
SUBSTITUTE HOUSE BILL 1681

State of Washington

67th Legislature

2022 Regular Session

By House Public Safety (originally sponsored by Representatives Simmons, Hansen, Davis, Macri, Harris-Talley, and Frame)

READ FIRST TIME 01/31/22.

1 AN ACT Relating to modifying the requirements for vacating
2 conviction records; amending RCW 9.94A.640 and 9.96.060; reenacting
3 and amending RCW 9.96.060; providing an effective date; and providing
4 an expiration date.

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

6 **Sec. 1.** RCW 9.94A.640 and 2021 c 237 s 2 are each amended to
7 read as follows:

8 (1) Every offender who has been discharged under RCW 9.94A.637
9 may apply to the sentencing court for a vacation of the offender's
10 record of conviction. If the court finds the offender meets the tests
11 prescribed in subsection (2) of this section, the court may clear the
12 record of conviction by: (a) Permitting the offender to withdraw the
13 offender's plea of guilty and to enter a plea of not guilty; or (b)
14 if the offender has been convicted after a plea of not guilty, by the
15 court setting aside the verdict of guilty; and (c) by the court
16 dismissing the information or indictment against the offender.

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

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

20 (b) The offense was a violent offense as defined in RCW 9.94A.030
21 or crime against persons as defined in RCW 43.43.830, except the

1 following offenses may be vacated if the conviction did not include a
2 firearm, deadly weapon, or sexual motivation enhancement: (i) Assault
3 in the second degree under RCW 9A.36.021; (ii) assault in the third
4 degree under RCW 9A.36.031 when not committed against a law
5 enforcement officer or peace officer; and (iii) robbery in the second
6 degree under RCW 9A.56.210;

7 (c) The offense is a class B felony and the offender has been
8 convicted of a new crime in this state, another state, or federal
9 court in the ((~~ten~~)) 10 years prior to the application for vacation;

10 (d) The offense is a class C felony and the offender has been
11 convicted of a new crime in this state, another state, or federal
12 court in the five years prior to the application for vacation;

13 (e) The offense is a class B felony and less than ((~~ten~~)) 10
14 years have passed since the later of: (i) The applicant's release
15 from community custody; (ii) the applicant's release from ((~~full~~))
16 total and partial confinement; or (iii) the applicant's sentencing
17 date;

18 (f) The offense was a class C felony, other than a class C felony
19 described in RCW 46.61.502(6) or 46.61.504(6), and less than five
20 years have passed since the later of: (i) The applicant's release
21 from community custody; (ii) the applicant's release from ((~~full~~))
22 total and partial confinement; or (iii) the applicant's sentencing
23 date; or

24 (g) The offense was a felony described in RCW 46.61.502 or
25 46.61.504.

26 (3) If the applicant is a victim of sex trafficking,
27 prostitution, or commercial sexual abuse of a minor; sexual assault;
28 or domestic violence as defined in RCW 9.94A.030, the victim or the
29 prosecutor of the county in which the victim was sentenced may apply
30 to the sentencing court or the sentencing court's successor to vacate
31 the victim's record of conviction for a class B or class C felony
32 offense using the process in RCW 9.94A.648. When preparing or filing
33 the petition, the prosecutor is not deemed to be providing legal
34 advice or legal assistance on behalf of the victim, but is fulfilling
35 an administrative function on behalf of the state in order to further
36 their responsibility to seek to reform and improve the administration
37 of criminal justice. A record of conviction vacated using the process
38 in RCW 9.94A.648 is subject to subsection (4) of this section.

39 (4) (a) Except as otherwise provided, once the court vacates a
40 record of conviction under subsection (1) of this section, the fact

1 that the offender has been convicted of the offense shall not be
2 included in the offender's criminal history for purposes of
3 determining a sentence in any subsequent conviction, and the offender
4 shall be released from all penalties and disabilities resulting from
5 the offense. For all purposes, including responding to questions on
6 employment applications, an offender whose conviction has been
7 vacated may state that the offender has never been convicted of that
8 crime. A conviction that has been vacated under this section may not
9 be disseminated or disclosed by the state patrol or local law
10 enforcement agency to any person, except other criminal justice
11 enforcement agencies. Nothing in this section affects or prevents the
12 use of an offender's prior conviction in a later criminal
13 prosecution, and nothing in this section affects the requirements for
14 restoring a right to possess a firearm under RCW 9.41.040.

15 (b) A conviction vacated on or after July 28, 2019, qualifies as
16 a prior conviction for the purpose of charging a present recidivist
17 offense occurring on or after July 28, 2019, and may be used to
18 establish an ongoing pattern of abuse for purposes of RCW 9.94A.535.

19 **Sec. 2.** RCW 9.96.060 and 2021 c 237 s 4 are each amended to read
20 as follows:

21 (1) When vacating a conviction under this section, the court
22 effectuates the vacation by: (a)(i) Permitting the applicant to
23 withdraw the applicant's plea of guilty and to enter a plea of not
24 guilty; or (ii) if the applicant has been convicted after a plea of
25 not guilty, the court setting aside the verdict of guilty; and (b)
26 the court dismissing the information, indictment, complaint, or
27 citation against the applicant and vacating the judgment and
28 sentence.

29 (2) Every person convicted of a misdemeanor or gross misdemeanor
30 offense may apply to the sentencing court for a vacation of the
31 applicant's record of conviction for the offense. If the court finds
32 the applicant meets the requirements of this subsection, the court
33 may in its discretion vacate the record of conviction. Except as
34 provided in subsections (3), (4), and (5) of this section, an
35 applicant may not have the record of conviction for a misdemeanor or
36 gross misdemeanor offense vacated if any one of the following is
37 present:

1 (a) The applicant has not completed all of the terms of the
2 sentence for the offense, including satisfaction of financial
3 obligations;

4 (b) There are any criminal charges against the applicant pending
5 in any court of this state or another state, or in any federal or
6 tribal court, at the time of application;

7 (c) The offense was a violent offense as defined in RCW 9.94A.030
8 or an attempt to commit a violent offense;

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

17 (e) The offense was any misdemeanor or gross misdemeanor
18 violation, including attempt, of chapter 9.68 RCW (obscenity and
19 pornography), chapter 9.68A RCW (sexual exploitation of children), or
20 chapter 9A.44 RCW (sex offenses), except for failure to register as a
21 sex offender under RCW 9A.44.132;

22 ~~((The applicant was convicted of a misdemeanor or gross~~
23 ~~misdemeanor offense as defined in RCW 10.99.020, or the court~~
24 ~~determines after a review of the court file that the offense was~~
25 ~~committed by one family or household member against another or by one~~
26 ~~intimate partner against another, or the court, after considering the~~
27 ~~damage to person or property that resulted in the conviction, any~~
28 ~~prior convictions for crimes defined in RCW 10.99.020, or for~~
29 ~~comparable offenses in another state or in federal court, and the~~
30 ~~totality of the records under review by the court regarding the~~
31 ~~conviction being considered for vacation, determines that the offense~~
32 ~~involved domestic violence, and any one of the following factors~~
33 ~~exist:~~

34 ~~(i) The applicant has not provided written notification of the~~
35 ~~vacation petition to the prosecuting attorney's office that~~
36 ~~prosecuted the offense for which vacation is sought, or has not~~
37 ~~provided that notification to the court;~~

38 ~~(ii) The applicant has two or more domestic violence convictions~~
39 ~~stemming from different incidents. For purposes of this subsection,~~
40 ~~however, if the current application is for more than one conviction~~

1 that arose out of a single incident, none of those convictions counts
2 as a previous conviction;

3 ~~(iii) The applicant has signed an affidavit under penalty of~~
4 ~~perjury affirming that the applicant has not previously had a~~
5 ~~conviction for a domestic violence offense, and a criminal history~~
6 ~~check reveals that the applicant has had such a conviction; or~~

7 ~~(iv) Less than five years have elapsed since the person completed~~
8 ~~the terms of the original conditions of the sentence, including any~~
9 ~~financial obligations and successful completion of any treatment~~
10 ~~ordered as a condition of sentencing;~~

11 ~~(g))~~ For any offense other than those described in ~~((f))~~ (h)
12 of this subsection, less than three years have passed since the
13 ~~((person completed the terms of the sentence, including any financial~~
14 ~~obligations))~~ later of: The applicant's release from total and
15 partial confinement, as defined in RCW 9.94A.030; or the applicant's
16 sentencing date;

17 ~~((h))~~ (g) The ~~((offender))~~ applicant has been convicted of a
18 new crime in this state, another state, or federal or tribal court in
19 the three years prior to the vacation application; or

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

32 (i) The applicant has not provided written notification of the
33 vacation petition to the prosecuting attorney's office that
34 prosecuted the offense for which vacation is sought, or has not
35 provided that notification to the court;

36 (ii) The applicant has two or more domestic violence convictions
37 stemming from different incidents. For purposes of this subsection,
38 however, if the current application is for more than one conviction
39 that arose out of a single incident, none of those convictions count
40 as a previous conviction;

1 (iii) The applicant has signed an affidavit under penalty of
2 perjury affirming that the applicant has not previously had a
3 conviction for a domestic violence offense, and a criminal history
4 check reveals that the applicant has had such a conviction;

5 (iv) Less than five years have elapsed since the later of: The
6 applicant's release from total and partial confinement, as defined in
7 RCW 9.94A.030; or the applicant's sentencing date; or

8 (v) The applicant is currently restrained by a domestic violence
9 protection order, a no-contact order, an antiharassment order, or a
10 civil restraining order which restrains one party from contacting the
11 other party or was previously restrained by such an order and was
12 found to have committed one or more violations of the order in the
13 five years prior to the vacation application.

14 (3) If the applicant is a victim of sex trafficking,
15 prostitution, or commercial sexual abuse of a minor; sexual assault;
16 or domestic violence as defined in RCW 9.94A.030, or the prosecutor
17 applies on behalf of the state, the sentencing court may vacate the
18 record of conviction if the application satisfies the requirements of
19 RCW 9.96.080. When preparing or filing the petition, the prosecutor
20 is not deemed to be providing legal advice or legal assistance on
21 behalf of the victim, but is fulfilling an administrative function on
22 behalf of the state in order to further their responsibility to seek
23 to reform and improve the administration of criminal justice. A
24 record of conviction vacated using the process in RCW 9.96.080 is
25 subject to subsections (6) and (7) of this section.

26 (4) Every person convicted prior to January 1, 1975, of violating
27 any statute or rule regarding the regulation of fishing activities,
28 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
29 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
30 who claimed to be exercising a treaty Indian fishing right, may apply
31 to the sentencing court for vacation of the applicant's record of the
32 misdemeanor, gross misdemeanor, or felony conviction for the offense.
33 If the person is deceased, a member of the person's family or an
34 official representative of the tribe of which the person was a member
35 may apply to the court on behalf of the deceased person.
36 Notwithstanding the requirements of RCW 9.94A.640, the court shall
37 vacate the record of conviction if:

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

1 (b) The state has been enjoined from taking enforcement action of
2 the statute or rule to the extent that it interferes with a treaty
3 Indian fishing right as determined under *United States v. Washington*,
4 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
5 899 (D. Oregon 1969), and any posttrial orders of those courts, or
6 any other state supreme court or federal court decision.

7 (5) Every person convicted of a misdemeanor marijuana offense,
8 who was (~~twenty-one~~) 21 years of age or older at the time of the
9 offense, may apply to the sentencing court for a vacation of the
10 applicant's record of conviction for the offense. A misdemeanor
11 marijuana offense includes, but is not limited to: Any offense under
12 RCW 69.50.4014, from July 1, 2004, onward, and its predecessor
13 statutes, including RCW 69.50.401(e), from March 21, 1979, to July 1,
14 2004, and RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and
15 any offense under an equivalent municipal ordinance. If an applicant
16 qualifies under this subsection, the court shall vacate the record of
17 conviction.

18 (6) A person who is a family member of a homicide victim may
19 apply to the sentencing court on the behalf of the victim for
20 vacation of the victim's record of conviction for prostitution under
21 RCW 9A.88.030. If an applicant qualifies under this subsection, the
22 court shall vacate the victim's record of conviction.

23 (7)(a) Except as provided in (c) of this subsection, once the
24 court vacates a record of conviction under this section, the person
25 shall be released from all penalties and disabilities resulting from
26 the offense and the fact that the person has been convicted of the
27 offense shall not be included in the person's criminal history for
28 purposes of determining a sentence in any subsequent conviction. For
29 all purposes, including responding to questions on employment or
30 housing applications, a person whose conviction has been vacated
31 under this section may state that he or she has never been convicted
32 of that crime. However, nothing in this section affects the
33 requirements for restoring a right to possess a firearm under RCW
34 9.41.040. Except as provided in (b) of this subsection, nothing in
35 this section affects or prevents the use of an offender's prior
36 conviction in a later criminal prosecution.

37 (b) When a court vacates a record of domestic violence as defined
38 in RCW 10.99.020 under this section, the state may not use the
39 vacated conviction in a later criminal prosecution unless the
40 conviction was for: (i) Violating the provisions of a restraining

1 order, no-contact order, or protection order restraining or enjoining
2 the person or restraining the person from going on to the grounds of
3 or entering a residence, workplace, school, or day care, or
4 prohibiting the person from knowingly coming within, or knowingly
5 remaining within, a specified distance of a location (RCW 10.99.040,
6 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, 26.50.060,
7 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii) stalking (RCW
8 9A.46.110). A vacated conviction under this section is not considered
9 a conviction of such an offense for the purposes of 27 C.F.R. 478.11.

10 (c) A conviction vacated on or after July 28, 2019, qualifies as
11 a prior conviction for the purpose of charging a present recidivist
12 offense as defined in RCW 9.94A.030 occurring on or after July 28,
13 2019.

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

26 **Sec. 3.** RCW 9.96.060 and 2021 c 237 s 4 and 2021 c 215 s 105 are
27 each reenacted and amended to read as follows:

28 (1) When vacating a conviction under this section, the court
29 effectuates the vacation by: (a)(i) Permitting the applicant to
30 withdraw the applicant's plea of guilty and to enter a plea of not
31 guilty; or (ii) if the applicant has been convicted after a plea of
32 not guilty, the court setting aside the verdict of guilty; and (b)
33 the court dismissing the information, indictment, complaint, or
34 citation against the applicant and vacating the judgment and
35 sentence.

36 (2) Every person convicted of a misdemeanor or gross misdemeanor
37 offense may apply to the sentencing court for a vacation of the
38 applicant's record of conviction for the offense. If the court finds
39 the applicant meets the requirements of this subsection, the court

1 may in its discretion vacate the record of conviction. Except as
2 provided in subsections (3), (4), and (5) of this section, an
3 applicant may not have the record of conviction for a misdemeanor or
4 gross misdemeanor offense vacated if any one of the following is
5 present:

6 (a) The applicant has not completed all of the terms of the
7 sentence for the offense, including satisfaction of financial
8 obligations;

9 (b) There are any criminal charges against the applicant pending
10 in any court of this state or another state, or in any federal or
11 tribal court, at the time of application;

12 (c) The offense was a violent offense as defined in RCW 9.94A.030
13 or an attempt to commit a violent offense;

14 (d) The offense was a violation of RCW 46.61.502 (driving while
15 under the influence), 46.61.504 (actual physical control while under
16 the influence), 9.91.020 (operating a railroad, etc. while
17 intoxicated), or the offense is considered a "prior offense" under
18 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
19 violation within ~~((ten))~~ 10 years of the date of arrest for the prior
20 offense or less than ~~((ten))~~ 10 years has elapsed since the date of
21 the arrest for the prior offense;

22 (e) The offense was any misdemeanor or gross misdemeanor
23 violation, including attempt, of chapter 9.68 RCW (obscenity and
24 pornography), chapter 9.68A RCW (sexual exploitation of children), or
25 chapter 9A.44 RCW (sex offenses), except for failure to register as a
26 sex offender under RCW 9A.44.132;

27 ~~((The applicant was convicted of a misdemeanor or gross~~
28 ~~misdemeanor offense as defined in RCW 10.99.020, or the court~~
29 ~~determines after a review of the court file that the offense was~~
30 ~~committed by one family or household member against another or by one~~
31 ~~intimate partner against another, or the court, after considering the~~
32 ~~damage to person or property that resulted in the conviction, any~~
33 ~~prior convictions for crimes defined in RCW 10.99.020, or for~~
34 ~~comparable offenses in another state or in federal court, and the~~
35 ~~totality of the records under review by the court regarding the~~
36 ~~conviction being considered for vacation, determines that the offense~~
37 ~~involved domestic violence, and any one of the following factors~~
38 ~~exist:~~

39 ~~(i) The applicant has not provided written notification of the~~
40 ~~vacation petition to the prosecuting attorney's office that~~

1 prosecuted the offense for which vacation is sought, or has not
2 provided that notification to the court;

3 ~~(ii) The applicant has two or more domestic violence convictions~~
4 ~~stemming from different incidents. For purposes of this subsection,~~
5 ~~however, if the current application is for more than one conviction~~
6 ~~that arose out of a single incident, none of those convictions counts~~
7 ~~as a previous conviction;~~

8 ~~(iii) The applicant has signed an affidavit under penalty of~~
9 ~~perjury affirming that the applicant has not previously had a~~
10 ~~conviction for a domestic violence offense, and a criminal history~~
11 ~~check reveals that the applicant has had such a conviction; or~~

12 ~~(iv) Less than five years have elapsed since the person completed~~
13 ~~the terms of the original conditions of the sentence, including any~~
14 ~~financial obligations and successful completion of any treatment~~
15 ~~ordered as a condition of sentencing;~~

16 ~~(g))~~ For any offense other than those described in ~~((+f))~~ (h)
17 of this subsection, less than three years have passed since the
18 ~~((person completed the terms of the sentence, including any financial~~
19 ~~obligations))~~ later of: The applicant's release from total and
20 partial confinement, as defined in RCW 9.94A.030; or the applicant's
21 sentencing date;

22 ~~((+h))~~ (g) The ~~((offender))~~ applicant has been convicted of a
23 new crime in this state, another state, or federal or tribal court in
24 the three years prior to the vacation application; or

25 ~~((+i))~~ (h) The applicant was convicted of a misdemeanor or gross
26 misdemeanor offense as defined in RCW 10.99.020, or the court
27 determines after a review of the court file that the offense was
28 committed by one family or household member against another or by one
29 intimate partner against another, or the court, after considering the
30 damage to person or property that resulted in the conviction, any
31 prior convictions for crimes defined in RCW 10.99.020, or for
32 comparable offenses in another state or in federal court, and the
33 totality of the records under review by the court regarding the
34 conviction being considered for vacation, determines that the offense
35 involved domestic violence, and any one of the following factors
36 exist:

37 (i) The applicant has not provided written notification of the
38 vacation petition to the prosecuting attorney's office that
39 prosecuted the offense for which vacation is sought, or has not
40 provided that notification to the court;

1 (ii) The applicant has two or more domestic violence convictions
2 stemming from different incidents. For purposes of this subsection,
3 however, if the current application is for more than one conviction
4 that arose out of a single incident, none of those convictions count
5 as a previous conviction;

6 (iii) The applicant has signed an affidavit under penalty of
7 perjury affirming that the applicant has not previously had a
8 conviction for a domestic violence offense, and a criminal history
9 check reveals that the applicant has had such a conviction;

10 (iv) Less than five years have elapsed since the later of: The
11 applicant's release from total and partial confinement, as defined in
12 RCW 9.94A.030; or the applicant's sentencing date; or

13 (v) The applicant is currently restrained by a domestic violence
14 protection order, a no-contact order, an antiharassment order, or a
15 civil restraining order which restrains one party from contacting the
16 other party or was previously restrained by such an order and was
17 found to have committed one or more violations of the order in the
18 five years prior to the vacation application.

19 (3) If the applicant is a victim of sex trafficking,
20 prostitution, or commercial sexual abuse of a minor; sexual assault;
21 or domestic violence as defined in RCW 9.94A.030, or the prosecutor
22 applies on behalf of the state, the sentencing court may vacate the
23 record of conviction if the application satisfies the requirements of
24 RCW 9.96.080. When preparing or filing the petition, the prosecutor
25 is not deemed to be providing legal advice or legal assistance on
26 behalf of the victim, but is fulfilling an administrative function on
27 behalf of the state in order to further their responsibility to seek
28 to reform and improve the administration of criminal justice. A
29 record of conviction vacated using the process in RCW 9.96.080 is
30 subject to subsections (6) and (7) of this section.

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

1 Notwithstanding the requirements of RCW 9.94A.640, the court shall
2 vacate the record of conviction if:

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

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

11 (5) Every person convicted of a misdemeanor marijuana offense,
12 who was (~~twenty-one~~) 21 years of age or older at the time of the
13 offense, may apply to the sentencing court for a vacation of the
14 applicant's record of conviction for the offense. A misdemeanor
15 marijuana offense includes, but is not limited to: Any offense under
16 RCW 69.50.4014, from July 1, 2004, onward, and its predecessor
17 statutes, including RCW 69.50.401(e), from March 21, 1979, to July 1,
18 2004, and RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and
19 any offense under an equivalent municipal ordinance. If an applicant
20 qualifies under this subsection, the court shall vacate the record of
21 conviction.

22 (6) A person who is a family member of a homicide victim may
23 apply to the sentencing court on the behalf of the victim for
24 vacation of the victim's record of conviction for prostitution under
25 RCW 9A.88.030. If an applicant qualifies under this subsection, the
26 court shall vacate the victim's record of conviction.

27 (7)(a) Except as provided in (c) of this subsection, once the
28 court vacates a record of conviction under this section, the person
29 shall be released from all penalties and disabilities resulting from
30 the offense and the fact that the person has been convicted of the
31 offense shall not be included in the person's criminal history for
32 purposes of determining a sentence in any subsequent conviction. For
33 all purposes, including responding to questions on employment or
34 housing applications, a person whose conviction has been vacated
35 under this section may state that he or she has never been convicted
36 of that crime. However, nothing in this section affects the
37 requirements for restoring a right to possess a firearm under RCW
38 9.41.040. Except as provided in (b) of this subsection, nothing in
39 this section affects or prevents the use of an offender's prior
40 conviction in a later criminal prosecution.

1 (b) When a court vacates a record of domestic violence as defined
2 in RCW 10.99.020 under this section, the state may not use the
3 vacated conviction in a later criminal prosecution unless the
4 conviction was for: (i) Violating the provisions of a restraining
5 order, no-contact order, or protection order restraining or enjoining
6 the person or restraining the person from going on to the grounds of
7 or entering a residence, workplace, school, or day care, or
8 prohibiting the person from knowingly coming within, or knowingly
9 remaining within, a specified distance of a location, a protected
10 party's person, or a protected party's vehicle (RCW 10.99.040,
11 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,
12 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and
13 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic
14 violence protection order or vulnerable adult protection order
15 entered under chapter 7.105 RCW. 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 (c) A conviction vacated on or after July 28, 2019, qualifies as
19 a prior conviction for the purpose of charging a present recidivist
20 offense as defined in RCW 9.94A.030 occurring on or after July 28,
21 2019.

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

34 NEW SECTION. **Sec. 4.** Section 2 of this act expires July 1,
35 2022.

1 NEW SECTION. **Sec. 5.** Section 3 of this act takes effect July 1,
2 2022.

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