

SENATE BILL REPORT

SSB 5998

As Passed Senate, January 31, 2024

Title: An act relating to timing of eligibility for vacation of nonfelony convictions.

Brief Description: Timing of eligibility for vacation of nonfelony convictions.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Hansen, Billig, Dhingra, Nguyen and Saldaña).

Brief History:

Committee Activity: Law & Justice: 1/16/24, 1/18/24 [DPS, DNP, w/oRec].

Floor Activity: Passed Senate: 1/31/24, 29-19.

Brief Summary of First Substitute Bill

- Allows the three-year or five-year waiting period for vacation of conviction for a misdemeanor or gross misdemeanor offense to start when the person has completed all conditions of sentence except for payment of legal financial obligations.
- Requires a person to pay all legal financial obligations before a court may vacate a conviction for a misdemeanor or gross misdemeanor.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5998 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators McCune, Wagoner and Wilson, L..

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.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Torres.

Staff: Kevin Black (786-7747)

Background: Vacation of Criminal Convictions. Vacation is a means of undoing a criminal conviction which occurs when a court sets aside a guilty verdict or allows a person to withdraw their guilty plea and then dismisses the charge. A court may vacate a conviction only if the charge is eligible for vacation; no new criminal charges are pending against the person; the person has completed all terms of sentence, including payment of legal financial obligations; and a waiting period has elapsed which varies depending on the nature of the charge.

Charges Which Are Not Eligible for Vacation. No violent felony offense except assault 2 and robbery 2, and no violent felony offense involving a firearm, deadly weapon, or sexual motivation, is eligible for vacation. Felony driving under the influence and felony physical control of a vehicle offenses are not eligible for vacation. Gross misdemeanor or misdemeanor sex offenses, pornography offenses, and obscenity offenses are not eligible for vacation.

Waiting Period for Vacation. The waiting period to be eligible for vacation of a criminal offense is as follows:

- for a class B felony, ten years since release from confinement, community custody, and sentencing, and ten years since the person's last criminal conviction;
- for a class C felony, five years since release from confinement, community custody, and sentencing, and five years since the person's last criminal conviction;
- for a gross misdemeanor or misdemeanor offense, three years from completion of sentence including payment of legal financial obligations;
- for a gross misdemeanor or misdemeanor offense which is a domestic violence offense, five years from completion of sentence including successful completion of treatment and payment of legal financial obligations; and
- for a gross misdemeanor or misdemeanor driving under the influence or physical control of a vehicle offense, ten years since arrest for the offense without subsequent alcohol, or drug violations within the ten-year period.

Other Requirements Which Apply to Vacation of Gross Misdemeanor and Misdemeanor Domestic Violence Offenses. For a gross misdemeanor or misdemeanor domestic violence offense, the court may only vacate the offense if the person has provided written notification of the vacation petition to the prosecutor's office which prosecuted the offense; does not have a second domestic violence conviction stemming from a different incident; and has not signed an affidavit affirming they do not have a conviction for domestic violence and a criminal history check reveals they have such a conviction.

Summary of First Substitute Bill: The waiting period before a court may vacate a

misdemeanor or gross misdemeanor conviction must begin when the person has completed all the terms of their sentence except payment of legal financial obligations. The person must must pay the legal financial obligations before the court may vacate the sentence.

With this change, a court may vacate a misdemeanor or gross misdemeanor offense if a petitioner who meets other requirements has completed all of the original terms of sentence including payment of legal financial obligations, and three years have passed since the later of the petitioner's release from supervision or probation, release from total and partial confinement, or sentencing date. The waiting period is five years if the offense is classified as a domestic violence offense or the court makes a finding that the offense was committed against a family member, household member, or intimate partner.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: A few years ago this body passed the New Hope Act. In that law we changed the waiting periods for vacation of felony convictions so they would start to run while the person is paying their legal financial obligations, but we forgot to make the same change for misdemeanors. We should make it easier for people to clear their criminal convictions when they have turned their lives around. You have to give people hope and redemption. I have experienced the professional and economic limitations that go with having a criminal record. The New Hope Act changed my life for the better and gave me opportunities. People want to change; this bill will make it easier for them to do so. It will increase access to justice. Because of the discrepancy in the law, it can take longer to vacate a misdemeanor conviction than a felony conviction. The legal system is already complicated and opaque without this problem. Support Washingtonians in their rehabilitation journey by remedying this unjust asymmetry in the law. Research shows only 3 percent of individuals in Washington with a prior conviction have been able to access vacate relief. This bill begins the work of closing the second chance gap.

Persons Testifying: PRO: Senator Drew Hansen, Prime Sponsor; Quinton Baker, Forge; Oscar Aguirre, King County Bar Association Records Project; Prachi Dave, Civil Survival.

Persons Signed In To Testify But Not Testifying: No one.