

2 **SHB 1392** - S AMD - 490

3 By Senators Heavey, Costa, Kline and Honeyford

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, and less than ten years
15 have passed since the date the applicant was discharged under RCW
16 9.94A.220. The court shall not grant the motion to vacate a domestic
17 violence conviction if, upon review of the police report and any
18 evidence from the prosecution or the defense, the court finds that the
19 defendant's behavior in the commission of the crime was particularly
20 egregious; (d) the offense was a crime against persons as defined in
21 RCW 43.43.830; (~~(d)~~) (e) the offender has been convicted of a new
22 crime in this state, another state, or federal court since the date of
23 the offender's discharge under RCW 9.94A.220; (~~(e)~~) (f) the offense
24 is a class B felony and less than ten years have passed since the date
25 the applicant was discharged under RCW 9.94A.220; (~~(and-f)~~) or (g)
26 the offense was a class C felony and less than five years have passed
27 since the date the applicant was discharged under RCW 9.94A.220.

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

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

5 (5) Any conviction that is vacated under this section shall be
6 treated as nonconviction data as defined in chapter 10.97 RCW for the
7 purposes of the defendant's criminal history. The clerk of the court
8 in which the motion is brought shall transmit the order vacating the
9 conviction to the Washington state patrol. The Washington state patrol
10 shall transmit the order vacating the conviction to the federal bureau
11 of investigation.

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

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

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

1 to enter a plea of not guilty; or (ii) if the defendant has been
2 convicted after a plea of not guilty, the court setting aside the
3 verdict of guilty; and (b) the court dismissing the information or
4 indictment against the defendant.

5 (2) An offender may not have the record of conviction cleared if:
6 (a) There are any criminal charges against the defendant pending in any
7 court of this state or another state, or in any federal court; (b) the
8 offense was a violent offense as defined in RCW 9.94A.030; (c) the
9 offense was a felony crime against persons as defined in RCW 43.43.830;
10 (d) the defendant has been convicted of a new crime in this state,
11 another state, or federal court since the date the defendant
12 successfully completed probation; (e) the offense is a class B felony
13 and less than ten years have passed since the date the defendant
14 successfully completed probation; (f) the offense was a class C felony
15 and less than five years have passed since the date the defendant
16 successfully completed probation; (g) the offense was a misdemeanor or
17 gross misdemeanor and less than five years have passed since the date
18 the defendant successfully completed probation; or (h) the offense was
19 a misdemeanor or gross misdemeanor and operated to interrupt the
20 washout of a class B felony under RCW 9.94A.360 and less than ten years
21 have passed since the date of the conviction for the misdemeanor or
22 gross misdemeanor.

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

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

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

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

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

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

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

12 (3) All records other than the official juvenile court file are
13 confidential and may be released only as provided in this section, RCW
14 13.50.010, 13.40.215, and 4.24.550.

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

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

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

33 (7) The juvenile court and the prosecutor may set up and maintain
34 a central record-keeping system which may receive information on all
35 alleged juvenile offenders against whom a complaint has been filed
36 pursuant to RCW 13.40.070 whether or not their cases are currently
37 pending before the court. The central record-keeping system may be
38 computerized. If a complaint has been referred to a diversion unit,

1 the diversion unit shall promptly report to the juvenile court or the
2 prosecuting attorney when the juvenile has agreed to diversion. An
3 offense shall not be reported as criminal history in any central
4 record-keeping system without notification by the diversion unit of the
5 date on which the offender agreed to diversion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (e) Full restitution has been paid.

26 ~~((+12+))~~ (13) The person making a motion pursuant to subsection
27 (10) of this section shall give reasonable notice of the motion to the
28 prosecution and to any person or agency whose files are sought to be
29 sealed.

30 ~~((+13+))~~ (14) If the court grants the motion to seal made pursuant
31 to subsection (10) of this section, it shall, subject to subsection
32 ~~((+22+))~~ (23) of this section, order sealed the official juvenile court
33 file, the social file, and other records relating to the case as are
34 named in the order. Thereafter, the proceedings in the case shall be
35 treated as if they never occurred, and the subject of the records may
36 reply accordingly to any inquiry about the events, records of which are
37 sealed. Any agency shall reply to any inquiry concerning confidential
38 or sealed records that records are confidential, and no information can
39 be given about the existence or nonexistence of records concerning an

1 individual. Any record that is sealed under this section shall be
2 treated as nonconviction data as defined in chapter 10.97 RCW for the
3 purposes of the defendant's criminal history. The clerk of the court
4 in which the motion is brought shall transmit the order sealing the
5 record to the Washington state patrol. The Washington state patrol
6 shall transmit the order sealing the record to the federal bureau of
7 investigation.

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

13 ~~((15))~~ (16) Any adjudication of a juvenile offense or a crime
14 subsequent to sealing has the effect of nullifying the sealing order.
15 Any charging of an adult felony subsequent to the sealing has the
16 effect of nullifying the sealing order for the purposes of chapter
17 9.94A RCW.

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

24 ~~((17))~~ (18) If the court grants the motion to destroy records
25 made pursuant to subsection ~~((16))~~ (17) of this section, it shall,
26 subject to subsection ~~((22))~~ (23) of this section, order the official
27 juvenile court file, the social file, and any other records named in
28 the order to be destroyed.

29 ~~((18))~~ (19) The person making the motion pursuant to subsection
30 ~~((16))~~ (17) of this section shall give reasonable notice of the
31 motion to the prosecuting attorney and to any agency whose records are
32 sought to be destroyed.

33 ~~((19))~~ (20) Any juvenile to whom the provisions of this section
34 may apply shall be given written notice of his or her rights under this
35 section at the time of his or her disposition hearing or during the
36 diversion process.

37 ~~((20))~~ (21) Nothing in this section may be construed to prevent
38 a crime victim or a member of the victim's family from divulging the

1 identity of the alleged or proven juvenile offender or his or her
2 family when necessary in a civil proceeding.

3 ~~((+21+))~~ (22) Any juvenile justice or care agency may, subject to
4 the limitations in subsection ~~((+22+))~~ (23) of this section and (a) and
5 (b) of this subsection, develop procedures for the routine destruction
6 of records relating to juvenile offenses and diversions.

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

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

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

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

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

1 **SHB 1392** - S AMD - 490

2 By Senators Heavey, Costa, Kline and Honeyford

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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