
HOUSE BILL 1661

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Fitzgibbon, Condotta, Roberts, Jenkins, Green, Upthegrove, Walsh, Moscoso, Tharinger, Cody, Kagi, Hunt, Appleton, Ryu, Lytton, Farrell, Pollet, Van De Wege, Ormsby, Liias, Reykdal, and Stanford

Read first time 02/05/13. Referred to Committee on Public Safety.

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. The court shall
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) Except as provided in subsection (1) of this section, every
16 person convicted of a misdemeanor or gross misdemeanor offense who has
17 completed all of the terms of the sentence for the misdemeanor or gross
18 misdemeanor offense may apply to the sentencing court for a vacation of
19 the applicant's record of conviction for the offense. If the court

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

9 ~~((+2))~~ (3) Pursuant to subsection (2) of this section, an
10 applicant may not have the record of conviction for a misdemeanor or
11 gross misdemeanor offense vacated if any one of the following is
12 present:

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

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

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

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

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

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

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

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

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

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

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

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

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

30 ((+3+)) (4) Every person convicted of prostitution under RCW
31 9A.88.030 who committed the offense as a result of being a victim of
32 trafficking, RCW 9A.40.100, promoting prostitution in the first degree,
33 RCW 9A.88.070, or trafficking in persons under the trafficking victims
34 protection act of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the
35 sentencing court for vacation of the applicant's record of conviction
36 for the prostitution offense. An applicant may not have the record of
37 conviction for prostitution vacated if any one of the following is
38 present:

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

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

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

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

18 ~~((+5))~~ (6) All costs incurred by the court and probation services
19 shall be paid by the person making the motion to vacate the record
20 unless a determination is made pursuant to chapter 10.101 RCW that the
21 person making the motion is indigent, at the time the motion is
22 brought.

23 ~~((+6))~~ (7) The clerk of the court in which the vacation order is
24 entered shall immediately transmit the order vacating the conviction to
25 the Washington state patrol identification section and to the local
26 police agency, if any, which holds criminal history information for the
27 person who is the subject of the conviction. The Washington state
28 patrol and any such local police agency shall immediately update their
29 records to reflect the vacation of the conviction, and shall transmit
30 the order vacating the conviction to the federal bureau of
31 investigation. A conviction that has been vacated under this section
32 may not be disseminated or disclosed by the state patrol or local law
33 enforcement agency to any person, except other criminal justice
34 enforcement agencies.

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