

# HOUSE BILL REPORT

## SHB 1041

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### As Amended by the Senate

**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:** House Committee on Public Safety (originally sponsored by Representatives Hansen, Irwin, Ryu, Jinkins, Wylie, Santos and Caldier).

#### **Brief History:**

##### **Committee Activity:**

Public Safety: 1/24/19, 2/7/19 [DPS].

##### **Floor Activity:**

Passed House: 3/1/19, 95-0.

Senate Amended.

Passed Senate: 4/3/19, 48-0.

#### **Brief Summary of Substitute Bill**

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

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Appleton, Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

**Staff:** Kelly Leonard (786-7147).

#### **Background:**

Certificates of Discharge for Felony Convictions.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

When a person has completed the sentencing conditions for a felony conviction, including any and all legal financial obligations (LFOs), the sentencing court is required to provide him or her with a certificate of discharge (COD). The COD has the effect of restoring all civil rights, with the exception of the right to vote, which is automatically provisionally restored upon release from incarceration. A prior record may still be used in determining sentences for later offenses, and a COD does not discharge a no-contact or protection order.

The process for obtaining a COD is provided in statute. When a person has completed sentencing conditions, the Department of Corrections (DOC) is required to submit notice to the county clerk, who in turn informs the sentencing court. If the person was not in the custody of 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 the person satisfies all LFOs, the sentencing court is required to provide him or her with a COD.

#### Vacating Criminal 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. A person whose conviction has been vacated may state that he or she has never been convicted of that crime, including when responding to questions pertaining to licensing, employment, and housing applications.

*Vacating Felony Convictions.* A person convicted of a felony may apply to the sentencing court to vacate the conviction after receiving a COD. However, the record of conviction may not be vacated if:

- the offense was a violent offense, a crime against persons, or a felony driving under the influence (DUI) offense;
- the applicant has any criminal charges pending 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 the COD;
- the offense is a class B felony and fewer than 10 years have passed since the date of the COD; or
- the offense was a class C felony and fewer than five years have passed since the date of the COD.

*Vacating Misdemeanor Convictions.* 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, including payment of all LFOs. However, the record of conviction may not be 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, a DUI offense, or certain domestic violence (DV) offenses;
- the applicant has any criminal charges pending 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;

- the applicant applies for vacation less than three years after completing his or her sentence, including any LFOs (or less than five years for certain DV offenses); or
- the applicant has been the subject of a DV 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.

### **Summary of Substitute Bill:**

#### Certificates of Discharge for Felony Convictions.

Notices from the DOC to the county clerk must include specific information regarding completed sentence requirements, so it is clear to the sentencing court that the person is entitled to a COD upon completing payment of his or her LFOs. The county clerk must promptly notify the court when the person completes payment of his or her LFOs.

A person may apply directly to the sentencing court if the DOC does not provide notice to the court. The applicant must submit documentation to the court verifying completion of all sentencing conditions. The sentencing court must issue a COD upon verification of completion of sentencing conditions. A COD is effective on the date the person completed sentencing conditions.

If a person does not receive a COD under current procedures requiring documentation, he or she 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. A COD issued as a result of a declaration is effective on the later of: five years after completion of community custody or, if the person was not required to serve community custody, after completion of full and partial confinement; or the date on which any and all LFOs were satisfied.

#### Vacating Criminal Convictions.

*Vacating Felony Convictions.* Eligibility criteria for vacating felony convictions are 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, so long as those offenses do not include a firearm, deadly weapon, or sexual motivation enhancement.

The waiting periods are modified. The waiting periods are no longer tied to the effective date of the COD. Instead, 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 time period preceding the application for vacation—specifically, 10 years for a class B felony and five years for a class C felony.

Language is added specifying that the vacation of a conviction does not affect the requirements for restoring a right to possess a firearm.

A "recidivist offense" is a felony offense where a prior conviction of the same offense or other specified offense is an element of the crime, including, but not limited to: Assault in the fourth degree where domestic violence is pleaded and proven; Cyberstalking; Harassment; Indecent Exposure; Stalking; Telephone Harassment; and violation of a no-contact or protection order.

*Vacating Misdemeanor Convictions.* Eligibility criteria for vacating misdemeanor convictions are modified. 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.

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.

The current requirement for all court and probation services costs to be paid by the applicant, unless he or she is indigent, is removed. Language is added specifying that the vacation of a conviction does not affect the requirements for restoring a right to possess a firearm.

#### Recidivist Offenses.

A vacated conviction qualifies as a prior conviction for the purpose of charging a present recidivist offense.

#### **EFFECT OF SENATE AMENDMENT(S):**

The provision allowing a person to seek a certificate of discharge based on a sworn declaration is removed. Instead, the person must provide verification of completion of all nonfinancial conditions of his or her sentence, unless the court finds good cause to waive this requirement.

Language is added specifying that a vacated felony conviction may be used in a future criminal proceeding for the purposes of establishing an ongoing pattern of abuse, on the basis of which the court may impose an exceptional sentence.

The requirements for vacating misdemeanor convictions are modified. A person may not have his or her misdemeanor conviction vacated if he or she has any pending criminal charges in any tribal court. Language is added specifying that the restriction on any pending charges (including those in Washington courts, other state courts, federal court, or tribal courts) refers to charges that are pending at the time of the current application. In addition, a person may not have his or her misdemeanor conviction vacated if he or she has been convicted of any new crime in tribal court in the three years prior to the current application.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill does not reduce sentences or reduce punishment. Instead, it is a reward for highly motivated people who have completed their sentences and turned their lives around. First, the bill streamlines the process for getting a COD. Second, it modifies the eligibility criteria for applications to vacate records.

Under current law, a person can vacate an unlimited number of felonies, but only one misdemeanor. This disparity makes no sense, and the bill addresses it by allowing the vacation of more than one misdemeanor. In addition, it allows three commonly charged felonies to be vacated, specifically Assault in the second degree, Assault in the third degree not involving a law enforcement officer, and Robbery in the second degree. These are common offenses and cover a range of conduct. Notably, there are other severe offenses that can be vacated under current law, like Extortion, Intimidating a Judge, and Hit and Run. The offenses covered under this bill should not be treated differently.

The vacating law needs to be modernized. The waiting period should not be dependent on the ability to pay LFOs. Instead, the crime-free period should be calculated from when the person is released from custody and supervision. If someone has served his or her sentence, paid off all LFOs, and waited for five or 10 years without committing any crimes, then he or she should be able to make a case in front of a judge.

Washington has a significant recidivism problem, and the prisons are full. The state should focus on policies to reduce recidivism by facilitating successful reentry and reintegration. A criminal record is a significant collateral consequence of a conviction, yet one in four Americans have a criminal record. Barriers can continue to arise long after someone has paid his or her debt to society.

While there are some evil people in this world, most people who are convicted of crimes are not so. There is a chance for them to turn things around. Law enforcement officers understand this better than anyone—it is hard to hate up close. This bill recognizes that people can change, and it gives them a reason to move forward and stop making mistakes. If someone knows they have a chance to get a clean record, it will motivate them to stay out of the justice system.

There are countless examples of law-abiding citizens, good mothers, and good workers who face unnecessary challenges in employment, licensing, volunteering, and housing as a result of a criminal record. In one instance, a woman was hired in a new position in a different part of the state. She was open and honest about her record, and she was told it would be fine. She had a start date and had gone to orientation. She left her old job. Then, after she had moved her family, someone from human resources called her and told her that the offer was

withdrawn due to her criminal record. This is a very common story. Often, clients and coworkers have no concerns, but someone in a legal or human resources department terminates an otherwise qualified employee. A conviction can be decades old—it makes no difference. This forces people to relive the shame of their past over and over again, even when they have changed and moved on.

The state certificate of restoration of opportunity is not effective in reducing these barriers. The vacating laws are overly restrictive and most people do not qualify. The only recourse is to get a pardon from the Governor, yet this is like winning the lottery.

While it might seem counterintuitive, victims' advocates are supportive of this legislation. Successful reentry is key to reducing recidivism. If a person is able to reenter society and thrive, then future abuses are much less likely to occur. The state can believe survivors and condemn abusive behavior, while still recognizing the ability for people to change. A criminal justice system that is overly punitive, especially post-sentence, is counterproductive to public safety. Collateral consequences affect not only the person with the record, but also their entire family and children.

People often tell inmates and those who are struggling that it is possible to have a better life. "Work hard, make amends, and you can be successful," they say. Does the state want people to believe this? Is it true? There are truly amazing people—published authors and lawyers—who cannot rent an apartment because of an old criminal conviction. If even the successful are condemned, what does this say to someone starting at the bottom? The state should fulfill its promise that a better life is possible.

While the bill opens up the possibility to vacate some additional offenses, there are sideboards to prevent abuses. It is unlikely that anyone would qualify to vacate several convictions. It is also not an automatic process. A judge must review each application, and the decision is ultimately discretionary.

Prosecutors defer to the Legislature regarding the eligibility requirements for vacating convictions. However, some clarifications might be helpful to address unintended consequences. The state should try to seek justice in criminal cases, and those principles are preserved in this bill. Justice can still be served while allowing people to move on with successful reentry. However, some changes should be made to ensure full payment of restitution and mandatory LFOs. Some language should be added to clarify the use of vacated offenses as predicate offenses.

The clerks might have some concerns about the process, but proponents are confident a resolution can be found to address those concerns.

(Opposed) None.

(Other) The DOC is supportive of improving the process for obtaining CODs, as certificates can expand opportunities for jobs and housing. However, as written, there may be additional costs to the DOC that will require funding.

The bill does not contemplate the actual procedures for collecting LFOs. Specifically, it distinguishes between restitution and nonrestitution LFOs, but it is more complicated. Persons are also required to pay interest, and the collected payments are distributed to obligations according to priorities established in statute. Some additional changes to statute will be necessary to make this work, specifically with respect to whether payment of interest is required before an application can be approved. It is not clear how the bill can be harmonized with current LFO requirements. Restitution interest is considered the property of the victim, and victims are not wealthy people. In addition, requiring continued payment of LFOs after a conviction is vacated is not enforceable. If the Legislature chooses to enact a change to allow someone to vacate a conviction without fully paying LFOs, then it would be better to just waive the remaining balance.

The bill also allows someone to make a motion, instead of filing a petition, when seeking a COD in a case involving a no-contact order. This does not work. It needs to be a petition in order to provide notice to proper parties and work with the system.

**Persons Testifying:** (In support) Representative Hansen, prime sponsor; Representative Irwin; Dan Satterberg, King County Prosecuting Attorney's Office and Washington Statewide Reentry Council; Tamaso Johnson, Washington State Coalition Against Domestic Violence; Russell Brown, Washington Association of Prosecuting Attorneys; Devitta Briscoe, Community Justice Project; Carolina Landa, Civil Survival; Andre Taylor, Not This Time and De-Escalate Washington; Portia Linear; Collin Dow; Crystal Nelson; Dominic Jones; and Tarra Simmons.

(Other) Alex MacBain, Department of Corrections; and Ruth Gordon, Washington State Association of County Clerks.

**Persons Signed In To Testify But Not Testifying:** None.