

HOUSE BILL REPORT

SB 5605

As Reported by House Committee On:
Public Safety

Title: An act relating to misdemeanor marijuana offense convictions.

Brief Description: Concerning misdemeanor marijuana offense convictions.

Sponsors: Senators Nguyen, Keiser, Hunt, Salomon, Hasegawa, Saldaña, Das, Randall, Darneille, Kuderer, Pedersen and Wilson, C..

Brief History:

Committee Activity:

Public Safety: 3/25/19, 4/1/19 [DPA].

Brief Summary of Bill
(As Amended by Committee)

- Requires a court to vacate a misdemeanor marijuana possession conviction upon the application of a person who was age 21 or older at the time of the offense.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 10 members: Representatives Goodman, Chair; Davis, Vice Chair; Sutherland, Assistant Ranking Minority Member; Appleton, Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

Minority Report: Do not pass. Signed by 1 member: Representative Klippert, Ranking Minority Member.

Staff: Kelly Leonard (786-7147).

Background:

Misdemeanor Marijuana Possession.

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.

It is a misdemeanor offense for any person to possess 40 grams or less of marijuana, although this is subject to some exceptions. In 2012 Washington voters passed Initiative No. 502 (I-502), which legalized the recreational use of marijuana and created a comprehensive regulatory scheme under state law. Persons at least 21 years old may legally possess up to 1 ounce of marijuana and related products for personal use. They may also purchase up to 1 ounce of useable marijuana, 16 ounces of solid marijuana-infused product, 72 ounces of liquid marijuana-infused product, and 7 grams of marijuana concentrate.

Marijuana possession is still a state crime for persons under 21 years old, regardless of the amount possessed. Previous convictions or sentences for marijuana-related misdemeanor offenses were not retroactively modified by I-502.

In addition, marijuana possession for persons of all ages remains a crime under federal law.

Actions to Modify Prior Marijuana Convictions.

In January 2019 the Governor announced a plan to expedite the pardon process for certain adults with misdemeanor marijuana convictions. The Governor will exercise his constitutional clemency authority to pardon individuals age 21 and older with a single misdemeanor conviction for marijuana possession between January 1, 1998, and December 5, 2012, when I-502 took effect. The conviction must have been prosecuted under Washington state law, not a local ordinance, and must be the only conviction on the petitioner's criminal record. Petitioners who qualify may submit a petition for clemency, which will officially start the request for a pardon of the conviction. Records indicate that roughly 3,500 individuals are eligible under the requirements established by the Governor.

In 2018 the Seattle City Attorney's Office moved to dismiss possession of marijuana charges filed between 1996 and 2010 in the Municipal Court of the City of Seattle. An order was signed by all seven Seattle Municipal Court judges on September 11, 2018.

Vacation of Misdemeanors or Gross Misdemeanors.

After completing all of the terms of the sentence, a person convicted of a misdemeanor or gross misdemeanor may apply to the sentencing court to vacate his or her conviction record. The sentencing court has discretion to vacate the applicant's conviction record. However, the court may not clear the applicant's record if:

- criminal charges against the applicant are pending;
- fewer than three years have passed since the applicant completed the terms of the sentence, including any financial obligations;
- the applicant has been convicted of a new crime since the date of conviction;
- the applicant has ever had the record of another conviction vacated; or
- the applicant is currently restrained, or has been restrained within the last five years, from contacting another party by a court order.

Certain offenses may not be vacated, including violent offenses and sex offenses, and additional restrictions apply to other specified offenses.

Once the court vacates a record of conviction, the person is released from all penalties and disabilities resulting from the conviction, and the conviction is not included in the person's

criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated may state that the person has never been convicted of that crime.

Summary of Amended Bill:

Any person with a prior conviction of misdemeanor marijuana possession occurring when he or she was age 21 years or older may apply to the sentencing court to vacate his or her conviction record. The court must vacate the applicant's conviction record and may not consider the restrictions applicable to vacating other misdemeanor convictions.

Amended Bill Compared to Original Bill:

Language is added clarifying that the underlying bill also applies to misdemeanor marijuana possession offenses charged under specific predecessor statutes and equivalent municipal ordinances. Provisions are reorganized, and duplicative language is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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) This bill is about righting the wrongs of a failed public policy—the war on drugs. The criminalization of marijuana in Washington has disproportionately affected persons of color and vulnerable populations. Despite the passage of I-502, past convictions continue to have serious ramifications. Past convictions impact access to housing, employment, education, business and licensing opportunities, and even volunteering opportunities. Tens of thousands of people are affected by past criminalization and continue to suffer the consequences. This has become a cycle where past hardships define future outcomes.

Put simply, the state should vacate these offenses because the conduct is now legal. The original public safety concerns underlying the prohibition of cannabis were unfounded. Therefore, the related convictions were unfounded. It is time to wipe the slate clean. This bill is fundamentally about fairness.

(Opposed) None.

Persons Testifying: Senator Nguyen, prime sponsor; Lara Kaminsky, The Cannabis Alliance; Logan Bowers; and William Gipson.

Persons Signed In To Testify But Not Testifying: None.