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SENATE BILL 5461

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State of Washington

64th Legislature

2015 Regular Session

By Senators Ranker, Kohl-Welles, Pedersen, Chase, Keiser, Hasegawa,  
and Darneille

Read first time 01/22/15. Referred to Committee on Law & Justice.

1 AN ACT Relating to vacating marijuana convictions; and reenacting  
2 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 2014 c 176 s 1 and 2014 c 109 s 1 are  
5 each reenacted and amended to read as follows:

6 (1) Every person convicted of a misdemeanor marijuana offense  
7 committed prior to November 7, 2012, under RCW 69.50.4014 may apply  
8 to the sentencing court for a vacation of the applicant's record of  
9 conviction for the offense. If the court finds the applicant meets  
10 the tests prescribed in subsection (2) of this section, the court  
11 shall vacate the record of conviction by:

12 (a)(i) Permitting the applicant to withdraw the applicant's plea  
13 of guilty and to enter a plea of not guilty; or (ii) if the applicant  
14 was convicted after a plea of not guilty, the court setting aside the  
15 verdict of guilty; and

16 (b) Dismissing the information, indictment, complaint, or  
17 citation against the applicant and vacating the judgment and  
18 sentence.

19 (2) An applicant may not have the record of conviction for a  
20 misdemeanor marijuana offense vacated if any one of the following is  
21 present:

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

4 (b) The applicant has a criminal history that includes any one of  
5 the following:

6 (i) A violent offense as defined in RCW 9.94A.030 or an attempt  
7 to commit a violent offense;

8 (ii) A violation of RCW 46.61.502 (driving while under the  
9 influence), 46.61.504 (actual physical control while under the  
10 influence), 9.91.020 (operating a railroad, etc. while intoxicated),  
11 or the prior 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;

15 (iii) Any violation, including attempt, of chapter 9.68 RCW  
16 (obscenity and pornography), chapter 9.68A RCW (sexual exploitation  
17 of children), or chapter 9A.44 RCW (sex offenses).

18 (3) Except as provided in subsections (1) and (2) of this  
19 section, every person convicted of a misdemeanor or gross misdemeanor  
20 offense who has completed all of the terms of the sentence for the  
21 misdemeanor or gross misdemeanor offense may apply to the sentencing  
22 court for a vacation of the applicant's record of conviction for the  
23 offense. If the court finds the applicant meets the tests prescribed  
24 in subsection ((+2)) (4) of this section, the court may in its  
25 discretion vacate the record of conviction by: (a)(i) Permitting the  
26 applicant to withdraw the applicant's plea of guilty and to enter a  
27 plea of not guilty; or (ii) if the applicant has been convicted after  
28 a plea of not guilty, the court setting aside the verdict of guilty;  
29 and (b) the court dismissing the information, indictment, complaint,  
30 or citation against the applicant and vacating the judgment and  
31 sentence.

32 ((+2)) (4) Pursuant to subsection (3) of this section, an  
33 applicant may not have the record of conviction for a misdemeanor or  
34 gross misdemeanor offense vacated if any one of the following is  
35 present:

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

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

1 (c) The offense was a violation of RCW 46.61.502 (driving while  
2 under the influence), 46.61.504 (actual physical control while under  
3 the influence), 9.91.020 (operating a railroad, etc. while  
4 intoxicated), or the offense is considered a "prior offense" under  
5 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug  
6 violation within ten years of the date of arrest for the prior  
7 offense;

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

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

23 (i) The applicant has not provided written notification of the  
24 vacation petition to the prosecuting attorney's office that  
25 prosecuted the offense for which vacation is sought, or has not  
26 provided that notification to the court;

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

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

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

1 (f) For any offense other than those described in (e) of this  
2 subsection, less than three years have passed since the person  
3 completed the terms of the sentence, including any financial  
4 obligations;

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

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

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

14 (~~(3)~~) (5) Subject to RCW 9.96.070, every person convicted of  
15 prostitution under RCW 9A.88.030 who committed the offense as a  
16 result of being a victim of trafficking, RCW 9A.40.100, promoting  
17 prostitution in the first degree, RCW 9A.88.070, promoting commercial  
18 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons  
19 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.  
20 7101 et seq. may apply to the sentencing court for vacation of the  
21 applicant's record of conviction for the prostitution offense. An  
22 applicant may not have the record of conviction for prostitution  
23 vacated if any one of the following is present:

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

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

30 (~~(4)~~) (6) Every person convicted prior to January 1, 1975, of  
31 violating any statute or rule regarding the regulation of fishing  
32 activities, including, but not limited to, RCW 75.08.260, 75.12.060,  
33 75.12.070, 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and  
34 77.16.240 who claimed to be exercising a treaty Indian fishing right,  
35 may apply to the sentencing court for vacation of the applicant's  
36 record of the misdemeanor, gross misdemeanor, or felony conviction  
37 for the offense. If the person is deceased, a member of the person's  
38 family or an official representative of the tribe of which the person  
39 was a member may apply to the court on behalf of the deceased person.

1 Notwithstanding the requirements of RCW 9.94A.640, the court shall  
2 vacate the record of conviction if:

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

5 (b) The state has been enjoined from taking enforcement action of  
6 the statute or rule to the extent that it interferes with a treaty  
7 Indian fishing right as determined under *United States v. Washington*,  
8 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
9 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
10 any other state supreme court or federal court decision.

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

23 ~~((+6+))~~ (8) All costs incurred by the court and probation  
24 services shall be paid by the person making the motion to vacate the  
25 record unless a determination is made pursuant to chapter 10.101 RCW  
26 that the person making the motion is indigent, at the time the motion  
27 is brought.

28 ~~((+7+))~~ (9) The clerk of the court in which the vacation order is  
29 entered shall immediately transmit the order vacating the conviction  
30 to the Washington state patrol identification section and to the  
31 local police agency, if any, which holds criminal history information  
32 for the person who is the subject of the conviction. The Washington  
33 state patrol and any such local police agency shall immediately  
34 update their records to reflect the vacation of the conviction, and  
35 shall transmit the order vacating the conviction to the federal  
36 bureau of investigation. A conviction that has been vacated under  
37 this section may not be disseminated or disclosed by the state patrol

1 or local law enforcement agency to any person, except other criminal  
2 justice enforcement agencies.

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