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## Public Safety Committee

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### ESSB 5180

**Brief Description:** Vacating certain convictions.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Dhingra, Das, Hunt, Liias, Lovelett, Nguyen, Pedersen, Rolfes, Saldaña, Salomon, Stanford and Wilson, C.).

#### Brief Summary of Engrossed Substitute Bill

- Authorizes a person to apply to vacate a qualifying conviction where the person committed the offense as a result of being the victim of sex trafficking, prostitution, commercial sexual abuse of a minor, domestic violence, or sexual assault.
- Authorizes a prosecutor to apply to vacate a qualifying conviction on behalf of a victim of sex trafficking, prostitution, commercial sexual abuse of a minor, domestic violence, or sexual assault.
- Repeals the provision authorizing a person to apply to vacate a conviction for a misdemeanor prostitution offense where the person committed the offense as a result of being the victim of sex trafficking or promotion.

**Hearing Date:** 3/11/21

**Staff:** Corey Patton (786-7388).

#### **Background:**

##### Vacation of Convictions Generally.

Under certain conditions, a person's record of conviction may be vacated by a sentencing court. If the court vacates the record of conviction, the offense is no longer included in the person's

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criminal history and the person 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.

#### Vacation of Misdemeanor Convictions.

A person convicted of a misdemeanor or gross misdemeanor may apply to the sentencing court to vacate the conviction upon meeting certain criteria. A person's misdemeanor or gross misdemeanor conviction may not be vacated if:

- the person has any pending criminal charges;
- less than three years have passed since the person completed all sentencing conditions, including payment of all legal financial obligations;
- the person has been convicted of a subsequent offense within three years prior to applying for vacation;
- the conviction is for a violent offense, a driving under the influence (DUI) offense, a sex offense other than Failure to Register, or a domestic violence (DV) offense under certain conditions; or
- the person is the current subject of a DV protection order, no-contact order, anti-harassment order, or civil restraining order, or has violated an order within five years prior to applying for vacation.

A person convicted of a misdemeanor prostitution offense may apply to the sentencing court for vacation as a result of being a victim of certain qualifying crimes related to sex trafficking and promotion. A person applying to vacate a conviction for a prostitution offense in this manner must, in addition to meeting the general criteria for vacating misdemeanors and gross misdemeanors, prove by a preponderance of the evidence that he or she committed the offense as a result of being a victim of a qualifying crime. Depending on the crime the person is a victim of, the person generally must prove certain elements that show the person was compelled to engage in prostitution.

#### Vacation of Felony Convictions.

A person convicted of a felony may apply to the sentencing court to vacate the conviction upon meeting certain criteria. A person's felony conviction may not be vacated if:

- the person has any pending criminal charges;
- the conviction is for a violent offense, a crime against persons, or a DUI offense;
- the conviction is for a class B felony and either less than 10 years have passed since discharge or the person has been convicted of a subsequent offense within 10 years prior to applying for vacation; and
- the conviction is for a class C felony and either less than five years have passed since discharge or the person has been convicted of a subsequent offense within five years prior to applying for vacation.

### **Summary of Engrossed Substitute Bill:**

#### Vacation of Convictions for Qualifying Victims.

A person convicted of a misdemeanor, gross misdemeanor, or class B or C felony offense, or a prosecutor exercising discretion to apply on the person's behalf, may apply to the sentencing court for vacation of the offense on the basis that the person is a victim of sex trafficking, prostitution, commercial sexual abuse of a minor, domestic violence (DV), or sexual assault. The applicant must provide an affidavit stating specific facts and circumstances proving, by a preponderance of the evidence, that the person committed the offense as a result of being a victim of a qualifying crime. A person's conviction may not be vacated if:

- the person has any pending criminal charges other than prostitution offenses;
- the person has been convicted of a subsequent offense within three years prior to applying for vacation if the underlying offense is a misdemeanor or gross misdemeanor, within five years if the underlying offense is a class C felony, or within 10 years if the underlying offense is a class B felony;
- the conviction is for a class B or C felony and is a violent offense, a crime against persons, a driving under the influence (DUI) offense, or the crime of Promoting Prostitution in the first or second degree; or
- the conviction is for a misdemeanor or gross misdemeanor and is a DUI offense, a sex offense other than Failure to Register, or the crime of Patronizing a Prostitute.

The provision authorizing a person who committed a misdemeanor prostitution offense to apply for vacation as a result of being a victim of certain qualifying crimes related to sex trafficking and promotion is repealed.

#### Definitions.

"Victim of DV" means a person who has been subjected to the infliction of physical harm or sexual and psychological abuse by an intimate partner or household member as part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance or control.

"Victim of sex trafficking, prostitution, or commercial sexual abuse of a minor" means a person who has been forced or coerced to perform a commercial sex act, or a person who was induced to perform a commercial sex act when they were less than 18 years of age.

"Victim of sexual assault" means a person who is a victim of a sexual assault offense, nonconsensual sexual conduct, or nonconsensual sexual penetration and as a result suffers physical, emotional, financial, or psychological impacts.

**Appropriation:** None.

**Fiscal Note:** Available.

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