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SENATE BILL 5685

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State of Washington

69th Legislature

2025 Regular Session

By Senator Lovick

1 AN ACT Relating to theft in the third degree; amending RCW  
2 9A.56.050 and 9.94A.640; and prescribing penalties.

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

4 **Sec. 1.** RCW 9A.56.050 and 2009 c 431 s 9 are each amended to  
5 read as follows:

6 (1) A person is guilty of theft in the third degree if he or she  
7 commits theft of property or services which (a) does not exceed  
8 (~~seven hundred fifty dollars~~) \$750 in value, or (b) includes  
9 (~~ten~~) 10 or more merchandise pallets, or (~~ten~~) 10 or more  
10 beverage crates, or a combination of (~~ten~~) 10 or more merchandise  
11 pallets and beverage crates.

12 (2) (~~Theft~~) Except as provided in subsection (3) of this  
13 section, theft in the third degree is a gross misdemeanor.

14 (3) Theft in the third degree is a class C felony upon a third or  
15 subsequent adult conviction of theft in the third degree. A third or  
16 subsequent conviction means the person has been previously convicted  
17 as an adult on at least two separate occasions of the crime of theft  
18 in the third degree.

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

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

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

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

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

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

24 (d) ~~((The))~~ Except as provided in subsection (3) of this section,  
25 the offense is a class C felony and the offender has been convicted  
26 of a new crime in this state, another state, or federal court in the  
27 five years prior to the application for vacation;

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

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

37 (g) The offense was a felony described in RCW 46.61.502 or  
38 46.61.504.

39 (3) If the offense is felony theft in the third degree and the  
40 individual enters into and successfully completes substance use

1 disorder treatment, the individual may petition for vacation of the  
2 conviction one year after the later of the individual's completion of  
3 community custody or the completion of substance use disorder  
4 treatment.

5 (4) If the applicant is a victim of sex trafficking,  
6 prostitution, or commercial sexual abuse of a minor; sexual assault;  
7 or domestic violence as defined in RCW 9.94A.030, the victim or the  
8 prosecutor of the county in which the victim was sentenced may apply  
9 to the sentencing court or the sentencing court's successor to vacate  
10 the victim's record of conviction for a class B or class C felony  
11 offense using the process in RCW 9.94A.648. When preparing or filing  
12 the petition, the prosecutor is not deemed to be providing legal  
13 advice or legal assistance on behalf of the victim, but is fulfilling  
14 an administrative function on behalf of the state in order to further  
15 their responsibility to seek to reform and improve the administration  
16 of criminal justice. A record of conviction vacated using the process  
17 in RCW 9.94A.648 is subject to subsection ~~((4))~~ (5) of this  
18 section.

19 ~~((4))~~ (5)(a) Except as otherwise provided, once the court  
20 vacates a record of conviction under subsection (1) of this section,  
21 the fact that the offender has been convicted of the offense shall  
22 not be included in the offender's criminal history for purposes of  
23 determining a sentence in any subsequent conviction, and the offender  
24 shall be released from all penalties and disabilities resulting from  
25 the offense. For all purposes, including responding to questions on  
26 employment applications, an offender whose conviction has been  
27 vacated may state that the offender has never been convicted of that  
28 crime. A conviction that has been vacated under this section may not  
29 be disseminated or disclosed by the state patrol or local law  
30 enforcement agency to any person, except other criminal justice  
31 enforcement agencies. Nothing in this section affects or prevents the  
32 use of an offender's prior conviction in a later criminal  
33 prosecution, and nothing in this section affects the requirements for  
34 restoring a right to possess a firearm under RCW 9.41.040.

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

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