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SENATE BILL 5831

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State of Washington

64th Legislature

2015 Regular Session

By Senators Honeyford, Hatfield, Rivers, Becker, Schoesler, King, Roach, Warnick, Hewitt, and Angel

Read first time 02/05/15. Referred to Committee on Law & Justice.

1 AN ACT Relating to the restoration of firearms rights; 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 2014 c 176 s 1 and 2014 c 109 s 1 are  
5 each reenacted and amended to read as follows:

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

19 (2) An applicant may not have the record of conviction for a  
20 misdemeanor or gross misdemeanor offense vacated if any one of the  
21 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 (b) The offense was a violent offense as defined in RCW 9.94A.030  
4 or an attempt to commit a violent offense;

5 (c) The offense was a violation of RCW 46.61.502 (driving while  
6 under the influence), 46.61.504 (actual physical control while under  
7 the influence), 9.91.020 (operating a railroad, etc. while  
8 intoxicated), or the offense is considered a "prior offense" under  
9 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug  
10 violation within ten years of the date of arrest for the prior  
11 offense;

12 (d) The offense was any misdemeanor or gross misdemeanor  
13 violation, including attempt, of chapter 9.68 RCW (obscenity and  
14 pornography), chapter 9.68A RCW (sexual exploitation of children), or  
15 chapter 9A.44 RCW (sex offenses);

16 (e) The applicant was convicted of a misdemeanor or gross  
17 misdemeanor offense as defined in RCW 10.99.020, or the court  
18 determines after a review of the court file that the offense was  
19 committed by one family member or household member against another,  
20 or the court, after considering the damage to person or property that  
21 resulted in the conviction, any prior convictions for crimes defined  
22 in RCW 10.99.020, or for comparable offenses in another state or in  
23 federal court, and the totality of the records under review by the  
24 court regarding the conviction being considered for vacation,  
25 determines that the offense involved domestic violence, and any one  
26 of the following factors exist:

27 (i) The applicant has not provided written notification of the  
28 vacation petition to the prosecuting attorney's office that  
29 prosecuted the offense for which vacation is sought, or has not  
30 provided that notification to the court;

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

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

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

5 (f) For any offense other than those described in (e) of this  
6 subsection, less than three years have passed since the person  
7 completed the terms of the sentence, including any financial  
8 obligations;

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

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

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

18 (3) Subject to RCW 9.96.070, every person convicted of  
19 prostitution under RCW 9A.88.030 who committed the offense as a  
20 result of being a victim of trafficking, RCW 9A.40.100, promoting  
21 prostitution in the first degree, RCW 9A.88.070, promoting commercial  
22 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons  
23 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.  
24 7101 et seq. may apply to the sentencing court for vacation of the  
25 applicant's record of conviction for the prostitution offense. An  
26 applicant may not have the record of conviction for prostitution  
27 vacated if any one of the following is present:

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

31 (b) The offender has been convicted of another crime, except  
32 prostitution, in this state, another state, or federal court since  
33 the date of conviction.

34 (4) Every person convicted prior to January 1, 1975, of violating  
35 any statute or rule regarding the regulation of fishing activities,  
36 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,  
37 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240  
38 who claimed to be exercising a treaty Indian fishing right, may apply  
39 to the sentencing court for vacation of the applicant's record of the  
40 misdemeanor, gross misdemeanor, or felony conviction for the offense.

1 If the person is deceased, a member of the person's family or an  
2 official representative of the tribe of which the person was a member  
3 may apply to the court on behalf of the deceased person.  
4 Notwithstanding the requirements of RCW 9.94A.640, the court shall  
5 vacate the record of conviction if:

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

8 (b) The state has been enjoined from taking enforcement action of  
9 the statute or rule to the extent that it interferes with a treaty  
10 Indian fishing right as determined under *United States v. Washington*,  
11 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
12 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
13 any other state supreme court or federal court decision.

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

26 (b) When a court vacates a record of domestic violence as defined  
27 in RCW 10.99.020 under this section, the state may not use the  
28 vacated conviction in a later criminal prosecution unless the  
29 conviction was for: (i) Violating the provisions of a restraining  
30 order, no-contact order, or protection order restraining or enjoining  
31 the person or restraining the person from going on to the grounds of  
32 or entering a residence, workplace, school, or day care, or  
33 prohibiting the person from knowingly coming within, or knowingly  
34 remaining within, a specified distance of a location (RCW 10.99.040,  
35 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150,  
36 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii)  
37 stalking (RCW 9A.46.110). A vacated conviction under this section is  
38 not considered a conviction of such an offense for the purposes of  
39 C.F.R. 478.11.

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

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

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