

FINAL BILL REPORT

2SHB 2793

FULL VETO

Synopsis as Enacted

Brief Description: Vacating criminal records.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Hansen and Irwin).

House Committee on Public Safety
House Committee on Appropriations
Senate Committee on Law & Justice
Senate Committee on Ways & Means

Background:

A person may apply to the sentencing court to have his or her conviction vacated in certain circumstances. 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.

In order for the court to vacate a conviction, the person must meet certain statutory eligibility requirements, which vary depending on the nature of the conviction. Certain types of convictions do not qualify to be vacated. In addition, for most applications, the decision to vacate the offense is discretionary on the part of the sentencing court.

A person may not have a felony conviction vacated if:

- the person has not received a certificate of discharge for the offense, including payment of legal financial obligations;
- the offense was a violent offense, crime against persons, or felony Driving Under the Influence (DUI), except for Assault in the second degree, Assault in the third degree not involving a law enforcement officer, and Robbery in the second degree may be vacated, so long as the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement;
- there are any criminal charges against the person pending in any state or federal court;
- the offense is a class B felony and the person has been convicted of a new crime in the 10 years prior to the application, or less than 10 years have passed since the later

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- of: release from community custody; release from full and partial confinement; or sentencing; or
- the offense is a class C felony and the person has been convicted of a new crime in the five years prior to the application, or less than five years have passed since the later of: release from community custody; release from full and partial confinement; or sentencing.

A person may not have a gross misdemeanor or misdemeanor conviction vacated if:

- the person has not completed the conditions of his or her sentence, including payment of legal financial obligations;
- the conviction was for one of the select offenses that may not be vacated, including, for example, a violent offense, a sex offense, or a DUI offense;
- the person has any criminal charges pending in any state or federal court;
- the person has been convicted of a new crime in any state, federal, or tribal court since the date of conviction;
- less than three years have passed since the person completed the terms of the sentence, including any financial obligations, or the person has been convicted of a new crime in the three years prior to the application; or
- the person does not meet certain requirements pertaining to no-contact orders or protection orders.

Additional restrictions apply to certain types of offenses, including, for example domestic violence offenses. However, a misdemeanor marijuana possession offense is exempted from any restrictions for vacation, provided that the offense was committed when the person was age 21 or older.

Summary:

Study and Implementation Plan. The Administrative Office of the Courts (AOC) must conduct a study and pilot program to develop an administrative, court-driven process for streamlining the vacation of criminal convictions based on current statutory eligibility requirements.

The AOC must assess whether any changes to laws, policies, or practices or additional resources are necessary to improve the reliability of the process for the pilot program and for launching a similar program statewide. The AOC must submit a report with findings, recommendations, and an implementation plan to the Governor and Legislature by December 1, 2020.

Process for Pilot Program. The pilot program must commence July 1, 2021, and continue through June 30, 2022, in a single county selected by the AOC. The program must include courts of general and limited jurisdiction.

The pilot program includes a screening process conducted by AOC, and then a final review process conducted by individual sentencing courts. First, the AOC reviews convictions from the participating county for the purpose of determining whether those convictions should be scheduled for administrative vacation hearings. If appropriate and necessary for producing

reliable notifications, the AOC may limit the screening process to certain types or classes of convictions or defendants.

The AOC screening process must:

- review convictions beginning at the earliest period for which electronic court records are reliable, provided that the review applies to convictions beginning no later than January 1, 2000;
- rely upon records available to the AOC and other agencies;
- determine whether a defendant is currently incarcerated for a criminal offense, and whether available records indicate that he or she is precluded from qualifying to vacate his or her conviction, which may be based on queries and other procedures developed by the AOC;
- notify sentencing courts to schedule an administrative vacation hearing for any defendant where a review of available records does not indicate that the defendant is precluded from qualifying to vacate his or her conviction; and
- prioritize potentially qualifying defendants according to criteria established by the AOC so as not to hinder sentencing courts with excessing notifications.

When a sentencing court receives notice from the AOC regarding a potentially qualifying defendant, the court must set an administrative vacation hearing. At the hearing, the court must determine whether to vacate the conviction based on the current eligibility requirements. The defendant is presumed to meet the requirements and the court must vacate the conviction, unless: court records indicate that the defendant does not meet the requirements; or the prosecutor objects on the basis that the defendant does not meet the requirements or that the defendant is currently incarcerated for a criminal offense. If the court vacates a conviction, it is processed in the same manner and has the same effect as provided in current law.

If the court determines the defendant is not currently eligible, but is likely to become eligible in the future, the court may set a subsequent hearing. Otherwise, the court may decline to vacate the conviction without setting a subsequent hearing.

A defendant is not required to appear at an administrative hearing in order for the court to vacate the conviction. Regardless of whether a hearing has previously occurred or is scheduled at a future date, a defendant may still independently apply to the court to vacate a conviction or seal his or her records.

Final Report. The AOC must collect information with respect to convictions where notifications were sent to sentencing courts under the pilot program. The AOC must submit to the Governor and Legislature a status update by December 1, 2021, and a final report by December 1, 2022.

Votes on Final Passage:

House	79	18	
Senate	45	3	(Senate amended)
House	90	7	(House concurred)