
SUBSTITUTE HOUSE BILL 1392

State of Washington 56th Legislature 1999 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Hurst, Constantine, Sheahan and McDonald)

Read first time 02/16/1999. Referred to Committee on .

1 AN ACT Relating to vacation of records of conviction; amending RCW
2 9.95.240 and 9.94A.230; and adding a new section to chapter 9.92 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.92 RCW
5 to read as follows:

6 (1) This section applies to offenders convicted of crimes in a
7 superior court or a court of limited jurisdiction and who are not
8 subject to the provisions of RCW 9.95.240 or 9.94A.230. An offender
9 who has completed his or her sentence, including fulfilling the
10 conditions of any probation for the entire period thereof, or who has
11 been discharged from probation prior to the termination of the period
12 thereof, may apply to the sentencing court for a vacation of the
13 offender's record of conviction. If the court finds the offender meets
14 the tests prescribed in subsection (2) of this section, the court may
15 clear the record of conviction by: (a) Permitting the offender to
16 withdraw the offender's plea of guilty and to enter a plea of not
17 guilty; (b) if the offender has been convicted after a plea of not
18 guilty, the court setting aside the verdict of guilty; or (c) the court
19 dismissing the information or indictment against the offender.

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

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

4 (b) The offense was a violent offense as defined in RCW 9.94A.030;

5 (c) The offense was a felony crime against persons as defined in
6 RCW 43.43.830;

7 (d) The offender has been convicted of a new crime in this state,
8 another state, or federal court since the date the offender
9 successfully completed his or her sentence, including any probation;

10 (e) The offense is a class B felony and less than ten years have
11 passed since the date the offender successfully completed his or her
12 sentence, including any probation;

13 (f) The offense was a class C felony and less than five years have
14 passed since the date the offender successfully completed his or her
15 sentence, including any probation;

16 (g) The offense was a misdemeanor or gross misdemeanor and operated
17 to interrupt the washout of a class B felony under RCW 9.94A.360 and
18 less than ten years have passed since the date of the conviction for
19 the misdemeanor or gross misdemeanor;

20 (h) The offense was a misdemeanor or gross misdemeanor for which a
21 statute provides a specific period for counting prior offenses,
22 including but not limited to the period applicable to a "prior offense"
23 under RCW 46.61.5055, and less than the applicable period has passed;
24 or

25 (i) The offense was a misdemeanor or gross misdemeanor not
26 otherwise covered by this subsection (2) and less than five years have
27 passed since the date the offender successfully completed his or her
28 sentence, including any probation.

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

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

5 **Sec. 2.** RCW 9.95.240 and 1957 c 227 s 7 are each amended to read
6 as follows:

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

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

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

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

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

25 **Sec. 3.** RCW 9.94A.230 and 1987 c 486 s 7 are each amended to read
26 as follows:

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

36 (2) An offender may not have the record of conviction cleared if:
37 (a) There are any criminal charges against the offender pending in any
38 court of this state or another state, or in any federal court; (b) the

1 offense was a violent offense as defined in RCW 9.94A.030; (c) the
2 offense was a crime against persons as defined in RCW 43.43.830; (d)
3 the offender has been convicted of a new crime in this state, another
4 state, or federal court since the date of the offender's discharge
5 under RCW 9.94A.220; (e) the offense is a class B felony and less than
6 ten years have passed since the date the applicant was discharged under
7 RCW 9.94A.220; and (f) the offense was a class C felony and less than
8 five years have passed since the date the applicant was discharged
9 under RCW 9.94A.220.

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 prosecution.

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.

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