
HOUSE BILL 1088

State of Washington 65th Legislature 2017 Regular Session

By Representatives Appleton, Ormsby, and Jinkins

Read first time 01/11/17. Referred to Committee on Public Safety.

1 AN ACT Relating to allowing for more than one vacation of a
2 misdemeanor and gross misdemeanor conviction; and reenacting and
3 amending RCW 9.96.060.

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 drug
13 violation within ten years of the date of arrest for the prior
14 offense;

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

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

30 (i) The applicant has not provided written notification of the
31 vacation petition to the prosecuting attorney's office that
32 prosecuted the offense for which vacation is sought, or has not
33 provided that notification to the court;

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

39 (iii) The applicant has signed an affidavit under penalty of
40 perjury affirming that the applicant has not previously had a

1 conviction for a domestic violence offense, and a criminal history
2 check reveals that the applicant has had such a conviction; or

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

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

11 (g) The offender has been convicted of a new ~~((crime))~~ gross
12 misdemeanor or misdemeanor offense in this state, another state, or
13 federal court in the three years prior to the application;

14 (h) The offender has been convicted of a new felony in this
15 state, another state, or federal court since the date of conviction;

16 ~~((h))~~ (i) The applicant has ~~((ever))~~ had the records of
17 ~~((another))~~ four or more convictions vacated; or

18 ~~((i))~~ (j) The applicant is currently restrained, or has been
19 restrained within five years prior to the vacation application, by a
20 domestic violence protection order, a no-contact order, an
21 antiharassment order, or a civil restraining order which restrains
22 one party from contacting the other party.

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 commercial
27 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
28 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
29 7101 et seq. may apply to the sentencing court for vacation of the
30 applicant's record of conviction for the prostitution offense. An
31 applicant may not have the record of conviction for prostitution
32 vacated if any one of the following is present:

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

36 (b) The offender has been convicted of another ~~((crime))~~ gross
37 misdemeanor or misdemeanor offense, except prostitution, in this
38 state, another state, or federal court in the three years prior to
39 the application; or

1 (c) The offender has been convicted of a felony in this state,
2 another state, or federal court since the date of conviction.

3 (4) Every person convicted prior to January 1, 1975, of violating
4 any statute or rule regarding the regulation of fishing activities,
5 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
6 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
7 who claimed to be exercising a treaty Indian fishing right, may apply
8 to the sentencing court for vacation of the applicant's record of the
9 misdemeanor, gross misdemeanor, or felony conviction for the offense.
10 If the person is deceased, a member of the person's family or an
11 official representative of the tribe of which the person was a member
12 may apply to the court on behalf of the deceased person.
13 Notwithstanding the requirements of RCW 9.94A.640, the court shall
14 vacate the record of conviction if:

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

17 (b) The state has been enjoined from taking enforcement action of
18 the statute or rule to the extent that it interferes with a treaty
19 Indian fishing right as determined under *United States v. Washington*,
20 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
21 899 (D. Oregon 1969), and any posttrial orders of those courts, or
22 any other state supreme court or federal court decision.

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

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

38 (7) The clerk of the court in which the vacation order is entered
39 shall immediately transmit the order vacating the conviction to the
40 Washington state patrol identification section and to the local

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

10 (8) A person may apply to the sentencing court for, and the court
11 may grant, vacation of the records of conviction for more than one
12 misdemeanor or gross misdemeanor offense at one time, unless
13 otherwise prohibited by this section.

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