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HOUSE BILL 1110

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State of Washington

69th Legislature

2025 Regular Session

By Representatives Ortiz-Self and Goodman

Prefiled 12/20/24.

1 AN ACT Relating to vacating convictions for driving under the  
2 influence, actual physical control of a motor vehicle while under the  
3 influence, or an offense considered a prior offense to such  
4 convictions; and amending RCW 9.96.060.

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

6 **Sec. 1.** RCW 9.96.060 and 2024 c 296 s 1 are each amended to read  
7 as follows:

8 (1) When vacating a conviction under this section, the court  
9 effectuates the vacation by: (a)(i) Permitting the applicant to  
10 withdraw the applicant's plea of guilty and to enter a plea of not  
11 guilty; or (ii) if the applicant has been convicted after a plea of  
12 not guilty, the court setting aside the verdict of guilty; and (b)  
13 the court dismissing the information, indictment, complaint, or  
14 citation against the applicant and vacating the judgment and  
15 sentence.

16 (2) Every person convicted of a misdemeanor or gross misdemeanor  
17 offense may apply to the sentencing court for a vacation of the  
18 applicant's record of conviction for the offense. If the court finds  
19 the applicant meets the requirements of this subsection, the court  
20 may in its discretion vacate the record of conviction. Except as  
21 provided in subsections (3), (4), (5), ~~((and))~~ (6), and (7) of this

1 section, an applicant may not have the record of conviction for a  
2 misdemeanor or gross misdemeanor offense vacated if any one of the  
3 following is present:

4 (a) The applicant has not completed all of the terms of the  
5 sentence for the offense, including satisfaction of financial  
6 obligations;

7 (b) There are any criminal charges against the applicant pending  
8 in any court of this state or another state, or in any federal or  
9 tribal court, at the time of application;

10 (c) The offense was a violent offense as defined in RCW 9.94A.030  
11 or an attempt to commit a violent offense;

12 (d) The offense was a violation of RCW (~~(46.61.502 (driving while~~  
13 ~~under the influence), 46.61.504 (actual physical control while under~~  
14 ~~the influence),~~) 9.91.020 (operating a railroad, etc. while  
15 intoxicated) (~~, or the offense is considered a "prior offense" under~~  
16 ~~RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug~~  
17 ~~violation within 10 years of the date of arrest for the prior offense~~  
18 ~~or less than 10 years has elapsed since the date of the arrest for~~  
19 ~~the prior offense));~~

20 (e) The offense was any misdemeanor or gross misdemeanor  
21 violation, including attempt, of chapter 9.68 RCW (obscenity and  
22 pornography), chapter 9.68A RCW (sexual exploitation of children), or  
23 chapter 9A.44 RCW (sex offenses), except for failure to register as a  
24 sex offender under RCW 9A.44.132;

25 (f) The applicant was convicted of a misdemeanor or gross  
26 misdemeanor offense as defined in RCW 10.99.020, or the court  
27 determines after a review of the court file that the offense was  
28 committed by one family or household member against another or by one  
29 intimate partner against another, or the court, after considering the  
30 damage to person or property that resulted in the conviction, any  
31 prior convictions for crimes defined in RCW 10.99.020, or for  
32 comparable offenses in another state or in federal court, and the  
33 totality of the records under review by the court regarding the  
34 conviction being considered for vacation, determines that the offense  
35 involved domestic violence, and any one of the following factors  
36 exist:

37 (i) The applicant has not provided written notification of the  
38 vacation petition to the prosecuting attorney's office that  
39 prosecuted the offense for which vacation is sought, or has not  
40 provided that notification to the court;

1 (ii) The applicant has two or more domestic violence convictions  
2 stemming from different incidents. For purposes of this subsection,  
3 however, if the current application is for more than one conviction  
4 that arose out of a single incident, none of those convictions counts  
5 as a previous conviction;

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

10 (iv) Less than five years have elapsed since the person completed  
11 the terms of the original conditions of the sentence, including  
12 successful completion of any treatment ordered as a condition of  
13 sentencing, but excluding the payment of financial obligations;

14 (g) For any offense other than those described in (f) of this  
15 subsection, less than three years have passed since the later of the  
16 applicant's release from supervision or probation; the applicant's  
17 release from total and partial confinement, as defined in RCW  
18 9.94A.030; or the applicant's sentencing date;

19 (h) The offender has been convicted of a new crime in this state,  
20 another state, or federal or tribal court in the three years prior to  
21 the vacation application; or

22 (i) The applicant is currently restrained by a domestic violence  
23 protection order, a no-contact order, an antiharassment order, or a  
24 civil restraining order which restrains one party from contacting the  
25 other party or was previously restrained by such an order and was  
26 found to have committed one or more violations of the order in the  
27 five years prior to the vacation application.

28 (3) If the applicant is a victim of sex trafficking,  
29 prostitution, or commercial sexual abuse of a minor; sexual assault;  
30 or domestic violence as defined in RCW 9.94A.030, or the prosecutor  
31 applies on behalf of the state, the sentencing court may vacate the  
32 record of conviction if the application satisfies the requirements of  
33 RCW 9.96.080. When preparing or filing the petition, the prosecutor  
34 is not deemed to be providing legal advice or legal assistance on  
35 behalf of the victim, but is fulfilling an administrative function on  
36 behalf of the state in order to further their responsibility to seek  
37 to reform and improve the administration of criminal justice. A  
38 record of conviction vacated using the process in RCW 9.96.080 is  
39 subject to subsections ~~((7))~~ (8) and ~~((8))~~ (9) of this section.

1 (4) Every person convicted prior to January 1, 1975, of violating  
2 any statute or rule regarding the regulation of fishing activities,  
3 including, but not limited to, (~~(former)~~) former RCW 75.08.260,  
4 75.12.060, 75.12.070, 75.12.160, 77.16.020, 77.16.030, 77.16.040,  
5 77.16.060, and 77.16.240 who claimed to be exercising a treaty Indian  
6 fishing right, may apply to the sentencing court for vacation of the  
7 applicant's record of the misdemeanor, gross misdemeanor, or felony  
8 conviction for the offense. If the person is deceased, a member of  
9 the person's family or an official representative of the tribe of  
10 which the person was a member may apply to the court on behalf of the  
11 deceased person. Notwithstanding the requirements of RCW 9.94A.640,  
12 the court shall vacate the record of conviction if:

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

15 (b) The state has been enjoined from taking enforcement action of  
16 the statute or rule to the extent that it interferes with a treaty  
17 Indian fishing right as determined under *United States v. Washington*,  
18 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
19 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
20 any other state supreme court or federal court decision.

21 (5) Every person convicted of a misdemeanor cannabis offense, who  
22 was 21 years of age or older at the time of the offense, may apply to  
23 the sentencing court for a vacation of the applicant's record of  
24 conviction for the offense. A misdemeanor cannabis offense includes,  
25 but is not limited to: Any offense under RCW 69.50.4014, from July 1,  
26 2004, onward, and its predecessor statutes, including RCW  
27 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW  
28 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense  
29 under an equivalent municipal ordinance. If an applicant qualifies  
30 under this subsection, the court shall vacate the record of  
31 conviction.

32 (6) If a person convicted of violating RCW 69.50.4011(1) (b) or  
33 (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) completes a  
34 substance use disorder program and files proof of completion with the  
35 court, or obtains an assessment from a recovery navigator program  
36 established under RCW 71.24.115, an arrest and jail alternative  
37 program established under RCW 36.28A.450, or a law enforcement  
38 assisted diversion program established under RCW 71.24.589, and has  
39 six months of substantial compliance with recommended treatment or  
40 services and progress toward recovery goals as reflected by a written

1 status update, upon verification the court must vacate the conviction  
2 or convictions.

3 (7) Every person convicted of violating RCW 46.61.502 (driving  
4 while under the influence), 46.61.504 (actual physical control while  
5 under the influence), or an offense considered a "prior offense"  
6 under RCW 46.61.5055, may apply to the sentencing court for a  
7 vacation of the applicant's record of conviction for the offense if  
8 the applicant has not had a subsequent alcohol or drug-related  
9 traffic conviction in this state, another state, or tribal court  
10 within five years of the date of conviction. If after filing proof of  
11 completion of all requirements of the sentence with the court an  
12 applicant qualifies under this subsection, the court may vacate the  
13 record of conviction.

14 (8) A person who is a family member of a homicide victim may  
15 apply to the sentencing court on the behalf of the victim for  
16 vacation of the victim's record of conviction for prostitution under  
17 RCW 9A.88.030. If an applicant qualifies under this subsection, the  
18 court shall vacate the victim's record of conviction.

19 ~~((+8))~~ (9)(a) Except as provided in (c) and (d) of this  
20 subsection, once the court vacates a record of conviction under this  
21 section, the person shall be released from all penalties and  
22 disabilities resulting from the offense and the fact that the person  
23 has been convicted of the offense shall not be included in the  
24 person's criminal history for purposes of determining a sentence in  
25 any subsequent conviction. For all purposes, including responding to  
26 questions on employment or housing applications, a person whose  
27 conviction has been vacated under this section may state that he or  
28 she has never been convicted of that crime. However, nothing in this  
29 section affects the requirements for restoring a right to possess a  
30 firearm under RCW 9.41.041. Except as provided in (b) of this  
31 subsection, nothing in this section affects or prevents the use of an  
32 offender's prior conviction in a later criminal prosecution.

33 (b) When a court vacates a record of domestic violence as defined  
34 in RCW 10.99.020 under this section, the state may not use the  
35 vacated conviction in a later criminal prosecution unless the  
36 conviction was for: (i) Violating the provisions of a restraining  
37 order, no-contact order, or protection order restraining or enjoining  
38 the person or restraining the person from going on to the grounds of  
39 or entering a residence, workplace, school, or day care, or  
40 prohibiting the person from knowingly coming within, or knowingly

1 remaining within, a specified distance of a location, a protected  
2 party's person, or a protected party's vehicle (RCW 10.99.040,  
3 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,  
4 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and  
5 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic  
6 violence protection order or vulnerable adult protection order  
7 entered under chapter 7.105 RCW. A vacated conviction under this  
8 section is not considered a conviction of such an offense for the  
9 purposes of 27 C.F.R. 478.11.

10 (c) A conviction vacated on or after July 28, 2019, qualifies as  
11 a prior conviction for the purpose of charging a present recidivist  
12 offense as defined in RCW 9.94A.030 occurring on or after July 28,  
13 2019.

14 (d) (i) When a court vacates a record under subsection (7) of this  
15 section, the vacated conviction qualifies as a "prior offense" under  
16 RCW 46.61.502(6), 46.61.504(6), and 46.61.5055 in a later criminal  
17 prosecution of RCW 46.61.502 (driving while under the influence) or  
18 RCW 46.61.504 (actual physical control while under the influence) if  
19 the later prosecution is within 15 years of the date of the  
20 conviction for the vacated conviction. If a subsequent conviction of  
21 RCW 46.61.502 or 46.61.504 is within 15 years of the date of the  
22 conviction for the vacated conviction, the court may use the vacated  
23 conviction in determining a sentence or determining whether the  
24 subsequent conviction qualifies as a felony under RCW 46.61.5055.

25 (ii) A conviction vacated under subsection (7) of this section  
26 qualifies as a prior conviction in determining a sentence for a  
27 conviction under RCW 46.61.520 if the vehicular homicide occurred  
28 while the driver was under the influence of intoxicating liquor or  
29 any drug.

30 ~~((9))~~ (10) The clerk of the court in which the vacation order  
31 is entered shall immediately transmit the order vacating the  
32 conviction to the Washington state patrol identification section and  
33 to the local police agency, if any, which holds criminal history  
34 information for the person who is the subject of the conviction. The  
35 Washington state patrol and any such local police agency shall  
36 immediately update their records to reflect the vacation of the  
37 conviction, and shall transmit the order vacating the conviction to  
38 the federal bureau of investigation. A conviction that has been  
39 vacated under this section may not be disseminated or disclosed by

1 the state patrol or local law enforcement agency to any person,  
2 except other criminal justice enforcement agencies.  
3 (~~(10)~~) (11) For the purposes of this section, "cannabis" has  
4 the meaning provided in RCW 69.50.101.

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