

# SENATE BILL REPORT

## SB 5605

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As of February 13, 2019

**Title:** An act relating to misdemeanor marijuana offense convictions.

**Brief Description:** Concerning misdemeanor marijuana offense convictions.

**Sponsors:** Senators Nguyen, Keiser, Hunt, Salomon, Hasegawa, Saldaña, Das, Randall, Darneille, Kuderer, Pedersen and Wilson, C..

**Brief History:**

**Committee Activity:** Law & Justice: 2/12/19.

**Brief Summary of Bill**

- Requires a court to vacate a misdemeanor marijuana possession conviction upon request if the applicant was age twenty-one or older at the time of the offense.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Tim Ford (786-7423)

**Background:** Misdemeanor Marijuana Possession. It is a misdemeanor offense for any person to possess 40 grams or less of marijuana. In 2012, Washington voters passed Initiative No. 502 (I-502), which legalized the recreational use of marijuana in certain circumstances and created a comprehensive regulatory scheme. Medical use of marijuana was also made legal by Initiative No. 692 in 1998. Persons at least twenty-one years old may legally possess up to one ounce of marijuana and related products for personal use. They may also purchase up to one ounce of useable marijuana, 16 ounces of solid marijuana-infused product, 72 ounces of liquid marijuana-infused product, and seven grams of marijuana concentrate.

Marijuana possession is still illegal for persons under twenty-one years old, regardless of the amount possessed.

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*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.*

Initiatives No. 502 and 692 did not repeal the misdemeanor offense of possession of marijuana, nor did it retroactively modify previous convictions or sentences for marijuana-related misdemeanor offenses.

Pardon Process for Marijuana Misdemeanor Conviction. The Governor announced a marijuana justice initiative which provides a process for applying for a pardon for certain adult marijuana misdemeanor convictions. To be eligible for clemency through the Initiative, a person's conviction must meet the following parameters:

- the person must be an adult of at least twenty-one years convicted for misdemeanor marijuana possession;
- the person was prosecuted under Washington State law and not a local ordinance;
- the conviction must have occurred between January 1, 1998 and December 5, 2012; and
- it must be the only conviction on the person's criminal record.

A pardon does not vacate a conviction.

Vacation of Misdemeanors or Gross Misdemeanors. After completing all of the terms of their sentence, persons convicted of misdemeanors or gross misdemeanors may apply for a vacation of their conviction record. The sentencing court has discretion to vacate the applicant's conviction record. However, the court may not clear the applicant's record if:

- criminal charges against the applicant are pending;
- fewer than three years have passed since the applicant completed the terms of the sentence, including any financial obligations;
- the applicant has been convicted of a new crime since the date of conviction;
- the applicant has never had the record of another conviction vacated; or
- the applicant is currently restrained, or has been restrained within the last five years, from contacting another party by a court order.

Certain offenses may not be vacated, including violent offenses and sex offenses, and additional restrictions apply to other specified offenses.

Once the court vacates a record of conviction, the person is released from all penalties and disabilities resulting from the conviction, and that conviction 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 they have 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:** Persons with prior convictions of misdemeanor marijuana possession may apply to the sentencing court for a vacation of their conviction record. The applicant must have been at least twenty-one years old at the time of the offense. The court must vacate the applicant's conviction record and may not consider the restrictions applicable to vacating other misdemeanor convictions.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Oftentimes marijuana convictions have a disproportionate impact on communities of color. We are simply asking that activities that are currently legal be vacated from someone's record. It is a matter of fairness and justice to align a person's record with our current laws.

Cannabis Alliance is in firm support of this bill. The state of Washington will not be the first state to pass this. Virtually every state that has similar possession laws for cannabis has adopted a process for people to vacate convictions that no longer constitute criminal activity.

CON: The Washington Association of Sheriffs and Police Chiefs is not in support of this legislation. We agree that these convictions place burdens on persons who have been convicted and attempted to address the impacts of those burdens. However, there are already mechanisms in statute to allow a person to go back and get misdemeanors or gross misdemeanors vacated from their record. The difference from this bill and existing law is that current law places limits on the number of multiple conditions that can be vacated. Further, simple marijuana cases don't always start out as simple possession. Many started as possession with intent to deliver. This vacation process does not take this into account. We believe the Legislature enacted the existing process in a careful and measured way that considers these circumstances before a conviction is vacated.

**Persons Testifying:** PRO: Senator Joe Nguyen, Prime Sponsor; Al Ralston, The Cannabis Alliance.

CON: James McMahan, Washington Association Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** No one.