

# SENATE BILL REPORT

## SHB 2080

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As of February 21, 2014

**Title:** An act relating to vacating convictions for certain tribal fishing activities.

**Brief Description:** Vacating convictions for certain tribal fishing activities.

**Sponsors:** House Committee on 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).

**Brief History:** Passed House: 2/13/14, 92-6.

**Committee Activity:** Law & Justice: 2/21/14.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Kelly Walsh (786-7755)

**Background:** 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. Over time, the state developed a comprehensive regulatory and enforcement code to manage and conserve the fish resources 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 to fish 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* that the treaties collectively entitled the tribes to a 50 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. 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

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between the tribes and the state and retained jurisdiction over the case to resolve other ongoing issues related to resource management.

Persons convicted of a misdemeanor or gross misdemeanor who completed all the terms of their sentence may apply to the sentencing court for a vacation of their record of conviction. The court has discretion to vacate the conviction, unless certain conditions are found, including the following:

- 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 was convicted of another crime or had another conviction vacated;
- less than three years have passed since the person completed the sentencing terms; or
- the person had a protection or restraining order issued against that person in the last five years.

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 that person's record of conviction. The sentencing court has discretion to vacate the record of a felony conviction, unless certain conditions are found, including the following:

- 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.

**Summary of Bill:** Any person who was convicted prior to 1975 of a 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. A family member or tribal representative may apply on behalf of a deceased tribal member. The court must 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 the *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:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill is an attempt to rectify some of the wrongs that were committed against these tribes. The elders of these tribes and tribal members experienced injustice and are still being affected by this injustice. We have a responsibility to put this past behind us, have respect, and do what we can to heal these wounds. State agents made repeated aggressive arrests for fishing activities, doing anything they could to deter the exercise of these treaty rights. We should do all we can to repair this injustice. We have an opportunity to take action and honor the tribes and their elders.

**Persons Testifying:** PRO: Representative Sawyer, prime sponsor; Representative Zeiger.