

SENATE BILL REPORT

SHB 1346

As Reported By Senate Committee On:
Judiciary, March 27, 2003

Title: An act relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

Brief Description: Changing provisions relating to vacation of records of conviction for pre-sentencing reform act felony offenses.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Lovick, Cairnes, Rockefeller, Campbell, Moeller, Clibborn, Cooper, Flannigan, Simpson, Kagi, Pettigrew and Chase).

Brief History:

Committee Activity: Judiciary: 3/26/03, 3/27/03 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: For felony convictions after July 1, 1984, the Sentencing Reform Act (SRA) allows an offender to have his or her record of a felony conviction vacated if at least 10 years have passed since completion of the sentence for a class B felony or at least five years have passed since completion of the sentence for a class C felony. The judge has the discretion to vacate the conviction, except that vacation is not possible: (1) for any class A felony, any "violent offense," or any "crime against persons;" (2) if the offender has any criminal charges pending; or (3) if the offender has been convicted of any other crime since completion of the sentence for the offense for which vacation is being sought.

Vacation of the record has the effect of removing all penalties and disabilities that resulted from the offense. However, it is unclear whether vacation of a conviction entitles an offender to possess a firearm since there is no specific finding of rehabilitation (federal law precludes possession). Vacation of the record prevents the offense from being used as criminal history for purposes of establishing the offender score in sentencing for a subsequent offense and allows the offender to respond on an employment application that he or she has never been convicted of that crime. Once a felony record has been vacated, the State Patrol and other law enforcement agencies may not disseminate the record except to other law enforcement agencies. Vacation of a conviction does not prevent it from being used to impeach a witness or to establish an element of a crime whose classification as a felony requires proof of a prior conviction.

For felonies sentenced before July 1, 1984, there are no statutory provisions expressly authorizing the vacation of records. For pre-SRA felons who have successfully completed parole after a prison sentence, the Indeterminate Sentence Review Board (ISRB) may issue a certificate of discharge if the ISRB determines that the person's final release "is not incompatible with the best interests of society and the welfare of the paroled individual." A certificate of discharge has the effect of restoring the right to vote, but does not entitle the offender to possess a firearm.

Some pre-SRA felons were not sentenced to prison, but instead served suspended sentences and a period of probation (convictions for murder; burglary in the first degree; arson in the first degree; robbery; rape; and rape of a child may not be suspended). If a felon successfully completed the period of probation, he or she could be "released from all penalties and disabilities" that resulted from conviction. The release does not prevent the record of conviction from being used in a subsequent prosecution. An application for release must be made "prior to the expiration of the maximum period of punishment for the offense." A pre-SRA felon who received a suspended sentence may apply for restoration of the right to vote.

No statute authorizes pre-SRA felons to respond to an employment application by saying they have never been convicted of an offense. However, the state Supreme Court has recently held that the pre-SRA release from penalties provision is the functional equivalent of the SRA provision with respect to vacation of records. The court held that a pre-SRA felon who has been released from all penalties and disabilities following successful completion of probation may respond on an employment application that he or she has not been convicted of the offense. The court also held that the effect of such a release is to direct criminal justice agencies not to release the record of conviction to prospective employers.

Summary of Bill: A felon convicted before July 1, 1984, who has successfully completed a suspended sentence and probation may apply for a vacation of the record of his or her conviction. The application for and granting of the vacation are subject to the same conditions and restrictions used under the SRA. After the conviction is vacated, the offender may respond on an employment application that he or she has not been convicted of the crime. The records are treated the same by law enforcement agencies.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Pre-SRA and post-SRA offenders should be treated consistently. Offenders who show that they can live in the community without reoffending should be allowed to go on with their lives. This is not an issue of leniency, it is an issue of fairness.

Testimony Against: None.

Testified: PRO: Representative O'Brien; Tom McBride, WAPA; Mark Muenster, WACDL.