

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 2793

66th Legislature
2020 Regular Session

Passed by the House March 10, 2020
Yeas 90 Nays 7

**Speaker of the House of
Representatives**

Passed by the Senate March 6, 2020
Yeas 45 Nays 3

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2793** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 2793

AS AMENDED BY THE SENATE

Passed Legislature - 2020 Regular Session

State of Washington 66th Legislature 2020 Regular Session

By House Appropriations (originally sponsored by Representatives Hansen and Irwin)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to vacating criminal records; reenacting and
2 amending RCW 9.96.060; adding a new chapter to Title 10 RCW; and
3 providing expiration dates.

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 conduct a study and a pilot project on streamlining the
7 vacation of criminal convictions under RCW 9.96.060 (2)(b) and (5)(a)
8 and 9.94A.640(2) through an administrative, court-driven process
9 established under section 2 of this act.

10 (2) The administrative office of the courts shall:

11 (a) Determine the types of data currently available to the
12 administrative office of the courts to assess eligibility under RCW
13 9.96.060 (2)(b) and (5)(a) and 9.94A.640(2);

14 (b) Evaluate additional types of information that should be
15 reported to judicial information systems or directly to sentencing
16 courts or the administrative office of the courts to improve the
17 reliability of the screening process;

18 (c) Propose procedures for conducting queries of available
19 records to assess eligibility, which may include, for example: (i) If
20 applicable, whether a person is currently incarcerated for a criminal
21 offense may be determined by reviewing the term of confinement

1 reflected in the judgment and sentence document for his or her most
2 recent criminal conviction; (ii) if applicable, whether a person
3 completed his or her sentencing conditions, excluding legal financial
4 obligations, and satisfied the waiting period under RCW
5 9.96.060(2)(b)(vi)(D) or (vii) or 9.94A.640(2)(e) or (f) may be
6 determined by adding the waiting period to the terms of confinement
7 and community custody reflected in the applicable judgment and
8 sentence document; (iii) if applicable, the period for which a person
9 must not have been convicted of any new criminal offense under RCW
10 9.96.060(2)(b)(viii) or 9.94A.640(2)(c) or (d) may be determined
11 based on the date of the query conducted by the administrative office
12 of the courts, rather than the date of application; and (iv) any
13 other procedures deemed necessary by the administrative office of the
14 courts;

15 (d) Assess whether any changes to laws, policies, or practices or
16 additional resources are necessary to improve the reliability of the
17 process for the pilot program and for launching a similar program
18 statewide;

19 (e) Develop an implementation plan for the pilot program under
20 section 2 of this act; and

21 (f) Make additional recommendations deemed appropriate and
22 necessary by the administrative office of the courts.

23 (3) The administrative office of the courts shall report to the
24 governor and the appropriate committees of the legislature, as
25 follows:

26 (a) A report with findings, recommendations, and an
27 implementation plan must be submitted by December 1, 2020;

28 (b) A status update on the pilot program must be submitted by
29 December 1, 2021; and

30 (c) A final report on the pilot program, including a summary of
31 data collected under section 2 of this act and other findings and
32 recommendations, must be submitted by December 1, 2022.

33 (4) When conducting the evaluation and pilot program required
34 under this section and section 2 of this act, the administrative
35 office of the courts shall consult with county clerks and court
36 administrators, judges, prosecuting attorneys, defense attorneys, the
37 department of corrections, county and city departments, national and
38 local organizations with interest or experience in vacating or
39 sealing criminal convictions, national and local organizations with
40 experience in developing automated vacating or sealing procedures in

1 other states, organizations and persons with relevant technical
2 expertise in computer and records systems, and any other entities
3 with relevant records.

4 (5) This section expires June 30, 2025.

5 NEW SECTION. **Sec. 2.** (1) Beginning July 1, 2021, through June
6 30, 2022, the administrative office of the courts shall conduct a
7 pilot program for streamlining the vacation of criminal convictions
8 under RCW 9.96.060 (2)(b) and (5)(a) and 9.94A.640(2) through an
9 administrative, court-driven process. After consulting with courts of
10 general and limited jurisdiction, the administrative office of the
11 courts shall select a county in which to conduct the pilot program.
12 The sentencing courts within the county selected for the pilot
13 program shall comply with the requirements of this section, and
14 further provide information to the administrative office of the
15 courts necessary for the reporting requirement under subsection (4)
16 of this section.

17 (2) When conducting the pilot program, the administrative office
18 of the courts shall review convictions from the participating county
19 for the purpose of determining whether those convictions should be
20 scheduled for administrative vacation hearings. If appropriate and
21 necessary for producing reliable notifications to sentencing courts
22 participating in the pilot program, the administrative office of the
23 courts may limit the screening process to certain types or classes of
24 convictions or defendants. The process must:

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

28 (b) Rely upon records available to the administrative office of
29 the courts through judicial information systems and other agencies
30 including, but not limited to, the Washington state patrol and the
31 department of corrections;

32 (c) Determine whether a defendant is currently incarcerated for a
33 criminal offense, and whether available records indicate that he or
34 she is precluded from qualifying to vacate his or her misdemeanor
35 conviction under RCW 9.96.060 (2)(b) or (5)(a) or his or her felony
36 conviction under RCW 9.94A.640(2), which may be based on queries and
37 other procedures developed by the administrative office of the courts
38 including, but not limited to, those referenced in section 1(2)(c) of
39 this act;

1 (d) Notify sentencing courts to schedule an administrative
2 vacation hearing for any defendant where a review of available
3 records does not indicate that the defendant is precluded from
4 qualifying to vacate his or her conviction;

5 (e) Prioritize potentially qualifying defendants according to
6 criteria established by the administrative office of the courts so as
7 not to hinder sentencing courts with excessing notifications; and

8 (f) Review records and provide notifications on a monthly or
9 quarterly basis, as determined by the administrative office of the
10 courts.

11 (3)(a) Beginning July 1, 2021, through June 30, 2022, sentencing
12 courts within the county selected for the pilot program under this
13 section shall conduct regularly scheduled administrative vacation
14 hearings.

15 (b) When a participating sentencing court receives notice from
16 the administrative office of the courts under subsection (2) of this
17 section regarding a defendant potentially qualifying to vacate his or
18 her conviction, the court shall set an administrative vacation
19 hearing. At an administrative vacation hearing, the court shall
20 determine whether to vacate the conviction based on the requirements
21 for the particular offense under RCW 9.96.060 (2)(b) or (5)(a) or
22 9.94A.640(2). The defendant is presumed to meet the requirements and
23 the court shall vacate the conviction, unless: Court records indicate
24 that the defendant does not meet the requirements; or the prosecutor
25 objects on the basis that the defendant does not meet the
26 requirements or that the defendant is currently incarcerated for a
27 criminal offense, provided that such objection is made with
28 sufficient particularity and supporting information. If the court
29 determines the defendant is not currently eligible, but is likely to
30 become eligible in the future, the court may set a subsequent
31 administrative vacation hearing at an appropriate date determined by
32 the court. Otherwise, the court may decline to vacate the conviction
33 without setting a subsequent hearing.

34 (c) For the purposes of conducting proceedings under this
35 section, the requirements under RCW 9.96.060 (2)(b) and (5)(a) apply
36 to misdemeanors and the requirements under RCW 9.94A.640(2) apply to
37 felonies, except a defendant is not required to: File a petition or
38 application; provide notice to relevant parties; or appear at an
39 administrative hearing. If the court vacates a conviction under this
40 section, it shall achieve the vacation through the procedure provided

1 in RCW 9.96.060(1). A vacation under this section is processed in the
2 same manner and has the same effect as provided under RCW 9.96.060
3 (6) and (7) for a misdemeanor or RCW 9.94A.640(3) for a felony.
4 Regardless of whether a hearing under this section has previously
5 occurred or is scheduled at a future date, nothing in this section
6 prohibits a defendant from applying to the court to: Vacate a
7 conviction under RCW 9.96.060 or 9.94A.640; or seal his or her
8 conviction or vacation records under court rules.

9 (4) The administrative office of the courts shall collect the
10 following information with respect to convictions where notifications
11 were sent to sentencing courts through the pilot program, including:
12 The number of notifications sent to sentencing courts; the number of
13 administrative hearings held; the number of vacations granted at
14 administrative hearings; the number of convictions where the court
15 set a future administrative hearing based on predicted eligibility;
16 the number of convictions where the court declined to vacate the
17 convictions without setting a future administrative hearing; and
18 other data deemed relevant by the administrative office of the
19 courts. The administrative office of the courts shall include a
20 summary of the data, including by type of court and for the entire
21 pilot program, in its reports required under section 1(3) (b) and (c)
22 of this act.

23 (5) This section expires June 30, 2025.

24 **Sec. 3.** RCW 9.96.060 and 2019 c 400 s 1, 2019 c 331 s 4, and
25 2019 c 46 s 5010 are each reenacted and amended to read as follows:

26 (1) When vacating a conviction under this section, the court
27 effectuates the vacation by: (a)(i) Permitting the applicant to
28 withdraw the applicant's plea of guilty and to enter a plea of not
29 guilty; or (ii) if the applicant has been convicted after a plea of
30 not guilty, the court setting aside the verdict of guilty; and (b)
31 the court dismissing the information, indictment, complaint, or
32 citation against the applicant and vacating the judgment and
33 sentence.

34 (2) (a) Every person convicted of a misdemeanor or gross
35 misdemeanor offense may apply to the sentencing court for a vacation
36 of the applicant's record of conviction for the offense. If the court
37 finds the applicant meets the requirements of (b) of this subsection,
38 the court may in its discretion vacate the record of conviction.

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (3) Subject to RCW 9.96.070, every person convicted of
30 prostitution under RCW 9A.88.030 who committed the offense as a
31 result of being a victim of trafficking, RCW 9A.40.100, promoting
32 prostitution in the first degree, RCW 9A.88.070, promoting commercial
33 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
34 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
35 7101 et seq. may apply to the sentencing court for vacation of the
36 applicant's record of conviction for the prostitution offense. An
37 applicant may not have the record of conviction for prostitution
38 vacated if any one of the 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 for any crime other than prostitution; or

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

15 (4) Every person convicted prior to January 1, 1975, of violating
16 any statute or rule regarding the regulation of fishing activities,
17 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
18 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
19 who claimed to be exercising a treaty Indian fishing right, may apply
20 to the sentencing court for vacation of the applicant's record of the
21 misdemeanor, gross misdemeanor, or felony conviction for the offense.
22 If the person is deceased, a member of the person's family or an
23 official representative of the tribe of which the person was a member
24 may apply to the court on behalf of the deceased person.
25 Notwithstanding the requirements of RCW 9.94A.640, the court shall
26 vacate the record of conviction if:

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

29 (b) The state has been enjoined from taking enforcement action of
30 the statute or rule to the extent that it interferes with a treaty
31 Indian fishing right as determined under *United States v. Washington*,
32 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
33 899 (D. Oregon 1969), and any posttrial orders of those courts, or
34 any other state supreme court or federal court decision.

35 (5) (a) Every person convicted of a misdemeanor marijuana offense,
36 who was twenty-one years of age or older at the time of the offense,
37 (~~may apply to the sentencing court for a vacation of the~~
38 ~~applicant's~~) qualifies to have his or her record of conviction for
39 the offense vacated by the sentencing court. A misdemeanor marijuana
40 offense includes, but is not limited to: Any offense under RCW

1 69.50.4014, from July 1, 2004, onward, and its predecessor statutes,
2 including RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and
3 RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and any
4 offense under an equivalent municipal ordinance.

5 (b) If ((an applicant qualifies)) a qualifying defendant applies
6 to the sentencing court under this subsection, the court shall vacate
7 the record of conviction.

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

22 (b) When a court vacates a record of domestic violence as defined
23 in RCW 10.99.020 under this section, the state may not use the
24 vacated conviction in a later criminal prosecution unless the
25 conviction was for: (i) Violating the provisions of a restraining
26 order, no-contact order, or protection order restraining or enjoining
27 the person or restraining the person from going on to the grounds of
28 or entering a residence, workplace, school, or day care, or
29 prohibiting the person from knowingly coming within, or knowingly
30 remaining within, a specified distance of a location (RCW 10.99.040,
31 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.44.063, 26.44.150,
32 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii)
33 stalking (RCW 9A.46.110). A vacated conviction under this section is
34 not considered a conviction of such an offense for the purposes of
35 C.F.R. 478.11.

36 (c) A conviction vacated on or after July 28, 2019, qualifies as
37 a prior conviction for the purpose of charging a present recidivist
38 offense as defined in RCW 9.94A.030 occurring on or after July 28,
39 2019.

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

13 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act constitute a
14 new chapter in Title 10 RCW.

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