
ENGROSSED SENATE BILL 6255

State of Washington

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By Senators Fraser, Kline, Eide, Kohl-Welles, Shin, Litzow, Chase, Stevens, Pflug, Regala, Nelson, Keiser, Roach, Conway, Holmquist Newbry, and Frockt

Read first time 01/16/12. Referred to Committee on Judiciary.

1 AN ACT Relating to victims of human trafficking and promoting
2 prostitution; amending RCW 9.96.060; and adding a new section to
3 chapter 9A.88 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 9A.88 RCW
6 to read as follows:

7 In any prosecution for prostitution under RCW 9A.88.030, it is an
8 affirmative defense that the actor committed the offense as a result of
9 being a victim of trafficking, RCW 9A.40.100, promoting prostitution in
10 the first degree, RCW 9A.88.070, or trafficking in persons under the
11 trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq.
12 Documentation that the actor is named as a current victim in an
13 information or the investigative records upon which a conviction is
14 obtained for trafficking, promoting prostitution in the first degree,
15 or trafficking in persons shall create a presumption that the person's
16 participation in prostitution was a result of having been a victim of
17 trafficking, promoting prostitution in the first degree, or trafficking
18 in persons.

1 **Sec. 2.** RCW 9.96.060 and 2001 c 140 s 1 are each amended to read
2 as follows:

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

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

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

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

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

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

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

1 court regarding the conviction being considered for vacation,
2 determines that the offense involved domestic violence, and any one of
3 the following factors exist:

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

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

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

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

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

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

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

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

33 (3) Every person convicted of prostitution under RCW 9A.88.030 who
34 committed the offense as a result of being a victim of trafficking, RCW
35 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070,
36 or trafficking in persons under the trafficking victims protection act
37 of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the sentencing court
38 for vacation of the applicant's record of conviction for the

1 prostitution offense. An applicant may not have the record of
2 conviction for prostitution vacated if any one of the following is
3 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 offender has been convicted of another crime in this state,
7 another state, or federal court since the date of conviction; or

8 (c) The applicant has ever had the record of another prostitution
9 conviction vacated.

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

21 ~~((4))~~ (5) All costs incurred by the court and probation services
22 shall be paid by the person making the motion to vacate the record
23 unless a determination is made pursuant to chapter 10.101 RCW that the
24 person making the motion is indigent, at the time the motion is
25 brought.

26 ~~((5))~~ (6) The clerk of the court in which the vacation order is
27 entered shall immediately transmit the order vacating the conviction to
28 the Washington state patrol identification section and to the local
29 police agency, if any, which holds criminal history information for the
30 person who is the subject of the conviction. The Washington state
31 patrol and any such local police agency shall immediately update their
32 records to reflect the vacation of the conviction, and shall transmit
33 the order vacating the conviction to the federal bureau of
34 investigation. A conviction that has been vacated under this section
35 may not be disseminated or disclosed by the state patrol or local law
36 enforcement agency to any person, except other criminal justice

1 enforcement agencies.

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