
SUBSTITUTE HOUSE BILL 2080

State of Washington

63rd Legislature

2014 Regular Session

By House Community Development, Housing & Tribal Affairs (originally sponsored by Representatives Sawyer, Zeiger, Appleton, Angel, DeBolt, Blake, Haler, McCoy, Wilcox, Fitzgibbon, Hurst, Freeman, S. Hunt, Santos, and Ryu)

READ FIRST TIME 01/22/14.

1 AN ACT Relating to vacating convictions for certain tribal fishing
2 activities; and reenacting and amending RCW 9.96.060.

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

4 **Sec. 1.** RCW 9.96.060 and 2012 c 183 s 5 and 2012 c 142 s 2 are
5 each reenacted and amended to read as follows:

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

18 (2) An applicant may not have the record of conviction for a

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

3 (a) There are any criminal charges against the applicant pending in
4 any court of this state or another state, or in any federal court;

5 (b) The offense was a violent offense as defined in RCW 9.94A.030
6 or an attempt to commit a violent offense;

7 (c) The offense was a violation of RCW 46.61.502 (driving while
8 under the influence), 46.61.504 (actual physical control while under
9 the influence), 9.91.020 (operating a railroad, etc. while
10 intoxicated), or the offense is considered a "prior offense" under RCW
11 46.61.5055 and the applicant has had a subsequent alcohol or drug
12 violation within ten years of the date of arrest for the prior offense;

13 (d) The offense was any misdemeanor or gross misdemeanor violation,
14 including attempt, of chapter 9.68 RCW (obscenity and pornography),
15 chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44
16 RCW (sex offenses);

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

28 (i) The applicant has not provided written notification of the
29 vacation petition to the prosecuting attorney's office that prosecuted
30 the offense for which vacation is sought, or has not provided that
31 notification to the court;

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

36 (iii) The applicant has signed an affidavit under penalty of
37 perjury affirming that the applicant has not previously had a

1 conviction for a domestic violence offense, and a criminal history
2 check reveals that the applicant has had such a conviction; or

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

7 (f) For any offense other than those described in (e) of this
8 subsection, less than three years have passed since the person
9 completed the terms of the sentence, including any financial
10 obligations;

11 (g) The offender has been convicted of a new crime in this state,
12 another state, or federal court since the date of conviction;

13 (h) The applicant has ever had the record of another conviction
14 vacated; or

15 (i) The applicant is currently restrained, or has been restrained
16 within five years prior to the vacation application, by a domestic
17 violence protection order, a no-contact order, an antiharassment order,
18 or a civil restraining order which restrains one party from contacting
19 the other party.

20 (3) Every person convicted of prostitution under RCW 9A.88.030 who
21 committed the offense as a result of being a victim of trafficking, RCW
22 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070,
23 or trafficking in persons under the trafficking victims protection act
24 of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the sentencing court
25 for vacation of the applicant's record of conviction for the
26 prostitution offense. An applicant may not have the record of
27 conviction for prostitution vacated if any one of the following is
28 present:

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

31 (b) The offender has been convicted of another crime in this state,
32 another state, or federal court since the date of conviction; or

33 (c) The applicant has ever had the record of another prostitution
34 conviction vacated.

35 (4) Every person convicted prior to January 1, 1975, of violating
36 any statute or rule regarding the regulation of fishing activities,
37 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
38 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240

1 who claimed to be exercising a treaty Indian fishing right, may apply
2 to the sentencing court for vacation of the applicant's record of the
3 misdemeanor, gross misdemeanor, or felony conviction for the offense.
4 If the person is deceased, a member of the person's family or an
5 official representative of the tribe of which the person was a member
6 may apply to the court on behalf of the deceased person.
7 Notwithstanding the requirements of RCW 9.94A.640, the court shall
8 vacate the record of conviction if:

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

11 (b) The state has been enjoined from taking enforcement action of
12 the statute or rule to the extent that it interferes with a treaty
13 Indian fishing right as determined under *United States v. Washington*,
14 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
15 899 (D. Oregon 1969), and any posttrial orders of those courts, or any
16 other state supreme court or federal court decision.

17 (5) Once the court vacates a record of conviction under
18 ((~~subsection (1) of~~)) this section, the person shall be released from
19 all penalties and disabilities resulting from the offense and the fact
20 that the person has been convicted of the offense shall not be included
21 in the person's criminal history for purposes of determining a sentence
22 in any subsequent conviction. For all purposes, including responding
23 to questions on employment or housing applications, a person whose
24 conviction has been vacated under ((~~subsection (1) of~~)) this section
25 may state that he or she has never been convicted of that crime.
26 Nothing in this section affects or prevents the use of an offender's
27 prior conviction in a later criminal prosecution.

28 ((+5)) (6) All costs incurred by the court and probation services
29 shall be paid by the person making the motion to vacate the record
30 unless a determination is made pursuant to chapter 10.101 RCW that the
31 person making the motion is indigent, at the time the motion is
32 brought.

33 ((+6)) (7) The clerk of the court in which the vacation order is
34 entered shall immediately transmit the order vacating the conviction to
35 the Washington state patrol identification section and to the local
36 police agency, if any, which holds criminal history information for the
37 person who is the subject of the conviction. The Washington state
38 patrol and any such local police agency shall immediately update their

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

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