

HOUSE BILL REPORT

HB 1500

As Reported by House Committee On:
Public Safety

Title: An act relating to misdemeanor marijuana offense convictions.

Brief Description: Concerning misdemeanor marijuana offense convictions.

Sponsors: Representatives Fitzgibbon, Stanford, Valdez, Frame, Appleton, Senn, Tarleton, Ormsby, Kloba, Walen, Davis and Macri.

Brief History:

Committee Activity:

Public Safety: 2/5/19, 2/14/19 [DPS].

Brief Summary of Substitute Bill

- Requires prosecutors to file motions to vacate misdemeanor marijuana possession convictions occurring from January 1, 1998, through December 5, 2012, where defendants were age 21 or older at the time of the offenses, and requires courts to grant those motions.
- Requires a court to vacate a misdemeanor marijuana possession conviction upon the independent application of a person who was age 21 or older at the time of the offense, regardless of the date of the offense.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Goodman, Chair; Davis, Vice Chair; Sutherland, Assistant Ranking Minority Member; Appleton, Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

Minority Report: Do not pass. Signed by 1 member: Representative Klippert, Ranking Minority Member.

Staff: Jenny Aronson (786-7290) and Kelly Leonard (786-7147).

Background:

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.

Misdemeanor Marijuana Possession.

It is a misdemeanor offense for any person to possess 40 grams or less of marijuana, although this is subject to some exceptions. In 2012 Washington voters passed Initiative No. 502 (I-502), which legalized the recreational use of marijuana in certain circumstances and created a comprehensive regulatory scheme. Persons at least 21 years old may legally possess up to one ounce of marijuana and related products for personal use. They may also purchase up to one ounce of useable marijuana, 16 ounces of solid marijuana-infused product, 72 ounces of liquid marijuana-infused product, and seven grams of marijuana concentrate.

Marijuana possession is still illegal for persons under 21 years old, regardless of the amount possessed. Previous convictions or sentences for marijuana-related misdemeanor offenses were not retroactively modified by I-502.

Actions to Modify Prior Marijuana Convictions in Washington.

In January 2019 the Governor announced a plan to expedite the pardon process for certain adults with misdemeanor marijuana convictions. The Governor will exercise his constitutional clemency authority to pardon individuals age 21 and older with a single misdemeanor conviction for marijuana possession between January 1, 1998, and December 5, 2012, when I-502 took effect. The conviction must have been prosecuted under Washington state law, not a local ordinance, and must be the only conviction on the petitioner's criminal record. Petitioners who qualify may submit a petition for clemency, which will officially start the request for a pardon of the conviction. Records indicate that roughly 3,500 individuals are eligible under the requirements established by the Governor.

In 2018 the Seattle City Attorney's Office moved to dismiss possession of marijuana charges filed between 1996 and 2010 in the Municipal Court of the City of Seattle. An order was signed by all seven Seattle Municipal Court judges on September 11, 2018.

Vacation of Misdemeanors or Gross Misdemeanors.

After completing all of the terms of their sentence, persons convicted of misdemeanors or gross misdemeanors may apply for a vacation of their conviction record. The sentencing court has discretion to vacate the applicant's conviction record. However, the court may not clear the applicant's record if:

- criminal charges against the applicant are pending;
- fewer than three years have passed since the applicant completed the terms of the sentence, including any financial obligations;
- the applicant has been convicted of a new crime since the date of conviction;
- the applicant has ever had the record of another conviction vacated; or
- the applicant is currently restrained, or has been restrained within the last five years, from contacting another party by a court order.

Certain offenses may not be vacated, including violent offenses and sex offenses, and additional restrictions apply to other specified offenses.

Once the court vacates a record of conviction, the person is released from all penalties and disabilities resulting from the conviction, and that conviction is not included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated may state that the person has never been convicted of that crime. This does not affect or prevent the use of an offender's prior conviction in a later criminal prosecution.

Summary of Substitute Bill:

A misdemeanor marijuana possession conviction includes a conviction for an offense under the current state statute criminalizing possession of 40 grams or less of marijuana, its predecessor statute, or an equivalent municipal ordinance.

On or before January 1, 2020, county and city prosecutors must file motions to vacate misdemeanor marijuana possession convictions occurring from January 1, 1998, through December 5, 2012, where defendants were age 21 or older at the time of the offenses. Motions may be filed ex parte and may include multiple defendants, and the current restrictions applicable to vacating misdemeanor convictions do not apply. A sentencing court must vacate convictions upon a motion from a prosecuting attorney.

A person with a prior conviction of misdemeanor marijuana possession occurring when he or she was age 21 years or older may independently apply to the sentencing court for a vacation of his or her conviction record, regardless of the date of offense or conviction. The court must vacate the applicant's conviction record and may not consider the restrictions applicable to vacating other misdemeanor convictions. The separate process initiated by prosecuting attorneys does not preclude a person from filing an independent application to vacate a conviction. The Administrative Office of the Courts must develop a master pattern form for applications under this process.

Substitute Bill Compared to Original Bill:

Provisions are added requiring county and city prosecutors to file motions to vacate certain misdemeanor marijuana possession convictions and requiring courts to grant those motions.

Misdemeanor marijuana possession offenses also include offenses under predecessor statutes and equivalent municipal ordinances. The Administrative Office of the Courts is required to develop a single master pattern form for applications to vacate misdemeanor marijuana possession convictions by January 1, 2020.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on February 14, 2019.

Effective Date of Substitute Bill: 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 harsh discrepancy between legalizing marijuana in Washington and retaining criminal conviction records for offenses committed prior to legalization. Many people carry conviction records for actions that are legal today. This bill is a logical and compassionate step to address a continued barrier for individuals seeking employment and housing. Lost potential compounds over time for young adults. The impact is felt most by individuals with the least access to capital resources, and there is a disparate impact on communities of color.

This bill would streamline the vacation process. Washington would follow several states in moving toward vacation of criminal records for prior marijuana convictions. The Governor's initiative to pardon some prior marijuana convictions is a good start, but only applies to a small percentage of convictions. The process provided by this bill would help a wider group of people.

This bill could go further by creating an automatic vacation process similar to California.

(Opposed) Regardless of I-502, marijuana possession was illegal at the time of these prior convictions. Further, many simple possession convictions were lessened or pled down from other charges, such as Possession with Intent to Deliver. Some of these convictions involved serious misconduct.

The Governor has already announced a plan that provides a mechanism for receiving a pardon. State law also has an existing process for seeking the vacation of conviction records. These current mechanisms are sufficient.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; Senator Nguyen; Lara Kaminsky and Oliver Stannard, The Cannabis Alliance; Samantha Grad, United Food and Commercial Workers International Union 21; and Arthur West.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.