
HOUSE BILL 2390

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By Representatives Carrell, McMahan, Cox, Bush, Mielke, Boldt and Pearson

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1 AN ACT Relating to collateral attacks; amending RCW 4.72.010,
2 7.36.130, 10.73.090, 10.73.100, 10.73.140, and 10.73.150; and adding
3 new sections to chapter 10.73 RCW.

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

5 NEW SECTION. **Sec. 1.** (1) A person who has been convicted of a
6 crime has no constitutional right to challenge a facially valid
7 judgment that was not appealed or that was upheld on direct appeal.
8 The right to challenge such a judgment arises only from statute.

9 (2) Collateral challenges to convictions impose trauma on victims
10 of crime, interfere with rehabilitation, and place a continuing burden
11 on courts and public officials. It is therefore the intent of the
12 legislature to allow these challenges only when the conviction
13 constitutes a clear miscarriage of justice.

14 (3) Multiple petitions challenging the same conviction are both
15 especially burdensome and unlikely to raise valid issues. It is the
16 intent of the legislature that these petitions will be allowed only
17 under rare and carefully defined circumstances.

18 (4) It is the intent of the legislature that the only basis for
19 challenging a facially valid judgment entered in a criminal proceeding

1 are those contained in this chapter. To the extent that *State v.*
2 *Sampson*, 82 Wn.2d 663, 513 P.2d 60 (1973), provides that RCW 4.72.010
3 is applicable to judgments entered in criminal cases and that RAP 16.4,
4 CrR 7.8, and CrRLJ 7.8, provide different grounds for relief they are
5 disapproved.

6 **Sec. 2.** RCW 4.72.010 and 1957 c 9 s 4 are each amended to read as
7 follows:

8 The superior court in a civil case in which a judgment or final
9 order has been rendered, or made, shall have power to vacate or modify
10 such judgment or order:

11 (1) By granting a new trial for the cause, within the time and in
12 the manner, and for any of the causes prescribed by the rules of court
13 relating to new trials.

14 (2) By a new trial granted in proceedings against defendant served
15 by publication only as prescribed in RCW 4.28.200.

16 (3) For mistakes, neglect or omission of the clerk, or irregularity
17 in obtaining a judgment or order.

18 (4) For fraud practiced by the successful party in obtaining the
19 judgment or order.

20 (5) For erroneous proceedings against a minor or person of unsound
21 mind, when the condition of such defendant does not appear in the
22 record, nor the error in the proceedings.

23 (6) For the death of one of the parties before the judgment in the
24 action.

25 (7) For unavoidable casualty, or misfortune preventing the party
26 from prosecuting or defending.

27 (8) For error in a judgment shown by a minor, within twelve months
28 after arriving at full age.

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

31 No court or judge shall inquire into the legality of any judgment
32 or process whereby the party is in custody, or discharge the party when
33 the term of commitment has not expired, in (~~either~~) any of the cases
34 following:

35 (1) Upon any process issued on any final judgment of a court of
36 competent jurisdiction except where it is alleged in the petition that

1 rights guaranteed the petitioner by the Constitution of the state of
2 Washington or of the United States have been violated and the petition
3 is filed within the time allowed by RCW 10.73.090 and 10.73.100, and,
4 if a second or subsequent petition challenges a final judgment of a
5 court of competent jurisdiction, the petition satisfies the
6 requirements of RCW 10.73.140.

7 (2) For any contempt of any court, officer or body having authority
8 in the premises to commit; but an order of commitment, as for a
9 contempt upon proceedings to enforce the remedy of a party, is not
10 included in any of the foregoing specifications.

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

13 **Sec. 4.** RCW 10.73.090 and 1989 c 395 s 1 are each amended to read
14 as follows:

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

23 (2) For the purposes of this (~~section~~) chapter, "collateral
24 attack" means any form of postconviction relief other than a direct
25 appeal. "Collateral attack" includes, but is not limited to, a
26 personal restraint petition, a state or federal habeas corpus petition,
27 a motion to vacate judgment, a motion to withdraw guilty plea, a motion
28 for a new trial, and a motion to arrest judgment.

29 (3) For purposes of this chapter, a judgment is not "valid on its
30 face" only if infirmities of a constitutional magnitude are apparent
31 from the face of the judgment itself, without consideration of other
32 documents or portions of the record.

33 (4) For purposes of this chapter, a court of competent jurisdiction
34 is any court authorized by the Washington state Constitution or a
35 statute to hear the type of case in which the judgment was entered.

36 (5) For the purposes of this (~~section~~) chapter, a judgment
37 becomes final on the last of the following dates:

1 (a) The date it is filed with the clerk of the trial court;
2 (b) The date that an appellate court issues its mandate disposing
3 of a timely direct appeal from the conviction; or

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

8 (6) The time for filing a petition is jurisdictional and may not be
9 extended except:

10 (a) As provided for in RCW 10.73.100; or

11 (b) To the extent that deliberate interference by government
12 officials prevented the petition from being filed.

13 **Sec. 5.** RCW 10.73.100 and 1989 c 395 s 2 are each amended to read
14 as follows:

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

18 (1) Newly discovered evidence(~~(, if)~~) of the defendant's innocence,
19 if:

20 (a) The evidence would probably lead a fact-finder to find the
21 defendant not guilty;

22 (b) The evidence was discovered since the trial;

23 (c) The evidence is not merely cumulative or impeaching; and

24 (d) The defendant acted with reasonable diligence in discovering
25 the evidence and filing the petition or motion;

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

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

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

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

35 (6) There has been a significant change in the law, whether
36 substantive or procedural, which is material to the conviction,
37 sentence, or other order entered in a criminal or civil proceeding

1 instituted by the state or local government, and either the legislature
2 has expressly provided that the change in the law is to be applied
3 retroactively, or a court, in interpreting a change in the law that
4 lacks express legislative intent regarding retroactive application,
5 determines that sufficient reasons exist to require retroactive
6 application of the changed legal standard.

7 **Sec. 6.** RCW 10.73.140 and 1989 c 395 s 9 are each amended to read
8 as follows:

9 (1) A person filing a collateral attack on a judgment in a criminal
10 case shall include a list of all prior collateral attacks upon the same
11 final judgment that the person has filed and the grounds for relief
12 raised in each prior collateral attack. A person's failure to provide
13 an accurate list of prior collateral attacks may be grounds for
14 dismissing the collateral attack.

15 (2) If a person has previously filed a ((petition for personal
16 restraint, the court of appeals will not)) collateral attack, no court
17 may consider ((the petition)) a new collateral attack unless the person
18 certifies that he or she has not filed a previous ((petition))
19 collateral attack on similar grounds, and shows good cause why the
20 petitioner did not raise the new grounds in ((the)) any previous
21 ((petition)) collateral attack, and obtains permission from the supreme
22 court to file the new collateral attack. Upon receipt of a ((personal
23 restraint petition)) motion for permission to file a second or
24 subsequent collateral attack, the supreme court ((of appeals)) shall
25 review the ((petition)) collateral attack and determine whether the
26 person has ((previously filed a petition or petitions and if so,
27 compare them. If upon review, the court of appeals finds that the
28 petitioner has)) previously raised the same grounds for review, or
29 ((that)) whether the petitioner has failed to show good cause why the
30 ground was not raised earlier((, the court of appeals shall dismiss the
31 petition on its own motion without requiring the state to respond to
32 the petition)). If the supreme court determines that the petitioner
33 has demonstrated good cause, the supreme court shall enter an order
34 allowing the appropriate division of the court of appeals or trial
35 court to consider the merits of the issues. A second or subsequent
36 collateral attack is not properly filed until the supreme court enters

1 an order authorizing the court of appeals or trial court to consider
2 the merits of the claim.

3 (3) Good cause exists when:

4 (a) The petitioner shows that the claim relies on a new rule of
5 constitutional law made retroactive to cases on collateral review by
6 either the United States supreme court or the Washington supreme court;
7 or

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

10 (ii) The facts underlying the claim, if proven and viewed in light
11 of the evidence as a whole, would be sufficient to establish by clear
12 and convincing evidence that, but for the constitutional error, no
13 reasonable fact finder would have found the petitioner guilty of the
14 underlying offense.

15 (4) Upon receipt of a first or subsequent ((petition)) collateral
16 attack, the court ((of appeals)) shall, whenever possible, review the
17 ((petition)) collateral attack and determine if ((the petition)) it is
18 based on frivolous grounds. If frivolous, the court ((of appeals))
19 shall dismiss the ((petition)) collateral attack on its own motion
20 without first requiring the state to respond to the ((petition))
21 collateral attack.

22 **Sec. 7.** RCW 10.73.150 and 1995 c 275 s 2 are each amended to read
23 as follows:

24 Counsel shall be provided at state expense to an adult offender
25 convicted of a crime and to a juvenile offender convicted of an offense
26 when the offender is indigent or indigent and able to contribute as
27 those terms are defined in RCW 10.101.010 and the offender:

28 (1) Files an appeal from a judgment and sentence as a matter of
29 right;

30 (2) Responds to an appeal filed as a matter of right or responds to
31 a motion for discretionary review or petition for review filed by the
32 state;

33 (3) Is under a sentence of death and requests counsel be appointed
34 to file and prosecute a motion or petition for collateral attack as
35 defined in RCW 10.73.090. Counsel may be provided at public expense to
36 file or prosecute a second or subsequent collateral attack on the same

1 judgment and sentence, if the court determines that the collateral
2 attack is not barred by RCW 10.73.090 or 10.73.140;

3 (4) Is not under a sentence of death and requests counsel to
4 prosecute a collateral attack after the chief judge has determined that
5 the issues raised by the petition are not frivolous, in accordance with
6 the procedure contained in rules of appellate procedure 16.11, or after
7 a trial court judge has determined that the issues raised by the
8 petition are authorized by section 9 of this act and are not frivolous.
9 Counsel shall not be provided at public expense to file or prosecute a
10 second or subsequent collateral attack on the same judgment and
11 sentence;

12 (5) Responds to a collateral attack filed by the state or responds
13 to or prosecutes an appeal from a collateral attack that was filed by
14 the state;

15 (6) Prosecutes a motion or petition for review after the supreme
16 court or court of appeals has accepted discretionary review of a
17 decision of a court of limited jurisdiction; or

18 (7) Prosecutes a motion or petition for review after the supreme
19 court has accepted discretionary review of a court of appeals decision
20 in an appeal as a matter of right from a judgment or sentence or in a
21 first collateral attack upon a judgment or sentence.

22 NEW SECTION. Sec. 8. No court shall grant relief to any person
23 who files a petition or motion for collateral attack on a judgment and
24 sentence in a criminal case that is valid on its face and was rendered
25 by a court of competent jurisdiction unless it appears that the
26 petitioner has proven by clear and convincing evidence that a right
27 guaranteed the petitioner by the Constitution of the state of
28 Washington or of the United States has been violated and that the
29 constitutional error had substantial and injurious effect or influence
30 in determining the jury's verdict or that one of the grounds for relief
31 specified in section 9 of this act exists.

32 No court shall require the state to respond to a collateral attack
33 on a judgment and sentence in a criminal case until the person filing
34 the collateral attack establishes that the collateral attack is not
35 frivolous, is timely under RCW 10.73.090 or an exception to RCW
36 10.73.090, and is not barred by RCW 10.73.140.

1 The ineffectiveness or incompetence of counsel during collateral
2 postconviction proceedings shall not be grounds for relief.

3 NEW SECTION. **Sec. 9.** (1) Any court having jurisdiction shall have
4 the power to vacate or modify a facially valid judgment or final order
5 rendered in a criminal case when the motion is made in accordance with
6 RCW 10.73.090, 10.73.100, and 10.73.140, and the petitioner has proven
7 by clear and convincing evidence that a right guaranteed the petitioner
8 by the Constitution of the state of Washington or of the United States
9 has been violated and that the constitutional error had substantial and
10 injurious effect or influence in determining the jury's verdict.

11 (2) The trial court in which a judgment or final order has been
12 rendered, or made, shall have power to vacate or modify such judgment
13 or order when the motion is limited to one or more of the following
14 grounds and is made in accordance with RCW 10.73.090, 10.73.100, and
15 10.73.140:

16 (a) When the petitioner produces newly discovered evidence that,
17 when viewed in light of the evidence as a whole, would be sufficient to
18 establish by clear and convincing evidence that no reasonable fact
19 finder would have found the petitioner guilty of the offense;

20 (b) When the prosecutor or the defendant produces evidence that the
21 other party breached the terms of any plea agreement;

22 (c) When a conviction that was included in the defendant's criminal
23 history was vacated by another court in a ruling entered after the
24 original sentencing hearing;

25 (d) When the Washington supreme court interprets a Washington
26 sentencing statute in a decision entered after the original sentencing
27 hearing in a manner that fundamentally changes the application of the
28 statute to the facts as developed in the original sentencing hearing.

29 (3) The trial court in which a judgment or final order has been
30 rendered, or made, shall have the power to correct clerical mistakes in
31 judgments, orders, or other parts of the record. Errors therein
32 arising from oversight or omission may be corrected by the court at any
33 time of its own initiative or on the motion of any party and after such
34 notice, if any, as the court orders. A motion to correct a clerical
35 mistake is not considered a collateral attack for purposes of RCW
36 10.73.140.

1 NEW SECTION. **Sec. 10.** (1) A person under the jurisdiction of the
2 department of corrections may challenge an administrative decision of
3 the department affecting his or her custody only by a personal
4 restraint petition.

5 (2) For the purposes of this section, a personal restraint petition
6 must be filed in the court of appeals within sixty days of the
7 department's decision or, if the decision is in writing, within sixty
8 days of the written decision. The petition shall be filed in the court
9 of appeals for the division in which the underlying judgment and
10 sentence was obtained.

11 (3) The time limit contained in this section is jurisdictional and
12 may not be waived by the court or the parties.

13 (4) A challenge to an administrative decision of the department is
14 not considered a collateral attack upon the conviction for purposes of
15 RCW 10.73.140.

16 NEW SECTION. **Sec. 11.** (1) A person under the jurisdiction of the
17 indeterminate sentencing review board may challenge an administrative
18 decision of the board affecting his or her custody only by a personal
19 restraint petition.

20 (2) For the purposes of this section, a personal restraint petition
21 must be filed in the court of appeals within sixty days of the board's
22 decision or, if the decision is in writing, within sixty days of the
23 written decision. The petition shall be filed in the court of appeals
24 for the division in which the underlying judgment and sentence was
25 obtained.

26 (3) The time limit contained in this section is jurisdictional and
27 may not be waived by the court or the parties.

28 (4) A challenge to an administrative decision of the board is not
29 considered a collateral attack upon the conviction for purposes of RCW
30 10.73.140.

31 NEW SECTION. **Sec. 12.** Sections 1 and 8 through 11 of this act are
32 each added to chapter 10.73 RCW.

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