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**ENGROSSED SUBSTITUTE SENATE BILL 5180**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Dhingra, Das, Hunt, Llias, Lovelett, Nguyen, Pedersen, Rolfes, Saldaña, Salomon, Stanford, and Wilson, C.)

READ FIRST TIME 02/05/21.

1       AN ACT Relating to vacating certain convictions; amending RCW  
2 9.94A.640 and 9.96.060; reenacting and amending RCW 9.94A.030; adding  
3 a new section to chapter 9.94A RCW; adding a new section to chapter  
4 9.96 RCW; and repealing RCW 9.96.070.

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

6       **Sec. 1.** RCW 9.94A.030 and 2020 c 296 s 2, 2020 c 252 s 4, and  
7 2020 c 137 s 1 are each reenacted and amended to read as follows:

8       Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter.

10       (1) "Board" means the indeterminate sentence review board created  
11 under chapter 9.95 RCW.

12       (2) "Collect," or any derivative thereof, "collect and remit," or  
13 "collect and deliver," when used with reference to the department,  
14 means that the department, either directly or through a collection  
15 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
16 and enforcing the offender's sentence with regard to the legal  
17 financial obligation, receiving payment thereof from the offender,  
18 and, consistent with current law, delivering daily the entire payment  
19 to the superior court clerk without depositing it in a departmental  
20 account.

21       (3) "Commission" means the sentencing guidelines commission.

1 (4) "Community corrections officer" means an employee of the  
2 department who is responsible for carrying out specific duties in  
3 supervision of sentenced offenders and monitoring of sentence  
4 conditions.

5 (5) "Community custody" means that portion of an offender's  
6 sentence of confinement in lieu of earned release time or imposed as  
7 part of a sentence under this chapter and served in the community  
8 subject to controls placed on the offender's movement and activities  
9 by the department.

10 (6) "Community protection zone" means the area within eight  
11 hundred eighty feet of the facilities and grounds of a public or  
12 private school.

13 (7) "Community restitution" means compulsory service, without  
14 compensation, performed for the benefit of the community by the  
15 offender.

16 (8) "Confinement" means total or partial confinement.

17 (9) "Conviction" means an adjudication of guilt pursuant to Title  
18 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,  
19 and acceptance of a plea of guilty.

20 (10) "Crime-related prohibition" means an order of a court  
21 prohibiting conduct that directly relates to the circumstances of the  
22 crime for which the offender has been convicted, and shall not be  
23 construed to mean orders directing an offender affirmatively to  
24 participate in rehabilitative programs or to otherwise perform  
25 affirmative conduct. However, affirmative acts necessary to monitor  
26 compliance with the order of a court may be required by the  
27 department.

28 (11) "Criminal history" means the list of a defendant's prior  
29 convictions and juvenile adjudications, whether in this state, in  
30 federal court, or elsewhere, and any issued certificates of  
31 restoration of opportunity pursuant to RCW 9.97.020.

32 (a) The history shall include, where known, for each conviction  
33 (i) whether the defendant has been placed on probation and the length  
34 and terms thereof; and (ii) whether the defendant has been  
35 incarcerated and the length of incarceration.

36 (b) A conviction may be removed from a defendant's criminal  
37 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,  
38 9.95.240, or a similar out-of-state statute, or if the conviction has  
39 been vacated pursuant to a governor's pardon. However, when a  
40 defendant is charged with a recidivist offense, "criminal history"

1 includes a vacated prior conviction for the sole purpose of  
2 establishing that such vacated prior conviction constitutes an  
3 element of the present recidivist offense as provided in RCW  
4 9.94A.640(~~(+3)~~) (4)(b) and 9.96.060(6)(c).

5 (c) The determination of a defendant's criminal history is  
6 distinct from the determination of an offender score. A prior  
7 conviction that was not included in an offender score calculated  
8 pursuant to a former version of the sentencing reform act remains  
9 part of the defendant's criminal history.

10 (12) "Criminal street gang" means any ongoing organization,  
11 association, or group of three or more persons, whether formal or  
12 informal, having a common name or common identifying sign or symbol,  
13 having as one of its primary activities the commission of criminal  
14 acts, and whose members or associates individually or collectively  
15 engage in or have engaged in a pattern of criminal street gang  
16 activity. This definition does not apply to employees engaged in  
17 concerted activities for their mutual aid and protection, or to the  
18 activities of labor and bona fide nonprofit organizations or their  
19 members or agents.

20 (13) "Criminal street gang associate or member" means any person  
21 who actively participates in any criminal street gang and who  
22 intentionally promotes, furthers, or assists in any criminal act by  
23 the criminal street gang.

24 (14) "Criminal street gang-related offense" means any felony or  
25 misdemeanor offense, whether in this state or elsewhere, that is  
26 committed for the benefit of, at the direction of, or in association  
27 with any criminal street gang, or is committed with the intent to  
28 promote, further, or assist in any criminal conduct by the gang, or  
29 is committed for one or more of the following reasons:

30 (a) To gain admission, prestige, or promotion within the gang;

31 (b) To increase or maintain the gang's size, membership,  
32 prestige, dominance, or control in any geographical area;

33 (c) To exact revenge or retribution for the gang or any member of  
34 the gang;

35 (d) To obstruct justice, or intimidate or eliminate any witness  
36 against the gang or any member of the gang;

37 (e) To directly or indirectly cause any benefit, aggrandizement,  
38 gain, profit, or other advantage for the gang, its reputation,  
39 influence, or membership; or

1 (f) To provide the gang with any advantage in, or any control or  
2 dominance over any criminal market sector, including, but not limited  
3 to, manufacturing, delivering, or selling any controlled substance  
4 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
5 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
6 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual  
7 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter  
8 9.68 RCW).

9 (15) "Day fine" means a fine imposed by the sentencing court that  
10 equals the difference between the offender's net daily income and the  
11 reasonable obligations that the offender has for the support of the  
12 offender and any dependents.

13 (16) "Day reporting" means a program of enhanced supervision  
14 designed to monitor the offender's daily activities and compliance  
15 with sentence conditions, and in which the offender is required to  
16 report daily to a specific location designated by the department or  
17 the sentencing court.

18 (17) "Department" means the department of corrections.

19 (18) "Determinate sentence" means a sentence that states with  
20 exactitude the number of actual years, months, or days of total  
21 confinement, of partial confinement, of community custody, the number  
22 of actual hours or days of community restitution work, or dollars or  
23 terms of a legal financial obligation. The fact that an offender  
24 through earned release can reduce the actual period of confinement  
25 shall not affect the classification of the sentence as a determinate  
26 sentence.

27 (19) "Disposable earnings" means that part of the earnings of an  
28 offender remaining after the deduction from those earnings of any  
29 amount required by law to be withheld. For the purposes of this  
30 definition, "earnings" means compensation paid or payable for  
31 personal services, whether denominated as wages, salary, commission,  
32 bonuses, or otherwise, and, notwithstanding any other provision of  
33 law making the payments exempt from garnishment, attachment, or other  
34 process to satisfy a court-ordered legal financial obligation,  
35 specifically includes periodic payments pursuant to pension or  
36 retirement programs, or insurance policies of any type, but does not  
37 include payments made under Title 50 RCW, except as provided in RCW  
38 50.40.020 and 50.40.050, or Title 74 RCW.

39 (20) "Domestic violence" has the same meaning as defined in RCW  
40 10.99.020 and 26.50.010.

1 (21) "Drug offender sentencing alternative" is a sentencing  
2 option available to persons convicted of a felony offense who are  
3 eligible for the option under RCW 9.94A.660.

4 (22) "Drug offense" means:

5 (a) Any felony violation of chapter 69.50 RCW except possession  
6 of a controlled substance (RCW 69.50.4013) or forged prescription for  
7 a controlled substance (RCW 69.50.403);

8 (b) Any offense defined as a felony under federal law that  
9 relates to the possession, manufacture, distribution, or  
10 transportation of a controlled substance; or

11 (c) Any out-of-state conviction for an offense that under the  
12 laws of this state would be a felony classified as a drug offense  
13 under (a) of this subsection.

14 (23) "Earned release" means earned release from confinement as  
15 provided in RCW 9.94A.728.

16 (24) "Electronic monitoring" means tracking the location of an  
17 individual through the use of technology that is capable of  
18 determining or identifying the monitored individual's presence or  
19 absence at a particular location including, but not limited to:

20 (a) Radio frequency signaling technology, which detects if the  
21 monitored individual is or is not at an approved location and  
22 notifies the monitoring agency of the time that the monitored  
23 individual either leaves the approved location or tampers with or  
24 removes the monitoring device; or

25 (b) Active or passive global positioning system technology, which  
26 detects the location of the monitored individual and notifies the  
27 monitoring agency of the monitored individual's location and which  
28 may also include electronic monitoring with victim notification  
29 technology that is capable of notifying a victim or protected party,  
30 either directly or through a monitoring agency, if the monitored  
31 individual enters within the restricted distance of a victim or  
32 protected party, or within the restricted distance of a designated  
33 location.

34 (25) "Escape" means:

35 (a) Sexually violent predator escape (RCW 9A.76.115), escape in  
36 the first degree (RCW 9A.76.110), escape in the second degree (RCW  
37 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
38 willful failure to return from work release (RCW 72.65.070), or  
39 willful failure to be available for supervision by the department  
40 while in community custody (RCW 72.09.310); or

1 (b) Any federal or out-of-state conviction for an offense that  
2 under the laws of this state would be a felony classified as an  
3 escape under (a) of this subsection.

4 (26) "Felony traffic offense" means:

5 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
6 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
7 run injury-accident (RCW 46.52.020(4)), felony driving while under  
8 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),  
9 or felony physical control of a vehicle while under the influence of  
10 intoxicating liquor or any drug (RCW 46.61.504(6)); or

11 (b) Any federal or out-of-state conviction for an offense that  
12 under the laws of this state would be a felony classified as a felony  
13 traffic offense under (a) of this subsection.

14 (27) "Fine" means a specific sum of money ordered by the  
15 sentencing court to be paid by the offender to the court over a  
16 specific period of time.

17 (28) "First-time offender" means any person who has no prior  
18 convictions for a felony and is eligible for the first-time offender  
19 waiver under RCW 9.94A.650.

20 (29) "Home detention" is a subset of electronic monitoring and  
21 means a program of partial confinement available to offenders wherein  
22 the offender is confined in a private residence twenty-four hours a  
23 day, unless an absence from the residence is approved, authorized, or  
24 otherwise permitted in the order by the court or other supervising  
25 agency that ordered home detention, and the offender is subject to  
26 electronic monitoring.

27 (30) "Homelessness" or "homeless" means a condition where an  
28 individual lacks a fixed, regular, and adequate nighttime residence  
29 and who has a primary nighttime residence that is:

30 (a) A supervised, publicly or privately operated shelter designed  
31 to provide temporary living accommodations;

32 (b) A public or private place not designed for, or ordinarily  
33 used as, a regular sleeping accommodation for human beings; or

34 (c) A private residence where the individual stays as a transient  
35 invitee.

36 (31) "Legal financial obligation" means a sum of money that is  
37 ordered by a superior court of the state of Washington for legal  
38 financial obligations which may include restitution to the victim,  
39 statutorily imposed crime victims' compensation fees as assessed  
40 pursuant to RCW 7.68.035, court costs, county or interlocal drug

1 funds, court-appointed attorneys' fees, and costs of defense, fines,  
2 and any other financial obligation that is assessed to the offender  
3 as a result of a felony conviction. Upon conviction for vehicular  
4 assault while under the influence of intoxicating liquor or any drug,  
5 RCW 46.61.522(1)(b), or vehicular homicide while under the influence  
6 of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal  
7 financial obligations may also include payment to a public agency of  
8 the expense of an emergency response to the incident resulting in the  
9 conviction, subject to RCW 38.52.430.

10 (32) "Most serious offense" means any of the following felonies  
11 or a felony attempt to commit any of the following felonies:

12 (a) Any felony defined under any law as a class A felony or  
13 criminal solicitation of or criminal conspiracy to commit a class A  
14 felony;

15 (b) Assault in the second degree;

16 (c) Assault of a child in the second degree;

17 (d) Child molestation in the second degree;

18 (e) Controlled substance homicide;

19 (f) Extortion in the first degree;

20 (g) Incest when committed against a child under age fourteen;

21 (h) Indecent liberties;

22 (i) Kidnapping in the second degree;

23 (j) Leading organized crime;

24 (k) Manslaughter in the first degree;

25 (l) Manslaughter in the second degree;

26 (m) Promoting prostitution in the first degree;

27 (n) Rape in the third degree;

28 (o) Sexual exploitation;

29 (p) Vehicular assault, when caused by the operation or driving of  
30 a vehicle by a person while under the influence of intoxicating  
31 liquor or any drug or by the operation or driving of a vehicle in a  
32 reckless manner;

33 (q) Vehicular homicide, when proximately caused by the driving of  
34 any vehicle by any person while under the influence of intoxicating  
35 liquor or any drug as defined by RCW 46.61.502, or by the operation  
36 of any vehicle in a reckless manner;

37 (r) Any other class B felony offense with a finding of sexual  
38 motivation;

39 (s) Any other felony with a deadly weapon verdict under RCW  
40 9.94A.825;

1 (t) Any felony offense in effect at any time prior to December 2,  
2 1993, that is comparable to a most serious offense under this  
3 subsection, or any federal or out-of-state conviction for an offense  
4 that under the laws of this state would be a felony classified as a  
5 most serious offense under this subsection;

6 (u)(i) A prior conviction for indecent liberties under RCW  
7 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.  
8 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),  
9 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW  
10 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,  
11 until July 1, 1988;

12 (ii) A prior conviction for indecent liberties under RCW  
13 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
14 if: (A) The crime was committed against a child under the age of  
15 fourteen; or (B) the relationship between the victim and perpetrator  
16 is included in the definition of indecent liberties under RCW  
17 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,  
18 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,  
19 1993, through July 27, 1997;

20 (v) Any out-of-state conviction for a felony offense with a  
21 finding of sexual motivation if the minimum sentence imposed was ten  
22 years or more; provided that the out-of-state felony offense must be  
23 comparable to a felony offense under this title and Title 9A RCW and  
24 the out-of-state definition of sexual motivation must be comparable  
25 to the definition of sexual motivation contained in this section.

26 (33) "Nonviolent offense" means an offense which is not a violent  
27 offense.

28 (34) "Offender" means a person who has committed a felony  
29 established by state law and is eighteen years of age or older or is  
30 less than eighteen years of age but whose case is under superior  
31 court jurisdiction under RCW 13.04.030 or has been transferred by the  
32 appropriate juvenile court to a criminal court pursuant to RCW  
33 13.40.110. In addition, for the purpose of community custody  
34 requirements under this chapter, "offender" also means a misdemeanor  
35 or gross misdemeanor probationer ordered by a superior court to  
36 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and  
37 supervised by the department pursuant to RCW 9.94A.501 and  
38 9.94A.5011. Throughout this chapter, the terms "offender" and  
39 "defendant" are used interchangeably.



1 (35) "Partial confinement" means confinement for no more than one  
2 year in a facility or institution operated or utilized under contract  
3 by the state or any other unit of government, or, if home detention,  
4 electronic monitoring, or work crew has been ordered by the court or  
5 home detention has been ordered by the department as part of the  
6 parenting program or the graduated reentry program, in an approved  
7 residence, for a substantial portion of each day with the balance of  
8 the day spent in the community. Partial confinement includes work  
9 release, home detention, work crew, electronic monitoring, and a  
10 combination of work crew, electronic monitoring, and home detention.

11 (36) "Pattern of criminal street gang activity" means:

12 (a) The commission, attempt, conspiracy, or solicitation of, or  
13 any prior juvenile adjudication of or adult conviction of, two or  
14 more of the following criminal street gang-related offenses:

15 (i) Any "serious violent" felony offense as defined in this  
16 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a  
17 Child 1 (RCW 9A.36.120);

18 (ii) Any "violent" offense as defined by this section, excluding  
19 Assault of a Child 2 (RCW 9A.36.130);

20 (iii) Deliver or Possession with Intent to Deliver a Controlled  
21 Substance (chapter 69.50 RCW);

22 (iv) Any violation of the firearms and dangerous weapon act  
23 (chapter 9.41 RCW);

24 (v) Theft of a Firearm (RCW 9A.56.300);

25 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

26 (vii) Hate Crime (RCW 9A.36.080);

27 (viii) Harassment where a subsequent violation or deadly threat  
28 is made (RCW 9A.46.020(2)(b));

29 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

30 (x) Any felony conviction by a person eighteen years of age or  
31 older with a special finding of involving a juvenile in a felony  
32 offense under RCW 9.94A.833;

33 (xi) Residential Burglary (RCW 9A.52.025);

34 (xii) Burglary 2 (RCW 9A.52.030);

35 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

36 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

37 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

38 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

39 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW  
40 9A.56.070);

1 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
2 9A.56.075);  
3 (xix) Extortion 1 (RCW 9A.56.120);  
4 (xx) Extortion 2 (RCW 9A.56.130);  
5 (xxi) Intimidating a Witness (RCW 9A.72.110);  
6 (xxii) Tampering with a Witness (RCW 9A.72.120);  
7 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
8 (xxiv) Coercion (RCW 9A.36.070);  
9 (xxv) Harassment (RCW 9A.46.020); or  
10 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);  
11 (b) That at least one of the offenses listed in (a) of this  
12 subsection shall have occurred after July 1, 2008;  
13 (c) That the most recent committed offense listed in (a) of this  
14 subsection occurred within three years of a prior offense listed in  
15 (a) of this subsection; and  
16 (d) Of the offenses that were committed in (a) of this  
17 subsection, the offenses occurred on separate occasions or were  
18 committed by two or more persons.  
19 (37) "Persistent offender" is an offender who:  
20 (a) (i) Has been convicted in this state of any felony considered  
21 a most serious offense; and  
22 (ii) Has, before the commission of the offense under (a) of this  
23 subsection, been convicted as an offender on at least two separate  
24 occasions, whether in this state or elsewhere, of felonies that under  
25 the laws of this state would be considered most serious offenses and  
26 would be included in the offender score under RCW 9.94A.525; provided  
27 that of the two or more previous convictions, at least one conviction  
28 must have occurred before the commission of any of the other most  
29 serious offenses for which the offender was previously convicted; or  
30 (b) (i) Has been convicted of: (A) Rape in the first degree, rape  
31 of a child in the first degree, child molestation in the first  
32 degree, rape in the second degree, rape of a child in the second  
33 degree, or indecent liberties by forcible compulsion; (B) any of the  
34 following offenses with a finding of sexual motivation: Murder in the  
35 first degree, murder in the second degree, homicide by abuse,  
36 kidnapping in the first degree, kidnapping in the second degree,  
37 assault in the first degree, assault in the second degree, assault of  
38 a child in the first degree, assault of a child in the second degree,  
39 or burglary in the first degree; or (C) an attempt to commit any  
40 crime listed in this subsection (37) (b) (i); and

1 (ii) Has, before the commission of the offense under (b)(i) of  
2 this subsection, been convicted as an offender on at least one  
3 occasion, whether in this state or elsewhere, of an offense listed in  
4 (b)(i) of this subsection or any federal or out-of-state offense or  
5 offense under prior Washington law that is comparable to the offenses  
6 listed in (b)(i) of this subsection. A conviction for rape of a child  
7 in the first degree constitutes a conviction under (b)(i) of this  
8 subsection only when the offender was sixteen years of age or older  
9 when the offender committed the offense. A conviction for rape of a  
10 child in the second degree constitutes a conviction under (b)(i) of  
11 this subsection only when the offender was eighteen years of age or  
12 older when the offender committed the offense.

13 (38) "Predatory" means: (a) The perpetrator of the crime was a  
14 stranger to the victim, as defined in this section; (b) the  
15 perpetrator established or promoted a relationship with the victim  
16 prior to the offense and the victimization of the victim was a  
17 significant reason the perpetrator established or promoted the  
18 relationship; or (c) the perpetrator was: (i) A teacher, counselor,  
19 volunteer, or other person in authority in any public or private  
20 school and the victim was a student of the school under his or her  
21 authority or supervision. For purposes of this subsection, "school"  
22 does not include home-based instruction as defined in RCW  
23 28A.225.010; (ii) a coach, trainer, volunteer, or other person in  
24 authority in any recreational activity and the victim was a  
25 participant in the activity under his or her authority or  
26 supervision; (iii) a pastor, elder, volunteer, or other person in  
27 authority in any church or religious organization, and the victim was  
28 a member or participant of the organization under his or her  
29 authority; or (iv) a teacher, counselor, volunteer, or other person  
30 in authority providing home-based instruction and the victim was a  
31 student receiving home-based instruction while under his or her  
32 authority or supervision. For purposes of this subsection: (A) "Home-  
33 based instruction" has the same meaning as defined in RCW  
34 28A.225.010; and (B) "teacher, counselor, volunteer, or other person  
35 in authority" does not include the parent or legal guardian of the  
36 victim.

37 (39) "Private school" means a school regulated under chapter  
38 28A.195 or 28A.205 RCW.

39 (40) "Public school" has the same meaning as in RCW 28A.150.010.

1 (41) "Recidivist offense" means a felony offense where a prior  
2 conviction of the same offense or other specified offense is an  
3 element of the crime including, but not limited to:

4 (a) Assault in the fourth degree where domestic violence is  
5 pleaded and proven, RCW 9A.36.041(3);

6 (b) Cyberstalking, RCW 9.61.260(3)(a);

7 (c) Harassment, RCW 9A.46.020(2)(b)(i);

8 (d) Indecent exposure, RCW 9A.88.010(2)(c);

9 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);

10 (f) Telephone harassment, RCW 9.61.230(2)(a); and

11 (g) Violation of a no-contact or protection order, RCW  
12 26.50.110(5).

13 (42) "Repetitive domestic violence offense" means any:

14 (a)(i) Domestic violence assault that is not a felony offense  
15 under RCW 9A.36.041;

16 (ii) Domestic violence violation of a no-contact order under  
17 chapter 10.99 RCW that is not a felony offense;

18 (iii) Domestic violence violation of a protection order under  
19 chapter 26.09, (~~26.10,~~) 26.26A, 26.26B, or 26.50 RCW that is not a  
20 felony offense;

21 (iv) Domestic violence harassment offense under RCW 9A.46.020  
22 that is not a felony offense; or

23 (v) Domestic violence stalking offense under RCW 9A.46.110 that  
24 is not a felony offense; or

25 (b) Any federal, out-of-state, tribal court, military, county, or  
26 municipal conviction for an offense that under the laws of this state  
27 would be classified as a repetitive domestic violence offense under  
28 (a) of this subsection.

29 (43) "Restitution" means a specific sum of money ordered by the  
30 sentencing court to be paid by the offender to the court over a  
31 specified period of time as payment of damages. The sum may include  
32 both public and private costs.

33 (44) "Risk assessment" means the application of the risk  
34 instrument recommended to the department by the Washington state  
35 institute for public policy as having the highest degree of  
36 predictive accuracy for assessing an offender's risk of reoffense.

37 (45) "Serious traffic offense" means:

38 (a) Nonfelony driving while under the influence of intoxicating  
39 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
40 while under the influence of intoxicating liquor or any drug (RCW

1 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
2 attended vehicle (RCW 46.52.020(5)); or

3 (b) Any federal, out-of-state, county, or municipal conviction  
4 for an offense that under the laws of this state would be classified  
5 as a serious traffic offense under (a) of this subsection.

6 (46) "Serious violent offense" is a subcategory of violent  
7 offense and means:

8 (a)(i) Murder in the first degree;

9 (ii) Homicide by abuse;

10 (iii) Murder in the second degree;

11 (iv) Manslaughter in the first degree;

12 (v) Assault in the first degree;

13 (vi) Kidnapping in the first degree;

14 (vii) Rape in the first degree;

15 (viii) Assault of a child in the first degree; or

16 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
17 commit one of these felonies; or

18 (b) Any federal or out-of-state conviction for an offense that  
19 under the laws of this state would be a felony classified as a  
20 serious violent offense under (a) of this subsection.

21 (47) "Sex offense" means:

22 (a)(i) A felony that is a violation of chapter 9A.44 RCW other  
23 than RCW 9A.44.132;

24 (ii) A violation of RCW 9A.64.020;

25 (iii) A felony that is a violation of chapter 9.68A RCW other  
26 than RCW 9.68A.080;

27 (iv) A felony that is, under chapter 9A.28 RCW, a criminal  
28 attempt, criminal solicitation, or criminal conspiracy to commit such  
29 crimes; or

30 (v) A felony violation of RCW 9A.44.132(1) (failure to register  
31 as a sex offender) if the person has been convicted of violating RCW  
32 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130  
33 prior to June 10, 2010, on at least one prior occasion;

34 (b) Any conviction for a felony offense in effect at any time  
35 prior to July 1, 1976, that is comparable to a felony classified as a  
36 sex offense in (a) of this subsection;

37 (c) A felony with a finding of sexual motivation under RCW  
38 9.94A.835 or 13.40.135; or

1 (d) Any federal or out-of-state conviction for an offense that  
2 under the laws of this state would be a felony classified as a sex  
3 offense under (a) of this subsection.

4 (48) "Sexual motivation" means that one of the purposes for which  
5 the defendant committed the crime was for the purpose of his or her  
6 sexual gratification.

7 (49) "Standard sentence range" means the sentencing court's  
8 discretionary range in imposing a nonappealable sentence.

9 (50) "Statutory maximum sentence" means the maximum length of  
10 time for which an offender may be confined as punishment for a crime  
11 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute  
12 defining the crime, or other statute defining the maximum penalty for  
13 a crime.

14 (51) "Stranger" means that the victim did not know the offender  
15 twenty-four hours before the offense.

16 (52) "Total confinement" means confinement inside the physical  
17 boundaries of a facility or institution operated or utilized under  
18 contract by the state or any other unit of government for twenty-four  
19 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

20 (53) "Transition training" means written and verbal instructions  
21 and assistance provided by the department to the offender during the  
22 two weeks prior to the offender's successful completion of the work  
23 ethic camp program. The transition training shall include  
24 instructions in the offender's requirements and obligations during  
25 the offender's period of community custody.

26 (54) "Victim" means any person who has sustained emotional,  
27 psychological, physical, or financial injury to person or property as  
28 a direct result of the crime charged.

29 (55) "Victim of domestic violence" means an intimate partner or  
30 household member who has been subjected to the infliction of physical  
31 harm or sexual and psychological abuse by an intimate partner or  
32 household member as part of a pattern of assaultive, coercive, and  
33 controlling behaviors directed at achieving compliance from or  
34 control over that intimate partner or household member. Domestic  
35 violence includes, but is not limited to, the offenses listed in RCW  
36 10.99.020 and 26.50.010 committed by an intimate partner or household  
37 member against a victim who is an intimate partner or household  
38 member.

39 (56) "Victim of sex trafficking, prostitution, or commercial  
40 sexual abuse of a minor" means a person who has been forced or

1 coerced to perform a commercial sex act including, but not limited  
2 to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070,  
3 9.68A.101, and the trafficking victims protection act of 2000, 22  
4 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a  
5 commercial sex act when they were less than 18 years of age including  
6 but not limited to the offenses defined in chapter 9.68A RCW.

7 (57) "Victim of sexual assault" means any person who is a victim  
8 of a sexual assault offense, nonconsensual sexual conduct, or  
9 nonconsensual sexual penetration and as a result suffers physical,  
10 emotional, financial, or psychological impacts. Sexual assault  
11 offenses include, but are not limited to, the offenses defined in  
12 chapter 9A.44 RCW.

13 (58) "Violent offense" means:

14 (a) Any of the following felonies:

15 (i) Any felony defined under any law as a class A felony or an  
16 attempt to commit a class A felony;

17 (ii) Criminal solicitation of or criminal conspiracy to commit a  
18 class A felony;

19 (iii) Manslaughter in the first degree;

20 (iv) Manslaughter in the second degree;

21 (v) Indecent liberties if committed by forcible compulsion;

22 (vi) Kidnapping in the second degree;

23 (vii) Arson in the second degree;

24 (viii) Assault in the second degree;

25 (ix) Assault of a child in the second degree;

26 (x) Extortion in the first degree;

27 (xi) Robbery in the second degree;

28 (xii) Drive-by shooting;

29 (xiii) Vehicular assault, when caused by the operation or driving  
30 of a vehicle by a person while under the influence of intoxicating  
31 liquor or any drug or by the operation or driving of a vehicle in a  
32 reckless manner; and

33 (xiv) Vehicular homicide, when proximately caused by the driving  
34 of any vehicle by any person while under the influence of  
35 intoxicating liquor or any drug as defined by RCW 46.61.502, or by  
36 the operation of any vehicle in a reckless manner;

37 (b) Any conviction for a felony offense in effect at any time  
38 prior to July 1, 1976, that is comparable to a felony classified as a  
39 violent offense in (a) of this subsection; and

1 (c) Any federal or out-of-state conviction for an offense that  
2 under the laws of this state would be a felony classified as a  
3 violent offense under (a) or (b) of this subsection.

4 (~~(56)~~) (59) "Work crew" means a program of partial confinement  
5 consisting of civic improvement tasks for the benefit of the  
6 community that complies with RCW 9.94A.725.

7 (~~(57)~~) (60) "Work ethic camp" means an alternative  
8 incarceration program as provided in RCW 9.94A.690 designed to reduce  
9 recidivism and lower the cost of corrections by requiring offenders  
10 to complete a comprehensive array of real-world job and vocational  
11 experiences, character-building work ethics training, life management  
12 skills development, substance abuse rehabilitation, counseling,  
13 literacy training, and basic adult education.

14 (~~(58)~~) (61) "Work release" means a program of partial  
15 confinement available to offenders who are employed or engaged as a  
16 student in a regular course of study at school.

17 **Sec. 2.** RCW 9.94A.640 and 2019 c 331 s 3 are each amended to  
18 read as follows:

19 (1) Every offender who has been discharged under RCW 9.94A.637  
20 may apply to the sentencing court for a vacation of the offender's  
21 record of conviction. If the court finds the offender meets the tests  
22 prescribed in subsection (2) of this section, the court may clear the  
23 record of conviction by: (a) Permitting the offender to withdraw the  
24 offender's plea of guilty and to enter a plea of not guilty; or (b)  
25 if the offender has been convicted after a plea of not guilty, by the  
26 court setting aside the verdict of guilty; and (c) by the court  
27 dismissing the information or indictment against the offender.

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

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

31 (b) The offense was a violent offense as defined in RCW 9.94A.030  
32 or crime against persons as defined in RCW 43.43.830, except the  
33 following offenses may be vacated if the conviction did not include a  
34 firearm, deadly weapon, or sexual motivation enhancement: (i) Assault  
35 in the second degree under RCW 9A.36.021; (ii) assault in the third  
36 degree under RCW 9A.36.031 when not committed against a law  
37 enforcement officer or peace officer; and (iii) robbery in the second  
38 degree under RCW 9A.56.210;



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

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

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

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

16 (g) The offense was a felony described in RCW 46.61.502 or  
17 46.61.504.

18 (3) If the applicant is a victim of sex trafficking,  
19 prostitution, or commercial sexual abuse of a minor; sexual assault;  
20 or domestic violence as defined in RCW 9.94A.030, the victim or the  
21 prosecutor of the county in which the victim was sentenced may apply  
22 to the sentencing court or the sentencing court's successor to vacate  
23 the victim's record of conviction for a class B or class C felony  
24 offense using the process in section 3 of this act. When preparing or  
25 filing the petition, the prosecutor is not deemed to be providing  
26 legal advice or legal assistance on behalf of the victim, but is  
27 fulfilling an administrative function on behalf of the state in order  
28 to further their responsibility to seek to reform and improve the  
29 administration of criminal justice.

30 (4)(a) Except as otherwise provided, once the court vacates a  
31 record of conviction under subsection (1) of this section, the fact  
32 that the offender has been convicted of the offense shall not be  
33 included in the offender's criminal history for purposes of  
34 determining a sentence in any subsequent conviction, and the offender  
35 shall be released from all penalties and disabilities resulting from  
36 the offense. For all purposes, including responding to questions on  
37 employment applications, an offender whose conviction has been  
38 vacated may state that the offender has never been convicted of that  
39 crime. A conviction that has been vacated under this section may not  
40 be disseminated or disclosed by the state patrol or local law

1 enforcement agency to any person, except other criminal justice  
2 enforcement agencies. Nothing in this section affects or prevents the  
3 use of an offender's prior conviction in a later criminal  
4 prosecution, and nothing in this section affects the requirements for  
5 restoring a right to possess a firearm under RCW 9.41.040.

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

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A  
11 RCW to read as follows:

12 (1)(a) A victim of sex trafficking, prostitution, or commercial  
13 sexual abuse of a minor; sexual assault; or domestic violence as  
14 defined in RCW 9.94A.030 may apply to the sentencing court or the  
15 sentencing court's successor to vacate the victim's record of  
16 conviction for a class B or class C felony offense.

17 (b) The prosecutor of a county in which a victim of sex  
18 trafficking, prostitution, commercial sexual abuse of a minor; sexual  
19 assault; or domestic violence was sentenced for a class B or class C  
20 felony offense may exercise discretion to apply to the court on  
21 behalf of the state recommending that the court vacate the victim's  
22 record of conviction by submitting the information required in  
23 subsection (2) of this section. If the court finds the application  
24 meets the requirements of subsection (2) of this section, the court  
25 may decide whether to grant the application to vacate the record.

26 (2) In order to vacate a record of conviction for a class B or  
27 class C felony offense committed as a result of being a victim of sex  
28 trafficking, prostitution, or commercial sexual abuse of a minor;  
29 domestic violence; or sexual assault, the applicant must meet the  
30 following requirements:

31 (a) Provide an affidavit under penalty of perjury stating the  
32 specific facts and circumstances proving, by a preponderance of  
33 evidence, that the offense was committed as a result of being a  
34 victim of sex trafficking, prostitution, or commercial sexual abuse  
35 of a minor; domestic violence; or sexual assault;

36 (b) There are no criminal charges against the applicant pending  
37 in any court of this state or another state, or in any federal court  
38 for any offense other than prostitution;

1 (c) If the victim's offense is a class C felony, the offender has  
2 not been convicted of a new offense in this state, another state, or  
3 federal or tribal court in the five years prior to the vacation  
4 application;

5 (d) If the victim's offense is a class B felony, the offender has  
6 not been convicted of a new offense in this state, another state, or  
7 federal or tribal court in the 10 years prior to the vacation  
8 application;

9 (e) Provide proof that the crime victim penalty assessment, RCW  
10 7.68.035, has been paid in full; and

11 (f) If applicable, restitution owed to any victim, excluding  
12 restitution owed to any insurance provider under Title 48 RCW, has  
13 been paid in full.

14 (3) An applicant may not have a record of conviction for a class  
15 B or class C felony offense vacated if:

16 (a) The offense was a violent offense as defined in RCW 9.94A.030  
17 or crime against persons as defined in RCW 43.43.830, except the  
18 following offenses may be vacated if the conviction did not include a  
19 firearm, deadly weapon, or sexual motivation enhancement: (i) Assault  
20 in the second degree under RCW 9A.36.021; (ii) assault in the third  
21 degree under RCW 9A.36.031 when not committed against a law  
22 enforcement officer or peace officer; and (iii) robbery in the second  
23 degree under RCW 9A.56.210;

24 (b) The offense was a felony described in RCW 46.61.502 or  
25 46.61.504; or

26 (c) The offense was promoting prostitution in the first or second  
27 degree as described in RCW 9A.88.070 and 9A.88.080.

28 **Sec. 4.** RCW 9.96.060 and 2020 c 29 s 18 are each amended to read  
29 as follows:

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

38 (2) Every person convicted of a misdemeanor or gross misdemeanor  
39 offense may apply to the sentencing court for a vacation of the

1 applicant's record of conviction for the offense. If the court finds  
2 the applicant meets the requirements of this subsection, the court  
3 may in its discretion vacate the record of conviction. Except as  
4 provided in subsections (3), (4), and (5) of this section, an  
5 applicant may not have the record of conviction for a misdemeanor or  
6 gross misdemeanor offense vacated if any one of the following is  
7 present:

8 (a) The applicant has not completed all of the terms of the  
9 sentence for the offense;

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

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

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

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

28 (f) 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 or household member against another or by one  
32 intimate partner against another, or the court, after considering the  
33 damage to person or property that resulted in the conviction, any  
34 prior convictions for crimes defined in RCW 10.99.020, or for  
35 comparable offenses in another state or in federal court, and the  
36 totality of the records under review by the court regarding the  
37 conviction being considered for vacation, determines that the offense  
38 involved domestic violence, and any one of the following factors  
39 exist:

1 (i) The applicant has not provided written notification of the  
2 vacation petition to the prosecuting attorney's office that  
3 prosecuted the offense for which vacation is sought, or has not  
4 provided that notification to the court;

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

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

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

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

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

25 (i) The applicant is currently restrained by a domestic violence  
26 protection order, a no-contact order, an antiharassment order, or a  
27 civil restraining order which restrains one party from contacting the  
28 other party or was previously restrained by such an order and was  
29 found to have committed one or more violations of the order in the  
30 five years prior to the vacation application.

31 (3) ~~((Subject to RCW 9.96.070, every person convicted of~~  
32 ~~prostitution under RCW 9A.88.030 who committed the offense as a~~  
33 ~~result of being a victim of trafficking, RCW 9A.40.100, promoting~~  
34 ~~prostitution in the first degree, RCW 9A.88.070, promoting commercial~~  
35 ~~sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons~~  
36 ~~under the trafficking victims protection act of 2000, 22 U.S.C. Sec.~~  
37 ~~7101 et seq. may apply to the sentencing court for vacation of the~~  
38 ~~applicant's record of conviction for the prostitution offense. An~~  
39 ~~applicant may not have the record of conviction for prostitution~~  
40 ~~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)) If the applicant is a victim of sex~~  
15 ~~trafficking, prostitution, or commercial sexual abuse of a minor;~~  
16 ~~sexual assault; or domestic violence as defined in RCW 9.94A.030, or~~  
17 ~~the prosecutor applies on behalf of the state, the sentencing court~~  
18 ~~may vacate the record of conviction if the application satisfies the~~  
19 ~~requirements of section 5 of this act.~~

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

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

34 (b) The state has been enjoined from taking enforcement action of  
35 the statute or rule to the extent that it interferes with a treaty  
36 Indian fishing right as determined under *United States v. Washington*,  
37 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
38 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
39 any other state supreme court or federal court decision.

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

12 (6)(a) Except as provided in (c) of this subsection, once the  
13 court vacates a record of conviction under this section, the person  
14 shall be released from all penalties and disabilities resulting from  
15 the offense and the fact that the person has been convicted of the  
16 offense shall not be included in the person's criminal history for  
17 purposes of determining a sentence in any subsequent conviction. For  
18 all purposes, including responding to questions on employment or  
19 housing applications, a person whose conviction has been vacated  
20 under this section may state that he or she has never been convicted  
21 of that crime. However, nothing in this section affects the  
22 requirements for restoring a right to possess a firearm under RCW  
23 9.41.040. Except as provided in (b) of this subsection, nothing in  
24 this section affects or prevents the use of an offender's prior  
25 conviction in a later criminal prosecution.

26 (b) When a court vacates a record of domestic violence as defined  
27 in RCW 10.99.020 under this section, the state may not use the  
28 vacated conviction in a later criminal prosecution unless the  
29 conviction was for: (i) Violating the provisions of a restraining  
30 order, no-contact order, or protection order restraining or enjoining  
31 the person or restraining the person from going on to the grounds of  
32 or entering a residence, workplace, school, or day care, or  
33 prohibiting the person from knowingly coming within, or knowingly  
34 remaining within, a specified distance of a location (RCW 10.99.040,  
35 10.99.050, 26.09.300, ((~~26.10.220,~~)) 26.26B.050, 26.44.063,  
36 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);  
37 or (ii) stalking (RCW 9A.46.110). A vacated conviction under this  
38 section is not considered a conviction of such an offense for the  
39 purposes of 27 C.F.R. 478.11.

1 (c) A conviction vacated on or after July 28, 2019, qualifies as  
2 a prior conviction for the purpose of charging a present recidivist  
3 offense as defined in RCW 9.94A.030 occurring on or after July 28,  
4 2019.

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

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.96 RCW  
18 to read as follows:

19 (1)(a) A victim of sex trafficking, prostitution, or commercial  
20 sexual abuse of a minor; sexual assault; or domestic violence, as  
21 defined in RCW 9.94A.030 may apply to the sentencing court or the  
22 sentencing court's successor to vacate the applicant's record of  
23 conviction for the offense; or

24 (b) The prosecutor of a county or municipality in which a victim  
25 of sex trafficking, prostitution, or commercial sexual abuse of a  
26 minor; sexual assault; or domestic violence was sentenced for a  
27 misdemeanor or gross misdemeanor offense may exercise discretion to  
28 apply to the court on behalf of the state recommending that the court  
29 vacate the victim's record of conviction by submitting the  
30 information required in subsection (2) of this section. If the court  
31 finds the application meets the requirements of subsection (2) of  
32 this section, the court may decide whether to grant the application  
33 to vacate the record.

34 (2) In order to vacate a record of conviction for a gross  
35 misdemeanor or misdemeanor offense committed as a result of being a  
36 victim of sex trafficking, prostitution, or commercial sexual abuse  
37 of a minor; sexual assault; or domestic violence as defined in RCW  
38 9.94A.030, the applicant must meet the following requirements:



1 (a) Provide an affidavit, under penalty of perjury, stating the  
2 specific facts and circumstances proving, by a preponderance of  
3 evidence that the offense was committed as a result of being a victim  
4 of sex trafficking, prostitution, or commercial sexual abuse of a  
5 minor; sexual assault; or domestic violence as defined in RCW  
6 9.94A.030;

7 (b) There are no criminal charges against the applicant pending  
8 in any court of this state or another state, or in any federal court  
9 for any crime other than prostitution;

10 (c) If the offense is a misdemeanor, the offender has not been  
11 convicted of a new crime in this state, another state, or federal or  
12 tribal court in the three years prior to the vacation application;

13 (d) Except where the conviction to be vacated is for the crime of  
14 prostitution, prostitution loitering, or stay out of area of  
15 prostitution, provide proof that the crime victim penalty assessment,  
16 RCW 7.68.035, has been paid in full;

17 (e) If applicable, restitution owed to any victim, excluding  
18 restitution owed to any insurance provider under Title 48 RCW, has  
19 been paid in full.

20 (3) An applicant may not have a record of conviction for a gross  
21 misdemeanor or misdemeanor offense vacated if:

22 (a) 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 (b) The offense was a gross misdemeanor as described in RCW  
28 46.61.502 or 46.61.504; or

29 (c) The offense was patronizing a prostitute as described in RCW  
30 9A.88.110.

31 NEW SECTION. **Sec. 6.** RCW 9.96.070 (Vacating records of  
32 conviction—Prostitution offenses) and 2017 c 128 s 2 & 2014 c 109 s 2  
33 are each repealed.

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