

Judiciary

HB 1174

Title: *An act relating to vacation of records of conviction for misdemeanor and gross misdemeanor offenses.*

Brief Description: *Authorizing vacation of records of conviction for misdemeanor and gross misdemeanor offenses.*

Sponsors: *Representatives Hurst, Carrell, Lantz, Lovick and O'Brien.*

Brief Summary of Bill

- *With various exceptions and limitations, allows the vacation of records of misdemeanor convictions.*
- *Generally prohibits dissemination of vacated records.*

Hearing Date: *1/30/01*

Staff: *Bill Perry (786-7123).*

Background:

Some felony convictions can be vacated. Misdemeanor convictions cannot.

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.)

Vacation of a record is at the discretion of a judge, with the following limitations:

- *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 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 years must have passed since completion of the sentence if the offense was a class B felony.*
- *At least five 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 misdemeanants nor pre-SRA felons are authorized to respond to an employment application by saying they have never been convicted of an offense.

One division of the state court of appeals has held that with respect to a felony conviction, a vacation or sealing of the record removes the conviction from the public record. (State v. Breazeale.) The State Patrol had taken the position that vacated or sealed records remain public. Under this policy, even though a person with a vacated record might answer on a job application that he or she has never been convicted, the prospective employer could nonetheless get access to the conviction record. This decision by Division III of the court of appeals has been accepted for review by the state supreme court.

Division II of the court of appeals has held that there is no statutory authority for a court

to vacate a misdemeanor conviction. However, the court also held that under Court Rule GR 15, upon a showing of "compelling circumstances," misdemeanor records may be "sealed." (State v. Noel.) Under the court rule, a "sealed" record is also still identified on the public record, but only by the defendant's name and the criminal charge and with a notation that the record is sealed. Thus a sealed record indicates there has been a charge, but not whether or not there has been a conviction.

Under the Washington State Criminal Records Privacy Act, all conviction records are considered public. "Nonconviction data," on the other hand is subject to restrictions on release and generally may only be exchanged between criminal justice agencies. Nonconviction data consists of all criminal history record information relating to an incident which has not led to a disposition adverse to the person who is the subject of the information.

Summary of Bill:

Authorization is provided for the vacation and sealing of records of misdemeanor convictions.

Once a person has completed all the terms of a misdemeanor sentence, he or she may petition a court for the vacation and sealing of the record of conviction.

The court has discretion to grant or deny the petition, but may not grant the petition if:

- the petitioner has any outstanding criminal charges;*
- the misdemeanor conviction was for a violent offense, or attempted violent offense; (Note: In fact, there are no misdemeanors or gross misdemeanors that fall within the category of "violent offenses." None of these offenses is lower than a class B felony, which means that even an attempt to commit one of them is a class C felony.)*
- the misdemeanor conviction was for DUI;*
- the misdemeanor conviction was for pornography or sexual exploitation of children;*
- less than three years have passed since completion of all terms of the sentence, including financial obligations.*

Once a conviction has been vacated, it may not be used in sentencing for any subsequent offense. A vacated record is to be considered "non-conviction data" for purposes of the criminal records privacy act. The person is released from all disabilities resulting from the conviction and may respond to employment or housing questions that he or she has not been convicted of the crime.

The petitioner must pay all costs associated with vacation, unless he or she is found to be indigent.

The clerk of the court is to transmit the order of vacation to law enforcement agencies, and

the State Patrol is prohibited from disclosing such a record to anyone other than another law enforcement agency.

The court may also order a vacated record to be sealed. Once a record has been sealed, the court may not release information regarding the conviction and shall remove the conviction from the public record.

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

Appropriation: *None.*

Fiscal Note: *Not Requested.*