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**SENATE BILL 5605**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Nguyen, Keiser, Hunt, Salomon, Hasegawa, Saldaña, Das, Randall, Darneille, Kuderer, Pedersen, and Wilson, C.

Read first time 01/24/19. Referred to Committee on Law & Justice.

1 AN ACT Relating to misdemeanor marijuana offense convictions; and  
2 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 2017 c 336 s 2, 2017 c 272 s 9, and  
5 2017 c 128 s 1 are each reenacted and amended to read as follows:

6 (1) Every person convicted of a misdemeanor marijuana offense  
7 under RCW 69.50.4014, who was twenty-one years of age or older at the  
8 time of the offense, may apply to the sentencing court for a vacation  
9 of the applicant's record of conviction for the offense. The court  
10 shall vacate the record of conviction by: (a)(i) Permitting the  
11 applicant to withdraw the applicant's plea of guilty and to enter a  
12 plea of not guilty; or (ii) if the applicant has been convicted after  
13 a plea of not guilty, the court setting aside the verdict of guilty;  
14 and (b) the court dismissing the information, indictment, complaint,  
15 or citation against the applicant and vacating the judgment and  
16 sentence.

17 (2) Except as provided in subsection (1) of this section, every  
18 person convicted of a misdemeanor or gross misdemeanor offense who  
19 has completed all of the terms of the sentence for the misdemeanor or  
20 gross misdemeanor offense may apply to the sentencing court for a  
21 vacation of the applicant's record of conviction for the offense. If

1 the court finds the applicant meets the tests prescribed in  
2 subsection ~~((2))~~ (3) of this section, the court may in its  
3 discretion vacate the record of conviction by: (a) (i) Permitting the  
4 applicant to withdraw the applicant's plea of guilty and to enter a  
5 plea of not guilty; or (ii) if the applicant has been convicted after  
6 a plea of not guilty, the court setting aside the verdict of guilty;  
7 and (b) the court dismissing the information, indictment, complaint,  
8 or citation against the applicant and vacating the judgment and  
9 sentence.

10 ~~((2))~~ (3) Pursuant to subsection (2) of this section, an  
11 applicant may not have the record of conviction for a misdemeanor or  
12 gross misdemeanor offense vacated if any one of the following is  
13 present:

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

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

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

26 (d) The offense was any misdemeanor or gross misdemeanor  
27 violation, including attempt, of chapter 9.68 RCW (obscenity and  
28 pornography), chapter 9.68A RCW (sexual exploitation of children), or  
29 chapter 9A.44 RCW (sex offenses);

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

1 (i) The applicant has not provided written notification of the  
2 vacation petition to the prosecuting attorney's office that  
3 prosecuted the offense for which vacation is sought, or has not  
4 provided that notification to the court;

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

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

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

18 (f) For any offense other than those described in (e) of this  
19 subsection, less than three years have passed since the person  
20 completed the terms of the sentence, including any financial  
21 obligations;

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

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

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

31 (~~(3)~~) (4) Subject to RCW 9.96.070, every person convicted of  
32 prostitution under RCW 9A.88.030 who committed the offense as a  
33 result of being a victim of trafficking, RCW 9A.40.100, promoting  
34 prostitution in the first degree, RCW 9A.88.070, promoting commercial  
35 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons  
36 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.  
37 7101 et seq. may apply to the sentencing court for vacation of the  
38 applicant's record of conviction for the prostitution offense. An  
39 applicant may not have the record of conviction for prostitution  
40 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)~~) (5) Every person convicted prior to January 1, 1975, of  
16 violating any statute or rule regarding the regulation of fishing  
17 activities, including, but not limited to, RCW 75.08.260, 75.12.060,  
18 75.12.070, 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and  
19 77.16.240 who claimed to be exercising a treaty Indian fishing right,  
20 may apply to the sentencing court for vacation of the applicant's  
21 record of the misdemeanor, gross misdemeanor, or felony conviction  
22 for the offense. If the person is deceased, a member of the person's  
23 family or an official representative of the tribe of which the person  
24 was a member 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)~~) (6)(a) Once the court vacates a record of conviction  
36 under subsections (1) and (2) of this section, the person shall be  
37 released from all penalties and disabilities resulting from the  
38 offense and the fact that the person has been convicted of the  
39 offense shall not be included in the person's criminal history for  
40 purposes of determining a sentence in any subsequent conviction. For

1 all purposes, including responding to questions on employment or  
2 housing applications, a person whose conviction has been vacated  
3 under subsections (1) and (2) of this section may state that he or  
4 she has never been convicted of that crime. Except as provided in (b)  
5 of this subsection, nothing in this section affects or prevents the  
6 use of an offender's prior conviction in a later criminal  
7 prosecution.

8 (b) When a court vacates a record of domestic violence as defined  
9 in RCW 10.99.020 under this section, the state may not use the  
10 vacated conviction in a later criminal prosecution unless the  
11 conviction was for: (i) Violating the provisions of a restraining  
12 order, no-contact order, or protection order restraining or enjoining  
13 the person or restraining the person from going on to the grounds of  
14 or entering a residence, workplace, school, or day care, or  
15 prohibiting the person from knowingly coming within, or knowingly  
16 remaining within, a specified distance of a location (RCW 10.99.040,  
17 10.99.050, 26.09.300, 26.10.220, (~~26.26.138~~) 26.26B.050, 26.44.063,  
18 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);  
19 or (ii) stalking (RCW 9A.46.110). A vacated conviction under this  
20 section is not considered a conviction of such an offense for the  
21 purposes of 27 C.F.R. 478.11.

22 (~~(6)~~) (7) All costs incurred by the court and probation  
23 services shall be paid by the person making the motion to vacate the  
24 record unless a determination is made pursuant to chapter 10.101 RCW  
25 that the person making the motion is indigent, at the time the motion  
26 is brought.

27 (~~(7)~~) (8) The clerk of the court in which the vacation order is  
28 entered shall immediately transmit the order vacating the conviction  
29 to the Washington state patrol identification section and to the  
30 local police agency, if any, which holds criminal history information  
31 for the person who is the subject of the conviction. The Washington  
32 state patrol and any such local police agency shall immediately  
33 update their records to reflect the vacation of the conviction, and  
34 shall transmit the order vacating the conviction to the federal  
35 bureau of investigation. A conviction that has been vacated under  
36 this section may not be disseminated or disclosed by the state patrol  
37 or local law enforcement agency to any person, except other criminal  
38 justice enforcement agencies.

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