

2 **SHB 1392** - S AMD - 480

3 By Senators Heavey, Costa, Kline, Johnson and McCaslin

4 ADOPTED 4/24/99

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9.96 RCW
8 to read as follows:

9 (1) Every person convicted of a misdemeanor or gross misdemeanor
10 offense who has completed all of the terms of the sentence for the
11 misdemeanor or gross misdemeanor offense may apply to the sentencing
12 court for a vacation of the applicant's record of conviction for the
13 offense. If the court finds the applicant meets the tests prescribed
14 in subsection (2) of this section, the court may in its discretion
15 clear the record of conviction by: (a)(i) Permitting the applicant to
16 withdraw the applicant's plea of guilty and to enter a plea of not
17 guilty; or (ii) if the applicant has been convicted after a plea of not
18 guilty, the court setting aside the verdict of guilty; and (b) the
19 court dismissing the information or indictment against the applicant.

20 (2) An applicant may not have the record of conviction for a
21 misdemeanor or gross misdemeanor offense cleared if any one of the
22 following is present: (a) There are any criminal charges against the
23 applicant pending in any court of this state or another state, or in
24 any federal court; (b) the offense was a violent offense as defined in
25 RCW 9.94A.030 or an attempt to commit a violent offense; (c) the
26 offense was a violation of RCW 46.61.502 (Driving while under the
27 influence), 46.61.504 (Actual physical control while under the
28 influence), or 9.91.020 (Operating a railroad, etc. while intoxicated);
29 (d) the offense was any misdemeanor or gross misdemeanor attempt to
30 commit a sex offense as defined in RCW 9.94A.030; (e) the offense was
31 any misdemeanor or gross misdemeanor violation, including attempt, of
32 chapter 9.68 (Obscenity and pornography) or 9.68A (Sexual exploitation
33 of children) RCW; (f) the applicant has been convicted of a new crime
34 in this state, another state, or federal court since the date the
35 applicant completed all of the terms of the sentence for the
36 misdemeanor or gross misdemeanor offense; (g) the offense was a
37 domestic violence offense as defined in RCW 10.99.020, and less than

1 ten years have passed since the date the offender successfully
2 completed all terms of his or her sentence, including probation. The
3 court shall not grant the motion to vacate a domestic violence
4 conviction if, upon review of the police report and any evidence from
5 the prosecution or the defense, the court finds that the defendant's
6 behavior in the commission of the crime was particularly egregious; or
7 (h) less than five years have passed since the date the applicant
8 completed all of the terms of the sentence for the misdemeanor or gross
9 misdemeanor offense.

10 (3) Once the court vacates a record of conviction under subsection
11 (1) of this section, the person shall be released from all penalties
12 and disabilities resulting from the offense, except that the fact that
13 the person had been convicted of the offense may be used in any
14 subsequent criminal prosecution consistent with any other legal use and
15 may be included in the person's criminal history for purposes of
16 determining a sentence in any subsequent conviction. For all other
17 purposes, including responding to questions on employment applications,
18 a person whose conviction has been vacated may state that the person
19 has never been convicted of that crime.

20 (4) All costs incurred by the court and probation services shall be
21 paid by the person making the motion to vacate the record unless a
22 determination is made pursuant to chapter 10.101 RCW that the person
23 making the motion is indigent, at the time the motion is brought.

24 (5) Any conviction that is vacated under this section shall be
25 treated as nonconviction data as defined in chapter 10.97 RCW for the
26 purposes of the defendant's criminal history. The clerk of the court
27 in which the motion is brought shall transmit the order vacating the
28 conviction to the Washington state patrol. The Washington state patrol
29 shall transmit the order vacating the conviction to the federal bureau
30 of investigation.

31 (6) No person may seek or be granted a vacation of record of
32 conviction for an offense committed after the date upon which the
33 person received a vacation of record of conviction for any other
34 offense.

35 **Sec. 2.** RCW 9.94A.230 and 1987 c 486 s 7 are each amended to read
36 as follows:

37 (1) Every offender who has been discharged under RCW 9.94A.220 may
38 apply to the sentencing court for a vacation of the offender's record

1 of conviction. If the court finds the offender meets the tests
2 prescribed in subsection (2) of this section, the court may in its
3 discretion clear the record of conviction by: (a)(i) Permitting the
4 offender to withdraw the offender's plea of guilty and to enter a plea
5 of not guilty; or ~~((b))~~ (ii) if the offender has been convicted after
6 a plea of not guilty, ~~((by))~~ the court setting aside the verdict of
7 guilty; and ~~((e-by))~~ (b) the court dismissing the information or
8 indictment against the offender.

9 (2) An offender may not have the record of conviction cleared if
10 any one of the following is present: (a) There are any criminal
11 charges against the offender pending in any court of this state or
12 another state, or in any federal court; (b) the offense was a violent
13 offense as defined in RCW 9.94A.030; (c) the offense was a domestic
14 violence offense as defined in RCW 10.99.020; (d) the offense was a
15 crime against persons as defined in RCW 43.43.830; ~~((d))~~ (e) the
16 offender has been convicted of a new crime in this state, another
17 state, or federal court since the date of the offender's discharge
18 under RCW 9.94A.220; ~~((e))~~ (f) the offense is a class B felony and
19 less than ten years have passed since the date the applicant was
20 discharged under RCW 9.94A.220; ~~((and-f))~~ or (g) the offense was a
21 class C felony and less than five years have passed since the date the
22 applicant was discharged under RCW 9.94A.220.

23 (3) Once the court vacates a record of conviction under subsection
24 (1) of this section, ~~((the fact that the offender has been convicted of~~
25 ~~the offense shall not be included in the offender's criminal history~~
26 ~~for purposes of determining a sentence in any subsequent conviction,~~
27 ~~and the offender shall be released from all penalties and disabilities~~
28 ~~resulting from the offense. For all purposes, including responding to~~
29 ~~questions on employment applications,))~~ an offender whose conviction
30 has been vacated may state that the offender has never been convicted
31 of that crime, including responses to questions when making application
32 for employment. Nothing in this section affects or prevents the use of
33 an offender's prior conviction in a later criminal prosecution.

34 (4) All costs incurred by the court and probation services shall be
35 paid by the person making the motion to vacate the record unless a
36 determination is made pursuant to chapter 10.101 RCW that the person
37 making the motion is indigent, at the time the motion is brought.

38 (5) Any conviction that is vacated under this section shall be
39 treated as nonconviction data as defined in chapter 10.97 RCW for the

1 purposes of the defendant's criminal history. The clerk of the court
2 in which the motion is brought shall transmit the order vacating the
3 conviction to the Washington state patrol. The Washington state patrol
4 shall transmit the order vacating the conviction to the federal bureau
5 of investigation.

6 (6) No person may seek or be granted a vacation of record of
7 conviction for an offense committed after the date upon which the
8 person received a vacation of record of conviction for any other
9 offense.

10 **Sec. 3.** RCW 9.95.240 and 1957 c 227 s 7 are each amended to read
11 as follows:

12 (1) Every defendant who has fulfilled the conditions of his of her
13 probation for the entire period thereof, or who ((shall have)) has been
14 discharged from probation prior to the termination of the period
15 thereof, may ((at any time prior to the expiration of the maximum
16 period of punishment for the offense for which he has been convicted be
17 permitted in the discretion of the court to withdraw his plea of guilty
18 and enter a plea of not guilty, or if he has been convicted after a
19 plea of not guilty, the court may in its discretion set aside the
20 verdict of guilty; and in either case, the court may thereupon dismiss
21 the information or indictment against such defendant, who shall
22 thereafter be released from all penalties and disabilities resulting
23 from the offense or crime of which he has been convicted. The
24 probationer shall be informed of this right in his probation papers:
25 PROVIDED, That in any subsequent prosecution, for any other offense,
26 such prior conviction may be pleaded and proved, and shall have the
27 same effect as if probation had not been granted, or the information or
28 indictment dismissed)) apply to the sentencing court for a vacation of
29 the defendant's record of conviction. If the court finds the defendant
30 meets the tests prescribed in subsection (2) of this section, the court
31 may in its discretion clear the record of conviction by: (a)(i)
32 Permitting the defendant to withdraw the defendant's plea of guilty and
33 to enter a plea of not guilty; or (ii) if the defendant has been
34 convicted after a plea of not guilty, the court setting aside the
35 verdict of guilty; and (b) the court dismissing the information or
36 indictment against the defendant.

37 (2) An offender may not have the record of conviction cleared if:
38 (a) There are any criminal charges against the defendant pending in any

1 court of this state or another state, or in any federal court; (b) the
2 offense was a violent offense as defined in RCW 9.94A.030; (c) the
3 offense was a felony crime against persons as defined in RCW 43.43.830;
4 (d) the defendant has been convicted of a new crime in this state,
5 another state, or federal court since the date the defendant
6 successfully completed probation; (e) the offense is a class B felony
7 and less than ten years have passed since the date the defendant
8 successfully completed probation; (f) the offense was a class C felony
9 and less than five years have passed since the date the defendant
10 successfully completed probation; (g) the offense was a misdemeanor or
11 gross misdemeanor and less than five years have passed since the date
12 the defendant successfully completed probation; or (h) the offense was
13 a misdemeanor or gross misdemeanor and operated to interrupt the
14 washout of a class B felony under RCW 9.94A.360 and less than ten years
15 have passed since the date of the conviction for the misdemeanor or
16 gross misdemeanor.

17 (3) Once the court vacates a record of conviction under subsection
18 (1) of this section, an offender whose conviction has been vacated may
19 state that the offender has never been convicted of that crime,
20 including responses to questions when making application for
21 employment. Nothing in this section affects or prevents the use of an
22 offender's prior conviction in a later criminal case.

23 (4) No person may seek or be granted a vacation of record of
24 conviction for an offense committed after the date upon which the
25 person received a vacation of record of conviction for any other
26 offense.

27 (5) Any conviction that is vacated under this section shall be
28 treated as nonconviction data as defined in chapter 10.97 RCW for the
29 purposes of the defendant's criminal history. The clerk of the court
30 in which the motion is brought shall transmit the order vacating the
31 conviction to the Washington state patrol. The Washington state patrol
32 shall transmit the order vacating the conviction to the federal bureau
33 of investigation.

34 (6) All costs incurred by the court and probation services shall be
35 paid by the person making the motion to vacate the record unless a
36 determination is made pursuant to chapter 10.101 RCW that the person
37 making the motion is indigent, at the time the motion is brought.

1 **Sec. 4.** RCW 13.50.050 and 1997 c 338 s 40 are each amended to read
2 as follows:

3 (1) This section governs records relating to the commission of
4 juvenile offenses, including records relating to diversions.

5 (2) The official juvenile court file of any alleged or proven
6 juvenile offender shall be open to public inspection, unless sealed
7 pursuant to subsection (~~((+11))~~) (12) of this section.

8 (3) All records other than the official juvenile court file are
9 confidential and may be released only as provided in this section, RCW
10 13.50.010, 13.40.215, and 4.24.550.

11 (4) Except as otherwise provided in this section and RCW 13.50.010,
12 records retained or produced by any juvenile justice or care agency may
13 be released to other participants in the juvenile justice or care
14 system only when an investigation or case involving the juvenile in
15 question is being pursued by the other participant or when that other
16 participant is assigned the responsibility for supervising the
17 juvenile.

18 (5) Except as provided in RCW 4.24.550, information not in an
19 official juvenile court file concerning a juvenile or a juvenile's
20 family may be released to the public only when that information could
21 not reasonably be expected to identify the juvenile or the juvenile's
22 family.

23 (6) Notwithstanding any other provision of this chapter, the
24 release, to the juvenile or his or her attorney, of law enforcement and
25 prosecuting attorneys' records pertaining to investigation, diversion,
26 and prosecution of juvenile offenses shall be governed by the rules of
27 discovery and other rules of law applicable in adult criminal
28 investigations and prosecutions.

29 (7) The juvenile court and the prosecutor may set up and maintain
30 a central record-keeping system which may receive information on all
31 alleged juvenile offenders against whom a complaint has been filed
32 pursuant to RCW 13.40.070 whether or not their cases are currently
33 pending before the court. The central record-keeping system may be
34 computerized. If a complaint has been referred to a diversion unit,
35 the diversion unit shall promptly report to the juvenile court or the
36 prosecuting attorney when the juvenile has agreed to diversion. An
37 offense shall not be reported as criminal history in any central
38 record-keeping system without notification by the diversion unit of the
39 date on which the offender agreed to diversion.

1 (8) Upon request of the victim of a crime or the victim's immediate
2 family, the identity of an alleged or proven juvenile offender alleged
3 or found to have committed a crime against the victim and the identity
4 of the alleged or proven juvenile offender's parent, guardian, or
5 custodian and the circumstance of the alleged or proven crime shall be
6 released to the victim of the crime or the victim's immediate family.

7 (9) Subject to the rules of discovery applicable in adult criminal
8 prosecutions, the juvenile offense records of an adult criminal
9 defendant or witness in an adult criminal proceeding shall be released
10 upon request to prosecution and defense counsel after a charge has
11 actually been filed. The juvenile offense records of any adult
12 convicted of a crime and placed under the supervision of the adult
13 corrections system shall be released upon request to the adult
14 corrections system.

15 (10) In any case in which an information has been filed pursuant to
16 RCW 13.40.100 or a complaint has been filed with the prosecutor and
17 referred for diversion pursuant to RCW 13.40.070, the person the
18 subject of the information or complaint may file a motion with the
19 court to have the court vacate its order and findings, if any, and,
20 subject to subsection ~~((+22+))~~ (23) of this section, order the sealing
21 of the official juvenile court file, the social file, and records of
22 the court and of any other agency in the case.

23 (11) The court has the discretion to grant the motion to seal
24 records made pursuant to subsection (10) of this section if it finds
25 that for class B offenses other than sex offenses, since the last date
26 of release from confinement, including full-time residential treatment,
27 if any, or entry of disposition:

28 (a) The person has spent five consecutive years in the community
29 without committing another offense or crime that results in conviction
30 in this state, another state, or federal court;

31 (b) There are no criminal charges against the person pending in any
32 court of this state, another state, or federal court;

33 (c) Through credible evidence presented to the court that the
34 person has a present career path that is impeded by the record of the
35 courts order and findings;

36 (d) That the person is twenty-one years of age or older; and

37 (e) The person has lived an exemplary life since the court's order
38 and findings.

1 (12) The court shall grant the motion to seal records made pursuant
2 to subsection (10) of this section if it finds that:

3 (a) For class B offenses other than sex offenses, since the last
4 date of release from confinement, including full-time residential
5 treatment, if any, or entry of disposition, the person has spent ten
6 consecutive years in the community without committing any offense or
7 crime that subsequently results in conviction. For class C offenses,
8 gross misdemeanors, and misdemeanors, other than sex offenses, since
9 the last date of release from confinement, including full-time
10 residential treatment, if any, or entry of disposition, the person has
11 spent five consecutive years in the community without committing any
12 offense or crime that subsequently results in conviction;

13 (b) No proceeding is pending against the moving party seeking the
14 conviction of a juvenile offense or a criminal offense;

15 (c) No proceeding is pending seeking the formation of a diversion
16 agreement with that person;

17 (d) The person has not been convicted of a class A or sex offense;
18 and

19 (e) Full restitution has been paid.

20 (~~(12)~~) (13) The person making a motion pursuant to subsection
21 (10) of this section shall give reasonable notice of the motion to the
22 prosecution and to any person or agency whose files are sought to be
23 sealed.

24 (~~(13)~~) (14) If the court grants the motion to seal made pursuant
25 to subsection (10) of this section, it shall, subject to subsection
26 (~~(22)~~) (23) of this section, order sealed the official juvenile court
27 file, the social file, and other records relating to the case as are
28 named in the order. Thereafter, the proceedings in the case shall be
29 treated as if they never occurred, and the subject of the records may
30 reply accordingly to any inquiry about the events, records of which are
31 sealed. Any agency shall reply to any inquiry concerning confidential
32 or sealed records that records are confidential, and no information can
33 be given about the existence or nonexistence of records concerning an
34 individual. Any record that is sealed under this section shall be
35 treated as nonconviction data as defined in chapter 10.97 RCW for the
36 purposes of the defendant's criminal history. The clerk of the court
37 in which the motion is brought shall transmit the order sealing the
38 record to the Washington state patrol. The Washington state patrol

1 shall transmit the order sealing the record to the federal bureau of
2 investigation.

3 ~~((14))~~ (15) Inspection of the files and records included in the
4 order to seal may thereafter be permitted only by order of the court
5 upon motion made by the person who is the subject of the information or
6 complaint, except as otherwise provided in RCW 13.50.010(8) and
7 subsection ~~((22))~~ (23) of this section.

8 ~~((15))~~ (16) Any adjudication of a juvenile offense or a crime
9 subsequent to sealing has the effect of nullifying the sealing order.
10 Any charging of an adult felony subsequent to the sealing has the
11 effect of nullifying the sealing order for the purposes of chapter
12 9.94A RCW.

13 ~~((16))~~ (17) A person eighteen years of age or older whose
14 criminal history consists of only one referral for diversion may
15 request that the court order the records in that case destroyed. The
16 request shall be granted, subject to subsection ~~((22))~~ (23) of this
17 section, if the court finds that two years have elapsed since
18 completion of the diversion agreement.

19 ~~((17))~~ (18) If the court grants the motion to destroy records
20 made pursuant to subsection ~~((16))~~ (17) of this section, it shall,
21 subject to subsection ~~((22))~~ (23) of this section, order the official
22 juvenile court file, the social file, and any other records named in
23 the order to be destroyed.

24 ~~((18))~~ (19) The person making the motion pursuant to subsection
25 ~~((16))~~ (17) of this section shall give reasonable notice of the
26 motion to the prosecuting attorney and to any agency whose records are
27 sought to be destroyed.

28 ~~((19))~~ (20) Any juvenile to whom the provisions of this section
29 may apply shall be given written notice of his or her rights under this
30 section at the time of his or her disposition hearing or during the
31 diversion process.

32 ~~((20))~~ (21) Nothing in this section may be construed to prevent
33 a crime victim or a member of the victim's family from divulging the
34 identity of the alleged or proven juvenile offender or his or her
35 family when necessary in a civil proceeding.

36 ~~((21))~~ (22) Any juvenile justice or care agency may, subject to
37 the limitations in subsection ~~((22))~~ (23) of this section and (a) and
38 (b) of this subsection, develop procedures for the routine destruction
39 of records relating to juvenile offenses and diversions.

1 (a) Records may be routinely destroyed only when the person the
2 subject of the information or complaint has attained twenty-three years
3 of age or older, or is eighteen years of age or older and his or her
4 criminal history consists entirely of one diversion agreement and two
5 years have passed since completion of the agreement.

6 (b) The court may not routinely destroy the official juvenile court
7 file or recordings or transcripts of any proceedings.

8 (~~(+22+)~~) (23) No identifying information held by the Washington
9 state patrol in accordance with chapter 43.43 RCW is subject to
10 destruction or sealing under this section. For the purposes of this
11 subsection, identifying information includes photographs, fingerprints,
12 palmprints, soleprints, toeprints and any other data that identifies a
13 person by physical characteristics, name, birthdate or address, but
14 does not include information regarding criminal activity, arrest,
15 charging, diversion, conviction or other information about a person's
16 treatment by the criminal justice system or about the person's
17 behavior.

18 (~~(+23+)~~) (24) Information identifying child victims under age
19 eighteen who are victims of sexual assaults by juvenile offenders is
20 confidential and not subject to release to the press or public without
21 the permission of the child victim or the child's legal guardian.
22 Identifying information includes the child victim's name, addresses,
23 location, photographs, and in cases in which the child victim is a
24 relative of the alleged perpetrator, identification of the relationship
25 between the child and the alleged perpetrator. Information identifying
26 a child victim of sexual assault may be released to law enforcement,
27 prosecutors, judges, defense attorneys, or private or governmental
28 agencies that provide services to the child victim of sexual assault.

29 (25) All costs incurred by the court and probation services shall
30 be paid by the person making the motion to seal the record under
31 subsection (10) of this section unless a determination is made pursuant
32 to chapter 10.101 RCW that the person making the motion is indigent, at
33 the time the motion is brought."

1 **SHB 1392** - S AMD - 480

2 By Senators Heavey, Costa, Kline, Johnson and McCaslin

3 ADOPTED 4/24/99

4 On page 1, line 1 of the title, after "conviction;" strike the
5 remainder of the title and insert "amending RCW 9.94A.230, 9.95.240,
6 and 13.50.050; and adding a new section to chapter 9.96 RCW."

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