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## Public Safety Committee

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### HB 1087

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

**Sponsors:** Representatives Appleton, Roberts and Freeman.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• A person may apply to the sentencing court to have the record of a misdemeanor or gross misdemeanor conviction vacated regardless if the offender has had the record of another conviction vacated.</li></ul>
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**Hearing Date:** 1/30/13

**Staff:** Sarah Koster (786-7303).

**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

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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. For purposes of this subsection, however, if the current application is for more than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction;
  - 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 Bill:**

A person convicted of a misdemeanor or gross misdemeanor may apply for a vacation of the criminal record and may have the record vacated regardless if he or she has had the record of another conviction vacated.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.