

2 **SHB 1392** - S AMD - 520

3 By Senators Heavey, Kline, McCaslin, Costa and Honeyford

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9.96 RCW  
8 to read as follows:

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

20 (2) An applicant may not have the record of conviction for a  
21 misdemeanor or gross misdemeanor offense cleared if any one of the  
22 following is present: (a) There are any criminal charges against the  
23 applicant pending in any court of this state or another state, or in  
24 any federal court; (b) the offense was a violent offense as defined in  
25 RCW 9.94A.030 or an attempt to commit a violent offense; (c) the  
26 offense was a violation of RCW 46.61.502 (Driving while under the  
27 influence), 46.61.504 (Actual physical control while under the  
28 influence), or 9.91.020 (Operating a railroad, etc. while intoxicated);  
29 (d) the offense was any misdemeanor or gross misdemeanor attempt to  
30 commit a sex offense as defined in RCW 9.94A.030; (e) the offense was  
31 any misdemeanor or gross misdemeanor violation, including attempt, of  
32 chapter 9.68 (Obscenity and pornography) or 9.68A (Sexual exploitation  
33 of children) RCW; (f) the applicant has been convicted of a new crime  
34 in this state, another state, or federal court since the date the  
35 applicant completed all of the terms of the sentence for the  
36 misdemeanor or gross misdemeanor offense; (g) the offense was a  
37 domestic violence offense as defined in RCW 10.99.020, and less than

1 five years have passed since the date the offender successfully  
2 completed all terms of his or her sentence, including probation. After  
3 the applicable time limit, the court may only grant the motion to  
4 vacate a domestic violence conviction if, upon review of the police  
5 report, any evidence from the prosecution or the defense, a statement  
6 from the victim, and a review of the defendant's behavior since the  
7 commission of the crime, the court finds that the defendant is no  
8 longer a danger to the public and has been rehabilitated; or (h) less  
9 than five years have passed since the date the applicant completed all  
10 of the terms of the sentence for the misdemeanor or gross misdemeanor  
11 offense.

12 (3) Once the court vacates a record of conviction under subsection  
13 (1) of this section, the person shall be released from all penalties  
14 and disabilities resulting from the offense, except that the fact that  
15 the person had been convicted of the offense may be used in any  
16 subsequent criminal prosecution consistent with any other legal use and  
17 may be included in the person's criminal history for purposes of  
18 determining a sentence in any subsequent conviction. For all other  
19 purposes, including responding to questions on employment applications,  
20 a person whose conviction has been vacated may state that the person  
21 has never been convicted of that crime.

22 (4) All costs incurred by the court and probation services shall be  
23 paid by the person making the motion to vacate the record unless a  
24 determination is made that the person making the motion is indigent at  
25 the time the motion is brought.

26 (5) Any conviction that is vacated under this section shall be  
27 treated as nonconviction data as defined in chapter 10.97 RCW for the  
28 purposes of the defendant's criminal history. The clerk of the court  
29 in which the motion is brought shall transmit the order vacating the  
30 conviction to the Washington state patrol. The Washington state patrol  
31 shall transmit the order vacating the conviction to the federal bureau  
32 of investigation.

33 (6) No person may seek or be granted a vacation of record of  
34 conviction for an offense committed after the date upon which the  
35 person received a vacation of record of conviction for any other  
36 offense.

37 **Sec. 2.** RCW 9.94A.230 and 1987 c 486 s 7 are each amended to read  
38 as follows:

1 (1) Every offender who has been discharged under RCW 9.94A.220 may  
2 apply to the sentencing court for a vacation of the offender's record  
3 of conviction. If the court finds the offender meets the tests  
4 prescribed in subsection (2) of this section, the court may in its  
5 discretion clear the record of conviction by: (a)(i) Permitting the  
6 offender to withdraw the offender's plea of guilty and to enter a plea  
7 of not guilty; or (~~(b)~~) (ii) if the offender has been convicted after  
8 a plea of not guilty, (~~by~~) the court setting aside the verdict of  
9 guilty; and (~~(e) by~~) (b) the court dismissing the information or  
10 indictment against the offender.

11 (2) An offender may not have the record of conviction cleared if  
12 any one of the following is present: (a) There are any criminal  
13 charges against the offender pending in any court of this state or  
14 another state, or in any federal court; (b) the offense was a violent  
15 offense as defined in RCW 9.94A.030; (c) the offense was a class C  
16 felony domestic violence offense as defined in RCW 10.99.020, and less  
17 than five years have passed since the date the applicant was discharged  
18 under RCW 9.94A.220 or the offense was a class B felony domestic  
19 violence offense as defined in RCW 10.99.020, and less than ten years  
20 have passed since the date the applicant was discharged under RCW  
21 9.94A.220. After the applicable time limit, the court may only grant  
22 the motion to vacate a domestic violence conviction if, upon review of  
23 the police report, any evidence from the prosecution or the defense, a  
24 statement from the victim, and a review of the defendant's behavior  
25 since the commission of the crime, the court finds that the defendant  
26 is no longer a danger to the public and has been rehabilitated and the  
27 offense is not otherwise excluded by (b) or (d) of this subsection; (d)  
28 the offense was a crime against persons as defined in RCW 43.43.830;  
29 (~~(d)~~) (e) the offender has been convicted of a new crime in this  
30 state, another state, or federal court since the date of the offender's  
31 discharge under RCW 9.94A.220; (~~(e)~~) (f) the offense is a class B  
32 felony and less than ten years have passed since the date the applicant  
33 was discharged under RCW 9.94A.220; (~~and (f)~~) or (g) the offense was  
34 a class C felony and less than five years have passed since the date  
35 the applicant was discharged under RCW 9.94A.220.

36 (3) Once the court vacates a record of conviction under subsection  
37 (1) of this section, the fact that the offender has been convicted of  
38 the offense shall not be included in the offender's criminal history  
39 for purposes of determining a sentence in any subsequent conviction,

1 and the offender shall be released from all penalties and disabilities  
2 resulting from the offense. For all purposes, ~~((including responding~~  
3 ~~to questions on employment applications,))~~ an offender whose conviction  
4 has been vacated may state that the offender has never been convicted  
5 of that crime, including responses to questions when making application  
6 for employment. Nothing in this section affects or prevents the use of  
7 an offender's prior conviction in a later criminal prosecution.

8 (4) All costs incurred by the court and probation services shall be  
9 paid by the person making the motion to vacate the record unless a  
10 determination is made that the person making the motion is indigent at  
11 the time the motion is brought.

12 (5) Any conviction that is vacated under this section shall be  
13 treated as nonconviction data as defined in chapter 10.97 RCW for the  
14 purposes of the defendant's criminal history. The clerk of the court  
15 in which the motion is brought shall transmit the order vacating the  
16 conviction to the Washington state patrol. The Washington state patrol  
17 shall transmit the order vacating the conviction to the federal bureau  
18 of investigation.

19 (6) No person may seek or be granted a vacation of record of  
20 conviction for an offense committed after the date upon which the  
21 person received a vacation of record of conviction for any other  
22 offense.

23 **Sec. 3.** RCW 9.95.240 and 1957 c 227 s 7 are each amended to read  
24 as follows:

25 (1) Every defendant who has fulfilled the conditions of his or her  
26 probation for the entire period thereof, or who ~~((shall have))~~ has been  
27 discharged from probation prior to the termination of the period  
28 thereof, may ~~((at any time prior to the expiration of the maximum~~  
29 period of punishment for the offense for which he has been convicted be  
30 permitted in the discretion of the court to withdraw his plea of guilty  
31 and enter a plea of not guilty, or if he has been convicted after a  
32 plea of not guilty, the court may in its discretion set aside the  
33 verdict of guilty; and in either case, the court may thereupon dismiss  
34 the information or indictment against such defendant, who shall  
35 thereafter be released from all penalties and disabilities resulting  
36 from the offense or crime of which he has been convicted. The  
37 probationer shall be informed of this right in his probation papers:  
38 PROVIDED, That in any subsequent prosecution, for any other offense,

1 ~~such prior conviction may be pleaded and proved, and shall have the~~  
2 ~~same effect as if probation had not been granted, or the information or~~  
3 ~~indictment dismissed)) apply to the sentencing court for a vacation of~~  
4 ~~the defendant's record of conviction. If the court finds the defendant~~  
5 ~~meets the tests prescribed in subsection (2) of this section, the court~~  
6 ~~may in its discretion clear the record of conviction by: (a)(i)~~  
7 ~~Permitting the defendant to withdraw the defendant's plea of guilty and~~  
8 ~~to enter a plea of not guilty; or (ii) if the defendant has been~~  
9 ~~convicted after a plea of not guilty, the court setting aside the~~  
10 ~~verdict of guilty; and (b) the court dismissing the information or~~  
11 ~~indictment against the defendant.~~

12 (2) An offender may not have the record of conviction cleared if:  
13 (a) There are any criminal charges against the defendant pending in any  
14 court of this state or another state, or in any federal court; (b) the  
15 offense was a violent offense as defined in RCW 9.94A.030; (c) the  
16 offense was a felony crime against persons as defined in RCW 43.43.830;  
17 (d) the defendant has been convicted of a new crime in this state,  
18 another state, or federal court since the date the defendant  
19 successfully completed probation; (e) the offense is a class B felony  
20 and less than ten years have passed since the date the defendant  
21 successfully completed probation; (f) the offense was a class C felony  
22 and less than five years have passed since the date the defendant  
23 successfully completed probation; (g) the offense was a misdemeanor or  
24 gross misdemeanor and less than five years have passed since the date  
25 the defendant successfully completed probation; or (h) the offense was  
26 a misdemeanor or gross misdemeanor and operated to interrupt the  
27 washout of a class B felony under RCW 9.94A.360 and less than ten years  
28 have passed since the date of the conviction for the misdemeanor or  
29 gross misdemeanor.

30 (3) Once the court vacates a record of conviction under subsection  
31 (1) of this section, the fact that the offender has been convicted of  
32 the offense shall not be included in the offender's criminal history  
33 for purposes of determining a sentence in any subsequent conviction,  
34 and the offender shall be released from all penalties and disabilities  
35 resulting from the offense. For all purposes, an offender whose  
36 conviction has been vacated may state that the offender has never been  
37 convicted of that crime, including responses to questions when making  
38 application for employment. Nothing in this section affects or

1 prevents the use of an offender's prior conviction in a later criminal  
2 case.

3 (4) No person may seek or be granted a vacation of record of  
4 conviction for an offense committed after the date upon which the  
5 person received a vacation of record of conviction for any other  
6 offense.

7 (5) Any conviction that is vacated under this section shall be  
8 treated as nonconviction data as defined in chapter 10.97 RCW for the  
9 purposes of the defendant's criminal history. The clerk of the court  
10 in which the motion is brought shall transmit the order vacating the  
11 conviction to the Washington state patrol. The Washington state patrol  
12 shall transmit the order vacating the conviction to the federal bureau  
13 of investigation.

14 (6) All costs incurred by the court and probation services shall be  
15 paid by the person making the motion to vacate the record unless a  
16 determination is made that the person making the motion is indigent at  
17 the time the motion is brought.

18 **Sec. 4.** RCW 13.50.050 and 1997 c 338 s 40 are each amended to read  
19 as follows:

20 (1) This section governs records relating to the commission of  
21 juvenile offenses, including records relating to diversions.

22 (2) The official juvenile court file of any alleged or proven  
23 juvenile offender shall be open to public inspection, unless sealed  
24 pursuant to subsection (~~((11))~~) (12) of this section.

25 (3) All records other than the official juvenile court file are  
26 confidential and may be released only as provided in this section, RCW  
27 13.50.010, 13.40.215, and 4.24.550.

28 (4) Except as otherwise provided in this section and RCW 13.50.010,  
29 records retained or produced by any juvenile justice or care agency may  
30 be released to other participants in the juvenile justice or care  
31 system only when an investigation or case involving the juvenile in  
32 question is being pursued by the other participant or when that other  
33 participant is assigned the responsibility for supervising the  
34 juvenile.

35 (5) Except as provided in RCW 4.24.550, information not in an  
36 official juvenile court file concerning a juvenile or a juvenile's  
37 family may be released to the public only when that information could

1 not reasonably be expected to identify the juvenile or the juvenile's  
2 family.

3 (6) Notwithstanding any other provision of this chapter, the  
4 release, to the juvenile or his or her attorney, of law enforcement and  
5 prosecuting attorneys' records pertaining to investigation, diversion,  
6 and prosecution of juvenile offenses shall be governed by the rules of  
7 discovery and other rules of law applicable in adult criminal  
8 investigations and prosecutions.

9 (7) The juvenile court and the prosecutor may set up and maintain  
10 a central record-keeping system which may receive information on all  
11 alleged juvenile offenders against whom a complaint has been filed  
12 pursuant to RCW 13.40.070 whether or not their cases are currently  
13 pending before the court. The central record-keeping system may be  
14 computerized. If a complaint has been referred to a diversion unit,  
15 the diversion unit shall promptly report to the juvenile court or the  
16 prosecuting attorney when the juvenile has agreed to diversion. An  
17 offense shall not be reported as criminal history in any central  
18 record-keeping system without notification by the diversion unit of the  
19 date on which the offender agreed to diversion.

20 (8) Upon request of the victim of a crime or the victim's immediate  
21 family, the identity of an alleged or proven juvenile offender alleged  
22 or found to have committed a crime against the victim and the identity  
23 of the alleged or proven juvenile offender's parent, guardian, or  
24 custodian and the circumstance of the alleged or proven crime shall be  
25 released to the victim of the crime or the victim's immediate family.

26 (9) Subject to the rules of discovery applicable in adult criminal  
27 prosecutions, the juvenile offense records of an adult criminal  
28 defendant or witness in an adult criminal proceeding shall be released  
29 upon request to prosecution and defense counsel after a charge has  
30 actually been filed. The juvenile offense records of any adult  
31 convicted of a crime and placed under the supervision of the adult  
32 corrections system shall be released upon request to the adult  
33 corrections system.

34 (10) In any case in which an information has been filed pursuant to  
35 RCW 13.40.100 or a complaint has been filed with the prosecutor and  
36 referred for diversion pursuant to RCW 13.40.070, the person the  
37 subject of the information or complaint may file a motion with the  
38 court to have the court vacate its order and findings, if any, and,  
39 subject to subsection ((+22+)) (23) of this section, order the sealing

1 of the official juvenile court file, the social file, and records of  
2 the court and of any other agency in the case.

3 (11) The court has the discretion to grant the motion to seal  
4 records made pursuant to subsection (10) of this section if it finds  
5 that for class B offenses other than sex offenses, since the last date  
6 of release from confinement, including full-time residential treatment,  
7 if any, or entry of disposition:

8 (a) The person has spent five consecutive years in the community  
9 without committing another offense or crime that results in conviction  
10 in this state, another state, or federal court;

11 (b) There are no criminal charges against the person pending in any  
12 court of this state, another state, or federal court;

13 (c) Through credible evidence presented to the court that the  
14 person has a present career path that is impeded by the record of the  
15 courts order and findings;

16 (d) That the person is twenty-one years of age or older; and

17 (e) The person has lived an exemplary life since the court's order  
18 and findings.

19 (12) The court shall grant the motion to seal records made pursuant  
20 to subsection (10) of this section if it finds that:

21 (a) For class B offenses other than sex offenses, since the last  
22 date of release from confinement, including full-time residential  
23 treatment, if any, or entry of disposition, the person has spent ten  
24 consecutive years in the community without committing any offense or  
25 crime that subsequently results in conviction. For class C offenses,  
26 gross misdemeanors, and misdemeanors, other than sex offenses, since  
27 the last date of release from confinement, including full-time  
28 residential treatment, if any, or entry of disposition, the person has  
29 spent five consecutive years in the community without committing any  
30 offense or crime that subsequently results in conviction;

31 (b) No proceeding is pending against the moving party seeking the  
32 conviction of a juvenile offense or a criminal offense;

33 (c) No proceeding is pending seeking the formation of a diversion  
34 agreement with that person;

35 (d) The person has not been convicted of a class A or sex offense;  
36 and

37 (e) Full restitution has been paid.

38 ~~((12))~~ (13) The person making a motion pursuant to subsection  
39 (10) of this section shall give reasonable notice of the motion to the

1 prosecution and to any person or agency whose files are sought to be  
2 sealed.

3 ~~((+13+))~~ (14) If the court grants the motion to seal made pursuant  
4 to subsection (10) of this section, it shall, subject to subsection  
5 ~~((+22+))~~ (23) of this section, order sealed the official juvenile court  
6 file, the social file, and other records relating to the case as are  
7 named in the order. Thereafter, the proceedings in the case shall be  
8 treated as if they never occurred, and the subject of the records may  
9 reply accordingly to any inquiry about the events, records of which are  
10 sealed. Any agency shall reply to any inquiry concerning confidential  
11 or sealed records that records are confidential, and no information can  
12 be given about the existence or nonexistence of records concerning an  
13 individual. Any record that is sealed under this section shall be  
14 treated as nonconviction data as defined in chapter 10.97 RCW for the  
15 purposes of the defendant's criminal history. The clerk of the court  
16 in which the motion is brought shall transmit the order sealing the  
17 record to the Washington state patrol. The Washington state patrol  
18 shall transmit the order sealing the record to the federal bureau of  
19 investigation.

20 ~~((+14+))~~ (15) Inspection of the files and records included in the  
21 order to seal may thereafter be permitted only by order of the court  
22 upon motion made by the person who is the subject of the information or  
23 complaint, except as otherwise provided in RCW 13.50.010(8) and  
24 subsection ~~((+22+))~~ (23) of this section.

25 ~~((+15+))~~ (16) Any adjudication of a juvenile offense or a crime  
26 subsequent to sealing has the effect of nullifying the sealing order.  
27 Any charging of an adult felony subsequent to the sealing has the  
28 effect of nullifying the sealing order for the purposes of chapter  
29 9.94A RCW.

30 ~~((+16+))~~ (17) A person eighteen years of age or older whose  
31 criminal history consists of only one referral for diversion may  
32 request that the court order the records in that case destroyed. The  
33 request shall be granted, subject to subsection ~~((+22+))~~ (23) of this  
34 section, if the court finds that two years have elapsed since  
35 completion of the diversion agreement.

36 ~~((+17+))~~ (18) If the court grants the motion to destroy records  
37 made pursuant to subsection ~~((+16+))~~ (17) of this section, it shall,  
38 subject to subsection ~~((+22+))~~ (23) of this section, order the official

1 juvenile court file, the social file, and any other records named in  
2 the order to be destroyed.

3 ~~((+18+))~~ (19) The person making the motion pursuant to subsection  
4 ~~((+16+))~~ (17) of this section shall give reasonable notice of the  
5 motion to the prosecuting attorney and to any agency whose records are  
6 sought to be destroyed.

7 ~~((+19+))~~ (20) Any juvenile to whom the provisions of this section  
8 may apply shall be given written notice of his or her rights under this  
9 section at the time of his or her disposition hearing or during the  
10 diversion process.

11 ~~((+20+))~~ (21) Nothing in this section may be construed to prevent  
12 a crime victim or a member of the victim's family from divulging the  
13 identity of the alleged or proven juvenile offender or his or her  
14 family when necessary in a civil proceeding.

15 ~~((+21+))~~ (22) Any juvenile justice or care agency may, subject to  
16 the limitations in subsection ~~((+22+))~~ (23) of this section and (a) and  
17 (b) of this subsection, develop procedures for the routine destruction  
18 of records relating to juvenile offenses and diversions.

19 (a) Records may be routinely destroyed only when the person the  
20 subject of the information or complaint has attained twenty-three years  
21 of age or older, or is eighteen years of age or older and his or her  
22 criminal history consists entirely of one diversion agreement and two  
23 years have passed since completion of the agreement.

24 (b) The court may not routinely destroy the official juvenile court  
25 file or recordings or transcripts of any proceedings.

26 ~~((+22+))~~ (23) No identifying information held by the Washington  
27 state patrol in accordance with chapter 43.43 RCW is subject to  
28 destruction or sealing under this section. For the purposes of this  
29 subsection, identifying information includes photographs, fingerprints,  
30 palmprints, soleprints, toeprints and any other data that identifies a  
31 person by physical characteristics, name, birthdate or address, but  
32 does not include information regarding criminal activity, arrest,  
33 charging, diversion, conviction or other information about a person's  
34 treatment by the criminal justice system or about the person's  
35 behavior.

36 ~~((+23+))~~ (24) Information identifying child victims under age  
37 eighteen who are victims of sexual assaults by juvenile offenders is  
38 confidential and not subject to release to the press or public without  
39 the permission of the child victim or the child's legal guardian.

1 Identifying information includes the child victim's name, addresses,  
2 location, photographs, and in cases in which the child victim is a  
3 relative of the alleged perpetrator, identification of the relationship  
4 between the child and the alleged perpetrator. Information identifying  
5 a child victim of sexual assault may be released to law enforcement,  
6 prosecutors, judges, defense attorneys, or private or governmental  
7 agencies that provide services to the child victim of sexual assault.

8 (25) All costs incurred by the court and probation services shall  
9 be paid by the person making the motion to seal the record under  
10 subsection (10) of this section unless a determination is made that the  
11 person making the motion is indigent at the time the motion is  
12 brought."

13 **SHB 1392** - S AMD - 520

14 By Senators Heavey, Kline, McCaslin, Costa and Honeyford

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16 On page 1, line 1 of the title, after "conviction;" strike the  
17 remainder of the title and insert "amending RCW 9.94A.230, 9.95.240,  
18 and 13.50.050; and adding a new section to chapter 9.96 RCW."

--- END ---