

HOUSE BILL ANALYSIS

ESB 5665

Title: An act relating to vacation of records of conviction.

Brief Description: Authorizing vacation of records of convictions for misdemeanors and gross misdemeanors.

Sponsors: Senators Costa, Honeyford, Hargrove, Kline, Heavey, McCaslin and Long.

Brief Summary of Bill

- Creates a procedure for vacating records of convictions of some misdemeanors and gross misdemeanors.
- Removes the ability to vacate records of convictions of certain felonies under the Sentencing Reform Act.
- Allows sealing of the records of juvenile adjudications for misdemeanors and gross misdemeanors.

HOUSE COMMITTEE ON JUDICIARY

Staff: Bill Perry (786-7123).

Background:

Under the Sentencing Reform Act (SRA) an offender may be able to get his or her record of a felony conviction "vacated" after a certain amount of time has passed. Vacation of the record has the effect of removing "all penalties and disabilities" that resulted from the offense. It also prevents the offense from being used as "criminal history" for purposes of sentencing for a subsequent offense. Finally, vacation of the record allows the offender to respond on an employment application that he or she has never been convicted of that crime. However, the vacation of a record of conviction does not prevent that conviction from being used in a later criminal prosecution for a crime in which one element is a prior conviction. (For instance, it is still possible to use a vacated prior conviction in a prosecution for a crime that becomes a felony on a second or subsequent conviction.) Vacated records are not destroyed.

There are several limitations on an offender's ability to get a record of conviction vacated:

- No vacation is possible for any class A felony, any violent offense, or any "crime against persons." (These categories cover many crimes, including all murders, all felony sex offenses, all felony assaults, and many other crimes that are covered by the Washington State Patrol's background check authority regarding prospective employees who may have contact with children.)
- No vacation is possible if the offender has any criminal charges pending.
- No vacation is possible if the offender has been convicted of any other crime since completion of his or her sentence for the offense for which vacation is being sought.
- At least 10 crime-free years must have passed since completion of the sentence if the offense was a class B felony.
- At least five crime-free years must have passed since completion of the sentence if the offense was a class C felony.

These vacation of record provisions apply only to offenders sentenced under the SRA. The SRA applies only to felonies committed on or after July 1, 1984.

For felonies committed before the SRA and for misdemeanor and gross misdemeanor offenses, there are no provisions equivalent to this vacation of record procedure. Pre-SRA felons may be "released from all penalties and disabilities" that resulted from conviction, and misdemeanants may have their charges "dismissed" after successful completion of a suspended sentence. However, neither pre-SRA felons nor misdemeanants are authorized to respond to an employment application by saying they have never been convicted of an offense.

Juvenile offenders may have their records of adjudication for felonies "sealed" under certain circumstances. However, there is no provision for the sealing of records of misdemeanors or gross misdemeanors. The criteria for sealing records of juvenile felonies are similar to those that apply to adult felonies under the SRA. No records of class A felonies or sex offenses may be sealed. The person must have completed all terms of his or her sentence and must have no criminal proceedings pending. At least 10 years must have passed without a criminal offense before a class B felony record may be sealed. For class C felonies, the period is five years. Sealing does not result in the destruction of records, and records are automatically unsealed upon adjudication of a subsequent juvenile offense or upon charging of an adult felony. However, while records are sealed the person is permitted to reply to any inquiry as though the offense had never been committed.

Summary of Bill:

A procedure is established for the vacation of records of conviction of some misdemeanor and gross misdemeanor offenses. Additional crimes are added to the list of offenses under the SRA for which vacation of records of conviction is not permitted. A procedure is established for the sealing of juvenile records of misdemeanor and gross misdemeanor offenses.

The same basic procedure that applies to the vacation of records of SRA crimes is made available for misdemeanor and gross misdemeanor offenses. An offender must have at least five crime-free years following completion of a sentence before he or she may apply to have a misdemeanor or gross misdemeanor record of conviction vacated. The record of convictions for many misdemeanor or gross misdemeanor offenses may not be vacated. These offenses include:

- DUI;
- domestic violence offenses (which include more than a dozen non-felony crimes);
- attempted sex offenses;
- obscenity, pornography, or sexual exploitation of children;
- barratry;
- promising a reward by a district court judge;
- counterfeiting a trademark or brand;
- false bidding;
- fraud in stock subscriptions;
- doing business without a license;
- false representation concerning a title;
- unlawful possession, carrying, or aiming of a firearm;
- possession of a dangerous weapon;
- several offenses related to gambling;
- misconduct of court personnel with regard to juries;
- violation of an anti-harassment no contact order;
- criminal impersonation;
- jury or evidence tampering; and
- indecent exposure.

"Domestic violence offenses" are added to the list of crimes for which vacation of criminal records are not permitted under the SRA. Several of these offense are either non-felonies that are therefore not covered by the SRA, or are offenses that are already included in the current prohibitions against vacations for "violent" felonies or for "crimes against persons." The net result is the addition of four new crimes for which vacation of records of conviction is not allowed. This prohibition applies only if these crimes are committed against a family or household member. The new

crimes are: residential burglary; burglary in the second degree; and malicious mischief in the first and second degree.

For purposes of sealing juvenile records of adjudication, misdemeanors and gross misdemeanors are treated the same as class C felonies.

In any proceeding for vacating a record of conviction or sealing a juvenile adjudication, the person seeking the vacation or sealing must bear all costs incurred by the court and probation department unless the person is found to be indigent.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research