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**SECOND SUBSTITUTE HOUSE BILL 1492**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Simmons, Peterson, Santos, Doglio, Pollet, Macri, and Reed)

AN ACT Relating to providing relief for persons affected by State v. Blake; amending RCW 9.94A.640, 9.96.060, and 72.09.480; adding a new chapter to Title 9 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Clerk" means the clerk of the superior court or the court administrator of a court of limited jurisdiction.

(2) "Collection cost" means any fee or cost paid to a collection agency as a result of a qualifying conviction or qualifying nonconviction. A collection cost is "readily ascertainable" if the clerk or collection agency maintains a record or accounting of the collection cost or the defendant has provided documentation of the collection cost.

(3) "Cost of supervision" means any supervision fee or cost paid to the department of corrections.

(4) "Document-verified collateral cost" means any fee or cost paid for a person's participation in a program or activity resulting from a qualifying conviction or qualifying nonconviction, including but not limited to electronic home monitoring costs, work release fees, costs of drug evaluations, cost of treatment, probation costs, and jail time in lieu of legal financial obligations, the payment of which is verified by documentation carrying sufficient indicia of reliability per guidance issued by the administrative office of the courts. A fee or cost paid to a collection agency is not considered a document-verified collateral cost.

(5) "Legal financial obligation" means a sum of money that is ordered by a superior, district, or municipal court of the state of Washington for legal financial obligations, which may include restitution to the victim, court costs, county or interlocal drug funds, court-appointed attorneys' fees, accrued interest, costs of defense, fines, and any other financial obligation that is assessed on the defendant as a result of a qualifying conviction or qualifying nonconviction. A legal financial obligation does not include any fee related to reissuing or reinstating a driver's license under chapter 46.20 RCW. A nonconviction legal financial obligation is "readily ascertainable" if the clerk, adult or juvenile court, prosecuting authority, or any diversion unit administered by the jurisdiction maintains a record or accounting of the nonconviction legal financial obligation or the defendant has provided documentation of the nonconviction legal financial obligation.

(6) "Prosecuting authority" means any prosecuting attorney as defined in RCW 36.27.005 or 35.23.111 or any attorney authorized to prosecute cases in courts of limited jurisdiction.

(7) "Qualifying conviction" means any conviction or juvenile adjudication of a qualifying offense.

(8) "Qualifying nonconviction" means any adult or juvenile charge for a qualifying offense that was dismissed or not filed following successful completion of a diversion program, deferred prosecution, therapeutic court, or similar program. However, if the person was participating in the diversion program, deferred prosecution, therapeutic court, or other program, for multiple charges on an indictment, information, or affidavit where one or more charged offenses were not qualifying offenses, then the charge for the qualifying offense does not constitute a qualifying nonconviction under this chapter.

(9) "Qualifying offense" includes:

(a) Any of the following offenses where possession of a substance is criminalized without proof that the person knowingly possessed the substance: RCW 69.50.4013 (simple possession of a controlled substance, 2004-2021); RCW 69.50.401 (simple possession of a controlled substance, 1971-2004); RCW 69.33.020 or 69.33.230 (simple possession of narcotics, 1951-1971); RCW 69.50.401 (possession of less than 40 grams of marijuana, 1971-2004); RCW 69.50.4014 (possession of less than 40 grams of marijuana, 2004-2021); RCW 69.41.030 and 69.41.070 (possession of legend drugs, 1973-2004); RCW 69.41.030 (possession of legend drugs, 2004-2021); RCW 69.50.4011 (possession of counterfeit substances, 2004-2021); RCW 69.50.412 (use of drug paraphernalia to inject, ingest, inhale, or otherwise introduce a controlled substance into the human body, 1981-2021);

(b) Any offense under any municipal code that criminalizes possession of a controlled substance, legend drug, counterfeit substance, or drug paraphernalia without proof that the person knowingly possessed the controlled substance, legend drug, or counterfeit substance or drug paraphernalia;

(c) Any attempt, conspiracy, or solicitation to commit any offense under (a) or (b) of this subsection;

(d) Any of the following offenses when such an offense was predicated solely on a conviction of any offense under (a), (b), or (c) of this subsection: RCW 9.41.040(2)(a) (unlawful possession of a firearm, 2003-2021); RCW 9.41.040(1)(b) (unlawful possession of a firearm, 1994-2003); and

(e) Any offense that the state supreme court rules unconstitutional in light of *State v. Blake*, No. 96873-0 (decided February 25, 2021).

NEW SECTION. **Sec.**  Any person with a qualifying conviction is eligible to have such conviction vacated by the sentencing court under this chapter. The restrictions under RCW 9.96.060 and 9.94A.640 do not apply to motions or applications filed under this chapter. Any person with a qualifying conviction or qualifying nonconviction is eligible for a refund of all legal financial obligations, collection costs, and document-verified collateral costs paid as a result of the qualifying conviction or qualifying nonconviction as provided in this chapter.

NEW SECTION. **Sec.**  (1) Upon receipt of a report from the clerk under section 10 of this act, a prosecuting authority shall review all qualifying convictions and qualifying nonconvictions within his or her jurisdiction.

(a) For each qualifying conviction and qualifying nonconviction, the prosecuting authority shall:

(i) Coordinate with the appropriate clerk and other appropriate entities to develop a list of all legal financial obligation amounts and readily ascertainable collection cost amounts paid as a result of the qualifying conviction or qualifying nonconviction; and

(ii) Determine whether the person is currently serving a sentence for any offense under the supervision of the department of corrections, and in such case, notify the office of public defense that the person may be eligible for resentencing under section 6 of this act.

(b) For each qualifying conviction, the prosecuting authority shall file an ex parte motion by January 1, 2026, with the applicable sentencing court to dismiss and vacate the conviction under this chapter.

(c) For each qualifying nonconviction where legal financial obligations or readily ascertainable collection costs were paid as a result of the qualifying nonconviction, the prosecuting authority shall file an ex parte motion by January 1, 2026, with the applicable sentencing court to refund the legal financial obligations and readily ascertainable collection costs under this chapter.

(d) A motion under this section may include documentation of the amount of legal financial obligations and readily ascertainable collection costs paid by the person as a result of the qualifying conviction or nonconviction. The prosecuting authority is not required to notify the defendant of the motion, and the court shall consider a motion under this section without requiring the presence of the parties or counsel.

(2)(a) The clerk must conduct an objectively reasonable search for collection cost records and nonconviction legal financial obligation records. The adequacy of a search is judged by the standard of reasonableness. A reasonable search usually begins with the clerk or designated employee deciding where the records are likely to be and who is likely to know where they are.

(b) In conducting an objectively reasonable search for collection cost records, in addition to searching the clerk's own records, the clerk shall issue a written request to any current or past contracted collection agency to provide all records and allocations of payments made under qualifying convictions or qualifying nonconvictions. After issuing a written request, the clerk shall also make substantial efforts to obtain the requested records from the collection agency.

NEW SECTION. **Sec.**  A person with a qualifying conviction or qualifying nonconviction may file a motion with the sentencing court for a vacation of the conviction and a refund of legal financial obligation, collection cost, or document-verified collateral cost amounts, or a refund of nonconviction legal financial obligation, collection cost, or document-verified collateral cost amounts, regardless of whether a prosecuting authority is expected to file a motion under section 3 of this act. A person moving for a vacation of a conviction or a refund under this section shall set the motion for hearing in accordance with local court rules, but in no case sooner than 30 days from the date of filing, unless the court finds good cause to shorten the time. For a motion for a refund brought under this section, the prosecuting authority shall furnish the applicant with the amount paid by the applicant for any legal financial obligations and readily ascertainable collection costs 14 court days in advance of the hearing. The movant may also demonstrate payment of legal financial obligations, collection costs, and document-verified collateral costs by submitting copies of records demonstrating payment and by sworn declaration. The prosecuting authority may object to a motion for vacation of the conviction only on the basis that the conviction is not a qualifying conviction.

NEW SECTION. **Sec.**  (1) Upon a determination by the court to vacate any qualifying conviction under this chapter, the court shall:

(a) Set aside each guilty plea or verdict, dismiss with prejudice the count or counts in the information, indictment, complaint, or citation that relates to the qualifying conviction or convictions, and vacate the judgment and sentence;

(b) Quash any outstanding warrants related to the vacated qualifying conviction;

(c) Release the individual from all penalties and disabilities resulting from the qualifying conviction;

(d) Prohibit the qualifying conviction from being included in a person's criminal history for the purposes of determining bail in a subsequent prosecution or a sentence in any subsequent conviction;

(e) Direct the clerk to notify the department of licensing to reinstate the person's privilege to drive, if suspended due to the qualifying conviction;

(f) Direct the clerk to cancel any unpaid balances of legal financial obligations imposed upon the person as a result of the qualifying conviction, and direct the clerk to remove the legal financial obligations from collection if collection of legal financial obligations was assigned to a private collection agency;

(g) Order the administrative office of the courts to refund any documented legal financial obligation, collection cost, and document-verified collateral cost amounts paid as a result of the qualifying conviction;

(h) Include in the order a statement informing the person of the right to challenge the amount refunded under the order and that if the person is indigent, the person may request publicly funded counsel, subject to available funding for this purpose, to assist in reviewing the refund determination and bringing a motion to amend the refund amount, as provided in section 8 of this act; and

(i) Include in the order a statement that the defendant's conviction is vacated as unconstitutional pursuant to *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

(2) Upon receipt of a court order to vacate a qualifying conviction under this section, the clerk shall transmit notice of the vacate order to the Washington state patrol identification section, and shall transmit the certification, and all documentation in support of the certified amount to the administrative office of the courts refund bureau.

(3) Upon receipt of notice of a court order to vacate a qualifying conviction under this section, the Washington state patrol shall have no more than seven working days to update their records to reflect the vacation of the qualifying conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A qualifying conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol, prosecuting authority, or local law enforcement agency to any person, except other criminal justice enforcement agencies.

(4) A qualifying conviction vacated under this chapter may not be included in the person's criminal history for purposes of determining bail in a subsequent prosecution or a sentence in any subsequent conviction, and the person must be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, a person whose qualifying conviction has been vacated may state that he or she has never been convicted of that crime. For any qualifying conviction vacated under this section, a prosecuting authority may not refile any charges for acts alleged in the original indictment, information, or affidavit of probable cause filed in relation to the qualifying conviction, and may not file new or additional charges based on acts alleged in any law enforcement report from which the qualifying conviction arose.

NEW SECTION. **Sec.**  (1) If the vacation of a qualifying conviction under this chapter affects a sentence imposed for a separate conviction by altering the person's criminal history as defined in RCW 9.94A.030, then the person may file a motion to be resentenced in the applicable sentencing court. Any person with a qualifying conviction who is serving a current or pending sentence under the supervision of the department of corrections has a right to court-appointed counsel for resentencing proceedings under this section consistent with the provisions set forth in chapter 10.101 RCW. For the purposes of this chapter, individuals incarcerated under the jurisdiction of the department of corrections are presumed indigent.

(2) A prosecuting authority may not file or refile previously dismissed charges contained in any indictment, information, or affidavit of probable cause filed in relation to the conviction for which the person qualifies for resentencing under this section, and may not file new or additional charges based on acts alleged in any law enforcement report from which the conviction arose for which the person is being resentenced.

NEW SECTION. **Sec.**  (1) Upon determination by the court of any valid motion to refund legal obligations for any qualifying nonconviction, the court shall:

(a) Direct the clerk to cancel any unpaid balances of legal financial obligations imposed upon the person as a result of the qualifying nonconviction, and direct the clerk to remove the legal financial obligations from collection if collection of legal financial obligations was assigned to a private collection agency;

(b) Provide the clerk with an approved itemized and totaled amount of documented legal financial obligation, collection cost, and document-verified collateral cost amounts to be refunded; and

(c) Order the administrative office of the courts to refund any documented legal financial obligation, collection cost, and document-verified collateral cost amounts paid as a result of the qualifying nonconviction.

(2) The clerk shall transmit the certification to the administrative office of the courts refund bureau.

NEW SECTION. **Sec.**  (1) Within three years of issuance of a refund amount from the refund bureau, a person may challenge the amount of any legal financial obligation or collection cost refund ordered by the court under section 5 or 7 of this act if the order resulted from a motion brought under section 3 of this act by bringing a motion to amend the order's refund amount in the court that issued the order. A person may also move to amend the refund amount to include document-verified collateral costs paid as a result of the qualifying conviction or qualifying nonconviction. Any motion to challenge or amend the refund amount must include documentation to support any additional refund amounts sought. A person bringing a motion to challenge the refund amount must notify the refund bureau of the challenge.

(2) If the person is indigent, and if the refund amount was ordered as a result of a motion brought under section 3 of this act, the person may request the services of counsel, subject to funding appropriated for this specific purpose to the office of civil legal aid or the office of public defense, to review the refund determination and to assist in bringing a good-faith motion to amend the refund amount in the court that issued the order. The provision of publicly funded counsel under this section will be coordinated by the office of public defense and the office of civil legal aid. For the purpose of this section, "indigent" has the same meaning given in RCW 10.101.010.

(3) A motion to amend the refund amount brought under this section is not a collateral attack as defined under RCW 10.73.090. Nothing in this chapter shall be construed as limiting a person's right to appeal a court order under applicable Washington court rules.

NEW SECTION. **Sec.**  (1) Legal financial obligations refunded as a result of a vacated qualifying conviction shall not be reallocated to any other legal financial obligations the person is required to pay under other cause numbers or to legal financial obligations owed on other convictions under the same cause number.

(2) When the only crime of conviction under a cause number is a qualifying conviction, the court shall vacate all legal financial obligations imposed under the conviction and order the refund of any documented legal financial obligation, collection cost, and document-verified collateral cost amounts paid.

(3) If the person whose qualifying conviction is vacated has multiple convictions under the cause number, the following standards apply for determining the allocation of legal financial obligation, collection cost, and document-verified collateral cost amounts the person is entitled to be refunded under the vacated qualifying conviction:

(a) For a victim penalty assessment imposed under RCW 7.68.035:

(i) If at least one other nonvacated count is a felony conviction, the victim penalty assessment shall not be vacated or refunded;

(ii) If all other nonvacated counts are misdemeanors, but one of those counts was originally charged as a felony, $250 of the victim penalty assessment principal amount shall be vacated and, if paid, refunded;

(iii) If all other nonvacated counts are misdemeanors, and none of those counts were originally charged as a felony, the victim penalty assessment shall be vacated and, if paid, refunded.

(b) For a DNA collection fee imposed under RCW 43.43.7541:

(i) If at least one nonvacated count is a crime specified in RCW 43.43.754, the DNA collection fee shall not be vacated or refunded;

(ii) If none of the nonvacated counts are crimes specified in RCW 43.43.754, the DNA collection fee shall be vacated and, if paid, refunded.

(c) The crime laboratory analysis fee imposed under RCW 43.43.690 shall be vacated and, if paid, refunded, unless the fee was imposed for a conviction that is not a qualifying conviction.

(d) For a fine imposed under RCW 69.50.430:

(i) If at least one nonvacated count is a crime specified in RCW 69.50.430, the fine shall not be vacated or refunded;

(ii) If none of the nonvacated counts are crimes specified in RCW 69.50.430, the fine shall be vacated and, if paid, refunded.

(e) For any fee imposed for a county or interlocal drug fund:

(i) If at least one nonvacated count is a drug offense, as defined under RCW 9.94A.030, the drug fund fee shall not be vacated or refunded;

(ii) If none of the nonvacated counts are drug offenses, as defined under RCW 9.94A.030, the drug fund fee shall be vacated and, if paid, refunded.

(f) Drug court costs shall be vacated and, if paid, refunded.

(g) All costs of chemical dependency evaluation or treatment shall be refunded where either was ordered as a condition of the judgment and sentence. Upon presentation of proof of document-verified collateral costs associated with a chemical dependency evaluation or treatment, the court shall order a refund amount equaling the proof of payment presented.

(h) If any legal financial obligation is reduced, vacated, or refunded pursuant to (a) through (f) of this subsection, accrued interest and collection costs shall be vacated and, if paid, refunded. Accrued interest and collection costs shall be reduced and, if paid, refunded, based on the proportion of the vacated counts under the cause number. The proportionate reduction and refund shall be computed by dividing the number of vacated counts by the original total counts of conviction under the cause number.

NEW SECTION. **Sec.**  (1) The administrative office of the courts, in coordination with clerks in the superior, district, and municipal courts within each county, shall develop comprehensive reports for each court of all persons with qualifying convictions or qualifying nonconvictions. The report must be based on available court records and list qualifying convictions and qualifying nonconvictions chronologically by cause number in a readily searchable and sortable format. For each cause number, the report must include the date of the judgment and sentence or dismissal pursuant to successful completion of a diversion program or deferred prosecution, a listing of all conviction counts for a qualifying offense in the judgment and sentence or order of dismissal pursuant to successful completion of a diversion program or deferred prosecution, and a listing of all conviction counts for other offenses in the judgment and sentence. The administrative office of the courts shall indicate any period of time where court records are unavailable.

(2) In compiling the report, the administrative office of the courts, with the assistance of the department of corrections and the clerk of the court, shall prioritize cases in the following order: (a) The person is incarcerated due to a qualifying conviction; (b) the person is incarcerated and has a qualifying conviction in the person's criminal history score; (c) the person is under active or inactive supervision due to a qualifying conviction; and (d) the person has a past qualifying conviction or qualifying nonconviction.

(3) Upon availability, the administrative office of the courts shall provide completed installments of the report of qualifying convictions and qualifying nonconvictions to clerks in the superior, district, and municipal courts, and to the office of public defense and the office of civil legal aid. Upon receipt of the reports, clerks in the superior, district, and municipal courts shall provide the reports to local prosecutors. The office of public defense and the office of civil legal aid may provide the reports to local public defense or their contractors providing legal representation to those impacted by *State v. Blake*.

(4) The administrative office of the courts shall complete the report for all qualifying convictions and nonconvictions under section 1(9) (a), (b), and (c) of this act by January 1, 2024. The administrative office of the courts shall complete the report for all qualifying convictions and qualifying nonconvictions under section 1(9)(d) of this act by July 1, 2024.

NEW SECTION. **Sec.**  No public agency, public official, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon a release of a report under this chapter if the public agency, public official, or custodian acted in good faith in attempting to comply with the provisions of this chapter.

NEW SECTION. **Sec.**  (1) The administrative office of the courts shall create and administer a refund bureau to provide direct refunds to persons who are entitled to a refund of legal financial obligations, collection costs, and document-verified collateral costs paid pursuant to a vacated qualifying conviction or a qualifying nonconviction based on certifications of legal financial obligations received from clerks in the superior, district, or municipal courts, or the department of corrections. The refund bureau shall also provide direct refunds to persons who made payments towards the costs of supervision as a result of a qualifying conviction based on the list certified by the department of corrections under subsection (2) of this section. The administrative office of the courts shall create a model application form that may be used for persons to submit to the refund bureau for purposes of obtaining a refund.

(2) The department of corrections shall provide the administrative office of the courts with a certified list of all qualifying convictions in which the defendant paid any amount towards the cost of supervision. This list shall contain the defendant's name, case number, and the amount paid. The department of corrections shall provide this list to the administrative office of the courts by January 1, 2024.

(3) The administrative office of the courts shall provide a notice to all persons who are entitled to a refund of legal financial obligations, collection costs, document-verified collateral costs, or costs of supervision paid under a qualifying conviction or qualifying nonconviction of their right to the refund and the process for applying for the refund.

(4)(a) Upon the issuance of a refund, the administrative office of the courts refund bureau must also notify the person that:

(i) The person has the right to bring a motion to amend the refund amount if the person believes the refund amount is inaccurate;

(ii) The person must bring the motion within three years after issuance of the refund; and

(iii) If the person is indigent, the person may request publicly funded counsel, subject to available funding for this purpose, to review the determination and assist in bringing a good-faith motion to amend the refund amount in the court that issued the order.

(b) The notice must provide information on the process to bring a motion to amend the refund amount and how to contact the office of public defense and the office of civil legal aid if the person is indigent and wishes to obtain the assistance of an attorney.

(5) The administrative office of the courts shall create a searchable online database to allow persons to search and determine whether they have a qualifying conviction that has been vacated and whether they are entitled to a refund of legal financial obligations, collection costs, or document-verified collateral costs paid as a result of a vacated qualifying conviction or a qualifying nonconviction.

NEW SECTION. **Sec.**  Nothing in this chapter is intended to modify or have any affect on the procedures or requirements for, or the consequences of, a vacation of a criminal offense under other provisions of law.

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

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

(2) ((~~An~~)) Except as provided in section 1 of this act and subsection (3) of this section, an offender may not have the record of conviction cleared if:

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

(b) The offense was a violent offense as defined in RCW 9.94A.030 or crime against persons as defined in RCW 43.43.830, except the following offenses may be vacated if the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement: (i) Assault in the second degree under RCW 9A.36.021; (ii) assault in the third degree under RCW 9A.36.031 when not committed against a law enforcement officer or peace officer; and (iii) robbery in the second degree under RCW 9A.56.210;

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

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

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

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

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

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

(4)(a) Except as otherwise provided, once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution, and nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040.

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

**Sec.**  RCW 9.96.060 and 2022 c 16 s 7 are each amended to read as follows:

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

(2) Every person convicted of a misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. If the court finds the applicant meets the requirements of this subsection, the court may in its discretion vacate the record of conviction. Except as provided in section 1 of this act and subsections (3), (4), ((~~and~~)) (5), and (6) of this section, an applicant may not have the record of conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) When a court vacates a record of domestic violence as defined in RCW 10.99.020 under this section, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (i) Violating the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going on to the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle (RCW 10.99.040, 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070, or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic violence protection order or vulnerable adult protection order entered under chapter 7.105 RCW. A vacated conviction under this section is not considered a conviction of such an offense for the purposes of 27 C.F.R. 478.11.

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

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

(9) For the purposes of this section, "cannabis" has the meaning provided in RCW 69.50.101.

**Sec.**  RCW 72.09.480 and 2015 c 238 s 1 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree or certificate education program.

(2) When an inmate, except as provided in subsections (4) ((~~and~~)), (8), and (9) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(d) Twenty percent for any child support owed under a support order;

(e) Twenty percent to the department to contribute to the cost of incarceration; and

(f) Twenty percent for payment of any civil judgment for assault for all inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(3) When an inmate, except as provided in subsection ((~~(9)~~)) (10) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) When an inmate who is subject to a child support order receives funds from an inheritance, the deduction required under subsection (2)(e) and (f) of this section shall only apply after the child support obligation has been paid in full.

(5) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(6)(a) The deductions required under subsection (2) of this section shall not apply to funds received by the department from an ((~~offender~~)) incarcerated individual or from a third party on behalf of an ((~~offender~~)) incarcerated individual for payment of education or vocational programs or postsecondary ((~~education~~)) degree or certificate programs as provided in RCW 72.09.460 and 72.09.465.

(b) The deductions required under subsection (2) of this section shall not apply to funds received by the department from a third party, including but not limited to a nonprofit entity on behalf of the department's education, vocation, or postsecondary ((~~education~~)) degree or certificate education programs.

(7) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(8) The deductions required under subsection (2) of this section do not apply to any money received by the department on behalf of an inmate from family or other outside sources for the payment of certain medical expenses. Money received under this subsection may only be used for the payment of medical expenses associated with the purchase of eyeglasses, over-the-counter medications, and ((~~offender~~)) incarcerated individual copayments. Funds received specifically for these purposes may not be transferred to any other account or purpose. Money that remains unused in the inmate's medical fund at the time of release is subject to deductions under subsection (2) of this section.

(9) Legal financial obligations reimbursed pursuant to *State v. Blake* under chapter . . . RCW (the new chapter created in section 17 of this act) are exempt from the deductions requirements in subsection (2) of this section when the defendant is in custody in a correctional facility.

(10) Inmates sentenced to life imprisonment without possibility of release or sentenced to death under chapter 10.95 RCW receives funds, deductions are required under subsection (2) of this section, with the exception of a personal inmate savings account under subsection (2)(b) of this section.

((~~(10)~~)) (11) The secretary of the department of corrections, or his or her designee, may exempt an inmate from a personal inmate savings account under subsection (2)(b) of this section if the inmate's earliest release date is beyond the inmate's life expectancy.

((~~(11)~~)) (12) The interest earned on an inmate savings account created as a result of the plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

((~~(12)~~)) (13) Nothing in this section shall limit the authority of the department of social and health services division of child support, the county clerk, or a restitution recipient from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action.

NEW SECTION. **Sec.**  Sections 1 through 13 of this act constitute a new chapter in Title 9 RCW.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void.

**--- END ---**