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HOUSE BILL 2227

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State of Washington

68th Legislature

2024 Regular Session

By Representative Ortiz-Self

Read first time 01/09/24. Referred to Committee on Community Safety, Justice, & Reentry.

1 AN ACT Relating to vacating convictions for driving under the  
2 influence, actual physical control of a motor vehicle while under the  
3 influence, or an offense considered a prior offense to such  
4 convictions; and amending RCW 9.96.060.

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

6 **Sec. 1.** RCW 9.96.060 and 2023 sp.s. c 1 s 11 are each amended to  
7 read as follows:

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

16 (2) Every person convicted of a misdemeanor or gross misdemeanor  
17 offense may apply to the sentencing court for a vacation of the  
18 applicant's record of conviction for the offense. If the court finds  
19 the applicant meets the requirements of this subsection, the court  
20 may in its discretion vacate the record of conviction. Except as  
21 provided in subsections (3), (4), (5), ~~((and))~~ (6), and (7) of this

1 section, an applicant may not have the record of conviction for a  
2 misdemeanor or gross misdemeanor offense vacated if any one of the  
3 following is present:

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (3) If the applicant is a victim of sex trafficking,  
28 prostitution, or commercial sexual abuse of a minor; sexual assault;  
29 or domestic violence as defined in RCW 9.94A.030, or the prosecutor  
30 applies on behalf of the state, the sentencing court may vacate the  
31 record of conviction if the application satisfies the requirements of  
32 RCW 9.96.080. When preparing or filing the petition, the prosecutor  
33 is not deemed to be providing legal advice or legal assistance on  
34 behalf of the victim, but is fulfilling an administrative function on  
35 behalf of the state in order to further their responsibility to seek  
36 to reform and improve the administration of criminal justice. A  
37 record of conviction vacated using the process in RCW 9.96.080 is  
38 subject to subsections (~~((7))~~) (8) and (~~((8))~~) (9) of this section.

39 (4) Every person convicted prior to January 1, 1975, of violating  
40 any statute or rule regarding the regulation of fishing activities,

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

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

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

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

30 (6) If a person convicted of violating RCW 69.50.4011(1) (b) or  
31 (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) completes a  
32 substance use disorder program and files proof of completion with the  
33 court, or obtains an assessment from a recovery navigator program  
34 established under RCW 71.24.115, an arrest and jail alternative  
35 program established under RCW 36.28A.450, or a law enforcement  
36 assisted diversion program established under RCW 71.24.589, and has  
37 six months of substantial compliance with recommended treatment or  
38 services and progress toward recovery goals as reflected by a written  
39 status update, upon verification the court must vacate the conviction  
40 or convictions.

1       (7) Every person convicted of violating RCW 46.61.502 (driving  
2 while under the influence), 46.61.504 (actual physical control while  
3 under the influence), or an offense considered a "prior offense"  
4 under RCW 46.61.5055, may apply to the sentencing court for a  
5 vacation of the applicant's record of conviction for the offense if  
6 the applicant has not had a subsequent alcohol or drug-related  
7 traffic conviction in this state, another state, or tribal court  
8 within 10 years of the date of conviction. If after filing proof of  
9 completion of all requirements of the sentence with the court an  
10 applicant qualifies under this subsection, the court may vacate the  
11 record of conviction.

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

17       (~~(8)~~) (9)(a) Except as provided in (c) of this subsection, once  
18 the court vacates a record of conviction under this section, the  
19 person shall be released from all penalties and disabilities  
20 resulting from the offense and the fact that the person has been  
21 convicted of the offense shall not be included in the person's  
22 criminal history for purposes of determining a sentence in any  
23 subsequent conviction. For all purposes, including responding to  
24 questions on employment or housing applications, a person whose  
25 conviction has been vacated under this section may state that he or  
26 she has never been convicted of that crime. However, nothing in this  
27 section affects the requirements for restoring a right to possess a  
28 firearm under RCW 9.41.040. Except as provided in (b) of this  
29 subsection, nothing in this section affects or prevents the use of an  
30 offender's prior conviction in a later criminal prosecution.

31       (b) When a court vacates a record of domestic violence as defined  
32 in RCW 10.99.020 under this section, the state may not use the  
33 vacated conviction in a later criminal prosecution unless the  
34 conviction was for: (i) Violating the provisions of a restraining  
35 order, no-contact order, or protection order restraining or enjoining  
36 the person or restraining the person from going on to the grounds of  
37 or entering a residence, workplace, school, or day care, or  
38 prohibiting the person from knowingly coming within, or knowingly  
39 remaining within, a specified distance of a location, a protected  
40 party's person, or a protected party's vehicle (RCW 10.99.040,

1 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,  
2 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and  
3 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic  
4 violence protection order or vulnerable adult protection order  
5 entered under chapter 7.105 RCW. A vacated conviction under this  
6 section is not considered a conviction of such an offense for the  
7 purposes of 27 C.F.R. 478.11.

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

12 (ii) A conviction vacated under subsection (7) of this section  
13 qualifies as a prior conviction in determining a sentence for a  
14 conviction under RCW 46.61.520 if the vehicular homicide occurred  
15 while the driver was under the influence of intoxicating liquor or  
16 any drug.

17 ~~((9))~~ (10) The clerk of the court in which the vacation order  
18 is entered shall immediately transmit the order vacating the  
19 conviction to the Washington state patrol identification section and  
20 to the local police agency, if any, which holds criminal history  
21 information for the person who is the subject of the conviction. The  
22 Washington state patrol and any such local police agency shall  
23 immediately update their records to reflect the vacation of the  
24 conviction, and shall transmit the order vacating the conviction to  
25 the federal bureau of investigation. A conviction that has been  
26 vacated under this section may not be disseminated or disclosed by  
27 the state patrol or local law enforcement agency to any person,  
28 except other criminal justice enforcement agencies.

29 ~~((10))~~ (11) For the purposes of this section, "cannabis" has  
30 the meaning provided in RCW 69.50.101.

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