

SB 5605 - H AMD 769

By Representative Goodman

ADOPTED 04/23/2019

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

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

5 ~~(1) ((Every person convicted of a misdemeanor or gross~~
6 ~~misdemeanor offense who has completed all of the terms of the~~
7 ~~sentence for the misdemeanor or gross misdemeanor offense may apply~~
8 ~~to the sentencing court for a vacation of the applicant's record of~~
9 ~~conviction for the offense. If the court finds the applicant meets~~
10 ~~the tests prescribed in subsection (2) of this section, the court may~~
11 ~~in its discretion vacate the record of conviction))~~ When vacating a
12 conviction under this section, the court effectuates the vacation by:

13 (a)(i) Permitting the applicant to withdraw the applicant's plea of
14 guilty and to enter a plea of not guilty; or (ii) if the applicant
15 has been convicted after a plea of not guilty, the court setting
16 aside the verdict of guilty; and (b) the court dismissing the
17 information, indictment, complaint, or citation against the applicant
18 and vacating the judgment and sentence.

19 (2) Every person convicted of a misdemeanor or gross misdemeanor
20 offense may apply to the sentencing court for a vacation of the
21 applicant's record of conviction for the offense. If the court finds
22 the applicant meets the requirements of this subsection, the court
23 may in its discretion vacate the record of conviction. Except as
24 provided in subsections (3), (4), and (5) of this section, an
25 applicant may not have the record of conviction for a misdemeanor or
26 gross misdemeanor offense vacated if any one of the following is
27 present:

28 (a) The applicant has not completed all of the terms of the
29 sentence for the offense;

30 (b) There are any criminal charges against the applicant pending
31 in any court of this state or another state, or in any federal court;

1 (~~(b)~~) (c) The offense was a violent offense as defined in RCW
2 9.94A.030 or an attempt to commit a violent offense;

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

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

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

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

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

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

39 (iv) Less than five years have elapsed since the person completed
40 the terms of the original conditions of the sentence, including any

1 financial obligations and successful completion of any treatment
2 ordered as a condition of sentencing;

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

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

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

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

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

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

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

1 (4) Every person convicted prior to January 1, 1975, of violating
2 any statute or rule regarding the regulation of fishing activities,
3 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
4 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
5 who claimed to be exercising a treaty Indian fishing right, may apply
6 to the sentencing court for vacation of the applicant's record of the
7 misdemeanor, gross misdemeanor, or felony conviction for the offense.
8 If the person is deceased, a member of the person's family or an
9 official representative of the tribe of which the person was a member
10 may apply to the court on behalf of the deceased person.
11 Notwithstanding the requirements of RCW 9.94A.640, the court shall
12 vacate the record of conviction if:

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

15 (b) The state has been enjoined from taking enforcement action of
16 the statute or rule to the extent that it interferes with a treaty
17 Indian fishing right as determined under *United States v. Washington*,
18 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
19 899 (D. Oregon 1969), and any posttrial orders of those courts, or
20 any other state supreme court or federal court decision.

21 (5) Every person convicted of a misdemeanor marijuana offense,
22 who was twenty-one years of age or older at the time of the offense,
23 may apply to the sentencing court for a vacation of the applicant's
24 record of conviction for the offense. A misdemeanor marijuana offense
25 includes, but is not limited to: Any offense under RCW 69.50.4014,
26 from July 1, 2004, onward, and its predecessor statutes, including
27 RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW
28 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense
29 under an equivalent municipal ordinance. If an applicant qualifies
30 under this subsection, the court shall vacate the record of
31 conviction.

32 (6)(a) Once the court vacates a record of conviction under this
33 section, the person shall be released from all penalties and
34 disabilities resulting from the offense and the fact that the person
35 has been convicted of the offense shall not be included in the
36 person's criminal history for purposes of determining a sentence in
37 any subsequent conviction. For all purposes, including responding to
38 questions on employment or housing applications, a person whose
39 conviction has been vacated under this section may state that he or
40 she has never been convicted of that crime. Except as provided in (b)

1 of this subsection, nothing in this section affects or prevents the
2 use of an offender's prior conviction in a later criminal
3 prosecution.

4 (b) When a court vacates a record of domestic violence as defined
5 in RCW 10.99.020 under this section, the state may not use the
6 vacated conviction in a later criminal prosecution unless the
7 conviction was for: (i) Violating the provisions of a restraining
8 order, no-contact order, or protection order restraining or enjoining
9 the person or restraining the person from going on to the grounds of
10 or entering a residence, workplace, school, or day care, or
11 prohibiting the person from knowingly coming within, or knowingly
12 remaining within, a specified distance of a location (RCW 10.99.040,
13 10.99.050, 26.09.300, 26.10.220, (~~26.26.138~~) 26.26B.050, 26.44.063,
14 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);
15 or (ii) stalking (RCW 9A.46.110). A vacated conviction under this
16 section is not considered a conviction of such an offense for the
17 purposes of 27 C.F.R. 478.11.

18 (~~(6)~~) (7) All costs incurred by the court and probation
19 services shall be paid by the person making the motion to vacate the
20 record unless a determination is made pursuant to chapter 10.101 RCW
21 that the person making the motion is indigent, at the time the motion
22 is brought.

23 (~~(7)~~) (8) The clerk of the court in which the vacation order is
24 entered shall immediately transmit the order vacating the conviction
25 to the Washington state patrol identification section and to the
26 local police agency, if any, which holds criminal history information
27 for the person who is the subject of the conviction. The Washington
28 state patrol and any such local police agency shall immediately
29 update their records to reflect the vacation of the conviction, and
30 shall transmit the order vacating the conviction to the federal
31 bureau of investigation. A conviction that has been vacated under
32 this section may not be disseminated or disclosed by the state patrol
33 or local law enforcement agency to any person, except other criminal
34 justice enforcement agencies.

35 NEW SECTION. **Sec. 2.** If specific funding for the purposes of
36 this act, referencing this act by bill or chapter number, is not
37 provided by June 30, 2019, in the omnibus appropriations act, this
38 act is null and void."

1 Correct the title.

EFFECT: Specifies that the underlying bill applies to misdemeanor marijuana possession offenses charged under specific predecessor statutes as well as equivalent municipal ordinances. Reorganizes subsections in current law and the underlying bill, and removes duplicative language.

Adds a null and void clause. The bill is null and void unless funded in the budget.

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