
**Community Development, Housing &
Tribal Affairs Committee**

HB 2080

Brief Description: Vacating convictions for certain tribal fishing activities.

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

Brief Summary of Bill

- Allows a person who claimed to be exercising a treaty right to apply to vacate a conviction related to a fishing offense that occurred before 1975.
- Requires a sentencing court to vacate any pre-1975 fishing convictions of a tribal member who was exercising a treaty right.

Hearing Date: 1/14/14

Staff: Sean Flynn (786-7124).

Background:

Indian Treaty Fishing Rights

In the mid-1850s, the United States negotiated and executed a series of treaties with several Indian tribes that inhabited lands within and around the Washington Territory. Through these treaties, the tribes ceded their interest in much of the lands in the territory in exchange for monetary compensation. Certain parcels of land were reserved for the exclusive use of particular tribes.

The treaties also reserved certain aboriginal rights outside of the designated reservations, including the right to engage in fishing and hunting activities. Regarding fishing rights, all the treaties provided substantially similar language, including "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the United States" Treaty of Point No Point, January 26, 1855.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Over time, the state developed a comprehensive regulatory and enforcement code to manage and conserve the fish resource in the state. The interpretation of the treaty fishing rights became an increasing source of controversy between the treaty tribes in attempting to exercise their right to fish, and the state in maintaining regulatory authority over off-reservation fishing activities. As tensions grew in the 1960s and 1970s tribal members began testing the state's authority by fishing openly in violation of state law, which prompted state officials to arrest and prosecute tribal members in state court.

In 1970, the United States and several treaty tribes filed suit in federal court against the state for violating the tribes' treaty right to fish. After extensive litigation, the court ruled in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), that the treaties collectively entitled the tribes to a fifty percent share of the fish harvest in the state. The court further enjoined the state from asserting regulatory authority over treaty tribal members at off-reservation locations where a treaty fishing right existed. The court cited several state statutes and regulations, restricting the time, place and manner of fishing activities, which the state was barred from enforcing in a way that would regulate, limit or restrict the exercise of a tribe's treaty fishing right.

At the same time, the court recognized that the tribes had the authority to regulate the activities of their own members at these off-reservation locations. The court went on to establish a co-management plan between the tribes and the state and retained jurisdiction over the case to resolve other on-going issues related to resource management.

Vacation of Convictions

Misdemeanors and Gross Misdemeanors: A person convicted of a misdemeanor or gross misdemeanor who has completed all the terms of his or her sentence may apply to the sentencing court for a vacation of his or her record of conviction. The court has discretion to vacate the conviction, unless certain conditions are found, including:

- the conviction was for a violent offense, a driving while under the influence (DUI) related offense, a sex offense, or certain kinds of domestic violence offenses;
- the person has charges pending in any state or federal court;
- the person has been convicted of another crime or has had another conviction vacated;
- less than three years have passed since the person has completed the sentencing terms; or
- the person has had a protection or restraining order issued against him or her in the last five years.

Felonies: A person convicted of a felony who has been discharged upon completion of all requirements of the sentence may apply to the sentencing court for a vacation of the record of his or her record of conviction. The sentencing court has discretion to vacate the record of a felony conviction, unless certain conditions are found, including:

- the conviction was for a violent offense, offense against a person, or certain DUI offenses;
- the person has charges pending in any state or federal court or has been convicted of a new crime;
- less than ten years have passed since the date of discharge for a class B felony; or
- less than five years have passed since the date of discharge for class C felonies, other than certain DUI offenses .

A vacated record of conviction releases the person from all penalties and disabilities resulting from the offenses and may not be included in the offender's criminal history for purposes of determining a sentence. For all purposes, including responding to employment or housing applications, the person may respond that he or she has never been convicted of that crime. However, a vacated conviction record may be used in a later criminal prosecution.

Summary of Bill:

Any person who was convicted prior to 1975 of misdemeanor, gross misdemeanor or felony offense related to fishing activity may apply to the sentencing court for the vacation of that conviction, if the person had claimed to be exercising a tribal treaty fishing right. The court shall vacate the conviction if:

- the person is a member of a tribe that has a treaty fishing right at the location where the offense occurred; and
- the state has been enjoined from enforcing the statute or rule that was violated, under a ruling in *United States v. Washington* or other state supreme court or federal court decision, to the extent that such enforcement interferes with a treaty Indian fishing right.

Appropriation: None.

Fiscal Note: Requested on 1/9/14.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.