
SUBSTITUTE SENATE BILL 5323

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Kline, Constantine, Hargrove and Thibaudeau)

READ FIRST TIME 03/05/2001.

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), chapter 9A.42 RCW
13 (criminal mistreatment), or chapter 9A.44 RCW (sex offenses); (e) the
14 applicant was convicted of a misdemeanor or gross misdemeanor offense
15 as defined in RCW 10.99.020, or the court determines after a review of
16 the court file that the offense was committed by one family member or
17 household member against another, or the court, after considering the
18 damage to person or property that resulted in the conviction, any prior
19 convictions for crimes defined in RCW 10.99.020, or for comparable
20 offenses in another state or in federal court, and the totality of the
21 records under review by the court regarding the conviction being
22 considered for vacation, determines that the offense involved domestic
23 violence, and any one of 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; or

28 (ii) The applicant has previously had a conviction for domestic
29 violence vacated, unless the vacation sought is for more than one
30 misdemeanor or gross misdemeanor conviction that arose out of a single
31 incident; or

32 (iii) A criminal history check reveals, and the applicant has
33 signed an affidavit under penalty of perjury affirming, that the
34 applicant has not previously had a conviction vacated for a domestic
35 violence offense; 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; or (h) the applicant is currently restrained, or has been
6 restrained within five years prior to the vacation application, by a
7 domestic violence protection order, a no-contact order, an
8 antiharassment order, or a civil restraining order which restrains one
9 party from contacting the other party.

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

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

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

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