

SHB 2890 - H AMD 851

By Representative Irwin

1 Strike everything after the enacting clause and insert the
2 following:

3

4 "NEW SECTION. **Sec. 1.** This act may be known and cited as the
5 new hope act.

6

7 **Sec. 2.** RCW 9.94A.637 and 2009 c 325 s 3 and 2009 c 288 s 2 are
8 each reenacted and amended to read as follows:

9 (1)((~~a~~)) When an offender has completed all requirements of
10 the sentence, including any and all legal financial obligations, and
11 while under the custody ((~~and~~)) or supervision of the department,
12 the secretary or the secretary's designee shall notify the
13 sentencing court, which shall discharge the offender and provide the
14 offender with a certificate of discharge by issuing the certificate
15 to the offender in person or by mailing the certificate to the
16 offender's last known address. A certificate of discharge issued
17 under this subsection (1) is effective on the date the offender
18 completed all conditions of his or her sentence.

19 ((~~b~~)(~~i~~)) (2)(a) When an offender has reached the end of his or
20 her supervision with the department and has completed all the
21 requirements of the sentence except his or her legal financial
22 obligations, the secretary's designee shall provide the county clerk
23 with a notice that the offender has completed all nonfinancial
24 requirements of the sentence. The notice must list the specific
25 sentence requirements that have been completed, so that it is clear
26 to the sentencing court that the offender is entitled to discharge
27 upon completing the legal financial obligations of the sentence.

1 ~~((ii))~~ (b) When the department has provided the county clerk
2 with notice under (a) of this subsection showing that an offender
3 has completed all the requirements of the sentence and the offender
4 subsequently satisfies all legal financial obligations under the
5 sentence, the county clerk shall notify the sentencing court ~~((
6 including the notice from the department, which))~~ by promptly
7 transmitting the notice of completion of nonfinancial sentence
8 requirements and notice of satisfaction of all legal financial
9 obligations to the sentencing court. Upon receipt of the notices
10 under this subsection (2)(b), the court shall discharge the offender
11 and provide the offender with a certificate of discharge ~~((by~~
12 ~~issuing the certificate to the offender in person or by mailing the~~
13 ~~certificate to the offender's last known address))~~. A certificate of
14 discharge issued under this subsection (2) is effective on the date
15 the offender completed all conditions of his or her sentence.

16 ~~((c) When an offender who is subject to requirements of the~~
17 ~~sentence in addition to the payment of legal financial obligations~~
18 ~~either is not subject to supervision by the department or does not~~
19 ~~complete the requirements while under supervision of the department,~~
20 ~~it is the offender's responsibility to provide the court with~~
21 ~~verification of the completion of the sentence conditions other than~~
22 ~~the payment of legal financial obligations. When the offender~~
23 ~~satisfies all legal financial obligations under the sentence, the~~
24 ~~county clerk shall notify the sentencing court that the legal~~
25 ~~financial obligations have been satisfied. When the court has~~
26 ~~received both notification from the clerk and adequate verification~~
27 ~~from the offender that the sentence requirements have been~~
28 ~~completed, the court shall discharge the offender and provide the~~
29 ~~offender with))~~

30 (3) In the absence of a certificate of discharge issued under
31 subsection (1) or (2) of this section, the offender may file a
32 motion with the sentencing court for a certificate of discharge. The
33 sentencing court shall issue a certificate of discharge upon
34 verification of completion of all sentencing conditions, including

1 any and all legal financial obligations. A certificate of discharge
2 issued under this subsection (3) is effective on the date the
3 offender completed all conditions of his or her sentence.

4 (4) In the absence of a certificate of discharge issued under
5 subsection (1), (2), or (3) of this section, the offender may file a
6 motion with the sentencing court for a certificate of discharge and
7 file a declaration sworn under penalty of perjury that he or she has
8 completed all of the nonfinancial conditions of his or her sentence.
9 The filing of such a declaration creates a rebuttable presumption
10 that the offender completed all nonfinancial conditions of his or
11 her sentence. A certificate of discharge issued under this
12 subsection (4) is effective on the later of: (a) Five years after
13 completion of community custody, or if the offender was not required
14 to serve community custody, after the completion of full and partial
15 confinement; or (b) the date any and all legal financial obligations
16 were satisfied.

17 (5) The court shall issue a certificate of discharge under this
18 section by issuing the certificate to the offender in person or by
19 mailing the certificate to the offender's last known address.

20 ~~((+2))~~ (6)(a) ~~((For purposes of this subsection (2),))~~ A no-
21 contact order is not a requirement of the offender's sentence. An
22 offender who has completed all requirements of the sentence,
23 including any and all legal financial obligations, is eligible for a
24 certificate of discharge even if the offender has an existing no-
25 contact order that excludes or prohibits the offender from having
26 contact with a specified person or ~~((business))~~ entity or coming
27 within a set distance of any specified location.

28 ~~((b))~~ In the case of an eligible offender who has a no-contact
29 order as part of the judgment and sentence, the offender may
30 ~~((petition))~~ file a motion with the sentencing court to issue a
31 certificate of discharge and a separate no-contact order ~~((by filing~~
32 a petition in the sentencing court and)), which must include paying
33 the appropriate filing fee ~~((associated with the petition))~~ for the
34 separate no-contact order. This filing fee does not apply to an

1 offender seeking a certificate of discharge when the offender has a
2 no-contact order separate from the judgment and sentence.

3 ~~((i)(A) The court shall issue a certificate of discharge and a
4 separate no contact order under this subsection (2) if the court
5 determines that the offender has completed all requirements of the
6 sentence, including all legal financial obligations.))~~ The court
7 shall reissue the no-contact order separately under a new civil
8 cause number for the remaining term and under the same conditions as
9 contained in the judgment and sentence.

10 ~~((B))~~ (b) The clerk of the court shall send a copy of the new
11 no-contact order to the individuals or entities protected by the no-
12 contact order, along with an explanation of the reason for the
13 change, if there is an address available in the court file. If no
14 address is available, the clerk of the court shall forward a copy of
15 the order to the prosecutor, who shall send a copy of the no-contact
16 order with an explanation of the reason for the change to the last
17 known address of the protected individuals or entities.

18 ~~((ii) Whenever an order under this subsection (2) is issued,))~~
19 (c) The clerk of the court shall forward a copy of the order to the
20 appropriate law enforcement agency specified in the order on or
21 before the next judicial day. The clerk shall also include a cover
22 sheet that indicates the case number of the judgment and sentence
23 that has been discharged. Upon receipt of the copy of the order and
24 cover sheet, the law enforcement agency shall enter the order into
25 any computer-based criminal intelligence information system
26 available in this state used by law enforcement agencies to list
27 outstanding warrants. The order shall remain in this system until it
28 expires. The new order, and case number of the discharged judgment
29 and sentence, shall be linked in the criminal intelligence
30 information system for purposes of enforcing the no-contact order.

31 ~~((iii))~~ (d) A separately issued no-contact order may be
32 enforced under chapter 26.50 RCW.

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1 (~~(iv)~~) (e) A separate no-contact order issued under this
2 subsection (~~(2)~~) (6) is not a modification of the offender's
3 sentence.

4 (~~(3)~~) (7) Every signed certificate and order of discharge
5 shall be filed with the county clerk of the sentencing county. In
6 addition, the court shall send to the department a copy of every
7 signed certificate and order of discharge for offender sentences
8 under the authority of the department. The county clerk shall enter
9 into a database maintained by the administrator for the courts the
10 names of all felons who have been issued certificates of discharge,
11 the date of discharge, and the date of conviction and offense.

12 (~~(4)~~) (8) An offender who is not convicted of a violent
13 offense or a sex offense and is sentenced to a term involving
14 community supervision may be considered for a discharge of sentence
15 by the sentencing court prior to the completion of community
16 supervision, provided that the offender has completed at least one-
17 half of the term of community supervision and has met all other
18 sentence requirements.

19 (~~(5)~~) (9) The discharge shall have the effect of restoring all
20 civil rights not already restored by RCW 29A.08.520, and the
21 certificate of discharge shall so state. Nothing in this section
22 prohibits the use of an offender's prior record for purposes of
23 determining sentences for later offenses as provided in this
24 chapter. Nothing in this section affects or prevents use of the
25 offender's prior conviction in a later criminal prosecution either
26 as an element of an offense or for impeachment purposes. A
27 certificate of discharge is not based on a finding of
28 rehabilitation.

29 (~~(6)~~) (10) Unless otherwise ordered by the sentencing court, a
30 certificate of discharge shall not terminate the offender's
31 obligation to comply with an order that excludes or prohibits the
32 offender from having contact with a specified person or coming
33 within a set distance of any specified location that was contained
34 in the judgment and sentence. An offender who violates such an order

1 after a certificate of discharge has been issued shall be subject to
2 prosecution according to the chapter under which the order was
3 originally issued.

4 ~~((+7))~~ (11) Upon release from custody, the offender may apply
5 to the department for counseling and help in adjusting to the
6 community. This voluntary help may be provided for up to one year
7 following the release from custody.

8

9 **Sec. 3.** RCW 9.94A.640 and 2012 c 183 s 3 are each amended to
10 read as follows:

11 (1) Every offender who has been discharged under RCW 9.94A.637
12 may apply to the sentencing court for a vacation of the offender's
13 record of conviction. If the court finds the offender meets the
14 tests prescribed in subsection (2) of this section, the court may
15 clear the record of conviction by: (a) Permitting the offender to
16 withdraw the offender's plea of guilty and to enter a plea of not
17 guilty; or (b) if the offender has been convicted after a plea of
18 not guilty, by the court setting aside the verdict of guilty; and
19 (c) by the court dismissing the information or indictment against
20 the offender.

21 (2) An offender may not have the record of conviction cleared
22 if:

23 (a) There are any criminal charges against the offender pending
24 in any court of this state or another state, or in any federal
25 court;

26 (b) The offense was a violent offense as defined in RCW
27 9.94A.030 ~~((+7~~

28 ~~(e) the offense was a))~~ or crime against persons as defined in
29 RCW 43.43.830, except the following offenses may be vacated if the
30 conviction did not include an aggravating circumstance under RCW
31 9.94A.535(3): Assault in the second degree under RCW 9A.36.021,
32 assault in the third degree under RCW 9A.36.031(1) (a) through (f),
33 or (i) through (k) when not committed against a law enforcement
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1 officer or peace officer, or robbery in the second degree under RCW
2 9A.56.210;

3 ~~((d))~~ (c) The offense is a class B felony and the offender has
4 been convicted of a new crime in this state, another state, or
5 federal court in the ten years prior to the application for
6 vacation;

7 (d) The offense is a class C felony and the offender has been
8 convicted of a new crime in this state, another state, or federal
9 court ~~((since the date of the offender's discharge under RCW~~
10 ~~9.94A.637))~~ in the five years prior to the application for vacation;

11 (e) The offense is a class B felony and less than ten years have
12 passed since the ~~((date the applicant was discharged under RCW~~
13 ~~9.94A.637))~~ later of: (i) The applicant's release from community
14 custody; (ii) the applicant's release from full and partial
15 confinement; or (iii) the applicant's sentencing date;

16 (f) The offense was a class C felony, other than a class C
17 felony described in RCW 46.61.502(6) or 46.61.504(6), and less than
18 five years have passed since the ~~((date the applicant was discharged~~
19 ~~under RCW 9.94A.637))~~ later of: (i) The applicant's release from
20 community custody; (ii) the applicant's release from full and
21 partial confinement; or (iii) the applicant's sentencing date; or

22 (g) The offense was a ~~((class C))~~ felony described in RCW
23 46.61.502 ~~((+6))~~ or 46.61.504 ~~((+6))~~ .

24 (3)(a) Except as provided in (b) of this subsection, once the
25 court vacates a record of conviction under subsection (1) of this
26 section, the fact that the offender has been convicted of the
27 offense shall not be included in the offender's criminal history for
28 purposes of determining a sentence in any subsequent conviction, and
29 the offender shall be released from all penalties and disabilities
30 resulting from the offense. For all purposes, including responding
31 to questions on employment applications, an offender whose
32 conviction has been vacated may state that the offender has never
33 been convicted of that crime. A conviction that has been vacated
34 under this section may not be disseminated or disclosed by the state

1 patrol or local law enforcement agency to any person, except other
2 criminal justice enforcement agencies. Nothing in this section
3 affects or prevents the use of an offender's prior conviction in a
4 later criminal prosecution.

5 (b) A vacated conviction qualifies as a prior conviction for the
6 purpose of charging a present offense where a prior conviction
7 elevates the classification level of the present offense.

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9 **Sec. 4.** RCW 9.96.060 and 2017 c 336 s 2, 2017 c 272 s 9, and
10 2017 c 128 s 1 are each reenacted and amended to read as follows:

11 (1) Every person convicted of a misdemeanor or gross misdemeanor
12 offense who has completed all of the terms of the sentence for the
13 misdemeanor or gross misdemeanor offense may apply to the sentencing
14 court for a vacation of the applicant's record of conviction for the
15 offense. If the court finds the applicant meets the tests prescribed
16 in subsection (2) of this section, the court may in its discretion
17 vacate the record of conviction by: (a)(i) Permitting the applicant
18 to withdraw the applicant's plea of guilty and to enter a plea of
19 not guilty; or (ii) if the applicant has been convicted after a plea
20 of not guilty, the court setting aside the verdict of guilty; and
21 (b) the court dismissing the information, indictment, complaint, or
22 citation against the applicant and vacating the judgment and
23 sentence.

24 (2) An applicant may not have the record of conviction for a
25 misdemeanor or gross misdemeanor offense vacated if any one of the
26 following is present:

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

30 (b) The offense was a violent offense as defined in RCW
31 9.94A.030 or an attempt to commit a violent offense;

32 (c) The offense was a violation of RCW 46.61.502 (driving while
33 under the influence), 46.61.504 (actual physical control while under
34 the influence), 9.91.020 (operating a railroad, etc. while

1 intoxicated), or the offense is considered a "prior offense" under
2 RCW 46.61.5055 and the applicant has had a subsequent alcohol or
3 drug violation within ten years of the date of arrest for the prior
4 offense or less than ten years has elapsed since the date of the
5 arrest for the prior offense;

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

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

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

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

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

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

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

9 (g) The offender has been convicted of a new crime in this
10 state, another state, or federal court (~~(since the date of~~
11 ~~conviction))~~ in the three years prior to the vacation application;
12 or

13 (~~(The applicant has ever had the record of another~~
14 ~~conviction vacated; or~~

15 ~~(i))~~) The applicant is currently restrained(~~(, or has been~~
16 ~~restrained within five years prior to the vacation application,))~~ by
17 a domestic violence protection order, a no-contact order, an
18 antiharassment order, or a civil restraining order which restrains
19 one party from contacting the other party or was previously
20 restrained by such an order and was found to have committed one or
21 more violations of the order in the five years prior to the vacation
22 application.

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

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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
3 court, for any crime other than prostitution; or

4 (b) The offender has been convicted of another crime, except
5 prostitution, in this state, another state, or federal court since
6 the date of conviction. The limitation in this subsection (3)(b)
7 does not apply to convictions where the offender proves by a
8 preponderance of the evidence that he or she committed the crime as
9 a result of being a victim of trafficking, RCW 9A.40.100, promoting
10 prostitution in the first degree, RCW 9A.88.070, promoting
11 commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in
12 persons under the trafficking victims protection act of 2000, 22
13 U.S.C. Sec. 7101 et seq., according to the requirements provided in
14 RCW 9.96.070 for each respective conviction.

15 (4) Every person convicted prior to January 1, 1975, of
16 violating any statute or rule regarding the regulation of fishing
17 activities, including, but not limited to, RCW 75.08.260, 75.12.060,
18 75.12.070, 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060,
19 and 77.16.240 who claimed to be exercising a treaty Indian fishing
20 right, may apply to the sentencing court for vacation of the
21 applicant's record of the misdemeanor, gross misdemeanor, or felony
22 conviction for the offense. If the person is deceased, a member of
23 the person's family or an official representative of the tribe of
24 which the person was a member may apply to the court on behalf of
25 the deceased person. Notwithstanding the requirements of RCW
26 9.94A.640, the court shall vacate the record of conviction if:

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

30 (b) The state has been enjoined from taking enforcement action
31 of the statute or rule to the extent that it interferes with a
32 treaty Indian fishing right as determined under *United States v.*
33 *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*,

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1 302 F. Supp. 899 (D. Oregon 1969), and any posttrial orders of those
2 courts, or any other state supreme court or federal court decision.

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

15 (b) When a court vacates a record of domestic violence as
16 defined in RCW 10.99.020 under this section, the state may not use
17 the vacated conviction in a later criminal prosecution unless the
18 conviction was for: (i) Violating the provisions of a restraining
19 order, no-contact order, or protection order restraining or
20 enjoining the person or restraining the person from going on to the
21 grounds of or entering a residence, workplace, school, or day care,
22 or prohibiting the person from knowingly coming within, or knowingly
23 remaining within, a specified distance of a location (RCW 10.99.040,
24 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150,
25 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii)
26 stalking (RCW 9A.46.110). A vacated conviction under this section is
27 not considered a conviction of such an offense for the purposes of
28 27 C.F.R. 478.11.

29 (c) A vacated conviction qualifies as a prior conviction for the
30 purpose of charging a present offense where a prior conviction
31 elevates the classification level of the present offense.

32 (6) All costs incurred by the court and probation services shall
33 be paid by the person making the motion to vacate the record unless
34 a determination is made pursuant to chapter 10.101 RCW that the

1 person making the motion is indigent, at the time the motion is
2 brought.

3 (7) The clerk of the court in which the vacation order is
4 entered shall immediately transmit the order vacating the conviction
5 to the Washington state patrol identification section and to the
6 local police agency, if any, which holds criminal history
7 information for the person who is the subject of the conviction. The
8 Washington state patrol and any such local police agency shall
9 immediately update their records to reflect the vacation of the
10 conviction, and shall transmit the order vacating the conviction to
11 the federal bureau of investigation. A conviction that has been
12 vacated under this section may not be disseminated or disclosed by
13 the state patrol or local law enforcement agency to any person,
14 except other criminal justice enforcement agencies."

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16 Correct the title.

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EFFECT: Prohibits the vacation of a conviction of Assault in
the second degree, Assault in the third degree (when not committed
against a law enforcement officer), and Robbery in the second degree
if the conviction included an aggravating circumstance under the
Sentencing Reform Act.

Restores the prohibition against vacating a misdemeanor
Failure to Register conviction.

Specifies that a vacated conviction qualifies as a prior
conviction for the purpose of charging a present offense where a
prior conviction elevates the classification level of the present
offense.

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