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HOUSE BILL 1015

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State of Washington

64th Legislature

2015 Regular Session

By Representative Appleton

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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 2014 c 176 s 1 and 2014 c 109 s 1 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  
14 to 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  
16 not guilty, the court setting aside the verdict of guilty; and (b)  
17 the court dismissing the information, indictment, complaint, or  
18 citation against the applicant and vacating the judgment and  
19 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  
5 in 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  
12 RCW 46.61.5055 (~~and the applicant has had a subsequent alcohol or  
13 drug violation within ten years of the date of arrest for the prior  
14 offense~~) unless the conviction may be vacated under section 2 of  
15 this act;

16 (d) The offense was any misdemeanor or gross misdemeanor  
17 violation, including attempt, of chapter 9.68 RCW (obscenity and  
18 pornography), chapter 9.68A RCW (sexual exploitation of children), or  
19 chapter 9A.44 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,  
24 or the court, after considering the damage to person or property that  
25 resulted in the conviction, any prior convictions for crimes defined  
26 in 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  
30 of 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  
33 prosecuted the offense for which vacation is sought, or has not  
34 provided that 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  
38 single incident, none of those convictions counts as a previous  
39 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  
11 passed since the person completed the terms of the sentence,  
12 including any 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  
20 order, or a civil restraining order which restrains one party from  
21 contacting the other party.

22 (3) Subject to RCW 9.96.070, every person convicted of  
23 prostitution under RCW 9A.88.030 who committed the offense as a  
24 result of being a victim of trafficking, RCW 9A.40.100, promoting  
25 prostitution in the first degree, RCW 9A.88.070, promoting commercial  
26 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons  
27 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.  
28 7101 et seq. may apply to the sentencing court for vacation of the  
29 applicant's record of conviction for the prostitution offense. An  
30 applicant may not have the record of conviction for prostitution  
31 vacated if any one of the following is present:

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

35 (b) The offender has been convicted of another crime, except  
36 prostitution, in this state, another state, or federal court since  
37 the date of conviction.

38 (4) Every person convicted prior to January 1, 1975, of violating  
39 any statute or rule regarding the regulation of fishing activities,  
40 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,

1 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240  
2 who claimed to be exercising a treaty Indian fishing right, may apply  
3 to the sentencing court for vacation of the applicant's record of the  
4 misdemeanor, gross misdemeanor, or felony conviction for the offense.  
5 If the person is deceased, a member of the person's family or an  
6 official representative of the tribe of which the person was a member  
7 may apply to the court on behalf of the deceased person.  
8 Notwithstanding the requirements of RCW 9.94A.640, the court shall  
9 vacate the record of conviction if:

10 (a) The applicant is a member of a tribe that may exercise treaty  
11 Indian fishing rights at the location where the offense occurred; and

12 (b) The state has been enjoined from taking enforcement action of  
13 the statute or rule to the extent that it interferes with a treaty  
14 Indian fishing right as determined under *United States v. Washington*,  
15 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
16 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
17 any other state supreme court or federal court decision.

18 (5) Once the court vacates a record of conviction under this  
19 section or section 2 of this act, the person shall be released from  
20 all penalties and disabilities resulting from the offense and the  
21 fact that the person has been convicted of the offense shall not be  
22 included in the person's criminal history for purposes of determining  
23 a sentence in any subsequent conviction. For all purposes, including  
24 responding to questions on employment or housing applications, a  
25 person whose conviction has been vacated under this section or  
26 section 2 of this act may state that he or she has never been  
27 convicted of that crime. Nothing in this section affects or prevents  
28 the use of an offender's prior conviction in a later criminal  
29 prosecution.

30 (6) All costs incurred by the court and probation services shall  
31 be paid by the person making the motion to vacate the record unless a  
32 determination is made pursuant to chapter 10.101 RCW that the person  
33 making the motion is indigent, at the time the motion is brought.

34 (7) The clerk of the court in which the vacation order is entered  
35 shall immediately transmit the order vacating the conviction to the  
36 Washington state patrol identification section and to the local  
37 police agency, if any, which holds criminal history information for  
38 the person who is the subject of the conviction. The Washington state  
39 patrol and any such local police agency shall immediately update  
40 their records to reflect the vacation of the conviction, and shall

1 transmit the order vacating the conviction to the federal bureau of  
2 investigation. A conviction that has been vacated under this section  
3 or section 2 of this act may not be disseminated or disclosed by the  
4 state patrol or local law enforcement agency to any person, except  
5 other criminal justice enforcement agencies.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.96 RCW  
7 to read as follows:

8 A person may apply to the sentencing court under RCW 9.96.060 for  
9 a vacation of the person's record of conviction for a violation of  
10 RCW 46.61.502 (driving while under the influence), 46.61.504 (actual  
11 physical control while under the influence), 9.91.020 (operating a  
12 railroad, etc. while intoxicated), or a conviction for a "prior  
13 offense" as defined under RCW 46.61.5055, if the following conditions  
14 have been met:

15 (1) More than ten years have elapsed since the person completed  
16 the terms of the original conditions of the sentence, including any  
17 financial obligations;

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

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

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