
SUBSTITUTE HOUSE BILL 1087

State of Washington

63rd Legislature

2013 Regular Session

By House Public Safety (originally sponsored by Representatives Appleton, Roberts, and Freeman)

READ FIRST TIME 02/19/13.

1 AN ACT Relating to allowing for more than one vacation of a
2 misdemeanor and gross misdemeanor conviction; and reenacting and
3 amending RCW 9.96.060.

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 offense;

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

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

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

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

37 (iii) The applicant has signed an affidavit under penalty of

1 perjury affirming that the applicant has not previously had a
2 conviction for a domestic violence offense, and a criminal history
3 check reveals that the applicant has had such a conviction; or

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

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

12 (g) The offender has been convicted of a new crime in this state,
13 another state, or federal court in the three years prior to the
14 application or been convicted of a felony in this state, another state,
15 or federal court since the date of conviction;

16 (h) The applicant has (~~ever~~) had the records of (~~another~~) four
17 or more convictions vacated; or

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

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

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

34 (b) The offender has been convicted of another crime in this state,
35 another state, or federal court in the three years prior to the
36 application or been convicted of a felony in this state, another state,
37 or federal court since the date of conviction(~~or~~)

1 ~~(c) The applicant has ever had the record of another prostitution~~
2 ~~conviction vacated~~)).

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

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

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

30 (7) A person may apply to the sentencing court for, and the court
31 may grant, vacation of the records of conviction for more than one
32 misdemeanor or gross misdemeanor offense at one time, if not otherwise
33 prohibited by this section.

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