
SUBSTITUTE HOUSE BILL 1661

State of Washington

63rd Legislature

2013 Regular Session

By House Appropriations Subcommittee on General Government (originally sponsored by Representatives Fitzgibbon, Condotta, Roberts, Jinkins, Green, Upthegrove, Walsh, Moscoso, Tharinger, Cody, Kagi, Hunt, Appleton, Ryu, Lytton, Farrell, Pollet, Van De Wege, Ormsby, Lias, Reykdal, and Stanford)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to misdemeanor marijuana offense convictions; and
2 reenacting 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 2012 c 183 s 5 and 2012 c 142 s 2 are
5 each reenacted and amended to read as follows:

6 (1) Every person convicted of a misdemeanor marijuana offense under
7 RCW 69.50.4014 may apply to the sentencing court for a vacation of the
8 applicant's record of conviction for the offense. If the applicant
9 establishes that he or she was aged twenty-one or over at the time of
10 the offense and that the amount of marijuana in possession which formed
11 the basis of the offense was less than one ounce, the court shall
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) Except as provided in subsection (1) of this section, every
19 person convicted of a misdemeanor or gross misdemeanor offense who has

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

12 ~~((+2))~~ (3) Pursuant to subsection (2) of this section, an
13 applicant may not have the record of conviction for a misdemeanor or
14 gross misdemeanor offense vacated if any one of the following is
15 present:

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

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

20 (c) The offense was a violation of RCW 46.61.502 (driving while
21 under the influence), 46.61.504 (actual physical control while under
22 the influence), 9.91.020 (operating a railroad, etc. while
23 intoxicated), or the offense is considered a "prior offense" under RCW
24 46.61.5055 and the applicant has had a subsequent alcohol or drug
25 violation within ten years of the date of arrest for the prior offense;

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+)) (4) Every person convicted of prostitution under RCW
34 9A.88.030 who committed the offense as a result of being a victim of
35 trafficking, RCW 9A.40.100, promoting prostitution in the first degree,
36 RCW 9A.88.070, or trafficking in persons under the trafficking victims
37 protection act of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the
38 sentencing court for vacation of the applicant's record of conviction

1 for the 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))~~ (5) Once the court vacates a record of conviction under
11 subsections (1) and (2) of this section, the person shall be released
12 from all penalties and disabilities resulting from the offense and the
13 fact that the person has been convicted of the offense shall not be
14 included in the person's criminal history for purposes of determining
15 a sentence in any subsequent conviction. For all purposes, including
16 responding to questions on employment or housing applications, a person
17 whose conviction has been vacated under subsections (1) and (2) of this
18 section may state that he or she has never been convicted of that
19 crime. Nothing in this section affects or prevents the use of an
20 offender's prior conviction in a later criminal prosecution.

21 ~~((+5))~~ (6) 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 ~~((+6))~~ (7) 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.

--- END ---