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**SUBSTITUTE SENATE BILL 5998**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Hansen, Billig, Dhingra, Nguyen, and Saldaña)

READ FIRST TIME 01/19/24.

1 AN ACT Relating to timing of eligibility for vacation of  
2 nonfelony convictions; and amending RCW 9.96.060.

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

4 **Sec. 1.** RCW 9.96.060 and 2023 sp.s. c 1 s 11 are each amended to  
5 read as follows:

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

14 (2) Every person convicted of a misdemeanor or gross misdemeanor  
15 offense may apply to the sentencing court for a vacation of the  
16 applicant's record of conviction for the offense. If the court finds  
17 the applicant meets the requirements of this subsection, the court  
18 may in its discretion vacate the record of conviction. Except as  
19 provided in subsections (3), (4), (5), and (6) of this section, an  
20 applicant may not have the record of conviction for a misdemeanor or

1 gross misdemeanor offense vacated if any one of the following is  
2 present:

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

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

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

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

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

24 (f) 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 counts  
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; or

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

15 (g) For any offense other than those described in (f) of this  
16 subsection, less than three years have passed since the (~~person~~  
17 ~~completed the terms of the sentence, including any financial~~  
18 ~~obligations~~) later of the applicant's release from supervision or  
19 probation; the applicant's release from total and partial  
20 confinement, as defined in RCW 9.94A.030; or the applicant's  
21 sentencing date;

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) If the applicant is a victim of sex trafficking,  
32 prostitution, or commercial sexual abuse of a minor; sexual assault;  
33 or domestic violence as defined in RCW 9.94A.030, or the prosecutor  
34 applies on behalf of the state, the sentencing court may vacate the  
35 record of conviction if the application satisfies the requirements of  
36 RCW 9.96.080. When preparing or filing the petition, the prosecutor  
37 is not deemed to be providing legal advice or legal assistance on  
38 behalf of the victim, but is fulfilling an administrative function on  
39 behalf of the state in order to further their responsibility to seek  
40 to reform and improve the administration of criminal justice. A

1 record of conviction vacated using the process in RCW 9.96.080 is  
2 subject to subsections (7) and (8) of this section.

3 (4) Every person convicted prior to January 1, 1975, of violating  
4 any statute or rule regarding the regulation of fishing activities,  
5 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,  
6 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240  
7 who claimed to be exercising a treaty Indian fishing right, may apply  
8 to the sentencing court for vacation of the applicant's record of the  
9 misdemeanor, gross misdemeanor, or felony conviction for the offense.  
10 If the person is deceased, a member of the person's family or an  
11 official representative of the tribe of which the person was a member  
12 may apply to the court on behalf of the deceased person.  
13 Notwithstanding the requirements of RCW 9.94A.640, the court shall  
14 vacate the record of conviction if:

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

17 (b) The state has been enjoined from taking enforcement action of  
18 the statute or rule to the extent that it interferes with a treaty  
19 Indian fishing right as determined under *United States v. Washington*,  
20 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
21 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
22 any other state supreme court or federal court decision.

23 (5) Every person convicted of a misdemeanor cannabis offense, who  
24 was 21 years of age or older at the time of the offense, may apply to  
25 the sentencing court for a vacation of the applicant's record of  
26 conviction for the offense. A misdemeanor cannabis offense includes,  
27 but is not limited to: Any offense under RCW 69.50.4014, from July 1,  
28 2004, onward, and its predecessor statutes, including RCW  
29 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW  
30 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense  
31 under an equivalent municipal ordinance. If an applicant qualifies  
32 under this subsection, the court shall vacate the record of  
33 conviction.

34 (6) If a person convicted of violating RCW 69.50.4011(1) (b) or  
35 (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) completes a  
36 substance use disorder program and files proof of completion with the  
37 court, or obtains an assessment from a recovery navigator program  
38 established under RCW 71.24.115, an arrest and jail alternative  
39 program established under RCW 36.28A.450, or a law enforcement  
40 assisted diversion program established under RCW 71.24.589, and has

1 six months of substantial compliance with recommended treatment or  
2 services and progress toward recovery goals as reflected by a written  
3 status update, upon verification the court must vacate the conviction  
4 or convictions.

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

10 (8)(a) Except as provided in (c) of this subsection, once the  
11 court vacates a record of conviction under this section, the person  
12 shall be released from all penalties and disabilities resulting from  
13 the offense and the fact that the person has been convicted of the  
14 offense shall not be included in the person's criminal history for  
15 purposes of determining a sentence in any subsequent conviction. For  
16 all purposes, including responding to questions on employment or  
17 housing applications, a person whose conviction has been vacated  
18 under this section may state that he or she has never been convicted  
19 of that crime. However, nothing in this section affects the  
20 requirements for restoring a right to possess a firearm under RCW  
21 (~~9.41.040~~) 9.41.041. Except as provided in (b) of this subsection,  
22 nothing in this section affects or prevents the use of an offender's  
23 prior conviction in a later criminal prosecution.

24 (b) When a court vacates a record of domestic violence as defined  
25 in RCW 10.99.020 under this section, the state may not use the  
26 vacated conviction in a later criminal prosecution unless the  
27 conviction was for: (i) Violating the provisions of a restraining  
28 order, no-contact order, or protection order restraining or enjoining  
29 the person or restraining the person from going on to the grounds of  
30 or entering a residence, workplace, school, or day care, or  
31 prohibiting the person from knowingly coming within, or knowingly  
32 remaining within, a specified distance of a location, a protected  
33 party's person, or a protected party's vehicle (RCW 10.99.040,  
34 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,  
35 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and  
36 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic  
37 violence protection order or vulnerable adult protection order  
38 entered under chapter 7.105 RCW. A vacated conviction under this  
39 section is not considered a conviction of such an offense for the  
40 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 (9) 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 (10) For the purposes of this section, "cannabis" has the meaning  
18 provided in RCW 69.50.101.

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