

FINAL BILL REPORT

ESSB 5180

C 237 L 21
Synopsis as Enacted

Brief Description: Vacating certain convictions.

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

Senate Committee on Law & Justice
House Committee on Public Safety

Background: Vacating Misdemeanor or Gross Misdemeanor Conviction Records. A person convicted of a misdemeanor or gross misdemeanor offense, who has completed all the terms of the sentence and has met other statutory criteria, may apply to the sentencing court for a vacation of the record of conviction. A conviction may not be vacated if:

- any criminal charges are pending against the applicant;
- the offense or attempted offense was violent;
- the offense was for driving under the influence, or actual physical control while under the influence, or the offense is a prior and the applicant has had a subsequent alcohol or drug violation within ten years of the date of arrest for the prior offense;
- the offense was any misdemeanor or gross misdemeanor sex offense, sexual exploitation of children, or pornography;
- the offense was for certain domestic violence offenses;
- the offender has subsequent convictions;
- the offender has had a prior conviction vacated; or
- the offender has a current restraining order in place.

If the court finds the applicant does not have any restrictions listed above, the court may vacate the record of conviction by permitting the applicant to:

- withdraw the guilty plea and enter a plea of not guilty; or
- if the applicant was convicted after a plea of not guilty, the court may set aside the guilty verdict, dismiss the complaint, and vacate the judgement and sentence.

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.

A victim may apply to vacate prostitution offenses committed as a result of being a victim of trafficking, promoting prostitution in the first degree, promoting commercial sexual abuse of a minor, or of trafficking in persons under federal law. In addition to the restrictions listed above, in order to vacate a misdemeanor, or gross misdemeanor record of conviction for a prostitution offense as a result of being a victim of those crimes, the applicant must prove certain elements by a preponderance of evidence. The elements vary for each different crime against the victim, but generally require the victim to prove the person committing the offenses against the victim acted knowingly, and the applicant was compelled by threat, force, inducement, or coercion to engage in prostitution leading to a conviction.

Vacating Felony Conviction Records. A person convicted of a felony offense, who has completed all of the terms of the sentence and has met other statutory criteria, may apply to the sentencing court for a vacation of the record of conviction. A conviction may not be vacated if:

- any criminal charges are pending against the applicant;
- the offense or attempted offense was violent;
- the offense was against children or vulnerable adults;
- the offender has subsequent convictions since discharge;
- the offense was a class B felony and less than ten years have passed since discharge;
- the offense was a class C felony and less than five years have passed since discharge;
- or
- the offense was for driving under the influence, or actual physical control while under the influence.

If the court finds the applicant does not have any restrictions listed above, the court may vacate the record of conviction by permitting the applicant to:

- withdraw the guilty plea and enter a plea of not guilty; or
- if the applicant was convicted after a plea of not guilty, the court may set aside the guilty verdict, dismiss the indictment, and release the offender from all penalties.

For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution. Once a court vacates a record of a felony conviction, the offense shall not be included in the offender's criminal history for determining a sentence in any subsequent conviction.

Summary: A victim of sex trafficking, prostitution, or commercial sexual abuse of a minor, sexual assault, or domestic violence may apply to vacate a record of conviction for a misdemeanor, gross misdemeanor, or a class B or C felony offense. The prosecutor of the county in which the victim was sentenced may exercise discretion to apply on the victim's behalf to vacate the victim's record of conviction. A prosecutor is not providing legal assistance on behalf of the victim when filing to vacate the victim's conviction.

A court may vacate the victim's record of conviction if:

- the applicant provides an affidavit under penalty of perjury stating specific facts and circumstances proving, by a preponderance of evidence that the offense was committed as a result of being a victim of sex trafficking, prostitution, or commercial sexual abuse of a minor, domestic violence, or sexual assault;
- there are no criminal charges pending against the applicant for any offense other than prostitution;
- the victim's offense is a misdemeanor, the offender has not been convicted of a new crime in the three years prior to the application to vacate the victim's record of conviction;
- the victim's offense is a class C felony, the offender has not been convicted of a new offense in five years prior to the application to vacate the victim's record of conviction;
- the victim's offense is a class B felony, the offender has not been convicted of a new offense in ten years prior to the application to vacate the victim's record of conviction; or
- a family member of a homicide victim applies to vacate the victim's conviction record of prostitution.

Certain convictions may not be vacated for:

- felony violent offenses;
- statutorily defined crimes against children and other persons;
- assault in the second or third degree if the conviction included a firearm, deadly weapon, or sexual motivation enhancement, or if the assault was committed against a law enforcement officer or peace officer; and robbery in the second degree if the conviction included a firearm, deadly weapon, or sexual motivation enhancement;
- driving under the influence or physical control of a vehicle under the influence;
- gross misdemeanor or misdemeanor offenses related to obscenity, pornography, sexual exploitation of children, or other statutory sex offenses;
- felony crimes of promoting prostitution in the first or second degree;
- gross misdemeanor crimes of driving under the influence, and physical control of a vehicle under the influence; or
- misdemeanor of patronizing a prostitute.

Proof of payment of the victim penalty assessment and payment of any restitution owed to any victim is required to vacate convictions.

Definitions are added to the Sentencing Reform Act of 1981 for a "victim of domestic violence," "victim of sex trafficking, prostitution, or commercial sexual abuse of a minor," and victim of sexual assault."

The act repeals state law for vacating gross misdemeanor and misdemeanor prostitution offenses as a result of being:

- a victim of trafficking;
- a victim of promoting prostitution in the first degree;
- a victim of promoting commercial sexual abuse of a minor; or
- a victim of trafficking in persons under the Trafficking Victims Protection Act of federal law.

Votes on Final Passage:

Senate	48	0	
House	93	5	(House amended)
Senate	45	3	(Senate concurred)

Effective: July 25, 2021