

2 **SHB 1392** - S AMD - 520

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

4

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 five years have passed since the date the offender successfully
2 completed all terms of his or her sentence, including probation. After
3 the applicable time limit, the court may only grant the motion to
4 vacate a domestic violence conviction if, upon review of the police
5 report, any evidence from the prosecution or the defense, a statement
6 from the victim, and a review of the defendant's behavior since the
7 commission of the crime, the court finds that the defendant is no
8 longer a danger to the public and has been rehabilitated; or (h) less
9 than five years have passed since the date the applicant completed all
10 of the terms of the sentence for the misdemeanor or gross misdemeanor
11 offense.

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

22 (4) All costs incurred by the court and probation services shall be
23 paid by the person making the motion to vacate the record unless a
24 determination is made that the person making the motion is indigent at
25 the time the motion is brought.

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

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

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

1 (1) Every offender who has been discharged under RCW 9.94A.220 may
2 apply to the sentencing court for a vacation of the offender's record
3 of conviction. If the court finds the offender meets the tests
4 prescribed in subsection (2) of this section, the court may in its
5 discretion clear the record of conviction by: (a)(i) Permitting the
6 offender to withdraw the offender's plea of guilty and to enter a plea
7 of not guilty; or ~~((b))~~ (ii) if the offender has been convicted after
8 a plea of not guilty, ~~((by))~~ the court setting aside the verdict of
9 guilty; and ~~((e) by))~~ (b) the court dismissing the information or
10 indictment against the offender.

11 (2) An offender may not have the record of conviction cleared if
12 any one of the following is present: (a) There are any criminal
13 charges against the offender pending in any court of this state or
14 another state, or in any federal court; (b) the offense was a violent
15 offense as defined in RCW 9.94A.030; (c) the offense was a class C
16 felony domestic violence offense as defined in RCW 10.99.020, and less
17 than five years have passed since the date the applicant was discharged
18 under RCW 9.94A.220 or the offense was a class B felony domestic
19 violence offense as defined in RCW 10.99.020, and less than ten years
20 have passed since the date the applicant was discharged under RCW
21 9.94A.220. After the applicable time limit, the court may only grant
22 the motion to vacate a domestic violence conviction if, upon review of
23 the police report, any evidence from the prosecution or the defense, a
24 statement from the victim, and a review of the defendant's behavior
25 since the commission of the crime, the court finds that the defendant
26 is no longer a danger to the public and has been rehabilitated and the
27 offense is not otherwise excluded by (b) or (d) of this subsection; (d)
28 the offense was a crime against persons as defined in RCW 43.43.830;
29 ~~((d))~~ (e) the offender has been convicted of a new crime in this
30 state, another state, or federal court since the date of the offender's
31 discharge under RCW 9.94A.220; ~~((e))~~ (f) the offense is a class B
32 felony and less than ten years have passed since the date the applicant
33 was discharged under RCW 9.94A.220; ~~((and (f))~~) or (g) the offense was
34 a class C felony and less than five years have passed since the date
35 the applicant was discharged under RCW 9.94A.220.

36 (3) Once the court vacates a record of conviction under subsection
37 (1) of this section, the fact that the offender has been convicted of
38 the offense shall not be included in the offender's criminal history
39 for purposes of determining a sentence in any subsequent conviction,

1 and the offender shall be released from all penalties and disabilities
2 resulting from the offense. For all purposes, (~~including responding~~
3 ~~to questions on employment applications,~~) an offender whose conviction
4 has been vacated may state that the offender has never been convicted
5 of that crime, including responses to questions when making application
6 for employment. Nothing in this section affects or prevents the use of
7 an offender's prior conviction in a later criminal prosecution.

8 (4) All costs incurred by the court and probation services shall be
9 paid by the person making the motion to vacate the record unless a
10 determination is made that the person making the motion is indigent at
11 the time the motion is brought.

12 (5) Any conviction that is vacated under this section shall be
13 treated as nonconviction data as defined in chapter 10.97 RCW for the
14 purposes of the defendant's criminal history. The clerk of the court
15 in which the motion is brought shall transmit the order vacating the
16 conviction to the Washington state patrol. The Washington state patrol
17 shall transmit the order vacating the conviction to the federal bureau
18 of investigation.

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

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

25 (1) Every defendant who has fulfilled the conditions of his or her
26 probation for the entire period thereof, or who (~~shall have~~) has been
27 discharged from probation prior to the termination of the period
28 thereof, may (~~at any time prior to the expiration of the maximum~~
29 period of punishment for the offense for which he has been convicted be
30 permitted in the discretion of the court to withdraw his plea of guilty
31 and enter a plea of not guilty, or if he has been convicted after a
32 plea of not guilty, the court may in its discretion set aside the
33 verdict of guilty; and in either case, the court may thereupon dismiss
34 the information or indictment against such defendant, who shall
35 thereafter be released from all penalties and disabilities resulting
36 from the offense or crime of which he has been convicted. The
37 probationer shall be informed of this right in his probation papers:
38 PROVIDED, That in any subsequent prosecution, for any other offense,

1 ~~such prior conviction may be pleaded and proved, and shall have the~~
2 ~~same effect as if probation had not been granted, or the information or~~
3 ~~indictment dismissed)) apply to the sentencing court for a vacation of~~
4 ~~the defendant's record of conviction. If the court finds the defendant~~
5 ~~meets the tests prescribed in subsection (2) of this section, the court~~
6 ~~may in its discretion clear the record of conviction by: (a)(i)~~
7 ~~Permitting the defendant to withdraw the defendant's plea of guilty and~~
8 ~~to enter a plea of not guilty; or (ii) if the defendant has been~~
9 ~~convicted after a plea of not guilty, the court setting aside the~~
10 ~~verdict of guilty; and (b) the court dismissing the information or~~
11 ~~indictment against the defendant.~~

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

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

1 prevents the use of an offender's prior conviction in a later criminal
2 case.

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

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

14 (6) All costs incurred by the court and probation services shall be
15 paid by the person making the motion to vacate the record unless a
16 determination is made that the person making the motion is indigent at
17 the time the motion is brought.

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

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

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

25 (3) All records other than the official juvenile court file are
26 confidential and may be released only as provided in this section, RCW
27 13.50.010, 13.40.215, and 4.24.550.

28 (4) Except as otherwise provided in this section and RCW 13.50.010,
29 records retained or produced by any juvenile justice or care agency may
30 be released to other participants in the juvenile justice or care
31 system only when an investigation or case involving the juvenile in
32 question is being pursued by the other participant or when that other
33 participant is assigned the responsibility for supervising the
34 juvenile.

35 (5) Except as provided in RCW 4.24.550, information not in an
36 official juvenile court file concerning a juvenile or a juvenile's
37 family may be released to the public only when that information could

1 not reasonably be expected to identify the juvenile or the juvenile's
2 family.

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

9 (7) The juvenile court and the prosecutor may set up and maintain
10 a central record-keeping system which may receive information on all
11 alleged juvenile offenders against whom a complaint has been filed
12 pursuant to RCW 13.40.070 whether or not their cases are currently
13 pending before the court. The central record-keeping system may be
14 computerized. If a complaint has been referred to a diversion unit,
15 the diversion unit shall promptly report to the juvenile court or the
16 prosecuting attorney when the juvenile has agreed to diversion. An
17 offense shall not be reported as criminal history in any central
18 record-keeping system without notification by the diversion unit of the
19 date on which the offender agreed to diversion.

20 (8) Upon request of the victim of a crime or the victim's immediate
21 family, the identity of an alleged or proven juvenile offender alleged
22 or found to have committed a crime against the victim and the identity
23 of the alleged or proven juvenile offender's parent, guardian, or
24 custodian and the circumstance of the alleged or proven crime shall be
25 released to the victim of the crime or the victim's immediate family.

26 (9) Subject to the rules of discovery applicable in adult criminal
27 prosecutions, the juvenile offense records of an adult criminal
28 defendant or witness in an adult criminal proceeding shall be released
29 upon request to prosecution and defense counsel after a charge has
30 actually been filed. The juvenile offense records of any adult
31 convicted of a crime and placed under the supervision of the adult
32 corrections system shall be released upon request to the adult
33 corrections system.

34 (10) In any case in which an information has been filed pursuant to
35 RCW 13.40.100 or a complaint has been filed with the prosecutor and
36 referred for diversion pursuant to RCW 13.40.070, the person the
37 subject of the information or complaint may file a motion with the
38 court to have the court vacate its order and findings, if any, and,
39 subject to subsection ((+22+)) (23) of this section, order the sealing

1 of the official juvenile court file, the social file, and records of
2 the court and of any other agency in the case.

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

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

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

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

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

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

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

21 (a) For class B offenses other than sex offenses, since the last
22 date of release from confinement, including full-time residential
23 treatment, if any, or entry of disposition, the person has spent ten
24 consecutive years in the community without committing any offense or
25 crime that subsequently results in conviction. For class C offenses,
26 gross misdemeanors, and misdemeanors, other than sex offenses, since
27 the last date of release from confinement, including full-time
28 residential treatment, if any, or entry of disposition, the person has
29 spent five consecutive years in the community without committing any
30 offense or crime that subsequently results in conviction;

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

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

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

37 (e) Full restitution has been paid.

38 ~~((12))~~ (13) The person making a motion pursuant to subsection
39 (10) of this section shall give reasonable notice of the motion to the

1 prosecution and to any person or agency whose files are sought to be
2 sealed.

3 ~~((+13+))~~ (14) If the court grants the motion to seal made pursuant
4 to subsection (10) of this section, it shall, subject to subsection
5 ~~((+22+))~~ (23) of this section, order sealed the official juvenile court
6 file, the social file, and other records relating to the case as are
7 named in the order. Thereafter, the proceedings in the case shall be
8 treated as if they never occurred, and the subject of the records may
9 reply accordingly to any inquiry about the events, records of which are
10 sealed. Any agency shall reply to any inquiry concerning confidential
11 or sealed records that records are confidential, and no information can
12 be given about the existence or nonexistence of records concerning an
13 individual. Any record that is sealed under this section shall be
14 treated as nonconviction data as defined in chapter 10.97 RCW for the
15 purposes of the defendant's criminal history. The clerk of the court
16 in which the motion is brought shall transmit the order sealing the
17 record to the Washington state patrol. The Washington state patrol
18 shall transmit the order sealing the record to the federal bureau of
19 investigation.

20 ~~((+14+))~~ (15) Inspection of the files and records included in the
21 order to seal may thereafter be permitted only by order of the court
22 upon motion made by the person who is the subject of the information or
23 complaint, except as otherwise provided in RCW 13.50.010(8) and
24 subsection ~~((+22+))~~ (23) of this section.

25 ~~((+15+))~~ (16) Any adjudication of a juvenile offense or a crime
26 subsequent to sealing has the effect of nullifying the sealing order.
27 Any charging of an adult felony subsequent to the sealing has the
28 effect of nullifying the sealing order for the purposes of chapter
29 9.94A RCW.

30 ~~((+16+))~~ (17) A person eighteen years of age or older whose
31 criminal history consists of only one referral for diversion may
32 request that the court order the records in that case destroyed. The
33 request shall be granted, subject to subsection ~~((+22+))~~ (23) of this
34 section, if the court finds that two years have elapsed since
35 completion of the diversion agreement.

36 ~~((+17+))~~ (18) If the court grants the motion to destroy records
37 made pursuant to subsection ~~((+16+))~~ (17) of this section, it shall,
38 subject to subsection ~~((+22+))~~ (23) of this section, order the official

1 juvenile court file, the social file, and any other records named in
2 the order to be destroyed.

3 ~~((+18+))~~ (19) The person making the motion pursuant to subsection
4 ~~((+16+))~~ (17) of this section shall give reasonable notice of the
5 motion to the prosecuting attorney and to any agency whose records are
6 sought to be destroyed.

7 ~~((+19+))~~ (20) Any juvenile to whom the provisions of this section
8 may apply shall be given written notice of his or her rights under this
9 section at the time of his or her disposition hearing or during the
10 diversion process.

11 ~~((+20+))~~ (21) Nothing in this section may be construed to prevent
12 a crime victim or a member of the victim's family from divulging the
13 identity of the alleged or proven juvenile offender or his or her
14 family when necessary in a civil proceeding.

15 ~~((+21+))~~ (22) Any juvenile justice or care agency may, subject to
16 the limitations in subsection ~~((+22+))~~ (23) of this section and (a) and
17 (b) of this subsection, develop procedures for the routine destruction
18 of records relating to juvenile offenses and diversions.

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

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

26 ~~((+22+))~~ (23) No identifying information held by the Washington
27 state patrol in accordance with chapter 43.43 RCW is subject to
28 destruction or sealing under this section. For the purposes of this
29 subsection, identifying information includes photographs, fingerprints,
30 palmprints, soleprints, toeprints and any other data that identifies a
31 person by physical characteristics, name, birthdate or address, but
32 does not include information regarding criminal activity, arrest,
33 charging, diversion, conviction or other information about a person's
34 treatment by the criminal justice system or about the person's
35 behavior.

36 ~~((+23+))~~ (24) Information identifying child victims under age
37 eighteen who are victims of sexual assaults by juvenile offenders is
38 confidential and not subject to release to the press or public without
39 the permission of the child victim or the child's legal guardian.

1 Identifying information includes the child victim's name, addresses,
2 location, photographs, and in cases in which the child victim is a
3 relative of the alleged perpetrator, identification of the relationship
4 between the child and the alleged perpetrator. Information identifying
5 a child victim of sexual assault may be released to law enforcement,
6 prosecutors, judges, defense attorneys, or private or governmental
7 agencies that provide services to the child victim of sexual assault.

8 (25) All costs incurred by the court and probation services shall
9 be paid by the person making the motion to seal the record under
10 subsection (10) of this section unless a determination is made that the
11 person making the motion is indigent at the time the motion is
12 brought."

13 **SHB 1392** - S AMD - 520

14 By Senators Heavey, Kline, McCaslin, Costa and Honeyford

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

--- END ---