
HOUSE BILL 1392

State of Washington 56th Legislature 1999 Regular Session

By Representatives Hurst, Constantine, Sheahan and McDonald

Read first time 01/22/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to vacation of records of conviction; and amending
2 RCW 9.92.066 and 9.95.240.

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

4 **Sec. 1.** RCW 9.92.066 and 1971 ex.s. c 188 s 3 are each amended to
5 read as follows:

6 (1) Every defendant who has fulfilled the conditions of his or her
7 probation for the entire period thereof, or who has been discharged
8 from probation prior to the termination of the period thereof, may
9 apply to the sentencing court for a vacation of the defendant's record
10 of conviction. If the court finds the defendant meets the tests
11 prescribed in subsection (2) of this section, the court may clear the
12 record of conviction by: (a) Permitting the defendant to withdraw the
13 defendant's plea of guilty and to enter a plea of not guilty; (b) if
14 the defendant has been convicted after a plea of not guilty, the court
15 setting aside the verdict of guilty; or (c) the court dismissing the
16 information or indictment against the defendant. Upon termination of
17 any suspended sentence under RCW 9.92.060 or 9.95.210, such person may
18 apply to the court for restoration of his or her civil rights.
19 Thereupon the court may in its discretion enter an order directing that

1 such defendant shall thereafter be released from all penalties and
2 disabilities resulting from the offense or crime of which he or she has
3 been convicted.

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

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

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

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

34 (1) Every defendant who has fulfilled the conditions of his of her
35 probation for the entire period thereof, or who ((shall have)) has been
36 discharged from probation prior to the termination of the period
37 thereof, may ((at any time prior to the expiration of the maximum
38 period of punishment for the offense for which he has been convicted be

1 permitted in the discretion of the court to withdraw his plea of guilty
2 and enter a plea of not guilty, or if he has been convicted after a
3 plea of not guilty, the court may in its discretion set aside the
4 verdict of guilty; and in either case, the court may thereupon dismiss
5 the information or indictment against such defendant, who shall
6 thereafter be released from all penalties and disabilities resulting
7 from the offense or crime of which he has been convicted. The
8 probationer shall be informed of this right in his probation papers:
9 PROVIDED, That in any subsequent prosecution, for any other offense,
10 such prior conviction may be pleaded and proved, and shall have the
11 same effect as if probation had not been granted, or the information or
12 indictment dismissed)) apply to the sentencing court for a vacation of
13 the defendant's record of conviction. If the court finds the defendant
14 meets the tests prescribed in subsection (2) of this section, the court
15 may clear the record of conviction by: (a) Permitting the defendant to
16 withdraw the defendant's plea of guilty and to enter a plea of not
17 guilty; (b) if the defendant 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 defendant.

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

38 (3) Once the court vacates a record of conviction under subsection
39 (1) of this section, the fact that the offender has been convicted of

1 the offense shall not be included in the offender's criminal history
2 for purposes of determining a sentence in any subsequent conviction,
3 and the offender shall be released from all penalties and disabilities
4 resulting from the offense. For all purposes, including responding to
5 questions on employment applications, an offender whose conviction has
6 been vacated may state that the offender has never been convicted of
7 that crime. Nothing in this section affects or prevents the use of an
8 offender's prior conviction in a later criminal case.

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