
SUBSTITUTE HOUSE BILL 2793

State of Washington

66th Legislature

2020 Regular Session

By House Public Safety (originally sponsored by Representatives Hansen and Irwin)

1 AN ACT Relating to vacating criminal records; reenacting and
2 amending RCW 9.96.060; adding a new chapter to Title 10 RCW; creating
3 new sections; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** (1) The administrative office of the
6 courts shall develop a process by which criminal convictions are
7 reviewed to determine whether those convictions should be scheduled
8 for administrative vacation hearings under section 2 of this act. The
9 process must:

10 (a) Review convictions beginning at the earliest period for which
11 electronic court records are reliable, provided that the review
12 applies to all convictions beginning no later than January 1, 2000;

13 (b) Rely upon records available to the administrative office of
14 the courts through judicial information systems and state agencies;

15 (c) Determine whether a defendant is currently incarcerated for a
16 criminal offense, and whether available records indicate that he or
17 she is precluded from qualifying to vacate his or her misdemeanor
18 conviction under RCW 9.96.060 (2)(b) or (5)(a) or his or her felony
19 conviction RCW 9.94A.640(2), provided that:

20 (i) If applicable, whether a person is currently incarcerated for
21 a criminal offense is determined by reviewing the term of confinement

1 reflected in the judgment and sentence document for his or her most
2 recent criminal conviction;

3 (ii) If applicable, whether a person completed his or her
4 sentencing conditions, excluding legal financial obligations, and
5 satisfied the waiting period under RCW 9.96.060(2)(b) (vi)(D) or
6 (vii) or 9.94A.640(2) (e) or (f) is determined by adding the waiting
7 period to the terms of confinement and community custody reflected in
8 the applicable judgment and sentence document; and

9 (iii) If applicable, the period for which a person must not have
10 been convicted of any new criminal offense under RCW
11 9.96.060(2)(b)(viii) or 9.94A.640(2) (c) or (d) is determined based
12 on the date of the query conducted by the administrative office of
13 the courts, rather than the date of application;

14 (d) Notify sentencing courts to schedule an administrative
15 vacation hearing for any defendant where a review of records does not
16 indicate that the defendant is precluded from qualifying to vacate
17 his or her conviction; and

18 (e) Review records and provide notifications on a monthly or
19 quarterly basis, as determined by the administrative office of the
20 courts.

21 (2) The administrative office of the courts shall develop a
22 process by which a person seeking to vacate his or her conviction may
23 submit an inquiry with supporting information and documentation to
24 assist or otherwise expedite the review under subsection (1) of this
25 section.

26 (3) The administrative office of the courts, in consultation with
27 courts of general jurisdiction and limited jurisdiction, may
28 establish an implementation plan for complying with the requirements
29 of this section. The implementation plan may establish criteria for
30 prioritizing potentially qualifying defendants. The implementation
31 plan may also include a phased process by which to notify courts of
32 any defendants meeting requirements under RCW 9.96.060 (2)(b) or
33 (5)(a) or 9.94A.640(2) for convictions occurring prior to the
34 effective date of this section so as to not hinder sentencing courts
35 with excessive notices and directives to schedule hearings.

36 NEW SECTION. **Sec. 2.** (1) Sentencing courts shall conduct
37 regularly scheduled vacation hearings to carry out the requirements
38 of this section.

1 (2) When a sentencing court receives notice from the
2 administrative office of the courts under section 1 of this act
3 regarding a defendant potentially qualifying to vacate his or her
4 conviction, the court shall set an administrative vacation hearing.

5 For the purposes of conducting proceedings under this section,
6 the requirements under RCW 9.96.060 (2)(b) and (5)(a) apply to
7 misdemeanors and the requirements under RCW 9.94A.640(2) apply to
8 felonies, except a defendant is not required to: File a petition or
9 application; provide notice to relevant parties; or appear at an
10 administrative or contested hearing.

11 (3) At an administrative vacation hearing, the court shall
12 determine whether to vacate the conviction based on the requirements
13 for the particular offense under RCW 9.96.060 (2)(b) or (5)(a) or
14 9.94A.640(2). In addition, a defendant is disqualified from having
15 his or her record vacated if he or she is currently incarcerated for
16 a criminal offense. The defendant is presumed to meet the
17 requirements and the court shall vacate the conviction, unless court
18 records indicate that the defendant does not meet the requirements or
19 the prosecutor objects on the basis that the defendant does not meet
20 the requirements, in which case the court shall set a contested
21 hearing to be conducted on the record. The contested hearing must be
22 set no sooner than eighteen days after notice of the contested
23 hearing has been provided to the defendant.

24 (4) At a contested hearing, the court shall vacate the record,
25 unless the court determines the defendant does not meet the
26 requirements under RCW 9.96.060 (2)(b) or (5)(a) or 9.94A.640(2). If
27 the court determines the defendant is not currently eligible, but is
28 likely to become eligible in the future, the court may set a
29 subsequent administrative vacation hearing at an appropriate date
30 determined by the court.

31 (5)(a) If the court vacates a conviction under this section, it
32 shall achieve the vacation by: (i) Withdrawing the plea of guilty and
33 entering a plea of not guilty, or if the defendant was convicted
34 after a plea of not guilty, setting aside the verdict of guilty; and
35 (ii) dismissing the information or indictment against the defendant
36 and vacating the judgment and sentence.

37 (b) If the court vacates a conviction under this section, it is
38 processed in the same manner and has the same effect as provided
39 under RCW 9.96.060 (6) and (7) for a misdemeanor or RCW 9.94A.640(3)
40 for a felony.

1 (6) Regardless of whether a hearing under this section has
2 previously occurred or is scheduled at a future date, nothing in this
3 section prohibits a defendant from applying to the court to: Vacate a
4 conviction under RCW 9.96.060 or 9.94A.640; or seal his or her
5 conviction or vacation records under court rules.

6 NEW SECTION. **Sec. 3.** (1) The administrative office of the
7 courts shall regularly collect and report the following information
8 with respect to convictions where notifications were sent to
9 sentencing courts under section 1 of this act:

10 (a) The number of convictions where notifications were sent;

11 (b) The number of convictions where the sentencing court
12 scheduled an administrative hearing within ninety days of receiving
13 the notification;

14 (c) The number of convictions where the court vacated the
15 conviction at an administrative hearing;

16 (d) The number of convictions where the court set a contested
17 hearing;

18 (e) The number of convictions where the court vacated the
19 conviction at a contested hearing;

20 (f) The number of convictions where the court denied vacation of
21 the conviction at a contested hearing; and

22 (g) Other data deemed relevant by the administrative office of
23 the courts.

24 (2) The requirement to regularly report information under this
25 section may be satisfied by: Including the information in publicly
26 available caseload reports; or submitting a quarterly or annual
27 report to the governor and appropriate committees of the legislature.

28 NEW SECTION. **Sec. 4.** (1) The administrative office of the
29 courts shall evaluate:

30 (a) The requirements of sections 1 and 2 of this act and
31 determine the types of data currently available to assess eligibility
32 under RCW 9.96.060 (2) (b) and (5) (a) and 9.94A.640 (2);

33 (b) Any additional types of information that should be reported
34 to sentencing courts or directly to the administrative office of the
35 courts to improve the reliability of notifications provided under
36 section 1 of this act;

37 (c) Any additional types of information that should be reported
38 through judicial information systems by clerks and court

1 administrators to improve the reliability of notifications provided
2 under section 1 of this act; and

3 (d) Any changes to laws, policies, or practices or additional
4 resources necessary to improve the reliability of notifications
5 provided under section 1 of this act.

6 (2) In conducting the evaluation under this section, the
7 administrative office of the courts may consult with county clerks
8 and court administrators, judges, prosecuting attorneys, defense
9 attorneys, the department of corrections, county and city
10 departments, and any other entities with relevant records.

11 (3) The administrative office of the courts shall submit a report
12 with its findings to the governor and the appropriate committees of
13 the legislature by December 1, 2020.

14 **Sec. 5.** RCW 9.96.060 and 2019 c 400 s 1, 2019 c 331 s 4, and
15 2019 c 46 s 5010 are each reenacted and amended to read as follows:

16 (1) When vacating a conviction under this section, the court
17 effectuates the vacation by: (a)(i) Permitting the applicant to
18 withdraw the applicant's plea of guilty and to enter a plea of not
19 guilty; or (ii) if the applicant has been convicted after a plea of
20 not guilty, the court setting aside the verdict of guilty; and (b)
21 the court dismissing the information, indictment, complaint, or
22 citation against the applicant and vacating the judgment and
23 sentence.

24 (2) (a) Every person convicted of a misdemeanor or gross
25 misdemeanor offense may apply to the sentencing court for a vacation
26 of the applicant's record of conviction for the offense. If the court
27 finds the applicant meets the requirements of (b) of this subsection,
28 the court may in its discretion vacate the record of conviction.

29 (b) Except as provided in subsections (3), (4), and (5) of this
30 section, ~~((an applicant))~~ a defendant may not have the record of
31 conviction for a misdemeanor or gross misdemeanor offense vacated if
32 any one of the following is present:

33 ~~((a))~~ (i) The ~~((applicant))~~ defendant has not completed all of
34 the terms of the sentence for the offense;

35 ~~((b))~~ (ii) There are any criminal charges against the
36 ~~((applicant))~~ defendant pending in any court of this state or another
37 state, or in any federal or tribal court, at the time of application;

38 ~~((c))~~ (iii) The offense was a violent offense as defined in RCW
39 9.94A.030 or an attempt to commit a violent offense;

1 ~~((d))~~ (iv) The offense was a violation of RCW 46.61.502
2 (driving while under the influence), 46.61.504 (actual physical
3 control while under the influence), 9.91.020 (operating a railroad,
4 etc. while intoxicated), or the offense is considered a "prior
5 offense" under RCW 46.61.5055 and the ~~((applicant))~~ defendant has had
6 a subsequent alcohol or drug violation within ten years of the date
7 of arrest for the prior offense or less than ten years has elapsed
8 since the date of the arrest for the prior offense;

9 ~~((e))~~ (v) The offense was any misdemeanor or gross misdemeanor
10 violation, including attempt, of chapter 9.68 RCW (obscenity and
11 pornography), chapter 9.68A RCW (sexual exploitation of children), or
12 chapter 9A.44 RCW (sex offenses), except for failure to register as a
13 sex offender under RCW 9A.44.132;

14 ~~((f))~~ (vi) The ~~((applicant))~~ defendant was convicted of a
15 misdemeanor or gross misdemeanor offense as defined in RCW 10.99.020,
16 or the court determines after a review of the court file that the
17 offense was committed by one family member or household member
18 against another, or the court, after considering the damage to person
19 or property that resulted in the conviction, any prior convictions
20 for crimes defined in RCW 10.99.020, or for comparable offenses in
21 another state or in federal court, and the totality of the records
22 under review by the court regarding the conviction being considered
23 for vacation, determines that the offense involved domestic violence,
24 and any one of the following factors exist:

25 ~~((i) The applicant)~~ (A) If the defendant is requesting a
26 vacation through an application, the defendant has not provided
27 written notification of the vacation petition to the prosecuting
28 attorney's office that prosecuted the offense for which vacation is
29 sought, or has not provided that notification to the court;

30 ~~((ii))~~ (B) The ~~((applicant))~~ defendant has two or more domestic
31 violence convictions stemming from different incidents. For purposes
32 of this subsection, however, if the current application is for more
33 than one conviction that arose out of a single incident, none of
34 those convictions counts as a previous conviction;

35 ~~((iii))~~ (C) The ~~((applicant))~~ defendant has signed an affidavit
36 under penalty of perjury affirming that the applicant has not
37 previously had a conviction for a domestic violence offense, and a
38 criminal history check reveals that the applicant has had such a
39 conviction; or

1 (~~(iv)~~) (D) Less than five years have elapsed since the person
2 completed the terms of the original conditions of the sentence,
3 including any financial obligations and successful completion of any
4 treatment ordered as a condition of sentencing;

5 (~~(g)~~) (vii) For any offense other than those described in
6 (~~(f)~~) (vi) of this subsection, less than three years have passed
7 since the person completed the terms of the sentence, including any
8 financial obligations;

9 (~~(h)~~) (viii) The offender has been convicted of a new crime in
10 this state, another state, or federal or tribal court in the three
11 years prior to the vacation application; or

12 (~~(i)~~) (ix) The (~~applicant~~) defendant is currently restrained
13 by a domestic violence protection order, a no-contact order, an
14 antiharassment order, or a civil restraining order which restrains
15 one party from contacting the other party or was previously
16 restrained by such an order and was found to have committed one or
17 more violations of the order in the five years prior to the vacation
18 application.

19 (3) Subject to RCW 9.96.070, every person convicted of
20 prostitution under RCW 9A.88.030 who committed the offense as a
21 result of being a victim of trafficking, RCW 9A.40.100, promoting
22 prostitution in the first degree, RCW 9A.88.070, promoting commercial
23 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
24 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
25 7101 et seq. may apply to the sentencing court for vacation of the
26 applicant's record of conviction for the prostitution offense. An
27 applicant may not have the record of conviction for prostitution
28 vacated if any one of the following is present:

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

32 (b) The offender has been convicted of another crime, except
33 prostitution, in this state, another state, or federal court since
34 the date of conviction. The limitation in this subsection (3)(b) does
35 not apply to convictions where the offender proves by a preponderance
36 of the evidence that he or she committed the crime as a result of
37 being a victim of trafficking, RCW 9A.40.100, promoting prostitution
38 in the first degree, RCW 9A.88.070, promoting commercial sexual abuse
39 of a minor, RCW 9.68A.101, or trafficking in persons under the
40 trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et

1 seq., according to the requirements provided in RCW 9.96.070 for each
2 respective conviction.

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

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

17 (b) The state has been enjoined from taking enforcement action of
18 the statute or rule to the extent that it interferes with a treaty
19 Indian fishing right as determined under *United States v. Washington*,
20 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
21 899 (D. Oregon 1969), and any posttrial orders of those courts, or
22 any other state supreme court or federal court decision.

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

33 (b) If ~~((an applicant qualifies))~~ a qualifying defendant applies
34 to the sentencing court under this subsection, the court shall vacate
35 the record of conviction.

36 (6) (a) Except as provided in (c) of this subsection, once the
37 court vacates a record of conviction under this section, the person
38 shall be released from all penalties and disabilities resulting from
39 the offense and the fact that the person has been convicted of the
40 offense shall not be included in the person's criminal history for

1 purposes of determining a sentence in any subsequent conviction. For
2 all purposes, including responding to questions on employment or
3 housing applications, a person whose conviction has been vacated
4 under this section may state that he or she has never been convicted
5 of that crime. However, nothing in this section affects the
6 requirements for restoring a right to possess a firearm under RCW
7 9.41.040. Except as provided in (b) of this subsection, nothing in
8 this section affects or prevents the use of an offender's prior
9 conviction in a later criminal prosecution.

10 (b) When a court vacates a record of domestic violence as defined
11 in RCW 10.99.020 under this section, the state may not use the
12 vacated conviction in a later criminal prosecution unless the
13 conviction was for: (i) Violating the provisions of a restraining
14 order, no-contact order, or protection order restraining or enjoining
15 the person or restraining the person from going on to the grounds of
16 or entering a residence, workplace, school, or day care, or
17 prohibiting the person from knowingly coming within, or knowingly
18 remaining within, a specified distance of a location (RCW 10.99.040,
19 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.44.063, 26.44.150,
20 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii)
21 stalking (RCW 9A.46.110). A vacated conviction under this section is
22 not considered a conviction of such an offense for the purposes of 27
23 C.F.R. 478.11.

24 (c) A conviction vacated on or after July 28, 2019, qualifies as
25 a prior conviction for the purpose of charging a present recidivist
26 offense as defined in RCW 9.94A.030 occurring on or after July 28,
27 2019.

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

1 NEW SECTION. **Sec. 6.** This act may be known and cited as the
2 Washington clean slate act.

3 NEW SECTION. **Sec. 7.** Sections 1 through 3 of this act
4 constitute a new chapter in Title 10 RCW.

5 NEW SECTION. **Sec. 8.** Sections 1 through 3 of this act take
6 effect July 1, 2022.

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