
SUBSTITUTE HOUSE BILL 2890

State of Washington 65th Legislature 2018 Regular Session

By House Public Safety (originally sponsored by Representatives Hansen, Frame, and Ormsby)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to promoting successful reentry by modifying the
2 process for obtaining certificates of discharge and vacating
3 conviction records; amending RCW 9.94A.640; reenacting and amending
4 RCW 9.94A.637 and 9.96.060; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the new
7 hope act.

8 **Sec. 2.** RCW 9.94A.637 and 2009 c 325 s 3 and 2009 c 288 s 2 are
9 each reenacted and amended to read as follows:

10 (1)((~~a~~)) When an offender has completed all requirements of the
11 sentence, including any and all legal financial obligations, and
12 while under the custody ((~~and~~)) or supervision of the department, the
13 secretary or the secretary's designee shall notify the sentencing
14 court, which shall discharge the offender and provide the offender
15 with a certificate of discharge by issuing the certificate to the
16 offender in person or by mailing the certificate to the offender's
17 last known address. A certificate of discharge issued under this
18 subsection (1) is effective on the date the offender completed all
19 conditions of his or her sentence.

1 ~~((b)(i))~~ (2)(a) When an offender has reached the end of his or
2 her supervision with the department and has completed all the
3 requirements of the sentence except his or her legal financial
4 obligations, the secretary's designee shall provide the county clerk
5 with a notice that the offender has completed all nonfinancial
6 requirements of the sentence. The notice must list the specific
7 sentence requirements that have been completed, so that it is clear
8 to the sentencing court that the offender is entitled to discharge
9 upon completing the legal financial obligations of the sentence.

10 ~~((i))~~ (b) When the department has provided the county clerk
11 with notice under (a) of this subsection showing that an offender has
12 completed all the requirements of the sentence and the offender
13 subsequently satisfies all legal financial obligations under the
14 sentence, the county clerk shall notify the sentencing court~~((~~
15 ~~including the notice from the department, which))~~ by promptly
16 transmitting the notice of completion of nonfinancial sentence
17 requirements and notice of satisfaction of all legal financial
18 obligations to the sentencing court. Upon receipt of the notices
19 under this subsection (2)(b), the court shall discharge the offender
20 and provide the offender with a certificate of discharge ~~((by issuing~~
21 ~~the certificate to the offender in person or by mailing the~~
22 ~~certificate to the offender's last known address))~~. A certificate of
23 discharge issued under this subsection (2) is effective on the date
24 the offender completed all conditions of his or her sentence.

25 ~~((c) When an offender who is subject to requirements of the~~
26 ~~sentence in addition to the payment of legal financial obligations~~
27 ~~either is not subject to supervision by the department or does not~~
28 ~~complete the requirements while under supervision of the department,~~
29 ~~it is the offender's responsibility to provide the court with~~
30 ~~verification of the completion of the sentence conditions other than~~
31 ~~the payment of legal financial obligations. When the offender~~
32 ~~satisfies all legal financial obligations under the sentence, the~~
33 ~~county clerk shall notify the sentencing court that the legal~~
34 ~~financial obligations have been satisfied. When the court has~~
35 ~~received both notification from the clerk and adequate verification~~
36 ~~from the offender that the sentence requirements have been completed,~~
37 ~~the court shall discharge the offender and provide the offender~~
38 ~~with))~~

39 (3) In the absence of a certificate of discharge issued under
40 subsection (1) or (2) of this section, the offender may file a motion

1 with the sentencing court for a certificate of discharge. The
2 sentencing court shall issue a certificate of discharge upon
3 verification of completion of all sentencing conditions, including
4 any and all legal financial obligations. A certificate of discharge
5 issued under this subsection (3) is effective on the date the
6 offender completed all conditions of his or her sentence.

7 (4) In the absence of a certificate of discharge issued under
8 subsection (1), (2), or (3) of this section, the offender may file a
9 motion with the sentencing court for a certificate of discharge and
10 file a declaration sworn under penalty of perjury that he or she has
11 completed all of the nonfinancial conditions of his or her sentence.
12 The filing of such a declaration creates a rebuttable presumption
13 that the offender completed all nonfinancial conditions of his or her
14 sentence. A certificate of discharge issued under this subsection (4)
15 is effective on the later of: (a) Five years after completion of
16 community custody, or if the offender was not required to serve
17 community custody, after the completion of full and partial
18 confinement; or (b) the date any and all legal financial obligations
19 were satisfied.

20 (5) The court shall issue a certificate of discharge under this
21 section by issuing the certificate to the offender in person or by
22 mailing the certificate to the offender's last known address.

23 ~~((2))~~ (6)(a) ((For purposes of this subsection (2),)) A no-
24 contact order is not a requirement of the offender's sentence. An
25 offender who has completed all requirements of the sentence,
26 including any and all legal financial obligations, is eligible for a
27 certificate of discharge even if the offender has an existing no-
28 contact order that excludes or prohibits the offender from having
29 contact with a specified person or ~~((business))~~ entity or coming
30 within a set distance of any specified location.

31 ~~((b))~~ In the case of an eligible offender who has a no-contact
32 order as part of the judgment and sentence, the offender may
33 ~~((petition))~~ file a motion with the sentencing court to issue a
34 certificate of discharge and a separate no-contact order ((by filing
35 a petition in the sentencing court and)), which must include paying
36 the appropriate filing fee ((associated with the petition)) for the
37 separate no-contact order. This filing fee does not apply to an
38 offender seeking a certificate of discharge when the offender has a
39 no-contact order separate from the judgment and sentence.

1 ~~((i)(A) The court shall issue a certificate of discharge and a~~
2 ~~separate no-contact order under this subsection (2) if the court~~
3 ~~determines that the offender has completed all requirements of the~~
4 ~~sentence, including all legal financial obligations.))~~ The court
5 shall reissue the no-contact order separately under a new civil cause
6 number for the remaining term and under the same conditions as
7 contained in the judgment and sentence.

8 ~~((B))~~ (b) The clerk of the court shall send a copy of the new
9 no-contact order to the individuals or entities protected by the no-
10 contact order, along with an explanation of the reason for the
11 change, if there is an address available in the court file. If no
12 address is available, the clerk of the court shall forward a copy of
13 the order to the prosecutor, who shall send a copy of the no-contact
14 order with an explanation of the reason for the change to the last
15 known address of the protected individuals or entities.

16 ~~((ii) Whenever an order under this subsection (2) is issued,))~~
17 (c) The clerk of the court shall forward a copy of the order to the
18 appropriate law enforcement agency specified in the order on or
19 before the next judicial day. The clerk shall also include a cover
20 sheet that indicates the case number of the judgment and sentence
21 that has been discharged. Upon receipt of the copy of the order and
22 cover sheet, the law enforcement agency shall enter the order into
23 any computer-based criminal intelligence information system available
24 in this state used by law enforcement agencies to list outstanding
25 warrants. The order shall remain in this system until it expires. The
26 new order, and case number of the discharged judgment and sentence,
27 shall be linked in the criminal intelligence information system for
28 purposes of enforcing the no-contact order.

29 ~~((iii))~~ (d) A separately issued no-contact order may be
30 enforced under chapter 26.50 RCW.

31 ~~((iv))~~ (e) A separate no-contact order issued under this
32 subsection ~~((2))~~ (6) is not a modification of the offender's
33 sentence.

34 ~~((3))~~ (7) Every signed certificate and order of discharge shall
35 be filed with the county clerk of the sentencing county. In addition,
36 the court shall send to the department a copy of every signed
37 certificate and order of discharge for offender sentences under the
38 authority of the department. The county clerk shall enter into a
39 database maintained by the administrator for the courts the names of

1 all felons who have been issued certificates of discharge, the date
2 of discharge, and the date of conviction and offense.

3 ~~((4))~~ (8) An offender who is not convicted of a violent offense
4 or a sex offense and is sentenced to a term involving community
5 supervision may be considered for a discharge of sentence by the
6 sentencing court prior to the completion of community supervision,
7 provided that the offender has completed at least one-half of the
8 term of community supervision and has met all other sentence
9 requirements.

10 ~~((5))~~ (9) The discharge shall have the effect of restoring all
11 civil rights not already restored by RCW 29A.08.520, and the
12 certificate of discharge shall so state. Nothing in this section
13 prohibits the use of an offender's prior record for purposes of
14 determining sentences for later offenses as provided in this chapter.
15 Nothing in this section affects or prevents use of the offender's
16 prior conviction in a later criminal prosecution either as an element
17 of an offense or for impeachment purposes. A certificate of discharge
18 is not based on a finding of rehabilitation.

19 ~~((6))~~ (10) Unless otherwise ordered by the sentencing court, a
20 certificate of discharge shall not terminate the offender's
21 obligation to comply with an order that excludes or prohibits the
22 offender from having contact with a specified person or coming within
23 a set distance of any specified location that was contained in the
24 judgment and sentence. An offender who violates such an order after a
25 certificate of discharge has been issued shall be subject to
26 prosecution according to the chapter under which the order was
27 originally issued.

28 ~~((7))~~ (11) Upon release from custody, the offender may apply to
29 the department for counseling and help in adjusting to the community.
30 This voluntary help may be provided for up to one year following the
31 release from custody.

32 **Sec. 3.** RCW 9.94A.640 and 2012 c 183 s 3 are each amended to
33 read as follows:

34 (1) Every offender who has been discharged under RCW 9.94A.637
35 may apply to the sentencing court for a vacation of the offender's
36 record of conviction. If the court finds the offender meets the tests
37 prescribed in subsection (2) of this section, the court may clear the
38 record of conviction by: (a) Permitting the offender to withdraw the
39 offender's plea of guilty and to enter a plea of not guilty; or (b)

1 if the offender has been convicted after a plea of not guilty, by the
2 court setting aside the verdict of guilty; and (c) by the court
3 dismissing the information or indictment against the offender.

4 (2) An offender may not have the record of conviction cleared if:

5 (a) There are any criminal charges against the offender pending
6 in any court of this state or another state, or in any federal court;

7 (b) The offense was a violent offense as defined in RCW
8 9.94A.030(~~(+)~~

9 ~~(c) the offense was a~~) or crime against persons as defined in
10 RCW 43.43.830, except for assault in the second degree under RCW
11 9A.36.021, assault in the third degree under RCW 9A.36.031(1) (a)
12 through (f), or (i) through (k) when not committed against a law
13 enforcement officer or peace officer, or robbery in the second degree
14 under RCW 9A.56.210;

15 ~~((d))~~ (c) The offense is a class B felony and the offender has
16 been convicted of a new crime in this state, another state, or
17 federal court in the ten years prior to the application for vacation;

18 (d) The offense is a class C felony and the offender has been
19 convicted of a new crime in this state, another state, or federal
20 court (~~since the date of the offender's discharge under RCW~~
21 ~~9.94A.637~~) in the five years prior to the application for vacation;

22 (e) The offense is a class B felony and less than ten years have
23 passed since the (~~date the applicant was discharged under RCW~~
24 ~~9.94A.637~~) later of: (i) The applicant's release from community
25 custody; (ii) the applicant's release from full and partial
26 confinement; or (iii) the applicant's sentencing date;

27 (f) The offense was a class C felony, other than a class C felony
28 described in RCW 46.61.502(6) or 46.61.504(6), and less than five
29 years have passed since the (~~date the applicant was discharged under~~
30 ~~RCW 9.94A.637~~) later of: (i) The applicant's release from community
31 custody; (ii) the applicant's release from full and partial
32 confinement; or (iii) the applicant's sentencing date; or

33 (g) The offense was a (~~class C~~) felony described in RCW
34 46.61.502(~~(+6)~~) or 46.61.504(~~(+6)~~).

35 (3) Once the court vacates a record of conviction under
36 subsection (1) of this section, the fact that the offender has been
37 convicted of the offense shall not be included in the offender's
38 criminal history for purposes of determining a sentence in any
39 subsequent conviction, and the offender shall be released from all
40 penalties and disabilities resulting from the offense. For all

1 purposes, including responding to questions on employment
2 applications, an offender whose conviction has been vacated may state
3 that the offender has never been convicted of that crime. A
4 conviction that has been vacated under this section may not be
5 disseminated or disclosed by the state patrol or local law
6 enforcement agency to any person, except other criminal justice
7 enforcement agencies. Nothing in this section affects or prevents the
8 use of an offender's prior conviction in a later criminal
9 prosecution.

10 **Sec. 4.** RCW 9.96.060 and 2017 c 336 s 2, 2017 c 272 s 9, and
11 2017 c 128 s 1 are each reenacted and amended to read as follows:

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

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

32 (c) The offense was a violation of RCW 46.61.502 (driving while
33 under the influence), 46.61.504 (actual physical control while under
34 the influence), 9.91.020 (operating a railroad, etc. while
35 intoxicated), or the offense is considered a "prior offense" under
36 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
37 violation within ten years of the date of arrest for the prior
38 offense or less than ten years has elapsed since the date of the
39 arrest for the prior offense;

1 (d) The offense was any misdemeanor or gross misdemeanor
2 violation, including attempt, of chapter 9.68 RCW (obscenity and
3 pornography), chapter 9.68A RCW (sexual exploitation of children), or
4 chapter 9A.44 RCW (sex offenses) other than a conviction for failure
5 to register under RCW 9A.44.132;

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

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

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

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

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

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

38 (g) The offender has been convicted of a new crime in this state,
39 another state, or federal court (~~since the date of conviction~~) in
40 the three years prior to the vacation application; or

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~~
4 ~~restrained within five years prior to the vacation application,)~~) by
5 a domestic violence protection order, a no-contact order, an
6 antiharassment order, or a civil restraining order which restrains
7 one party from contacting the other party or was previously
8 restrained by such an order and was found to have committed one or
9 more violations of the order in the five years prior to the vacation
10 application.

11 (3) Subject to RCW 9.96.070, every person convicted of
12 prostitution under RCW 9A.88.030 who committed the offense as a
13 result of being a victim of trafficking, RCW 9A.40.100, promoting
14 prostitution in the first degree, RCW 9A.88.070, promoting commercial
15 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
16 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
17 7101 et seq. may apply to the sentencing court for vacation of the
18 applicant's record of conviction for the prostitution offense. An
19 applicant may not have the record of conviction for prostitution
20 vacated if any one of the following is present:

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

24 (b) The offender has been convicted of another crime, except
25 prostitution, in this state, another state, or federal court since
26 the date of conviction. The limitation in this subsection (3)(b) does
27 not apply to convictions where the offender proves by a preponderance
28 of the evidence that he or she committed the crime as a result of
29 being a victim of trafficking, RCW 9A.40.100, promoting prostitution
30 in the first degree, RCW 9A.88.070, promoting commercial sexual abuse
31 of a minor, RCW 9.68A.101, or trafficking in persons under the
32 trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et
33 seq., according to the requirements provided in RCW 9.96.070 for each
34 respective conviction.

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

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

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

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

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

27 (b) When a court vacates a record of domestic violence as defined
28 in RCW 10.99.020 under this section, the state may not use the
29 vacated conviction in a later criminal prosecution unless the
30 conviction was for: (i) Violating the provisions of a restraining
31 order, no-contact order, or protection order restraining or enjoining
32 the person or restraining the person from going on to the grounds of
33 or entering a residence, workplace, school, or day care, or
34 prohibiting the person from knowingly coming within, or knowingly
35 remaining within, a specified distance of a location (RCW 10.99.040,
36 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150,
37 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii)
38 stalking (RCW 9A.46.110). A vacated conviction under this section is
39 not considered a conviction of such an offense for the purposes of
40 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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