

# SENATE BILL REPORT

## SB 5998

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As of January 16, 2024

**Title:** An act relating to timing of eligibility for vacation of nonfelony convictions.

**Brief Description:** Timing of eligibility for vacation of nonfelony convictions.

**Sponsors:** Senators Hansen, Billig, Dhingra, Nguyen and Saldaña.

**Brief History:**

**Committee Activity:** Law & Justice: 1/16/24.

**Brief Summary of Bill**

- Removes requirement to toll the three-year or five-year waiting period for vacation of a gross misdemeanor or misdemeanor conviction until payment of legal financial obligations.
- Requires that legal financial obligations be paid before vacation of a gross misdemeanor or misdemeanor conviction.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Kevin Black (786-7747)

**Background:** Vacation of Criminal Convictions. Vacation is a means of undoing a criminal conviction which occurs when a court sets aside a guilty verdict or allows a person to withdraw their guilty plea and then dismisses the charge. A court may vacate a conviction only if the charge is eligible for vacation; no new criminal charges are pending against the person; the person has completed all terms of sentence, including payment of legal financial obligations; and a waiting period has elapsed which varies depending on the nature of the charge.

Charges Which Are Not Eligible for Vacation. No violent felony offense except assault 2

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and robbery 2, and no violent felony offense involving a firearm, deadly weapon, or sexual motivation, is eligible for vacation. Felony driving under the influence and felony physical control of a vehicle offenses are not eligible for vacation. Gross misdemeanor or misdemeanor sex offenses, pornography offenses, and obscenity offenses are not eligible for vacation.

Waiting Period for Vacation. The waiting period to be eligible for vacation of a criminal offense is as follows:

- for a class B felony, ten years since release from confinement, community custody, and sentencing, and ten years since the person's last criminal conviction;
- for a class C felony, five years since release from confinement, community custody, and sentencing, and five years since the person's last criminal conviction;
- for a gross misdemeanor or misdemeanor offense, three years from completion of sentence including payment of legal financial obligations;
- for a gross misdemeanor or misdemeanor offense which is a domestic violence offense, five years from completion of sentence including successful completion of treatment and payment of legal financial obligations; and
- for a gross misdemeanor or misdemeanor driving under the influence or physical control of a vehicle offense, ten years since arrest for the offense without subsequent alcohol, or drug violations within the ten-year period.

Other Requirements Which Apply to Vacation of Gross Misdemeanor and Misdemeanor Domestic Violence Offenses. For a gross misdemeanor or misdemeanor domestic violence offense, the court may only grant vacation if the person has provided written notification of the vacation petition to the prosecutor's office which prosecuted the offense; does not have a second domestic violence conviction stemming from a different incident; and has not signed an affidavit affirming they do not have a conviction for domestic violence and a criminal history check reveals they have such a conviction.

**Summary of Bill:** The period of time for which a person with a misdemeanor or gross misdemeanor conviction must wait before a court may grant a petition to vacate the conviction is no longer tolled until the person has paid all legal financial obligations. The person must must pay the legal financial obligations before the court may vacate the sentence.

With this change, a court may vacate a misdemeanor or gross misdemeanor offense if a petitioner who meets other requirements has completed all of the original terms of sentence including payment of legal financial obligations, and three years have passed since the later of the petitioner's release from supervision, release from total and partial confinement, or sentencing date. The waiting period is five years if the offense is classified as a domestic violence offense or the court makes a finding that the offense was committed against a family member, household member, or intimate partner.

**Appropriation:** None.

**Fiscal Note:** Requested on January 9, 2024.

**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: A few years ago this body passed the New Hope Act. In that law we changed the waiting periods for vacation of felony convictions so they would start to run while the person is paying their legal financial obligations, but we forgot to make the same change for misdemeanors. We should make it easier for people to clear their criminal convictions when they have turned their lives around. You have to give people hope and redemption. I have experienced the professional and economic limitations that go with having a criminal record. The New Hope Act changed my life for the better and gave me opportunities. People want to change; this bill will make it easier for them to do so. It will increase access to justice. Because of the discrepancy in the law, it can take longer to vacate a misdemeanor conviction than a felony conviction. The legal system is already complicated and opaque without this problem. Support Washingtonians in their rehabilitation journey by remedying this unjust asymmetry in the law. Research shows only 3 percent of individuals in Washington with a prior conviction have been able to access vacate relief. This bill begins the work of closing the second chance gap.

**Persons Testifying:** PRO: Senator Drew Hansen, Prime Sponsor; Quinton Baker, Forge; Oscar Aguirre, King County Bar Association Records Project; Prachi Dave, Civil Survival.

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