

**SB 5605** - H COMM AMD  
By Committee on Appropriations

**ADOPTED 04/16/2019**

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

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

5 ~~(1) ((Every person convicted of a misdemeanor or gross~~  
6 ~~misdemeanor offense who has completed all of the terms of the~~  
7 ~~sentence for the misdemeanor or gross misdemeanor offense 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 may~~  
11 ~~in its discretion vacate the record of conviction))~~ When vacating a  
12 conviction under this section, the court effectuates the vacation by:

13 (a)(i) Permitting the applicant to withdraw the applicant's plea of  
14 guilty and to enter a plea of not guilty; or (ii) if the applicant  
15 has been convicted after a plea of not guilty, the court setting  
16 aside the verdict of guilty; and (b) the court dismissing the  
17 information, indictment, complaint, or citation against the applicant  
18 and vacating the judgment and sentence.

19 (2) 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 requirements of  
24 this subsection, the court may in its discretion vacate the record of  
25 conviction. Except as provided in subsections (3), (4), and (5) of  
26 this section, an applicant may not have the record of conviction for  
27 a misdemeanor or gross misdemeanor offense vacated if any one of the  
28 following is present:

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

31 (b) The offense was a violent offense as defined in RCW 9.94A.030  
32 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 or less than ten years has elapsed since the date of the  
8 arrest for the prior offense;

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

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

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

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

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

37 (iv) Less than five years have elapsed since the person completed  
38 the terms of the original conditions of the sentence, including any  
39 financial obligations and successful completion of any treatment  
40 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) 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. The limitation in this subsection (3)(b) does  
30 not apply to convictions where the offender proves by a preponderance  
31 of the evidence that he or she committed the crime as a result of  
32 being a victim of trafficking, RCW 9A.40.100, promoting prostitution  
33 in the first degree, RCW 9A.88.070, promoting commercial sexual abuse  
34 of a minor, RCW 9.68A.101, or trafficking in persons under the  
35 trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et  
36 seq., according to the requirements provided in RCW 9.96.070 for each  
37 respective 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) Every person convicted of a misdemeanor marijuana offense,  
19 who was twenty-one years of age or older at the time of the offense,  
20 may apply to the sentencing court for a vacation of the applicant's  
21 record of conviction for the offense. A misdemeanor marijuana offense  
22 includes, but is not limited to: Any offense under RCW 69.50.4014,  
23 from July 1, 2004, onward, and its predecessor statutes, including  
24 RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW  
25 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense  
26 under an equivalent municipal ordinance. The requirements and  
27 restrictions in subsection (2) of this section do not apply to  
28 applications under this subsection. If an applicant qualifies under  
29 this subsection, the court shall vacate the record of conviction.

30 (6)(a) Once the court vacates a record of conviction under this  
31 section, the person shall be released from all penalties and  
32 disabilities resulting from the offense and the fact that the person  
33 has been convicted of the offense shall not be included in the  
34 person's criminal history for purposes of determining a sentence in  
35 any subsequent conviction. For all purposes, including responding to  
36 questions on employment or housing applications, a person whose  
37 conviction has been vacated under this section may state that he or  
38 she has never been convicted of that crime. Except as provided in (b)  
39 of this subsection, nothing in this section affects or prevents the

1 use of an offender's prior conviction in a later criminal  
2 prosecution.

3 (b) When a court vacates a record of domestic violence as defined  
4 in RCW 10.99.020 under this section, the state may not use the  
5 vacated conviction in a later criminal prosecution unless the  
6 conviction was for: (i) Violating the provisions of a restraining  
7 order, no-contact order, or protection order restraining or enjoining  
8 the person or restraining the person from going on to the grounds of  
9 or entering a residence, workplace, school, or day care, or  
10 prohibiting the person from knowingly coming within, or knowingly  
11 remaining within, a specified distance of a location (RCW 10.99.040,  
12 10.99.050, 26.09.300, 26.10.220, (~~26.26.138~~) 26.26B.050, 26.44.063,  
13 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);  
14 or (ii) stalking (RCW 9A.46.110). A vacated conviction under this  
15 section is not considered a conviction of such an offense for the  
16 purposes of 27 C.F.R. 478.11.

17 (~~(6)~~) (7) All costs incurred by the court and probation  
18 services shall be paid by the person making the motion to vacate the  
19 record unless a determination is made pursuant to chapter 10.101 RCW  
20 that the person making the motion is indigent, at the time the motion  
21 is brought.

22 (~~(7)~~) (8) The clerk of the court in which the vacation order is  
23 entered shall immediately transmit the order vacating the conviction  
24 to the Washington state patrol identification section and to the  
25 local police agency, if any, which holds criminal history information  
26 for the person who is the subject of the conviction. The Washington  
27 state patrol and any such local police agency shall immediately  
28 update their records to reflect the vacation of the conviction, and  
29 shall transmit the order vacating the conviction to the federal  
30 bureau of investigation. A conviction that has been vacated under  
31 this section may not be disseminated or disclosed by the state patrol  
32 or local law enforcement agency to any person, except other criminal  
33 justice enforcement agencies.

34 NEW SECTION. **Sec. 2.** If specific funding for the purposes of  
35 this act, referencing this act by bill or chapter number, is not  
36 provided by June 30, 2019, in the omnibus appropriations act, this  
37 act is null and void."

38 Correct the title.

EFFECT: Specifies that the underlying bill applies to misdemeanor marijuana possession offenses charged under specific predecessor statutes as well as equivalent municipal ordinances. Reorganizes subsections in current law and the underlying bill, and removes duplicative language.

Adds a null and void clause. The bill is null and void unless funded in the budget.

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