
SECOND SUBSTITUTE HOUSE BILL 2793

State of Washington

66th Legislature

2020 Regular Session

By House Appropriations (originally sponsored by Representatives Hansen and Irwin)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to vacating criminal records; reenacting and
2 amending RCW 9.96.060; adding a new chapter to Title 10 RCW; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) Except as provided in section 4(2) of
6 this act, beginning July 1, 2022, the administrative office of the
7 courts shall develop an automated process by which criminal
8 convictions are reviewed to determine whether those convictions
9 should be scheduled for administrative vacation hearings under
10 section 2 of this act. The process must:

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

14 (b) Rely upon records available to the administrative office of
15 the courts through judicial information systems;

16 (c) Determine whether a defendant is currently incarcerated for a
17 criminal offense, and whether available records indicate that he or
18 she is precluded from qualifying to vacate his or her misdemeanor
19 conviction under RCW 9.96.060 (2)(b) or (5)(a) or his or her felony
20 conviction RCW 9.94A.640(2), provided that:

1 (i) If applicable, whether a person is currently incarcerated for
2 a criminal offense is determined by reviewing the term of confinement
3 reflected in the judgment and sentence document for his or her most
4 recent criminal conviction;

5 (ii) If applicable, whether a person completed his or her
6 sentencing conditions, excluding legal financial obligations, and
7 satisfied the waiting period under RCW 9.96.060(2)(b) (vi)(D) or
8 (vii) or 9.94A.640(2) (e) or (f) is determined by adding the waiting
9 period to the terms of confinement and community custody reflected in
10 the applicable judgment and sentence document; and

11 (iii) If applicable, the period for which a person must not have
12 been convicted of any new criminal offense under RCW
13 9.96.060(2)(b)(viii) or 9.94A.640(2) (c) or (d) is determined based
14 on the date of the query conducted by the administrative office of
15 the courts, rather than the date of application;

16 (d) Notify sentencing courts to schedule an administrative
17 vacation hearing for any defendant where a review of available court
18 records does not indicate that the defendant is precluded from
19 qualifying to vacate his or her conviction; and

20 (e) Review records and provide notifications on a monthly or
21 quarterly basis, as determined by the administrative office of the
22 courts.

23 (2) The administrative office of the courts shall develop a
24 process by which a person seeking to vacate his or her conviction may
25 submit an inquiry with supporting information and documentation to
26 assist or otherwise expedite the review under subsection (1) of this
27 section.

28 NEW SECTION. **Sec. 2.** (1) When a sentencing court receives
29 notice from the administrative office of the courts under section 1
30 of this act regarding a defendant potentially qualifying to vacate
31 his or her conviction, the court shall set an administrative vacation
32 hearing.

33 For the purposes of conducting proceedings under this section,
34 the requirements under RCW 9.96.060 (2)(b) and (5)(a) apply to
35 misdemeanors and the requirements under RCW 9.94A.640(2) apply to
36 felonies, except a defendant is not required to: File a petition or
37 application; provide notice to relevant parties; or appear at an
38 administrative or contested hearing.

1 (2) At an administrative vacation hearing, the court shall
2 determine whether to vacate the conviction based on the requirements
3 for the particular offense under RCW 9.96.060 (2)(b) or (5)(a) or
4 9.94A.640(2). The defendant is presumed to meet the requirements and
5 the court shall vacate the conviction, unless court records indicate
6 that the defendant does not meet the requirements or unless the
7 prosecutor objects on the basis that the defendant does not meet the
8 requirements or that the defendant is currently incarcerated for a
9 criminal offense, in which case the court shall set a contested
10 hearing to be conducted on the record. The contested hearing must be
11 set no sooner than eighteen days after notice of the contested
12 hearing has been provided to the defendant.

13 (3) At a contested hearing, the court shall vacate the record,
14 unless the court determines the defendant does not meet the
15 requirements under RCW 9.96.060 (2)(b) or (5)(a) or 9.94A.640(2) or
16 determines that he or she is currently incarcerated for a criminal
17 offense. If the court determines the defendant is not currently
18 eligible, but is likely to become eligible in the future, the court
19 may set a subsequent administrative vacation hearing at an
20 appropriate date determined by the court.

21 (4)(a) If the court vacates a conviction under this section, it
22 shall achieve the vacation by: (i) Withdrawing the plea of guilty and
23 entering a plea of not guilty, or if the defendant was convicted
24 after a plea of not guilty, setting aside the verdict of guilty; and
25 (ii) dismissing the information or indictment against the defendant
26 and vacating the judgment and sentence.

27 (b) If the court vacates a conviction under this section, it is
28 processed in the same manner and has the same effect as provided
29 under RCW 9.96.060 (6) and (7) for a misdemeanor or RCW 9.94A.640(3)
30 for a felony.

31 (5) Regardless of whether a hearing under this section has
32 previously occurred or is scheduled at a future date, nothing in this
33 section prohibits a defendant from applying to the court to: Vacate a
34 conviction under RCW 9.96.060 or 9.94A.640; or seal his or her
35 conviction or vacation records under court rules.

36 (6) Beginning July 1, 2022, sentencing courts shall conduct
37 regularly scheduled vacation hearings to carry out the requirements
38 of this section. However, sentencing courts within the county
39 selected for the pilot program in section 4 of this act must begin
40 conducting scheduled vacation hearings by July 1, 2021.

1 NEW SECTION. **Sec. 3.** (1) Beginning July 1, 2022, the
2 administrative office of the courts shall regularly collect and
3 report the following information with respect to convictions where
4 notifications were sent to sentencing courts under section 1 of this
5 act:

6 (a) The number of convictions where notifications were sent;

7 (b) The number of convictions where the sentencing court
8 scheduled an administrative hearing within ninety days of receiving
9 the notification;

10 (c) The number of convictions where the court vacated the
11 conviction at an administrative hearing;

12 (d) The number of convictions where the court set a contested
13 hearing;

14 (e) The number of convictions where the court vacated the
15 conviction at a contested hearing;

16 (f) The number of convictions where the court denied vacation of
17 the conviction at a contested hearing; and

18 (g) Other data deemed relevant by the administrative office of
19 the courts.

20 (2) The requirement to regularly report information under this
21 section may be satisfied by: Including the information in publicly
22 available caseload reports; or submitting a quarterly or annual
23 report to the governor and appropriate committees of the legislature.

24 NEW SECTION. **Sec. 4.** (1)(a) The administrative office of the
25 courts shall evaluate:

26 (i) The requirements of sections 1 and 2 of this act and
27 determine the types of data currently available to assess eligibility
28 under RCW 9.96.060 (2)(b) and (5)(a) and 9.94A.640(2);

29 (ii) Any additional types of information that should be reported
30 to sentencing courts or directly to the administrative office of the
31 courts to improve the reliability of notifications provided under
32 section 1 of this act;

33 (iii) Any additional types of information that should be reported
34 through judicial information systems by clerks and court
35 administrators to improve the reliability of notifications provided
36 under section 1 of this act; and

37 (iv) Any changes to laws, policies, or practices or additional
38 resources necessary to improve the reliability of notifications
39 provided under section 1 of this act.

1 (b) The administrative office of the courts, in consultation with
2 courts of general jurisdiction and limited jurisdiction, shall also
3 establish an implementation plan for complying with the requirements
4 of section 1 of this act. The implementation plan shall include the
5 pilot program required under subsection (2) of this section. The
6 implementation plan may establish criteria for prioritizing
7 potentially qualifying defendants, and may also include a phased
8 process by which to notify courts of any defendants meeting the
9 requirements for convictions occurring prior to July 1, 2022, or for
10 the county participating in the pilot program under subsection (2) of
11 this section, prior to July 1, 2021, so as to not hinder sentencing
12 courts with excessive notices and directives to schedule hearings.

13 (2) The administrative office of the courts shall, in
14 consultation with courts of general jurisdiction and limited
15 jurisdiction, conduct a pilot program, from July 1, 2021, through
16 June 30, 2022, for carrying out the requirements of section 1 of this
17 act for convictions from a single county. The administrative office
18 of the courts shall consult with courts of general and limited
19 jurisdiction and other appropriate entities to select the county for
20 the pilot program. The sentencing courts within the county selected
21 for the pilot program shall comply with the requirements of section 2
22 of this act, and further provide information to the administrative
23 office of the courts necessary for the reporting requirement under
24 subsection (4) of this section. The pilot program must be designed in
25 a manner so as to implement the same process statewide beginning July
26 1, 2022.

27 (3) In conducting the evaluation and pilot program required under
28 this section, the administrative office of the courts may consult
29 with county clerks and court administrators, judges, prosecuting
30 attorneys, defense attorneys, the department of corrections, county
31 and city departments, and any other entities with relevant records.

32 (4) The administrative office of the courts shall report to the
33 governor and the appropriate committees of the legislature, as
34 follows:

35 (a) A preliminary report with findings required under subsection
36 (1) of this section and an initial implementation plan for the pilot
37 program under subsection (2) of this section must be submitted by
38 December 1, 2020;

39 (b) A status update of the pilot program and a statewide
40 implementation plan must be submitted by December 1, 2021; and

1 (c) A final report on the pilot program, including a summary of
2 applicable data under section 3 of this act and other findings and
3 recommendations, and a status update on statewide implementation must
4 be submitted by December 1, 2022.

5 **Sec. 5.** RCW 9.96.060 and 2019 c 400 s 1, 2019 c 331 s 4, and
6 2019 c 46 s 5010 are each reenacted and amended to read as follows:

7 (1) When vacating a conviction under this section, the court
8 effectuates the vacation by: (a)(i) Permitting the applicant to
9 withdraw the applicant's plea of guilty and to enter a plea of not
10 guilty; or (ii) if the applicant has been convicted after a plea of
11 not guilty, the court setting aside the verdict of guilty; and (b)
12 the court dismissing the information, indictment, complaint, or
13 citation against the applicant and vacating the judgment and
14 sentence.

15 (2) (a) Every person convicted of a misdemeanor or gross
16 misdemeanor offense may apply to the sentencing court for a vacation
17 of the applicant's record of conviction for the offense. If the court
18 finds the applicant meets the requirements of (b) of this subsection,
19 the court may in its discretion vacate the record of conviction.

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

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

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

29 ~~((c))~~ (iii) The offense was a violent offense as defined in RCW
30 9.94A.030 or an attempt to commit a violent offense;

31 ~~((d))~~ (iv) The offense was a violation of RCW 46.61.502
32 (driving while under the influence), 46.61.504 (actual physical
33 control while under the influence), 9.91.020 (operating a railroad,
34 etc. while intoxicated), or the offense is considered a "prior
35 offense" under RCW 46.61.5055 and the ~~((applicant))~~ defendant has had
36 a subsequent alcohol or drug violation within ten years of the date
37 of arrest for the prior offense or less than ten years has elapsed
38 since the date of the arrest for the prior offense;

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

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

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

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

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

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

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

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

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

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

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

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

35 (4) Every person convicted prior to January 1, 1975, of violating
36 any statute or rule regarding the regulation of fishing activities,
37 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
38 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
39 who claimed to be exercising a treaty Indian fishing right, may apply
40 to the sentencing court for vacation of the applicant's record of the

1 misdemeanor, gross misdemeanor, or felony conviction for the offense.
2 If the person is deceased, a member of the person's family or an
3 official representative of the tribe of which the person was a member
4 may apply to the court on behalf of the deceased person.
5 Notwithstanding the requirements of RCW 9.94A.640, the court shall
6 vacate the record of conviction if:

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

9 (b) The state has been enjoined from taking enforcement action of
10 the statute or rule to the extent that it interferes with a treaty
11 Indian fishing right as determined under *United States v. Washington*,
12 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
13 899 (D. Oregon 1969), and any posttrial orders of those courts, or
14 any other state supreme court or federal court decision.

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

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

28 (6) (a) Except as provided in (c) of this subsection, once the
29 court vacates a record of conviction under this section, the person
30 shall be released from all penalties and disabilities resulting from
31 the offense and the fact that the person has been convicted of the
32 offense shall not be included in the person's criminal history for
33 purposes of determining a sentence in any subsequent conviction. For
34 all purposes, including responding to questions on employment or
35 housing applications, a person whose conviction has been vacated
36 under this section may state that he or she has never been convicted
37 of that crime. However, nothing in this section affects the
38 requirements for restoring a right to possess a firearm under RCW
39 9.41.040. Except as provided in (b) of this subsection, nothing in

1 this section affects or prevents the use of an offender's prior
2 conviction in a later criminal 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, 26.26B.050, 26.44.063, 26.44.150,
13 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii)
14 stalking (RCW 9A.46.110). A vacated conviction under this section is
15 not considered a conviction of such an offense for the purposes of 27
16 C.F.R. 478.11.

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

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

33 NEW SECTION. **Sec. 6.** This act may be known and cited as the
34 Washington clean slate act.

35 NEW SECTION. **Sec. 7.** Sections 1 through 4 of this act
36 constitute a new chapter in Title 10 RCW.

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