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**SUBSTITUTE HOUSE BILL 1500**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Fitzgibbon, Stanford, Valdez, Frame, Appleton, Senn, Tarleton, Ormsby, Kloba, Walen, Davis, and Macri)

READ FIRST TIME 02/18/19.

1 AN ACT Relating to misdemeanor marijuana offense convictions;  
2 reenacting and amending RCW 9.96.060; adding a new section to chapter  
3 9.96 RCW; creating a new section; and providing an expiration date.

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

5 **Sec. 1.** RCW 9.96.060 and 2017 c 336 s 2, 2017 c 272 s 9, and  
6 2017 c 128 s 1 are each reenacted and amended to read as follows:

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

1           (2) Every person convicted of a misdemeanor or gross misdemeanor  
2 offense who has completed all of the terms of the sentence for the  
3 misdemeanor or gross misdemeanor offense may apply to the sentencing  
4 court for a vacation of the applicant's record of conviction for the  
5 offense. If the court finds the applicant meets the tests prescribed  
6 in this subsection (2), the court may in its discretion vacate the  
7 record of conviction in accordance with subsection (1) of this  
8 section. Except as provided in subsections (3), (4), and (5) of this  
9 section, an applicant may not have the record of conviction for a  
10 misdemeanor or gross misdemeanor offense vacated if any one of the  
11 following is present:

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

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

16           (c) The offense was a violation of RCW 46.61.502 (driving while  
17 under the influence), 46.61.504 (actual physical control while under  
18 the influence), 9.91.020 (operating a railroad, etc. while  
19 intoxicated), or the offense is considered a "prior offense" under  
20 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug  
21 violation within ten years of the date of arrest for the prior  
22 offense or less than ten years has elapsed since the date of the  
23 arrest for the prior offense;

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

28           (e) The applicant was convicted of a misdemeanor or gross  
29 misdemeanor offense as defined in RCW 10.99.020, or the court  
30 determines after a review of the court file that the offense was  
31 committed by one family member or household member against another,  
32 or the court, after considering the damage to person or property that  
33 resulted in the conviction, any prior convictions for crimes defined  
34 in RCW 10.99.020, or for comparable offenses in another state or in  
35 federal court, and the totality of the records under review by the  
36 court regarding the conviction being considered for vacation,  
37 determines that the offense involved domestic violence, and any one  
38 of the following factors exist:

39           (i) The applicant has not provided written notification of the  
40 vacation petition to the prosecuting attorney's office that

1 prosecuted the offense for which vacation is sought, or has not  
2 provided that notification to the court;

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

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

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

16 (f) For any offense other than those described in (e) of this  
17 subsection, less than three years have passed since the person  
18 completed the terms of the sentence, including any financial  
19 obligations;

20 (g) The offender has been convicted of a new crime in this state,  
21 another state, or federal court since the date of conviction;

22 (h) The applicant has ever had the record of another conviction  
23 vacated; or

24 (i) The applicant is currently restrained, or has been restrained  
25 within five years prior to the vacation application, by a domestic  
26 violence protection order, a no-contact order, an antiharassment  
27 order, or a civil restraining order which restrains one party from  
28 contacting the other party.

29 (3) Subject to RCW 9.96.070, every person convicted of  
30 prostitution under RCW 9A.88.030 who committed the offense as a  
31 result of being a victim of trafficking, RCW 9A.40.100, promoting  
32 prostitution in the first degree, RCW 9A.88.070, promoting commercial  
33 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons  
34 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.  
35 7101 et seq. may apply to the sentencing court for vacation of the  
36 applicant's record of conviction for the prostitution offense. An  
37 applicant may not have the record of conviction for prostitution  
38 vacated if any one of the following is present:

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

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

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

29 (b) The state has been enjoined from taking enforcement action of  
30 the statute or rule to the extent that it interferes with a treaty  
31 Indian fishing right as determined under *United States v. Washington*,  
32 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
33 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
34 any other state supreme court or federal court decision.

35 (5) Every person convicted of a misdemeanor marijuana possession  
36 offense who was twenty-one years of age or older at the time of the  
37 offense may apply to the sentencing court for a vacation of the  
38 applicant's record of conviction for the offense. A misdemeanor  
39 marijuana possession offense includes, but is not limited to, an  
40 offense under RCW 69.50.4014, from July 1, 2004, onward, and its

1 predecessor statutes, including RCW 69.50.401(e), from March 21,  
2 1979, to July 1, 2004, and RCW 69.50.401(d), from May 21, 1971, to  
3 March 21, 1979, and any offense under an equivalent municipal  
4 ordinance.

5 The restrictions in subsection (2) of this section do not apply  
6 to applications under this subsection. Upon receipt of a qualifying  
7 application, the court shall vacate the record of conviction in  
8 accordance with subsection (1) of this section.

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

21 (b) When a court vacates a record of domestic violence as defined  
22 in RCW 10.99.020 under this section, the state may not use the  
23 vacated conviction in a later criminal prosecution unless the  
24 conviction was for: (i) Violating the provisions of a restraining  
25 order, no-contact order, or protection order restraining or enjoining  
26 the person or restraining the person from going on to the grounds of  
27 or entering a residence, workplace, school, or day care, or  
28 prohibiting the person from knowingly coming within, or knowingly  
29 remaining within, a specified distance of a location (RCW 10.99.040,  
30 10.99.050, 26.09.300, 26.10.220, (~~26.26.138~~) 26.26B.050, 26.44.063,  
31 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);  
32 or (ii) stalking (RCW 9A.46.110). A vacated conviction under this  
33 section is not considered a conviction of such an offense for the  
34 purposes of 27 C.F.R. 478.11.

35 (~~(6)~~) (7) Except as provided in subsection (5) of this section,  
36 all costs incurred by the court and probation services shall be paid  
37 by the person making the motion to vacate the record unless a  
38 determination is made pursuant to chapter 10.101 RCW that the person  
39 making the motion is indigent, at the time the motion is brought.

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

13       NEW SECTION.   **Sec. 2.**   (1) By January 1, 2020, the administrative  
14 office of the courts shall develop a single master pattern form for  
15 applications under RCW 9.96.060(5).

16       (2) This section expires January 1, 2021.

17       NEW SECTION.   **Sec. 3.**   A new section is added to chapter 9.96 RCW  
18 to read as follows:

19       (1) On or before January 1, 2020, county and city prosecuting  
20 attorneys shall file motions with applicable sentencing courts to  
21 dismiss and vacate all misdemeanor marijuana possession convictions  
22 occurring in their respective jurisdictions from January 1, 1998,  
23 through December 5, 2012, where defendants were age twenty-one years  
24 or older at the time of the offense. The restrictions under RCW  
25 9.96.060 do not apply to motions filed under this section. A motion  
26 under this section may be filed ex parte and may include multiple  
27 defendants.

28       (2) Upon a motion of a prosecuting attorney under subsection (1)  
29 of this section, the court shall set aside each guilty plea or  
30 verdict, dismiss the information, indictment, complaint, or citation,  
31 and vacate the judgment and sentence. The effect of a vacation under  
32 this section must be the same as provided under RCW 9.96.060 (6) and  
33 (8).

34       (3) Nothing in this section prohibits an applicant from applying  
35 to vacate a conviction under RCW 9.96.060.

36       (4) For the purposes of this section, "misdemeanor marijuana  
37 possession offense" includes, but is not limited to, an offense under

1 RCW 69.50.4014 and its predecessor statute, RCW 69.50.401(e), and any  
2 offense under an equivalent municipal ordinance.

--- **END** ---