

---

HOUSE BILL 2080

---

State of Washington                      63rd Legislature                      2013 2nd Special Session

By Representatives Sawyer, Zeiger, Appleton, Angel, DeBolt, Blake, Haler, McCoy, Wilcox, Fitzgibbon, Hurst, Freeman, Hunt, Santos, and Ryu

Read first time 06/25/13. Referred to Committee on Community Development, Housing & Tribal Affairs.

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 Notwithstanding the requirements of RCW 9.94A.640, the court shall  
5 vacate the record of conviction if:

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

8 (b) The state has been enjoined from taking enforcement action of  
9 the statute or rule to the extent that it interferes with a treaty  
10 Indian fishing right as determined under United States v. Washington,  
11 384 F. Supp. 312 (W.D. Wash. 1974), any posttrial orders of that court,  
12 or any other state supreme court or federal court decision.

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

24 ((+5)) (6) All costs incurred by the court and probation services  
25 shall be paid by the person making the motion to vacate the record  
26 unless a determination is made pursuant to chapter 10.101 RCW that the  
27 person making the motion is indigent, at the time the motion is  
28 brought.

29 ((+6)) (7) The clerk of the court in which the vacation order is  
30 entered shall immediately transmit the order vacating the conviction to  
31 the Washington state patrol identification section and to the local  
32 police agency, if any, which holds criminal history information for the  
33 person who is the subject of the conviction. The Washington state  
34 patrol and any such local police agency shall immediately update their  
35 records to reflect the vacation of the conviction, and shall transmit  
36 the order vacating the conviction to the federal bureau of  
37 investigation. A conviction that has been vacated under this section

1 may not be disseminated or disclosed by the state patrol or local law  
2 enforcement agency to any person, except other criminal justice  
3 enforcement agencies.

--- END ---