



# Feasibility Study to Streamline the Vacation of Criminal Conviction Records

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## *Preliminary Report*

**Submitted to:** Washington Office of Financial Management

**Submitted by:** SEARCH Group, Incorporated

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to the Washington Office of Financial Management

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## Executive summary

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Engrossed Substitute Senate Bill 5092 2021–2023 Biennial Budget, Section 953<sup>1</sup> called for a “feasibility study regarding the establishment of a system for streamlining the vacation of criminal conviction records.” In summary, the bill specified analyzing the ability, potential costs, and recommendations for the Washington State Patrol (WSP) to conduct national background checks to determine vacation eligibility, develop a database and web-portal to notify eligible individuals, and automate the vacation petition filing process. The bill included establishing technology recommendations and cost estimates for the development, implementation, and support of a streamlined system. The Washington Office of Financial Management retained SEARCH Group, Incorporated<sup>2</sup> to conduct the feasibility study.

### Summary of SEARCH findings

After concluding the research of these provisions, SEARCH has determined establishing eligibility and individual notification capabilities are not feasible, nor a recommended course of action. The limitations are due to numerous policy conflicts with the technological approach prescribed in the bill. In summary:

1. Federal policy appears to prohibit WSP from conducting national background checks without the knowledge or consent of an individual or court order.
2. Without taking this policy restriction into consideration, conducting 1.22 million background checks would require over 200,000 staff hours at a cost of over \$8.6 million to establish the content of an “eligibility database.”<sup>3</sup>
3. WSP cannot validate all conviction vacation requirements through background checks and any eligibility database would be incomplete and inaccurate.
4. Washington criminal justice stakeholders have no reliable means to contact potentially eligible individuals. This barrier could also result in the inappropriate disclosure of protected criminal history information to third parties.

### Summary of SEARCH recommendations

SEARCH recommends adopting several measures to help streamline the conviction vacation process and improve the accessibility and ease of filing vacation petitions. The core recommendations include the following:

1. Develop a web-based conviction vacation portal that would enable users to learn about the record vacation process and eligibility criteria, complete a self-assessment to determine whether they qualify for conviction vacation by responding to a series of structured questions based on current eligibility criteria, and, if eligible, complete an online petition for conviction vacation. Cost estimate is \$204,000.
2. Conduct a statewide public awareness outreach and marketing campaign to promote conviction vacation availability, benefits and processes. Cost estimate is \$675,000.
3. Automate the conviction vacation petition filing process statewide. Washington is already developing electronic case filing (e-filing) for the courts. A conviction eligibility portal, which would automatically generate vacation petitions, should be integrated into the planned court e-filing process. This would eliminate physical paper-based submissions and in-person

filing requirements and notify parties to the case. E-filing costs are estimated at \$4.4 million annually and have been included in previous AOC budget requests.

4. Designate the Administrative Office of the Courts (AOC) as the lead agency to develop and manage the recommended portal solutions, as well as to provide hosting and technical support services. Portal maintenance and support cost estimate is \$73,000 annually.

## Introduction

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In 2019 the Washington State Legislature passed the New Hope Act<sup>4</sup> which expanded eligibility for criminal records vacation by streamlining the process of certifying satisfactory completion of a sentence (i.e., obtaining a Certificate of Discharge)<sup>5</sup> and allowing people to petition to vacate multiple misdemeanor convictions and certain types of felony convictions.

To expand and expedite the records vacation process, the Legislature passed Second Substitute House Bill 2793 in 2020. This would have funded a study and a pilot project to streamline the vacation of criminal convictions through an administrative, court-driven process.<sup>6</sup> The bill directed the Washington State Administrative Office of the Courts (AOC) to query available records through judicial information systems and other data sources (e.g., the Washington State Patrol (WSP) and the Washington State Department of Corrections (DOC)) to review convictions and determine whether they qualify and should be scheduled for administrative vacation hearings. AOC was to prioritize potentially qualifying defendants and notify sentencing courts participating in a pilot program to schedule administrative vacation hearings without requiring eligible defendants to file petitions and notify relevant parties to appear at administrative hearings. The AOC estimated that the fiscal impact of this legislation at approximately \$1,213,806 in the first year, \$1,431,952 in the second year, and \$792,292 in the third year.<sup>7</sup> It should be noted that the costs identified in the fiscal note were associated with research and reporting requirements, and a pilot project involving courts of a single county, not a statewide implementation.

Gov. Jay Inslee vetoed 2SHB 2793, noting the “catastrophic effects” and lost revenue resulting from the COVID-19 pandemic and the “major impact on the economic health” of the state<sup>8</sup>

Renewed interest in streamlining the criminal records vacation process prompted the Legislature to pass Engrossed Substitute Senate Bill 5092 2021–2023 Biennial Budget, Section 953:<sup>9</sup>

“Sec. 953. (1) The office of financial management shall conduct a feasibility study and make recommendations regarding the establishment of a system for streamlining the vacation of criminal conviction records. The office of financial management may contract with an independent expert to assist with the feasibility study. The study must consider and make recommendations regarding, but not limited to, the following:

(a) Requiring the Washington state patrol to conduct state and national criminal background checks to determine individuals who may be eligible for the vacation of a criminal record, either under:

(i) Current eligibility requirements; or

(ii) Under other streamlined requirements that could consider, for example, eligibility to vacate only a certain category of offenses with reduced requirements, including but not limited to such as having no other convictions in the Washington state patrol's criminal history database for a certain number of years;

(b) Creating a database and online portal system that would assess eligibility and subsequently notify respective persons eligible for a vacation of a criminal record;

(c) Developing the online portal system that, upon such person's consent, prepopulates the petition and forward the petition to the respective sentencing court and local public defender's office in the local jurisdiction of that court;

(d) Determining the appropriate state entity to operate and have oversight of the database and online portal system for streamlining the vacation of criminal conviction records;

(e) Consulting with the administrative office of the courts, county clerks and court administrators, judges, prosecuting attorneys, defense attorneys, the department of corrections, and county and city departments to make additional recommendations as deemed appropriate and necessary for implementation of the database and online portal system;

(f) Determining what information technology and support would be needed to be developed and maintained to administer a streamlining process most effectively and efficiently for the vacation of criminal conviction records in Washington; and

(g) The approximate cost to establish a system for streamlining the vacation of criminal conviction records with an online portal in Washington, and the approximate annual cost to operate such a system.

(2) The office of financial management shall submit a preliminary report of findings and recommendations to the governor and the appropriate committees of the legislature by Dec. 1, 2022, and a final report by June 30, 2023.

(3) This section expires July 1, 2023."<sup>10</sup>

This report constitutes the preliminary feasibility study ordered by the Washington State Legislature.

## Washington State records relief practices

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Assessing eligibility for criminal records vacatur in Washington is a complicated and multifaceted process. There are numerous factors that enter the equation in establishing eligibility for vacatur, including:

- (1) the seriousness and nature of the offense of conviction,
- (2) circumstances involved in the crime (e.g., whether a weapon was used),
- (3) the criminal history record of the petitioner,
- (4) the current legal status of the petitioner (e.g., whether they have pending charges or disqualifying convictions in Washington or in other states or at the federal level, as well as outstanding protection orders, restraining orders, or no contact orders, or have failed to register as a sex offender),
- (5) whether the petitioner has successfully completed their sentence, including payment of legal financial obligations, and
- (6) completion of a crime-free waiting period following successful completion of their sentence.

The WSP has criminal history records on 1,782,800 people.<sup>11</sup> A preliminary review of existing records by the WSP Criminal History Records Section indicates that an estimated 1,220,286 people have convictions for offenses that *may* be eligible for vacation.<sup>12</sup> It is important to note that this preliminary review considered only whether a person had a conviction offense that was potentially eligible for vacation and did not consider any other eligibility criteria.

### Conviction vacation eligibility requirements

Washington statutes RCW 9.96.060 and RCW 9.94A.640 define the eligibility criteria and exclusions for vacating certain misdemeanors, gross misdemeanors and felony convictions. Many of the eligibility criteria for each offense level have similar provisions and establish minimum waiting periods during which the offender may not have been convicted of a new crime in Washington, another state, or federal court. The eligibility criteria also exclude driving under the influence and most violent and sex offenses. Both statutes require offenders to fully discharge all sentence terms, including any legal financial obligations.

Felony conviction eligibility (defined in RCW 9.94A.640) requires a Certificate of Discharge to be issued by the sentencing court before filing a motion to vacate the conviction.<sup>13</sup> The statute states that an offender is not eligible if any of the following criteria apply:<sup>14</sup>

- There are pending charges in any state or federal court.
- The offense was a violent offense or crime against a person — except the following offenses may be vacated if the conviction did not include a firearm, deadly weapon or sexual motivation enhancement:
  - assault in the second degree,
  - assault in the third degree when not committed against a law enforcement officer or peace officer, and
  - robbery in the second degree.

- The offense is a class B felony and the offender has been convicted of a new crime in any court 10 years before to the application.
- The offense is a class C felony and the offender has been convicted of a new crime in any court five years before the application.
- The offense is a class B felony and less than 10 years have passed since the later of:
  - release from community custody,
  - release from confinement, or
  - sentencing date.
- The offense is a class C felony, other than a Driving Under the Influence (DUI)-related felony and less than five years have passed since the later of:
  - the applicant's release from community custody,
  - the applicant's release from full and partial confinement, or
  - the applicant's sentencing date.
- The offense was driving, or physically in control of, a vehicle while under the influence felony.

Eligibility for gross misdemeanors and simple misdemeanors are defined in RCW 9.96.060, which state an individual is **not** eligible if:<sup>15</sup>

- The applicant has not completed all terms of sentence.
- There are pending charges in any state, tribal or federal court.
- The offense was a violent offense or attempt.
- The offense is a DUI-related offense, or a “previous offense” with a subsequent DUI or drug offense within 10 years.
- The offense is considered a sex offense, obscenity, pornography or sexual exploitation of children.
- Less than three years have elapsed since the petitioner successfully completed all terms of their sentence and financial obligations.
- There are any convictions within the past three years in any state, tribal or federal court.
- The applicant is subject to a restraining, protection order, or no contact order with a violation within the past five years.
- The offense is a domestic violence (DV) offense and any of the following occurred:
  - Applicant did not provide notification of petition to prosecuting attorney’s office.
  - Applicant has two or more previous DV convictions from different incidents.
  - Applicant perjured regarding previous DV conviction on affidavit/application.
  - Less than five years elapsed since the applicant completed sentence, paid obligations or successfully completed court-ordered treatment.



Victims of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence<sup>16</sup> are also eligible to have convictions for a gross misdemeanor or misdemeanor offense vacated,<sup>17</sup> or class B or C felony offenses vacated<sup>18</sup> when the offense was committed as a result of being a victim of these offenses. Statutes also provide relief criteria for several other specific circumstances, including marijuana misdemeanor convictions eligible for anyone who was 21 years old or older at the time of the offense,<sup>19</sup> or tribal members who may exercise treaty Indian fishing rights at the location where the offense occurred.<sup>20</sup>

## Local, state, and national data sources accessed to determine vacation eligibility

The process currently employed to determine eligibility involves accessing several criminal justice information systems at the state and federal level, primarily court case management systems and criminal history record repositories. It is important to distinguish between *court records*, which are maintained by county clerks throughout the state and centrally managed by the AOC, and *criminal history records*, which are maintained by the WSP.

“A court record includes documents, information, and exhibits that are maintained by the court in connection with a judicial proceeding. If a defendant is convicted, the record contains a disposition order or judgment and sentence specifying the crime(s) committed and the punishment imposed. If a defendant is acquitted or the court determines charges should not go forward, the record shows the action has been dismissed.”<sup>21</sup>

While court records contain case-based information, criminal history records are longitudinal person-based records that use fingerprints to establish or verify the identity of a person involved in the justice system and include:

“...descriptions and notations of detentions, arrests, indictments, information or other formal criminal charges, and any dispositions. ‘Criminal history records,’ are maintained by law enforcement and other criminal justice agencies and should not be confused with ‘court records,’ which are maintained by the courts...Local law enforcement agencies submit criminal history record information to the [Washington] State Patrol, which maintains the information in a statewide repository.”<sup>22</sup>

It is important to note that records contained in both the AOC and WSP systems are compilations of records submitted to both agencies by courts and other justice agencies that submit data to these systems. Each agency’s information systems reflect data contributed by the entity responsible for record submission. For example, arrest records typically originate in law enforcement agencies and county jails, charge filings from a prosecuting attorney, convictions from the trial court clerk, and prison intake and discharge from the Washington State Department of Corrections.

### Local data systems

In Washington, local criminal justice information systems are not typically accessed to determine eligibility for conviction vacation. As we noted above, these individual systems (e.g., law enforcement records management systems, prosecution case management systems, and the few courts that use their own case management system) have established policies, procedures and technological capabilities to

provide AOC and WSP<sup>23</sup> with the necessary data to determine whether an individual's conviction is eligible for vacation.

### *State data systems*

Washington has two primary criminal justice information systems that contain most of the data for conviction eligibility determinations. These are the AOC Judicial Information System (JIS), and the WSP criminal history repository referred to as the Washington State Identification System (WASIS).

#### – **Judicial Information System (JIS)**

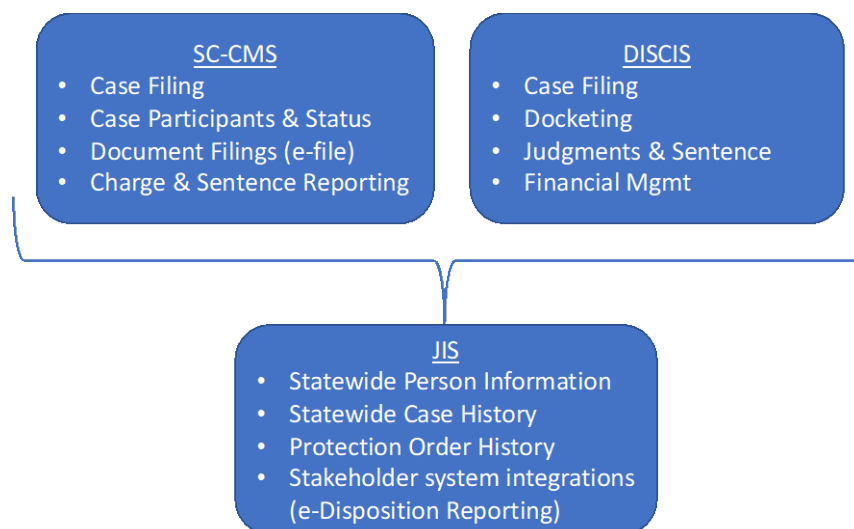
“The Judicial Information System (JIS) is the primary information system for courts in Washington. It provides case management automation to appellate, superior, limited jurisdiction and juvenile courts. Its twofold purpose is: (1) to automate and support the daily operations of the courts and (2) to maintain a statewide network connecting the courts and partner criminal justice agencies to the JIS database.”<sup>24</sup> JIS includes several distinct court case management applications currently used by appellate and trial courts across the state. This document will focus on the two trial court applications most directly related to conviction vacation data:

**SC-CMS.** The Superior Court case management system (SC-CMS) is a statewide, web-based system used by 37 of the 39 superior courts.<sup>25</sup> Implemented in 2018, SC-CMS supports a wide variety of case management functions and detailed information on case participants, documents, charges, judgments and amounts, sentences and case completion.

**DISCIS.** The District and Municipal Court Information System (DISCIS) was deployed in 1987 in over 150 courts of limited jurisdiction throughout Washington. The key functionality of DISCIS includes case filing, docketing, judgment and sentence recording, warrant processing and financial management. AOC is leading a replacement project for DISCIS and plans to implement the new system statewide by 2026.

As court staff and county clerks enter data into each system, the information is retained in the JIS database that AOC manages. The JIS database provides a statewide network for court and criminal justice agencies<sup>26</sup> and is the single point of access to court data. JIS provides the ability to perform a variety of queries on individuals or cases and to automate exchanges with external stakeholders. Figure 1 illustrates a few of the types of data JIS accesses within SC-CMS and DISCIS.

**Figure 1. Court Case Management System Components**

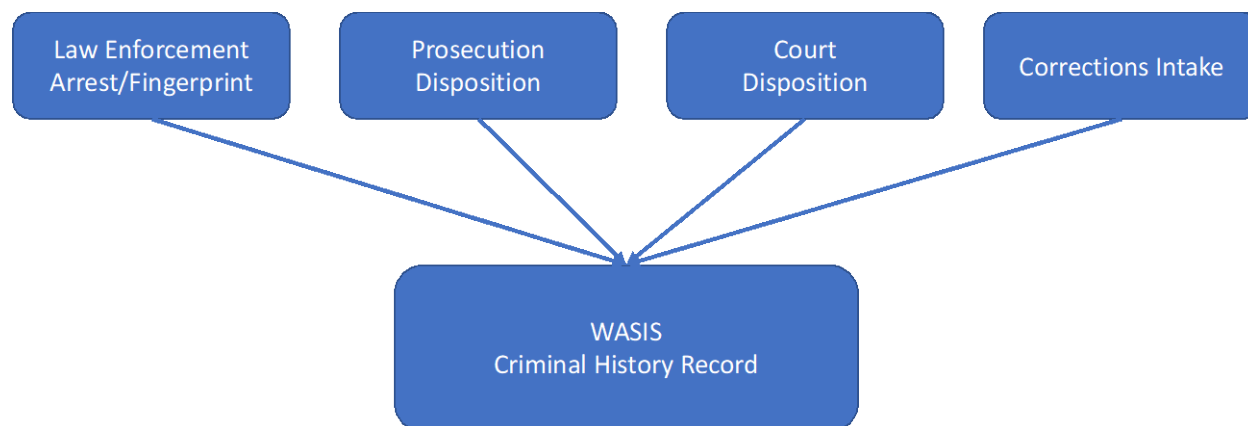


– **Washington State Identification System (WASIS)**

The WSP maintains the state’s criminal history repository, the Washington State Identification System. WASIS contains fingerprint-based records of arrest and dispositions submitted by law enforcement and courts throughout the state.<sup>27</sup> A person’s criminal history is created and updated based on the fingerprint records submitted by law enforcement agencies statewide for every custodial arrest.<sup>28</sup> Each person fingerprinted is assigned a unique state identification number (SID). The arrest record contains personal demographics, offense information, and unique identifiers for the person and charges to be matched upon disposition of the case.

WSP receives charge adjudications from the entity that disposed of the charges and posts this information in WASIS. As illustrated in Figure 2, case dispositions are reported by law enforcement agencies, prosecuting attorneys (e.g., charge amendments, *nolle prosequi*) and by courts.

**Figure 2. WASIS Criminal History Record Components**



If the disposition includes a conviction, courts will submit the judgment and sentence terms imposed by the court and any enhancements, such as use of a firearm.<sup>29</sup> Additionally, courts also provide “subsequent dispositions” for actions after the initial sentence, including Certificates of Discharge (COD), Certificates of Restoration of Opportunity (CROP),<sup>30</sup> orders to vacate or seal convictions, or pardons. The Washington State Department of Corrections (DOC) also updates WASIS with offender commitment date and charge if sentenced to DOC custody. Each subsequent arrest and corresponding disposition is appended to the person’s criminal history record — provided that appropriate tracking or transaction numbers are available to link the event to the originating case.

WSP is required to conduct annual disposition reporting compliance audits for each “originating agency” (i.e., the agency responsible for the initial arrest record to WASIS), prosecuting attorney and trial court.<sup>31</sup> In 2020 WASIS contained criminal history records on 1,782,800 individuals; 88% of all arrests had final dispositions, including 69% for arrests entered within the past five years, and 86% of felonies.<sup>32</sup>

WSP reports that it receives 73% of dispositions through the Electronic Disposition Transfer Report (EDTR) interface with JIS.<sup>33</sup> A total of 26% of electronic dispositions submitted via the EDTR interface update WASIS automatically (i.e., “lights-out processing”), while 71% are routed to an exception handling queue, which requires staff intervention to resolve.<sup>34</sup> Felony court case dispositions received by WSP are posted to WASIS within 24 hours.<sup>35</sup> Prosecution dispositions are submitted to WSP via mail and manually entered by WSP into WASIS.

## *National data systems*

### – **Interstate Identification Index (III)**

WASIS fingerprint images and criminal history records are submitted by WSP to the Federal Bureau of Investigation’s (FBI) Interstate Identification Index (III or “Triple I”). The III is a national index of state and federal criminal history records maintained by the FBI designed to facilitate the interstate exchange among state justice agencies. It includes a database of fingerprint images to establish and verify the positive identification of record subjects. Upon receipt of a fingerprint image and confirmation there is no existing match, a record subject is assigned a unique identifier, known as the Universal Control Number (UCN).<sup>36</sup> The UCN is used to positively identify individuals with criminal records in multiple states. The III makes these records, along with other state criminal history records, available for authorized purposes (e.g., civil background checks, criminal investigations, etc.). The III is the primary conduit for criminal justice stakeholders to conduct interstate background checks.

“Queries from criminal justice agencies nationwide are transmitted automatically via state telecommunications networks and the FBI’s National Crime Information Center telecommunications lines. Searches are made on the basis of name and other identifiers. The process is entirely automated. If a hit is made against the Index, record requests are made using the SID or UCN, and data are automatically retrieved from each repository holding records on the individual and forwarded to the requesting agency. Currently, all 50 states and the District of Columbia participate in III.”<sup>37</sup>

In Washington, III queries are accomplished through WASIS.

## Systems involved in eligibility determinations

The AOC systems (JIS) were designed to collect and manage *case-specific* information, while WSP’s WASIS is a *person-based* longitudinal history of an individual’s involvement in the criminal history system. Each system contains some comparable information (e.g., offense type and severity level, conviction and sentence date), but each is distinct and must be accessed to determine eligibility for conviction vacation, as the statutory criteria include both case- and criminal history-related provisions.

As illustrated in Tables 1 and 2, the data sources used to determine eligibility for vacation of misdemeanor, gross misdemeanor, and felony convictions are jointly shared by the AOC JIS and WSP WASIS systems.

**Table 1. Data sources to confirm misdemeanor/gross misdemeanor eligibility criteria**

Eligibility criteria	AOC JIS	WSP WASIS
Applicant has not completed all terms of sentence	X	
There are pending charges in any state, tribal or federal court		X
The offense was a violent offense or attempt	X	X
The offense is a DUI-related offense, or a “prior offense” with a subsequent DUI or drug offense within 10 years	X	X
The offense is considered a sex offense, obscenity, pornography, sexual exploitation of children	X	X
Less than three years since completion of sentence terms and financial obligations	X	
Any convictions within past three years	X	X
The applicant is subject to a restraining, protection order, or no contact order with a violation within the past five years	X	X
The offense is a domestic violence offense and any of the following occurred:	X	X
<ul style="list-style-type: none"> <li>○ Applicant did not provide notification of petition to prosecuting attorney’s office</li> </ul>		
<ul style="list-style-type: none"> <li>○ Applicant has two or more previous DV convictions from different incidents</li> </ul>	X	X
<ul style="list-style-type: none"> <li>○ Applicant perjured regarding previous DV conviction on affidavit/application</li> </ul>		X
<ul style="list-style-type: none"> <li>○ Less than five years elapsed since completed sentence, paid obligations, successful completion of court ordered treatment</li> </ul>	X	

**Table 2. Data sources to confirm felony eligibility criteria**

<b>Eligibility criteria</b>	<b>AOC JIS</b>	<b>WSP WASIS</b>
Certificate of Discharge has NOT been issued	X	X
Pending charges in any state, tribal or federal court		X
The offense was a violent offense or crime against a person — except the following offenses may be vacated if the conviction did not include a firearm, deadly weapon or sexual motivation enhancement:	X	X
o assault in the second degree	X	X
o assault in the third degree when not committed against a law enforcement officer or peace officer	X	X
o robbery in the second degree	X	X
The offense is a class B felony and the offender has been convicted of a new crime in any court 10 years before the application	X	X
The offense is a class C felony and the offender has been convicted of a new crime in any court five years before the application	X	X
The offense is a class B felony and less than 10 years have passed since the later of the applicant's:	X	X
o release from community custody	X	
o release from confinement	X	
o sentencing date	X	X
The offense is a class C felony, other than DUI-related felony, and less than five years have passed since the later of the applicant's:	X	X
o release from community custody	X	
o release from full and partial confinement	X	
o sentencing date	X	X
The offense was a DUI felony	X	X

JIS contains the majority – but not all – of the data necessary to determine if an individual’s conviction is eligible for vacation. JIS case information includes offense type (e.g., DUI, violent, sexual), offense classification (misdemeanor or felony), and whether the applicant is the subject of a restraining order with a violation within the past five years. JIS is the only source of data the state uses to determine if and when an offender has successfully completed all terms of sentence, including payment of legal financial obligations.

WASIS would be the only source to confirm whether an individual has pending charges or recent convictions in another state, tribal or federal courts.<sup>38</sup> In addition to JIS, WASIS contains offense types (such as DUI, violent or sex offenses). If reported by courts or law enforcement, WASIS may include aggravating circumstances, such as whether firearms, deadly weapons or sexual motivations were involved in the offense.

## Current records relief processes

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Washington currently provides three primary forms of criminal records relief for adults, all of which are petition-based: *expungement*, *vacatur* of criminal convictions, and *court record sealing*. A fourth option, which does not actually alter the court or criminal record adjudication, is a Certificate of Restoration of Opportunity (CROP), which is a civil court order designed to reduce employment barriers and restore eligibility for at least some occupational licenses.<sup>39</sup> The eligibility and processes required for obtaining each form of records relief depends upon specific circumstances and distinct criteria.

### Expunging/deleting criminal history records

Historically, to *expunge* meant “to destroy or obliterate; it implies not a legal act, but a physical annihilation.”<sup>40</sup> The *Washington State Criminal Records Privacy Act* dictates that criminal history record information that consists entirely of nonconviction data is subject to deletion from criminal justice agency files two years after a disposition favorable to the defendant has been entered, or after three years from the date of arrest or issuance of a citation or warrant for an offense for which a conviction was not obtained, *upon the request* of the person who is the subject of the record, unless the defendant is a fugitive.<sup>41</sup> Deleting criminal history record information that consists of nonconviction data only is equivalent to expungement of the record. Individuals can obtain a copy of their nonconviction criminal history record for \$12, and they must submit their expungement request forms<sup>42</sup> to the WSP, which requires identity verification via fingerprint submission and witness signatures.

WSP will remove the expunged data from state and national criminal history databases maintained by the FBI, including personally identifiable information if an expunged nonconviction is the only entry on an individual’s record. WSP does not notify the court of jurisdiction if or when nonconviction data is expunged.<sup>43</sup> In 2019, WSP received 834 nonconviction expungement requests and approved 361.<sup>44</sup>

Washington’s practice of nonconviction expungement is largely consistent with other states that provide similar relief measures. Delaware follows a similar process for expunging nonconviction records in the state criminal history repository, albeit with fewer requirements related to length of time from arrest and no provision regarding previous convictions. Connecticut also has a similar method but with a key distinction: It does not require individuals to initiate this specific type of expungement — the state acts directly. Connecticut’s criminal history repository agency conducts regular audits and performs “erasure”<sup>45</sup> as an operation of law.

### Vacating convictions

Court orders vacating a conviction are the most common form of records relief in Washington. In 2019, the AOC granted over 4,200 orders to vacate convictions in criminal history records.<sup>46</sup> The vacation process is administered by the sentencing courts and requires record subjects to file a petition for vacation and a hearing. If granted, “the court effectuates the vacation by: (a)(i) Permitting the applicant to withdraw the applicant’s plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.”<sup>47</sup>

In practice and by policy, the sentencing court will *modify both the original plea and the conviction on the case record from “guilty” to “vacated.”* Individuals granted a conviction vacation “shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime.”<sup>48</sup> WSP will amend the criminal history record to replace the “guilty” adjudication with “vacated,” and this information “is no longer disseminated to the public.”<sup>49</sup> The guidance goes on to note that “This information will remain available for criminal justice inquiries for the maximum state record retention period. Orders to vacate conviction records must be initiated by the court of jurisdiction. Please note that the FBI disseminates ALL CHRI [Criminal History Record Information] upon a fingerprint-based record check, including incidents with a status of ‘vacated.’”<sup>50</sup> The net effect of Washington’s record vacation is similar to other states’ sealing or expungement practices insofar as an individual’s conviction is no longer disqualifying for most employment, professional licensing, housing, credit or educational admission purposes, among other restrictions.<sup>51</sup>

Washington’s use of vacatur as the primary means to provide records relief is distinct from many other states. In Washington, vacatur is the principal means of providing records relief for persons who have fully discharged their sentence and have remained crime-free in the community for the legislatively mandated waiting period. The petition for vacation is a criminal filing given the fact that the net effect is to alter the court and criminal history record to change a conviction from “guilty” to “vacated.” In many other states, vacatur is generally reserved for setting aside convictions based on prejudicial error or newly discovered evidence,<sup>52</sup> for victims of human trafficking with commercialized sex convictions,<sup>53</sup> or for decriminalized offenses (e.g., marijuana related convictions).<sup>54</sup> Washington statutes also include provisions for vacating convictions for victims of human trafficking<sup>55</sup> and cannabis convictions that have been decriminalized,<sup>56</sup> yet broadscale records relief in many jurisdictions is more commonly achieved by *sealing* the existing criminal record, which is typically treated as a civil matter.

### ***Vacation petition and hearing process***

The conviction vacation process begins upon filing a Petition and Declaration Order for Vacating Conviction<sup>57</sup> and Notice of Hearing to Vacate Conviction<sup>58</sup> with the court clerk and prosecuting attorney’s office in the county where the conviction occurred. Court practices vary across the state in that some jurisdictions require additional case records and a fingerprint-based criminal history record from the WSP when filing vacation petitions.<sup>59</sup> Before a hearing, the prosecuting attorney and judicial staff will review the petition and confirm eligibility requirements have been met. The prosecuting attorney may object to a petition. If no objection is raised, the presiding judge has the discretion to grant the vacation order or to hold a hearing. If the prosecuting attorney files an objection, a hearing is required to weigh the merits of the petition and objection. Applicants are required to attend the hearing if one is scheduled.

### ***Vacation notifications and record retention***

Upon granting a vacation order, the court mails the order vacating the conviction to the applicant and electronically submits the order to the state criminal history repository at WSP and to the arresting law enforcement agency. “The Washington State Patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction and shall transmit the order vacating the



conviction to the Federal Bureau of Investigation.”<sup>60</sup> Upon receipt of the vacation order, WSP updates the individual’s criminal history record and retains the vacated conviction for disclosure to authorized criminal justice agencies and prohibits public access. Retention of the order ensures that subsequent civil fingerprint-based background checks (required for a variety of employment and licensing purposes) reflect vacated convictions.

Courts amend the case file to reflect the fact that the conviction was vacated (i.e., conviction disposition is changed from “guilty” to “vacated”), although the case file, including all case-related appearances, motions, petitions and orders, remains available to the public.<sup>61</sup> Most states restrict disclosure of convictions that have been sealed or expunged to criminal justice entities and limit public access. If a vacatur is granted in other states, courts generally include an accompanying sealing or expungement order.<sup>62</sup> Washington record subjects with a vacated conviction may legally state they have “never been convicted of that crime,” yet the public can search limited court records online,<sup>63</sup> or request complete court records from each court, which may create the potential for misunderstanding the meaning of the vacated conviction and inadvertently and negatively affect the individual.

In addition to the online case search capability, the Washington AOC sells case information in bulk to third-party consumer reporting agencies (CRAs), as do many other state courts. The AOC provides monthly updates to those CRAs, including court orders to vacate convictions. While AOC staff have indicated that they have minimal oversight or contractual provisions to ensure timely updates to include court orders to vacate convictions or limit repurposing court data by CRAs,<sup>64</sup> other states have adopted different approaches and measures to improve data quality compliance. In Pennsylvania, for example, the Administrative Office of the Pennsylvania Courts (AOPC) increased the submission frequency of case data to weekly batch updates of its LifeCycle file, which notifies bulk data purchasers to remove sealed records from their commercial databases. The agreement between AOPC and CRAs includes specific provisions enabling AOPC to perform audits to verify compliance to ensure that CRA records are updated and sealed records are removed from commercial databases.<sup>65</sup> Colorado shifted its previous model of providing batch record submissions to CRAs on a regular basis to providing access to a replicated database for real-time access to current case information contained in their state court system.

## Court record sealing

The term *sealing* in Washington is used in the same context as most other states and is defined as “the means to protect from examination by the public and unauthorized court personnel.”<sup>66</sup> Washington justice stakeholders unanimously confirm that sealing adult criminal convictions, even vacated convictions, is rare. This is a departure from common practices used in other states that employ sealing to restrict public access as the primary means of record relief. Stakeholders indicate the limited use of sealing adult court records is based on interpretation of a combination of court rules, state constitution, and related case law which will be detailed in this section.

AOC documentation describes the general conditions when sealing is available for criminal court records.

“Sealing a criminal case court record may be ordered when a conviction has been vacated or when the court finds that compelling privacy or safety concerns outweigh the public interest in access to the record.”<sup>67</sup>

Washington Courts General Rule 15 (GR 15) established uniform procedures and criteria for when court records may be sealed.

“In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile.”<sup>68</sup>

GR 15 provides additional guidance on criteria that must be factored into a sealing decision:

“Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:

- (A) The sealing or redaction is permitted by statute; or
- (B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or
- (C) A conviction has been vacated; or
- (D) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611;<sup>69</sup>
- (E) The sealing or redaction includes only restricted personal identifiers contained in the court record; or
- (F) Another identified compelling circumstance exists that required the sealing or redaction.”

In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number, case type with the notification “DV” if the case involved domestic violence, the adult or juvenile’s name, and the notation “vacated.” Sealing decisions in Washington apply only to court records because no authorizing legislation directs WSP to limit public disclosure of sealed adult court records. As a consequence, sealing an adult record by GR 15 does not affect the status of criminal history records maintained by WSP.

Sealing court records occurs routinely for juvenile cases and courts hold regular hearings to administratively seal juvenile records or hold contested hearings for certain offenses or prosecution objections,<sup>70</sup> but has no similar schedule for adult sealings.

Washington’s limited use of sealing adult records is based on the principle of *Open Courts*, a term commonly used to describe the tradition of a criminal justice system accessible by the public to promote transparency and accountability. Washington State Constitution Article 1 Section 10 specifies: “Justice in

all cases shall be administered openly, and without unnecessary delay.” Supporting case law and judicial canon has further clarified and interpreted the expansive right for public access to court proceedings. According to *Allied Daily Newspapers of Wash. v. Eikenberry*, the public and press may “freely observe the administration of civil and criminal justice.”<sup>71</sup> Additionally, stakeholders cite two specific cases that further reinforce the open courts and specifically impact the limited use of orders to seal court records: *Seattle Times Co v. Ishikawa*<sup>72</sup> and *State v. Bone Club*.<sup>73</sup> These cases effectively created additional criteria to GR 15 that stakeholders must consider on a case-by-case basis to seal court records. In summary, these criteria include a) showing a need due to a serious and imminent threat, b) the opportunity for objections by anyone present, c) [sealing] must be the least restrictive means to protect threatened interests, d) weighing competing interests of [sealing] and the public, and e) the order must be no broader than necessary to serve its purpose. Additionally, failure to apply these criteria will result in a reversible order.<sup>74</sup>

The collective effect of the Open Court principle, GR 15 and the *Bone-Club/Ishikawa* criteria establishes a high legal standard unique to Washington to restrict public access to court records. Washington courts require a demonstration of need, advance notice to involved parties and the public, public hearings that provide the opportunity for objection by anyone present, and use of judicial discretion in weighing competing interests to seal vacated convictions.

## Challenges to streamlining the vacation process

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Under the current petition process, filing the required documentation may present challenges for petitioners using existing published forms, particularly the Petition and Declaration Order for Vacating Conviction.<sup>75</sup> The five pages of instructions and checkboxes to validate eligibility are complex and may require legal assistance for applicants to ensure accuracy and compliance with statutory provisions. The form contains seven sections. Five specify the unique conditions for offense eligibility for offenses committed while being a victim of human trafficking, excluded offenses, prior offenses and associated original, amended convictions and deferred prosecutions, domestic violence offenses, etc. The document contains 75 references to various sections of the Revised Code of Washington and requires a declaration “under the penalty of perjury that the information, the best of their knowledge, is true and correct.”

### Inconsistent data collection and information sharing

Streamlining the conviction vacation petition process will require a significant level of information-sharing and coordination, particularly among courts, the criminal history repository, and correctional agencies. Washington courts are not unified. This means that courts of all levels and jurisdiction are managed and operated independently. Presiding judges have a degree of latitude to operate each trial court (Superior, District and Municipal). They are supported by court administrators who facilitate courtroom operations and county clerks who manage dockets and court records. The Washington AOC provides courts with statewide support resources that include technology, financial, programmatic and research resources. A critical component of AOC support is the statewide case management systems for Superior Courts and another for District and Municipal Courts. While most courts use these systems, they are not required to do so,<sup>76</sup> and each court’s data collection, document management, and information sharing practices can and do vary among courts statewide.

This is evident in the several ways that impact vacation eligibility determinations.

- **Unstructured data.** The use of unstructured, free-text dispositions and sentencing information entered by court clerks requires manual intervention to structure and categorize data to uniformly define sentence information (e.g., sentence type, confinement terms, financial obligations and other imposed conditions) to determine eligibility timeframes. This is problematic when attempting to calculate and apply the appropriate waiting period based on the date on which an individual completed their sentence terms.
- **Petition recording practices.** While practices vary across the state, clerks can record petitions without specifying the nature and type of the request (e.g., petitions to vacate convictions versus a petition for deferred prosecution). This can present challenges for prosecutors to conduct timely eligibility reviews, effectively notify victims or prepare for hearings.<sup>77</sup> This is also evident when attempting to determine the volume of conviction vacation petitions filed. This is because the AOC cannot easily determine the number of annual filings due to the varied court practices recording petitions, and policymakers cannot assess the extent which courts file, hear, deny or grant conviction vacation. This scenario may also present difficulties in conducting any number of assessments or analysis of the efficiency, effectiveness, and impact of streamlining vacation petitions as the baseline is difficult to determine.

- **Use of biometric identifiers/charge tracking numbers.** A final example is the inconsistent use of biometric person identifiers (i.e., fingerprints) and charge tracking numbers to confirm that all charges are properly and accurately disposed. Court dispositions lacking this data will not be accepted by the repository. It becomes a particular challenge when citations are issued in lieu of arrest, where no biometric fingerprint is collected at arrest. Recording citation-based arrests in the criminal history repository requires consistent practice of post-disposition fingerprint capture and reporting, which is not a standard operating procedure in Washington courts.

## Historical case data and staffing limitations

AOC deployed SCOMIS in 1984 and DISCIS in 1988. Most courts statewide used one of these systems and began capturing digital case information across the state. Before these systems, courts relied on paper-based files. These files have since been archived, transferred to microfiche, or in some instances destroyed in adherence to law.<sup>78</sup> Petitions for vacating convictions before electronic records will require court staff to physically search historical case records, which may require specialized equipment or traveling off-site to storage locations to attempt to locate non-digitized records. This scenario has become much more prevalent after the Washington Supreme Court decision in *State v. Blake*.<sup>79</sup> This case invalidated the state's strict liability felony controlled substance possession law that overturned an estimated 150,000 convictions since 1971.<sup>80</sup> The dramatic increase in eligible conviction vacations via the *Blake* decision poses significant operational and logistical challenges for courts, prosecutors and public defenders. Representatives of courts and prosecutor's offices have indicated that locating historical records is time- and resource-intensive. These representatives anecdotally indicated that staff resources are further strained as a result of the COVID-19 pandemic; staffing levels have dropped, and hiring remains a challenge across local government levels.<sup>81</sup> In recognition of the conviction vacation level of effort required due to the *Blake* decision, the Legislature appropriated \$11.5 million to municipalities to offset the increased operational costs incurred by those jurisdictions.<sup>82</sup> Furthermore, AOC anticipates *Blake*-related conviction vacations may take over 10 years to complete. This will likely impact the available bandwidth among AOC and court staff to initiate a new undertaking related to streamlining the petition process.

## Applicant/petitioner assessments

### *Assessing whether the applicant has completed all sentence terms*

Ensuring petitioners have successfully completed all terms and conditions mandated in their sentence<sup>83</sup> poses challenges to accurately confirm whether a conviction is eligible for vacation due to the distributed nature of supervision and oversight among the state Department of Corrections and local community supervision entities. DOC is responsible for monitoring offenders who have felony or certain gross misdemeanor convictions, while most misdemeanants are supervised by community corrections. DOC is required to notify the sentencing court when an individual completes their supervision terms. The court then issues a Certificate of Discharge<sup>84</sup> when an individual with a felony conviction has completed all remaining terms of their sentence, but these are not consistently issued or reported by Superior Courts.<sup>85</sup> Misdemeanor convictions do not have a corresponding process or requirement to validate completion of sentence terms and require manual research to confirm.

### ***Assessing whether the record subject has pending charges in any state, tribal or federal court<sup>86</sup>***

WSP appears to be unable to conduct national background checks before the filing of a vacation petition, or without the consent of the record subject to determine vacation eligibility. An additional challenge is posed by the transactional nature of querying III for out-of-state and federal criminal history records. The III system was designed to accept and respond to queries regarding a single individual. Law enforcement agencies currently submit requests for out-of-state criminal history information through the state criminal history repository via a “message switch,” which then routes the request to the III. In turn, III issues a federated query to individual state repositories, consolidates state responses, and returns the national results for a specific individual to the requesting entity. WSP would need to submit individual queries and evaluate responses against the eligibility criteria for each potentially eligible individual. This will require a significant amount of additional staff resources. SEARCH estimates 204,000 hours of staff time needed to conduct queries at a cost of \$8.6 million.<sup>87</sup> As previously noted, courts do not consistently capture and include person or charge tracking data when they report case dispositions to WSP. These may account for approximately 30% of all dispositions issued by courts statewide, according to WSP estimates.<sup>88</sup> Even with an individual’s SID provided via III, tribal criminal justice entities vary on their participation level with state or federal background check initiatives and results will not typically reflect tribal data. The U.S. Department of Justice (DOJ) continues to encourage tribal justice entities’ participation in the Tribal Access Program (TAP),<sup>89</sup> which provides software and equipment needed to share and receive information contained in national criminal justice systems, such as III and the National Crime Information Center (NCIC). Sixteen of the 29 federally-recognized tribes in Washington<sup>90</sup> participate in this program and may contribute arrest and disposition data, whereas the remaining 13 tribes do not make this information available via TAP.

### ***Assessing whether three or five years have elapsed since successful completion of sentence terms, including legal financial obligations<sup>91</sup>***

Calculating the time elapsed since successful completion of a sentence is a challenging eligibility factor, often requiring review of multiple sources of data. JIS may contain this information, but officials may also need to consult the DOC and local community corrections entities to determine the legal status of persons serving terms of probation and parole.

Determining whether a person has satisfied their legal financial obligations is not consistently captured in court case management systems. Court clerks are frequently contacted by prosecuting attorney staff to determine the status of outstanding fines, fees and restitution. AOC has indicated that courts vary in financial obligation collection practices and may employ external collection agencies to enforce compliance with court-ordered obligations. Confirmation of this requirement will likely be a manual process and vary by court.

## Assessing the feasibility of streamlining the records vacation process

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This research is designed to assess the feasibility and make recommendations regarding the establishment of a system to streamline the vacation of criminal conviction records proposed in Section 953 of Substitute Senate Bill 5092. The proposed approach is designed to prequalify and automate the petition-based vacatur of criminal conviction records:

“(a) Requiring the Washington state patrol to conduct state and national criminal background checks to determine individuals who may be eligible for the vacation of a criminal record, either under:

- (i) Current eligibility requirements; or
- (ii) Under other streamlined requirements that could consider, for example, eligibility to vacate only a certain category of offenses with reduced requirements, including but not limited to such as having no other convictions in the Washington state patrol’s criminal history database for a certain number of years;

(b) Creating a database and online portal system that would assess eligibility and subsequently notify respective persons eligible for a vacation of a criminal record;

(c) Developing the online portal system that, upon such person’s consent, prepopulates the petition and forwards the petition to the respective sentencing court and local public defender’s office in the local jurisdiction of that court.”

### National background checks and eligibility determination

The streamlined process proposed in this legislation represents a significant departure from current practice and presumes the ability of the WSP to (a) conduct national criminal background checks to identify individuals who may be eligible for the vacation of a criminal record, and (b) assess current eligibility requirements or reduced requirements, such as having no other convictions for a certain number of years. While WSP can review criminal history records within in the state’s official criminal history record system (WASIS) for conviction vacation eligibility purposes, their ability to conduct national criminal background checks is restricted under current policy and practice.

National criminal background checks are conducted through the Interstate Identification Index. The III system functions as a pointer index to state and federal criminal history records. Access to and use of III is strictly governed by security policies established by the FBI and the National Crime Prevention and Privacy Compact Council<sup>92</sup> and agreed by all contributing jurisdictions.

Under existing FBI and Compact Council policy, WSP is not authorized to conduct national criminal background checks before a vacation petition has been filed without the individual’s consent or a legitimate cause of action (e.g., court proceeding or legislative directive). As a consequence, WSP cannot “conduct national criminal background checks to determine individuals who may be eligible for the vacation of a criminal record” under current or streamlined vacation eligibility requirements. WSP is authorized to conduct national criminal history background checks of persons after they have filed a petition to have their conviction vacated to determine eligibility. WSP can also query the National Crime

Information Center (NCIC)<sup>93</sup> to determine if a petitioner has outstanding warrants or protection orders in other jurisdictions that would render them ineligible for records vacation.

The streamlined records vacation process proposed in the legislation also assumes that WSP will be able to determine records vacation eligibility under current or other streamlined requirements, such as having no other convictions in the WSP's criminal history database for a certain number of years. WASIS contains records on over 1.7 million individuals,<sup>94</sup> and is used extensively by prosecuting attorneys and their staff when conducting conviction vacation eligibility determinations. WASIS contains most, although not all, of the information needed to determine eligibility.

It is important to note that many of the current vacation eligibility requirements (e.g., no aggravating factors, no pending charges, successful completion of sentence, payment of legal financial obligations, and waiting periods with no subsequent convictions) rely on data that are not native elements of the official criminal history record. WSP does not routinely receive aggravating factors associated with a specific crime, such as offenses involving a law enforcement officer, use of a firearm or other deadly weapon, or sexual motivation as a part of the arrest charges that are reported to WSP. While WSP does receive the sentence terms and sentence date, the only sentence outcome data reported to WSP by the courts is whether an individual has been granted a Certificate of Discharge (COD).<sup>95</sup> A COD is issued by the courts and verifies that an individual with a felony conviction has successfully completed all terms of their sentence. According to AOC documentation, this does not always occur automatically.<sup>96</sup>

Individuals may petition the sentencing court for the issuance of a COD if one was not previously ordered. When a COD is issued, the individual court is responsible for notifying WSP of the COD, and WSP will update the individual criminal history record. This practice also does not occur automatically or consistently across the state. WSP confirmed this by noting that since 2017, Benton County (population of 200,715<sup>97</sup>) has submitted over 1,000 CODs to WSP, while King County (population of 2.2 million<sup>98</sup>) has submitted only 179 CODs.<sup>99</sup> WSP does not receive any sentence outcome information for misdemeanor or gross misdemeanor convictions, and courts do not issue CODs or orders equivalent to a COD for misdemeanor or gross misdemeanor convictions.

In the unlikely event WSP did receive authorization to conduct national background checks to determine vacation eligibility before an individual filing a petition, this process would require a significant level of effort, resources and time to complete. The III system is designed for manual and individual-specific queries and does not support "batch" submissions, i.e., multiple checks per query. WSP estimates that approximately 1.22 million queries would need to be submitted to III.<sup>100</sup> Conservative estimates assuming 10 minutes per check would require over 200,000 staff hours at a cost of over \$8.5 million to conduct national background checks via III. In addition to national background checks, similar resource levels would also be required to conduct NCIC queries to validate individuals are not subjects of protection, no-contact, and restraining orders.



## **Creating a database and online portal system, and notifying individuals eligible for records vacation**

The streamlined process proposed in the legislation contemplates the creation of a database and online portal system of persons who meet current or streamlined criminal conviction record vacation eligibility criteria, and proactive notification of persons who are eligible for records vacation. Given the challenges noted above in prequalifying individuals who are eligible for record vacation, creating a database and online portal system to support a prequalification process is not feasible. One option for consideration would be to eliminate the eligibility requirement of disqualifying petitioners who have pending charges in other states, tribal and federal jurisdictions.

Notifying people who may be eligible to have their criminal convictions vacated poses its own challenges. That's because neither WSP nor AOC have current contact information for every person in their recordkeeping systems. Criminal history records rarely capture a person's physical or mailing address, unless the person is a registered sex offender, which effectively renders them ineligible for records vacation. Court records may have an address on file while the case is active, but mailing addresses are subject to change without notice. Attempts to notify people who are eligible for criminal conviction vacation poses significant privacy and confidentiality risks that may outweigh the potential benefit.

Other states that have implemented state-initiated record clearance initiatives face the same problem of notifying record subjects when a conviction is cleared. Most states that have pursued records relief initiatives rely on a combination of mass-marketing and targeted communication strategies that include public service announcements, multimedia advertising (digital, radio, billboard, print), targeted social media group postings, and involvement of social service providers to publicize records relief initiatives. States have resisted mailed or other proactive direct notifications due to the sensitive nature of the notices and the potential to inadvertently disclose legally protected criminal history record information to unauthorized recipients and have opted to err on the side of caution out of respect to the potential for inadvertent disclosure of a previous conviction to an unintended audience.

## **Developing an online portal system that populates and forwards the petition to the sentencing court and local public defender's office in the local jurisdiction of the court**

The final element in the streamlined records vacation proposal referenced in the legislation is the development of an online portal that, upon the record subject's consent, would prepopulate the petition, which would be forwarded to the respective court and the local public defender's office.

The establishment of an online portal to support creating and filing a petition would include several technology components to develop the necessary framework. These foundational components include internet domain name registration, secured website hosting service, and graphic design for the user interface. The portal use case, while not included in the bill language, assumes the ability to establish session-based, device-specific security measures. This will require the portal to include the ability for user registration, authentication, and credentialing within a dedicated directory, creating a similar security environment to most e-commerce platforms. These platforms typically include user directory

services to support user account creation (username and password) using identification data yet to be determined, but likely include a combination of name, date of birth, and possibly other unique personal identifiers such as Social Security Number (SSN), State Identification Number (SID), etc. The user authentication mechanism should require two-factor authentication techniques such as issuing one-time passcodes, challenge questions, or CAPTCHA images to validate users and their devices. Establishing the user identification and authentication criteria will be critical components of the portal to ensure that the user is in fact the same individual as the record subject.

The requirement for the portal to create and populate a petition could be accomplished through creating a web-form that allows users to enter the necessary information for either felony<sup>101</sup> or misdemeanor<sup>102</sup> convictions. This information includes defendant name and contact information, court and county name, convicted offenses, count, conviction date, and a series of affirmations regarding sentence term completion, absence of pending charges, recent convictions, etc. Providing the ability to enter this information into a web-based form, and upon affirmation of truth and accuracy, the portal would generate an electronic version of the petition. This capability is feasible. The ability to “forward the petition to the respective sentencing court and local public defender’s office”<sup>103</sup> is also feasible. This automated filing process is commonly referred to as *e-filing* and has long been a sought-after feature of court case management systems in Washington. AOC recently was appropriated \$2.8 million to support the implementation of this feature in the Courts of Limited Jurisdiction Case Management System (CLJ-CMS) project, which is currently in progress, and requested an additional \$1.6 million for implementation in superior courts. This is a critical component for modern court operations, but it should be noted that the decision to use this feature remains with the individual courts. At the time of this writing, 17 superior courts are actively planning to implement this feature and are in the process of revising local court rules to enable e-filing.

## Summary

Given the challenges and barriers outlined above, the approach to developing a proactive online eligibility determination and notification system as contemplated in Engrossed Substitute Senate Bill 5092 2021-2023 Biennial Budget, Section 953 is not practicable. It is equally clear that WSP is not best suited or the most appropriate agency to lead efforts to streamline the eligibility determination and notification process. In the **Recommendations** section that follows, SEARCH outlines what we consider an achievable and measurable improvement to streamlining the records vacation process. These recommendations address specific directives included in the legislation authorizing this study.

## SEARCH Recommendations for streamlining conviction vacations

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The following are SEARCH recommendations for streamlining the criminal conviction vacation process in Washington. These recommendations seek to promote the awareness of records vacation through a streamlined process while supporting the current eligibility requirements defined in statute and address the first three requirements of this study.

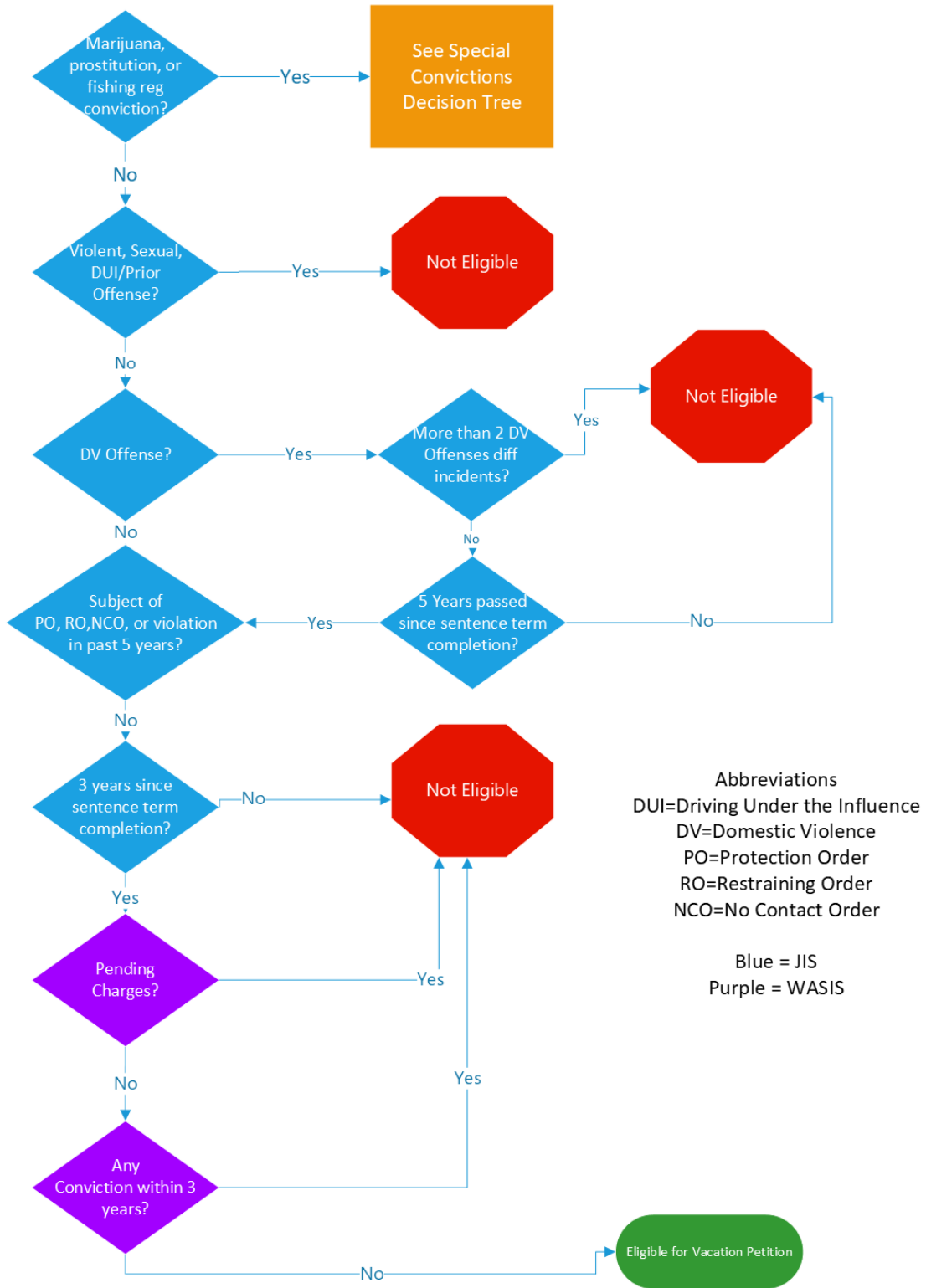
### **Recommendation 1: *Establish a conviction vacation portal with a self-assessment vacation eligibility tool and electronic filing of a Petition and Declaration for Order Vacating Conviction.***

Recommendation 1 adopts and integrates elements of the legislation by creating an online portal that would enable users to learn about the record vacation process and eligibility criteria, determine whether they qualify for conviction vacation by responding to a series of structured questions based on current eligibility criteria, and, if eligible, to securely complete and file an online petition for conviction vacation. The conviction vacation portal could be hosted by AOC under the ***courts.wa.gov*** domain using existing court internet infrastructure, including security, content management, translation services and knowledge base, enabling developers to leverage existing templates, tools, and experience to efficiently deploy materials and maintain a consistent presentation format.

The functionality of the portal would include a Self-Assessment Vacation Eligibility Tool, which would guide prospective petitioners in determining whether their convictions are eligible for vacation by answering a series of structured questions based on statutory criteria that assess the nature of their offense, their current legal status (e.g., whether they have pending charges, subsequent convictions, are subject to restraining or no-contact orders, etc.), and whether they have successfully completed all terms of their sentence.<sup>104</sup> The portal would be designed to provide a step-by-step “Turbo Tax”-like process where, using a question-and-answer format, the individual will be able to assess their potential eligibility for records vacation for all allowable offense types — misdemeanor, gross-misdemeanors and felony convictions — and the “Special Conviction Types” that include cannabis convictions, fishing violations related to tribal fishing rights, and convictions while victims of sex trafficking, prostitution, commercial sexual abuse of a minor, sexual assault or domestic violence. Figure 3, Misdemeanor Vacation Eligibility Self-Assessment Workflow, illustrates how the tool could be configured based on the responses provided by the user.

The portal should be a comprehensive resource for information related to record vacation and incorporate additional resources, such as descriptions of eligibility requirements, details regarding conviction vacation process, and any additional available resources to assist in completing the records vacation process.

**Figure 3. Misdemeanor vacation eligibility self-assessment workflow**



If the self-assessment concludes that the user appears to meet the minimum eligibility requirements for records vacation, the portal should offer the user the option to initiate an online Petition and Declaration for Order Vacating Conviction. The self-assessment tool would be accessible by anyone who visits the website but completing and filing the online Petition would require formal registration and user-validation to ensure security and maintain confidentiality of the process. The online Petition could mirror the data required in the existing petition and declaration forms and should include edits to ensure that all required fields are properly completed before submission.

The features of the portal will play an important role in ensuring the quality of petitions and provide a foundation for streamlining the vacation process. The petition-generating feature of the portal will need to be tightly aligned and integrated with AOC’s emerging electronic filing requirements and capabilities. It is important to note, however, that a baseline petition creation feature of the portal will be to produce a *printed* copy of the petition for mail or hand-delivery to the court of jurisdiction, since not all courts will be using the forthcoming e-filing capabilities currently being developed by the AOC. The portal would function to enable petitioners to e-file petitions in the future with courts as they adopt e-filing, but in the interim users will be provided the opportunity to complete their petition for manual filing with the respective courts.

To develop this capability, AOC will need a variety of technology development resources, including website design and development, security requirements and implementation, web-form development, content creation, legal analysis, and user acceptance testing and modifications. The overall level of effort is moderate in scale as this involves numerous features that will not only require development resources, but also include oversight and management responsibilities. This may be accomplished using internal AOC resources or contracting with an external consultant and developer.

**Table 3. Effort, outcomes, anticipated cost – Recommendation 1**

Implementation level of effort	Medium
Improved quality of petitions	High
Increased quantity of petitions	Medium
Improved accessibility for petitioners	Medium
Review efficiency	Medium
<b>Anticipated cost</b>	<b>\$204,010</b>

**Table 4. Vacation portal and self-assessment eligibility tool – Cost model estimate**

Task	Position	Rate	Hours	Total
Web design	Application Development (Entry)	\$52.19	800	\$41,752
Legal analysis	IT Business Analysis (Journey)	\$55.55	350	\$19,443
Security requirements/ implementation	IT Business Analysis (Journey)	\$55.55	400	\$22,220
User authentication/verification	Application Development (Senior)	\$63.52	375	\$23,820
Interface analysis/Requirements development	IT Business Analysis (Journey)	\$55.55	800	\$44,440
User acceptance testing	IT Data Management (Journey)	\$58.15	425	\$24,714
Content management	IT Data Management (Journey)	\$58.15	475	\$27,621
			3,625	<b>\$204,010</b>

This estimate addresses only the initial self-assessment tool and online petition creation and submission process. The portal development assumes that it can be integrated into the electronic filing services being developed and budgeted for Courts of Limited Jurisdiction and Superior Courts, as discussed below. These electronic filing services should include the capabilities to route the petition to the parties and handle all work and document flow thereafter through the normal hearing and determination processes. Once completed, this capability would be folded into the AOC Information Technology portfolio of service offerings, and ongoing maintenance and support would be incorporated into the annual budget.

Annual costs to maintain and support the portal and related functionality is estimated to be \$72,784 per year. This cost estimate is highly variable depending upon the impact of potential legislative or policy changes requiring the addition of new capabilities.

**Table 5. Vacation portal and self-assessment eligibility tool – Ongoing support and maintenance (annual)**

Task	Position	Rate	Hours	Total
Web design	Application Development (Entry)	\$52.19	400	\$15,657
Legal analysis	IT Business Analysis (Journey)	\$55.55	200	\$11,110
Security requirements/ implementation	IT Business Analysis (Journey)	\$55.55	100	\$5,555
User authentication/verification	Application Development (Senior)	\$63.52	100	\$6,352
Interface analysis/Requirements development	IT Business Analysis (Journey)	\$55.55	300	\$16,665
User acceptance testing	IT Data Management (Journey)	\$58.15	150	\$8,723
Content management	IT Data Management (Journey)	\$58.15	150	\$8,723
			1,300	<b>\$72,784</b>

## **Recommendation 2: *Implement a statewide public awareness outreach and marketing campaign.***

Successful implementation and use of the Conviction Records Vacation Portal will require a broad and coordinated statewide public awareness outreach and marketing campaign. States that have implemented state-initiated record clearance initiatives have leveraged a combination of mass marketing and communication strategies that include public service announcements, multimedia advertising campaigns (digital, radio, billboard, print), targeted social media group postings, and engagement with social service providers and advocacy groups that provide records clearance workshops and clinics to help petitioners in navigating the process.

Stakeholders should coordinate with private nonprofit organizations with previous and professional experience on strategies, techniques, and methodology to conduct this campaign. These organizations can assist in establishing the most effective means to leverage a variety of advertising and marketing collateral, and branding to promote the benefits of conviction vacation, the process and the portal functionality. Nonprofit advocacy and support organizations and professional associations like the Civil Survival Project<sup>105</sup> and the Washington Defender Association<sup>106</sup> are likely partners in extending public awareness of the streamlined records vacation process and the Conviction Records Vacation Portal.

Costs associated with creating and managing a statewide public awareness campaign largely depend on the approach taken and how aggressively the state wants to invest in supporting this effort. Comparable public awareness campaigns, such as the Target Zero<sup>107</sup> initiative conducted by the Washington Traffic Safety Commission, or the COVID-19 Community Media Outreach Program managed by the Washington Department of Health,<sup>108</sup> might provide additional insight regarding costs and evidence on the value of different marketing strategies. The Washington Traffic Safety Commission spent \$675,000 on its “Target Zero” strategic highway safety campaign to reduce traffic fatalities in Washington to zero by the year 2030.<sup>109</sup> The Target Zero statewide campaign included a variety of mediums and markets. While its target audience was men ages 18-34, the audiences associated with the campaign contemplated in this project is boarder in reach and less focused on specific holiday periods during which impaired driving increases (e.g., New Years, St. Patrick’s Day).

**Table 6. Effort, outcomes, anticipated cost – Recommendation 2**

Implementation level of effort	High
Improved quality of petitions	Low
Increased quantity of petitions	High
Improved accessibility for petitioners	Low
Review efficiency	Low
<b>Anticipated cost</b>	<b>\$675,000</b>

### **Recommendation 3: *Implement e-filing/e-service capabilities and encourage court adoption***

Streamlining the criminal conviction vacation process depends on the implementation of electronic filing (e-filing) for the online Petition and Declaration for Order Vacating Conviction. Having an electronic means available to petitioners to evaluate eligibility, complete the appropriate petition and hearing request forms, and submit electronic versions of those documents directly to the sentencing court will increase the quantity and quality of vacation petitions. E-filing should also reduce the level of effort required by court staff to conduct administrative and manual tasks associated with reviewing, entering, and updating case data in their case management system. E-filing solutions typically include e-service features to distribute filed documents to the appropriate party, e.g., prosecuting attorneys. This feature would eliminate the need for petitioners to separately serve prosecuting attorneys and ensure a consistent means of receipt. An e-filing solution will leverage the existing investments in e-filing projects currently in progress by AOC and would not be exclusive to vacatur petitions and would support a wide variety of filings for both criminal and civil cases statewide. Subsequent notifications to the petitioner, such as notice of scheduled court hearings, would occur following existing business practices.

AOC included e-filing implementation as a component of the Courts of Limited Jurisdiction Case Management System (CLJ-CMS) project and was appropriated \$2.8 million annually for the next three years to support this feature.<sup>110</sup> AOC has submitted an additional budget request of \$1.6 million for Superior Court implementation.<sup>111</sup> E-filing will be available at no additional cost to individual courts or to filers. Implementing a statewide e-filing solution will be a complex, costly and time-consuming process for AOC and all courts that elect to adopt this capability. According to recent project planning and status documentation,<sup>112</sup> AOC and its contractor have begun preparations for implementation and have completed initial design, development, and testing in advance of implementation in a pilot court. This is a critical component for modern court operations, but it should be noted that the decision to use this feature remains with the individual courts. At the time of this writing, 17 Superior Courts are actively planning to implement this feature and are in the process of revising local court rules to enable e-filing. In the interim, petitions will be required to manually file with the sentencing court. This functionality is predicated on the Legislature approving AOC funding requests for this service.

**Table 7. Effort, outcomes, anticipated cost – Recommendation 3**

Implementation level of effort	High
Improved quality of petitions	High
Increased quantity of petitions	High
Improved accessibility for petitioners	High
Review efficiency	Medium
<b>Anticipated cost</b>	<b>High - \$4.4 million per year</b>



**Recommendation 4:** *Designate the Administrative Office of the Courts as the lead agency to develop and manage the portal solutions and provide hosting and technical support services.*

SEARCH has determined and recommends that the AOC serve as the entity to develop, implement, and maintain the conviction vacation portal and related technology. AOC has a dedicated and experienced information technology staff that currently supports a robust public facing website with numerous resources, materials, and instructions. AOC leadership is integral in supporting statewide court operations with the rollout of the case management systems and integration capabilities such as electronic case filing.

## Other

### *Other requirements to be addressed in this study report*

The remainder of this section addresses the four remaining requirements (d through g) that this study report was to address.

**Requirement (d): Determine the appropriate state entity to operate and have oversight of the database and online portal system for streamlining the vacation of criminal conviction records.**

As noted in Recommendation 4, SEARCH has determined and recommends that the AOC serve as the entity to develop, implement, and maintain the conviction vacation portal and related technology.

**Requirement (e): Make additional recommendations as deemed appropriate and necessary for implementation of the database and online portal system.**

As noted in Recommendation 2, a statewide public awareness outreach and marketing campaign will be needed to inform the people who may be eligible for records vacation of new functionality to streamline the record vacation process. This resource is needed to offset the inability to effectively notify eligible individuals, as originally contemplated in the legislation.

**Requirement (f) Determining what information technology and support would be needed to be developed and maintained to administer a streamlining process most effectively and efficiently for the vacation of criminal conviction records in Washington.**

Supporting the technology components described in the above recommendations to develop the online portal will primarily require web application development resources. These resources would be responsible for the design, deployment, and management of the portal website and tools, including the conviction vacation portal with a Self-Assessment Vacation Eligibility Tool, web-based petition form(s), and integration with the forthcoming e-filing capabilities being developed by the courts. The recommendations made by SEARCH to streamline the petition process leverage a major investment being made by the AOC to implement electronic case filing (e-filing) capabilities for both the Superior Courts and Courts of Limited Jurisdiction. The efficiencies afforded by e-filing make the development of an online portal that enables petitioners to self-assess their potential eligibility, generate a petition, and

electronically file the petition with the court as the only major technological capability needed to streamline criminal conviction vacation.

**Requirement (g) The approximate cost to establish a system for streamlining the vacation of criminal conviction records with an online portal in Washington, and the approximate annual cost to operate such a system.**

The anticipated development cost for the conviction vacation portal and outreach program, as outlined in SEARCH Recommendations 1 and 2, is estimated at a total of \$951,794.

The estimated cost of developing and implementing the portal functionality is \$204,010, based upon an estimated total level of effort of 3,625 staff hours. This estimate assumes that this work will be performed by AOC staff. Upon deployment, AOC Information Technology staff would be responsible for maintaining its functionality and performing routine updates in the same manner as other web-based resources. Court staff would also need sufficient resources to monitor any legislative adjustments that would affect the portal content or functionality. The total cost to maintain and support the portal and related capabilities is estimated at 1,300 staff hours per year at an estimated cost of \$72,784. This estimate is high recognizing that legislative or procedural changes are highly variable and could impact the cost of supporting this application.

SEARCH estimates the public awareness outreach and marketing campaign will cost approximately \$675,000 to conduct. This is based upon and assumes a similar scope and scale to other statewide public safety and health initiatives. Some of these costs may be offset with the involvement of nonprofit entities with private funding to provide technical assistance with planning and rollout strategies. Electronic filing described in this document does not incur any costs in addition to previous funding requests. This functionality will leverage those capabilities upon implementation, assuming court budget requests are fully funded by the Legislature.

### ***Other post-implementation impacts***

Upon deployment of the recommendations in this report, the operational impact and associated costs incurred by all statewide stakeholders is indeterminate. The primary challenge with anticipating these costs is due to the unknown fluctuation in volume of filed petitions after deployment of the portal and e-filing. In 2009, 4,200 vacations were ordered at an estimated cost of approximately \$52.46 per petition across court, prosecution, and WSP staff.<sup>113</sup> SEARCH is unable to accurately project how many of the estimated 1.22 million persons who have convictions for offenses that are potentially eligible for vacation will actually qualify or the expected rate at which potentially eligible petitioners will use the portal and actually file petitions. In addition, the implementation of electronic filing of petitions will necessarily be staggered, given the staged implementation of e-filing across courts statewide. Nevertheless, the impact of the statewide public awareness outreach and marketing campaign may well prompt a substantial increase in the number of criminal conviction vacation petitions, which could have a cascading impact on the workload of justice stakeholders (courts, prosecutors, and WSP) across the state, including public defenders, who are already under caseload limitations.

## End notes

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<sup>1</sup> [Washington State Engrossed Substitute Senate Bill 5092, Section 953.](#)

<sup>2</sup> [SEARCH Group, Incorporated.](#) The National Consortium for Justice Information and Statistics, is a nonprofit organization with over 50 years of experience supporting the information sharing, technology, and criminal history records systems of states throughout the nation.

<sup>3</sup> Cost estimate calculation assumes 10 minutes to conduct 1,224,000 individual queries for a total of 204,000 Correctional Records Technical staff hours at a \$41.97 hourly rate for a cost of \$8,561,880. An additional \$102,000 required for conducting analysis of disqualifying convictions, database extract, transformation, and programming for a total cost of \$8,664,295.

<sup>4</sup> [Substitute House Bill 1041, Chapter 331, Laws of 2019.](#)

<sup>5</sup> [RCW 9.94A. 637 \(2019\).](#)

<sup>6</sup> [2SHB 2793 \(2020\).](#)

<sup>7</sup> [Judicial Impact Fiscal Note.](#)

<sup>8</sup> [Governor Jay Inslee letter to the House of Representatives, April 3, 2020.](#)

<sup>9</sup> [Washington State Engrossed Substitute Senate Bill 5092, Section 953.](#)

<sup>10</sup> *Ibid.*

<sup>11</sup> Becki R. Goggins and Dennis DeBacco, *Survey of State Criminal History Information Systems, 2020*, (Washington, DC: Bureau of Justice Statistics, pending), Table 1.

<sup>12</sup> Preliminary analysis by the WSP Criminal History Records Section, reported to the authors on October 31, 2022.

<sup>13</sup> RCW 9.94A.637 directs the Washington State Department of Corrections to notify the sentencing court when an offender under DOC supervision has successfully completed their sentence terms. The court must issue the certificate to the offender. It also includes a provision to waive completion of financial obligations if the court finds good cause.

<sup>14</sup> RCW 9.94A.640(2).

<sup>15</sup> RCW 9.96.060(2).

<sup>16</sup> As defined in RCW 9.94A.030(55-57).

<sup>17</sup> RCW 9.96.080 allows victims of these crime types with convictions to vacate misdemeanor convictions if they have no pending charges, no convictions within 3 years, and have paid restitution, if applicable. Statute prohibits vacating sex offenses, except failing to register as a sex offender, obscenity and pornography, sexual exploitation of children, driving under the influence, and patronizing a prostitute.

<sup>18</sup> RCW 9.94A.648 allows individuals with convictions while victims of certain crimes to vacate their conviction if they verify circumstances of victimization, have no pending charges, and no additional convictions in 5 years for class C offenses or 10 years for class B offenses and have paid applicable restitution and penalties. Violent offenses, crimes against persons, driving while intoxicated or in physical control of a vehicle, and promoting prostitution cannot be vacated under this law, with the exceptions of second- and third-degree assault not committed against law enforcement officer, and second-degree robbery if offense did not include a firearm, deadly weapon, or sexual motivation.

<sup>19</sup> RCW 9.96.060(5).

<sup>20</sup> RCW 9.96.060(4).

<sup>21</sup> Washington Administrative Office of the Courts, *A Guide to Sealing and Destroying Court Records, Vacating Convictions, and Deleting Criminal History Records*, (October 2019), p. 2.

<https://www.courts.wa.gov/newsinfo/content/GuideToCrimHistoryRecords.pdf>.

<sup>22</sup> *Ibid.*, p. 8.

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<sup>23</sup> RCW 10.98.090 requires county clerks, prosecuting attorneys, district and municipal courts, and originating law enforcement agencies to submit disposition information to the WSP Criminal History Records Section.

<sup>24</sup> Washington Courts Judicial Information System, <https://www.courts.wa.gov/jis/>.

<sup>25</sup> King and Pierce County Superior Courts implemented their own case management systems, but routinely provide case information updates to AOC.

<sup>26</sup> Washington Courts Judicial Information System, <https://www.courts.wa.gov/jis/>.

<sup>27</sup> RCW 43.43.700.

<sup>28</sup> RCW 43.43.735.

<sup>29</sup> RCW 9.94A.53 (3) provides for firearms enhancements, i.e., additional times added to the standard sentence range for specified felony offenses, ranging from 18 months for class C felonies to 5 years for class A felonies.

<sup>30</sup> RCW 9.97.020 Certificate of Restoration of Opportunity is a civil order which restores civil rights and designed to reduce employment barriers.

<sup>25</sup> RCW 10.98.100.

<sup>32</sup> Becki R. Goggins and Dennis DeBacco, *Survey of State Criminal History Information Systems, 2020*, (Washington, DC: Bureau of Justice Statistics, pending), Table 1.

<sup>33</sup> *Ibid.*, Table 7.

<sup>34</sup> *Washington State Patrol Annual Compliance Report for Disposition Reporting* (March 1, 2022).

<sup>35</sup> Becki R. Goggins and Dennis DeBacco, *Survey of State Criminal History Information Systems, 2020*, (Washington, DC: Bureau of Justice Statistics, pending), Table 7b.

<sup>36</sup> A Universal Control Number (UCN) is a unique identifying number used to index an individual's criminal or civil identity record in the Next Generation Identification (NGI) system of the FBI. See <https://e.fbi.gov/science-and-lab-resources/biometrics-and-fingerprints/biometrics/next-generation-identification-ngi>.

<sup>37</sup> Becki R. Goggins and Dennis DeBacco, *Survey of State Criminal History Information Systems, 2018* (Washington, DC: US Department of Justice, Bureau of Justice Statistics, 2020).

<sup>38</sup> WASIS does not contain detailed information on pending interstate, tribal, or federal charges natively but would be used in conducting III and NCIC queries to assess whether disqualifying charges are pending in other states, tribal, or federal jurisdictions.

<sup>39</sup> [RCW 9.97.020 Certificate of Restoration of Opportunity](#). CROP does not apply to the following occupations: law enforcement, license to practice law, many licenses involving financial responsibility, fiduciary duties, or working with vulnerable people, and some health care professions. Additionally, some licensing agencies have discretion based on the nature of a person's criminal history record and the seriousness of the offense, time since incarceration, changed circumstances, and the nature of employment or license being sought. Washington Administrative Office of the Courts, *CROP Brochure Courts 2016*, at [https://www.courts.wa.gov/forms/documents/CROP%20Brochure%20Courts\\_2016%2012.pdf](https://www.courts.wa.gov/forms/documents/CROP%20Brochure%20Courts_2016%2012.pdf). Also see, Columbia Legal Services, *Certificate of Restoration of Opportunities Act (CROP)*, at [http://columbialegal.org/policy\\_reforms/crop/](http://columbialegal.org/policy_reforms/crop/).

<sup>40</sup> *Black's Law Dictionary* (St. Paul, MN: West Publishing Co., 4th edition, 1968), p. 693.

<sup>41</sup> [RCW 10.97](#). Nonconviction data is defined as "criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. [RCW 10.97.030\(8\)](#). Dispositions that are favorable to the defendant include acquittals, dismissals, and *nolle prosequi*. The statute goes on to provide that "the criminal justice agency maintaining the data may, at its option, refuse to make the deletion if (1) the disposition was a deferred prosecution or similar diversion of the alleged offender; (2) the person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor; or (3) the individual who is the subject of the record has been arrested for or charged with another crime during the intervening period." [RCW 10.97.060](#).

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<sup>42</sup> [WSP Expungement Request Form](#).

<sup>43</sup> [WSP Non-conviction Expungement Checklist](#).

<sup>44</sup> 2019 expungements provided by WSP Criminal History Records Section staff, citing 2019 as the last complete year prior to COVID-19 facility closures that impacted in-person fingerprint availability.

<sup>45</sup> Connecticut's use of the term *erasure* for non-conviction data is the functional equivalent of expungement in most other states, in that the records are destroyed.

<sup>46</sup> This estimate provided by representatives of the WSP during an on-site meeting on April 11, 2022. Additional orders to vacate convictions may have been issued for cases not specifically recorded by the WSP and affecting court records only, but those figures are not presently available.

<sup>47</sup> [RCW 9.96.060\(1\)](#).

<sup>48</sup> [RCW 9.94A.640\(4\)\(a\)](#), [RCW 9.96.060\(7\)\(a\)](#). The statute excludes restoration of the right to possess a firearm and specifies limited use of vacated convictions for later criminal prosecutions for violations of protective, restraining, or no contact orders.

<sup>49</sup> Washington State Patrol website, "Criminal History, Updating Existing Criminal History Record Information, Vacate," at <https://www.wsp.wa.gov/crime/criminal-history/>.

<sup>50</sup> *Ibid.*

<sup>51</sup> National Inventory of Collateral Consequences of Conviction: Collateral Consequence Inventory database contains 44,719 consequences imposed on individuals across the country. <https://niccc.nationalreentryresourcecenter.org/consequences>.

<sup>52</sup> For example, in New York, a Motion to vacate a judgment may be pursued on the grounds that "(a) The court did not have jurisdiction of the action or of the person of the defendant; or (b) The judgment was procured by duress, misrepresentation or fraud on the part of the court or a prosecutor or a person acting for or in behalf of a court or a prosecutor; or (c) Material evidence adduced at trial resulting in the judgment was false and was, prior to the entry of the judgment, known by the prosecutor or by the court to be false; or (d) Material evidence adduced by the people at a trial resulting in the judgment was procured in violation of the defendant's rights under the constitution of this state or of the United States; or (e) During the proceedings resulting in the judgment, the defendant by reason of mental disease or defect, was incapable of understanding or participating in such proceedings; or (f) Improper and prejudicial conduct not appearing in the record occurred during a trial resulting in the judgment which conduct, if it had appeared in the record, would have required a reversal of the judgment upon an appeal therefrom; etc." N.Y. Crim. Proc. Law § 440.10(1). Similarly, in California people who are no longer in criminal custody can file a motion to vacate a judgment in a criminal case based on "1. A prejudicial error which damaged the defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or *nolo contendere* ("no content"); or 2. Newly discovered evidence of action innocence." California Penal Code § 1473.7.

<sup>53</sup> The following state statutes contain similar language directing courts to vacate and seal or expunge convictions as a result of human trafficking: Cal. Pen C § 236.14, Fla. Stat. Ann § 943.0583, Ga. Code Ann. § 17-10-21, Idaho Code § 67-2014, Nev. Rev. Stat. § 179.247, N.J. Crim. Proc. Code § 2C:44-1.1, N.D. Cent. Code Ann. § 12.1-41-14, 18 Pa. Cons. Stat. § 3019, S.C. Code Ann. § 16-3-2020, Vt. Stat. Ann. Tit 13, § 2658, W. Va. Code § 61-14-9.

<sup>54</sup> Ill. Comp. Stat. Ann. 2630/5.2(i)(3) authorizes vacatur and expungement of misdemeanor marijuana offenses. New Jersey also expunges and vacates most marijuana convictions, see § 2C:52-5.1 as does New York per N.Y. Crim. Proc. Law § 160.50(3)(k).

<sup>55</sup> [RCW 9.96.060\(3\)](#) and [RCW 9.94A.640\(3\)](#).

<sup>56</sup> [RCW 9.96.060\(5\)](#).

<sup>57</sup> [Petition and Declaration Order for Vacating Conviction](#) is a standardized court document that captures applicant contact information, offense, grounds for application, and attestation that the individual is eligible the information is true and correct.

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<sup>58</sup> [Notice of Hearing to Vacate Conviction](#).

<sup>59</sup> [Instructions for Vacating Misdemeanor and Gross Misdemeanor Convictions. Section 2 c](#), “...you may need to obtain information from the court file or the court docket for the offense(s) you are asking the court to vacate. Some courts may require you to obtain copies of your criminal history records and attach them to your petition.”

<sup>60</sup> [RCW 9.96.060\(8\)](#).

<sup>61</sup> “When a conviction is vacated, however, the court file is not destroyed and, unless it is sealed, the court file is still accessible to the public and the existence of the case is still publicly available as set forth in [General Rule 15\(c\)\(4\)](#).” Washington Administrative Office of the Courts, [Sealing and Destroying Court Records, Vacating Convictions, and Deleting Criminal History Records in Washington State](#) (June 2021.), p. 7.

<sup>62</sup> California convictions while victims of human trafficking will vacate the conviction, expunge the arrest, and issue an order to seal the arrest. See Cal. Penal Code § 236.14.

<sup>63</sup> The Washington AOC provides an online search capability for cases and individuals in the 37 superior courts that use the Odyssey case management system, and links to King County Superior Court and District Court case management systems. <https://dw.courts.wa.gov/>.

<sup>64</sup> At the time of this writing, AOC staff was unable to provide a contract with consumer reporting agencies to validate the contract provisions.

<sup>65</sup> Auditing Provision in Section 4 of the PA Courts “[Agreement concerning bulk distribution of electronic case information on a reoccurring basis](#).”

<sup>66</sup> Washington Courts, [Sealing and Destroying Court Records, Vacating Convictions, and Deleting Criminal History Records in Washington State](#), June 2021.

<sup>67</sup> *Ibid*.

<sup>68</sup> [Washington Court General Rule 15\(c\)\(1\)](#).

<sup>69</sup> [RCW 4.24.611](#) – Public Right to information regarding product liability/hazardous substance claims.

<sup>70</sup> Washington Courts, [Sealing and Destroying Court Records, Vacating Convictions, and Deleting Criminal History Records in Washington State](#), June 2021. “Sealing Juvenile Records,” p.2.

<sup>71</sup> *Allied Daily Newspapers of Wash. v. Eikenberry*, 121 Wn.2d 205, 211, 848 P.2d 1258 (1993).

<sup>72</sup> *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 36–39 (1982).

<sup>73</sup> *State v. Bone-Club*, 128 Wn.2d 254, 258–59 (1995).

<sup>74</sup> Subsequent case law has set precedent that failure to comply with GR15 or *Bone-Club/Ishikawa* is a reversible order. See *In re Marriage of R.E.*, 144 Wn. App. 393, 404-06, 183 P.3d 339 (2008).

<sup>75</sup> CrRLJ 09.0100, Petition and Declaration Order for Vacating Conviction, at [https://www.courts.wa.gov/forms/documents/CrRLJ%2009.0100%20PetitionDecVacateConviction\\_2022%2001.pdf](https://www.courts.wa.gov/forms/documents/CrRLJ%2009.0100%20PetitionDecVacateConviction_2022%2001.pdf).

<sup>76</sup> Washington’s two most populous counties, King and Pierce, are the notable exceptions as they each use different systems and rely on data integrations to communicate with AOC systems.

<sup>77</sup> SEARCH interview with AOC staff and court representatives on April 12, 2022, highlighted the absence of centralized data quality and assurance at the state level and associated challenges with inconsistent data entry, using vacation motion filing as an example.

<sup>78</sup> RCW 36.23.065.

<sup>79</sup> [State v. Blake, 197 Wash.2d 170 \(2021\)](#).

<sup>80</sup> David Hackett, Senior Civil Deputy, King County Prosecuting Attorney’s Office, as quoted in Amy Radil, KUOW.org, [In wake of ‘Blake,’ Washington courts clear drug convictions and refund fines](#), May 26, 2022. <https://www.kuow.org/stories/washington-courts-move-to-clear-old-drug-convictions-and-refund-fines>.

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<sup>81</sup> Maciag Rosewicz, “State and Local Government Job Growth Lags as Economy Recovers,” Pew, September 14, 2021. <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/09/14/state-and-local-government-job-growth-lags-as-economy-recovers>.

<sup>82</sup> AOC webinar describing *Blake* fund distribution, May 17, 2021. [https://www.courts.wa.gov/appellate\\_trial\\_courts/aocwho/msd/Blake%20Webinar%205-17-22.pdf](https://www.courts.wa.gov/appellate_trial_courts/aocwho/msd/Blake%20Webinar%205-17-22.pdf).

<sup>83</sup> [RCW 9.96.060\(2\)\(a\)](#).

<sup>84</sup> RCW 9.94A.637 directs DOC to “notify the sentencing court which shall provide the offender with a certificate of discharge.”

<sup>85</sup> Washington Courts, *Obtaining a Certificate of Discharge*, July 2019, p. 1. [https://www.courts.wa.gov/forms/documents/CR08.0670\\_Obtaining%20a%20Certificate%20of%20Discharge\\_2019%2007.pdf](https://www.courts.wa.gov/forms/documents/CR08.0670_Obtaining%20a%20Certificate%20of%20Discharge_2019%2007.pdf)

<sup>86</sup> [RCW 9.96.060\(2\)\(b\)](#).

<sup>87</sup> Cost estimate calculation assumes 10 minutes to conduct 1,224,000 individual queries for a total of 204,000 Correctional Records Technical staff hours at a \$41.97 hourly rate for a cost of \$8,561,880. An additional \$102,000 required for conducting analysis of disqualifying convictions, database extract, transformation, and programming for a total cost of \$8,664,295.

<sup>88</sup> WSP Criminal History Record Section staff estimates provided during an October 13, 2022, teleconference.

<sup>89</sup> [U.S. DOJ Tribal Access Program](#).

<sup>90</sup> <https://www.washingtontribes.org/>.

<sup>91</sup> The period of time that has elapsed since the person completed the terms of their original sentence varies by the nature of the misdemeanor and gross misdemeanor, ranging from 3–5 years. [RCW 9.96.060\(2\)\(f\)\(iv\) and \(g\)](#).

<sup>92</sup> The National Crime Prevention and Privacy Act of 1998 established the Compact Council to promulgate rules and procedures for the effective use of the Interstate Identification Index (III) System for noncriminal justice purposes. 34 U.S. Code § 40316 – *National Crime Prevention and Privacy Compact*. The Compact became effective April 28, 1999, after Montana and Georgia because the first two states to ratify it. To date, 34 states have ratified the Compact. Washington has not ratified the Compact.

<sup>93</sup> For information on the FBI’s National Crime Information Center (NCIC), see <https://irp.fas.org/agency/doi/fbi/is/ncic.htm>.

<sup>94</sup> Becki R. Goggins and Dennis DeBacco, *Survey of State Criminal History Information Systems, 2020*, (Washington, DC: Bureau of Justice Statistics, pending), Table 1.

<sup>95</sup> RCW 9.94A.637 requires Superior Courts to issue a Certificate of Discharge for felony convictions upon completion of all sentence obligations for a case.

<sup>96</sup> Washington State Courts, “[Obtaining a Certificate of Discharge](#),” WPF CR 08.0670 (July 2019).

<sup>97</sup> U.S. Department of Commerce, Bureau of the Census, 2020.

<sup>98</sup> *Ibid.*

<sup>99</sup> WSP Criminal History Records Section COD statistics provided via email on September 26, 2022.

<sup>100</sup> WSP Criminal History Records Section, October 31, 2022, analysis of the criminal history repository convictions that eliminated individuals with ineligible offenses, felony convictions within 5 years, and misdemeanor convictions within 3 years.

<sup>101</sup> [CR08.0920 Order re: Vacating Record of Felony Conviction](#).

<sup>102</sup> [CrRLJ 09.0100 Petition Declaration to Vacate Conviction](#).

<sup>103</sup> Washington State Engrossed Substitute Senate Bill 5092, Section 953(c).

<sup>104</sup> A nonprofit volunteer organization, Clearviction, recently developed a web-based conviction vacation “eligibility calculator” designed specifically for Washington that aligns with the approach. [www.clearviction.org](http://www.clearviction.org).

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<sup>105</sup> <https://civilsurvival.org/>.

<sup>106</sup> <https://defensenet.org/>.

<sup>107</sup> <https://wadrivetozero.com/>.

<sup>108</sup> <https://doh.wa.gov/emergencies/covid-19/community-engagement>.

<sup>109</sup> Thomas, F.D., Blomberg, R.D., Masten, S.V., Cicchino, J., Tippetts, A.S., Korbelad, K.T., Fell, J.C., & Lacey, J.H. (2015, January). *Evaluation of the Washington State Target Zero Teams Project*, p. 22. (DOT HS 812 097). Washington, DC: National Highway Traffic Safety Administration.

<https://www.nhtsa.gov/sites/nhtsa.gov/files/812097-wa-statetargetzeroproject.pdf>

<sup>110</sup> Washington State Judicial Branch 2022 Supplemental Budget Decision Package, Increase Access to Justice with E-Filing, at <https://www.courts.wa.gov/content/Financial%20Services/documents/2022/16%20-%20AOC%20Increase%20Access%20to%20Justice%20with%20E-Filing%209-9-2021.pdf>

<sup>111</sup> Washington State Judicial Branch 2023-2025 Biennial Budget, Implement eFiling for SC-CMS, at [https://www.courts.wa.gov/content/Financial%20Services/documents/2023\\_2025/Combined%20Branch%20PDF/36%20P2%20Implement%20E-Filing%20for%20SC-CMS%20FINAL.pdf](https://www.courts.wa.gov/content/Financial%20Services/documents/2023_2025/Combined%20Branch%20PDF/36%20P2%20Implement%20E-Filing%20for%20SC-CMS%20FINAL.pdf)

<sup>112</sup> Washington Courts Judicial Information System Committee Meeting, August 26, 2022.

<sup>113</sup> Calculating petition costs assumes the following: Staff time among courts, prosecutor offices, and WSP is at an average of \$41.97/hour (Step F Correctional Record Technical hourly salary + fringe and insurance). Based on interviews with representatives of all three agencies, court staff spend on average 35 minutes, prosecutors 20 minutes, and WSP staff 15 minutes to complete the existing vacation order process. Total staff time is approximately 75 minutes or 1.25 hours at an average salary of \$41.97 = \$52.46 per petition.