
SENATE BILL 5605

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

State of Washington **66th Legislature** **2019 Regular Session**

By Senators Nguyen, Keiser, Hunt, Salomon, Hasegawa, Saldaña, Das, Randall, Darneille, Kuderer, Pedersen, and Wilson, C.

Read first time 01/24/19. Referred to Committee on Law & Justice.

1 AN ACT Relating to misdemeanor marijuana offense convictions;
2 reenacting and amending RCW 9.96.060; and creating a new section.

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

4 **Sec. 1.** RCW 9.96.060 and 2017 c 336 s 2, 2017 c 272 s 9, and
5 2017 c 128 s 1 are each reenacted and amended to read as follows:

6 (1) ~~((Every person convicted of a misdemeanor or gross~~
7 ~~misdemeanor offense who has completed all of the terms of the~~
8 ~~sentence for the misdemeanor or gross misdemeanor offense may apply~~
9 ~~to the sentencing court for a vacation of the applicant's record of~~
10 ~~conviction for the offense. If the court finds the applicant meets~~
11 ~~the tests prescribed in subsection (2) of this section, the court may~~
12 ~~in its discretion vacate the record of conviction)) When vacating a~~
13 ~~conviction under this section, the court effectuates the vacation by:~~
14 (a)(i) Permitting the applicant to withdraw the applicant's plea of
15 guilty and to enter a plea of not guilty; or (ii) if the applicant
16 has been convicted after a plea of not guilty, the court setting
17 aside the verdict of guilty; and (b) the court dismissing the
18 information, indictment, complaint, or citation against the applicant
19 and vacating the judgment and 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

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 court;

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

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

22 ~~((d))~~ (e) The offense was any misdemeanor or gross misdemeanor
23 violation, including attempt, of chapter 9.68 RCW (obscenity and
24 pornography), chapter 9.68A RCW (sexual exploitation of children), or
25 chapter 9A.44 RCW (sex offenses);

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

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

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

14 ~~((f))~~ (g) For any offense other than those described in ~~((e))~~
15 (f) of this subsection, less than three years have passed since the
16 person completed the terms of the sentence, including any financial
17 obligations;

18 ~~((g))~~ (h) The offender has been convicted of a new crime in
19 this state, another state, or federal court since the date of
20 conviction;

21 ~~((h))~~ (i) The applicant has ever had the record of another
22 conviction vacated; or

23 ~~((i))~~ (j) The applicant is currently restrained, or has been
24 restrained within five years prior to the vacation application, by a
25 domestic violence protection order, a no-contact order, an
26 antiharassment order, or a civil restraining order which restrains
27 one party from contacting the other party.

28 (3) Subject to RCW 9.96.070, every person convicted of
29 prostitution under RCW 9A.88.030 who committed the offense as a
30 result of being a victim of trafficking, RCW 9A.40.100, promoting
31 prostitution in the first degree, RCW 9A.88.070, promoting commercial
32 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
33 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
34 7101 et seq. may apply to the sentencing court for vacation of the
35 applicant's record of conviction for the prostitution offense. An
36 applicant may not have the record of conviction for prostitution
37 vacated if any one of the following is present:

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

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

12 (4) Every person convicted prior to January 1, 1975, of violating
13 any statute or rule regarding the regulation of fishing activities,
14 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
15 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
16 who claimed to be exercising a treaty Indian fishing right, may apply
17 to the sentencing court for vacation of the applicant's record of the
18 misdemeanor, gross misdemeanor, or felony conviction for the offense.
19 If the person is deceased, a member of the person's family or an
20 official representative of the tribe of which the person was a member
21 may apply to the court on behalf of the deceased person.
22 Notwithstanding the requirements of RCW 9.94A.640, the court shall
23 vacate the record of conviction if:

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

26 (b) The state has been enjoined from taking enforcement action of
27 the statute or rule to the extent that it interferes with a treaty
28 Indian fishing right as determined under *United States v. Washington*,
29 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
30 899 (D. Oregon 1969), and any posttrial orders of those courts, or
31 any other state supreme court or federal court decision.

32 (5) Every person convicted of a misdemeanor marijuana offense,
33 who was twenty-one years of age or older at the time of the offense,
34 may apply to the sentencing court for a vacation of the applicant's
35 record of conviction for the offense. A misdemeanor marijuana offense
36 includes, but is not limited to: Any offense under RCW 69.50.4014,
37 from July 1, 2004, onward, and its predecessor statutes, including
38 RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW
39 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense
40 under an equivalent municipal ordinance. If an applicant qualifies

1 under this subsection, the court shall vacate the record of
2 conviction.

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

15 (b) When a court vacates a record of domestic violence as defined
16 in RCW 10.99.020 under this section, the state may not use the
17 vacated conviction in a later criminal prosecution unless the
18 conviction was for: (i) Violating the provisions of a restraining
19 order, no-contact order, or protection order restraining or enjoining
20 the person or restraining the person from going on to the grounds of
21 or entering a residence, workplace, school, or day care, or
22 prohibiting the person from knowingly coming within, or knowingly
23 remaining within, a specified distance of a location (RCW 10.99.040,
24 10.99.050, 26.09.300, 26.10.220, (~~26.26.138~~) 26.26B.050, 26.44.063,
25 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);
26 or (ii) stalking (RCW 9A.46.110). A vacated conviction under this
27 section is not considered a conviction of such an offense for the
28 purposes of 27 C.F.R. 478.11.

29 (~~(6)~~) (7) All costs incurred by the court and probation
30 services shall be paid by the person making the motion to vacate the
31 record unless a determination is made pursuant to chapter 10.101 RCW
32 that the person making the motion is indigent, at the time the motion
33 is brought.

34 (~~(7)~~) (8) The clerk of the court in which the vacation order is
35 entered shall immediately transmit the order vacating the conviction
36 to the Washington state patrol identification section and to the
37 local police agency, if any, which holds criminal history information
38 for the person who is the subject of the conviction. The Washington
39 state patrol and any such local police agency shall immediately
40 update their records to reflect the vacation of the conviction, and

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

6 NEW SECTION. **Sec. 2.** If specific funding for the purposes of
7 this act, referencing this act by bill or chapter number, is not
8 provided by June 30, 2019, in the omnibus appropriations act, this
9 act is null and void.

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