
HOUSE BILL 2087

State of Washington 59th Legislature 2005 Regular Session

By Representatives Lantz and Linville

Read first time 02/17/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to allowing the vacation of domestic violence
2 misdemeanor and gross misdemeanor convictions; amending RCW 9.96.060;
3 and adding a new section to chapter 9.96 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.96 RCW
6 to read as follows:

7 (1) This section applies to misdemeanor and gross misdemeanor
8 domestic violence offenses as identified in RCW 10.99.020.

9 (2)(a) In addition to any vacation of records of conviction under
10 RCW 9.96.060, a person may apply to the sentencing court under this
11 section for a vacation of his or her records of convictions for one or
12 more misdemeanor or gross misdemeanor offenses as identified in RCW
13 10.99.020.

14 (b) If the court finds the applicant meets the criteria prescribed
15 in subsection (3) of this section, the court may in its discretion
16 vacate the applicant's records of convictions by: (i)(A) Permitting
17 the applicant to withdraw the applicant's plea of guilty and to enter
18 a plea of not guilty; or (B) if the applicant has been convicted after
19 a plea of not guilty, the court setting aside the verdict of guilty;

1 and (ii) the court dismissing the information, indictment, complaint,
2 or citation against the applicant and vacating the judgment and
3 sentence.

4 (3)(a) An applicant may have his or her records of convictions
5 vacated if:

6 (i) There are no criminal charges against the applicant pending in
7 any court of this state or another state, or in any federal court;

8 (ii) Five years have elapsed since the applicant completed the
9 terms of the original conditions of the sentence for the offense,
10 including any legal financial obligations;

11 (iii) The applicant has successfully completed a domestic violence
12 perpetrator program meeting the minimum qualifications established by
13 RCW 26.50.150;

14 (iv) The prosecuting attorney's office that prosecuted the offense
15 for which vacation is sought consents to the vacation; and

16 (v) The court finds that the applicant is remorseful for the
17 offense.

18 (b) Notwithstanding the criteria in (a) of this subsection and RCW
19 9.96.060, an applicant may have his or her records of convictions
20 vacated if a court finds there are compelling circumstances justifying
21 vacation. In determining compelling circumstances, the court may
22 consider factors including, but not limited to, the wishes of the
23 victim of the offense for which vacation is sought and whether the
24 court's denial of the request to vacate would cause a hardship to
25 family members of the applicant.

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

36 (5) All costs incurred by the court and probation services shall be
37 paid by the person making the motion to vacate the record unless a

1 determination is made pursuant to chapter 10.101 RCW that the person
2 making the motion is indigent at the time the motion is brought.

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

15 **Sec. 2.** RCW 9.96.060 and 2001 c 140 s 1 are each amended to read
16 as follows:

17 (1) Every person convicted of a misdemeanor or gross misdemeanor
18 offense who has completed all of the terms of the sentence for the
19 misdemeanor or gross misdemeanor offense may apply to the sentencing
20 court for a vacation of the applicant's record of conviction for the
21 offense. If the court finds the applicant meets the tests prescribed
22 in subsection (2) of this section, the court may in its discretion
23 vacate the record of conviction by: (a)(i) Permitting the applicant to
24 withdraw the applicant's plea of guilty and to enter a plea of not
25 guilty; or (ii) if the applicant has been convicted after a plea of not
26 guilty, the court setting aside the verdict of guilty; and (b) the
27 court dismissing the information, indictment, complaint, or citation
28 against the applicant and vacating the judgment and sentence.

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

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

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

36 (c) The offense was a violation of RCW 46.61.502 (driving while

1 under the influence), 46.61.504 (actual physical control while under
2 the influence), or 9.91.020 (operating a railroad, etc. while
3 intoxicated);

4 (d) The offense was any misdemeanor or gross misdemeanor violation,
5 including attempt, of chapter 9.68 RCW (obscenity and pornography),
6 chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44
7 RCW (sex offenses);

8 (e) Except as provided in section 1 of this act, the applicant was
9 convicted of a misdemeanor or gross misdemeanor offense as ((defined))
10 identified in RCW 10.99.020, or the court determines after a review of
11 the court file that the offense was committed by one family member or
12 household member against another, or the court, after considering the
13 damage to person or property that resulted in the conviction, any prior
14 convictions for crimes ((defined)) identified in RCW 10.99.020, or for
15 comparable offenses in another state or in federal court, and the
16 totality of the records under review by the court regarding the
17 conviction being considered for vacation, determines that the offense
18 involved domestic violence, and any one of the following factors exist:

19 (i) The applicant has not provided written notification of the
20 vacation petition to the prosecuting attorney's office that prosecuted
21 the offense for which vacation is sought, or has not provided that
22 notification to the court; or

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

27 ~~(iii) The applicant has signed an affidavit under penalty of~~
28 ~~perjury affirming that the applicant has not previously had a~~
29 ~~conviction for a domestic violence offense, and a criminal history~~
30 ~~check reveals that the applicant has had such a conviction; or~~

31 ~~(iv))~~ Less than five years have elapsed since the person completed
32 the terms of the original conditions of the sentence, including any
33 financial obligations and successful completion of any treatment
34 ordered as a condition of sentencing;

35 (f) For any offense other than those described in (e) of this
36 subsection, less than three years have passed since the person
37 completed the terms of the sentence, including any financial
38 obligations;

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

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

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

10 (3) Once the court vacates a record of conviction under subsection
11 (1) of this section, the person shall be released from all penalties
12 and disabilities resulting from the offense and the fact that the
13 person has been convicted of the offense shall not be included in the
14 person's criminal history for purposes of determining a sentence in any
15 subsequent conviction. For all purposes, including responding to
16 questions on employment or housing applications, a person whose
17 conviction has been vacated under subsection (1) of this section may
18 state that he or she has never been convicted of that crime. Nothing
19 in this section affects or prevents the use of an offender's prior
20 conviction in a later criminal prosecution.

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

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

37 (6) A vacation of an applicant's record of conviction under this

1 section shall not preclude any vacation of an applicant's record of
2 conviction under section 1 of this act.

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