
SENATE BILL 5665

State of Washington

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By Senators Costa, Honeyford, Hargrove, Kline, Heavey, McCaslin and Long

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1 AN ACT Relating to vacation of records of conviction; amending RCW
2 9.94A.230 and 13.50.050; and adding a new section to chapter 9.96 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.96 RCW
5 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 clear the record of conviction by: (a) Permitting the applicant to
13 withdraw the applicant's plea of guilty and to enter a plea of not
14 guilty; or (b) if the applicant has been convicted after a plea of not
15 guilty, the court setting aside the verdict of guilty; and (c) the
16 court dismissing the information or indictment against the applicant.

17 (2) An applicant may not have the record of conviction for a
18 misdemeanor or gross misdemeanor offense cleared if any one of the
19 following is present: (a) There are any criminal charges against the

1 applicant pending in any court of this state or another state, or in
2 any federal court; (b) the offense was a violent offense as defined in
3 RCW 9.94A.030 or an attempt to commit a violent offense; (c) the
4 offense was a violation of RCW 46.61.502 (Driving while under the
5 influence), 46.61.504 (Actual physical control while under the
6 influence), or 9.91.020 (Operating a railroad, etc. while intoxicated);
7 (d) the offense was a domestic violence offense as defined in RCW
8 10.99.020; (e) the offense was any misdemeanor or gross misdemeanor
9 attempt to commit a sex offense as defined in RCW 9.94A.030; (f) the
10 offense was any misdemeanor or gross misdemeanor violation, including
11 attempt, of chapter 9.68 (Obscenity and pornography) or 9.68A (Sexual
12 exploitation of children) RCW; (g) the offense was a violation of any
13 of the following: RCW 9.12.010 (Barratry), 9.12.020 (Buying,
14 demanding, or promising reward by district judge or deputy), 9.16.030
15 (Counterfeiting trademark, brand, etc.), 9.18.140 (Bidding offenses,
16 false bidding), 9.24.010 (Fraud in stock subscriptions), 9.24.040
17 (Corporation doing business without license), 9.38.020 (False
18 representation concerning title), 9.41.040 (Unlawful possession of
19 firearms), 9.41.050 (Carrying firearms), 9.41.230 (Aiming or
20 discharging firearms), 9.41.250 (Dangerous weapons), 9.46.170
21 (Gambling: False or misleading entries or statements, refusal to
22 produce records), 9.46.190 (Gambling: Violations relating to fraud or
23 deceit), 9.46.196 (Gambling: Cheating), 9.46.222 (Professional
24 gambling 3), 9.51.010 (Misconduct of officer drawing jury), 9.51.030
25 (Misconduct of officer in charge of a jury), 9A.46.080 (Court order
26 restricting contact), 9A.60.040 (Criminal impersonation), 9A.60.050
27 (False swearing under oath), 9A.72.140 (Jury tampering), 9A.72.150
28 (Tampering with physical evidence), or 9A.88.010 (Indecent exposure);
29 (h) the applicant has been convicted of a new crime in this state,
30 another state, or federal court since the date the applicant completed
31 all of the terms of the sentence for the misdemeanor or gross
32 misdemeanor offense; or (i) less than five years have passed since the
33 date the applicant completed all of the terms of the sentence for the
34 misdemeanor or gross misdemeanor offense.

35 (3) Once the court vacates a record of conviction under subsection
36 (1) of this section, the person shall be released from all penalties
37 and disabilities resulting from the offense, except that the fact that
38 the person had been convicted of the offense may be used in any
39 subsequent criminal prosecution consistent with any other legal use and

1 may be included in the person's criminal history for purposes of
2 determining a sentence in any subsequent conviction. For all other
3 purposes, including responding to questions on employment applications,
4 a person whose conviction has been vacated may state that the person
5 has never been convicted of that crime.

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

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

12 (1) Every offender who has been discharged under RCW 9.94A.220 may
13 apply to the sentencing court for a vacation of the offender's record
14 of conviction. If the court finds the offender meets the tests
15 prescribed in subsection (2) of this section, the court may in its
16 discretion clear the record of conviction by: (a) Permitting the
17 offender to withdraw the offender's plea of guilty and to enter a plea
18 of not guilty; or (b) if the offender has been convicted after a plea
19 of not guilty, ~~((by))~~ the court setting aside the verdict of guilty;
20 and (c) ~~((by))~~ the court dismissing the information or indictment
21 against the offender.

22 (2) An offender may not have the record of conviction cleared if
23 any one of the following is present: (a) There are any criminal
24 charges against the offender pending in any court of this state or
25 another state, or in any federal court; (b) the offense was a violent
26 offense as defined in RCW 9.94A.030; (c) the offense was a domestic
27 violence offense as defined in RCW 10.99.020; (d) the offense was a
28 crime against persons as defined in RCW 43.43.830; ~~((+d))~~ (e) the
29 offender has been convicted of a new crime in this state, another
30 state, or federal court since the date of the offender's discharge
31 under RCW 9.94A.220; ~~((+e))~~ (f) the offense is a class B felony and
32 less than ten years have passed since the date the applicant was
33 discharged under RCW 9.94A.220; ~~((and-f))~~ or (g) the offense was a
34 class C felony and less than five years have passed since the date the
35 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

1 for purposes of determining a sentence in any subsequent conviction,
2 and the offender shall be released from all penalties and disabilities
3 resulting from the offense. For all purposes, including responding to
4 questions on employment applications, an offender whose conviction has
5 been vacated may state that the offender has never been convicted of
6 that crime. Nothing in this section affects or prevents the use of an
7 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 pursuant to chapter 10.101 RCW that the person
11 making the motion is indigent, at the time the motion is brought.

12 **Sec. 3.** RCW 13.50.050 and 1997 c 338 s 40 are each amended to read
13 as follows:

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

16 (2) The official juvenile court file of any alleged or proven
17 juvenile offender shall be open to public inspection, unless sealed
18 pursuant to subsection (11) of this section.

19 (3) All records other than the official juvenile court file are
20 confidential and may be released only as provided in this section, RCW
21 13.50.010, 13.40.215, and 4.24.550.

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

29 (5) Except as provided in RCW 4.24.550, information not in an
30 official juvenile court file concerning a juvenile or a juvenile's
31 family may be released to the public only when that information could
32 not reasonably be expected to identify the juvenile or the juvenile's
33 family.

34 (6) Notwithstanding any other provision of this chapter, the
35 release, to the juvenile or his or her attorney, of law enforcement and
36 prosecuting attorneys' records pertaining to investigation, diversion,
37 and prosecution of juvenile offenses shall be governed by the rules of

1 discovery and other rules of law applicable in adult criminal
2 investigations and prosecutions.

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

14 (8) Upon request of the victim of a crime or the victim's immediate
15 family, the identity of an alleged or proven juvenile offender alleged
16 or found to have committed a crime against the victim and the identity
17 of the alleged or proven juvenile offender's parent, guardian, or
18 custodian and the circumstance of the alleged or proven crime shall be
19 released to the victim of the crime or the victim's immediate family.

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

28 (10) In any case in which an information has been filed pursuant to
29 RCW 13.40.100 or a complaint has been filed with the prosecutor and
30 referred for diversion pursuant to RCW 13.40.070, the person the
31 subject of the information or complaint may file a motion with the
32 court to have the court vacate its order and findings, if any, and,
33 subject to subsection (22) of this section, order the sealing of the
34 official juvenile court file, the social file, and records of the court
35 and of any other agency in the case.

36 (11) The court shall grant the motion to seal records made pursuant
37 to subsection (10) of this section if it finds that:

38 (a) For class B offenses other than sex offenses, since the last
39 date of release from confinement, including full-time residential

1 treatment, if any, or entry of disposition, the person has spent ten
2 consecutive years in the community without committing any offense or
3 crime that subsequently results in conviction. For class C offenses,
4 gross misdemeanors, and misdemeanors, other than sex offenses, since
5 the last date of release from confinement, including full-time
6 residential treatment, if any, or entry of disposition, the person has
7 spent five consecutive years in the community without committing any
8 offense or crime that subsequently results in conviction;

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

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

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

15 (e) Full restitution has been paid.

16 (12) The person making a motion pursuant to subsection (10) of this
17 section shall give reasonable notice of the motion to the prosecution
18 and to any person or agency whose files are sought to be sealed.

19 (13) If the court grants the motion to seal made pursuant to
20 subsection (10) of this section, it shall, subject to subsection (22)
21 of this section, order sealed the official juvenile court file, the
22 social file, and other records relating to the case as are named in the
23 order. Thereafter, the proceedings in the case shall be treated as if
24 they never occurred, and the subject of the records may reply
25 accordingly to any inquiry about the events, records of which are
26 sealed. Any agency shall reply to any inquiry concerning confidential
27 or sealed records that records are confidential, and no information can
28 be given about the existence or nonexistence of records concerning an
29 individual.

30 (14) Inspection of the files and records included in the order to
31 seal may thereafter be permitted only by order of the court upon motion
32 made by the person who is the subject of the information or complaint,
33 except as otherwise provided in RCW 13.50.010(8) and subsection (22) of
34 this section.

35 (15) Any adjudication of a juvenile offense or a crime subsequent
36 to sealing has the effect of nullifying the sealing order. Any
37 charging of an adult felony subsequent to the sealing has the effect of
38 nullifying the sealing order for the purposes of chapter 9.94A RCW.

1 (16) A person eighteen years of age or older whose criminal history
2 consists of only one referral for diversion may request that the court
3 order the records in that case destroyed. The request shall be
4 granted, subject to subsection (22) of this section, if the court finds
5 that two years have elapsed since completion of the diversion
6 agreement.

7 (17) If the court grants the motion to destroy records made
8 pursuant to subsection (16) of this section, it shall, subject to
9 subsection (22) of this section, order the official juvenile court
10 file, the social file, and any other records named in the order to be
11 destroyed.

12 (18) The person making the motion pursuant to subsection (16) of
13 this section shall give reasonable notice of the motion to the
14 prosecuting attorney and to any agency whose records are sought to be
15 destroyed.

16 (19) Any juvenile to whom the provisions of this section may apply
17 shall be given written notice of his or her rights under this section
18 at the time of his or her disposition hearing or during the diversion
19 process.

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

24 (21) Any juvenile justice or care agency may, subject to the
25 limitations in subsection (22) of this section and (a) and (b) of this
26 subsection, develop procedures for the routine destruction of records
27 relating to juvenile offenses and diversions.

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

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

35 (22) No identifying information held by the Washington state patrol
36 in accordance with chapter 43.43 RCW is subject to destruction or
37 sealing under this section. For the purposes of this subsection,
38 identifying information includes photographs, fingerprints, palmprints,
39 soleprints, toeprints and any other data that identifies a person by

1 physical characteristics, name, birthdate or address, but does not
2 include information regarding criminal activity, arrest, charging,
3 diversion, conviction or other information about a person's treatment
4 by the criminal justice system or about the person's behavior.

5 (23) Information identifying child victims under age eighteen who
6 are victims of sexual assaults by juvenile offenders is confidential
7 and not subject to release to the press or public without the
8 permission of the child victim or the child's legal guardian.
9 Identifying information includes the child victim's name, addresses,
10 location, photographs, and in cases in which the child victim is a
11 relative of the alleged perpetrator, identification of the relationship
12 between the child and the alleged perpetrator. Information identifying
13 a child victim of sexual assault may be released to law enforcement,
14 prosecutors, judges, defense attorneys, or private or governmental
15 agencies that provide services to the child victim of sexual assault.

16 (24) All costs incurred by the court and probation services shall
17 be paid by the person making the motion unless a determination is made
18 pursuant to chapter 10.101 RCW that the person making the motion is
19 indigent, at the time the motion is brought.

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