

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1174**

57th Legislature  
2001 Regular Legislative Session

Passed by the House March 13, 2001  
Yeas 98 Nays 0

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**Speaker of the House of Representatives**

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**Speaker of the House of Representatives**

Passed by the Senate April 9, 2001  
Yeas 47 Nays 1

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**President of the Senate**

Approved

\_\_\_\_\_  
Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1174** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

\_\_\_\_\_  
**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1174**

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Passed Legislature - 2001 Regular Session

**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Hurst, Carrell, Lantz, Lovick and O'Brien)

Read first time 02/27/2001. Referred to Committee on .

1 AN ACT Relating to vacation of records of conviction for  
2 misdemeanor and gross misdemeanor offenses; and adding a new section to  
3 chapter 9.96 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.96 RCW  
6 to read as follows:

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

1 (2) An applicant may not have the record of conviction for a  
2 misdemeanor or gross misdemeanor offense vacated if any one of the  
3 following is present: (a) There are any criminal charges against the  
4 applicant pending in any court of this state or another state, or in  
5 any federal court; (b) the offense was a violent offense as defined in  
6 RCW 9.94A.030 or an attempt to commit a violent offense; (c) the  
7 offense was a violation of RCW 46.61.502 (driving while under the  
8 influence), 46.61.504 (actual physical control while under the  
9 influence), or 9.91.020 (operating a railroad, etc. while intoxicated);  
10 (d) the offense was any misdemeanor or gross misdemeanor violation,  
11 including attempt, of chapter 9.68 RCW (obscenity and pornography),  
12 chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44  
13 RCW (sex offenses); (e) the applicant was convicted of a misdemeanor or  
14 gross misdemeanor offense as defined in RCW 10.99.020, or the court  
15 determines after a review of the court file that the offense was  
16 committed by one family member or household member against another, or  
17 the court, after considering the damage to person or property that  
18 resulted in the conviction, any prior convictions for crimes defined in  
19 RCW 10.99.020, or for comparable offenses in another state or in  
20 federal court, and the totality of the records under review by the  
21 court regarding the conviction being considered for vacation,  
22 determines that the offense involved domestic violence, and any one of  
23 the following factors exist:

24 (i) The applicant has not provided written notification of the  
25 vacation petition to the prosecuting attorney's office that prosecuted  
26 the offense for which vacation is sought, or has not provided that  
27 notification to the court;

28 (ii) The applicant has previously had a conviction for domestic  
29 violence. For purposes of this subsection, however, if the current  
30 application is for more than one conviction that arose out of a single  
31 incident, none of those convictions counts as a previous conviction;

32 (iii) The applicant has signed an affidavit under penalty of  
33 perjury affirming that the applicant has not previously had a  
34 conviction for a domestic violence offense, and a criminal history  
35 check reveals that the applicant has had such a conviction; or

36 (iv) Less than five years have elapsed since the person completed  
37 the terms of the original conditions of the sentence, including any  
38 financial obligations and successful completion of any treatment  
39 ordered as a condition of sentencing; (f) for any offense other than

1 those described in (e) of this subsection, less than three years have  
2 passed since the person completed the terms of the sentence, including  
3 any financial obligations; (g) the offender has been convicted of a new  
4 crime in this state, another state, or federal court since the date of  
5 conviction; (h) the applicant has ever had the record of another  
6 conviction vacated; or (i) the applicant is currently restrained, or  
7 has been restrained within five years prior to the vacation  
8 application, by a domestic violence protection order, a no-contact  
9 order, an antiharassment order, or a civil restraining order which  
10 restrains one party from contacting the other party.

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

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

26 (5) The clerk of the court in which the vacation order is entered  
27 shall immediately transmit the order vacating the conviction to the  
28 Washington state patrol identification section and to the local police  
29 agency, if any, which holds criminal history information for the person  
30 who is the subject of the conviction. The Washington state patrol and  
31 any such local police agency shall immediately update their records to  
32 reflect the vacation of the conviction, and shall transmit the order  
33 vacating the conviction to the federal bureau of investigation. A  
34 conviction that has been vacated under this section may not be  
35 disseminated or disclosed by the state patrol or local law enforcement  
36 agency to any person, except other criminal justice enforcement  
37 agencies.

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