

SENATE BILL REPORT

2SHB 2793

As of March 2, 2020

Title: An act relating to vacating criminal records.

Brief Description: Vacating criminal records.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Hansen and Irwin).

Brief History: Passed House: 2/17/20, 79-18.

Committee Activity: Law & Justice: 2/24/20, 2/27/20 [DPA-WM].

Ways & Means: 2/29/20.

Brief Summary of Amended Bill

- Creates a court-driven process for reviewing and vacating criminal convictions based on current statutory eligibility requirements.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

Staff: Tim Ford (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Corban Nemeth (786-7736)

Background: A person may apply to the sentencing court to have their conviction vacated in certain circumstances. 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 they had never been convicted of that crime, including when responding to questions pertaining to licensing, employment, and housing applications.

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.

In order for the court to vacate a conviction, the person must meet certain statutory eligibility requirements, which vary depending on the nature of the conviction. Certain types of convictions do not qualify to be vacated. In addition, for most applications, the decision to vacate the offense is discretionary on the part of the sentencing court.

A person may not have a felony conviction vacated if:

- the person has not received a certificate of discharge for the offense, including payment of legal financial obligations;
- the offense was a violent offense, crime against persons, or felony driving under the influence (DUI), except for assault in the second degree, assault in the third degree not involving a law enforcement officer, and robbery in the second degree may be vacated, so long as the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement;
- there are any criminal charges against the person pending in any state or federal court;
- the offense is a class B felony and the person has been convicted of a new crime in the ten years prior to the application, or less than ten years have passed since the later of: release from community custody; release from full and partial confinement; or sentencing; or
- the offense is a class C felony and the person has been convicted of a new crime in the five years prior to the application, or less than five years have passed since the later of: release from community custody; release from full and partial confinement; or sentencing.

A person may not have a gross misdemeanor or misdemeanor conviction vacated if:

- the person has not completed the conditions of their sentence, including payment of legal financial obligations;
- the conviction was for one of the select offenses that may not be vacated, including, for example, a violent offense, a sex offense, or a DUI offense;
- the person has any criminal charges pending in any state or federal court;
- the person has been convicted of a new crime in any state, federal, or tribal court since the date of conviction;
- less than three years have passed since the person completed the terms of the sentence, including any financial obligations, or the person has been convicted of a new crime in the three years prior to the application; or
- the person does not meet certain requirements pertaining to no-contact orders or protection orders.

Additional restrictions apply to certain types of offenses, including, for example domestic violence offenses. However, a misdemeanor marijuana possession offense is exempted from any restrictions for vacation, provided that the offense was committed when the person was age 21 or older. The person need only have a qualifying possession conviction to apply for a vacation.

Summary of Amended Bill: The Administrative Office of the Courts (AOC) shall develop court driven process by which criminal convictions are reviewed to determine whether those convictions should be scheduled for administrative hearings for vacating the conviction.

AOC's review must:

- begin with conviction records at the earliest period for which electronic court records are reliable but no later than January 1, 2000;
- rely on records available through the judicial information systems; and
- determine whether a defendant is currently incarcerated or precluded from qualifying to vacate a conviction due to statutory restrictions.

AOC must notify the sentencing courts to schedule an administrative vacation hearing for any defendant where a review of records does not indicate that the defendant is precluded from qualifying to vacate the conviction.

In order to improve the reliability of the required notices to sentencing courts AOC must evaluate:

- the types of data currently available to assess eligibility;
- additional information that should be reported to sentencing courts or to the AOC; and
- additional information that should be reported through the judicial information system.

AOC must develop an implementation plan for the review of convictions and the notices to sentencing courts.

Pilot Program. AOC must conduct a pilot program for one year starting July 1, 2021, from a single county for the purposes of this automated review of criminal convictions and notice to sentencing courts. AOC shall consult with courts and other appropriate entities to select the county. The pilot program must be conducted in consultation with county clerks and court administrators, judges, prosecuting attorneys, defense attorneys, the Department of Corrections, county and city departments, and any other entities with relevant records. AOC must report to the Governor and Legislature a preliminary report with findings and an initial implementation plan for the pilot program by December 1, 2020, with a status update by December 1, 2021, and a final report by December 1, 2022.

Beginning July 1, 2022, AOC must regularly collect and report information with respect to convictions where notifications were sent to sentencing courts, including:

- the number of convictions where notice was sent;
- the number of convictions where a sentencing court scheduled an administrative hearing within 90 days of receipt of notice from AOC;
- the number of convictions vacated at an administrative hearing;
- the number of convictions where the court set a contested hearing;
- the number of convictions vacated at a contested administrative hearing;
- the number of convictions denied vacation at a contested administrative hearing; and
- other relevant data.

The AOC must include a summary of the data in its final report of the pilot program.

A defendant is not required to file a petition or application, provide notice to relevant parties, or appear at an administrative or contested hearing. The defendant is presumed to meet the requirements to vacate the conviction, and the court must vacate the conviction, unless court

records indicate the defendant is not qualified, or the prosecutor objects, or the defendant is incarcerated.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Removes the statewide process to vacate convictions. Limits the bill to a pilot program and study administered by the AOC.
- Removes the automated process and replaces it with a court driven process.
- Allows the AOC to limit the screening process to certain types or classes of convictions.
- Removes the contested hearing process by allowing a court to decline to vacate a conviction after an administrative review or objection demonstrates that the defendant is ineligible.
- Requires the AOC to consult with other entities with interest or experience in vacating convictions.
- Removes the short title.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Second Substitute House Bill (Law & Justice):

The committee recommended a different version of the bill than what was heard. PRO: Last year the Senate unanimously passed the new hope act which made it easier for people to clear their criminal convictions and turn their lives around. In the real world you may not know that you can vacate your conviction or you may not have the money to hire an attorney. That is a real problem. This bill, the clean slate act, aims to solve it. The bill has a delayed effective date of July 1, 2022. There will be a pilot program and a report from the Administrative Office of the Courts.

This is a very complicated process. People need to do this to be able to move on with their lives.

CON: This is an unfunded mandate. There are approximately 8.4 million court records that would need to be reviewed. The cities will not have an ability to pay for the hearings or staff. Maybe go forward with the pilot before doing the rest.

OTHER: The concept is one we can support. There are approximately 16,000 cases that could be eligible for vacating judgments. That means there will be a lot of hearings. AOC has contemplated developing queries, but they might unreliably result in false positives. There is not an adequate technology fix to address this concern. Washington State is not a uniform court system and all the systems are different in different counties. Counties need funding to implement this bill. Under the state constitution these processes have to take

place in the open before an elected judge. The index needs to be open for this docket, and also the evidence must be open.

Persons Testifying (Law & Justice): PRO: Representative Drew Hansen, Prime Sponsor; Zachary Kinneman, citizen; Jeff Beaulac, citizen; Evonne Silva, Code For America; Michael Transue, Tacoma Pierce County Chamber; Sarai Cook, Civil Survival Project.

CON: Sharon Swanson, Association of Washington Cities; Juliana Roe, Washington State Association of Counties.

OTHER: Stephen Warning, Superior Court Judges' Association; Doug Levy, City of Renton, City of Fife; Dory Nicpon, Administrative Office of the Courts; Russell Brown, Washington Association of Prosecuting Attorneys; Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on Bill as Amended by Law & Justice (Ways & Means): PRO: The bill is important because we know that many people are held back by criminal records. We understand the breadth of the original bill, and the version before you is a good first step.

Persons Testifying (Ways & Means): PRO: Michael Transue, Tacoma Pierce County Chamber.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.