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## Public Safety Committee

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### HB 2890

**Brief Description:** Promoting successful reentry by modifying the process for obtaining certificates of discharge and vacating conviction records.

**Sponsors:** Representatives Hansen, Frame and Ormsby.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Modifies the process for obtaining a certificate of discharge.</li><li>• Expands eligibility criteria for vacating criminal convictions.</li></ul>
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- Modifies the process for obtaining a certificate of discharge.
- Expands eligibility criteria for vacating criminal convictions.

**Hearing Date:** 1/23/18

**Staff:** Kelly Leonard (786-7147).

**Background:**

Certificate of Discharge.

When an offender has completed all of his or her requirements of sentence, including any and all legal financial obligations (LFOs), the sentencing court is required to provide the offender with a certificate of discharge. The discharge has the effect of restoring all civil rights, with the exception of the right-to-vote, which is automatically provisionally restored upon release from incarceration. An offender's prior record may still be used in determining sentences for later offenses and does not discharge a no-contact or protection order. A certificate of discharge is not based on a finding of rehabilitation.

The Department of Corrections (DOC) is required to submit notice to the county clerk, who in turn informs the sentencing court, when an offender has completed the requirements of his or her sentence, excluding LFOs. If an offender was not in the custody or under the supervision of DOC, he or she may directly contact the sentencing court with verification that he or she has completed the requirements of his or her sentence. Once an offender satisfies all LFOs, the sentencing court is required to provide the offender with a certificate of discharge.

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*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.*

### Vacating Convictions.

In certain circumstances authorized in statute, a person's record of conviction may be vacated by a sentencing judge. The judge may vacate a conviction by permitting the applicant to withdraw his or her guilty plea and enter a not guilty plea, or set aside the guilty verdict and dismiss the information, indictment, complaint or citation against the applicant, and vacate the judgment and sentence.

Once 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 for felony convictions, professional licensing, employment, housing, and other matters. An offender whose conviction has been vacated may state that the offender has never been convicted of that crime, including when responding to questions pertaining to licensing, employment, and housing applications.

*Vacating Misdemeanors and Gross Misdemeanors.* A person convicted of a misdemeanor or gross misdemeanor may apply to the sentencing court to vacate the conviction if he or she has completed all of the terms of the sentence. A person is prohibited from having a record vacated if:

- the conviction was for one of the select offenses that may not be vacated, for example, a violent offense, a sex offense, failure to register as a sex offender, or driving under the influence (DUI);
- there are any pending criminal charges against the applicant in any state or federal court;
- the applicant has been convicted of a new crime in any state or federal court since the date of conviction;
- the applicant has had the record of another conviction vacated;
- he or she applies for vacation less than three years after he or she completed his or her sentence, including any financial obligations;
- the applicant has been the subject of a domestic violence protection order, a no-contact order, an anti-harassment order, or a civil restraining order within the five years prior to applying for the vacation.

*Vacating Felony Convictions.* Similar to misdemeanors and gross misdemeanors, a person convicted of a felony may apply to the sentencing court to vacate the convictions after completing all of the terms of the sentence and receiving a certificate of discharge. However, the record of conviction may not be vacated if:

- the offense was a violent offense, a crime against persons, or a felony DUI;
- the applicant has any criminal charges pending in any court of this state or another state, or in any federal court;
- the applicant has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge;
- the offense is a class B felony and less than 10 years have passed since the date the applicant was discharged; or
- the offense was a class C felony and less than five years have passed since the date the applicant was discharged.

### **Summary of Bill:**

### Certificate of Discharge.

The process for an offender to apply directly to the court for a certificate of discharge is modified. The DOC must include clear information on its notice to the county clerk when someone completes his or her sentencing conditions. The county clerk must promptly submit notice of completion of sentencing conditions and a notice of completion of LFOs to the sentencing court.

Any offender may apply directly to the court in the absence of notice provided from the DOC. The offender must submit documentation to the court verifying completion of all of the conditions of his or her sentence. The sentencing court shall issue a certificate of discharge upon verification of completion of all sentencing conditions, including any and all LFOs. A certificate of discharge is effective on the date the offender completed all conditions of his or her sentence.

In the absence of receiving a certificate of discharge under current procedures, an offender may file a motion with the sentencing court with a declaration, sworn under penalty of perjury, stating he or she has completed all of the nonfinancial conditions of his or her sentence. The filing of a declaration creates a rebuttable presumption that the offender completed all nonfinancial conditions of his or her sentence. A certificate of discharge issued as a result of a declaration is effective on the later of: five years after completion of community custody, or if the offender was not required to serve community custody, after the completion of full and partial confinement; or the date any and all legal financial obligations were satisfied.

#### Vacating Convictions.

*Vacating Misdemeanors and Gross Misdemeanors.* The restriction against vacating a misdemeanor Failure to Register conviction is removed.

The restriction against prior vacations is removed. A person may apply to have his or her conviction vacated even if he or she has had a conviction vacated previously.

The restriction against new convictions is modified. A person may apply to have a conviction vacated even if he or she has been convicted of a new gross misdemeanor or misdemeanor offense, as long as it has been more than three years since those new convictions occurred.

The restriction against prior restraining/protection orders is modified. A person who has been the subject of an order in the previous five years may apply to have his or her record vacated so long as he or she is not currently subject to an order and he or she did not violate an order in the previous five years.

*Vacating Felony Convictions.* Eligibility criteria for vacating felony convictions is modified by removing the prohibition against vacating violent offenses and crimes against persons, and replacing it with a prohibition against vacating:

- class A felonies or an attempt, solicitation, or conspiracy to commit a class A felony;
- serious violent felonies;
- sex offenses;
- Felony DUI;
- Arson in the second degree;
- Assault in the third degree against a law enforcement officer or employee of a law enforcement agency or against a peace officer with a projectile stun gun;
- Felony Assault in the fourth degree with domestic violence;

- Assault of a Child in the first or second degree;
- Criminal mistreatment in the first or second degree;
- Custodial Assault;
- Domestic Violence court order violation;
- Drive By Shooting;
- Extortion in the first or second degree;
- Identity Theft in the first or second degree;
- Intimidating a Juror, Public Servant, or Witness;
- Kidnapping in the second degree;
- Manslaughter in the second degree;
- Promoting a Suicide Attempt;
- Promoting Prostitution in the first degree;
- Stalking;
- Theft from a Vulnerable Adult in the first or second degree;
- Threats to bomb, if against a person; or
- Vehicular Assault.

The waiting periods for class B and C felonies are modified. A person is require to wait until 10 years (for class B felonies) or five years (for class C felonies) have passed from the later of his or her: release from community custody; release from full and partial confinement; or sentencing date.

**Appropriation:** None.

**Fiscal Note:** Requested on January 22, 2018.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.