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HOUSE BILL 2088

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Lambert and Cairnes

Read first time 02/15/1999. Referred to Committee on Judiciary.

1            AN ACT Relating to collateral attack on judgments; amending RCW  
2 2.32.070, 7.36.130, 7.36.250, 10.73.090, 10.73.100, and 10.73.140;  
3 adding a new section to chapter 10.73 RCW; and creating a new section.

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

5            NEW SECTION.    **Sec. 1.**    (1) Collateral challenges to convictions  
6 impose trauma on victims of crime, interfere with rehabilitation, and  
7 place a continuing burden on courts and public officials. It is  
8 therefore the intent of the legislature to allow such challenges only  
9 when the conviction constitutes a clear miscarriage of justice.

10            (2) Multiple petitions challenging the same conviction are both  
11 especially burdensome and unlikely to raise valid issues. It is the  
12 intent of the legislature that such petitions will be allowed only  
13 under rare and carefully defined circumstances.

14            (3) A judgment that was upheld on direct appeal or that was not  
15 appealed is presumed valid. The right to challenge such a judgment  
16 arises only from statute. A person who has been convicted of a crime,  
17 which was upheld on appeal, has no constitutional right to challenge a  
18 facially valid judgment.

1       **Sec. 2.** RCW 2.32.070 and 1992 c 140 s 1 are each amended to read  
2 as follows:

3       The clerk of the supreme court and the clerks of the court of  
4 appeals shall collect the following fees for their official services:

5       Upon filing his or her first paper or record and making an  
6 appearance, the appellant or petitioner shall pay to the clerk of said  
7 court a docket fee of two hundred fifty dollars. The supreme court and  
8 the court of appeals cannot waive the fee for any second or subsequent  
9 collateral attack of a judgment and sentence in a criminal case.

10       For copies of opinions, twenty cents per folio: PROVIDED, That  
11 counsel of record and criminal defendants shall be supplied a copy  
12 without charge.

13       For certificates showing admission of an attorney to practice law  
14 five dollars, except that there shall be no fee for an original  
15 certificate to be issued at the time of his or her admission.

16       For filing a petition for review of a court of appeals decision  
17 terminating review, two hundred dollars.

18       The foregoing fees shall be all the fees connected with the appeal  
19 or special proceeding.

20       No fees shall be required to be advanced by the state or any  
21 municipal corporation, or any public officer prosecuting or defending  
22 on behalf of such state or municipal corporation.

23       **Sec. 3.** RCW 7.36.130 and 1989 c 395 s 3 are each amended to read  
24 as follows:

25       No court or judge shall inquire into the legality of any judgment  
26 or process whereby the party is in custody, or discharge the party when  
27 the term of commitment has not expired, in either of the cases  
28 following:

29       (1) Upon any process issued on any final judgment of a court of  
30 competent jurisdiction except where it is alleged in the petition that  
31 rights guaranteed the petitioner by the Constitution of the state of  
32 Washington or of the United States have been violated and the petition  
33 is filed within the time allowed by RCW 10.73.090 and 10.73.100 and, if  
34 a second or subsequent petition challenging a final judgment of a court  
35 of competent jurisdiction, the petition satisfies the requirements of  
36 RCW 10.73.140.

37       (2) For any contempt of any court, officer or body having authority  
38 in the premises to commit; but an order of commitment, as for a

1 contempt upon proceedings to enforce the remedy of a party, is not  
2 included in any of the foregoing specifications.

3 (3) Upon a warrant issued from the superior court upon an  
4 indictment or information.

5 **Sec. 4.** RCW 7.36.250 and 1947 c 256 s 1 are each amended to read  
6 as follows:

7 Any person entitled to prosecute a writ of habeas corpus who, by  
8 reason of poverty is unable to pay the costs of such proceeding or give  
9 security therefor, may file in the court having original jurisdiction  
10 of the proceeding an affidavit setting forth such facts and that he  
11 believes himself to be entitled to the redress sought. Upon the filing  
12 of such an affidavit the court may, if satisfied that the proceeding or  
13 appeal is instituted or taken in good faith, order that such  
14 proceeding, including appeal, may be prosecuted without prepayment of  
15 fees or costs or the giving of security therefor. However, a  
16 petitioner filing a second or subsequent collateral attack of a  
17 judgment and sentence in a criminal case must pay the filing fees  
18 whether or not the petitioner is considered indigent.

19 **Sec. 5.** RCW 10.73.090 and 1989 c 395 s 1 are each amended to read  
20 as follows:

21 (1) No petition or motion for collateral attack on a judgment and  
22 sentence in a criminal case may be filed more than one year after the  
23 judgment becomes final if the judgment and sentence is valid on its  
24 face and was rendered by a court of competent jurisdiction. No  
25 petition or motion for collateral attack on a judgment and sentence in  
26 a criminal case that has been filed within one year after the judgment  
27 becomes final may be amended to add new claims more than one year after  
28 the judgment became final.

29 (2) For the purposes of this section, "collateral attack" means any  
30 form of postconviction relief other than a direct appeal. "Collateral  
31 attack" includes, but is not limited to, a personal restraint petition,  
32 a habeas corpus petition, a motion to vacate judgment, a motion to  
33 withdraw guilty plea, a motion for a new trial, and a motion to arrest  
34 judgment.

35 (3) For the purposes of this section, a judgment becomes final on  
36 the last of the following dates:

37 (a) The date it is filed with the clerk of the trial court;

1 (b) The date that an appellate court issues its mandate disposing  
2 of a timely direct appeal from the conviction; or

3 (c) The date that the United States Supreme Court denies a timely  
4 petition for certiorari to review a decision affirming the conviction  
5 on direct appeal. The filing of a motion to reconsider denial of  
6 certiorari does not prevent a judgment from becoming final.

7 (4) The time for filing a petition is jurisdictional and may not be  
8 extended except as provided for in RCW 10.73.100.

9 **Sec. 6.** RCW 10.73.100 and 1989 c 395 s 2 are each amended to read  
10 as follows:

11 The time limit specified in RCW 10.73.090 does not apply to a  
12 petition or motion that is based solely on one or more of the following  
13 grounds:

14 (1) Newly discovered evidence that, if proven and viewed in light  
15 of the evidence as a whole, would be sufficient to establish by clear  
16 and convincing evidence that no reasonable fact-finder would have found  
17 the defendant guilty of the offense, if the defendant acted with  
18 reasonable diligence in discovering the evidence and filing the  
19 petition or motion;

20 (2) The statute that the defendant was convicted of violating was  
21 unconstitutional on its face or as applied to the defendant's conduct;

22 (3) The conviction was barred by double jeopardy under Amendment V  
23 of the United States Constitution or Article I, section 9 of the state  
24 Constitution;

25 (4) The defendant pled not guilty and the evidence introduced at  
26 trial was insufficient to support the conviction;

27 (5) The sentence imposed was in excess of the court's jurisdiction;  
28 or

29 (6) There has been a significant change in the law, whether  
30 substantive or procedural, which is material to the conviction,  
31 sentence, or other order entered in a criminal or civil proceeding  
32 instituted by the state or local government, and either the legislature  
33 has expressly provided that the change in the law is to be applied  
34 retroactively, or a court, in interpreting a change in the law that  
35 lacks express legislative intent regarding retroactive application,  
36 determines that sufficient reasons exist to require retroactive  
37 application of the changed legal standard.

1       **Sec. 7.** RCW 10.73.140 and 1989 c 395 s 9 are each amended to read  
2 as follows:

3       (1) A person filing a collateral attack on a judgment in a criminal  
4 case shall include a list of all prior collateral attacks upon the same  
5 final judgment that the person has filed and the grounds for relief  
6 raised in each prior collateral attack. A person's failure to provide  
7 an accurate list of prior collateral attacks may be grounds for  
8 dismissing the collateral attack.

9       (2) If a person has previously filed a ((petition for personal  
10 restraint, the court of appeals will)) collateral attack, the court may  
11 not consider ((the petition)) a new collateral attack unless the person  
12 certifies that he or she has not filed a previous ((petition))  
13 collateral attack on similar grounds, and shows good cause why the  
14 petitioner did not raise the new grounds in ((the)) any previous  
15 ((petition)) collateral attack, and obtains permission from the supreme  
16 court to file the new collateral attack. Upon receipt of a ((personal  
17 restraint petition)) motion for permission to file a second or  
18 subsequent collateral attack, the supreme court ((of appeals)) shall  
19 review the ((petition)) collateral attack and determine whether the  
20 person has ((previously filed a petition or petitions and if so,  
21 compare them. If upon review, the court of appeals finds that the  
22 petitioner has)) previously raised the same grounds for review, or  
23 ((that)) whether the petitioner has failed to show good cause why the  
24 ground was not raised earlier((, the court of appeals shall dismiss the  
25 petition on its own motion without requiring the state to respond to  
26 the petition)). If the supreme court determines that the petitioner  
27 has demonstrated good cause, the supreme court shall enter an order  
28 allowing the appropriate court of appeals to consider the merits of the  
29 issues. A second or subsequent collateral attack is not properly filed  
30 until the supreme court enters an order authorizing the court of  
31 appeals to consider the merits of the claim.

32       (3) Good cause exists when:

33       (a) The petitioner shows that the claim relies on a new rule of  
34 constitutional law made retroactive to cases on collateral review by  
35 either the United States supreme court or the Washington supreme court;  
36 or

37       (b)(i) The factual predicate for the claim could not have been  
38 discovered previously through the exercise of due diligence; and

1        (ii) The facts underlying the claim if proven and viewed in light  
2 of the evidence as a whole, would be sufficient to establish by clear  
3 and convincing evidence that, but for the constitutional error, no  
4 reasonable fact-finder would have found the petitioner guilty of the  
5 underlying offense.

6        (4) Upon receipt of a first or subsequent ((petition)) collateral  
7 attack, the court ((of appeals)) shall, whenever possible, review the  
8 ((petition)) collateral attack and determine if the ((petition))  
9 collateral attack is based on frivolous grounds. If frivolous, the  
10 court ((of appeals)) shall dismiss the ((petition)) collateral attack  
11 on its own motion without first requiring the state to respond to the  
12 ((petition)) collateral attack.

13        NEW SECTION. Sec. 8. A new section is added to chapter 10.73 RCW  
14 to read as follows:

15        No court may grant relief to any person who files a petition or  
16 motion for collateral attack on a judgment and sentence in a criminal  
17 case unless it appears that the petitioner has proven by clear and  
18 convincing evidence that a right guaranteed the petitioner by the  
19 Constitution of the state of Washington or of the United States has  
20 been violated and that the constitutional error had substantial and  
21 injurious effect or influence in determining the jury's verdict.

22        No court may require the state to respond to a collateral attack on  
23 a judgment and sentence in a criminal case until the person filing the  
24 collateral attack establishes that the collateral attack is not  
25 frivolous, is timely under RCW 10.73.090, and is not barred by RCW  
26 10.73.140.

27        If the judgment and sentence has been upheld on direct appeal or  
28 not appealed, the ineffectiveness or incompetence of counsel during  
29 later collateral postconviction proceedings shall not be grounds for  
30 relief.

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