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**SENATE BILL 5272**

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**State of Washington****65th Legislature****2017 Regular Session**

**By** Senators Saldaña, Hasegawa, Ranker, Chase, Hunt, Darneille, Wellman, Keiser, Cleveland, and Takko

1       AN ACT Relating to vacating convictions arising from offenses  
2 committed as a result of being a victim of trafficking, promoting  
3 prostitution, or promoting commercial sexual abuse of a minor;  
4 amending RCW 9.96.070; and reenacting 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 2014 c 176 s 1 and 2014 c 109 s 1 are  
7 each reenacted and amended to read as follows:

8       (1) Every person convicted of a misdemeanor or gross misdemeanor  
9 offense who has completed all of the terms of the sentence for the  
10 misdemeanor or gross misdemeanor offense may apply to the sentencing  
11 court for a vacation of the applicant's record of conviction for the  
12 offense. If the court finds the applicant meets the tests prescribed  
13 in subsection (2) of this section, the court may in its discretion  
14 vacate the record of conviction by: (a)(i) Permitting the applicant  
15 to withdraw the applicant's plea of guilty and to enter a plea of not  
16 guilty; or (ii) if the applicant has been convicted after a plea of  
17 not guilty, the court setting aside the verdict of guilty; and (b)  
18 the court dismissing the information, indictment, complaint, or  
19 citation against the applicant and vacating the judgment and  
20 sentence.

1       (2) 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) There are any criminal charges against the applicant pending  
5 in any court of this state or another state, or in any federal court;

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

8           (c) The offense was a violation of RCW 46.61.502 (driving while  
9 under the influence), 46.61.504 (actual physical control while under  
10 the influence), 9.91.020 (operating a railroad, etc. while  
11 intoxicated), or the offense is considered a "prior offense" under  
12 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug  
13 violation within ten years of the date of arrest for the prior  
14 offense;

15           (d) The offense was any misdemeanor or gross misdemeanor  
16 violation, including attempt, of chapter 9.68 RCW (obscenity and  
17 pornography), chapter 9.68A RCW (sexual exploitation of children), or  
18 chapter 9A.44 RCW (sex offenses);

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

30           (i) The applicant has not provided written notification of the  
31 vacation petition to the prosecuting attorney's office that  
32 prosecuted the offense for which vacation is sought, or has not  
33 provided that notification to the court;

34           (ii) The applicant has previously had a conviction for domestic  
35 violence. For purposes of this subsection, however, if the current  
36 application is for more than one conviction that arose out of a  
37 single incident, none of those convictions counts as a previous  
38 conviction;

39           (iii) The applicant has signed an affidavit under penalty of  
40 perjury affirming that the applicant has not previously had a

1 conviction for a domestic violence offense, and a criminal history  
2 check reveals that the applicant has had such a conviction; or

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

7 (f) For any offense other than those described in (e) of this  
8 subsection, less than three years have passed since the person  
9 completed the terms of the sentence, including any financial  
10 obligations;

11 (g) The offender has been convicted of a new crime in this state,  
12 another state, or federal court since the date of conviction;

13 (h) The applicant has ever had the record of another conviction  
14 vacated; or

15 (i) The applicant is currently restrained, or has been restrained  
16 within five years prior to the vacation application, by a domestic  
17 violence protection order, a no-contact order, an antiharassment  
18 order, or a civil restraining order which restrains one party from  
19 contacting the other party.

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

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

33 (b) The offender has been convicted of another crime, except  
34 prostitution, in this state, another state, or federal court since  
35 the date of conviction. The limitation in this subsection (3)(b) does  
not apply to convictions where the offender proves by a preponderance  
of the evidence that he or she committed the crime as a result of  
being a victim of trafficking, RCW 9A.40.100, promoting prostitution  
in the first degree, RCW 9A.88.070, promoting commercial sexual abuse  
of a minor, RCW 9.68A.101, or trafficking in persons under the

1 trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et  
2 seq., according to the requirements provided in RCW 9.96.070 for each  
3 respective conviction.

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

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

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

24 (5) Once the court vacates a record of conviction under this  
25 section, the person shall be released from all penalties and  
26 disabilities resulting from the offense and the fact that the person  
27 has been convicted of the offense shall not be included in the  
28 person's criminal history for purposes of determining a sentence in  
29 any subsequent conviction. For all purposes, including responding to  
30 questions on employment or housing applications, a person whose  
31 conviction has been vacated under this section may state that he or  
32 she has never been convicted of that crime. Nothing in this section  
33 affects or prevents the use of an offender's prior conviction in a  
34 later criminal prosecution.

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

39 (7) The clerk of the court in which the vacation order is entered  
40 shall immediately transmit the order vacating the conviction to the

1 Washington state patrol identification section and to the local  
2 police agency, if any, which holds criminal history information for  
3 the person who is the subject of the conviction. The Washington state  
4 patrol and any such local police agency shall immediately update  
5 their records to reflect the vacation of the conviction, and shall  
6 transmit the order vacating the conviction to the federal bureau of  
7 investigation. A conviction that has been vacated under this section  
8 may not be disseminated or disclosed by the state patrol or local law  
9 enforcement agency to any person, except other criminal justice  
10 enforcement agencies.

11       **Sec. 2.** RCW 9.96.070 and 2014 c 109 s 2 are each amended to read  
12 as follows:

13       (1) In order to vacate a record of conviction for a prostitution  
14 offense pursuant to RCW 9.96.060(3) as a result of being a victim of  
15 trafficking, RCW 9A.40.100, the applicant must prove each of the  
16 following elements by a preponderance of the evidence through a  
17 signed affidavit submitted with the motion to vacate:

18       (a)(i) The applicant was recruited, harbored, transported,  
19 provided, obtained, bought, purchased, or received by another person;

20       (ii) The person who committed any of the acts in (a)(i) of this  
21 subsection against the applicant acted knowingly or in reckless  
22 disregard for the fact that force, fraud, or coercion would be used  
23 to cause the applicant to engage in a sexually explicit act or  
24 commercial sex act; and

25       (iii) The applicant's conviction record for prostitution and  
26 other convictions under RCW 9.96.060(3)(b), if applicable, resulted  
27 from such acts; or

28       (b)(i) The applicant was recruited, harbored, transported,  
29 provided, obtained, bought, purchased, or received by another person;

30       (ii) The person who committed any of the acts in (b)(i) of this  
31 subsection against the applicant acted knowingly or in reckless  
32 disregard for the fact that the applicant had not attained the age of  
33 eighteen and would be caused to engage in a sexually explicit act or  
34 commercial sex act; and

35       (iii) The applicant's record of conviction for prostitution and  
36 other convictions under RCW 9.96.060(3)(b), if applicable, resulted  
37 from such acts.

38       (2) In order to vacate a record of conviction for a prostitution  
39 offense pursuant to RCW 9.96.060(3) as a result of being a victim of

1 promoting prostitution in the first degree, RCW 9A.88.070, the  
2 applicant must prove each of the following elements by a  
3 preponderance of the evidence through a signed affidavit submitted  
4 with the motion to vacate:

5 (a)(i) The applicant was compelled by threat or force to engage  
6 in prostitution;

7 (ii) The person who compelled the applicant acted knowingly; and

8 (iii) The applicant's conviction record for prostitution and  
9 other convictions under RCW 9.96.060(3)(b), if applicable, resulted  
10 from the compulsion; or

11 (b)(i) The applicant has a mental incapacity or developmental  
12 disability that renders the applicant incapable of consent;

13 (ii) The applicant was compelled to engage in prostitution;

14 (iii) The person who compelled the applicant acted knowingly; and

15 (iv) The applicant's record of conviction for prostitution and  
16 other convictions under RCW 9.96.060(3)(b), if applicable, resulted  
17 from the compulsion.

18 (3) In order to vacate a record of conviction for a prostitution  
19 offense pursuant to RCW 9.96.060(3) as a result of being a victim of  
20 promoting commercial sexual abuse of a minor, RCW 9.68A.101, the  
21 applicant must prove each of the following elements by a  
22 preponderance of the evidence through a signed affidavit submitted  
23 with the motion to vacate:

24 (a)(i) The applicant had not attained the age of eighteen at the  
25 time of the prostitution offense;

26 (ii) A person advanced commercial sexual abuse or a sexually  
27 explicit act of the applicant at the time he or she had not attained  
28 the age of eighteen;

29 (iii) The person committing the acts in (a)(ii) of this  
30 subsection acted knowingly; and

31 (iv) The applicant's record of conviction for prostitution and  
32 other convictions under RCW 9.96.060(3)(b), if applicable, resulted  
33 from any of the acts in (a)(ii) of this subsection.

34 (b) For purposes of this subsection (3), a person:

35 (i) "Advanced commercial sexual abuse" of the applicant if,  
36 acting other than as a minor receiving compensation for personally  
37 rendered sexual conduct or as a person engaged in commercial sexual  
38 abuse of a minor, he or she causes or aids a person to commit or  
39 engage in commercial sexual abuse of a minor, procures or solicits  
40 customers for commercial sexual abuse of a minor, provides persons or

1 premises for the purposes of engaging in commercial sexual abuse of a  
2 minor, operates or assists in the operation of a house or enterprise  
3 for the purposes of engaging in commercial sexual abuse of a minor,  
4 or engages in any other conduct designed to institute, aid, cause,  
5 assist, or facilitate an act or enterprise of commercial sexual abuse  
6 of a minor;

7 (ii) "Advanced a sexually explicit act" of the applicant if he or  
8 she causes or aids a sexually explicit act of a minor, procures or  
9 solicits customers for a sexually explicit act of a minor, provides  
10 persons or premises for the purposes of a sexually explicit act of a  
11 minor, or engages in any other conduct designed to institute, aid,  
12 cause, assist, or facilitate a sexually explicit act of a minor.

13 (4) In order to vacate a record of conviction for a prostitution  
14 offense pursuant to RCW 9.96.060(3) as a result of being a victim of  
15 trafficking in persons under the trafficking victims protection act  
16 of 2000, 22 U.S.C. Sec. 7101 et seq., the applicant must prove each  
17 of the following elements by a preponderance of the evidence through  
18 a signed affidavit submitted with the motion to vacate:

19 (a) The applicant was induced by force, fraud, or coercion to  
20 engage in a commercial sex act and the record of conviction for  
21 prostitution and other convictions under RCW 9.96.060(3)(b), if  
applicable, resulted from the inducement; or

23 (b) The applicant was induced to engage in a commercial sex act  
24 prior to reaching the age of eighteen and the record of conviction  
25 for prostitution and other convictions under RCW 9.96.060(3)(b), if  
applicable, resulted from the inducement.

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