

HOUSE BILL REPORT

HB 1681

As Reported by House Committee On:
Public Safety

Title: An act relating to modifying the requirements for vacating conviction records.

Brief Description: Modifying the requirements for vacating conviction records.

Sponsors: Representatives Simmons, Hansen, Davis, Macri, Harris-Talley and Frame.

Brief History:

Committee Activity:

Public Safety: 1/21/22, 1/27/22 [DPS].

Brief Summary of Substitute Bill

- Modifies the eligibility requirements for an application to vacate a gross misdemeanor or misdemeanor conviction.

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; Johnson, J., Vice Chair; Davis, Hackney, Orwall, Ramos, Simmons and Thai.

Minority Report: Do not pass. Signed by 2 members: Representatives Graham and Young.

Minority Report: Without recommendation. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Griffey.

Staff: 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 part of the legislation nor does it constitute a statement of legislative intent.

A person may apply to the sentencing court to have his or her conviction vacated in certain circumstances. 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. With some exceptions, the decision to vacate the conviction is discretionary on the part of the court. If the court vacates a record of conviction, the offense is no longer included in the person's criminal history. 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 Misdemeanor Convictions. A person may not have a gross misdemeanor or misdemeanor conviction vacated if:

- the person has not completed the conditions of his or her 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 Driving Under the Influence (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 the three years prior to the application;
- less than three years have passed since the person completed the terms of the sentence, including any financial obligations; or
- the person is currently or was previously restrained by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order and was found to have committed one or more violations of the order in the five years prior to the vacation application.

Additional restrictions apply when a person seeks to vacate a gross misdemeanor or misdemeanor domestic violence conviction. In addition to the general restrictions applicable to all types of convictions, the person may not have the domestic violence conviction vacated if:

- the person has not provided written notification of the vacation petition to the prosecuting attorney's office;
- the person has two or more domestic violence convictions stemming from different incidents;
- the person has signed an affidavit under penalty of perjury affirming that he or she has not previously had a conviction for a domestic violence offense, and a criminal history check reveals that the applicant has had such a conviction; or
- less than five years have passed since the person completed the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment.

Vacating Felony Convictions. 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 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 10 years prior to the application, or less than 10 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.

Definitions. In the Sentencing Reform Act, "total confinement" means confinement inside the physical boundaries of a facility or institution for 24 hours a day. "Partial confinement" means confinement in a facility or institution (or in an approved residence in cases where home detention, electronic monitoring, or work crew has been ordered by the court or the Department of Corrections) for a substantial portion of each day with the balance of the day spent in the community. "Partial confinement" includes work release, home detention, work crew, electronic monitoring, and a combination of work crew, electronic monitoring, and home detention.

Summary of Substitute Bill:

Vacating Misdemeanor Convictions. The applicable waiting period for applying to vacate a gross misdemeanor or misdemeanor conviction (three or five years) commences upon the later of: the person's release from total and partial confinement; or the person's sentencing date. However, the person must still complete other sentencing conditions prior to applying to vacate the conviction, including payment of legal financial obligations.

The provision restricting the vacating of a gross misdemeanor or misdemeanor conviction when the person has violated a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order in the previous five years is modified so as to only apply to applications for vacating gross misdemeanor or misdemeanor domestic violence convictions.

Vacating Felony Convictions. References to "full confinement" in the applicable waiting periods for vacating felony convictions are replaced with "total confinement," as defined in the Sentencing Reform Act.

Substitute Bill Compared to Original Bill:

The substitute bill restores the discretionary authority of the sentencing court to grant or deny an application to vacate a criminal conviction record of any qualifying applicant, rather than requiring the court to grant the application of any qualifying applicant as provided in the original bill.

The substitute bill replaces references to "full confinement" with "total confinement" in current law and the underlying bill, and provides that the terms "total confinement" and "partial confinement" have the same meaning as provided under the Sentencing Reform Act.

Appropriation: None.

Fiscal Note: Available.

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) Vacating records addresses unfair collateral consequences to convictions. When a record is vacated, it is no longer a part of a person's criminal history. This is critical to removing barriers to seeking employment and housing, and engaging with the community. The Legislature should build upon the New Hope Act, which passed in 2019 with unanimous support in the Legislature. This bill takes a narrow approach to streamlining the vacation process, especially for pro se litigants. This is achieved by ensuring qualifying applications will actually have their records vacated, rather than leaving it up to judicial discretion. Judges do not need or want this discretion, and it is rarely used even under the current framework. Discretion in these cases adds an extra layer of process, requiring additional court time and the need to hire lawyers. This is fundamentally an access to justice issue.

Many law-abiding, contributing members of our society have very old convictions in their history, and yet these convictions result in the loss of opportunities. People deserve second chances after they have repaid their debt to society. Sentences need to end. People do not need to be punished for 30, 40, or 50 years. There should be a light at the end of the tunnel. Providing the certainty that a conviction will be vacated creates hope and motivates people to do better.

The change relating to the waiting period is very important. Under current law, it is possible for someone to have complied with all of the requirements, including not committing any new crimes for several years, but the person does not qualify because of the timing of payments made on legal financial obligations. This doesn't make sense. The bill delinks the waiting period from these payments.

(Opposed) Vacating convictions has always been subject to judicial discretion. This is meant to ensure that a person is actually rehabilitated and the vacation is appropriate in each case. Further, if a judge denies an application, the person can appeal the decision. Certain stakeholders, including prosecutors, supported the New Hope Act because judicial discretion was left intact. The bill should be amended to remove this change in policy.

Persons Testifying: (In support) Representative Tarra Simmons, prime sponsor; Thomas Fairchild, Civil Survival and Shoulder to Shoulder; Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Tina Fricke; Prachi Dave, Public Defender Association; Hadley Tillson; and Karen Lee, Washington Statewide Reentry Council.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys; and Taylor Gardner, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: Ezra Alem.