

# SENATE BILL REPORT

## SHB 1041

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As of March 27, 2019

**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:** Passed House: 3/01/19, 95-0.

**Committee Activity:** Law & Justice: 3/21/19.

### Brief Summary of Bill

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

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Tim Ford (786-7423)

**Background:** Certificates of Discharge for Felony Convictions - Effect. A certificate of discharge (COD) restores all civil rights not already restored for an offender who has completed all requirements of the sentence, including all legal financial obligations (LFOs). Civil rights lost on conviction of a felony may include the right to vote, possess firearms, hold public office, and serve on a jury. The right to vote is provisionally restored upon release from incarceration.

A COD does not vacate a conviction record, and a prior record may still be used in determining sentences for future offenses. A COD does not lift a no-contact or protection order.

Process for obtaining a Certificate of Discharge. If an offender is under the custody of the Department of Corrections (DOC) upon completion of all sentence requirements, including

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LFOs, DOC shall discharge them and provide a COD. When a person has completed their sentencing conditions, but not their LFOs, DOC is required to submit a notice to the county clerk that the offender has completed all nonfinancial requirements. Upon subsequent completion of the LFOs, the county clerk shall notify the sentencing court, which shall discharge the offender and provide a certificate of discharge.

If the offender was not in the custody of or under the supervision of DOC, they may directly contact the sentencing court with verification that they have completed conditions. Once the person satisfies all LFOs, the sentencing court is required to provide them with a COD.

Vacating Felony Conviction Records. A person convicted of a felony offense, who has completed all of the terms of the sentence and has met other statutory criteria, may apply to the sentencing court for a vacation of the record of conviction. A conviction may not be vacated if:

- any criminal charges are pending against the applicant;
- the offense or attempted offense was violent;
- the offense was against children or vulnerable adults;
- the offender has subsequent convictions since discharge;
- the offense was a class B felony and less than ten years have passed since discharge;
- the offense was a class C felony and less than five years have passed since discharge;
- or
- the offense was for driving under the influence, or actual physical control while under the influence.

If the court finds the applicant does not have any restrictions listed above, the court may vacate the record of conviction by permitting the applicant to:

- withdraw the guilty plea and enter a plea of not guilty; or
- if the applicant was convicted after a plea of not guilty, the court may set aside the guilty verdict, dismiss the indictment, and release the offender from all penalties.

For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution. However, once a court vacates a record of a felony conviction, the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction.

Vacating Misdemeanor or Gross Misdemeanor Conviction Records. A person convicted of a misdemeanor or gross misdemeanor offense, who has completed all of the terms of the sentence and has met other statutory criteria, may apply to the sentencing court for a vacation of the record of conviction. A conviction may not be vacated if:

- any criminal charges are pending against the applicant;
- the offense or attempted offense was violent;
- the offense was for driving under the influence, or actual physical control while under the influence, or the offense is a prior and the applicant has had a subsequent alcohol or drug violation within ten years of the date of arrest for the prior offense;
- the offense was any misdemeanor or gross misdemeanor sex offense, sexual exploitation of children, or pornography;

- the offense was for certain domestic violence offenses;
- the offender has subsequent convictions;
- the offender has had a prior conviction vacated; or
- the offender has a current restraining order in place.

If the court finds the applicant does not have any restrictions listed above, the court may vacate the record of conviction by permitting the applicant to:

- withdraw the guilty plea and enter a plea of not guilty; or
- if the applicant was convicted after a plea of not guilty, the court may set aside the guilty verdict, dismiss the complaint, and vacate the judgement and sentence.

For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated may state they have never been convicted of that crime. Generally, an offender's prior conviction may be used in a later criminal prosecution.

**Summary of Bill:** Title. The act is given a title known as the New Hope Act.

Certificates of Discharge for Felony Convictions. Notices from the to the county clerk must list specific requirements completed, so it is clear to the sentencing court that the person is entitled to a COD upon completing payment of their LFOs. The county clerk must promptly notify the court when the person completes payment of their 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 from either DOC or the court by submitting documentation to verify completion, they may file a motion with the sentencing court with a declaration, sworn under penalty of perjury, stating they have completed all nonfinancial conditions of their 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 Felony Convictions. For violent offenses or offenses against children or vulnerable adults, the following may be vacated if the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement:

- 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.

For offenses by class, the following offenses may not be vacated:

- a class B felony where the offender has been convicted of a new crime within ten years of application for vacation;

- a class B felony and less than ten years have passed since the later of (1) release from community custody, (2) release from full and partial confinement, or (3) sentencing date DOC;
- a class C felony where the offender has been convicted of a new crime within five years of application for a vacation;
- a class C felony, other than a DUI or PCUI, and less than five years have passed since the later of (1) release from community custody, (2) release from full and partial confinement, or (3) sentencing date;
- any class of felony that is a DUI or PCUI.

A 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 pled and proven;
- cyberstalking;
- harassment;
- indecent exposure;
- stalking;
- telephone harassment; and
- violation of a no contact or protection order.

When a defendant is charged with a recidivist offense, criminal history includes a vacated prior conviction for the sole purpose of establishing the prior conviction as an element of the present recidivist offense.

Vacating Misdemeanor Convictions. The following restrictions are modified:

- not vacating a gross misdemeanor sex offense is changed, and a gross misdemeanor conviction of failure to register as a sex offender may be vacated;
- not vacating any conviction if the applicant has a prior domestic violence conviction is changed to not vacating any conviction where the applicant has two or more prior domestic violence convictions stemming from different incidents;
- not vacating a conviction if the applicant has been convicted of a new crime is changed to a new crime in the three years prior to applying for a vacation;
- not vacating any conviction if the applicant has had a prior conviction vacated is removed;
- not vacating any conviction if the applicant has been subject to a restraining order in the last five years is removed and applies only if the applicant is currently subject to a restraining order, or was previously restrained and found to have committed a violation of the order within five years of the application.

The requirement for a non-indigent applicant to pay costs incurred by the court or probation services is removed.

A conviction vacated on or after the effective date of the act qualifies as a prior conviction for the purpose of charging a recidivist offense.

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

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: When someone has a criminal conviction and has paid their debt to society, they should have an opportunity to get their record cleared so they can get a decent job and provide for their family. This bill streamlines the process for getting a certificate of discharge that says you have satisfied the conditions of your sentence, and paid your legal financial obligations. It makes the misdemeanor vacation rules align with the felony rules. Under current law you can vacate an unlimited number of felonies but only one misdemeanor. Individuals should have a chance to go before a judge to explain how they have been crime free in order to vacate an old conviction. This bill would provide a pathway for reentry for offenders.

**Persons Testifying:** PRO: Representative Drew Hansen, Prime Sponsor; Kevin Hull, Judge, Kitsap County Superior Court; Tamaso Johnson, Washington State Coalition Against Domestic Violence; Danielle Armbruster, Assistant Secretary, Department of Corrections; Tarra Simmons, Civil Survival, Public Defender Association, Washington State Re-Entry Council; Carolina Landa, Civil Survival; Noel Vest, Unlock Higher Ed; Russell Brown, Washington Association of Prosecuting Attorneys; Cynthia Delostrinos, Washington State Supreme Court Minority and Justice Commission; Sarah Hurd, citizen.

**Persons Signed In To Testify But Not Testifying:** No one.