

HOUSE BILL REPORT

HB 1110

As Reported by House Committee On:
Community Safety

Title: An act relating to vacating convictions for driving under the influence, actual physical control of a motor vehicle while under the influence, or an offense considered a prior offense to such convictions.

Brief Description: Vacating convictions for driving under the influence.

Sponsors: Representatives Ortiz-Self, Goodman, Reed, Simmons, Peterson and Wylie.

Brief History:

Committee Activity:

Community Safety: 1/21/25, 2/17/25 [DPS].

Brief Summary of Substitute Bill

- Authorizes a court to vacate a record of conviction of Driving Under the Influence (DUI), Actual Physical Control While Under the Influence (PC), or a prior offense for DUI or PC if it is the later of five years from the person's sentencing date or three years from the person's release from supervision or probation for the conviction and the person meets all other specified requirements.
- Provides that a vacated record of conviction of DUI, PC, or a prior offense for DUI or PC qualifies as a prior offense in a later criminal prosecution of, and sentencing for, a DUI or PC if the later prosecution is within 15 years of the date of the conviction.
- Requires the Department of Licensing (DOL) to remove a vacated conviction of DUI, PC, or a prior offense for DUI or PC, from a person's driving record, but permits the DOL to consider a vacated conviction for such offenses when determining a future administrative requirement for a subsequent conviction.

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.

HOUSE COMMITTEE ON COMMUNITY SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Obras.

Minority Report: Do not pass. Signed by 3 members: Representatives Graham, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Burnett.

Staff: Lena Langer (786-7192).

Background:

Vacating Misdemeanor or Gross Misdemeanor Conviction Records.

A person convicted of a misdemeanor or gross misdemeanor offense, who has completed all the terms of the sentence and has met other statutory criteria, may apply to the sentencing court for a vacation of the record of conviction. A conviction may not be vacated if:

- any criminal charges are pending against the applicant;
- the offense or attempted offense was violent;
- the offense was for Driving Under the Influence (DUI), Actual Physical Control While Under the Influence (PC), Operating a Railroad While Intoxicated, or the offense is a prior for DUI or PC and the applicant has had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense, or less than 10 years have passed since the date of arrest for the prior offense;
- the offense was any misdemeanor or gross misdemeanor related to sexual exploitation of children, pornography, or sex offenses except for Failure to Register as a Sex Offender;
- the conviction was for a domestic violence offense and specific criteria has not been met, or less than five years have elapsed since the person completed the terms of the conditions of the sentence;
- the offense is not related to domestic violence and less than three years have passed since the later of the applicant's release from supervision or probation, the applicant's release from confinement, or the applicant's sentencing date;
- the applicant has subsequent convictions in the three years prior to the vacation application; or
- the applicant has a current restraining order in place.

If the court finds the applicant does not have any restrictions listed above, the court may vacate the record of conviction by permitting the applicant to withdraw the guilty plea and enter a plea of not guilty; or if the applicant was convicted after a plea of not guilty, the court may set aside the guilty verdict, dismiss the complaint, and vacate the judgement and sentence.

Once the court vacates a record of conviction, the person is released from all penalties

resulting from the offense and the fact that the person has been convicted of the offense may not be included in the person's criminal history in determining a sentence in a subsequent conviction. However, a vacated conviction, vacated on or after July 28, 2019, qualifies as a prior conviction for the purpose of charging a present recidivist offense.

The vacated conviction may be used in a later criminal prosecution, except vacated domestic violence offenses may not be used unless the conviction was for:

- violating the provisions of a restraining order or similar order;
- stalking; or
- a domestic violence protection order or vulnerable adult protection order.

Driving While Under the Influence.

A person commits the crime of DUI if the person drives a motor vehicle:

- with a breath or blood alcohol concentration of 0.08 percent or higher;
- with a tetrahydrocannabinol (THC) concentration of 5.0 or higher in their blood; or
- while under the influence or a combined influence of intoxicating liquor, cannabis, and any drug.

Actual Physical Control of a Vehicle While Under the Influence.

A person commits the crime of PC if the person has actual physical control of a motor vehicle:

- with a breath or blood alcohol concentration of 0.08 percent or higher;
- with a THC concentration of 5.0 or higher in their blood; or
- while under the influence or a combined influence of intoxicating liquor, cannabis, and any drug.

Prior Offenses.

A "prior offense" for DUI or PC includes:

- a conviction for DUI;
- a conviction for PC;
- a conviction for Driving with Alcohol or THC in System;
- a conviction for Operating a Vessel While Under the Influence;
- a conviction for Operating an Aircraft While Under the Influence;
- a conviction for Operating Any Nonhighway Vehicle While Under the Influence;
- a conviction for Operating Any Snowmobile While Under the influence;
- a conviction for Vehicular Homicide committed while under the influence, or in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of Vehicular Homicide committed while under the influence;
- a conviction for Vehicular Assault committed while under the influence, or a conviction for Vehicular Assault committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as Vehicular Homicide committed while under the influence;
- a conviction for Negligent Driving, Reckless Driving, or Reckless Endangerment, if

- the conviction is the result of a charge that was originally filed as a violation of DUI, PC, Vehicular Homicide, or Vehicular Assault;
- an out-of-state conviction for a violation that would have been a violation of DUI, PC, Vehicular Homicide, Vehicular Assault, or Negligent Driving, Reckless Driving, or Reckless Endangerment, if the same circumstances apply for Negligent Driving, Reckless Driving, and Reckless Endangerment as they do for convictions in this state;
 - a deferred prosecution for DUI or PC;
 - a deferred prosecution for Negligent Driving if the charge under which the deferred prosecution was granted was originally filed as a violation of DUI or PC, or of Vehicular Homicide or Vehicular Assault;
 - a deferred prosecution granted in another state for DUI or PC if the out-of-state deferred prosecution is equivalent to the state's deferred prosecution, including a requirement that the defendant participate in a chemical dependency treatment program; and
 - a deferred sentence imposed in a prosecution for a violation of Negligent Driving, Reckless Driving, or Reckless Endangerment, if the charge under which the deferred sentence was imposed was originally filed as a violation of DUI, PC, Vehicular Homicide, or Vehicular Assault.

Summary of Substitute Bill:

A person convicted of DUI, PC, or a prior offense for DUI or PC is eligible for a vacation of the record of conviction if:

- the person meets all existing criteria for vacating a misdemeanor or gross misdemeanor offense;
- the person has not had a subsequent alcohol or drug-related traffic conviction in this state, another state, or tribal court within five years of the date of conviction;
- it is the later of five years from the person's sentencing date or three years from the person's release from supervision or probation for the conviction;
- the person's driver's license is eligible for reinstatement by the Department of Licensing (DOL); and
- at the time of the offense, the person did not hold a commercial driver's license or a commercial learner's permit and was not operating a commercial motor vehicle.

Upon notice to the DOL of vacation of a conviction of DUI, PC, or a prior offense for DUI or PC, the DOL must remove the conviction from the person's driving record if all administrative requirements have been met.

A vacated record of conviction of DUI, PC, or a prior offense for DUI or PC qualifies as a prior offense in a later criminal prosecution of DUI or PC if the later prosecution is within 15 years of the date of the conviction for the vacated record. If a person has a subsequent conviction of DUI or PC within 15 years of the date of the conviction for the vacated conviction, the court may use the vacated conviction in determining a sentence or

determining whether the subsequent conviction qualifies as a felony DUI.

A vacated conviction of DUI, PC, or prior offense for DUI or PC qualifies as a prior conviction in determining a sentence for a subsequent conviction of Vehicular Homicide if the offense occurred while the driver was under the influence.

The DOL may consider a vacated conviction of DUI, PC, or a prior offense for DUI or PC when determining a future administrative requirement for a subsequent conviction of DUI, PC, or a prior offense for DUI or PC.

Substitute Bill Compared to Original Bill:

The substitute bill:

- provides that a person must meet all existing criteria for vacating a misdemeanor or gross misdemeanor offense to be eligible to vacate a record of conviction of DUI, PC, or a prior offense for DUI or PC;
- requires the following additional criteria to vacate a conviction of DUI, PC, or a prior offense for DUI or PC:
 - it is the later of five years from the applicant's sentencing date or three years from the applicant's release from supervision or probation for the conviction;
 - the applicant's driver's license is eligible for reinstatement by the DOL; and
 - at the time of the offense, the applicant did not hold a commercial driver's license or a commercial learner's permit and was not operating a commercial motor vehicle;
- provides that the DOL may consider a vacated conviction of DUI, PC, or a prior offense for DUI or PC when determining a future administrative requirement for a subsequent conviction of DUI, PC, or a prior offense for DUI or PC;
- requires the DOL, upon notice of vacation of a conviction of DUI, PC, or a prior offense for DUI or PC, to remove the conviction from the person's driving record if all administrative requirements have been met; and
- adds an effective date of July 1, 2026.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 17, 2025.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2026.

Staff Summary of Public Testimony:

(In support) Permitting vacations of DUI, PC, and prior offenses will have a positive societal impact. This policy will only apply to a narrow set of individuals, and it will be a great incentive for someone to reform. This policy ensures that people are held accountable

because it allows for the conviction to be open again if the person commits a subsequent offense. The state allows vacations for convictions of drug offenses, but does not allow vacations for DUIs. The bill does not impact law enforcement's ability to enforce DUI laws. This bill allows people who have not committed another violation after five years to have a DUI conviction removed from the Washington State Patrol background check.

Vacating a conviction promotes successful reentry into society because it reduces barriers that a criminal record can create. Convictions for DUIs impose a substantial barrier to reentry into the community. The bill strikes a good balance because it keeps the vacated offenses as prior offenses in case there are subsequent DUI offenses. The bill would assist with mitigating lifelong harms that result from DUI convictions. Convictions for DUIs are one of the few misdemeanors that cannot be vacated. People face housing and employment barriers when they have DUI convictions on their records. Creating a pathway to vacating DUI convictions will help people who are in recovery from substance use disorders.

(Opposed) The bill undercuts what the Legislature has done for the past several years. In 2024 the Legislature passed legislation that allows for a second deferred prosecution, which can only be used on a second DUI, and requires that the person has not had a second DUI in 15 years. If a DUI conviction is vacated it will undermine the deferred prosecution agreement. Instead of passing this bill, more time should be taken to study the effects of this recently passed legislation. A vacated DUI might be able to be used for elements of a crime in a later prosecution, but would not be used for sentencing, the courts have been clear on that. People who violate the law should have a pathway to recovery, but that should not include concealing the offense. There are concerns about people who want to be commercial drivers after having DUIs vacated from their records.

Persons Testifying: (In support) Representative Lillian Ortiz-Self, prime sponsor; Alex Uskoski, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Oscar Aguirre, King County Bar Association Records Project; Laura Del Villar, Civil Survival; Tamara Light, Information For Change; and Tamara Light, Information For Change.

(Opposed) Amy Freedheim, Senior Deputy Prosecutor King County - Felony Traffic; Linda Thompson, Washington Association for Substance misuse and Violence Prevention (WASAVP); and James McMahan, WA Assoc Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.