can review and shift through as many cases as they can ahead of time. If the AOC is not able to shift through these cases ahead of time, then that becomes the responsibility of the counties. The sheer volume of these cases will significantly increase costs for local jurisdictions.

Persons Testifying: (In support) Representative Hansen, prime sponsor; Michael Transue, Tacoma Pierce County Chamber; and William Maurer, Institute for Justice.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.