
SENATE BILL 6164

State of Washington

64th Legislature

2016 Regular Session

By Senators Rivers, O'Ban, and Hasegawa

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1 AN ACT Relating to vacating prior misdemeanor convictions of
2 youthful offenders; and reenacting and amending RCW 9.96.060.

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

4 **Sec. 1.** RCW 9.96.060 and 2014 c 176 s 1 and 2014 c 109 s 1 are
5 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

9 (g) The offender has been convicted of a new crime in this state,
10 another state, or federal court since the date of conviction,
11 provided that up to two convictions in this state, another state, or
12 federal court for possession of one ounce or less of marijuana or
13 drug paraphernalia under RCW 69.50.102(a)(12) committed when the
14 applicant was less than twenty-five years of age do not count as
15 convictions for a new crime;

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

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

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

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

36 (b) The offender has been convicted of another crime, except
37 prostitution, in this state, another state, or federal court since
38 the date of conviction.

39 (4) Every person convicted prior to January 1, 1975, of violating
40 any statute or rule regarding the regulation of fishing activities,

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

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

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

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

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

34 (7) The clerk of the court in which the vacation order is entered
35 shall immediately transmit the order vacating the conviction to the
36 Washington state patrol identification section and to the local
37 police agency, if any, which holds criminal history information for
38 the person who is the subject of the conviction. The Washington state
39 patrol and any such local police agency shall immediately update
40 their records to reflect the vacation of the conviction, and shall

1 transmit the order vacating the conviction to the federal bureau of
2 investigation. A conviction that has been vacated under this section
3 may not be disseminated or disclosed by the state patrol or local law
4 enforcement agency to any person, except other criminal justice
5 enforcement agencies.

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