

2SHB 2793 - S COMM AMD

By Committee on Law & Justice

ADOPTED 03/06/2020

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

3 "NEW SECTION. **Sec. 1.** (1) The administrative office of the
4 courts shall conduct a study and a pilot project on streamlining the
5 vacation of criminal convictions under RCW 9.96.060 (2)(b) and (5)(a)
6 and 9.94A.640(2) through an administrative, court-driven process
7 established under section 2 of this act.

8 (2) The administrative office of the courts shall:

9 (a) Determine the types of data currently available to the
10 administrative office of the courts to assess eligibility under RCW
11 9.96.060 (2)(b) and (5)(a) and 9.94A.640(2);

12 (b) Evaluate additional types of information that should be
13 reported to judicial information systems or directly to sentencing
14 courts or the administrative office of the courts to improve the
15 reliability of the screening process;

16 (c) Propose procedures for conducting queries of available
17 records to assess eligibility, which may include, for example: (i) If
18 applicable, whether a person is currently incarcerated for a criminal
19 offense may be determined by reviewing the term of confinement
20 reflected in the judgment and sentence document for his or her most
21 recent criminal conviction; (ii) if applicable, whether a person
22 completed his or her sentencing conditions, excluding legal financial
23 obligations, and satisfied the waiting period under RCW
24 9.96.060(2)(b) (vi)(D) or (vii) or 9.94A.640(2) (e) or (f) may be
25 determined by adding the waiting period to the terms of confinement
26 and community custody reflected in the applicable judgment and
27 sentence document; (iii) if applicable, the period for which a person
28 must not have been convicted of any new criminal offense under RCW
29 9.96.060(2)(b) (viii) or 9.94A.640(2) (c) or (d) may be determined
30 based on the date of the query conducted by the administrative office
31 of the courts, rather than the date of application; and (iv) any
32 other procedures deemed necessary by the administrative office of the
33 courts;

1 (d) Assess whether any changes to laws, policies, or practices or
2 additional resources are necessary to improve the reliability of the
3 process for the pilot program and for launching a similar program
4 statewide;

5 (e) Develop an implementation plan for the pilot program under
6 section 2 of this act; and

7 (f) Make additional recommendations deemed appropriate and
8 necessary by the administrative office of the courts.

9 (3) The administrative office of the courts shall report to the
10 governor and the appropriate committees of the legislature, as
11 follows:

12 (a) A report with findings, recommendations, and an
13 implementation plan must be submitted by December 1, 2020;

14 (b) A status update on the pilot program must be submitted by
15 December 1, 2021; and

16 (c) A final report on the pilot program, including a summary of
17 data collected under section 2 of this act and other findings and
18 recommendations, must be submitted by December 1, 2022.

19 (4) When conducting the evaluation and pilot program required
20 under this section and section 2 of this act, the administrative
21 office of the courts shall consult with county clerks and court
22 administrators, judges, prosecuting attorneys, defense attorneys, the
23 department of corrections, county and city departments, national and
24 local organizations with interest or experience in vacating or
25 sealing criminal convictions, national and local organizations with
26 experience in developing automated vacating or sealing procedures in
27 other states, organizations and persons with relevant technical
28 expertise in computer and records systems, and any other entities
29 with relevant records.

30 (5) This section expires June 30, 2025.

31 NEW SECTION. **Sec. 2.** (1) Beginning July 1, 2021, through June
32 30, 2022, the administrative office of the courts shall conduct a
33 pilot program for streamlining the vacation of criminal convictions
34 under RCW 9.96.060 (2)(b) and (5)(a) and 9.94A.640(2) through an
35 administrative, court-driven process. After consulting with courts of
36 general and limited jurisdiction, the administrative office of the
37 courts shall select a county in which to conduct the pilot program.
38 The sentencing courts within the county selected for the pilot
39 program shall comply with the requirements of this section, and

1 further provide information to the administrative office of the
2 courts necessary for the reporting requirement under subsection (4)
3 of this section.

4 (2) When conducting the pilot program, the administrative office
5 of the courts shall review convictions from the participating county
6 for the purpose of determining whether those convictions should be
7 scheduled for administrative vacation hearings. If appropriate and
8 necessary for producing reliable notifications to sentencing courts
9 participating in the pilot program, the administrative office of the
10 courts may limit the screening process to certain types or classes of
11 convictions or defendants. The process must:

12 (a) Review convictions beginning at the earliest period for which
13 electronic court records are reliable, provided that the review
14 applies to convictions beginning no later than January 1, 2000;

15 (b) Rely upon records available to the administrative office of
16 the courts through judicial information systems and other agencies
17 including, but not limited to, the Washington state patrol and the
18 department of corrections;

19 (c) Determine whether a defendant is currently incarcerated for a
20 criminal offense, and whether available records indicate that he or
21 she is precluded from qualifying to vacate his or her misdemeanor
22 conviction under RCW 9.96.060 (2)(b) or (5)(a) or his or her felony
23 conviction under RCW 9.94A.640(2), which may be based on queries and
24 other procedures developed by the administrative office of the courts
25 including, but not limited to, those referenced in section 1(2)(c) of
26 this act;

27 (d) Notify sentencing courts to schedule an administrative
28 vacation hearing for any defendant where a review of available
29 records does not indicate that the defendant is precluded from
30 qualifying to vacate his or her conviction;

31 (e) Prioritize potentially qualifying defendants according to
32 criteria established by the administrative office of the courts so as
33 not to hinder sentencing courts with excessing notifications; and

34 (f) Review records and provide notifications on a monthly or
35 quarterly basis, as determined by the administrative office of the
36 courts.

37 (3)(a) Beginning July 1, 2021, through June 30, 2022, sentencing
38 courts within the county selected for the pilot program under this
39 section shall conduct regularly scheduled administrative vacation
40 hearings.

1 (b) When a participating sentencing court receives notice from
2 the administrative office of the courts under subsection (2) of this
3 section regarding a defendant potentially qualifying to vacate his or
4 her conviction, the court shall set an administrative vacation
5 hearing. At an administrative vacation hearing, the court shall
6 determine whether to vacate the conviction based on the requirements
7 for the particular offense under RCW 9.96.060 (2)(b) or (5)(a) or
8 9.94A.640(2). The defendant is presumed to meet the requirements and
9 the court shall vacate the conviction, unless: Court records indicate
10 that the defendant does not meet the requirements; or the prosecutor
11 objects on the basis that the defendant does not meet the
12 requirements or that the defendant is currently incarcerated for a
13 criminal offense, provided that such objection is made with
14 sufficient particularity and supporting information. If the court
15 determines the defendant is not currently eligible, but is likely to
16 become eligible in the future, the court may set a subsequent
17 administrative vacation hearing at an appropriate date determined by
18 the court. Otherwise, the court may decline to vacate the conviction
19 without setting a subsequent hearing.

20 (c) For the purposes of conducting proceedings under this
21 section, the requirements under RCW 9.96.060 (2)(b) and (5)(a) apply
22 to misdemeanors and the requirements under RCW 9.94A.640(2) apply to
23 felonies, except a defendant is not required to: File a petition or
24 application; provide notice to relevant parties; or appear at an
25 administrative hearing. If the court vacates a conviction under this
26 section, it shall achieve the vacation through the procedure provided
27 in RCW 9.96.060(1). A vacation under this section is processed in the
28 same manner and has the same effect as provided under RCW 9.96.060
29 (6) and (7) for a misdemeanor or RCW 9.94A.640(3) for a felony.
30 Regardless of whether a hearing under this section has previously
31 occurred or is scheduled at a future date, nothing in this section
32 prohibits a defendant from applying to the court to: Vacate a
33 conviction under RCW 9.96.060 or 9.94A.640; or seal his or her
34 conviction or vacation records under court rules.

35 (4) The administrative office of the courts shall collect the
36 following information with respect to convictions where notifications
37 were sent to sentencing courts through the pilot program, including:
38 The number of notifications sent to sentencing courts; the number of
39 administrative hearings held; the number of vacations granted at
40 administrative hearings; the number of convictions where the court

1 set a future administrative hearing based on predicted eligibility;
2 the number of convictions where the court declined to vacate the
3 convictions without setting a future administrative hearing; and
4 other data deemed relevant by the administrative office of the
5 courts. The administrative office of the courts shall include a
6 summary of the data, including by type of court and for the entire
7 pilot program, in its reports required under section 1(3) (b) and (c)
8 of this act.

9 (5) This section expires June 30, 2025.

10 **Sec. 3.** RCW 9.96.060 and 2019 c 400 s 1, 2019 c 331 s 4, and
11 2019 c 46 s 5010 are each reenacted and amended to read as follows:

12 (1) When vacating a conviction under this section, the court
13 effectuates the vacation by: (a)(i) Permitting the applicant to
14 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.

20 (2) (a) Every person convicted of a misdemeanor or gross
21 misdemeanor offense may apply to the sentencing court for a vacation
22 of the applicant's record of conviction for the offense. If the court
23 finds the applicant meets the requirements of (b) of this subsection,
24 the court may in its discretion vacate the record of conviction.

25 (b) Except as provided in subsections (3), (4), and (5) of this
26 section, ~~((an applicant))~~ a defendant may not have the record of
27 conviction for a misdemeanor or gross misdemeanor offense vacated if
28 any one of the following is present:

29 ~~((a))~~ (i) The ~~((applicant))~~ defendant has not completed all of
30 the terms of the sentence for the offense;

31 ~~((b))~~ (ii) There are any criminal charges against the
32 ~~((applicant))~~ defendant pending in any court of this state or another
33 state, or in any federal or tribal court, at the time of application;

34 ~~((c))~~ (iii) The offense was a violent offense as defined in RCW
35 9.94A.030 or an attempt to commit a violent offense;

36 ~~((d))~~ (iv) The offense was a violation of RCW 46.61.502
37 (driving while under the influence), 46.61.504 (actual physical
38 control while under the influence), 9.91.020 (operating a railroad,
39 etc. while intoxicated), or the offense is considered a "prior

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

5 (~~(e)~~) (v) The offense was any misdemeanor or gross misdemeanor
6 violation, including attempt, of chapter 9.68 RCW (obscenity and
7 pornography), chapter 9.68A RCW (sexual exploitation of children), or
8 chapter 9A.44 RCW (sex offenses), except for failure to register as a
9 sex offender under RCW 9A.44.132;

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

21 (~~(i)~~—The ~~(applicant)~~) (A) If the defendant is requesting a
22 vacation through an application, the defendant has not provided
23 written notification of the vacation petition to the prosecuting
24 attorney's office that prosecuted the offense for which vacation is
25 sought, or has not provided that notification to the court;

26 (~~(ii)~~) (B) The (~~(applicant)~~) defendant has two or more domestic
27 violence convictions stemming from different incidents. For purposes
28 of this subsection, however, if the current application is for more
29 than one conviction that arose out of a single incident, none of
30 those convictions counts as a previous conviction;

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

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

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

5 ~~((h))~~ (viii) The offender has been convicted of a new crime in
6 this state, another state, or federal or tribal court in the three
7 years prior to the vacation application; or

8 ~~((i))~~ (ix) The ~~((applicant))~~ defendant is currently restrained
9 by a domestic violence protection order, a no-contact order, an
10 antiharassment order, or a civil restraining order which restrains
11 one party from contacting the other party or was previously
12 restrained by such an order and was found to have committed one or
13 more violations of the order in the five years prior to the vacation
14 application.

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

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

28 (b) The offender has been convicted of another crime, except
29 prostitution, in this state, another state, or federal court since
30 the date of conviction. The limitation in this subsection (3)(b) does
31 not apply to convictions where the offender proves by a preponderance
32 of the evidence that he or she committed the crime as a result of
33 being a victim of trafficking, RCW 9A.40.100, promoting prostitution
34 in the first degree, RCW 9A.88.070, promoting commercial sexual abuse
35 of a minor, RCW 9.68A.101, or trafficking in persons under the
36 trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et
37 seq., according to the requirements provided in RCW 9.96.070 for each
38 respective conviction.

39 (4) Every person convicted prior to January 1, 1975, of violating
40 any statute or rule regarding the regulation of fishing activities,

1 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
2 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
3 who claimed to be exercising a treaty Indian fishing right, may apply
4 to the sentencing court for vacation of the applicant's record of the
5 misdemeanor, gross misdemeanor, or felony conviction for the offense.
6 If the person is deceased, a member of the person's family or an
7 official representative of the tribe of which the person was a member
8 may apply to the court on behalf of the deceased person.
9 Notwithstanding the requirements of RCW 9.94A.640, the court shall
10 vacate the record of conviction if:

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

13 (b) The state has been enjoined from taking enforcement action of
14 the statute or rule to the extent that it interferes with a treaty
15 Indian fishing right as determined under *United States v. Washington*,
16 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
17 899 (D. Oregon 1969), and any posttrial orders of those courts, or
18 any other state supreme court or federal court decision.

19 (5) (a) Every person convicted of a misdemeanor marijuana offense,
20 who was twenty-one years of age or older at the time of the offense,
21 ~~((may apply to the sentencing court for a vacation of the~~
22 ~~applicant's))~~ qualifies to have his or her record of conviction for
23 the offense vacated by the sentencing court. A misdemeanor marijuana
24 offense includes, but is not limited to: Any offense under RCW
25 69.50.4014, from July 1, 2004, onward, and its predecessor statutes,
26 including RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and
27 RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and any
28 offense under an equivalent municipal ordinance.

29 (b) If ~~((an applicant qualifies))~~ a qualifying defendant applies
30 to the sentencing court under this subsection, the court shall vacate
31 the record of conviction.

32 (6) (a) Except as provided in (c) of this subsection, once the
33 court vacates a record of conviction under this section, the person
34 shall be released from all penalties and disabilities resulting from
35 the offense and the fact that the person has been convicted of the
36 offense shall not be included in the person's criminal history for
37 purposes of determining a sentence in any subsequent conviction. For
38 all purposes, including responding to questions on employment or
39 housing applications, a person whose conviction has been vacated
40 under this section may state that he or she has never been convicted

1 of that crime. However, nothing in this section affects the
2 requirements for restoring a right to possess a firearm under RCW
3 9.41.040. Except as provided in (b) of this subsection, nothing in
4 this section affects or prevents the use of an offender's prior
5 conviction in a later criminal prosecution.

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

20 (c) A conviction vacated on or after July 28, 2019, qualifies as
21 a prior conviction for the purpose of charging a present recidivist
22 offense as defined in RCW 9.94A.030 occurring on or after July 28,
23 2019.

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

36 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act constitute a
37 new chapter in Title 10 RCW."

ADOPTED 03/06/2020

1 On page 1, line 1 of the title, after "records;" strike the
2 remainder of the title and insert "reenacting and amending RCW
3 9.96.060; adding a new chapter to Title 10 RCW; and providing
4 expiration dates."

EFFECT: (1) Removes the statewide vacating process established in the underlying bill, and instead limits the bill to the study and pilot program administered through the Administrative Office of the Courts (AOC).

(2) Provides that the study and pilot program are for streamlining the vacation of criminal convictions through an administrative, court-driven process (rather than for automating the vacation of criminal convictions). Modifies the study required in the underlying bill by requiring the AOC to propose procedures for conducting queries of available records to assess eligibility (which may include, but is not limited to, the procedures provided in the underlying bill).

(3) Modifies the AOC screening process in the pilot program by: Allowing the AOC to limit the screening process to certain types or classes of convictions or defendants if appropriate and necessary for producing reliable notifications to participating sentencing courts; providing that the process must also rely upon records from other agencies, including, but not limited to, the Washington State Patrol and the Department of Corrections (in addition to court records available through judicial information systems); requiring the process to determine eligibility based on queries and other procedures developed by the AOC.

(4) Modifies the court process for vacating convictions through the pilot program by removing the contested hearing process, thereby providing that the court may decline to vacate a conviction after an administrative review or objection demonstrates that the defendant does not meet the requirements. Requires prosecutorial objections to be made with sufficient particularity and supporting information.

(5) Requires the AOC to consult with additional entities when conducting the study and pilot program, including national and local organizations with interest or experience in vacating or sealing criminal convictions, national and local organizations with experience in developing automated vacating or sealing procedures in other states, and organizations and persons with relevant technical expertise in computer and records systems.

(6) Reorganizes and consolidates provisions to account for the removal of the permanent statewide process and removes redundant language. Provides expiration dates for sections including the study and pilot program. Removes the short title.

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