
Public Safety Committee

HB 1041

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

Sponsors: Representatives Hansen, Irwin, Ryu, Jenkins, Wylie, Santos and Caldier.

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

Hearing Date: 1/24/19

Staff: Kelly Leonard (786-7147).

Background:

Certificates of Discharge for Felony Convictions.

When a person has completed the sentencing conditions for a felony conviction, including any and all legal financial obligations (LFOs), the sentencing court is required to provide him or her with a certificate of discharge (COD). The COD 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. A prior record may still be used in determining sentences for later offenses, and a COD does not discharge a no-contact or protection order.

The process for obtaining a COD is provided in statute. The Department of Corrections (DOC) is required to submit notice to the county clerk, who in turn informs the sentencing court, when a person has completed sentencing conditions. If the person was not in the custody or under the supervision of the DOC, he or she may directly contact the sentencing court with verification that he or she has completed conditions. Once the person satisfies all LFOs, the sentencing court is required to provide him or her with a COD.

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 Criminal Convictions.

In certain circumstances authorized in statute, a person's record of conviction may be vacated by a sentencing judge. If 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, professional licensing, employment, housing, and other matters. A person whose conviction has been vacated may state that he or she has never been convicted of that crime, including when responding to questions pertaining to licensing, employment, and housing applications.

Vacating Felony Convictions. A person convicted of a felony may apply to the sentencing court to vacate the conviction after receiving a COD. However, the record of conviction may not be vacated if:

- the offense was a violent offense, a crime against persons, or a felony driving under the influence (DUI) offense;
- the applicant has any criminal charges pending 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 the COD;
- the offense is a class B felony and fewer than 10 years have passed since the date of the COD; or
- the offense was a class C felony and fewer than five years have passed since the date of the COD.

Vacating Misdemeanor Convictions. 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 sentencing conditions, including payment of all LFOs. However, the record of conviction may not be 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, a DUI offense, or certain domestic violence (DV) offenses;
- the applicant has any criminal charges pending 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;
- the applicant applies for vacation less than three years after completing his or her sentence, including any LFOs (or less than five years for certain DV offenses); or
- 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.

Legal Financial Obligations.

When a person is convicted of a crime, the court may impose LFOs as part of the judgment and sentence. Legal financial obligations include: restitution; crime victims' compensation fees; costs associated with the offender's prosecution and sentence; fines; penalties; and assessments. If a person willfully fails to pay LFOs, he or she may be subject to penalties for noncompliance.

Summary of Bill:

Certificates of Discharge for Felony Convictions.

The requirement to complete all conditions of a sentence to obtain a COD is modified. A person is required to pay the restitution portion of LFOs to obtain the COD. However, the court may not require payment of nonrestitution LFOs as a condition of issuing a COD. A COD does not terminate a person's obligation to pay nonrestitution LFOs. When issuing a COD to a person with outstanding nonrestitution LFOs, the court must issue an order requiring payment of those LFOs in accordance with applicable statutory requirements.

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, excluding nonrestitution LFOs.

If a person does not receive a COD under current procedures, he or she may file a motion with the sentencing court with a declaration, sworn under penalty of perjury, stating he or she has completed all nonfinancial conditions of his or her sentence. The filing of a declaration creates a rebuttable presumption that the person completed all nonfinancial conditions of his or her 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 the completion of full and partial confinement; or the date on which any and all LFOs were satisfied, excluding nonrestitution LFOs.

Vacating Criminal Convictions.

Vacating Felony Convictions. Eligibility criteria for vacating felony convictions are modified. A person may apply to vacate 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, so long as those offenses do not include a firearm, deadly weapon, or sexual motivation enhancement.

The waiting periods are modified. The waiting periods are no longer tied to the effective date of the COD. Instead, an applicant is required to wait 10 years for a class B felony or five years for a class C felony since the later of his or her: release from community custody; release from full and partial confinement; or sentencing date. The applicant must not have been convicted of a new crime for a specified time period preceding the application for vacation—specifically, 10 years for a class B felony and five years for a class C felony.

A vacated conviction qualifies as a prior conviction for the purpose of charging a present offense where a prior conviction elevates the classification level of the present offense. Language is added specifying that the vacation of a conviction does not affect the requirements for restoring a right to possess a firearm.

Vacating Misdemeanor Convictions. The restrictions relating to LFOs are modified. An applicant may apply to have his or her conviction vacated even if he or she has outstanding nonrestitution LFOs. However, the restitution portion of his or her LFOs must be paid prior to obtaining the vacation. When vacating a sentence for a person who has outstanding

nonrestitution LFOs, the court must enter a separate order requiring payment of those LFOs in accordance with current requirements.

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.

A vacated conviction qualifies as a prior conviction for the purpose of charging a present offense where a prior conviction elevates the classification level of the present offense. Language is added specifying that the vacation of a conviction does not affect the requirements for restoring a right to possess a firearm.

The current requirement for all court and probation services costs to be paid by the applicant (unless he or she is indigent) is removed.

Appropriation: None.

Fiscal Note: Requested on January 16, 2019.

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