
HOUSE BILL 1041

State of Washington

66th Legislature

2019 Regular Session

By Representatives Hansen and Irwin

Prefiled 12/11/18.

1 AN ACT Relating to promoting successful reentry by modifying the
2 process for obtaining certificates of discharge and vacating
3 conviction records; amending RCW 9.94A.640; reenacting and amending
4 RCW 9.94A.637 and 9.96.060; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the new
7 hope act.

8 **Sec. 2.** RCW 9.94A.637 and 2009 c 325 s 3 and 2009 c 288 s 2 are
9 each reenacted and amended to read as follows:

10 (1) ~~((a))~~ When an offender has completed all requirements of the
11 sentence, including any and all of the restitution portion of his or
12 her legal financial obligations, and while under the custody ~~((and))~~
13 or supervision of the department, the secretary or the secretary's
14 designee shall notify the sentencing court, which shall discharge the
15 offender and provide the offender with a certificate of discharge by
16 issuing the certificate to the offender in person or by mailing the
17 certificate to the offender's last known address. A certificate of
18 discharge issued under this subsection (1) is effective on the date
19 the offender completed all conditions of his or her sentence, except
20 for payment of nonrestitution legal financial obligations.

1 ~~((b)(i))~~ (2)(a) When an offender has reached the end of his or
2 her supervision with the department and has completed all the
3 requirements of the sentence except his or her legal financial
4 obligations, the secretary's designee shall provide the county clerk
5 with a notice that the offender has completed all nonfinancial
6 requirements of the sentence. The notice must list the specific
7 sentence requirements that have been completed, so that it is clear
8 to the sentencing court that the offender is entitled to discharge
9 upon completion of the restitution portion of his or her legal
10 financial obligations of the sentence.

11 ~~((ii))~~ (b) When the department has provided the county clerk
12 with notice under (a) of this subsection showing that an offender has
13 completed all the requirements of the sentence and the offender
14 subsequently satisfies all of the restitution portion of the legal
15 financial obligations under the sentence, the county clerk shall
16 notify the sentencing court ~~(, including the notice from the~~
17 ~~department, which))~~ by promptly transmitting the notice of completion
18 of nonfinancial sentence requirements and notice of satisfaction of
19 the restitution portion of his or her legal financial obligations.
20 Upon receipt of the notices under this subsection (2)(b), the court
21 shall discharge the offender and provide the offender with a
22 certificate of discharge ~~((by issuing the certificate to the offender~~
23 ~~in person or by mailing the certificate to the offender's last known~~
24 ~~address))~~. A certificate of discharge issued under this subsection
25 (2) is effective on the date the offender completed all conditions of
26 his or her sentence, except for payment of nonrestitution legal
27 financial obligations.

28 ~~((c) When an offender who is subject to requirements of the~~
29 ~~sentence in addition to the payment of legal financial obligations~~
30 ~~either is not subject to supervision by the department or does not~~
31 ~~complete the requirements while under supervision of the department,~~
32 ~~it is the offender's responsibility to provide the court with~~
33 ~~verification of the completion of the sentence conditions other than~~
34 ~~the payment of legal financial obligations. When the offender~~
35 ~~satisfies all legal financial obligations under the sentence, the~~
36 ~~county clerk shall notify the sentencing court that the legal~~
37 ~~financial obligations have been satisfied. When the court has~~
38 ~~received both notification from the clerk and adequate verification~~
39 ~~from the offender that the sentence requirements have been completed,~~

1 the court shall discharge the offender and provide the offender
2 with))

3 (3) In the absence of a certificate of discharge issued under
4 subsection (1) or (2) of this section, the offender may file a motion
5 with the sentencing court for a certificate of discharge. The
6 sentencing court shall issue a certificate of discharge upon
7 verification of completion of all sentencing conditions, including
8 any and all of the restitution portion of the legal financial
9 obligations. A certificate of discharge issued under this subsection
10 (3) is effective on the date the offender completed all conditions of
11 his or her sentence, except for payment of nonrestitution legal
12 financial obligations.

13 (4) In the absence of a certificate of discharge issued under
14 subsection (1), (2), or (3) of this section, the offender may file a
15 motion with the sentencing court for a certificate of discharge and
16 file a declaration sworn under penalty of perjury that he or she has
17 completed all of the nonfinancial conditions of his or her sentence.
18 The filing of such a declaration creates a rebuttable presumption
19 that the offender completed all nonfinancial conditions of his or her
20 sentence. A certificate of discharge issued under this subsection (4)
21 is effective on the later of: (a) Five years after completion of
22 community custody, or if the offender was not required to serve
23 community custody, after the completion of full and partial
24 confinement; or (b) the date any and all of the restitution portion
25 of his or her legal financial obligations was satisfied.

26 (5) (a) The court may not require payment of nonrestitution legal
27 financial obligations as a condition of issuing a certificate of
28 discharge under this section, and the court shall issue a certificate
29 of discharge if the offender has completed all other conditions of
30 the sentence in accordance with the requirements of this section. The
31 court shall issue a certificate of discharge by issuing the
32 certificate to the offender in person or by mailing the certificate
33 to the offender's last known address.

34 ((+2)) (b) A certificate of discharge issued under this section
35 does not terminate an offender's obligation to pay nonrestitution
36 legal financial obligations. When issuing a certificate of discharge
37 to an offender with outstanding nonrestitution legal financial
38 obligations, the court shall issue an order requiring payment of such
39 obligations in accordance with the applicable statutory requirements
40 pertaining to such obligations.

1 ~~(6)(a)~~ ~~((For purposes of this subsection (2),~~) A no-contact
2 order is not a requirement of the offender's sentence. An offender
3 who has completed all requirements of the sentence, including any and
4 all of the restitution portion of his or her legal financial
5 obligations, is eligible for a certificate of discharge even if the
6 offender has an existing no-contact order that excludes or prohibits
7 the offender from having contact with a specified person or
8 ~~((business))~~ entity or coming within a set distance of any specified
9 location.

10 ~~((b))~~ In the case of an eligible offender who has a no-contact
11 order as part of the judgment and sentence, the offender may
12 ~~((petition))~~ file a motion with the sentencing court to issue a
13 certificate of discharge and a separate no-contact order ~~((by filing~~
14 ~~a petition in the sentencing court and))~~, which must include paying
15 the appropriate filing fee ~~((associated with the petition))~~ for the
16 separate no-contact order. This filing fee does not apply to an
17 offender seeking a certificate of discharge when the offender has a
18 no-contact order separate from the judgment and sentence.

19 ~~((i)(A) The court shall issue a certificate of discharge and a~~
20 ~~separate no-contact order under this subsection (2) if the court~~
21 ~~determines that the offender has completed all requirements of the~~
22 ~~sentence, including all legal financial obligations.))~~ The court
23 shall reissue the no-contact order separately under a new civil cause
24 number for the remaining term and under the same conditions as
25 contained in the judgment and sentence.

26 ~~((B))~~ (b) The clerk of the court shall send a copy of the new
27 no-contact order to the individuals or entities protected by the no-
28 contact order, along with an explanation of the reason for the
29 change, if there is an address available in the court file. If no
30 address is available, the clerk of the court shall forward a copy of
31 the order to the prosecutor, who shall send a copy of the no-contact
32 order with an explanation of the reason for the change to the last
33 known address of the protected individuals or entities.

34 ~~((ii) Whenever an order under this subsection (2) is issued,))~~
35 (c) The clerk of the court shall forward a copy of the order to the
36 appropriate law enforcement agency specified in the order on or
37 before the next judicial day. The clerk shall also include a cover
38 sheet that indicates the case number of the judgment and sentence
39 that has been discharged. Upon receipt of the copy of the order and
40 cover sheet, the law enforcement agency shall enter the order into

1 any computer-based criminal intelligence information system available
2 in this state used by law enforcement agencies to list outstanding
3 warrants. The order shall remain in this system until it expires. The
4 new order, and case number of the discharged judgment and sentence,
5 shall be linked in the criminal intelligence information system for
6 purposes of enforcing the no-contact order.

7 ~~((+iii))~~ (d) A separately issued no-contact order may be
8 enforced under chapter 26.50 RCW.

9 ~~((+iv))~~ (e) A separate no-contact order issued under this
10 subsection ~~((+2))~~ (6) is not a modification of the offender's
11 sentence.

12 ~~((+3))~~ (7) Every signed certificate and order of discharge shall
13 be filed with the county clerk of the sentencing county. In addition,
14 the court shall send to the department a copy of every signed
15 certificate and order of discharge for offender sentences under the
16 authority of the department. The county clerk shall enter into a
17 database maintained by the administrator for the courts the names of
18 all felons who have been issued certificates of discharge, the date
19 of discharge, and the date of conviction and offense.

20 ~~((+4))~~ (8) An offender who is not convicted of a violent offense
21 or a sex offense and is sentenced to a term involving community
22 supervision may be considered for a discharge of sentence by the
23 sentencing court prior to the completion of community supervision,
24 provided that the offender has completed at least one-half of the
25 term of community supervision and has met all other sentence
26 requirements.

27 ~~((+5))~~ (9) The discharge shall have the effect of restoring all
28 civil rights not already restored by RCW 29A.08.520, and the
29 certificate of discharge shall so state. Nothing in this section
30 prohibits the use of an offender's prior record for purposes of
31 determining sentences for later offenses as provided in this chapter.
32 Nothing in this section affects or prevents use of the offender's
33 prior conviction in a later criminal prosecution either as an element
34 of an offense or for impeachment purposes. A certificate of discharge
35 is not based on a finding of rehabilitation.

36 ~~((+6))~~ (10) Unless otherwise ordered by the sentencing court, a
37 certificate of discharge shall not terminate the offender's
38 obligation to comply with an order that excludes or prohibits the
39 offender from having contact with a specified person or coming within
40 a set distance of any specified location that was contained in the

1 judgment and sentence. An offender who violates such an order after a
2 certificate of discharge has been issued shall be subject to
3 prosecution according to the chapter under which the order was
4 originally issued.

5 ~~((7))~~ (11) Upon release from custody, the offender may apply to
6 the department for counseling and help in adjusting to the community.
7 This voluntary help may be provided for up to one year following the
8 release from custody.

9 **Sec. 3.** RCW 9.94A.640 and 2012 c 183 s 3 are each amended to
10 read as follows:

11 (1) Every offender who has been discharged under RCW 9.94A.637
12 may apply to the sentencing court for a vacation of the offender's
13 record of conviction. If the court finds the offender meets the tests
14 prescribed in subsection (2) of this section, the court may clear the
15 record of conviction by: (a) Permitting the offender to withdraw the
16 offender's plea of guilty and to enter a plea of not guilty; or (b)
17 if the offender has been convicted after a plea of not guilty, by the
18 court setting aside the verdict of guilty; and (c) by the court
19 dismissing the information or indictment against the offender.

20 (2) An offender may not have the record of conviction cleared if:

21 (a) There are any criminal charges against the offender pending
22 in any court of this state or another state, or in any federal court;

23 (b) The offense was a violent offense as defined in RCW
24 9.94A.030 ~~((7~~

25 ~~(c) the offense was a~~) or crime against persons as defined in
26 RCW 43.43.830, except the following offenses may be vacated if the
27 conviction did not include a firearm, deadly weapon, or sexual
28 motivation enhancement: (i) Assault in the second degree under RCW
29 9A.36.021; (ii) assault in the third degree under RCW 9A.36.031 when
30 not committed against a law enforcement officer or peace officer; and
31 (iii) robbery in the second degree under RCW 9A.56.210;

32 ~~((d))~~ (c) The offense is a class B felony and the offender has
33 been convicted of a new crime in this state, another state, or
34 federal court in the ten years prior to the application for vacation;

35 (d) The offense is a class C felony and the offender has been
36 convicted of a new crime in this state, another state, or federal
37 court ~~((since the date of the offender's discharge under RCW~~
38 9.94A.637)) in the five years prior to the application for vacation;

1 (e) The offense is a class B felony and less than ten years have
2 passed since the ((date the applicant was discharged under RCW
3 9.94A.637)) later of: (i) The applicant's release from community
4 custody; (ii) the applicant's release from full and partial
5 confinement; or (iii) the applicant's sentencing date;

6 (f) The offense was a class C felony, other than a class C felony
7 described in RCW 46.61.502(6) or 46.61.504(6), and less than five
8 years have passed since the ((date the applicant was discharged under
9 RCW 9.94A.637)) later of: (i) The applicant's release from community
10 custody; (ii) the applicant's release from full and partial
11 confinement; or (iii) the applicant's sentencing date; or

12 (g) The offense was a ((class C)) felony described in RCW
13 46.61.502((+6)) or 46.61.504((+6)).

14 (3) (a) Except as provided in (b) of this subsection, once the
15 court vacates a record of conviction under subsection (1) of this
16 section, the fact that the offender has been convicted of the offense
17 shall not be included in the offender's criminal history for purposes
18 of determining a sentence in any subsequent conviction, and the
19 offender shall be released from all penalties and disabilities
20 resulting from the offense. For all purposes, including responding to
21 questions on employment applications, an offender whose conviction
22 has been vacated may state that the offender has never been convicted
23 of that crime. A conviction that has been vacated under this section
24 may not be disseminated or disclosed by the state patrol or local law
25 enforcement agency to any person, except other criminal justice
26 enforcement agencies. Nothing in this section affects or prevents the
27 use of an offender's prior conviction in a later criminal
28 prosecution, and nothing in this section affects the requirements for
29 restoring a right to possess a firearm under RCW 9.41.040.

30 (b) A conviction vacated on or after the effective date of this
31 section qualifies as a prior conviction for the purpose of charging a
32 present offense occurring on or after the effective date of this
33 section where a prior conviction elevates the classification level of
34 the present offense.

35 **Sec. 4.** RCW 9.96.060 and 2017 c 336 s 2, 2017 c 272 s 9, and
36 2017 c 128 s 1 are each reenacted and amended to read as follows:

37 (1) Every person convicted of a misdemeanor or gross misdemeanor
38 offense who has completed all of the terms of the sentence for the
39 misdemeanor or gross misdemeanor offense, except for payment of

1 nonrestitution legal financial obligations, may apply to the
2 sentencing court for a vacation of the applicant's record of
3 conviction for the offense. If the court finds the applicant meets
4 the tests prescribed in subsection (2) of this section, the court may
5 in its discretion vacate the record of conviction by: (a)(i)
6 Permitting the applicant to withdraw the applicant's plea of guilty
7 and to enter a plea of not guilty; or (ii) if the applicant has been
8 convicted after a plea of not guilty, the court setting aside the
9 verdict of guilty; and (b) the court dismissing the information,
10 indictment, complaint, or citation against the applicant and vacating
11 the judgment and sentence.

12 (2) An applicant may not have the record of conviction for a
13 misdemeanor or gross misdemeanor offense vacated if any one of the
14 following is present:

15 (a) There are any criminal charges against the applicant pending
16 in any court of this state or another state, or in any federal court;

17 (b) The offense was a violent offense as defined in RCW 9.94A.030
18 or an attempt to commit a violent offense;

19 (c) The offense was a violation of RCW 46.61.502 (driving while
20 under the influence), 46.61.504 (actual physical control while under
21 the influence), 9.91.020 (operating a railroad, etc. while
22 intoxicated), or the offense is considered a "prior offense" under
23 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
24 violation within ten years of the date of arrest for the prior
25 offense or less than ten years has elapsed since the date of the
26 arrest for the prior offense;

27 (d) The offense was any misdemeanor or gross misdemeanor
28 violation, including attempt, of chapter 9.68 RCW (obscenity and
29 pornography), chapter 9.68A RCW (sexual exploitation of children), or
30 chapter 9A.44 RCW (sex offenses), except for failure to register as a
31 sex offender under RCW 9A.44.132;

32 (e) The applicant was convicted of a misdemeanor or gross
33 misdemeanor offense as defined in RCW 10.99.020, or the court
34 determines after a review of the court file that the offense was
35 committed by one family member or household member against another,
36 or the court, after considering the damage to person or property that
37 resulted in the conviction, any prior convictions for crimes defined
38 in RCW 10.99.020, or for comparable offenses in another state or in
39 federal court, and the totality of the records under review by the
40 court regarding the conviction being considered for vacation,

1 determines that the offense involved domestic violence, and any one
2 of the following factors exist:

3 (i) The applicant has not provided written notification of the
4 vacation petition to the prosecuting attorney's office that
5 prosecuted the offense for which vacation is sought, or has not
6 provided that notification to the court;

7 (ii) The applicant has (~~previously had a conviction for domestic~~
8 ~~violence~~) two or more domestic violence convictions stemming from
9 different incidents. For purposes of this subsection, however, if the
10 current application is for more than one conviction that arose out of
11 a single incident, none of those convictions counts as a previous
12 conviction;

13 (iii) The applicant has signed an affidavit under penalty of
14 perjury affirming that the applicant has not previously had a
15 conviction for a domestic violence offense, and a criminal history
16 check reveals that the applicant has had such a conviction; or

17 (iv) Less than five years have elapsed since the person completed
18 the terms of the original conditions of the sentence, including (~~any~~
19 ~~financial obligations and~~) successful completion of any treatment
20 ordered as a condition of sentencing;

21 (f) For any offense other than those described in (e) of this
22 subsection, less than three years have passed since the person
23 completed the terms of the sentence(~~, including any financial~~
24 ~~obligations~~));

25 (g) The offender has been convicted of a new crime in this state,
26 another state, or federal court (~~since the date of conviction~~) in
27 the three years prior to the vacation application;

28 (~~The applicant has ever had the record of another conviction~~
29 ~~vacated; or~~

30 ~~(i))~~ The applicant is currently restrained(~~, or has been~~
31 ~~restrained within five years prior to the vacation application,~~) by
32 a domestic violence protection order, a no-contact order, an
33 antiharassment order, or a civil restraining order which restrains
34 one party from contacting the other party or was previously
35 restrained by such an order and was found to have committed one or
36 more violations of the order in the five years prior to the vacation
37 application; or

38 (i) The applicant has not completed payment of the restitution
39 portion of his or her legal financial obligations.

1 (3) An applicant is not required to satisfy all nonrestitution
2 legal financial obligations to vacate a conviction under this
3 section. However, vacating a conviction under this section does not
4 terminate an offender's obligation to pay nonrestitution legal
5 financial obligations. When vacating a conviction of an applicant
6 with outstanding nonrestitution legal financial obligations, the
7 court shall issue an order requiring payment of such obligations in
8 accordance with the applicable statutory requirements pertaining to
9 such obligations.

10 (4) Subject to RCW 9.96.070, every person convicted of
11 prostitution under RCW 9A.88.030 who committed the offense as a
12 result of being a victim of trafficking, RCW 9A.40.100, promoting
13 prostitution in the first degree, RCW 9A.88.070, promoting commercial
14 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
15 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
16 7101 et seq. may apply to the sentencing court for vacation of the
17 applicant's record of conviction for the prostitution offense. An
18 applicant may not have the record of conviction for prostitution
19 vacated if any one of the following is present:

20 (a) There are any criminal charges against the applicant pending
21 in any court of this state or another state, or in any federal court,
22 for any crime other than prostitution; or

23 (b) The offender has been convicted of another crime, except
24 prostitution, in this state, another state, or federal court since
25 the date of conviction. The limitation in this subsection (~~((3))~~) (4)
26 (b) does not apply to convictions where the offender proves by a
27 preponderance of the evidence that he or she committed the crime as a
28 result of being a victim of trafficking, RCW 9A.40.100, promoting
29 prostitution in the first degree, RCW 9A.88.070, promoting commercial
30 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
31 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
32 7101 et seq., according to the requirements provided in RCW 9.96.070
33 for each respective conviction.

34 (~~((4))~~) (5) Every person convicted prior to January 1, 1975, of
35 violating any statute or rule regarding the regulation of fishing
36 activities, including, but not limited to, RCW 75.08.260, 75.12.060,
37 75.12.070, 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and
38 77.16.240 who claimed to be exercising a treaty Indian fishing right,
39 may apply to the sentencing court for vacation of the applicant's
40 record of the misdemeanor, gross misdemeanor, or felony conviction

1 for the offense. If the person is deceased, a member of the person's
2 family or an official representative of the tribe of which the person
3 was a member may apply to the court on behalf of the deceased person.
4 Notwithstanding the requirements of RCW 9.94A.640, the court shall
5 vacate the record of conviction if:

6 (a) The applicant is a member of a tribe that may exercise treaty
7 Indian fishing rights at the location where the offense occurred; and

8 (b) The state has been enjoined from taking enforcement action of
9 the statute or rule to the extent that it interferes with a treaty
10 Indian fishing right as determined under *United States v. Washington*,
11 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
12 899 (D. Oregon 1969), and any posttrial orders of those courts, or
13 any other state supreme court or federal court decision.

14 ~~((+5))~~ (6)(a) Except as provided in (c) of this subsection, once
15 the court vacates a record of conviction under this section, the
16 person shall be released from all penalties and disabilities
17 resulting from the offense and the fact that the person has been
18 convicted of the offense shall not be included in the person's
19 criminal history for purposes of determining a sentence in any
20 subsequent conviction. For all purposes, including responding to
21 questions on employment or housing applications, a person whose
22 conviction has been vacated under this section may state that he or
23 she has never been convicted of that crime. However, nothing in this
24 section affects the requirements for restoring a right to possess a
25 firearm under RCW 9.41.040. Except as provided in (b) of this
26 subsection, nothing in this section affects or prevents the use of an
27 offender's prior conviction in a later criminal prosecution.

28 (b) When a court vacates a record of domestic violence as defined
29 in RCW 10.99.020 under this section, the state may not use the
30 vacated conviction in a later criminal prosecution unless the
31 conviction was for: (i) Violating the provisions of a restraining
32 order, no-contact order, or protection order restraining or enjoining
33 the person or restraining the person from going on to the grounds of
34 or entering a residence, workplace, school, or day care, or
35 prohibiting the person from knowingly coming within, or knowingly
36 remaining within, a specified distance of a location (RCW 10.99.040,
37 10.99.050, 26.09.300, 26.10.220, ~~((26-26-138))~~ 26.26B.050, 26.44.063,
38 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);
39 or (ii) stalking (RCW 9A.46.110). A vacated conviction under this

1 section is not considered a conviction of such an offense for the
2 purposes of 27 C.F.R. 478.11.

3 ~~((6) All costs incurred by the court and probation services
4 shall be paid by the person making the motion to vacate the record
5 unless a determination is made pursuant to chapter 10.101 RCW that
6 the person making the motion is indigent, at the time the motion is
7 brought.))~~

8 (c) A conviction vacated on or after the effective date of this
9 section qualifies as a prior conviction for the purpose of charging a
10 present offense occurring on or after the effective date of this
11 section where a prior conviction elevates the classification level of
12 the present offense.

13 (7) The clerk of the court in which the vacation order is entered
14 shall immediately transmit the order vacating the conviction to the
15 Washington state patrol identification section and to the local
16 police agency, if any, which holds criminal history information for
17 the person who is the subject of the conviction. The Washington state
18 patrol and any such local police agency shall immediately update
19 their records to reflect the vacation of the conviction, and shall
20 transmit the order vacating the conviction to the federal bureau of
21 investigation. A conviction that has been vacated under this section
22 may not be disseminated or disclosed by the state patrol or local law
23 enforcement agency to any person, except other criminal justice
24 enforcement agencies.

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