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HOUSE BILL 1829

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives Appleton, Lantz, Lovick, Hasegawa, Flannigan,  
Moeller, Darneille, McCoy and Simpson

Read first time 02/07/2005. Referred to Committee on Judiciary.

1            AN ACT Relating to records of conviction for misdemeanor and gross  
2 misdemeanor offenses; and amending RCW 9.96.060.

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

4            **Sec. 1.** RCW 9.96.060 and 2001 c 140 s 1 are each amended to read  
5 as follows:

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

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:

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

8 (c) The offense was a violation of RCW 46.61.502 (driving while  
9 under the influence), 46.61.504 (actual physical control while under  
10 the influence), or 9.91.020 (operating a railroad, etc. while  
11 intoxicated);

12 (d) The offense was any misdemeanor or gross misdemeanor violation,  
13 including attempt, of chapter 9.68 RCW (obscenity and pornography),  
14 chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44  
15 RCW (sex offenses);

16 (e) The applicant was convicted of a misdemeanor or gross  
17 misdemeanor offense as defined in RCW 10.99.020, or the court  
18 determines after a review of the court file that the offense was  
19 committed by one family member or household member against another, or  
20 the court, after considering the damage to person or property that  
21 resulted in the conviction, any prior convictions for crimes defined in  
22 RCW 10.99.020, or for comparable offenses in another state or in  
23 federal court, and the totality of the records under review by the  
24 court regarding the conviction being considered for vacation,  
25 determines that the offense involved domestic violence, and any one of  
26 the following factors exist:

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

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

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

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

5 (f) For any offense other than those described in (e) of this  
6 subsection, less than three years have passed since the person  
7 completed the terms of the sentence, including any financial  
8 obligations;

9 (g) The offender has been convicted of a new crime in this state,  
10 another state, or federal court since the date of conviction and less  
11 than three years have passed since the person completed the terms of  
12 the sentence for the newer offense; or

13 (~~h) ((The applicant has ever had the record of another conviction~~  
14 ~~vacated; or~~

15 ~~(i))~~) The applicant is currently restrained, or has been restrained  
16 within five years prior to the vacation application, by a domestic  
17 violence protection order, a no-contact order, an antiharassment order,  
18 or a civil restraining order which restrains one party from contacting  
19 the other party.

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

31 (b) When a court vacates a record of conviction under this section,  
32 the court may order the court clerk to seal the court file as provided  
33 for under court rules, without requiring the offender to demonstrate  
34 compelling circumstances. The order to seal the court file may allow  
35 the deletion of the offender's name in the case index and the  
36 substitution of the offender's name with his or her initials.

37 (4) All costs incurred by the court and probation services shall be

1 paid by the person making the motion to vacate the record unless a  
2 determination is made pursuant to chapter 10.101 RCW that the person  
3 making the motion is indigent, at the time the motion is brought.

4 (5) The clerk of the court in which the vacation order is entered  
5 shall immediately transmit the order vacating the conviction to the  
6 Washington state patrol identification section and to the local police  
7 agency, if any, which holds criminal history information for the person  
8 who is the subject of the conviction. The Washington state patrol and  
9 any such local police agency shall immediately update their records to  
10 reflect the vacation of the conviction, and shall transmit the order  
11 vacating the conviction to the federal bureau of investigation. A  
12 conviction that has been vacated under this section may not be  
13 disseminated or disclosed by the state patrol or local law enforcement  
14 agency to any person, except other criminal justice enforcement  
15 agencies.

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