

HOUSE BILL REPORT

HB 1087

As Reported by House Committee On: Public Safety

Title: An act relating to allowing for more than one vacation of a misdemeanor and gross misdemeanor conviction.

Brief Description: Allowing for more than one vacation of a misdemeanor and gross misdemeanor conviction.

Sponsors: Representatives Appleton, Roberts and Freeman.

Brief History:

Committee Activity:

Public Safety: 1/30/13, 2/14/13 [DPS].

Brief Summary of Substitute Bill

- Allows a person to apply to vacate up to four misdemeanor or gross misdemeanor convictions.
- Allows for vacation of more than one conviction at a time.
- Allows a person to apply to vacate a misdemeanor or gross misdemeanor conviction which is not his or her most recent conviction, except if he or she has been sentenced to a felony since the date of conviction or if he or she has been convicted of another misdemeanor in the three years prior to the application.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Goodman, Chair; Roberts, Vice Chair; Appleton, Moscoso, Pettigrew, Ross and Takko.

Minority Report: Do not pass. Signed by 4 members: Representatives Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Holy and Hope.

Staff: Sarah Koster (786-7303).

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.

Background:

Vacation of Misdemeanors and Gross Misdemeanors. Every person convicted of a misdemeanor or gross misdemeanor who has completed all terms of the sentence may apply for a vacation of the applicant's record of conviction for the offense. The offender's record cannot be cleared if:

1. there are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court;
2. the offense was a violent offense or an attempt to commit a violent offense;
3. the offense was a violation for driving while under the influence, actual physical control while under the influence, or operating a railroad, etc., while intoxicated, and the applicant has had a subsequent alcohol or drug violation within 10 years of the date of arrest;
4. the offense was any misdemeanor or gross misdemeanor violation, including an attempt, of an obscenity or pornography offense, sexual exploitation of children, or a sex offense;
5. the applicant was convicted of a misdemeanor or gross misdemeanor domestic violence offense; or the court determines after a review of the court file that the offense was committed by one family member or household member against another; or the court determines that the offense involved domestic violence, and any one of the following factors exist:
 - the applicant has not provided written notification of the vacation petition to the prosecuting attorney's office that prosecuted the offense for which vacation is sought or has not provided that notification to the court;
 - the applicant has previously had a conviction for domestic violence;
 - the applicant has signed an affidavit under penalty of perjury affirming that the applicant 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 elapsed since the person completed the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment ordered as a condition of sentencing;
6. for any offense other than those offences involving domestic violence, as described above, less than three years has passed since the person completed the terms of the sentence, including any financial obligations;
7. the offender has been convicted of a new crime in this state, another state, or federal court since the date of conviction;
8. the applicant has ever had the record of another conviction vacated; or
9. the applicant is currently restrained or has been restrained within five years prior to the vacation application by a domestic violence protection order, a no-contact order, an anti-harassment order, or a civil restraining order which restrains one party from contacting the other party.

For a person convicted of Prostitution who committed the offense as the result of being a victim of Trafficking or Promoting Prostitution in the first degree, he or she may apply to the sentencing court for vacation of the record of conviction, except that the record cannot be cleared if:

1. there are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court;
2. the offender has been convicted of a new crime in this state, another state, or federal court since the date of conviction; or
3. the offender has ever had the record of another Prostitution conviction vacated.

If the offender meets these tests, the court may clear the record of conviction by permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or, if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

Summary of Substitute Bill:

If a person is otherwise eligible to vacate a misdemeanor or gross misdemeanor conviction, he or she may apply to the sentencing court to have a misdemeanor or gross misdemeanor conviction vacated regardless if he or she has had the record of three or fewer other convictions vacated. A person otherwise eligible may vacate a record of a misdemeanor or gross misdemeanor conviction regardless if he or she has been convicted of a new crime since the date of conviction, except that a person may not vacate a conviction if he or she has been sentenced to a felony since the date of conviction or if he or she has been convicted of another misdemeanor in the three years prior to the application. More than one conviction may be vacated at a time.

Substitute Bill Compared to Original Bill:

The substitute bill limits the number of lifetime misdemeanor convictions which may be vacated to four and allows vacation of multiple misdemeanor or gross misdemeanor convictions at one time.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute 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) If you have a class C felony or class B felony and you have five years of clean behavior, you can vacate. There is no law that says if you have one felony vacated, you cannot have another as you go along, but with misdemeanors you can only vacate one. This bill is about young adults. It is known from brain science that children's brains are not evolved enough and that children do stupid things and they tend to get misdemeanors in

clusters. Since currently not more than one misdemeanor is allowed, we have a permanent underclass which cannot go to college, rent an apartment, or go into the service. This is a way to provide redemption in the justice system. People need to be given the opportunity to wipe the slate clean and go on with their lives and become productive members of society. The original statute was the product of a compromise and that compromise allowed for one vacation. It is unfair to allow a person to get out from under more than one felony but not multiple misdemeanors. The circumstances have changed since the vacation statute was passed because of the prevalence of electronic background checks. They are used for housing and for jobs and it makes it hard for people to find a place to live. This causes large-scale disenfranchisement. This bill has a real possibility of reducing recidivism by helping these people find gainful employment and housing and become valuable members of society. Sixty-five million Americans are affected in their ability to find employment or housing because of their criminal history.

(Opposed) None.

Persons Testifying: Representative Appleton, prime sponsor; and Sean Cecil, Washington Defender Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.