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HOUSE BILL 1681

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State of Washington

67th Legislature

2022 Regular Session

By Representatives Simmons, Hansen, Davis, Macri, Harris-Talley, and Frame

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1 AN ACT Relating to modifying the requirements for vacating  
2 conviction records; amending RCW 9.94A.640 and 9.96.060; reenacting  
3 and amending RCW 9.96.060; providing an effective date; and providing  
4 an expiration date.

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

6 **Sec. 1.** RCW 9.94A.640 and 2021 c 237 s 2 are each amended to  
7 read as follows:

8 (1) Every offender who has been discharged under RCW 9.94A.637  
9 may apply to the sentencing court for a vacation of the offender's  
10 record of conviction. If the court finds the offender meets the tests  
11 prescribed in subsection (2) of this section, the court (~~may~~) shall  
12 clear the record of conviction by: (a) Permitting the offender to  
13 withdraw the offender's plea of guilty and to enter a plea of not  
14 guilty; or (b) if the offender has been convicted after a plea of not  
15 guilty, by the court setting aside the verdict of guilty; and (c) by  
16 the court dismissing the information or indictment against the  
17 offender.

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

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

1 (b) The offense was a violent offense as defined in RCW 9.94A.030  
2 or crime against persons as defined in RCW 43.43.830, except the  
3 following offenses may be vacated if the conviction did not include a  
4 firearm, deadly weapon, or sexual motivation enhancement: (i) Assault  
5 in the second degree under RCW 9A.36.021; (ii) assault in the third  
6 degree under RCW 9A.36.031 when not committed against a law  
7 enforcement officer or peace officer; and (iii) robbery in the second  
8 degree under RCW 9A.56.210;

9 (c) The offense is a class B felony and the offender has been  
10 convicted of a new crime in this state, another state, or federal  
11 court in the (~~ten~~) 10 years prior to the application for vacation;

12 (d) The offense is a class C felony and the offender has been  
13 convicted of a new crime in this state, another state, or federal  
14 court in the five years prior to the application for vacation;

15 (e) The offense is a class B felony and less than (~~ten~~) 10  
16 years have passed since the later of: (i) The applicant's release  
17 from community custody; (ii) the applicant's release from full and  
18 partial confinement; or (iii) the applicant's sentencing date;

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

24 (g) The offense was a felony described in RCW 46.61.502 or  
25 46.61.504.

26 (3) If the applicant is a victim of sex trafficking,  
27 prostitution, or commercial sexual abuse of a minor; sexual assault;  
28 or domestic violence as defined in RCW 9.94A.030, the victim or the  
29 prosecutor of the county in which the victim was sentenced may apply  
30 to the sentencing court or the sentencing court's successor to vacate  
31 the victim's record of conviction for a class B or class C felony  
32 offense using the process in RCW 9.94A.648. When preparing or filing  
33 the petition, the prosecutor is not deemed to be providing legal  
34 advice or legal assistance on behalf of the victim, but is fulfilling  
35 an administrative function on behalf of the state in order to further  
36 their responsibility to seek to reform and improve the administration  
37 of criminal justice. A record of conviction vacated using the process  
38 in RCW 9.94A.648 is subject to subsection (4) of this section.

39 (4) (a) Except as otherwise provided, once the court vacates a  
40 record of conviction under subsection (1) of this section, the fact

1 that the offender has been convicted of the offense shall not be  
2 included in the offender's criminal history for purposes of  
3 determining a sentence in any subsequent conviction, and the offender  
4 shall be released from all penalties and disabilities resulting from  
5 the offense. For all purposes, including responding to questions on  
6 employment applications, an offender whose conviction has been  
7 vacated may state that the offender has never been convicted of that  
8 crime. A conviction that has been vacated under this section may not  
9 be disseminated or disclosed by the state patrol or local law  
10 enforcement agency to any person, except other criminal justice  
11 enforcement agencies. Nothing in this section affects or prevents the  
12 use of an offender's prior conviction in a later criminal  
13 prosecution, and nothing in this section affects the requirements for  
14 restoring a right to possess a firearm under RCW 9.41.040.

15 (b) A conviction vacated on or after July 28, 2019, qualifies as  
16 a prior conviction for the purpose of charging a present recidivist  
17 offense occurring on or after July 28, 2019, and may be used to  
18 establish an ongoing pattern of abuse for purposes of RCW 9.94A.535.

19 **Sec. 2.** RCW 9.96.060 and 2021 c 237 s 4 are each amended to read  
20 as follows:

21 (1) When vacating a conviction under this section, the court  
22 effectuates the vacation by: (a)(i) Permitting the applicant to  
23 withdraw the applicant's plea of guilty and to enter a plea of not  
24 guilty; or (ii) if the applicant has been convicted after a plea of  
25 not guilty, the court setting aside the verdict of guilty; and (b)  
26 the court dismissing the information, indictment, complaint, or  
27 citation against the applicant and vacating the judgment and  
28 sentence.

29 (2) Every person convicted of a misdemeanor or gross misdemeanor  
30 offense may apply to the sentencing court for a vacation of the  
31 applicant's record of conviction for the offense. If the court finds  
32 the applicant meets the requirements of this subsection, the court  
33 (~~may in its discretion~~) shall vacate the record of conviction.  
34 Except as provided in subsections (3), (4), and (5) of this section,  
35 an applicant may not have the record of conviction for a misdemeanor  
36 or gross misdemeanor offense vacated if any one of the following is  
37 present:

1 (a) The applicant has not completed all of the terms of the  
2 sentence for the offense, including satisfaction of financial  
3 obligations;

4 (b) There are any criminal charges against the applicant pending  
5 in any court of this state or another state, or in any federal or  
6 tribal court, at the time of application;

7 (c) The offense was a violent offense as defined in RCW 9.94A.030  
8 or an attempt to commit a violent offense;

9 (d) The offense was a violation of RCW 46.61.502 (driving while  
10 under the influence), 46.61.504 (actual physical control while under  
11 the influence), 9.91.020 (operating a railroad, etc. while  
12 intoxicated), or the offense is considered a "prior offense" under  
13 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug  
14 violation within ~~((ten))~~ 10 years of the date of arrest for the prior  
15 offense or less than ~~((ten))~~ 10 years has elapsed since the date of  
16 the arrest for the prior offense;

17 (e) The offense was any misdemeanor or gross misdemeanor  
18 violation, including attempt, of chapter 9.68 RCW (obscenity and  
19 pornography), chapter 9.68A RCW (sexual exploitation of children), or  
20 chapter 9A.44 RCW (sex offenses), except for failure to register as a  
21 sex offender under RCW 9A.44.132;

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

34 ~~(i) The applicant has not provided written notification of the~~  
35 ~~vacation petition to the prosecuting attorney's office that~~  
36 ~~prosecuted the offense for which vacation is sought, or has not~~  
37 ~~provided that notification to the court;~~

38 ~~(ii) The applicant has two or more domestic violence convictions~~  
39 ~~stemming from different incidents. For purposes of this subsection,~~  
40 ~~however, if the current application is for more than one conviction~~

1 ~~that arose out of a single incident, none of those convictions counts~~  
2 ~~as a previous conviction;~~

3 ~~(iii) The applicant has signed an affidavit under penalty of~~  
4 ~~perjury affirming that the applicant has not previously had a~~  
5 ~~conviction for a domestic violence offense, and a criminal history~~  
6 ~~check reveals that the applicant has had such a conviction; or~~

7 ~~(iv) Less than five years have elapsed since the person completed~~  
8 ~~the terms of the original conditions of the sentence, including any~~  
9 ~~financial obligations and successful completion of any treatment~~  
10 ~~ordered as a condition of sentencing;~~

11 ~~(g)) For any offense other than those described in ((f)) (h)~~  
12 ~~of this subsection, less than three years have passed since the~~  
13 ~~((person completed the terms of the sentence, including any financial~~  
14 ~~obligations)) later of: The applicant's release from full and partial~~  
15 ~~confinement; or the applicant's sentencing date;~~

16 ~~((h)) (g) The ((offender)) applicant has been convicted of a~~  
17 ~~new crime in this state, another state, or federal or tribal court in~~  
18 ~~the three years prior to the vacation application; or~~

19 ~~((i)) (h) The applicant was convicted of a misdemeanor or gross~~  
20 ~~misdemeanor offense as defined in RCW 10.99.020, or the court~~  
21 ~~determines after a review of the court file that the offense was~~  
22 ~~committed by one family or household member against another or by one~~  
23 ~~intimate partner against another, or the court, after considering the~~  
24 ~~damage to person or property that resulted in the conviction, any~~  
25 ~~prior convictions for crimes defined in RCW 10.99.020, or for~~  
26 ~~comparable offenses in another state or in federal court, and the~~  
27 ~~totality of the records under review by the court regarding the~~  
28 ~~conviction being considered for vacation, determines that the offense~~  
29 ~~involved domestic violence, and any one of the following factors~~  
30 ~~exist:~~

31 ~~(i) The applicant has not provided written notification of the~~  
32 ~~vacation petition to the prosecuting attorney's office that~~  
33 ~~prosecuted the offense for which vacation is sought, or has not~~  
34 ~~provided that notification to the court;~~

35 ~~(ii) The applicant has two or more domestic violence convictions~~  
36 ~~stemming from different incidents. For purposes of this subsection,~~  
37 ~~however, if the current application is for more than one conviction~~  
38 ~~that arose out of a single incident, none of those convictions count~~  
39 ~~as a previous conviction;~~

1       (iii) The applicant has signed an affidavit under penalty of  
2 perjury affirming that the applicant has not previously had a  
3 conviction for a domestic violence offense, and a criminal history  
4 check reveals that the applicant has had such a conviction;

5       (iv) Less than five years have elapsed since the later of: The  
6 applicant's release from full and partial confinement; or the  
7 applicant's sentencing date; or

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

14       (3) If the applicant is a victim of sex trafficking,  
15 prostitution, or commercial sexual abuse of a minor; sexual assault;  
16 or domestic violence as defined in RCW 9.94A.030, or the prosecutor  
17 applies on behalf of the state, the sentencing court may vacate the  
18 record of conviction if the application satisfies the requirements of  
19 RCW 9.96.080. When preparing or filing the petition, the prosecutor  
20 is not deemed to be providing legal advice or legal assistance on  
21 behalf of the victim, but is fulfilling an administrative function on  
22 behalf of the state in order to further their responsibility to seek  
23 to reform and improve the administration of criminal justice. A  
24 record of conviction vacated using the process in RCW 9.96.080 is  
25 subject to subsections (6) and (7) of this section.

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

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

1 (b) The state has been enjoined from taking enforcement action of  
2 the statute or rule to the extent that it interferes with a treaty  
3 Indian fishing right as determined under *United States v. Washington*,  
4 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
5 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
6 any other state supreme court or federal court decision.

7 (5) Every person convicted of a misdemeanor marijuana offense,  
8 who was (~~twenty-one~~) 21 years of age or older at the time of the  
9 offense, may apply to the sentencing court for a vacation of the  
10 applicant's record of conviction for the offense. A misdemeanor  
11 marijuana offense includes, but is not limited to: Any offense under  
12 RCW 69.50.4014, from July 1, 2004, onward, and its predecessor  
13 statutes, including RCW 69.50.401(e), from March 21, 1979, to July 1,  
14 2004, and RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and  
15 any offense under an equivalent municipal ordinance. If an applicant  
16 qualifies under this subsection, the court shall vacate the record of  
17 conviction.

18 (6) A person who is a family member of a homicide victim may  
19 apply to the sentencing court on the behalf of the victim for  
20 vacation of the victim's record of conviction for prostitution under  
21 RCW 9A.88.030. If an applicant qualifies under this subsection, the  
22 court shall vacate the victim's record of conviction.

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

37 (b) When a court vacates a record of domestic violence as defined  
38 in RCW 10.99.020 under this section, the state may not use the  
39 vacated conviction in a later criminal prosecution unless the  
40 conviction was for: (i) Violating the provisions of a restraining

1 order, no-contact order, or protection order restraining or enjoining  
2 the person or restraining the person from going on to the grounds of  
3 or entering a residence, workplace, school, or day care, or  
4 prohibiting the person from knowingly coming within, or knowingly  
5 remaining within, a specified distance of a location (RCW 10.99.040,  
6 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, 26.50.060,  
7 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii) stalking (RCW  
8 9A.46.110). A vacated conviction under this section is not considered  
9 a conviction of such an offense for the purposes of 27 C.F.R. 478.11.

10 (c) A conviction vacated on or after July 28, 2019, qualifies as  
11 a prior conviction for the purpose of charging a present recidivist  
12 offense as defined in RCW 9.94A.030 occurring on or after July 28,  
13 2019.

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

26 **Sec. 3.** RCW 9.96.060 and 2021 c 237 s 4 and 2021 c 215 s 105 are  
27 each reenacted and amended to read as follows:

28 (1) When vacating a conviction under this section, the court  
29 effectuates the vacation by: (a)(i) Permitting the applicant to  
30 withdraw the applicant's plea of guilty and to enter a plea of not  
31 guilty; or (ii) if the applicant has been convicted after a plea of  
32 not guilty, the court setting aside the verdict of guilty; and (b)  
33 the court dismissing the information, indictment, complaint, or  
34 citation against the applicant and vacating the judgment and  
35 sentence.

36 (2) Every person convicted of a misdemeanor or gross misdemeanor  
37 offense may apply to the sentencing court for a vacation of the  
38 applicant's record of conviction for the offense. If the court finds  
39 the applicant meets the requirements of this subsection, the court



1 (~~may in its discretion~~) shall vacate the record of conviction.  
2 Except as provided in subsections (3), (4), and (5) of this section,  
3 an applicant may not have the record of conviction for a misdemeanor  
4 or gross misdemeanor offense vacated if any one of the following is  
5 present:

6 (a) The applicant has not completed all of the terms of the  
7 sentence for the offense, including satisfaction of financial  
8 obligations;

9 (b) There are any criminal charges against the applicant pending  
10 in any court of this state or another state, or in any federal or  
11 tribal court, at the time of application;

12 (c) The offense was a violent offense as defined in RCW 9.94A.030  
13 or an attempt to commit a violent offense;

14 (d) The offense was a violation of RCW 46.61.502 (driving while  
15 under the influence), 46.61.504 (actual physical control while under  
16 the influence), 9.91.020 (operating a railroad, etc. while  
17 intoxicated), or the offense is considered a "prior offense" under  
18 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug  
19 violation within (~~ten~~) 10 years of the date of arrest for the prior  
20 offense or less than (~~ten~~) 10 years has elapsed since the date of  
21 the arrest for the prior offense;

22 (e) The offense was any misdemeanor or gross misdemeanor  
23 violation, including attempt, of chapter 9.68 RCW (obscenity and  
24 pornography), chapter 9.68A RCW (sexual exploitation of children), or  
25 chapter 9A.44 RCW (sex offenses), except for failure to register as a  
26 sex offender under RCW 9A.44.132;

27 (~~The applicant was convicted of a misdemeanor or gross~~  
28 ~~misdemeanor offense as defined in RCW 10.99.020, or the court~~  
29 ~~determines after a review of the court file that the offense was~~  
30 ~~committed by one family or household member against another or by one~~  
31 ~~intimate partner against another, or the court, after considering the~~  
32 ~~damage to person or property that resulted in the conviction, any~~  
33 ~~prior convictions for crimes defined in RCW 10.99.020, or for~~  
34 ~~comparable offenses in another state or in federal court, and the~~  
35 ~~totality of the records under review by the court regarding the~~  
36 ~~conviction being considered for vacation, determines that the offense~~  
37 ~~involved domestic violence, and any one of the following factors~~  
38 ~~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 two or more domestic violence convictions~~  
4 ~~stemming from different incidents. For purposes of this subsection,~~  
5 ~~however, if the current application is for more than one conviction~~  
6 ~~that arose out of a single incident, none of those convictions counts~~  
7 ~~as a previous 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 ~~(g))~~ For any offense other than those described in ~~((f))~~ (h)  
17 of this subsection, less than three years have passed since the  
18 ~~((person completed the terms of the sentence, including any financial~~  
19 ~~obligations))~~ later of: The applicant's release from full and partial  
20 confinement; or the applicant's sentencing date;

21 ~~((h))~~ (g) The ~~((offender))~~ applicant has been convicted of a  
22 new crime in this state, another state, or federal or tribal court in  
23 the three years prior to the vacation application; or

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

36 (i) The applicant has not provided written notification of the  
37 vacation petition to the prosecuting attorney's office that  
38 prosecuted the offense for which vacation is sought, or has not  
39 provided that notification to the court;

1       (ii) The applicant has two or more domestic violence convictions  
2 stemming from different incidents. For purposes of this subsection,  
3 however, if the current application is for more than one conviction  
4 that arose out of a single incident, none of those convictions count  
5 as a previous conviction;

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

10       (iv) Less than five years have elapsed since the later of: The  
11 applicant's release from full and partial confinement; or the  
12 applicant's sentencing date; or

13       (v) The applicant is currently restrained by a domestic violence  
14 protection order, a no-contact order, an antiharassment order, or a  
15 civil restraining order which restrains one party from contacting the  
16 other party or was previously restrained by such an order and was  
17 found to have committed one or more violations of the order in the  
18 five years prior to the vacation application.

19       (3) If the applicant is a victim of sex trafficking,  
20 prostitution, or commercial sexual abuse of a minor; sexual assault;  
21 or domestic violence as defined in RCW 9.94A.030, or the prosecutor  
22 applies on behalf of the state, the sentencing court may vacate the  
23 record of conviction if the application satisfies the requirements of  
24 RCW 9.96.080. When preparing or filing the petition, the prosecutor  
25 is not deemed to be providing legal advice or legal assistance on  
26 behalf of the victim, but is fulfilling an administrative function on  
27 behalf of the state in order to further their responsibility to seek  
28 to reform and improve the administration of criminal justice. A  
29 record of conviction vacated using the process in RCW 9.96.080 is  
30 subject to subsections (6) and (7) of this section.

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

1 Notwithstanding the requirements of RCW 9.94A.640, the court shall  
2 vacate the record of conviction if:

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

5 (b) The state has been enjoined from taking enforcement action of  
6 the statute or rule to the extent that it interferes with a treaty  
7 Indian fishing right as determined under *United States v. Washington*,  
8 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
9 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
10 any other state supreme court or federal court decision.

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

22 (6) A person who is a family member of a homicide victim may  
23 apply to the sentencing court on the behalf of the victim for  
24 vacation of the victim's record of conviction for prostitution under  
25 RCW 9A.88.030. If an applicant qualifies under this subsection, the  
26 court shall vacate the victim's record of conviction.

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

1 (b) When a court vacates a record of domestic violence as defined  
2 in RCW 10.99.020 under this section, the state may not use the  
3 vacated conviction in a later criminal prosecution unless the  
4 conviction was for: (i) Violating the provisions of a restraining  
5 order, no-contact order, or protection order restraining or enjoining  
6 the person or restraining the person from going on to the grounds of  
7 or entering a residence, workplace, school, or day care, or  
8 prohibiting the person from knowingly coming within, or knowingly  
9 remaining within, a specified distance of a location, a protected  
10 party's person, or a protected party's vehicle (RCW 10.99.040,  
11 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,  
12 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and  
13 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic  
14 violence protection order or vulnerable adult protection order  
15 entered under chapter 7.105 RCW. A vacated conviction under this  
16 section is not considered a conviction of such an offense for the  
17 purposes of 27 C.F.R. 478.11.

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

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

34 NEW SECTION. **Sec. 4.** Section 2 of this act expires July 1,  
35 2022.

1        NEW SECTION.    **Sec. 5.**    Section 3 of this act takes effect July 1,  
2    2022.

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