

2 SHB 1392 - S COMM AMD  
3 By Committee on Judiciary

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; or (g) less than five years

1 have passed since the date the applicant completed all of the terms of  
2 the sentence for the misdemeanor or gross misdemeanor offense.

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

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

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

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

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

30 (1) Every offender who has been discharged under RCW 9.94A.220 may  
31 apply to the sentencing court for a vacation of the offender's record  
32 of conviction. If the court finds the offender meets the tests  
33 prescribed in subsection (2) of this section, the court may in its  
34 discretion clear the record of conviction by: (a)(i) Permitting the  
35 offender to withdraw the offender's plea of guilty and to enter a plea  
36 of not guilty; or ((~~b~~)) (ii) if the offender has been convicted after  
37 a plea of not guilty, ((~~by~~)) the court setting aside the verdict of

1 guilty; and ~~((e) by)~~ (b) the court dismissing the information or  
2 indictment against the offender.

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

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

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

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

38 (6) No person may seek or be granted a vacation of record of  
39 conviction for an offense committed after the date upon which the

1 person received a vacation of record of conviction for any other  
2 offense.

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

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

30 (2) An offender may not have the record of conviction cleared if:  
31 (a) There are any criminal charges against the defendant pending in any  
32 court of this state or another state, or in any federal court; (b) the  
33 offense was a violent offense as defined in RCW 9.94A.030; (c) the  
34 offense was a felony crime against persons as defined in RCW 43.43.830;  
35 (d) the defendant has been convicted of a new crime in this state,  
36 another state, or federal court since the date the defendant  
37 successfully completed probation; (e) the offense is a class B felony  
38 and less than ten years have passed since the date the defendant

1 successfully completed probation; (f) the offense was a class C felony  
2 and less than five years have passed since the date the defendant  
3 successfully completed probation; (g) the offense was a misdemeanor or  
4 gross misdemeanor and less than five years have passed since the date  
5 the defendant successfully completed probation; or (h) the offense was  
6 a misdemeanor or gross misdemeanor and operated to interrupt the  
7 washout of a class B felony under RCW 9.94A.360 and less than ten years  
8 have passed since the date of the conviction for the misdemeanor or  
9 gross misdemeanor.

10 (3) Once the court vacates a record of conviction under subsection  
11 (1) of this section, the fact that the offender has been convicted of  
12 the offense shall not be included in the offender's criminal history  
13 for purposes of determining a sentence in any subsequent conviction,  
14 and the offender shall be released from all penalties and disabilities  
15 resulting from the offense. For all purposes, including responding to  
16 questions on employment applications, an offender whose conviction has  
17 been vacated may state that the offender has never been convicted of  
18 that crime. Nothing in this section affects or prevents the use of an  
19 offender's prior conviction in a later criminal case.

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

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

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

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

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

4 (3) All records other than the official juvenile court file are  
5 confidential and may be released only as provided in this section, RCW  
6 13.50.010, 13.40.215, and 4.24.550.

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

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

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

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

36 (8) Upon request of the victim of a crime or the victim's immediate  
37 family, the identity of an alleged or proven juvenile offender alleged  
38 or found to have committed a crime against the victim and the identity  
39 of the alleged or proven juvenile offender's parent, guardian, or

1 custodian and the circumstance of the alleged or proven crime shall be  
2 released to the victim of the crime or the victim's immediate family.

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

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

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

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

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

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

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

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

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

37 (a) For class B offenses other than sex offenses, since the last  
38 date of release from confinement, including full-time residential  
39 treatment, if any, or entry of disposition, the person has spent ten

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

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

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

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

14 (e) Full restitution has been paid.

15 (~~(12)~~) (13) The person making a motion pursuant to subsection  
16 (10) of this section shall give reasonable notice of the motion to the  
17 prosecution and to any person or agency whose files are sought to be  
18 sealed.

19 (~~(13)~~) (14) If the court grants the motion to seal made pursuant  
20 to subsection (10) of this section, it shall, subject to subsection  
21 (~~(22)~~) (23) of this section, order sealed the official juvenile court  
22 file, the social file, and other records relating to the case as are  
23 named in the order. Thereafter, the proceedings in the case shall be  
24 treated as if they never occurred, and the subject of the records may  
25 reply accordingly to any inquiry about the events, records of which are  
26 sealed. Any agency shall reply to any inquiry concerning confidential  
27 or sealed records that records are confidential, and no information can  
28 be given about the existence or nonexistence of records concerning an  
29 individual. Any record that is sealed under this section shall be  
30 treated as nonconviction data as defined in chapter 10.97 RCW for the  
31 purposes of the defendant's criminal history. The clerk of the court  
32 in which the motion is brought shall transmit the order sealing the  
33 record to the Washington state patrol. The Washington state patrol  
34 shall transmit the order sealing the record to the federal bureau of  
35 investigation.

36 (~~(14)~~) (15) Inspection of the files and records included in the  
37 order to seal may thereafter be permitted only by order of the court  
38 upon motion made by the person who is the subject of the information or

1 complaint, except as otherwise provided in RCW 13.50.010(8) and  
2 subsection ~~((+22+))~~ (23) of this section.

3 ~~((+15+))~~ (16) Any adjudication of a juvenile offense or a crime  
4 subsequent to sealing has the effect of nullifying the sealing order.  
5 Any charging of an adult felony subsequent to the sealing has the  
6 effect of nullifying the sealing order for the purposes of chapter  
7 9.94A RCW.

8 ~~((+16+))~~ (17) A person eighteen years of age or older whose  
9 criminal history consists of only one referral for diversion may  
10 request that the court order the records in that case destroyed. The  
11 request shall be granted, subject to subsection ~~((+22+))~~ (23) of this  
12 section, if the court finds that two years have elapsed since  
13 completion of the diversion agreement.

14 ~~((+17+))~~ (18) If the court grants the motion to destroy records  
15 made pursuant to subsection ~~((+16+))~~ (17) of this section, it shall,  
16 subject to subsection ~~((+22+))~~ (23) of this section, order the official  
17 juvenile court file, the social file, and any other records named in  
18 the order to be destroyed.

19 ~~((+18+))~~ (19) The person making the motion pursuant to subsection  
20 ~~((+16+))~~ (17) of this section shall give reasonable notice of the  
21 motion to the prosecuting attorney and to any agency whose records are  
22 sought to be destroyed.

23 ~~((+19+))~~ (20) Any juvenile to whom the provisions of this section  
24 may apply shall be given written notice of his or her rights under this  
25 section at the time of his or her disposition hearing or during the  
26 diversion process.

27 ~~((+20+))~~ (21) Nothing in this section may be construed to prevent  
28 a crime victim or a member of the victim's family from divulging the  
29 identity of the alleged or proven juvenile offender or his or her  
30 family when necessary in a civil proceeding.

31 ~~((+21+))~~ (22) Any juvenile justice or care agency may, subject to  
32 the limitations in subsection ~~((+22+))~~ (23) of this section and (a) and  
33 (b) of this subsection, develop procedures for the routine destruction  
34 of records relating to juvenile offenses and diversions.

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

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

3 (~~((22))~~) (23) No identifying information held by the Washington  
4 state patrol in accordance with chapter 43.43 RCW is subject to  
5 destruction or sealing under this section. For the purposes of this  
6 subsection, identifying information includes photographs, fingerprints,  
7 palmprints, soleprints, toeprints and any other data that identifies a  
8 person by physical characteristics, name, birthdate or address, but  
9 does not include information regarding criminal activity, arrest,  
10 charging, diversion, conviction or other information about a person's  
11 treatment by the criminal justice system or about the person's  
12 behavior.

13 (~~((23))~~) (24) Information identifying child victims under age  
14 eighteen who are victims of sexual assaults by juvenile offenders is  
15 confidential and not subject to release to the press or public without  
16 the permission of the child victim or the child's legal guardian.  
17 Identifying information includes the child victim's name, addresses,  
18 location, photographs, and in cases in which the child victim is a  
19 relative of the alleged perpetrator, identification of the relationship  
20 between the child and the alleged perpetrator. Information identifying  
21 a child victim of sexual assault may be released to law enforcement,  
22 prosecutors, judges, defense attorneys, or private or governmental  
23 agencies that provide services to the child victim of sexual assault.

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

29 **SHB 1392** - S COMM AMD  
30 By Committee on Judiciary

31  
32 On page 1, line 1 of the title, after "conviction;" strike the  
33 remainder of the title and insert "amending RCW 9.94A.230, 9.95.240,  
34 and 13.50.050; and adding a new section to chapter 9.96 RCW."

--- END ---