
Public Safety Committee

HB 1681

Brief Description: Modifying the requirements for vacating conviction records.

Sponsors: Representatives Simmons, Hansen, Davis, Macri, Harris-Talley and Frame.

Brief Summary of Bill

- Requires the court to vacate the felony, gross misdemeanor, or misdemeanor conviction of any applicant meeting statutory eligibility requirements.
- Modifies the eligibility requirements for an application to vacate a gross misdemeanor or misdemeanor conviction.

Hearing Date: 1/21/22

Staff: Kelly Leonard (786-7147).

Background:

A person may apply to the sentencing court to have his or her conviction vacated in certain circumstances. 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. With some exceptions, the decision to vacate the conviction is discretionary on the part of the court.

If the court vacates a record of conviction, the offense is no longer included in the person's criminal history. 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.

Vacating misdemeanor convictions. A person may not have a gross misdemeanor or

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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 Driving Under the Influence (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 the three years prior to the application;
- less than three years have passed since the person completed the terms of the sentence, including any financial obligations; or
- the person is currently or was previously restrained by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order and was found to have committed one or more violations of the order in the five years prior to the vacation application.

Additional restrictions apply when a person seeks to vacate a gross misdemeanor or misdemeanor domestic violence conviction. In addition to the general restrictions applicable to all types of convictions, the person may not have the domestic violence conviction vacated if:

- the person has not provided written notification of the vacation petition to the prosecuting attorney's office;
- the person has two or more domestic violence convictions stemming from different incidents;
- the person has signed an affidavit under penalty of perjury affirming that he or she has not previously had a conviction for a domestic violence offense, and a criminal history check reveals that the applicant has had such a conviction; or
- less than five years have passed since the person completed the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment.

Vacating felony convictions. 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 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.

Summary of Bill:

The court is required to vacate the felony, gross misdemeanor, or misdemeanor conviction of any qualifying applicant.

The applicable waiting period for applying to vacate a gross misdemeanor or misdemeanor conviction (three or five years) commences upon the later of: the person's release from full and partial confinement; or the person's sentencing date. However, the person must still complete other sentencing conditions prior to applying to vacate the conviction, including payment of legal financial obligations.

The provision restricting the vacating of a gross misdemeanor or misdemeanor conviction when the person has violated a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order in the previous five years is modified so as to only apply to applications for vacating gross misdemeanor or misdemeanor domestic violence convictions.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.