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HOUSE BILL 1086

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State of Washington

63rd Legislature

2013 Regular Session

By Representative Appleton

Read first time 01/16/13. Referred to Committee on Public Safety.

1 AN ACT Relating to the vacation of certain driving-related  
2 convictions under limited circumstances; reenacting and amending RCW  
3 9.96.060; and adding a new section to chapter 9.96 RCW.

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

5 **Sec. 1.** RCW 9.96.060 and 2012 c 183 s 5 and 2012 c 142 s 2 are  
6 each reenacted and amended to read as follows:

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

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), 9.91.020 (operating a railroad, etc. while  
11 intoxicated), or the offense is considered a "prior offense" under RCW  
12 46.61.5055 (~~and the applicant has had a subsequent alcohol or drug~~  
13 ~~violation within ten years of the date of arrest for the prior~~  
14 ~~offense)) unless the conviction may be vacated under section 2 of this  
15 act;~~

16 (d) The offense was any misdemeanor or gross misdemeanor violation,  
17 including attempt, of chapter 9.68 RCW (obscenity and pornography),  
18 chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44  
19 RCW (sex offenses);

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

31 (i) The applicant has not provided written notification of the  
32 vacation petition to the prosecuting attorney's office that prosecuted  
33 the offense for which vacation is sought, or has not provided that  
34 notification to the court;

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

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

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

9 (f) For any offense other than those described in (e) of this  
10 subsection or section 2 of this act, less than three years have passed  
11 since the person completed the terms of the sentence, including any  
12 financial obligations;

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

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

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

22 (3) Every person convicted of prostitution under RCW 9A.88.030 who  
23 committed the offense as a result of being a victim of trafficking, RCW  
24 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070,  
25 or trafficking in persons under the trafficking victims protection act  
26 of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the sentencing court  
27 for vacation of the applicant's record of conviction for the  
28 prostitution offense. An applicant may not have the record of  
29 conviction for prostitution vacated if any one of the following is  
30 present:

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

33 (b) The offender has been convicted of another crime in this state,  
34 another state, or federal court since the date of conviction; or

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

37 (4) Once the court vacates a record of conviction under subsection  
38 (1) of this section or section 2 of this act, the person shall be

1 released from all penalties and disabilities resulting from the offense  
2 and the fact that the person has been convicted of the offense shall  
3 not be included in the person's criminal history for purposes of  
4 determining a sentence in any subsequent conviction. For all purposes,  
5 including responding to questions on employment or housing  
6 applications, a person whose conviction has been vacated under  
7 subsection (1) of this section or section 2 of this act may state that  
8 he or she has never been convicted of that crime. Nothing in this  
9 section affects or prevents the use of an offender's prior conviction  
10 in a later criminal prosecution.

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 (6) The clerk of the court in which the vacation order is entered  
16 shall immediately transmit the order vacating the conviction to the  
17 Washington state patrol identification section and to the local police  
18 agency, if any, which holds criminal history information for the person  
19 who is the subject of the conviction. The Washington state patrol and  
20 any such local police agency shall immediately update their records to  
21 reflect the vacation of the conviction, and shall transmit the order  
22 vacating the conviction to the federal bureau of investigation. A  
23 conviction that has been vacated under this section or section 2 of  
24 this act may not be disseminated or disclosed by the state patrol or  
25 local law enforcement agency to any person, except other criminal  
26 justice enforcement agencies.

27 NEW SECTION. Sec. 2. A new section is added to chapter 9.96 RCW  
28 to read as follows:

29 A person may apply to the sentencing court under RCW 9.96.060 for  
30 a vacation of the person's record of conviction for a violation of RCW  
31 46.61.502 (driving while under the influence), 46.61.504 (actual  
32 physical control while under the influence), 9.91.020 (operating a  
33 railroad, etc. while intoxicated), or a conviction for a "prior  
34 offense" as defined under RCW 46.61.5055, if the following conditions  
35 have been met:

36 (1) More than ten years have elapsed since the person completed the

1 terms of the original conditions of the sentence, including any  
2 financial obligations;

3 (2) If a court ordered the person to enter alcohol or chemical  
4 dependency treatment as a condition of sentencing, the person has  
5 successfully completed treatment and has not had any relapse for at  
6 least five years prior to the date of the vacation application; and

7 (3) The person meets all other conditions under RCW 9.96.060(2).

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