
HOUSE BILL 2793

State of Washington

66th Legislature

2020 Regular Session

By Representatives Hansen and Irwin

Read first time 01/22/20. Referred to Committee on Public Safety.

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
7 occurring on or after January 1, 2000, are reviewed to determine
8 whether those convictions should be scheduled for administrative
9 vacation hearings under section 2 of this act. The process must:

10 (a) Rely upon records available to the administrative office of
11 the courts through judicial information systems and other sources;

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

17 (c) Notify sentencing courts to schedule an administrative
18 vacation hearing for any defendant where a review of records does not
19 indicate that the defendant is currently incarcerated for a criminal
20 offense or is precluded from qualifying to vacate his or her
21 conviction; and

1 (d) Review records and provide notifications on a monthly or
2 quarterly basis, as determined by the administrative office of the
3 courts.

4 (2) The administrative office of the courts, in consultation with
5 courts of general jurisdiction and limited jurisdiction, may
6 establish an implementation plan for complying with the requirements
7 of this section. The implementation plan may establish criteria for
8 prioritizing potentially qualifying defendants. The implementation
9 plan may also include a phased process by which to notify courts of
10 any defendants meeting requirements under RCW 9.96.060 (2)(b) or
11 (5)(a) or 9.94A.640(2) for convictions on or after January 1, 2000,
12 and prior to the effective date of this section so as to not hinder
13 sentencing courts with excessive notices and directives to schedule
14 hearings.

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

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

22 (b) For the purposes of conducting proceedings under this
23 section, the requirements under RCW 9.96.060 (2)(b) and (5)(a) apply
24 to misdemeanors and the requirements under RCW 9.94A.640(2) apply to
25 felonies, except a defendant is not required to file a petition or
26 application or provide notice to relevant parties. A defendant is not
27 required to appear at an administrative or contested hearing for the
28 court to vacate a conviction under this section.

29 (3) At an administrative vacation hearing, the court shall
30 determine whether to vacate the conviction based on the requirements
31 for the particular offense under RCW 9.96.060 (2)(b) or (5)(a) or
32 9.94A.640(2). In addition, a defendant is disqualified from having
33 his or her record vacated if he or she is currently incarcerated for
34 a criminal offense. The defendant is presumed to meet the
35 requirements and the court shall vacate the conviction, unless court
36 records indicate that the defendant does not meet the requirements or
37 the prosecutor objects on the basis that the defendant does not meet
38 the requirements, in which case the court shall set a contested
39 hearing to be conducted on the record. The contested hearing must be

1 set no sooner than eighteen days after notice of the contested
2 hearing has been provided to the defendant.

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

10 (5)(a) If the court vacates a conviction under this section, it
11 shall achieve the vacation by: (i) Withdrawing the plea of guilty and
12 entering a plea of not guilty, or if the defendant was convicted
13 after a plea of not guilty, setting aside the verdict of guilty; and
14 (ii) dismissing the information or indictment against the defendant
15 and vacating the judgment and sentence.

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

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

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

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

30 (b) The number of convictions where the sentencing court
31 scheduled an administrative hearing within ninety days of receiving
32 the notification;

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

35 (d) The number of convictions where the court set a contested
36 hearing;

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

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

3 (g) Other data deemed relevant by the administrative office of
4 the courts.

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

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

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

14 (b) Any additional types of information that should be reported
15 to sentencing courts or directly to the administrative office of the
16 courts to improve the reliability of notifications provided under
17 section 1 of this act;

18 (c) Any additional types of information that should be reported
19 through judicial information systems by clerks and court
20 administrators to improve the reliability of notifications provided
21 under section 1 of this act; and

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

25 (2) In conducting the evaluation under this section, the
26 administrative office of the courts may consult with county clerks
27 and court administrators, judges, prosecuting attorneys, defense
28 attorneys, the department of corrections, county and city
29 departments, and any other entities with relevant records.

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

33 **Sec. 5.** RCW 9.96.060 and 2019 c 400 s 1, 2019 c 331 s 4, and
34 2019 c 46 s 5010 are each reenacted and amended to read as follows:

35 (1) When vacating a conviction under this section, the court
36 effectuates the vacation by: (a)(i) Permitting the applicant to
37 withdraw the applicant's plea of guilty and to enter a plea of not
38 guilty; or (ii) if the applicant has been convicted after a plea of

1 not guilty, the court setting aside the verdict of guilty; and (b)
2 the court dismissing the information, indictment, complaint, or
3 citation against the applicant and vacating the judgment and
4 sentence.

5 (2) (a) Every person convicted of a misdemeanor or gross
6 misdemeanor offense may apply to the sentencing court for a vacation
7 of the applicant's record of conviction for the offense. If the court
8 finds the applicant meets the requirements of (b) of this subsection,
9 the court may in its discretion vacate the record of conviction.

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

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

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

19 ~~((c))~~ (iii) The offense was a violent offense as defined in RCW
20 9.94A.030 or an attempt to commit a violent offense;

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

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

34 ~~((f))~~ (vi) The ~~((applicant))~~ defendant was convicted of a
35 misdemeanor or gross misdemeanor offense as defined in RCW 10.99.020,
36 or the court determines after a review of the court file that the
37 offense was committed by one family member or household member
38 against another, or the court, after considering the damage to person
39 or property that resulted in the conviction, any prior convictions
40 for crimes defined in RCW 10.99.020, or for comparable offenses in

1 another state or in federal court, and the totality of the records
2 under review by the court regarding the conviction being considered
3 for vacation, determines that the offense involved domestic violence,
4 and any one of the following factors exist:

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

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

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

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

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

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

31 ~~((i))~~ (ix) The ~~(applicant)~~ defendant is currently restrained
32 by 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.

38 (3) Subject to RCW 9.96.070, every person convicted of
39 prostitution under RCW 9A.88.030 who committed the offense as a
40 result of being a victim of trafficking, RCW 9A.40.100, promoting

1 prostitution in the first degree, RCW 9A.88.070, promoting commercial
2 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
3 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
4 7101 et seq. may apply to the sentencing court for vacation of the
5 applicant's record of conviction for the prostitution offense. An
6 applicant may not have the record of conviction for prostitution
7 vacated if any one of the following is present:

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

11 (b) The offender has been convicted of another crime, except
12 prostitution, in this state, another state, or federal court since
13 the date of conviction. The limitation in this subsection (3)(b) does
14 not apply to convictions where the offender proves by a preponderance
15 of the evidence that he or she committed the crime as a result of
16 being a victim of trafficking, RCW 9A.40.100, promoting prostitution
17 in the first degree, RCW 9A.88.070, promoting commercial sexual abuse
18 of a minor, RCW 9.68A.101, or trafficking in persons under the
19 trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et
20 seq., according to the requirements provided in RCW 9.96.070 for each
21 respective conviction.

22 (4) Every person convicted prior to January 1, 1975, of violating
23 any statute or rule regarding the regulation of fishing activities,
24 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
25 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
26 who claimed to be exercising a treaty Indian fishing right, may apply
27 to the sentencing court for vacation of the applicant's record of the
28 misdemeanor, gross misdemeanor, or felony conviction for the offense.
29 If the person is deceased, a member of the person's family or an
30 official representative of the tribe of which the person was a member
31 may apply to the court on behalf of the deceased person.
32 Notwithstanding the requirements of RCW 9.94A.640, the court shall
33 vacate the record of conviction if:

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

36 (b) The state has been enjoined from taking enforcement action of
37 the statute or rule to the extent that it interferes with a treaty
38 Indian fishing right as determined under *United States v. Washington*,
39 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.

1 899 (D. Oregon 1969), and any posttrial orders of those courts, or
2 any other state supreme court or federal court decision.

3 (5) (a) Every person convicted of a misdemeanor marijuana offense,
4 who was twenty-one years of age or older at the time of the offense,
5 (~~may apply to the sentencing court for a vacation of the~~
6 ~~applicant's~~) qualifies to have his or her record of conviction for
7 the offense vacated by the sentencing court. A misdemeanor marijuana
8 offense includes, but is not limited to: Any offense under RCW
9 69.50.4014, from July 1, 2004, onward, and its predecessor statutes,
10 including RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and
11 RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and any
12 offense under an equivalent municipal ordinance.

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

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

30 (b) When a court vacates a record of domestic violence as defined
31 in RCW 10.99.020 under this section, the state may not use the
32 vacated conviction in a later criminal prosecution unless the
33 conviction was for: (i) Violating the provisions of a restraining
34 order, no-contact order, or protection order restraining or enjoining
35 the person or restraining the person from going on to the grounds of
36 or entering a residence, workplace, school, or day care, or
37 prohibiting the person from knowingly coming within, or knowingly
38 remaining within, a specified distance of a location (RCW 10.99.040,
39 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.44.063, 26.44.150,
40 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii)

1 stalking (RCW 9A.46.110). A vacated conviction under this section is
2 not considered a conviction of such an offense for the purposes of 27
3 C.F.R. 478.11.

4 (c) A conviction vacated on or after July 28, 2019, qualifies as
5 a prior conviction for the purpose of charging a present recidivist
6 offense as defined in RCW 9.94A.030 occurring on or after July 28,
7 2019.

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

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

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

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

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