

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1292

63rd Legislature
2014 Regular Session

Passed by the House March 10, 2014
Yeas 94 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 4, 2014
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1292** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1292

AS AMENDED BY THE SENATE

Passed Legislature - 2014 Regular Session

State of Washington

63rd Legislature

2014 Regular Session

By House Public Safety (originally sponsored by Representatives Orwall, Goodman, Roberts, Appleton, Green, Hope, Kochmar, Moscoso, Jinkins, Upthegrove, and Ryu)

READ FIRST TIME 02/18/13.

1 AN ACT Relating to vacating prostitution convictions; reenacting
2 and amending RCW 9.96.060; and adding a new section to chapter 9.96
3 RCW.

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;

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) Subject to section 2 of this act, every person convicted of
22 prostitution under RCW 9A.88.030 who committed the offense as a result
23 of being a victim of trafficking, RCW 9A.40.100, promoting prostitution
24 in the first degree, RCW 9A.88.070, promoting commercial sexual abuse
25 of a minor, RCW 9.68A.101, or trafficking in persons under the
26 trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq.
27 may apply to the sentencing court for vacation of the applicant's
28 record of conviction for the prostitution offense. An applicant may
29 not have the record of conviction for prostitution vacated if any one
30 of the following is present:

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

34 (b) The offender has been convicted of another crime, except
35 prostitution, in this state, another state, or federal court since the
36 date of conviction(~~or~~

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

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

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

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

28 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.96 RCW
29 to read as follows:

30 (1) In order to vacate a record of conviction for a prostitution
31 offense pursuant to RCW 9.96.060(3) as a result of being a victim of
32 trafficking, RCW 9A.40.100, the applicant must prove each of the
33 following elements by a preponderance of the evidence:

34 (a)(i) The applicant was recruited, harbored, transported,
35 provided, obtained, bought, purchased, or received by another person;

36 (ii) The person who committed any of the acts in (a)(i) of this
37 subsection against the applicant acted knowingly or in reckless

1 disregard for the fact that force, fraud, or coercion would be used to
2 cause the applicant to engage in a sexually explicit act or commercial
3 sex act; and

4 (iii) The applicant's conviction record for prostitution resulted
5 from such acts; or

6 (b)(i) The applicant was recruited, harbored, transported,
7 provided, obtained, bought, purchased, or received by another person;

8 (ii) The person who committed any of the acts in (b)(i) of this
9 subsection against the applicant acted knowingly or in reckless
10 disregard for the fact that the applicant had not attained the age of
11 eighteen and would be caused to engage in a sexually explicit act or
12 commercial sex act; and

13 (iii) The applicant's record of conviction for prostitution
14 resulted from such acts.

15 (2) In order to vacate a record of conviction for a prostitution
16 offense pursuant to RCW 9.96.060(3) as a result of being a victim of
17 promoting prostitution in the first degree, RCW 9A.88.070, the
18 applicant must prove each of the following elements by a preponderance
19 of the evidence:

20 (a)(i) The applicant was compelled by threat or force to engage in
21 prostitution;

22 (ii) The person who compelled the applicant acted knowingly; and

23 (iii) The applicant's conviction record for prostitution resulted
24 from the compulsion; or

25 (b)(i) The applicant has a mental incapacity or developmental
26 disability that renders the applicant incapable of consent;

27 (ii) The applicant was compelled to engage in prostitution;

28 (iii) The person who compelled the applicant acted knowingly; and

29 (iv) The applicant's record of conviction for prostitution resulted
30 from the compulsion.

31 (3) In order to vacate a record of conviction for a prostitution
32 offense pursuant to RCW 9.96.060(3) as a result of being a victim of
33 promoting commercial sexual abuse of a minor, RCW 9.68A.101, the
34 applicant must prove each of the following elements by a preponderance
35 of the evidence:

36 (a)(i) The applicant had not attained the age of eighteen at the
37 time of the prostitution offense;

1 (ii) A person advanced commercial sexual abuse or a sexually
2 explicit act of the applicant at the time he or she had not attained
3 the age of eighteen;

4 (iii) The person committing the acts in (a)(ii) of this subsection
5 acted knowingly; and

6 (iv) The applicant's record of conviction for prostitution resulted
7 from any of the acts in (a)(ii) of this subsection.

8 (b) For purposes of this subsection (3), a person:

9 (i) "Advanced commercial sexual abuse" of the applicant if, acting
10 other than as a minor receiving compensation for personally rendered
11 sexual conduct or as a person engaged in commercial sexual abuse of a
12 minor, he or she causes or aids a person to commit or engage in
13 commercial sexual abuse of a minor, procures or solicits customers for
14 commercial sexual abuse of a minor, provides persons or premises for
15 the purposes of engaging in commercial sexual abuse of a minor,
16 operates or assists in the operation of a house or enterprise for the
17 purposes of engaging in commercial sexual abuse of a minor, or engages
18 in any other conduct designed to institute, aid, cause, assist, or
19 facilitate an act or enterprise of commercial sexual abuse of a minor;

20 (ii) "Advanced a sexually explicit act" of the applicant if he or
21 she causes or aids a sexually explicit act of a minor, procures or
22 solicits customers for a sexually explicit act of a minor, provides
23 persons or premises for the purposes of a sexually explicit act of a
24 minor, or engages in any other conduct designed to institute, aid,
25 cause, assist, or facilitate a sexually explicit act of a minor.

26 (4) In order to vacate a record of conviction for a prostitution
27 offense pursuant to RCW 9.96.060(3) as a result of being a victim of
28 trafficking in persons under the trafficking victims protection act of
29 2000, 22 U.S.C. Sec. 7101 et seq., the applicant must prove each of the
30 following elements by a preponderance of the evidence:

31 (a) The applicant was induced by force, fraud, or coercion to
32 engage in a commercial sex act and the record of conviction for
33 prostitution resulted from the inducement; or

34 (b) The applicant was induced to engage in a commercial sex act
35 prior to reaching the age of eighteen and the record of conviction for
36 prostitution resulted from the inducement.

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