
SENATE BILL 6071

State of Washington

62nd Legislature

2012 Regular Session

By Senators Kline and Pridemore

Read first time 01/11/12. Referred to Committee on Judiciary.

1 AN ACT Relating to vacating records; and amending RCW 9.96.060 and
2 9.94A.640.

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

18 (2) An applicant may not have the record of conviction for a

1 misdemeanor or gross misdemeanor offense vacated if any one of the
2 following is present:

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

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

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

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

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

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

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

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

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

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

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

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

33 (5) The clerk of the court in which the vacation order is entered
34 shall immediately transmit the order vacating the conviction to the
35 Washington state patrol identification section and to the local police
36 agency, if any, which holds criminal history information for the person
37 who is the subject of the conviction. The Washington state patrol and
38 any such local police agency shall immediately update their records to

1 reflect the vacation of the conviction, and shall transmit the order
2 vacating the conviction to the federal bureau of investigation. A
3 conviction that has been vacated under this section may not be
4 disseminated or disclosed by the state patrol or local law enforcement
5 agency to any person, except other criminal justice enforcement
6 agencies.

7 **Sec. 2.** RCW 9.94A.640 and 2006 c 73 s 8 are each amended to read
8 as follows:

9 (1) Every offender who has been discharged under RCW 9.94A.637 may
10 apply to the sentencing court for a vacation of the offender's record
11 of conviction. If the court finds the offender meets the tests
12 prescribed in subsection (2) of this section, the court may clear the
13 record of conviction by: (a) Permitting the offender to withdraw the
14 offender's plea of guilty and to enter a plea of not guilty; or (b) if
15 the offender has been convicted after a plea of not guilty, by the
16 court setting aside the verdict of guilty; and (c) by the court
17 dismissing the information or indictment against the offender.

18 (2) An offender may not have the record of conviction cleared if:
19 (a) There are any criminal charges against the offender pending in any
20 court of this state or another state, or in any federal court; (b) the
21 offense was a violent offense as defined in RCW 9.94A.030; (c) the
22 offense was a crime against persons as defined in RCW 43.43.830; (d)
23 (~~the offender has been convicted of a new crime in this state, another~~
24 ~~state, or federal court since the date of the offender's discharge~~
25 ~~under RCW 9.94A.637; (e)) the offense is a class B felony and less
26 than ten years have passed since the date the applicant was discharged
27 under RCW 9.94A.637; (~~(+f+)~~) (e) the offense was a class C felony,
28 other than a class C felony described in RCW 46.61.502(6) or
29 46.61.504(6), and less than five years have passed since the date the
30 applicant was discharged under RCW 9.94A.637; or (~~(+g+)~~) (f) the
31 offense was a class C felony described in RCW 46.61.502(6) or
32 46.61.504(6) and less than ten years have passed since the applicant
33 was discharged under RCW 9.94A.637.~~

34 (3) Once the court vacates a record of conviction under subsection
35 (1) of this section, the fact that the offender has been convicted of
36 the offense shall not be included in the offender's criminal history
37 for purposes of determining a sentence in any subsequent conviction,

1 and the offender shall be released from all penalties and disabilities
2 resulting from the offense. For all purposes, including responding to
3 questions on employment applications, an offender whose conviction has
4 been vacated may state that the offender has never been convicted of
5 that crime. Nothing in this section affects or prevents the use of an
6 offender's prior conviction in a later criminal prosecution.

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