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HOUSE BILL 1087

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State of Washington                      63rd Legislature                      2013 Regular Session

By Representatives Appleton, Roberts, and Freeman

Read first time 01/16/13. Referred to Committee on Public Safety.

1            AN ACT Relating to allowing for more than one vacation of a  
2 misdemeanor and gross misdemeanor conviction; and reenacting and  
3 amending RCW 9.96.060.

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

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

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

1 (2) An applicant may not have the record of conviction for a  
2 misdemeanor or gross misdemeanor offense vacated if any one of the  
3 following is present:

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

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

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

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

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

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

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

37 (iii) The applicant has signed an affidavit under penalty of

1 perjury affirming that the applicant has not previously had a  
2 conviction for a domestic violence offense, and a criminal history  
3 check reveals that the applicant has had such a conviction; or

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

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

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

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

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

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

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

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

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

36 (4) Once the court vacates a record of conviction under subsection  
37 (1) of this section, the person shall be released from all penalties  
38 and disabilities resulting from the offense and the fact that the

1 person has been convicted of the offense shall not be included in the  
2 person's criminal history for purposes of determining a sentence in any  
3 subsequent conviction. For all purposes, including responding to  
4 questions on employment or housing applications, a person whose  
5 conviction has been vacated under subsection (1) of this section may  
6 state that he or she has never been convicted of that crime. Nothing  
7 in this section affects or prevents the use of an offender's prior  
8 conviction in a later criminal prosecution.

9 (5) All costs incurred by the court and probation services shall be  
10 paid by the person making the motion to vacate the record unless a  
11 determination is made pursuant to chapter 10.101 RCW that the person  
12 making the motion is indigent, at the time the motion is brought.

13 (6) The clerk of the court in which the vacation order is entered  
14 shall immediately transmit the order vacating the conviction to the  
15 Washington state patrol identification section and to the local police  
16 agency, if any, which holds criminal history information for the person  
17 who is the subject of the conviction. The Washington state patrol and  
18 any such local police agency shall immediately update their records to  
19 reflect the vacation of the conviction, and shall transmit the order  
20 vacating the conviction to the federal bureau of investigation. A  
21 conviction that has been vacated under this section may not be  
22 disseminated or disclosed by the state patrol or local law enforcement  
23 agency to any person, except other criminal justice enforcement  
24 agencies.

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