

HOUSE BILL REPORT

ESSB 5180

As Reported by House Committee On:
Public Safety

Title: An act relating to vacating certain convictions.

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 History:

Committee Activity:

Public Safety: 3/11/21, 3/23/21 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended By Committee)**

- 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.
- Authorizes a person who is a family member of a homicide victim to apply to vacate the victim's conviction for a misdemeanor prostitution offense on behalf of the victim.
- 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 12 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Mosbrucker, Ranking Minority Member; Davis, Graham, Griffey, Hackney, Lovick, Orwall, Ramos, Simmons and Young.

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

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 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 Amended 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, a prior offense under the alcohol and drug violators penalty schedule, 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 prior offense as described under the alcohol and drug violators penalty schedule, a sex offense other than Failure to Register, or the crime of Patronizing a Prostitute.

A person who is a family member of a homicide victim may apply to the sentencing court on behalf of the victim for posthumous vacation of the victim's record of conviction for a misdemeanor prostitution offense. Upon receiving a valid application, the court must vacate the victim's record of conviction.

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.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill: (1) specifies that, once vacated, a qualifying victim's record of conviction is subject to provisions relating to the victim's criminal history, disclosure of the conviction on housing and employment applications, protections against dissemination of the conviction by law enforcement, use of the conviction in a later criminal prosecution, and restoration of the right to possess a firearm; (2) specifies that a prosecutor who files a petition to vacate a record of conviction for a misdemeanor or gross misdemeanor on behalf of a qualifying victim is fulfilling an administrative function and is not providing legal advice or assistance; (3) provides that a qualifying victim may not vacate a record of conviction for any offense defined as a prior offense under the alcohol and drug violators penalty schedule; (4) allows a family member of a homicide victim to apply to the sentencing court on behalf of the victim to vacate the victim's record of conviction for prostitution; and (5) requires the sentencing court to vacate a homicide victim's record of conviction for prostitution upon the application of a qualified person.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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) A person who experiences traumatizing events is more likely to become a

victim of trafficking and commit an offense arising from the person's exploitation. The National Institute of Justice reports that over half of all women in jails and prisons nationwide experience physical or sexual abuse prior to their imprisonment. A criminal conviction, even for a misdemeanor offense, can be a significant hindrance that may impact a survivor of trafficking for decades. Common issues for survivors include access to employment or housing, with 72.7 percent of survivors reporting that their convictions create a barrier to employment and 57.6 percent reporting that their convictions create a barrier to housing. Survivors want to become contributing members of society, provide for their families, and move beyond their victimization. The existing process for vacating convictions subjects survivors to constant judgment and causes them to relive their trauma every time they are forced to explain their experiences in court.

Survivors of trafficking rarely self-identify as such because the term "trafficking" is commonly misunderstood. For example, some survivors of trafficking choose to identify as survivors of domestic violence, in part because trafficking is often perpetrated by an intimate partner or family member.

This bill builds on longstanding efforts to combat sex trafficking by addressing the way the criminal justice system has historically treated survivors of trafficking, sexual abuse, and domestic abuse, especially black women and women of color who have been disproportionately marginalized. By making more types of survivors eligible to vacate their convictions and streamlining the vacation process, more people will be able to remove obstacles hindering their recovery.

Because prosecutors ethically cannot represent defendants in a hearing, this bill should include language that allows a prosecutor to assist with an application without providing representation. There are some omissions from current state law that should be incorporated.

(Opposed) None.

Persons Testifying: Senator Dhingra, prime sponsor; David Martin, King County Prosecutor; Carlen McKee, The WAVE Foundation; Russell Brown, Washington Association of Prosecuting Attorneys; Kyle Wood, Office of the Attorney General; and Reba Harris.

Persons Signed In To Testify But Not Testifying: None.