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SENATE BILL 5323

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State of Washington

57th Legislature

2001 Regular Session

By Senators Kline, Constantine, Hargrove and Thibaudeau

Read first time 01/19/2001. Referred to Committee on Judiciary.

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 and for an order sealing the record. If the court finds the  
12 applicant meets the tests prescribed in subsection (2) of this section,  
13 the court may in its discretion vacate the record of conviction by:  
14 (a)(i) Permitting the applicant to withdraw the applicant's plea of  
15 guilty and to enter a plea of not guilty; or (ii) if the applicant has  
16 been convicted after a plea of not guilty, the court setting aside the  
17 verdict of guilty; and (b) the court dismissing the information,  
18 indictment, complaint, or citation against the applicant and vacating  
19 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) or  
12 chapter 9.68A RCW (sexual exploitation of children); (e) less than  
13 three years have passed since the person completed the terms of the  
14 sentence, including any financial obligations.

15 (3) Once the court vacates a record of conviction under subsection  
16 (1) of this section, the person shall be released from all penalties  
17 and disabilities resulting from the offense and the fact that the  
18 person has been convicted of the offense shall not be included in the  
19 person's criminal history for purposes of determining a sentence in any  
20 subsequent conviction. For all purposes, including responding to  
21 questions on employment or housing applications, a person whose  
22 conviction has been vacated under subsection (1) of this section may  
23 state that he or she has never been convicted of that crime.

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

28 (5) Any conviction that is vacated under subsection (1) of this  
29 section shall be treated as nonconviction data as defined in chapter  
30 10.97 RCW.

31 The clerk of the court in which the vacation order is entered shall  
32 immediately transmit the order vacating the conviction to the  
33 Washington state patrol identification section and to the local police  
34 agency, if any, which holds criminal history information for the person  
35 who is the subject of the conviction. The Washington state patrol and  
36 any such local police agency shall immediately update their records to  
37 reflect the vacation of the conviction, and shall transmit the order  
38 vacating the conviction to the federal bureau of investigation. A  
39 conviction that has been vacated under this section may not be

1 disseminated or disclosed by the state patrol or local law enforcement  
2 agency to any person, except other criminal justice enforcement  
3 agencies.

4 (6) A court may grant an order sealing the record for any  
5 conviction for which it grants a vacation under subsection (1) of this  
6 section. If the court seals the record, the clerk of the court shall  
7 not disseminate any information concerning that conviction, and shall  
8 remove it from its public records. A sealed record may not be  
9 destroyed by the clerk.

10 (7) If the court grants an order sealing the record of the  
11 conviction, the clerk of the court shall transmit a copy of the order  
12 sealing the record to the Washington state patrol and any local law  
13 enforcement agency holding criminal history information concerning the  
14 person whose conviction record has been vacated. Upon receipt of the  
15 order sealing the record, the Washington state patrol and any local law  
16 enforcement agency shall not disseminate any information concerning the  
17 conviction, except to other criminal justice enforcement agencies.

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