

HOUSE BILL REPORT

HB 2890

As Reported by House Committee On:
Public Safety

Title: An act relating to promoting successful reentry by modifying the process for obtaining certificates of discharge and vacating conviction records.

Brief Description: Promoting successful reentry by modifying the process for obtaining certificates of discharge and vacating conviction records.

Sponsors: Representatives Hansen, Frame and Ormsby.

Brief History:

Committee Activity:

Public Safety: 1/23/18, 2/1/18 [DPS].

Brief Summary of Substitute Bill

- Modifies the process for obtaining a certificate of discharge.
- Expands eligibility criteria for vacating criminal convictions.

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; Pellicciotti, Vice Chair; Appleton, Chapman, Holy, Orwall and Pettigrew.

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

Staff: Kelly Leonard (786-7147).

Background:

Certificate of Discharge.

When an offender has completed sentencing conditions, including any and all legal financial obligations (LFOs), the sentencing court is required to provide the offender with a certificate of discharge. The discharge has the effect of restoring all civil rights, with the exception of

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the right-to-vote, which is automatically provisionally restored upon release from incarceration. An offender's prior record may still be used in determining sentences for later offenses and does not discharge a no-contact or protection order. A certificate of discharge is not based on a finding of rehabilitation.

The Department of Corrections (DOC) is required to submit notice to the county clerk, who in turn informs the sentencing court, when an offender has completed sentencing conditions. If an offender was not in the custody or under the supervision of the DOC, he or she may directly contact the sentencing court with verification that he or she has completed conditions. Once an offender satisfies all LFOs, the sentencing court is required to provide the offender with a certificate of discharge.

Vacating Convictions.

In certain circumstances authorized in statute, a person's record of conviction may be vacated by a sentencing judge. If the court vacates a record of conviction, the offense is no longer included in the person's criminal history. Criminal history is a factor in sentencing, professional licensing, employment, housing, and other matters. An offender whose conviction has been vacated may state that the offender has never been convicted of that crime, including when responding to questions pertaining to licensing, employment, and housing applications.

Vacating Misdemeanors and Gross Misdemeanors. A person convicted of a misdemeanor or gross misdemeanor may apply to the sentencing court to vacate the conviction if he or she has completed all sentencing conditions. A person is prohibited from having a record vacated if:

- the conviction was for one of the select offenses that may not be vacated, for example, a violent offense, a sex offense, failure to register as a sex offender, or driving under the influence (DUI);
- there are any pending criminal charges against the applicant in any state or federal court;
- the applicant has been convicted of a new crime in any state or federal court since the date of conviction;
- the applicant has had the record of another conviction vacated;
- he or she applies for vacation less than three years after he or she completed his or her sentence, including any financial obligations;
- the applicant has been the subject of a domestic violence protection order, a no-contact order, an anti-harassment order, or a civil restraining order within the five years prior to applying for the vacation.

Vacating Felony Convictions. Similar to misdemeanors and gross misdemeanors, a person convicted of a felony may apply to the sentencing court to vacate the convictions after completing all sentencing conditions and receiving a certificate of discharge. However, the record of conviction may not be vacated if:

- the offense was a violent offense, a crime against persons, or a felony DUI;
- the applicant has any criminal charges pending in any court of this state or another state, or in any federal court;
- the applicant has been convicted of a new crime in this state, another state, or federal court since the date of the discharge;

- the offense is a class B felony and less than 10 years have passed since the date of discharge; or
 - the offense was a class C felony and less than five years have passed since the date of discharge.
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Summary of Substitute Bill:

Certificate of Discharge.

The process for an offender to apply directly to the court for a certificate of discharge is modified. The DOC must include clear information on its notice to the county clerk when someone completes his or her sentencing conditions. The county clerk must promptly submit notice of completion of sentencing conditions and a notice of completion of LFOs to the sentencing court.

Any offender may apply directly to the court in the absence of notice provided from the DOC. The offender must submit documentation to the court verifying completion of all sentencing conditions. The sentencing court must issue a certificate of discharge upon verification of completion of all sentencing conditions, including any and all LFOs. A certificate of discharge is effective on the date the offender completed all sentencing conditions.

In the absence of receiving a certificate of discharge under current procedures, an offender may file a motion with the sentencing court with a declaration, sworn under penalty of perjury, stating he or she has completed all nonfinancial conditions of his or her sentence. The filing of a declaration creates a rebuttable presumption that the offender completed all nonfinancial conditions of his or her sentence. A certificate of discharge issued as a result of a declaration is effective on the later of: five years after completion of community custody, or if the offender was not required to serve community custody, after the completion of full and partial confinement; or the date any and all legal financial obligations were satisfied.

Vacating Convictions.

Vacating Misdemeanors and Gross Misdemeanors. The restriction against vacating a misdemeanor Failure to Register conviction is removed.

The restriction against prior vacations is removed. A person may apply to have his or her conviction vacated even if he or she has had a conviction vacated previously.

The restriction against new convictions is modified. A person may apply to have a conviction vacated even if he or she has been convicted of a new gross misdemeanor or misdemeanor offense, as long as it has been more than three years since those new convictions occurred.

The restriction against prior restraining/protection orders is modified. A person who has been the subject of an order in the previous five years may apply to have his or her record vacated so long as he or she is not currently subject to an order and he or she did not violate an order in the previous five years.

Vacating Felony Convictions. Eligibility criteria for vacating felony convictions is modified. A person may apply to vacate Assault in the second degree, Assault in the third degree when not committed against a law enforcement officer or peace officer, or Robbery in the second degree.

The waiting periods for class B and C felonies are modified. An applicant is required to wait 10 years for a class B felony or five years for a class C felony since the later of his or her: release from community custody; release from full and partial confinement; or sentencing date. The applicant must not have been convicted of a new crime for a specified period of time preceding the application for vacation, specifically 10 years for a class B felony and five years for a class C felony.

Substitute Bill Compared to Original Bill:

The current restrictions barring certain offenses from vacation are restored, except for Assault in the second degree, Assault in the third degree when not committed against a law enforcement officer or peace officer, and Robbery in the second degree.

The court is prohibited from vacating a felony conviction unless the applicant has not been convicted of a new crime for a specified period of time preceding the application (rather than since the date of receiving the certificate of discharge).

A current cross-reference to felony DUI statutes is modified to reflect prior changes in the classification level of those offenses.

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) The bill is designed to remove the barriers keeping persons from successfully reentering society after a criminal conviction.

The bill makes it easier to get a certificate of discharge when you are entitled to it, but when it is not otherwise being issued under the current process. The bill allows certain offenses to be vacated that are not currently eligible. The bill also aligns the process for vacating misdemeanors with felonies. Currently, it is easier to vacate a felony than a gross misdemeanor. This does not make sense.

The bill modifies when waiting periods start for vacating a conviction. The bill appropriately demands a lengthy period of clean conduct. This is because of research, as we know that

after a certain period of crime-free conduct a person is highly unlikely to reoffend. At this point, someone should not be burdened with a conviction record. The state should be creating a system where people can get decent jobs to support their families.

The efforts of the bill dovetail with the Legislature's efforts to improve reentry. In 2016 the Legislature created the certification of restoration of opportunity to allow certain classes of offenders to access certain professional licenses, and this is the next step for addressing collateral consequences. Not every offender would be able or willing to vacate his or her record. A person who goes through the steps is unique. While the process is and will remain complicated, expanding the availability of the vacation process is of critical importance to many offenders seeking to rebuild their lives.

Rehabilitation and restoration need to be part of the criminal justice system. There are countless examples of offenders who have completed their conditions of sentence and done everything they were asked to do, yet are still suffering the collateral consequences of a conviction. For example, a criminal record can prevent a licensed attorney from volunteering at their child's school, even when they may be otherwise qualified to represent children in court. In another instance, someone was able to obtain top secret security clearance to work for the White House, but could not find an apartment. Landlords would not rent to someone with a felony conviction. Reentering persons can enroll in institutions of higher education, but may not qualify for internships.

The state needs to encourage people to better themselves. The goal for a reentering offender should not be to subsist on government programs; the goal should be the same as for anyone: to be a respected, educated, productive member of society. Giving people an opportunity to vacate their conviction creates an incentive for those reentering to succeed in life. If they know they will never be able to escape their criminal record, it is yet another barrier and form of punishment. However, if they know they will be able to qualify for vacating their record in the future, they have something to work towards.

The Legislature can chip at each individual collateral consequence; however, vacating a conviction is broader and more effective. Burdening people with permanent criminal records creates an underclass. Society punishes people indefinitely based on a single decision, no matter how far into the past it may have been. The bill is about a second chance.

(Opposed) None.

Persons Testifying: Representative Hansen, prime sponsor; Tarra Simmons; Dan Satterberg, King County Prosecuting Attorney's Office; Christopher Poulos, Washington Statewide Reentry Council; Noel Vest; Omari Amili; Christopher Beasley; Lisa Kurek; Steven Simmons; Bob Cooper, Washington Association of Criminal Defense Lawyers and Washington Defender Association; and Michele Gerber.

Persons Signed In To Testify But Not Testifying: None.