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**HOUSE BILL 1492**

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

**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 section to chapter 42.56 RCW; and adding a new chapter to Title 9 RCW.

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) "Legal financial obligation" means any financial obligation that a person is required to pay as a result of a charge or conviction for the offense, regardless of whether the amount is required to be paid to the court, a governmental entity, or a private entity, including but not limited to: Restitution; fines, fees, penalties, and assessments for the criminal offense; costs including court costs, costs of incarceration, and costs of supervision; fees or costs assessed in connection with a diversion, deferred prosecution, deferred sentence, or participation in a therapeutic court; fees or costs assessed for court-ordered electronic monitoring or court-ordered treatment; and all fees, interest, or other moneys related to the collection or enforcement of a legal financial obligation.

(3) "Prosecuting attorney" means any prosecuting attorney as defined in RCW 36.27.005 and any city attorney.

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

(5) "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.

(6) "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(2) (possession of drug paraphernalia, 1981-2021);

(b) Any offense under any municipal code that criminalizes possession of a controlled substance, legend drug, or 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)(i) Any of the following offenses when such an offense was predicated on an arrest, charge, conviction, or sentence of any offense under (a), (b), or (c) of this subsection: RCW 9A.76.170 (bail jumping, 1975-2020); RCW 9A.76.170 (bail jumping for trial, 2020-2021); RCW 9A.76.190 (failure to appear or surrender, 2020-2021); RCW 9.31.010 (escape, 1909-1975); RCW 9A.76.110 (escape 1st degree, 1975-2021); RCW 9A.76.120 (escape 2nd degree, 1975-2021); RCW 9A.76.130 (escape 3rd degree, 1975-2021); RCW 9.69.040 (resisting public officer, 1909-1975); RCW 9A.76.040 (resisting arrest, 1975-2021); RCW 72.09.310 (community custody violator, 1988-2021);

(ii) Any of the following offenses when such an offense was predicated 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 Washington courts rule unconstitutional in light of *State v. Blake*, No. 96873-0 (decided February 25, 2021).

NEW SECTION. **Sec.**  As a result of the Washington state supreme court decision in *State v. Blake*, No. 96873-0 (decided February 25, 2021), 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 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 9 of this act, a prosecuting attorney shall review all qualifying convictions and nonconvictions within his or her jurisdiction.

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

(i) Coordinate with the appropriate clerk and other appropriate entities to develop a list of all legal financial obligation amounts paid as a result of the qualifying conviction or qualifying nonconviction. The prosecutor shall include legal financial obligation amounts paid to private, third-party agencies with whom the courts or local jurisdictions have contractual relationships for the collection of legal financial obligations, the department of corrections, and other private entities to the extent those amounts are known or readily ascertainable, or if the person subject to the qualifying conviction or qualifying nonconviction has provided the prosecutor with documentation of legal financial obligation amounts paid to private entities; 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 state 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 attorney 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 were paid as a result of the qualifying nonconviction, the prosecuting attorney shall file an ex parte motion by January 1, 2026, with the applicable sentencing court to refund the legal financial obligations under this chapter.

(d) A motion under this section must include documentation of the amount of legal financial obligations paid by the person as a result of the qualifying conviction or nonconviction. The prosecuting attorney 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 prosecuting attorney or defendant.

(2) By July 1, 2023, prosecuting attorneys shall submit to clerks in their respective jurisdictions a report on the status of all filed motions required under this section, including all filed motions to vacate pursuant to *State v. Blake* since the decision was issued. The report shall be in a format that includes, but is not limited to, cause level information in a searchable, tabulated file format which includes individual cause numbers, individual names, case outcomes, and legal financial reimbursement amounts for all cases. Beginning October 1, 2023, through January 1, 2026, prosecuting attorneys shall submit to the clerks on a quarterly basis a report in the same format with the same data points on the status of motions required under this section. Clerks shall forward these reports to the administrative office of the courts. The administrative office of the courts shall share these reports with the state office of public defense and the state office of civil legal aid.

(3) The clerk shall identify all legal financial obligation refund amounts which have been ordered by the court as a result of a qualifying conviction or qualifying nonconviction beginning from the date of the mandate in *State v. Blake*, to the effective date of this section, and determine any additional legal financial amounts not previously refunded or ordered to be refunded, but entitled to be refunded, in accordance with the determination in subsection (1)(a)(i) of this section. The clerk shall provide this information to the prosecuting attorney and the administrative office of the courts. The prosecuting attorney shall seek amended orders for the refund of legal financial obligation amounts identified under this subsection.

NEW SECTION. **Sec.**  (1) A person with a qualifying conviction or nonconviction may apply to the sentencing court for a vacation of the conviction or a refund of nonconviction legal financial obligations under this chapter, regardless of whether a prosecuting attorney is expected to file a motion under section 3 of this act. If a person applies under this section, the prosecuting attorney shall respond to the application within 30 days. The prosecuting attorney may object to the application only on the basis that the conviction or nonconviction is not a qualifying conviction or qualifying nonconviction under this chapter and may otherwise provide clarifying documentation as to the legal financial obligations paid as a result of the qualifying conviction or qualifying nonconviction.

(2) A person may challenge the amount of any legal financial obligation refund ordered by the court under section 5 or 7 of this act in the court that issued the order by bringing a motion to amend the order's refund amount. The person has a right to the assistance of counsel in reviewing the refund determination and in bringing a motion to amend the refund amount in the court that issued the order.

(3) By January 1, 2024, the administrative office of the courts shall develop pattern forms for applications for a pro se vacation of qualifying convictions, motion to amend a legal financial obligation refund amount, and applications for assistance of counsel in bringing the motion to amend the refund amount under this section.

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

(a) Set aside each guilty plea or verdict, dismiss the information, indictment, complaint, or citation with prejudice, 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) Provide the clerk with an approved itemized and totaled amount of legal financial obligations to be refunded, and direct the clerk to certify the itemized and totaled amounts;

(h) Order the administrative office of the courts to refund any legal financial obligations paid as a result of the qualifying conviction;

(i) Include in the order a statement informing the person of the right to challenge the amount of legal financial obligations refunded under the order and the right to the assistance of counsel in reviewing the refund determination and bringing a motion to amend the refund amount, as provided in section 4 of this act; and

(j) 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 the order to the Washington state patrol identification section; the local police agency, if any, which holds criminal history information for the person, and shall transmit the order, the certification, and all documentation in support of the certified amount to the administrative office of the courts refund bureau.

(3) Upon receipt of a court order to vacate a qualifying conviction under this section, the Washington state patrol and any such local police agency 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 attorney, or local law enforcement agency to any person.

(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 attorney 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 offender score under RCW 9.94A.525, then the person may file a motion to be resentenced in the applicable sentencing court. Any person with a qualifying conviction who is currently serving a sentence under the supervision of the department of corrections has a right to the assistance of counsel for resentencing proceedings under this section.

(2) A prosecuting attorney 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 legal financial obligations to be refunded, and direct the clerk to certify the itemized and totaled amounts; and

(c) Order the administrative office of the courts to refund any legal financial obligations paid as a result of the qualifying nonconviction.

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

NEW SECTION. **Sec.**  (1)(a) 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.

(b) The clerk shall identify all legal financial obligations from qualifying convictions which have been paid and previously reallocated to other counts or cause numbers and the amount reallocated. This information shall be provided to the prosecuting attorney's office and the administrative office of the courts. The previously reallocated amount shall be refunded.

(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 legal financial obligation 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 obligations and the amount 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, and any associated interest and collection fees, 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 and any associated interest and collection fees 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 and any associated interest and collection fees shall be vacated and, if paid, refunded.

(c) Costs of a court appointed attorney imposed under RCW 10.101.020(5) 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.

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

(e) 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 and any associated interest and collection fees shall be vacated and, if paid, refunded.

(f) 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 and any associated interest and collection fees shall be vacated and, if paid, refunded.

(g) The public safety and education assessment imposed under RCW 3.62.090, and any associated interest and collection fees, shall be vacated and, if paid, refunded, in proportion to the percentage of other legal financial obligations vacated for the qualifying conviction.

(h) Drug court costs and any associated interest and collection fees shall be vacated and, if paid, refunded.

(i) All costs of chemical dependency evaluation or treatment shall be refunded in the amount of $250 where either was ordered as a condition of the judgment and sentence. Upon presentation of proof of payment exceeding the amount in this subsection (3)(i), the court shall order a refund amount equaling the proof of payment presented. Nothing in this section precludes a person with a qualifying conviction or qualifying nonconviction from seeking legal financial obligations in excess of this amount where proof of payment is presented to a court.

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 person's name, birth date, last known address, 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. The clerk of the court shall develop a similar report of all sealed cases of persons with qualifying convictions and qualifying nonconvictions. This must be kept confidential and may only be shared with the administrative office of the courts, except as otherwise provided in this section.

(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 state 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(6) (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 nonconvictions under section 1(6)(d) of this act by July 1, 2024. Reports compiled, received, and shared under this section are exempt from public disclosure under chapter 42.56 RCW. 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 section 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 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. 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 administrative office of the courts shall provide a notice to all persons who are entitled to a refund of legal financial obligations paid under a qualifying conviction or qualifying nonconviction of their right to the refund and the process for applying for the refund.

(3) The notice must include notice that the person has the right to bring a motion to amend the refund amount if the person believes the refund amount is inaccurate and the right to counsel to assist in reviewing the determination, and bringing a nonfrivolous motion to amend the refund amount in the court that issued the order. The notice must provide information on the process to bring a motion to amend the refund amount and how to contact the state office of public defense and the office of civil legal aid if the person wishes to obtain an attorney.

(4) 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 paid as a result of a vacated qualifying conviction or a qualifying nonconviction.

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

Reports compiled, received, and shared under section 9 of this act are exempt from disclosure under this chapter.

**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 15 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 10 of this act constitute a new chapter in Title 9 RCW.

**--- END ---**