

SHB 1292 - S COMM AMD  
By Committee on Law & Justice

ADOPTED 03/04/2014

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 9.96.060 and 2012 c 183 s 5 and 2012 c 142 s 2 are  
4 each reenacted and amended to read as follows:

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

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

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

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

24 (c) The offense was a violation of RCW 46.61.502 (driving while  
25 under the influence), 46.61.504 (actual physical control while under  
26 the influence), 9.91.020 (operating a railroad, etc. while  
27 intoxicated), or the offense is considered a "prior offense" under RCW  
28 46.61.5055 and the applicant has had a subsequent alcohol or drug  
29 violation within ten years of the date of arrest for the prior offense;

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

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

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

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

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

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

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

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

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

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

8 (3) Subject to section 2 of this act, every person convicted of  
9 prostitution under RCW 9A.88.030 who committed the offense as a result  
10 of being a victim of trafficking, RCW 9A.40.100, promoting prostitution  
11 in the first degree, RCW 9A.88.070, promoting commercial sexual abuse  
12 of a minor, RCW 9.68A.101, or trafficking in persons under the  
13 trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq.  
14 may apply to the sentencing court for vacation of the applicant's  
15 record of conviction for the prostitution offense. An applicant may  
16 not have the record of conviction for prostitution vacated if any one  
17 of the following is present:

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

21 (b) The offender has been convicted of another crime, except  
22 prostitution, in this state, another state, or federal court since the  
23 date of conviction(~~(+or~~

24 ~~(c) The applicant has ever had the record of another prostitution~~  
25 ~~conviction vacated)).~~

26 (4) Once the court vacates a record of conviction under subsection  
27 (1) of this section, the person shall be released from all penalties  
28 and disabilities resulting from the offense and the fact that the  
29 person has been convicted of the offense shall not be included in the  
30 person's criminal history for purposes of determining a sentence in any  
31 subsequent conviction. For all purposes, including responding to  
32 questions on employment or housing applications, a person whose  
33 conviction has been vacated under subsection (1) of this section may  
34 state that he or she has never been convicted of that crime. Nothing  
35 in this section affects or prevents the use of an offender's prior  
36 conviction in a later criminal prosecution.

37 (5) All costs incurred by the court and probation services shall be

1 paid by the person making the motion to vacate the record unless a  
2 determination is made pursuant to chapter 10.101 RCW that the person  
3 making the motion is indigent, at the time the motion is brought.

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

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.96 RCW  
17 to read as follows:

18 (1) In order to vacate a record of conviction for a prostitution  
19 offense pursuant to RCW 9.96.060(3) as a result of being a victim of  
20 trafficking, RCW 9A.40.100, the applicant must prove each of the  
21 following elements by a preponderance of the evidence:

22 (a)(i) The applicant was recruited, harbored, transported,  
23 provided, obtained, bought, purchased, or received by another person;

24 (ii) The person who committed any of the acts in (a)(i) of this  
25 subsection against the applicant acted knowingly or in reckless  
26 disregard for the fact that force, fraud, or coercion would be used to  
27 cause the applicant to engage in a sexually explicit act or commercial  
28 sex act; and

29 (iii) The applicant's conviction record for prostitution resulted  
30 from such acts; or

31 (b)(i) The applicant was recruited, harbored, transported,  
32 provided, obtained, bought, purchased, or received by another person;

33 (ii) The person who committed any of the acts in (b)(i) of this  
34 subsection against the applicant acted knowingly or in reckless  
35 disregard for the fact that the applicant had not attained the age of  
36 eighteen and would be caused to engage in a sexually explicit act or  
37 commercial sex act; and

1 (iii) The applicant's record of conviction for prostitution  
2 resulted from such acts.

3 (2) In order to vacate a record of conviction for a prostitution  
4 offense pursuant to RCW 9.96.060(3) as a result of being a victim of  
5 promoting prostitution in the first degree, RCW 9A.88.070, the  
6 applicant must prove each of the following elements by a preponderance  
7 of the evidence:

8 (a)(i) The applicant was compelled by threat or force to engage in  
9 prostitution;

10 (ii) The person who compelled the applicant acted knowingly; and

11 (iii) The applicant's conviction record for prostitution resulted  
12 from the compulsion; or

13 (b)(i) The applicant has a mental incapacity or developmental  
14 disability that renders the applicant incapable of consent;

15 (ii) The applicant was compelled to engage in prostitution;

16 (iii) The person who compelled the applicant acted knowingly; and

17 (iv) The applicant's record of conviction for prostitution resulted  
18 from the compulsion.

19 (3) In order to vacate a record of conviction for a prostitution  
20 offense pursuant to RCW 9.96.060(3) as a result of being a victim of  
21 promoting commercial sexual abuse of a minor, RCW 9.68A.101, the  
22 applicant must prove each of the following elements by a preponderance  
23 of the evidence:

24 (a)(i) The applicant had not attained the age of eighteen at the  
25 time of the prostitution offense;

26 (ii) A person advanced commercial sexual abuse or a sexually  
27 explicit act of the applicant at the time he or she had not attained  
28 the age of eighteen;

29 (iii) The person committing the acts in (a)(ii) of this subsection  
30 acted knowingly; and

31 (iv) The applicant's record of conviction for prostitution resulted  
32 from any of the acts in (a)(ii) of this subsection.

33 (b) For purposes of this subsection (3), a person:

34 (i) "Advanced commercial sexual abuse" of the applicant if, acting  
35 other than as a minor receiving compensation for personally rendered  
36 sexual conduct or as a person engaged in commercial sexual abuse of a  
37 minor, he or she causes or aids a person to commit or engage in  
38 commercial sexual abuse of a minor, procures or solicits customers for

1 commercial sexual abuse of a minor, provides persons or premises for  
2 the purposes of engaging in commercial sexual abuse of a minor,  
3 operates or assists in the operation of a house or enterprise for the  
4 purposes of engaging in commercial sexual abuse of a minor, or engages  
5 in any other conduct designed to institute, aid, cause, assist, or  
6 facilitate an act or enterprise of commercial sexual abuse of a minor;

7 (ii) "Advanced a sexually explicit act" of the applicant if he or  
8 she causes or aids a sexually explicit act of a minor, procures or  
9 solicits customers for a sexually explicit act of a minor, provides  
10 persons or premises for the purposes of a sexually explicit act of a  
11 minor, or engages in any other conduct designed to institute, aid,  
12 cause, assist, or facilitate a sexually explicit act of a minor.

13 (4) In order to vacate a record of conviction for a prostitution  
14 offense pursuant to RCW 9.96.060(3) as a result of being a victim of  
15 trafficking in persons under the trafficking victims protection act of  
16 2000, 22 U.S.C. Sec. 7101 et seq., the applicant must prove each of the  
17 following elements by a preponderance of the evidence:

18 (a) The applicant was induced by force, fraud, or coercion to  
19 engage in a commercial sex act and the record of conviction for  
20 prostitution resulted from the inducement; or

21 (b) The applicant was induced to engage in a commercial sex act  
22 prior to reaching the age of eighteen and the record of conviction for  
23 prostitution resulted from the inducement."

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24 On page 1, line 1 of the title, after "convictions;" strike the  
25 remainder of the title and insert "reenacting and amending RCW  
26 9.96.060; and adding a new section to chapter 9.96 RCW."

EFFECT: Establishes the burden of proof on the applicant and

articulates the specific elements necessary to show that the applicant qualifies for vacating a prostitution conviction under RCW 9.96.060(3).

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