
HOUSE BILL 2671

State of Washington 58th Legislature 2004 Regular Session

By Representatives Moeller and Chase

Read first time 01/19/2004. Referred to Committee on Judiciary.

1 AN ACT Relating to clarifying the current law for possession of
2 firearms; amending RCW 9.41.040, 9.92.066, 9.94A.637, 9.94A.640,
3 9.95.240, 9.96.050, and 9.96.060; adding a new section to chapter 9.41
4 RCW; and providing an effective date.

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

6 **Sec. 1.** RCW 9.41.040 and 2003 c 53 s 26 are each amended to read
7 as follows:

8 (1)(a) A person, whether an adult or juvenile, is guilty of the
9 crime of unlawful possession of a firearm in the first degree, if the
10 person owns, has in his or her possession, or has in his or her control
11 any firearm after having previously been convicted in this state or
12 elsewhere of any serious offense as defined in this chapter.

13 (b) Unlawful possession of a firearm in the first degree is a class
14 B felony punishable according to chapter 9A.20 RCW.

15 (2)(a) A person, whether an adult or juvenile, is guilty of the
16 crime of unlawful possession of a firearm in the second degree, if the
17 person does not qualify under subsection (1) of this section for the
18 crime of unlawful possession of a firearm in the first degree and the

1 person owns, has in his or her possession, or has in his or her control
2 any firearm:

3 (i) After having previously been convicted in this state or
4 elsewhere of any felony not specifically listed as prohibiting firearm
5 possession under subsection (1) of this section, or any of the
6 following crimes when committed by one family or household member
7 against another, committed on or after July 1, 1993: Assault in the
8 fourth degree, coercion, stalking, reckless endangerment, criminal
9 trespass in the first degree, or violation of the provisions of a
10 protection order or no-contact order restraining the person or
11 excluding the person from a residence (RCW 26.50.060, 26.50.070,
12 26.50.130, or 10.99.040);

13 (ii) After having previously been involuntarily committed for
14 mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77
15 RCW, or equivalent statutes of another jurisdiction, unless his or her
16 right to possess a firearm has been restored as provided in RCW
17 9.41.047;

18 (iii) If the person is under eighteen years of age, except as
19 provided in RCW 9.41.042; and/or

20 (iv) If the person is free on bond or personal recognizance pending
21 trial, appeal, or sentencing for a serious offense as defined in RCW
22 9.41.010.

23 (b) Unlawful possession of a firearm in the second degree is a
24 class C felony punishable according to chapter 9A.20 RCW.

25 ~~(3) ((Notwithstanding RCW 9.41.047 or any other provisions of law,
26 as used in this chapter, a person has been "convicted", whether in an
27 adult court or adjudicated in a juvenile court, at such time as a plea
28 of guilty has been accepted, or a verdict of guilty has been filed,
29 notwithstanding the pendency of any future proceedings including but
30 not limited to sentencing or disposition, post trial or post-
31 factfinding motions, and appeals. Conviction includes a dismissal
32 entered after a period of probation, suspension or deferral of
33 sentence, and also includes equivalent dispositions by courts in
34 jurisdictions other than Washington state. A person shall not be
35 precluded from possession of a firearm if the conviction has been the
36 subject of a pardon, annulment, certificate of rehabilitation, or other
37 equivalent procedure based on a finding of the rehabilitation of the
38 person convicted or the conviction or disposition has been the subject~~

1 of a pardon, annulment, or other equivalent procedure based on a
2 finding of innocence. Where no record of the court's disposition of
3 the charges can be found, there shall be a rebuttable presumption that
4 the person was not convicted of the charge.

5 ~~(4))~~ Notwithstanding subsection (1) or (2) of this section, a
6 person ~~((convicted of an offense prohibiting the possession of a~~
7 ~~firearm under this section other than murder, manslaughter, robbery,~~
8 ~~rape, indecent liberties, arson, assault, kidnapping, extortion,~~
9 ~~burglary, or violations with respect to controlled substances under RCW~~
10 ~~69.50.401 and 69.50.410, who received a probationary sentence under RCW~~
11 ~~9.95.200, and who received a dismissal of the charge under RCW~~
12 ~~9.95.240, shall not be precluded from possession of a firearm as a~~
13 ~~result of the conviction. Notwithstanding any other provisions of this~~
14 ~~section, if a person is prohibited from possession of a firearm under~~
15 ~~subsection (1) or (2) of this section and has not previously been~~
16 ~~convicted of a sex offense prohibiting firearm ownership under~~
17 ~~subsection (1) or (2) of this section and/or any felony defined under~~
18 ~~any law as a class A felony or with a maximum sentence of at least~~
19 ~~twenty years, or both, the individual)) may petition a court of record~~
20 ~~to have his or her right to possess a firearm restored when authorized:~~

21 (a) Under RCW 9.41.047; and/or

22 (b) ~~((i) If the conviction was for a felony offense, after five or~~
23 ~~more consecutive years in the community without being convicted or~~
24 ~~currently charged with any felony, gross misdemeanor, or misdemeanor~~
25 ~~crimes, if the individual has no prior felony convictions that prohibit~~
26 ~~the possession of a firearm counted as part of the offender score under~~
27 ~~RCW 9.94A.525; or~~

28 ~~(ii) If the conviction was for a nonfelony offense, after three or~~
29 ~~more consecutive years in the community without being convicted or~~
30 ~~currently charged with any felony, gross misdemeanor, or misdemeanor~~
31 ~~crimes, if the individual has no prior felony convictions that prohibit~~
32 ~~the possession of a firearm counted as part of the offender score under~~
33 ~~RCW 9.94A.525 and the individual has completed all conditions of the~~
34 ~~sentence.~~

35 ~~(5))~~ Under section 2 of this act.

36 (4) In addition to any other penalty provided for by law, if a
37 person under the age of eighteen years is found by a court to have
38 possessed a firearm in a vehicle in violation of subsection (1) or (2)

1 of this section or to have committed an offense while armed with a
2 firearm during which offense a motor vehicle served an integral
3 function, the court shall notify the department of licensing within
4 twenty-four hours and the person's privilege to drive shall be revoked
5 under RCW 46.20.265.

6 ~~((+6))~~ (5) Nothing in chapter 129, Laws of 1995 shall ever be
7 construed or interpreted as preventing an offender from being charged
8 and subsequently convicted for the separate felony crimes of theft of
9 a firearm or possession of a stolen firearm, or both, in addition to
10 being charged and subsequently convicted under this section for
11 unlawful possession of a firearm in the first or second degree.
12 Notwithstanding any other law, if the offender is convicted under this
13 section for unlawful possession of a firearm in the first or second
14 degree and for the felony crimes of theft of a firearm or possession of
15 a stolen firearm, or both, then the offender shall serve consecutive
16 sentences for each of the felony crimes of conviction listed in this
17 subsection.

18 ~~((+7))~~ (6) Each firearm unlawfully possessed under this section
19 shall be a separate offense.

20 (7) Notwithstanding RCW 9.41.047 or any other provision of law, as
21 used in this chapter, a person has been "convicted," whether in an
22 adult court or adjudicated in a juvenile court, at such time as a plea
23 of guilty has been accepted, or a verdict of guilty has been filed,
24 notwithstanding the pendency of any future proceedings including but
25 not limited to sentencing or disposition, post-trial or post-
26 factfinding motions, and appeals. Conviction includes a dismissal
27 entered after a period of probation, suspension, or deferral of
28 sentence, and also includes equivalent dispositions by courts in
29 jurisdictions other than Washington state. Where no record of the
30 court's disposition of the charges can be found, there shall be a
31 rebuttable presumption that the person was not convicted of the charge.

32 NEW SECTION. Sec. 2. A new section is added to chapter 9.41 RCW
33 to read as follows:

34 (1) A person shall not be precluded from possession of a firearm if
35 the conviction has been the subject of a pardon, or other equivalent
36 procedure based on a finding of the rehabilitation of the person
37 convicted or the conviction or disposition has been the subject of a

1 pardon, or other equivalent procedure based on a finding of innocence.
2 These procedures are the only ones by which a person who has been
3 convicted of a class A felony or a sex offense can have his or her
4 right to possess a firearm restored.

5 (2) Notwithstanding RCW 9.41.040(1), a person convicted of an
6 offense prohibiting the possession of a firearm other than murder,
7 manslaughter, robbery, rape, indecent liberties, arson, assault in the
8 first, second, or third degree, kidnapping, extortion, burglary, or
9 violations with respect to controlled substances under RCW 69.50.401(a)
10 and 69.50.410, who received a probationary sentence under RCW 9.95.200,
11 and who received a dismissal of the charge under RCW 9.95.240, shall
12 not be precluded from possession of a firearm as a result of the
13 conviction. A person convicted of any of the offenses listed in this
14 subsection, other than a class A or sex offense, or a person convicted
15 of an offense not listed in this subsection who did not obtain a
16 dismissal of charge under RCW 9.95.240 may petition to have his or her
17 right to possess a firearm restored pursuant to subsection (3) or (4)
18 of this section.

19 (3) Notwithstanding RCW 9.41.040(1), a person convicted in
20 Washington of any class B felony that is not a sex offense, any class
21 C felony that is not a sex offense, any gross misdemeanor that is not
22 a sex offense, or any misdemeanor that is not a sex offense who is
23 prohibited by such conviction from possessing a firearm under RCW
24 9.41.040(1) may petition a court of record to have his or her right to
25 possess a firearm restored.

26 (a) The petition must be filed as a civil suit in the superior
27 court of the county where the conviction occurred and judgment was
28 entered. If the person has disqualifying convictions from more than
29 one county, a separate petition must be filed in each county. The
30 filing fee for such suit shall be that specified in RCW
31 36.18.020(2)(a).

32 (b) The petition must be served on the prosecuting attorney's
33 office or city attorney's office that prosecuted the crime or crimes
34 for which relief is sought. Failure to serve the proper prosecuting
35 attorney's office or city attorney's office will result in a void
36 order.

37 (c) The petition shall include a statement, under oath, setting out
38 the petitioner's criminal history.

1 (4) A person convicted in another state, in a court-martial or in
2 a federal court of an offense which is the equivalent to a Washington
3 class B felony that is not a sex offense, any class C felony that is
4 not a sex offense, any gross misdemeanor that is not a sex offense, or
5 any misdemeanor that is not a sex offense, who is prohibited by such
6 conviction from possessing a firearm under RCW 9.41.040(1) may petition
7 to have his or her right to possess a firearm restored.

8 (a) The petition must be filed as a civil suit in the Thurston
9 county superior court. The filing fee for such suit shall be that
10 specified in RCW 36.18.020(2)(a).

11 (b) The petition must be served on the attorney general for the
12 state of Washington. Failure to properly serve the attorney general
13 will result in the entry of a void order.

14 (c) The petition shall include a statement, under oath, setting out
15 the petitioner's criminal history.

16 (5) No court shall grant a petition for restoration of the right to
17 possess a firearm if the disqualifying conviction was for a felony
18 offense if any one of the following is present:

19 (a) The petitioner does not currently have five or more consecutive
20 years in the community without being convicted of any felony, gross
21 misdemeanor, or misdemeanor crime;

22 (b) There are any criminal charges against the applicant pending in
23 any court of this state or another state, or in any federal court;

24 (c) The petitioner has any prior felony conviction that would
25 prohibit the possession of a firearm and that count or would count, at
26 the time the petition is filed, as part of the offender score under RCW
27 9.94A.525;

28 (d) The petitioner has not completed all conditions of the sentence
29 imposed when he or she was convicted of the disqualifying conviction;
30 or

31 (e) The petitioner has not provided proper notice of the hearing on
32 the petition for restoration of firearm rights to the prosecuting
33 attorney or to the attorney general as required by subsections (1) and
34 (2) of this section.

35 (6) No court shall grant a petition for restoration of the right to
36 possess a firearm if the disqualifying conviction was for a nonfelony
37 offense if any one of the following is present:

1 (a) The petitioner does not have three or more consecutive years in
2 the community without being convicted of any felony, gross misdemeanor,
3 or misdemeanor crime;

4 (b) There are any criminal charges against the applicant pending in
5 any court of this state or another state, or in any federal court;

6 (c) The petitioner has any prior felony conviction that would
7 prohibit the possession of a firearm and that count or would count, at
8 the time the petition is filed, as part of the offender score under RCW
9 9.94A.525;

10 (d) The petitioner has not completed all conditions of the sentence
11 imposed when he or she was convicted of the disqualifying conviction;
12 or

13 (e) The petitioner has not provided proper notice of the hearing on
14 the petition for restoration of firearm rights to the prosecuting
15 attorney or to the attorney general as required by subsections (1) and
16 (2) of this section.

17 (7) In cases where the person has disqualifying convictions in more
18 than one county or from another state or the federal government, a
19 court may only issue an order indicating that the disqualification
20 arising from the conviction or convictions for offenses committed
21 within that county is hereby removed, unless the person presents orders
22 demonstrating that the disqualification arising from convictions for
23 all offenses committed outside the county has been removed. In such a
24 case, the county court may issue an order restoring the person's right
25 to possess a firearm.

26 (8) This section and RCW 9.41.047(3) are the exclusive means by
27 which a Washington court can restore a person's right to possess a
28 firearm.

29 (9) The clerk of the court in which an order granting a petition
30 restoring a petitioner's right to possess a firearm within the state of
31 Washington is entered shall immediately transmit the order restoring
32 the right to possess a firearm to the Washington state patrol
33 identification section. The Washington state patrol shall immediately
34 update their records to reflect the entry of the order restoring the
35 petitioner's right to possess a firearm.

36 (10) Any order restoring the right to possess a firearm shall
37 contain a warning substantially as follows:

38 CAUTION: Although state and local laws do not differ, federal

1 law and state law on the possession of firearms differ. If you
2 are prohibited by federal law from possessing a firearm, you
3 may be prosecuted in federal court. An order restoring your
4 right to possess a firearm in Washington is not a defense to a
5 federal prosecution or to a prosecution under the laws of
6 another state.

7 **Sec. 3.** RCW 9.92.066 and 2003 c 66 s 2 are each amended to read as
8 follows:

9 (1) Upon termination of any suspended sentence under RCW 9.92.060
10 or 9.95.210, such person may apply to the court for restoration of his
11 or her civil rights. Thereupon the court may in its discretion enter
12 an order directing that such defendant shall thereafter be released
13 from all penalties and disabilities resulting from the offense or crime
14 of which he or she has been convicted.

15 (2)(a) Upon termination of a suspended sentence under RCW 9.92.060
16 or 9.95.210, the person may apply to the sentencing court for a
17 vacation of the person's record of conviction under RCW 9.94A.640. The
18 court may, in its discretion, clear the record of conviction if it
19 finds the person has met the equivalent of the tests in RCW
20 9.94A.640(2) as those tests would be applied to a person convicted of
21 a crime committed before July 1, 1984.

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

34 (3) An order entered under subsection (1) or (2) of this section
35 does not restore the person's right to possess a firearm. Any order
36 entered under subsection (1) or (2) of this section shall clearly

1 advise the person that the person's right to restore a firearm is not
2 affected by the entry of the order and that the right to possess a
3 firearm may only be restored pursuant to section 2 of this act.

4 **Sec. 4.** RCW 9.94A.637 and 2003 c 379 s 19 are each amended to read
5 as follows:

6 (1)(a) When an offender has completed all requirements of the
7 sentence, including any and all legal financial obligations, and while
8 under the custody and supervision of the department, the secretary or
9 the secretary's designee shall notify the sentencing court, which shall
10 discharge the offender and provide the offender with a certificate of
11 discharge by issuing the certificate to the offender in person or by
12 mailing the certificate to the offender's last known address.

13 (b)(i) When an offender has reached the end of his or her
14 supervision with the department and has completed all the requirements
15 of the sentence except his or her legal financial obligations, the
16 secretary's designee shall provide the county clerk with a notice that
17 the offender has completed all nonfinancial requirements of the
18 sentence.

19 (ii) When the department has provided the county clerk with notice
20 that an offender has completed all the requirements of the sentence and
21 the offender subsequently satisfies all legal financial obligations
22 under the sentence, the county clerk shall notify the sentencing court,
23 including the notice from the department, which shall discharge the
24 offender and provide the offender with a certificate of discharge by
25 issuing the certificate to the offender in person or by mailing the
26 certificate to the offender's last known address.

27 (2) The court shall send a copy of every signed certificate of
28 discharge to the auditor for the county in which the court resides and
29 to the department. The department shall create and maintain a data
30 base containing the names of all felons who have been issued
31 certificates of discharge, the date of discharge, and the date of
32 conviction and offense.

33 (3) An offender who is not convicted of a violent offense or a sex
34 offense and is sentenced to a term involving community supervision may
35 be considered for a discharge of sentence by the sentencing court prior
36 to the completion of community supervision, provided that the offender

1 has completed at least one-half of the term of community supervision
2 and has met all other sentence requirements.

3 (4) Except as provided in subsection (5) of this section, the
4 discharge shall have the effect of restoring all civil rights lost by
5 operation of law upon conviction except for the right to possess a
6 firearm, and the certificate of discharge shall so state. Nothing in
7 this section prohibits the use of an offender's prior record for
8 purposes of determining sentences for later offenses as provided in
9 this chapter. Nothing in this section affects or prevents use of the
10 offender's prior conviction in a later criminal prosecution either as
11 an element of an offense or for impeachment purposes. A certificate of
12 discharge is not based on a finding of rehabilitation. The right to
13 possess a firearm may only be restored pursuant to section 2 of this
14 act.

15 (5) Unless otherwise ordered by the sentencing court, a certificate
16 of discharge shall not terminate the offender's obligation to comply
17 with an order issued under chapter 10.99 RCW that excludes or prohibits
18 the offender from having contact with a specified person or coming
19 within a set distance of any specified location that was contained in
20 the judgment and sentence. An offender who violates such an order
21 after a certificate of discharge has been issued shall be subject to
22 prosecution according to the chapter under which the order was
23 originally issued.

24 (6) Upon release from custody, the offender may apply to the
25 department for counseling and help in adjusting to the community. This
26 voluntary help may be provided for up to one year following the release
27 from custody.

28 **Sec. 5.** RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read
29 as follows:

30 (1) Every offender who has been discharged under RCW 9.94A.637 may
31 apply to the sentencing court for a vacation of the offender's record
32 of conviction. If the court finds the offender meets the tests
33 prescribed in subsection (2) of this section, the court may clear the
34 record of conviction by: (a) Permitting the offender to withdraw the
35 offender's plea of guilty and to enter a plea of not guilty; or (b) if
36 the offender has been convicted after a plea of not guilty, by the

1 court setting aside the verdict of guilty; and (c) by the court
2 dismissing the information or indictment against the offender.

3 (2) An offender may not have the record of conviction cleared if:

4 (a) There are any criminal charges against the offender pending in any
5 court of this state or another state, or in any federal court; (b) the
6 offense was a violent offense as defined in RCW 9.94A.030; (c) the
7 offense was a crime against persons as defined in RCW 43.43.830; (d)
8 the offender has been convicted of a new crime in this state, another
9 state, or federal court since the date of the offender's discharge
10 under RCW 9.94A.637; (e) the offense is a class B felony and less than
11 ten years have passed since the date the applicant was discharged under
12 RCW 9.94A.637; and (f) the offense was a class C felony and less than
13 five years have passed since the date the applicant was discharged
14 under RCW 9.94A.637.

15 (3) Once the court vacates a record of conviction under subsection
16 (1) of this section, the fact that the offender has been convicted of
17 the offense shall not be included in the offender's criminal history
18 for purposes of determining a sentence in any subsequent conviction,
19 and the offender shall be released from all penalties and disabilities
20 resulting from the offense except as set forth in subsection (4) of
21 this section. For all purposes, including responding to questions on
22 employment applications, an offender whose conviction has been vacated
23 may state that the offender has never been convicted of that crime.
24 Nothing in this section affects or prevents the use of an offender's
25 prior conviction in a later criminal prosecution.

26 (4) The order vacating a record of conviction under subsection (1)
27 of this section does not restore the offender's right to possess a
28 firearm. The order vacating the record of conviction shall clearly
29 advise the offender that the offender's right to restore a firearm is
30 not affected by the entry of the order and that the right to possess a
31 firearm may only be restored pursuant to section 2 of this act.

32 **Sec. 6.** RCW 9.95.240 and 2003 c 66 s 1 are each amended to read as
33 follows:

34 (1) Every defendant who has fulfilled the conditions of his or her
35 probation for the entire period thereof, or who shall have been
36 discharged from probation prior to the termination of the period
37 thereof, may at any time prior to the expiration of the maximum period

1 of punishment for the offense for which he or she has been convicted be
2 permitted in the discretion of the court to withdraw his or her plea of
3 guilty and enter a plea of not guilty, or if he or she has been
4 convicted after a plea of not guilty, the court may in its discretion
5 set aside the verdict of guilty; and in either case, the court may
6 thereupon dismiss the information or indictment against such defendant,
7 who shall thereafter be released from all penalties and disabilities
8 resulting from the offense or crime of which he or she has been
9 convicted, except as stated in subsection (3) of this section. The
10 probationer shall be informed of this right in his or her probation
11 papers: PROVIDED, That in any subsequent prosecution, for any other
12 offense, such prior conviction may be pleaded and proved, and shall
13 have the same effect as if probation had not been granted, or the
14 information or indictment dismissed.

15 (2)(a) After the period of probation has expired, the defendant may
16 apply to the sentencing court for a vacation of the defendant's record
17 of conviction under RCW 9.94A.640. The court may, in its discretion,
18 clear the record of conviction if it finds the defendant has met the
19 equivalent of the tests in RCW 9.94A.640(2) as those tests would be
20 applied to a person convicted of a crime committed before July 1, 1984.

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

33 (3) The order dismissing the information or indictment under
34 subsection (1) of this section does not restore the offender's right to
35 possess a firearm. The order dismissing the information or indictment
36 under subsection (1) of this section shall clearly advise the offender
37 that the offender's right to restore a firearm is not affected by the

1 entry of the order and that the right to possess a firearm may only be
2 restored pursuant to section 2 of this act.

3 **Sec. 7.** RCW 9.96.050 and 2002 c 16 s 3 are each amended to read as
4 follows:

5 When a prisoner on parole has performed all obligations of his or
6 her release, including any and all legal financial obligations, for
7 such time as shall satisfy the indeterminate sentence review board that
8 his or her final release is not incompatible with the best interests of
9 society and the welfare of the paroled individual, the board may make
10 a final order of discharge and issue a certificate of discharge to the
11 prisoner. The certificate of discharge shall be issued to the offender
12 in person or by mail to the prisoner's last known address.

13 The board shall send a copy of every signed certificate of
14 discharge to the auditor for the county in which the offender was
15 sentenced and to the department of corrections. The department shall
16 create and maintain a data base containing the names of all felons who
17 have been issued certificates of discharge, the date of discharge, and
18 the date of conviction and offense.

19 The board retains the jurisdiction to issue a certificate of
20 discharge after the expiration of the prisoner's or parolee's maximum
21 statutory sentence. If not earlier granted, the board shall make a
22 final order of discharge three years from the date of parole unless the
23 parolee is on suspended or revoked status at the expiration of the
24 three years. Such discharge, regardless of when issued, shall have the
25 effect of restoring all civil rights lost by operation of law upon
26 conviction, and the certification of discharge shall so state. This
27 restoration of civil rights shall not restore the right to receive,
28 possess, own, or transport firearms, and the certification of discharge
29 shall so state.

30 The discharge provided for in this section shall be considered as
31 a part of the sentence of the convicted person and shall not in any
32 manner be construed as affecting the powers of the governor to pardon
33 any such person.

34 **Sec. 8.** RCW 9.96.060 and 2001 c 140 s 1 are each amended to read
35 as follows:

36 (1) Every person convicted of a misdemeanor or gross misdemeanor

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

12 (2) An applicant may not have the record of conviction for a
13 misdemeanor or gross misdemeanor offense vacated if any one of the
14 following is present:

15 (a) There are any criminal charges against the applicant pending in
16 any court of this state or another state, or in any federal court;

17 (b) The offense was a violent offense as defined in RCW 9.94A.030
18 or an attempt to commit a violent offense;

19 (c) The offense was a violation of RCW 46.61.502 (driving while
20 under the influence), 46.61.504 (actual physical control while under
21 the influence), or 9.91.020 (operating a railroad, etc. while
22 intoxicated);

23 (d) The offense was any misdemeanor or gross misdemeanor violation,
24 including attempt, of chapter 9.68 RCW (obscenity and pornography),
25 chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44
26 RCW (sex offenses);

27 (e) The applicant was convicted of a misdemeanor or gross
28 misdemeanor offense as defined in RCW 10.99.020, or the court
29 determines after a review of the court file that the offense was
30 committed by one family member or household member against another, or
31 the court, after considering the damage to person or property that
32 resulted in the conviction, any prior convictions for crimes defined in
33 RCW 10.99.020, or for comparable offenses in another state or in
34 federal court, and the totality of the records under review by the
35 court regarding the conviction being considered for vacation,
36 determines that the offense involved domestic violence, and any one of
37 the following factors exist:

1 (i) The applicant has not provided written notification of the
2 vacation petition to the prosecuting attorney's office that prosecuted
3 the offense for which vacation is sought, or has not provided that
4 notification to the court;

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

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

13 (iv) Less than five years have elapsed since the person completed
14 the terms of the original conditions of the sentence, including any
15 financial obligations and successful completion of any treatment
16 ordered as a condition of sentencing;

17 (f) For any offense other than those described in (e) of this
18 subsection, less than three years have passed since the person
19 completed the terms of the sentence, including any financial
20 obligations;

21 (g) The offender has been convicted of a new crime in this state,
22 another state, or federal court since the date of conviction;

23 (h) The applicant has ever had the record of another conviction
24 vacated; or

25 (i) The applicant is currently restrained, or has been restrained
26 within five years prior to the vacation application, by a domestic
27 violence protection order, a no-contact order, an antiharassment order,
28 or a civil restraining order which restrains one party from contacting
29 the other party.

30 (3) Once the court vacates a record of conviction under subsection
31 (1) of this section, the person shall be released from all penalties
32 and disabilities resulting from the offense except as provided in
33 subsection (4) of this section and the fact that the person has been
34 convicted of the offense shall not be included in the person's criminal
35 history for purposes of determining a sentence in any subsequent
36 conviction. For all purposes, including responding to questions on
37 employment or housing applications, a person whose conviction has been
38 vacated under subsection (1) of this section may state that he or she

1 has never been convicted of that crime. Nothing in this section
2 affects or prevents the use of an offender's prior conviction in a
3 later criminal prosecution.

4 (4) The order vacating a record of conviction under subsection (1)
5 of this section does not restore the person's right to possess a
6 firearm if such right was revoked by RCW 9.41.040. The order vacating
7 the record of conviction shall clearly advise the offender that the
8 offender's right to restore a firearm is not affected by the entry of
9 the order and that the right to possess a firearm may only be restored
10 pursuant to section 2 of this act.

11 (5) All costs incurred by the court and probation services shall be
12 paid by the person making the motion to vacate the record unless a
13 determination is made pursuant to chapter 10.101 RCW that the person
14 making the motion is indigent, at the time the motion is brought.

15 ~~((+5))~~ (6) The clerk of the court in which the vacation order is
16 entered shall immediately transmit the order vacating the conviction to
17 the Washington state patrol identification section and to the local
18 police agency, if any, which holds criminal history information for the
19 person who is the subject of the conviction. The Washington state
20 patrol and any such local police agency shall immediately update their
21 records to reflect the vacation of the conviction, and shall transmit
22 the order vacating the conviction to the federal bureau of
23 investigation. A conviction that has been vacated under this section
24 may not be disseminated or disclosed by the state patrol or local law
25 enforcement agency to any person, except other criminal justice
26 enforcement agencies.

27 NEW SECTION. Sec. 9. This act takes effect July 1, 2004.

--- END ---