
HOUSE BILL 1982

State of Washington

69th Legislature

2025 Regular Session

By Representatives Lekanoff, Parshley, and Pollet

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1 AN ACT Relating to vacating convictions involving the exercise of
2 treaty rights by Indian tribal members; amending RCW 9.96.060,
3 2.70.020, and 2.70.023; adding a new section to chapter 2.70 RCW; and
4 creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that during the
7 period of North America settlement in the 18th and 19th centuries,
8 the United States federal government signed treaties with many of the
9 Indian tribal nations living on the lands that would eventually
10 become the state of Washington.

11 The legislature further finds that although such treaties often
12 included promises to the Indian tribal nations to reserve a portion
13 of ceded land for the exclusive use and benefit of the tribes, these
14 promises have not always been kept.

15 The legislature further finds that in order to accomplish the
16 purposes and objectives outlined by the Centennial Accord between the
17 state of Washington and the federally recognized Indian tribes whose
18 traditional lands and territories included parts of Washington, the
19 state must make an unwavering commitment to address past and ongoing
20 injustices against the federally recognized Indian tribes and their
21 members.

1 The legislature therefore intends to expand provisions of state
2 law to vacate the records of conviction of Indian tribal members who
3 were convicted of offenses related to the exercise of treaty Indian
4 fishing, hunting, gathering, or pasturing rights.

5 The legislature further intends to spread awareness and
6 information about the process for vacating applicable convictions;
7 fund direct representation and consultation services for individuals
8 seeking to vacate applicable convictions; and promote better
9 relationships between the state and Indian tribal governments.

10 **Sec. 2.** RCW 9.96.060 and 2024 c 296 s 1 are each amended to read
11 as follows:

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

20 (2) Every person convicted of a misdemeanor or gross misdemeanor
21 offense may apply to the sentencing court for a vacation of the
22 applicant's record of conviction for the offense. If the court finds
23 the applicant meets the requirements of this subsection, the court
24 may in its discretion vacate the record of conviction. Except as
25 provided in subsections (3), (4), (5), and (6) of this section, an
26 applicant may not have the record of conviction for a misdemeanor or
27 gross misdemeanor offense vacated if any one of the following is
28 present:

29 (a) The applicant has not completed all of the terms of the
30 sentence for the offense, including satisfaction of financial
31 obligations;

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

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

37 (d) The offense was a violation of RCW 46.61.502 (driving while
38 under the influence), 46.61.504 (actual physical control while under
39 the influence), 9.91.020 (operating a railroad, etc. while

1 intoxicated), or the offense is considered a "prior offense" under
2 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
3 violation within 10 years of the date of arrest for the prior offense
4 or less than 10 years has elapsed since the date of the arrest for
5 the prior offense;

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

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

23 (i) The applicant has not provided written notification of the
24 vacation petition to the prosecuting attorney's office that
25 prosecuted the offense for which vacation is sought, or has not
26 provided that notification to the court;

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

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

36 (iv) Less than five years have elapsed since the person completed
37 the terms of the original conditions of the sentence, including
38 successful completion of any treatment ordered as a condition of
39 sentencing, but excluding the payment of financial obligations;

1 (g) For any offense other than those described in (f) of this
2 subsection, less than three years have passed since the later of the
3 applicant's release from supervision or probation; the applicant's
4 release from total and partial confinement, as defined in RCW
5 9.94A.030; or the applicant's sentencing date;

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

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

15 (3) If the applicant is a victim of sex trafficking,
16 prostitution, or commercial sexual abuse of a minor; sexual assault;
17 or domestic violence as defined in RCW 9.94A.030, or the prosecutor
18 applies on behalf of the state, the sentencing court may vacate the
19 record of conviction if the application satisfies the requirements of
20 RCW 9.96.080. When preparing or filing the petition, the prosecutor
21 is not deemed to be providing legal advice or legal assistance on
22 behalf of the victim, but is fulfilling an administrative function on
23 behalf of the state in order to further their responsibility to seek
24 to reform and improve the administration of criminal justice. A
25 record of conviction vacated using the process in RCW 9.96.080 is
26 subject to subsections (7) and (8) of this section.

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

1 (a) The applicant is a member of a tribe that may exercise treaty
2 Indian fishing, hunting, gathering, or pasturing rights at the
3 location where the offense occurred; and

4 (b) The state or local government has been enjoined from taking
5 enforcement action of the statute, ordinance, or rule to the extent
6 that it interferes with a treaty Indian fishing, hunting, gathering,
7 or pasturing 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), or State v. Wallahee, 3 Wn.3d 179 (2024), and
10 any posttrial orders of those courts, or any other state supreme
11 court or federal court decision.

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

23 (6) If a person convicted of violating RCW 69.50.4011(1) (b) or
24 (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) completes a
25 substance use disorder program and files proof of completion with the
26 court, or obtains an assessment from a recovery navigator program
27 established under RCW 71.24.115, an arrest and jail alternative
28 program established under RCW 36.28A.450, or a law enforcement
29 assisted diversion program established under RCW 71.24.589, and has
30 six months of substantial compliance with recommended treatment or
31 services and progress toward recovery goals as reflected by a written
32 status update, upon verification the court must vacate the conviction
33 or convictions.

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

39 (8) (a) Except as provided in (c) of this subsection, once the
40 court vacates a record of conviction under this section, the person

1 shall be released from all penalties and disabilities resulting from
2 the offense and the fact that the person has been convicted of the
3 offense shall not be included in the person's criminal history for
4 purposes of determining a sentence in any subsequent conviction. For
5 all purposes, including responding to questions on employment or
6 housing applications, a person whose conviction has been vacated
7 under this section may state that he or she has never been convicted
8 of that crime. However, nothing in this section affects the
9 requirements for restoring a right to possess a firearm under RCW
10 9.41.041. Except as provided in (b) of this subsection, nothing in
11 this section affects or prevents the use of an offender's prior
12 conviction in a later criminal prosecution.

13 (b) When a court vacates a record of domestic violence as defined
14 in RCW 10.99.020 under this section, the state may not use the
15 vacated conviction in a later criminal prosecution unless the
16 conviction was for: (i) Violating the provisions of a restraining
17 order, no-contact order, or protection order restraining or enjoining
18 the person or restraining the person from going on to the grounds of
19 or entering a residence, workplace, school, or day care, or
20 prohibiting the person from knowingly coming within, or knowingly
21 remaining within, a specified distance of a location, a protected
22 party's person, or a protected party's vehicle (RCW 10.99.040,
23 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,
24 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and
25 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic
26 violence protection order or vulnerable adult protection order
27 entered under chapter 7.105 RCW. A vacated conviction under this
28 section is not considered a conviction of such an offense for the
29 purposes of 27 C.F.R. 478.11.

30 (c) A conviction vacated on or after July 28, 2019, qualifies as
31 a prior conviction for the purpose of charging a present recidivist
32 offense as defined in RCW 9.94A.030 occurring on or after July 28,
33 2019.

34 (9) The clerk of the court in which the vacation order is entered
35 shall immediately transmit the order vacating the conviction to the
36 Washington state patrol identification section and to the local
37 police agency, if any, which holds criminal history information for
38 the person who is the subject of the conviction. The Washington state
39 patrol and any such local police agency shall immediately update
40 their records to reflect the vacation of the conviction, and shall

1 transmit the order vacating the conviction to the federal bureau of
2 investigation. A conviction that has been vacated under this section
3 may not be disseminated or disclosed by the state patrol or local law
4 enforcement agency to any person, except other criminal justice
5 enforcement agencies.

6 (10) For the purposes of this section, "cannabis" has the meaning
7 provided in RCW 69.50.101.

8 NEW SECTION. **Sec. 3.** A new section is added to chapter 2.70 RCW
9 to read as follows:

10 Subject to the availability of amounts appropriated for this
11 specific purpose, the office of public defense shall establish a
12 position for a staff tribal liaison counsel. The staff tribal liaison
13 counsel's responsibilities shall include:

14 (1) Performing outreach to tribal governments to identify and
15 support tribal members with convictions related to the regulation of
16 fishing, hunting, gathering, or pasturing activities that may be
17 eligible for vacation pursuant to RCW 9.96.060(4);

18 (2) Developing and disseminating educational material and
19 information to tribal governments and their members about the process
20 for vacating applicable convictions pursuant to RCW 9.96.060(4), and
21 the services that affected tribal members may be eligible to receive
22 from the office of public defense; and

23 (3) Providing direct representation and consultation services to
24 individuals seeking to vacate applicable convictions pursuant to RCW
25 9.96.060(4), including by filing motions to vacate and appearing at
26 related legal proceedings.

27 **Sec. 4.** RCW 2.70.020 and 2024 c 294 s 1 are each amended to read
28 as follows:

29 The director shall:

30 (1) Administer all state-funded services in the following program
31 areas:

32 (a) Trial court criminal indigent defense, as provided in chapter
33 10.101 RCW;

34 (b) Appellate indigent defense, as provided in this chapter and
35 RCW 10.73.150;

36 (c) Representation of indigent parents qualified for appointed
37 counsel in dependency and termination cases, as provided in RCW
38 13.34.090 and 13.34.092;

1 (d) Extraordinary criminal justice cost petitions, as provided in
2 RCW 43.330.190;

3 (e) Compilation of copies of DNA test requests by persons
4 convicted of felonies, as provided in RCW 10.73.170;

5 (f) Representation of indigent respondents qualified for
6 appointed counsel in sexually violent predator civil commitment
7 cases, as provided in chapter 71.09 RCW; and

8 (g) Representation of indigent persons who are acquitted by
9 reason of insanity and committed to state psychiatric care as
10 provided in chapter 10.77 RCW;

11 (2) Subject to availability of funds appropriated for this
12 specific purpose, provide access to counsel for indigent persons
13 incarcerated in a juvenile rehabilitation or adult correctional
14 facility to file and prosecute a first, timely personal restraint
15 petition under RCW 10.73.150. The office shall establish eligibility
16 criteria that prioritize access to counsel for youth under age 25,
17 youth or adults with sentences in excess of 120 months, youth or
18 adults with disabilities, and youth or adults with limited English
19 proficiency. Nothing in this subsection creates an entitlement to
20 counsel at state expense to file a personal restraint petition;

21 (3) Subject to the availability of funds appropriated for this
22 specific purpose, appoint counsel to petition the sentencing court if
23 the legislature creates an ability to petition the sentencing court,
24 or appoint counsel to challenge a conviction or sentence if a final
25 decision of an appellate court creates the ability to challenge a
26 conviction or sentence. Nothing in this subsection creates an
27 entitlement to counsel at state expense to petition the sentencing
28 court;

29 (4) Provide access to attorneys for juveniles contacted by a law
30 enforcement officer for whom a legal consultation is required under
31 RCW 13.40.740;

32 (5) Submit a biennial budget for all costs related to the
33 office's program areas;

34 (6) Establish administrative procedures, standards, and
35 guidelines for the office's program areas, including cost-efficient
36 systems that provide for authorized recovery of costs;

37 (7) Provide oversight and technical assistance to ensure the
38 effective and efficient delivery of services in the office's program
39 areas;

1 (8) Recommend criteria and standards for determining and
2 verifying indigency. In recommending criteria for determining
3 indigency, the director shall compile and review the indigency
4 standards used by other state agencies and shall periodically submit
5 the compilation and report to the legislature on the appropriateness
6 and consistency of such standards;

7 (9) Collect information regarding indigent defense services
8 funded by the state and report annually to the advisory committee,
9 the legislature, and the supreme court;

10 (10) Coordinate with the supreme court and the judges of each
11 division of the court of appeals to determine how appellate attorney
12 services should be provided;

13 (11) Subject to the availability of funds appropriated for this
14 specific purpose, provide access to direct representation and
15 consultation services to individuals eligible to vacate convictions
16 pursuant to RCW 9.96.060(4).

17 **Sec. 5.** RCW 2.70.023 and 2024 c 294 s 2 are each amended to read
18 as follows:

19 (1) Except as otherwise provided in this section, the office of
20 public defense shall not provide direct representation of clients.

21 (2) In order to protect and preserve client rights when
22 administering the office's statutory duties to provide initial
23 telephonic or video consultation services, managing and supervising
24 attorneys of the office of public defense who meet applicable public
25 defense qualifications may provide limited short-term coverage for
26 the consultation services if office of public defense contracted
27 counsel is unavailable to provide the consultation services. The
28 office shall provide services in a manner consistent with the rules
29 of professional conduct, chapter 42.52 RCW, and applicable policies
30 of the office of public defense.

31 (3) The office of public defense may facilitate and supervise
32 placement of law clerks, externs, and interns with office of public
33 defense contracted counsel, in a manner consistent with the
34 Washington admission and practice rules, the rules of professional
35 conduct, chapter 42.52 RCW, and applicable policies of the office of
36 public defense.

37 (4) Employees of the office of public defense may provide pro
38 bono legal services in a manner consistent with the rules of
39 professional conduct, chapter 42.52 RCW, and applicable policies of

1 the office of public defense. The policies of the office of public
2 defense must require that employees providing pro bono legal services
3 obtain and provide to the office a written statement, signed by any
4 pro bono client, acknowledging that:

5 (a) The pro bono legal services are provided by the employee
6 acting in the employee's personal capacity and not as an employee of
7 the office of public defense; and

8 (b) The state of Washington may not be held liable for any claim
9 arising from the provision of pro bono legal services by the
10 employees of the office of public defense.

11 The office of public defense shall retain the written statements
12 in a manner consistent with records relating to potential conflicts
13 of interest.

14 (5) Employees of the office of public defense may provide direct
15 representation and consultation services to individuals, or, where an
16 individual is deceased, a family member or an official tribal
17 representative acting on behalf of the individual, for purposes of
18 filing motions to vacate convictions pursuant to RCW 9.96.060(4) and
19 appearing at related legal proceedings, in a manner consistent with
20 Washington admission and practice rules, the rules of professional
21 conduct, chapter 42.52 RCW, and applicable policies of the office of
22 public defense.

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