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HOUSE BILL 2890

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State of Washington                      65th Legislature                      2018 Regular Session

By Representatives Hansen, Frame, and Ormsby

Read first time 01/22/18. Referred to Committee on Judiciary.

1            AN ACT Relating to promoting successful reentry by modifying the  
2 process for obtaining certificates of discharge and vacating  
3 conviction records; amending RCW 9.94A.640; reenacting and amending  
4 RCW 9.94A.637 and 9.96.060; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.** This act may be known and cited as the new  
7 hope act.

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

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

1        ~~((b)(i))~~ (2)(a) When an offender has reached the end of his or  
2 her supervision with the department and has completed all the  
3 requirements of the sentence except his or her legal financial  
4 obligations, the secretary's designee shall provide the county clerk  
5 with a notice that the offender has completed all nonfinancial  
6 requirements of the sentence. The notice must list the specific  
7 sentence requirements that have been completed, so that it is clear  
8 to the sentencing court that the offender is entitled to discharge  
9 upon completing the legal financial obligations of the sentence.

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

25        ~~((c) When an offender who is subject to requirements of the~~  
26 ~~sentence in addition to the payment of legal financial obligations~~  
27 ~~either is not subject to supervision by the department or does not~~  
28 ~~complete the requirements while under supervision of the department,~~  
29 ~~it is the offender's responsibility to provide the court with~~  
30 ~~verification of the completion of the sentence conditions other than~~  
31 ~~the payment of legal financial obligations. When the offender~~  
32 ~~satisfies all legal financial obligations under the sentence, the~~  
33 ~~county clerk shall notify the sentencing court that the legal~~  
34 ~~financial obligations have been satisfied. When the court has~~  
35 ~~received both notification from the clerk and adequate verification~~  
36 ~~from the offender that the sentence requirements have been completed,~~  
37 ~~the court shall discharge the offender and provide the offender~~  
38 ~~with))~~

39        (3) In the absence of a certificate of discharge issued under  
40 subsection (1) or (2) of this section, the offender may file a motion

1 with the sentencing court for a certificate of discharge. The  
2 sentencing court shall issue a certificate of discharge upon  
3 verification of completion of all sentencing conditions, including  
4 any and all legal financial obligations. A certificate of discharge  
5 issued under this subsection (3) is effective on the date the  
6 offender completed all conditions of his or her sentence.

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

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

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

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

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

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

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

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

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

34       ~~((3))~~ (7) Every signed certificate and order of discharge shall  
35 be filed with the county clerk of the sentencing county. In addition,  
36 the court shall send to the department a copy of every signed  
37 certificate and order of discharge for offender sentences under the  
38 authority of the department. The county clerk shall enter into a  
39 database maintained by the administrator for the courts the names of

1 all felons who have been issued certificates of discharge, the date  
2 of discharge, and the date of conviction and offense.

3 ~~((4))~~ (8) An offender who is not convicted of a violent offense  
4 or a sex offense and is sentenced to a term involving community  
5 supervision may be considered for a discharge of sentence by the  
6 sentencing court prior to the completion of community supervision,  
7 provided that the offender has completed at least one-half of the  
8 term of community supervision and has met all other sentence  
9 requirements.

10 ~~((5))~~ (9) The discharge shall have the effect of restoring all  
11 civil rights not already restored by RCW 29A.08.520, and the  
12 certificate of discharge shall so state. Nothing in this section  
13 prohibits the use of an offender's prior record for purposes of  
14 determining sentences for later offenses as provided in this chapter.  
15 Nothing in this section affects or prevents use of the offender's  
16 prior conviction in a later criminal prosecution either as an element  
17 of an offense or for impeachment purposes. A certificate of discharge  
18 is not based on a finding of rehabilitation.

19 ~~((6))~~ (10) Unless otherwise ordered by the sentencing court, a  
20 certificate of discharge shall not terminate the offender's  
21 obligation to comply with an order that excludes or prohibits the  
22 offender from having contact with a specified person or coming within  
23 a set distance of any specified location that was contained in the  
24 judgment and sentence. An offender who violates such an order after a  
25 certificate of discharge has been issued shall be subject to  
26 prosecution according to the chapter under which the order was  
27 originally issued.

28 ~~((7))~~ (11) Upon release from custody, the offender may apply to  
29 the department for counseling and help in adjusting to the community.  
30 This voluntary help may be provided for up to one year following the  
31 release from custody.

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

34 (1) Every offender who has been discharged under RCW 9.94A.637  
35 may apply to the sentencing court for a vacation of the offender's  
36 record of conviction. If the court finds the offender meets the tests  
37 prescribed in subsection (2) of this section, the court may clear the  
38 record of conviction by: (a) Permitting the offender to withdraw the  
39 offender's plea of guilty and to enter a plea of not guilty; or (b)

1 if the offender has been convicted after a plea of not guilty, by the  
2 court setting aside the verdict of guilty; and (c) by the court  
3 dismissing the information or indictment against the offender.

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

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

7 (b) The offense was:

8 (i) A class A felony or an attempt, solicitation, or conspiracy  
9 to commit a class A felony;

10 (ii) A serious violent offense as defined in RCW 9.94A.030;

11 (iii) A sex offense as defined in RCW 9.94A.030;

12 (iv) Arson in the second degree (RCW 9A.48.030);

13 (v) Assault in the third degree against a law enforcement officer  
14 or employee of a law enforcement agency (RCW 9A.36.031(1)(g)) or  
15 against a peace officer with a projectile stun gun (RCW  
16 9A.36.031(1)(h));

17 (vi) Assault in the fourth degree with domestic violence (RCW  
18 9A.36.041(3));

19 (vii) Assault of a child in the second degree (RCW 9A.36.130);

20 (viii) Assault of a child in the third degree (RCW 9A.36.140);

21 (ix) Criminal mistreatment in the first degree (RCW 9A.42.020);

22 (x) Criminal mistreatment in the second degree (RCW 9A.42.030);

23 (xi) Custodial assault (RCW 9A.36.100);

24 (xii) Domestic violence court order violation (RCW 26.50.110 (4)  
25 or (5));

26 (xiii) Drive by shooting (RCW 9A.36.045);

27 (xiv) Extortion in the first degree (RCW 9A.56.120);

28 (xv) Extortion in the second degree (RCW 9A.56.130);

29 (xvi) Identity theft in the first degree (RCW 9.35.020(2));

30 (xvii) Identity theft in the second degree (RCW 9.35.020(3));

31 (xviii) Intimidating a juror (RCW 9A.72.130);

32 (xix) Intimidating a public servant (RCW 9A.76.180);

33 (xx) Intimidating a witness (RCW 9A.72.110);

34 (xxi) Kidnapping in the second degree (RCW 9A.40.030(3)(a));

35 (xxii) Manslaughter in the second degree (RCW 9A.32.070);

36 (xxiii) Promoting a suicide attempt (RCW 9A.36.060);

37 (xxiv) Promoting prostitution in the first degree (RCW  
38 9A.88.070);

39 (xxv) Stalking (RCW 9A.46.110);

1        (xxvi) Theft from a vulnerable adult in the first degree (RCW  
2 9A.56.400(1));

3        (xxvii) Theft from a vulnerable adult in the second degree (RCW  
4 9A.56.400(2));

5        (xxviii) Threats to bomb, if against a person (RCW 9.61.160); or  
6 (xxix) Vehicular assault (RCW 46.61.522).

7        ~~(c) ((the offense was a crime against persons as defined in RCW~~  
8 ~~43.43.830;~~

9        ~~(d))~~ The offender has been convicted of a new crime in this  
10 state, another state, or federal court since the date of the  
11 offender's discharge under RCW 9.94A.637;

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

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

23        ~~((g))~~ (f) The offense was a class C felony described in RCW  
24 46.61.502(6) or 46.61.504(6).

25        (3) Once the court vacates a record of conviction under  
26 subsection (1) of this section, the fact that the offender has been  
27 convicted of the offense shall not be included in the offender's  
28 criminal history for purposes of determining a sentence in any  
29 subsequent conviction, and the offender shall be released from all  
30 penalties and disabilities resulting from the offense. For all  
31 purposes, including responding to questions on employment  
32 applications, an offender whose conviction has been vacated may state  
33 that the offender has never been convicted of that crime. A  
34 conviction that has been vacated under this section may not be  
35 disseminated or disclosed by the state patrol or local law  
36 enforcement agency to any person, except other criminal justice  
37 enforcement agencies. Nothing in this section affects or prevents the  
38 use of an offender's prior conviction in a later criminal  
39 prosecution.

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

3       (1) Every person convicted of a misdemeanor or gross misdemeanor  
4 offense who has completed all of the terms of the sentence for the  
5 misdemeanor or gross misdemeanor offense may apply to the sentencing  
6 court for a vacation of the applicant's record of conviction for the  
7 offense. If the court finds the applicant meets the tests prescribed  
8 in subsection (2) of this section, the court may in its discretion  
9 vacate the record of conviction by: (a)(i) Permitting the applicant  
10 to 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  
12 not guilty, the court setting aside the verdict of guilty; and (b)  
13 the court dismissing the information, indictment, complaint, or  
14 citation against the applicant and vacating the judgment and  
15 sentence.

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

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

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

23       (c) The offense was a violation of RCW 46.61.502 (driving while  
24 under the influence), 46.61.504 (actual physical control while under  
25 the influence), 9.91.020 (operating a railroad, etc. while  
26 intoxicated), or the offense is considered a "prior offense" under  
27 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug  
28 violation within ten years of the date of arrest for the prior  
29 offense or less than ten years has elapsed since the date of the  
30 arrest for the prior offense;

31       (d) The offense was any misdemeanor or gross misdemeanor  
32 violation, including attempt, of chapter 9.68 RCW (obscenity and  
33 pornography), chapter 9.68A RCW (sexual exploitation of children), or  
34 chapter 9A.44 RCW (sex offenses) other than a conviction for failure  
35 to register under RCW 9A.44.132;

36       (e) The applicant was convicted of a misdemeanor or gross  
37 misdemeanor offense as defined in RCW 10.99.020, or the court  
38 determines after a review of the court file that the offense was  
39 committed by one family member or household member against another,  
40 or the court, after considering the damage to person or property that



1 resulted in the conviction, any prior convictions for crimes defined  
2 in RCW 10.99.020, or for comparable offenses in another state or in  
3 federal court, and the totality of the records under review by the  
4 court regarding the conviction being considered for vacation,  
5 determines that the offense involved domestic violence, and any one  
6 of the following factors exist:

7 (i) The applicant has not provided written notification of the  
8 vacation petition to the prosecuting attorney's office that  
9 prosecuted the offense for which vacation is sought, or has not  
10 provided that notification to the court;

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

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

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

24 (f) For any offense other than those described in (e) of this  
25 subsection, less than three years have passed since the person  
26 completed the terms of the sentence, including any financial  
27 obligations;

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

31 (~~(The applicant has ever had the record of another conviction~~  
32 ~~vacated; or~~

33 ~~(i))~~) The applicant is currently restrained(~~(, or has been~~  
34 ~~restrained within five years prior to the vacation application,)) by  
35 a domestic violence protection order, a no-contact order, an  
36 antiharassment order, or a civil restraining order which restrains  
37 one party from contacting the other party or was previously  
38 restrained by such an order and was found to have committed one or  
39 more violations of the order in the five years prior to the vacation  
40 application.~~

1 (3) Subject to RCW 9.96.070, every person convicted of  
2 prostitution under RCW 9A.88.030 who committed the offense as a  
3 result of being a victim of trafficking, RCW 9A.40.100, promoting  
4 prostitution in the first degree, RCW 9A.88.070, promoting commercial  
5 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons  
6 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.  
7 7101 et seq. may apply to the sentencing court for vacation of the  
8 applicant's record of conviction for the prostitution offense. An  
9 applicant may not have the record of conviction for prostitution  
10 vacated if any one of the following is present:

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

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

25 (4) Every person convicted prior to January 1, 1975, of violating  
26 any statute or rule regarding the regulation of fishing activities,  
27 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,  
28 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240  
29 who claimed to be exercising a treaty Indian fishing right, may apply  
30 to the sentencing court for vacation of the applicant's record of the  
31 misdemeanor, gross misdemeanor, or felony conviction for the offense.  
32 If the person is deceased, a member of the person's family or an  
33 official representative of the tribe of which the person was a member  
34 may apply to the court on behalf of the deceased person.  
35 Notwithstanding the requirements of RCW 9.94A.640, the court shall  
36 vacate the record of conviction if:

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

39 (b) The state has been enjoined from taking enforcement action of  
40 the statute or rule to the extent that it interferes with a treaty

1 Indian fishing right as determined under *United States v. Washington*,  
2 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
3 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
4 any other state supreme court or federal court decision.

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

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

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

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

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

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