

HOUSE BILL REPORT

2ESHB 1553

As Passed House:
February 16, 2016

Title: An act relating to certificates of restoration of opportunity.

Brief Description: Encouraging certificates of restoration of opportunity.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Walkinshaw, MacEwen, Ryu, Appleton, Moscoso, Holy, Gregerson, Zeiger, Peterson, Farrell, Walsh, Reykdal, Orwall, Pettigrew, Tharinger, Fitzgibbon and Kagi).

Brief History:

Committee Activity:

Public Safety: 2/3/15, 2/6/15 [DPS].

Floor Activity:

Passed House: 3/2/15, 97-0.

Floor Activity:

Passed House: 2/16/16, 97-0.

Brief Summary of Second Engrossed Substitute Bill

- Creates a process by which a person with a criminal record can be granted a Certificate of Restoration of Opportunity.
- Prohibits the state and local governments from disqualifying an applicant for a license, certificate, or other qualification to engage in certain professions or businesses solely based on the applicant's criminal history if the applicant possesses a Certificate of Restoration of Opportunity.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Pettigrew and Wilson.

Staff: Kelly Leonard (786-7147).

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.

Background:

Occupational Licensure. Occupation licensure is the process by which a government entity grants individuals permission to engage in a specified professional occupation upon finding that individual applicants have attained the minimal degree of competency required to ensure that the public's health, safety, and welfare will be reasonably well protected. Currently, there are at least 120 types of occupations requiring licensing, certification, and registration in Washington state. Some occupational licensure procedures require state entities to conduct criminal background investigations and assess or exclude someone from licensure for certain types of criminal convictions.

Employment and Licensing Disqualification for Felony Convictions. Any state, city, county, or other municipal entity is prohibited from disqualifying a person from employment, or any occupation, trade, vocation, or business for which a state or local license, permit, certificate or registration is required solely because of a prior conviction of a felony. However, a prior conviction may be considered in conjunction with other factors.

There are exceptions allowing disqualification solely based on criminal history when:

- the felony is directly related to the employment or profession sought and it has been fewer than 10 years since conviction;
- the felony was for embezzlement or theft and the position is in a county treasurer's office; or
- the felony was committed against a child and the position is an education position requiring certification or is a position with a school district or educational service district.

Health professions are exempt from the prohibition on disqualification. In addition, many occupations regulated by the state contain specific requirements for considering criminal history, including requirements barring applicants from participating in certain occupations in some contexts.

Summary of Second Engrossed Substitute Bill:

The Certificate of Restoration of Opportunity (CROP) is created.

Eligibility Requirements. A person may obtain a CROP from a superior court if he or she meets certain eligibility requirements. Specific time periods must have passed since sentencing, for those sentenced to probation or some other noncustodial sentence, or since release from confinement, for those sentenced to jail or prison, before a person is eligible for a CROP. The time periods are as follows:

- one year for misdemeanors and gross misdemeanors when sentenced to probation or some other noncustodial sentence;
- 18 months for misdemeanors and gross misdemeanors when sentenced to a term of confinement;
- two years for a class B or C felony; or
- five years for any violent offense.

An applicant must be in compliance with or completed all sentencing requirements, including legal financial obligations. An applicant is not eligible if he or she has any new arrests, convictions, or pending criminal charges or known imminent charges, or is required to register as a sex offender. An applicant is not eligible if he or she has ever been convicted of any of the following:

- a class A felony, an attempt to commit a class A felony, or criminal solicitation of or criminal conspiracy to commit a class A felony;
- a sex offense;
- a crime that includes sexual motivation;
- Extortion in the first degree;
- Drive-by Shooting;
- Vehicular Assault; or
- Luring.

Occupational Licensing and Qualifications. When a qualified applicant holds a CROP and meets all other statutory or regulatory requirements, the state and any county, municipal department, board, officer, or agency may not disqualify him or her for a license, certificate of authority, or qualification to engage in the practice of any profession or business solely based on the applicant's criminal history. The state and other government entities are immune from suit for damages based on the exercise of any discretion with respect to CROPs.

The Department of Social and Health Services (DSHS) and the Department of Health (DOH) have discretion to disqualify an individual who holds a CROP based solely on criminal history if the employment involves unsupervised access to vulnerable adults, children, or individuals with mental illness or developmental disabilities. The DSHS and the DOH are immune from suit for damages based on the exercise of this discretion.

Certain professional licenses are not covered by a CROP, including the following: accountants; assisted living facilities employees; bail bond agents; escrow agents; long-term care workers; nursing home administrators; nurses; physicians and physician assistants; private investigators; receivers; security guards; teachers; notaries public; private investigators; real estate brokers and salespersons; security guards; and vulnerable adult care providers. Criminal justice agencies and the Washington State Bar Association are exempt and may disqualify an individual based solely on criminal history, regardless of whether the individual holds a CROP.

Employment and Housing. An employer or housing provider has the discretion to consider a CROP in making employment or housing decisions. Evidence of a crime for which a CROP has been issued is inadmissible in court for actions alleging negligence or intentionally tortious conduct of an employer or housing provider with respect to the employment or housing of CROP holder. Employers and housing providers are immune from suit for damages based on the exercise of its discretion to consider a CROP.

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) There is a need to find ways to enable successful re-entry and empower employers to make hiring decisions based on better information. The bill allows the certificates to be granted by the court when the individuals convicted of a crime have met a specific set of objective criteria. The bill attempts to satisfy the needs of employers and protect society. The bill allows individuals who have served time to come back to society and get access to employment and housing. This is an effort to prevent re-offense.

It is not the mission of the criminal justice system to impose lifelong disabilities on people who break the law. There should be a social mission to make sure offenders do not recidivate. Collateral consequences are consequences of conviction that were not a part of the sentence. This trips up offenders on the road to becoming a tax payer. The certificate is a receipt to be earned that shows debt payment to society. Those that search the criminal history will see both the certificate and the conviction. It is a transparent alternative to sealing a conviction. There is no employer mandate.

This bill is about the spirit of redemption. Studies show that employment reduces recidivism. There are exceptions for individuals with a CROP who would work with youth or vulnerable adults. Offenders getting out of institutions are full of hope and seek to change their lives. They have to have employment in order to do this. Losing hope leads to a loss of care for society. This bill addresses collateral consequences of crime. Judges see the consequences first hand. There are incredible barriers. This bill provides a realistic second chance. This is the right approach to addressing past criminal history rather than other approaches that attempt to hide and conceal things.

This bill creates employment opportunities for individuals with a criminal history. There is a need to address safety of vulnerable people and this bill gives the flexibility to promote that safety. This certificate is only as good as it is fully displayed. Anytime state patrol records are accessed it should be the first thing that is seen. This will increase the effectiveness of the tool.

A felony conviction can be an absolute bar in the helping professions. A trained, experienced individual who acquires a felony conviction may be excluded from employment due to the law. Criminal convictions create a daunting array of roadblocks for a job search. There are financial and emotional impacts on families. It is time to open the economy to individuals convicted of crimes who want to rebuild their lives. One in five Washington adults has a criminal record. Jobs reduce recidivism. There are 90 career paths closed to people with a criminal history. This is a social justice issue because there is disproportionate impact of incarceration and unemployment on people of color. A CROP will improve public safety and strengthen families. The bill strikes an appropriate balance between patient safety and the need to reintegrate offenders into society.

(Opposed) None.

Persons Testifying: Representative Walkinshaw, prime sponsor; Dan Satterberg, King County Prosecuting Attorney's Office; Merf Ehman, Columbia Legal Services; Bill Hinkle, Rental Housing Association; Glenna Awbrey, STAR Project; Elizabeth Martin, Superior Court Judges Association; James McMahan, Washington Association of Sheriffs and Police Chiefs; Jim Vollendroff, King County Department of Human Services; Bill Moss, Department of Social and Health Services; Rowland Thompson, Allied Daily Newspapers; William Keizer; Rolando Avila and Andrian Sherman, Poverty Action Network; Mike Schwartz, YWCA, King-Snohomish County; Nick Federici, Pioneer Human Services; Julia Gorton, Washington Restaurant Association; Kristin Peterson, Department of Health; and Devon Schrum, Department of Corrections.

Persons Signed In To Testify But Not Testifying: None.