
HOUSE BILL 1492

State of Washington

68th Legislature

2023 Regular Session

By Representatives Simmons, Peterson, Santos, Doglio, Pollet, Macri, and Reed

Read first time 01/23/23. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to providing relief for persons affected by State
2 v. Blake; amending RCW 9.94A.640, 9.96.060, and 72.09.480; adding a
3 new section to chapter 42.56 RCW; and adding a new chapter to Title 9
4 RCW.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

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

11 (2) "Legal financial obligation" means any financial obligation
12 that a person is required to pay as a result of a charge or
13 conviction for the offense, regardless of whether the amount is
14 required to be paid to the court, a governmental entity, or a private
15 entity, including but not limited to: Restitution; fines, fees,
16 penalties, and assessments for the criminal offense; costs including
17 court costs, costs of incarceration, and costs of supervision; fees
18 or costs assessed in connection with a diversion, deferred
19 prosecution, deferred sentence, or participation in a therapeutic
20 court; fees or costs assessed for court-ordered electronic monitoring
21 or court-ordered treatment; and all fees, interest, or other moneys

1 related to the collection or enforcement of a legal financial
2 obligation.

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

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

7 (5) "Qualifying nonconviction" means any adult or juvenile charge
8 for a qualifying offense that was dismissed or not filed following
9 successful completion of a diversion program, deferred prosecution,
10 therapeutic court, or similar program.

11 (6) "Qualifying offense" includes:

12 (a) Any of the following offenses where possession of a substance
13 is criminalized without proof that the person knowingly possessed the
14 substance: RCW 69.50.4013 (simple possession of a controlled
15 substance, 2004-2021); RCW 69.50.401 (simple possession of a
16 controlled substance, 1971-2004); RCW 69.33.020 or 69.33.230 (simple
17 possession of narcotics, 1951-1971); RCW 69.50.401 (possession of
18 less than 40 grams of marijuana, 1971-2004); RCW 69.50.4014
19 (possession of less than 40 grams of marijuana, 2004-2021); RCW
20 69.41.030 and 69.41.070 (possession of legend drugs, 1973-2004); RCW
21 69.41.030 (possession of legend drugs, 2004-2021); RCW 69.50.4011
22 (possession of counterfeit substances, 2004-2021); RCW 69.50.412(2)
23 (possession of drug paraphernalia, 1981-2021);

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

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

31 (d)(i) Any of the following offenses when such an offense was
32 predicated on an arrest, charge, conviction, or sentence of any
33 offense under (a), (b), or (c) of this subsection: RCW 9A.76.170
34 (bail jumping, 1975-2020); RCW 9A.76.170 (bail jumping for trial,
35 2020-2021); RCW 9A.76.190 (failure to appear or surrender,
36 2020-2021); RCW 9.31.010 (escape, 1909-1975); RCW 9A.76.110 (escape
37 1st degree, 1975-2021); RCW 9A.76.120 (escape 2nd degree, 1975-2021);
38 RCW 9A.76.130 (escape 3rd degree, 1975-2021); RCW 9.69.040 (resisting
39 public officer, 1909-1975); RCW 9A.76.040 (resisting arrest,
40 1975-2021); RCW 72.09.310 (community custody violator, 1988-2021);

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

6 (e) Any offense that Washington courts rule unconstitutional in
7 light of *State v. Blake*, No. 96873-0 (decided February 25, 2021).

8 NEW SECTION. **Sec. 2.** As a result of the Washington state
9 supreme court decision in *State v. Blake*, No. 96873-0 (decided
10 February 25, 2021), any person with a qualifying conviction is
11 eligible to have such conviction vacated by the sentencing court
12 under this chapter. The restrictions under RCW 9.96.060 and 9.94A.640
13 do not apply to motions or applications filed under this chapter. Any
14 person with a qualifying conviction or qualifying nonconviction is
15 eligible for a refund of all legal financial obligations paid as a
16 result of the qualifying conviction or qualifying nonconviction as
17 provided in this chapter.

18 NEW SECTION. **Sec. 3.** (1) Upon receipt of a report from the
19 clerk under section 9 of this act, a prosecuting attorney shall
20 review all qualifying convictions and nonconvictions within his or
21 her jurisdiction.

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

24 (i) Coordinate with the appropriate clerk and other appropriate
25 entities to develop a list of all legal financial obligation amounts
26 paid as a result of the qualifying conviction or qualifying
27 nonconviction. The prosecutor shall include legal financial
28 obligation amounts paid to private, third-party agencies with whom
29 the courts or local jurisdictions have contractual relationships for
30 the collection of legal financial obligations, the department of
31 corrections, and other private entities to the extent those amounts
32 are known or readily ascertainable, or if the person subject to the
33 qualifying conviction or qualifying nonconviction has provided the
34 prosecutor with documentation of legal financial obligation amounts
35 paid to private entities; and

36 (ii) Determine whether the person is currently serving a sentence
37 for any offense under the supervision of the department of
38 corrections, and in such case, notify the state office of public

1 defense that the person may be eligible for resentencing under
2 section 6 of this act.

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

7 (c) For each qualifying nonconviction where legal financial
8 obligations were paid as a result of the qualifying nonconviction,
9 the prosecuting attorney shall file an ex parte motion by January 1,
10 2026, with the applicable sentencing court to refund the legal
11 financial obligations under this chapter.

12 (d) A motion under this section must include documentation of the
13 amount of legal financial obligations paid by the person as a result
14 of the qualifying conviction or nonconviction. The prosecuting
15 attorney is not required to notify the defendant of the motion, and
16 the court shall consider a motion under this section without
17 requiring the presence of the prosecuting attorney or defendant.

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

33 (3) The clerk shall identify all legal financial obligation
34 refund amounts which have been ordered by the court as a result of a
35 qualifying conviction or qualifying nonconviction beginning from the
36 date of the mandate in *State v. Blake*, to the effective date of this
37 section, and determine any additional legal financial amounts not
38 previously refunded or ordered to be refunded, but entitled to be
39 refunded, in accordance with the determination in subsection
40 (1)(a)(i) of this section. The clerk shall provide this information

1 to the prosecuting attorney and the administrative office of the
2 courts. The prosecuting attorney shall seek amended orders for the
3 refund of legal financial obligation amounts identified under this
4 subsection.

5 NEW SECTION. **Sec. 4.** (1) A person with a qualifying conviction
6 or nonconviction may apply to the sentencing court for a vacation of
7 the conviction or a refund of nonconviction legal financial
8 obligations under this chapter, regardless of whether a prosecuting
9 attorney is expected to file a motion under section 3 of this act. If
10 a person applies under this section, the prosecuting attorney shall
11 respond to the application within 30 days. The prosecuting attorney
12 may object to the application only on the basis that the conviction
13 or nonconviction is not a qualifying conviction or qualifying
14 nonconviction under this chapter and may otherwise provide clarifying
15 documentation as to the legal financial obligations paid as a result
16 of the qualifying conviction or qualifying nonconviction.

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

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

28 NEW SECTION. **Sec. 5.** (1) Upon a determination by the court of
29 any valid motion to vacate any qualifying conviction under this
30 chapter, the court shall:

31 (a) Set aside each guilty plea or verdict, dismiss the
32 information, indictment, complaint, or citation with prejudice, and
33 vacate the judgment and sentence;

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

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

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

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

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

12 (g) Provide the clerk with an approved itemized and totaled
13 amount of legal financial obligations to be refunded, and direct the
14 clerk to certify the itemized and totaled amounts;

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

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

23 (j) Include in the order a statement that the defendant's
24 conviction is vacated as unconstitutional pursuant to *State v. Blake*,
25 197 Wn.2d 170, 481 P.3d 521 (2021).

26 (2) Upon receipt of a court order to vacate a qualifying
27 conviction under this section, the clerk shall transmit the order to
28 the Washington state patrol identification section; the local police
29 agency, if any, which holds criminal history information for the
30 person, and shall transmit the order, the certification, and all
31 documentation in support of the certified amount to the
32 administrative office of the courts refund bureau.

33 (3) Upon receipt of a court order to vacate a qualifying
34 conviction under this section, the Washington state patrol and any
35 such local police agency shall have no more than seven working days
36 to update their records to reflect the vacation of the qualifying
37 conviction, and shall transmit the order vacating the conviction to
38 the federal bureau of investigation. A qualifying conviction that has
39 been vacated under this section may not be disseminated or disclosed

1 by the state patrol, prosecuting attorney, or local law enforcement
2 agency to any person.

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

17 NEW SECTION. **Sec. 6.** (1) If the vacation of a qualifying
18 conviction under this chapter affects a sentence imposed for a
19 separate conviction by altering the person's offender score under RCW
20 9.94A.525, then the person may file a motion to be resentenced in the
21 applicable sentencing court. Any person with a qualifying conviction
22 who is currently serving a sentence under the supervision of the
23 department of corrections has a right to the assistance of counsel
24 for resentencing proceedings under this section.

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

32 NEW SECTION. **Sec. 7.** (1) Upon determination by the court of any
33 valid motion to refund legal obligations for any qualifying
34 nonconviction, the court shall:

35 (a) Direct the clerk to cancel any unpaid balances of legal
36 financial obligations imposed upon the person as a result of the
37 qualifying nonconviction, and direct the clerk to remove the legal

1 financial obligations from collection if collection of legal
2 financial obligations was assigned to a private collection agency;

3 (b) Provide the clerk with an approved itemized and totaled
4 amount of legal financial obligations to be refunded, and direct the
5 clerk to certify the itemized and totaled amounts; and

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

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

11 NEW SECTION.

Sec. 8.

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

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

22 (2) When the only crime of conviction under a cause number is a
23 qualifying conviction, the court shall vacate all legal financial
24 obligations imposed under the conviction and order the refund of any
25 legal financial obligation amounts paid.

26 (3) If the person whose qualifying conviction is vacated has
27 multiple convictions under the cause number, the following standards
28 apply for determining the allocation of legal financial obligations
29 and the amount the person is entitled to be refunded under the
30 vacated qualifying conviction:

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

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

35 (ii) If all other nonvacated counts are misdemeanors, but one of
36 those counts was originally charged as a felony, \$250 of the victim
37 penalty assessment principal amount, and any associated interest and
38 collection fees, shall be vacated and, if paid, refunded;

1 (iii) If all other nonvacated counts are misdemeanors, and none
2 of those counts were originally charged as a felony, the victim
3 penalty assessment and any associated interest and collection fees
4 shall be vacated and, if paid, refunded.

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

6 (i) If at least one nonvacated count is a crime specified in RCW
7 43.43.754, the DNA collection fee shall not be vacated or refunded;

8 (ii) If none of the nonvacated counts are crimes specified in RCW
9 43.43.754, the DNA collection fee and any associated interest and
10 collection fees shall be vacated and, if paid, refunded.

11 (c) Costs of a court appointed attorney imposed under RCW
12 10.101.020(5) shall be reduced and, if paid, refunded, based on the
13 proportion of the vacated counts under the cause number. The
14 proportionate reduction and refund shall be computed by dividing the
15 number of vacated counts by the original total counts of conviction
16 under the cause number.

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

21 (e) For a fine imposed under RCW 69.50.430:

22 (i) If at least one nonvacated count is a crime specified in RCW
23 69.50.430, the fine shall not be vacated or refunded;

24 (ii) If none of the nonvacated counts are crimes specified in RCW
25 69.50.430, the fine and any associated interest and collection fees
26 shall be vacated and, if paid, refunded.

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

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

31 (ii) If none of the nonvacated counts are drug offenses, as
32 defined under RCW 9.94A.030, the drug fund fee and any associated
33 interest and collection fees shall be vacated and, if paid, refunded.

34 (g) The public safety and education assessment imposed under RCW
35 3.62.090, and any associated interest and collection fees, shall be
36 vacated and, if paid, refunded, in proportion to the percentage of
37 other legal financial obligations vacated for the qualifying
38 conviction.

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

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

10 NEW SECTION. **Sec. 9.** (1) The administrative office of the
11 courts, in coordination with clerks in the superior, district, and
12 municipal courts within each county, shall develop comprehensive
13 reports for each court of all persons with qualifying convictions or
14 qualifying nonconvictions. The report must be based on available
15 court records and list qualifying convictions and qualifying
16 nonconvictions chronologically by cause number in a readily
17 searchable and sortable format. For each cause number, the report
18 must include the person's name, birth date, last known address, date
19 of the judgment and sentence or dismissal pursuant to successful
20 completion of a diversion program or deferred prosecution, a listing
21 of all conviction counts for a qualifying offense in the judgment and
22 sentence or order of dismissal pursuant to successful completion of a
23 diversion program or deferred prosecution, and a listing of all
24 conviction counts for other offenses in the judgment and sentence.
25 The administrative office of the courts shall indicate any period of
26 time where court records are unavailable. The clerk of the court
27 shall develop a similar report of all sealed cases of persons with
28 qualifying convictions and qualifying nonconvictions. This must be
29 kept confidential and may only be shared with the administrative
30 office of the courts, except as otherwise provided in this section.

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

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

11 (4) The administrative office of the courts shall complete the
12 report for all qualifying convictions and nonconvictions under
13 section 1(6) (a), (b), and (c) of this act by January 1, 2024. The
14 administrative office of the courts shall complete the report for all
15 qualifying convictions and nonconvictions under section 1(6)(d) of
16 this act by July 1, 2024. Reports compiled, received, and shared
17 under this section are exempt from public disclosure under chapter
18 42.56 RCW. No public agency, public official, or custodian shall be
19 liable, nor shall a cause of action exist, for any loss or damage
20 based upon a release of a report under this section if the public
21 agency, public official, or custodian acted in good faith in
22 attempting to comply with the provisions of this chapter.

23 NEW SECTION. **Sec. 10.** (1) The administrative office of the
24 courts shall create and administer a refund bureau to provide direct
25 refunds to persons who are entitled to a refund of legal financial
26 obligations paid pursuant to a vacated qualifying conviction or a
27 qualifying nonconviction based on certifications of legal financial
28 obligations received from clerks in the superior, district, or
29 municipal courts. The administrative office of the courts shall
30 create a model application form that may be used for persons to
31 submit to the refund bureau for purposes of obtaining a refund.

32 (2) The administrative office of the courts shall provide a
33 notice to all persons who are entitled to a refund of legal financial
34 obligations paid under a qualifying conviction or qualifying
35 nonconviction of their right to the refund and the process for
36 applying for the refund.

37 (3) The notice must include notice that the person has the right
38 to bring a motion to amend the refund amount if the person believes
39 the refund amount is inaccurate and the right to counsel to assist in

1 reviewing the determination, and bringing a nonfrivolous motion to
2 amend the refund amount in the court that issued the order. The
3 notice must provide information on the process to bring a motion to
4 amend the refund amount and how to contact the state office of public
5 defense and the office of civil legal aid if the person wishes to
6 obtain an attorney.

7 (4) The administrative office of the courts shall create a
8 searchable online database to allow persons to search and determine
9 whether they have a qualifying conviction that has been vacated and
10 whether they are entitled to a refund of legal financial obligations
11 paid as a result of a vacated qualifying conviction or a qualifying
12 nonconviction.

13 NEW SECTION. **Sec. 11.** A new section is added to chapter 42.56
14 RCW to read as follows:

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

17 **Sec. 12.** RCW 9.94A.640 and 2021 c 237 s 2 are each amended to
18 read as follows:

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

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

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

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

1 enforcement officer or peace officer; and (iii) robbery in the second
2 degree under RCW 9A.56.210;

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

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

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

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

18 (g) The offense was a felony described in RCW 46.61.502 or
19 46.61.504.

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

33 (4) (a) Except as otherwise provided, once the court vacates a
34 record of conviction under subsection (1) of this section, the fact
35 that the offender has been convicted of the offense shall not be
36 included in the offender's criminal history for purposes of
37 determining a sentence in any subsequent conviction, and the offender
38 shall be released from all penalties and disabilities resulting from
39 the offense. For all purposes, including responding to questions on
40 employment applications, an offender whose conviction has been

1 vacated may state that the offender has never been convicted of that
2 crime. A conviction that has been vacated under this section may not
3 be disseminated or disclosed by the state patrol or local law
4 enforcement agency to any person, except other criminal justice
5 enforcement agencies. Nothing in this section affects or prevents the
6 use of an offender's prior conviction in a later criminal
7 prosecution, and nothing in this section affects the requirements for
8 restoring a right to possess a firearm under RCW 9.41.040.

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

13 **Sec. 13.** RCW 9.96.060 and 2022 c 16 s 7 are each amended to read
14 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (b) When a court vacates a record of domestic violence as defined
40 in RCW 10.99.020 under this section, the state may not use the

1 vacated conviction in a later criminal prosecution unless the
2 conviction was for: (i) Violating the provisions of a restraining
3 order, no-contact order, or protection order restraining or enjoining
4 the person or restraining the person from going on to the grounds of
5 or entering a residence, workplace, school, or day care, or
6 prohibiting the person from knowingly coming within, or knowingly
7 remaining within, a specified distance of a location, a protected
8 party's person, or a protected party's vehicle (RCW 10.99.040,
9 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,
10 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and
11 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic
12 violence protection order or vulnerable adult protection order
13 entered under chapter 7.105 RCW. A vacated conviction under this
14 section is not considered a conviction of such an offense for the
15 purposes of 27 C.F.R. 478.11.

16 (c) A conviction vacated on or after July 28, 2019, qualifies as
17 a prior conviction for the purpose of charging a present recidivist
18 offense as defined in RCW 9.94A.030 occurring on or after July 28,
19 2019.

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

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

34 **Sec. 14.** RCW 72.09.480 and 2015 c 238 s 1 are each amended to
35 read as follows:

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

38 (a) "Cost of incarceration" means the cost of providing an inmate
39 with shelter, food, clothing, transportation, supervision, and other

1 services and supplies as may be necessary for the maintenance and
2 support of the inmate while in the custody of the department, based
3 on the average per inmate costs established by the department and the
4 office of financial management.

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

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

12 (2) When an inmate, except as provided in subsections (4)
13 ~~((and)),~~ (8), and (9) of this section, receives any funds in addition
14 to his or her wages or gratuities, except settlements or awards
15 resulting from legal action, the additional funds shall be subject to
16 the following deductions and the priorities established in chapter
17 72.11 RCW:

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (9) Legal financial obligations reimbursed pursuant to *State v.*
36 *Blake* under chapter . . . RCW (the new chapter created in section 15
37 of this act) are exempt from the deductions requirements in
38 subsection (2) of this section when the defendant is in custody in a
39 correctional facility.

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

6 (~~(10)~~) (11) The secretary of the department of corrections, or
7 his or her designee, may exempt an inmate from a personal inmate
8 savings account under subsection (2)(b) of this section if the
9 inmate's earliest release date is beyond the inmate's life
10 expectancy.

11 (~~(11)~~) (12) The interest earned on an inmate savings account
12 created as a result of the plan in section 4, chapter 325, Laws of
13 1999 shall be exempt from the mandatory deductions under this section
14 and RCW 72.09.111.

15 (~~(12)~~) (13) Nothing in this section shall limit the authority
16 of the department of social and health services division of child
17 support, the county clerk, or a restitution recipient from taking
18 collection action against an inmate's moneys, assets, or property
19 pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but
20 not limited to, the collection of moneys received by the inmate from
21 settlements or awards resulting from legal action.

22 NEW SECTION. **Sec. 15.** Sections 1 through 10 of this act
23 constitute a new chapter in Title 9 RCW.

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