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ENGROSSED SENATE BILL 5665

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State of Washington

56th Legislature

1999 Regular Session

By Senators Costa, Honeyford, Hargrove, Kline, Heavey, McCaslin and Long

Read first time 02/01/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to vacation of records of conviction; amending RCW  
2 9.94A.230 and 13.50.050; and adding a new section to chapter 9.96 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 9.96 RCW  
5 to read as follows:

6 (1) Every person convicted of a misdemeanor or gross misdemeanor  
7 offense who has completed all of the terms of the sentence for the  
8 misdemeanor or gross misdemeanor offense may apply to the sentencing  
9 court for a vacation of the applicant's record of conviction for the  
10 offense. If the court finds the applicant meets the tests prescribed  
11 in subsection (2) of this section, the court may in its discretion  
12 clear the record of conviction by: (a) Permitting the applicant to  
13 withdraw the applicant's plea of guilty and to enter a plea of not  
14 guilty; or (b) if the applicant has been convicted after a plea of not  
15 guilty, the court setting aside the verdict of guilty; and (c) the  
16 court dismissing the information or indictment against the applicant.

17 (2) An applicant may not have the record of conviction for a  
18 misdemeanor or gross misdemeanor offense cleared if any one of the  
19 following is present: (a) There are any criminal charges against the

1 applicant pending in any court of this state or another state, or in  
2 any federal court; (b) the offense was a violent offense as defined in  
3 RCW 9.94A.030 or an attempt to commit a violent offense; (c) the  
4 offense was a violation of RCW 46.61.502 (Driving while under the  
5 influence), 46.61.504 (Actual physical control while under the  
6 influence), or 9.91.020 (Operating a railroad, etc. while intoxicated);  
7 (d) the offense was a domestic violence offense as defined in RCW  
8 10.99.020; (e) the offense was any misdemeanor or gross misdemeanor  
9 attempt to commit a sex offense as defined in RCW 9.94A.030; (f) the  
10 offense was any misdemeanor or gross misdemeanor violation, including  
11 attempt, of chapter 9.68 (Obscenity and pornography) or 9.68A (Sexual  
12 exploitation of children) RCW; (g) the offense was a violation of any  
13 of the following: RCW 9.12.010 (Barratry), 9.12.020 (Buying,  
14 demanding, or promising reward by district judge or deputy), 9.16.030  
15 (Counterfeiting trademark, brand, etc.), 9.18.140 (Bidding offenses,  
16 false bidding), 9.24.010 (Fraud in stock subscriptions), 9.24.040  
17 (Corporation doing business without license), 9.38.020 (False  
18 representation concerning title), 9.41.040 (Unlawful possession of  
19 firearms), 9.41.050 (Carrying firearms), 9.41.230 (Aiming or  
20 discharging firearms), 9.41.250 (Dangerous weapons), 9.46.170  
21 (Gambling: False or misleading entries or statements, refusal to  
22 produce records), 9.46.190 (Gambling: Violations relating to fraud or  
23 deceit), 9.46.196 (Gambling: Cheating), 9.46.222 (Professional  
24 gambling 3), 9.51.010 (Misconduct of officer drawing jury), 9.51.030  
25 (Misconduct of officer in charge of a jury), 9A.46.080 (Court order  
26 restricting contact), 9A.60.040 (Criminal impersonation), 9A.60.050  
27 (False swearing under oath), 9A.72.140 (Jury tampering), 9A.72.150  
28 (Tampering with physical evidence), or 9A.88.010 (Indecent exposure);  
29 (h) the applicant has been convicted of a new crime in this state,  
30 another state, or federal court since the date the applicant completed  
31 all of the terms of the sentence for the misdemeanor or gross  
32 misdemeanor offense; or (i) less than five years have passed since the  
33 date the applicant completed all of the terms of the sentence for the  
34 misdemeanor or gross misdemeanor offense.

35 (3) Once the court vacates a record of conviction under subsection  
36 (1) of this section, the person shall be released from all penalties  
37 and disabilities resulting from the offense, except that the fact that  
38 the person had been convicted of the offense may be used in any  
39 subsequent criminal prosecution consistent with any other legal use and

1 may be included in the person's criminal history for purposes of  
2 determining a sentence in any subsequent conviction. For all other  
3 purposes, including responding to questions on employment applications,  
4 a person whose conviction has been vacated may state that the person  
5 has never been convicted of that crime.

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

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

12 (1) Every offender who has been discharged under RCW 9.94A.220 may  
13 apply to the sentencing court for a vacation of the offender's record  
14 of conviction. If the court finds the offender meets the tests  
15 prescribed in subsection (2) of this section, the court may in its  
16 discretion clear the record of conviction by: (a) Permitting the  
17 offender to withdraw the offender's plea of guilty and to enter a plea  
18 of not guilty; or (b) if the offender has been convicted after a plea  
19 of not guilty, (~~by~~) the court setting aside the verdict of guilty;  
20 and (c) (~~by~~) the court dismissing the information or indictment  
21 against the offender.

22 (2) An offender may not have the record of conviction cleared if  
23 any one of the following is present: (a) There are any criminal  
24 charges against the offender pending in any court of this state or  
25 another state, or in any federal court; (b) the offense was a violent  
26 offense as defined in RCW 9.94A.030; (c) the offense was a domestic  
27 violence offense as defined in RCW 10.99.020; (d) the offense was a  
28 crime against persons as defined in RCW 43.43.830; (~~(d)~~) (e) the  
29 offender has been convicted of a new crime in this state, another  
30 state, or federal court since the date of the offender's discharge  
31 under RCW 9.94A.220; (~~(e)~~) (f) the offense is a class B felony and  
32 less than ten years have passed since the date the applicant was  
33 discharged under RCW 9.94A.220; (~~and (f)~~) or (g) the offense was a  
34 class C felony and less than five years have passed since the date the  
35 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

1 for purposes of determining a sentence in any subsequent conviction,  
2 and the offender shall be released from all penalties and disabilities  
3 resulting from the offense. For all purposes, including responding to  
4 questions on employment applications, an offender whose conviction has  
5 been vacated may state that the offender has never been convicted of  
6 that crime. Nothing in this section affects or prevents the use of an  
7 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 pursuant to chapter 10.101 RCW that the person  
11 making the motion is indigent, at the time the motion is brought.

12 **Sec. 3.** RCW 13.50.050 and 1999 c 198 s 4 are each amended to read  
13 as follows:

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

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

19 (3) All records other than the official juvenile court file are  
20 confidential and may be released only as provided in this section, RCW  
21 13.50.010, 13.40.215, and 4.24.550.

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

29 (5) Except as provided in RCW 4.24.550, information not in an  
30 official juvenile court file concerning a juvenile or a juvenile's  
31 family may be released to the public only when that information could  
32 not reasonably be expected to identify the juvenile or the juvenile's  
33 family.

34 (6) Notwithstanding any other provision of this chapter, the  
35 release, to the juvenile or his or her attorney, of law enforcement and  
36 prosecuting attorneys' records pertaining to investigation, diversion,  
37 and prosecution of juvenile offenses shall be governed by the rules of

1 discovery and other rules of law applicable in adult criminal  
2 investigations and prosecutions.

3 (7) Upon the decision to arrest or the arrest, law enforcement and  
4 prosecuting attorneys may cooperate with schools in releasing  
5 information to a school pertaining to the investigation, diversion, and  
6 prosecution of a juvenile attending the school. Upon the decision to  
7 arrest or the arrest, incident reports may be released unless releasing  
8 the records would jeopardize the investigation or prosecution or  
9 endanger witnesses. If release of incident reports would jeopardize  
10 the investigation or prosecution or endanger witnesses, law enforcement  
11 and prosecuting attorneys may release information to the maximum extent  
12 possible to assist schools in protecting other students, staff, and  
13 school property.

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

25 (9) Upon request of the victim of a crime or the victim's immediate  
26 family, the identity of an alleged or proven juvenile offender alleged  
27 or found to have committed a crime against the victim and the identity  
28 of the alleged or proven juvenile offender's parent, guardian, or  
29 custodian and the circumstance of the alleged or proven crime shall be  
30 released to the victim of the crime or the victim's immediate family.

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

1 (11) In any case in which an information has been filed pursuant to  
2 RCW 13.40.100 or a complaint has been filed with the prosecutor and  
3 referred for diversion pursuant to RCW 13.40.070, the person the  
4 subject of the information or complaint may file a motion with the  
5 court to have the court vacate its order and findings, if any, and,  
6 subject to subsection (23) of this section, order the sealing of the  
7 official juvenile court file, the social file, and records of the court  
8 and of any other agency in the case.

9 (12) The court shall grant the motion to seal records made pursuant  
10 to subsection (11) of this section if it finds that:

11 (a) For class B offenses other than sex offenses, since the last  
12 date of release from confinement, including full-time residential  
13 treatment, if any, or entry of disposition, the person has spent ten  
14 consecutive years in the community without committing any offense or  
15 crime that subsequently results in conviction. For class C offenses,  
16 gross misdemeanors, and misdemeanors, other than sex offenses, since  
17 the last date of release from confinement, including full-time  
18 residential treatment, if any, or entry of disposition, the person has  
19 spent five consecutive years in the community without committing any  
20 offense or crime that subsequently results in conviction;

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

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

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

27 (e) Full restitution has been paid.

28 (13) The person making a motion pursuant to subsection (11) of this  
29 section shall give reasonable notice of the motion to the prosecution  
30 and to any person or agency whose files are sought to be sealed.

31 (14) If the court grants the motion to seal made pursuant to  
32 subsection (11) of this section, it shall, subject to subsection (23)  
33 of this section, order sealed the official juvenile court file, the  
34 social file, and other records relating to the case as are named in the  
35 order. Thereafter, the proceedings in the case shall be treated as if  
36 they never occurred, and the subject of the records may reply  
37 accordingly to any inquiry about the events, records of which are  
38 sealed. Any agency shall reply to any inquiry concerning confidential  
39 or sealed records that records are confidential, and no information can

1 be given about the existence or nonexistence of records concerning an  
2 individual.

3 (15) Inspection of the files and records included in the order to  
4 seal may thereafter be permitted only by order of the court upon motion  
5 made by the person who is the subject of the information or complaint,  
6 except as otherwise provided in RCW 13.50.010(8) and subsection (23) of  
7 this section.

8 (16) Any adjudication of a juvenile offense or a crime subsequent  
9 to sealing has the effect of nullifying the sealing order. Any  
10 charging of an adult felony subsequent to the sealing has the effect of  
11 nullifying the sealing order for the purposes of chapter 9.94A RCW.

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

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

23 (19) The person making the motion pursuant to subsection (17) of  
24 this section shall give reasonable notice of the motion to the  
25 prosecuting attorney and to any agency whose records are sought to be  
26 destroyed.

27 (20) Any juvenile to whom the provisions of this section may apply  
28 shall be given written notice of his or her rights under this section  
29 at the time of his or her disposition hearing or during the diversion  
30 process.

31 (21) Nothing in this section may be construed to prevent a crime  
32 victim or a member of the victim's family from divulging the identity  
33 of the alleged or proven juvenile offender or his or her family when  
34 necessary in a civil proceeding.

35 (22) Any juvenile justice or care agency may, subject to the  
36 limitations in subsection (23) of this section and (a) and (b) of this  
37 subsection, develop procedures for the routine destruction of records  
38 relating to juvenile offenses and diversions.

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

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

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

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

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

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