
SUBSTITUTE HOUSE BILL 1492

State of Washington

68th Legislature

2023 Regular Session

By House Civil Rights & Judiciary (originally sponsored by Representatives Simmons, Peterson, Santos, Doglio, Pollet, Macri, and Reed)

1 AN ACT Relating to providing relief for persons affected by State
2 v. Blake; amending RCW 9.94A.640, 9.96.060, and 72.09.480; adding a
3 new section to chapter 42.56 RCW; and adding a new chapter to Title 9
4 RCW.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Clerk" means the clerk of the superior court or the court
10 administrator of a court of limited jurisdiction.

11 (2) "Collection cost" means any fee or cost paid to a collection
12 agency as a result of a qualifying conviction or qualifying
13 nonconviction. A collection cost is "readily ascertainable" if the
14 clerk or collection agency maintains a record or accounting of the
15 collection cost or the defendant has provided documentation of the
16 collection cost.

17 (3) "Cost of supervision" means any supervision fee or cost paid
18 to the department of corrections.

19 (4) "Document-verified collateral cost" means any fee or cost
20 paid for a person's participation in a program or activity resulting
21 from a qualifying conviction or qualifying nonconviction, including

1 but not limited to electronic home monitoring costs, work release
2 fees, costs of drug evaluations, cost of treatment, probation costs,
3 and jail time in lieu of legal financial obligations, the payment of
4 which is verified by documentation carrying sufficient indicia of
5 reliability per guidance issued by the administrative office of the
6 courts. A fee or cost paid to a collection agency is not considered a
7 document-verified collateral cost.

8 (5) "Legal financial obligation" means a sum of money that is
9 ordered by a superior, district, or municipal court of the state of
10 Washington for legal financial obligations, which may include
11 restitution to the victim, court costs, county or interlocal drug
12 funds, court-appointed attorneys' fees, accrued interest, costs of
13 defense, fines, and any other financial obligation that is assessed
14 on the defendant as a result of a qualifying conviction or qualifying
15 nonconviction. A legal financial obligation does not include any fee
16 related to reissuing or reinstating a driver's license under chapter
17 46.20 RCW. A nonconviction legal financial obligation is "readily
18 ascertainable" if the clerk, adult or juvenile court, prosecuting
19 authority, or any diversion unit administered by the jurisdiction
20 maintains a record or accounting of the nonconviction legal financial
21 obligation or the defendant has provided documentation of the
22 nonconviction legal financial obligation.

23 (6) "Prosecuting authority" means any prosecuting attorney as
24 defined in RCW 36.27.005 or 35.23.111 or any attorney authorized to
25 prosecute cases in courts of limited jurisdiction.

26 (7) "Qualifying conviction" means any conviction or juvenile
27 adjudication of a qualifying offense.

28 (8) "Qualifying nonconviction" means any adult or juvenile charge
29 for a qualifying offense that was dismissed or not filed following
30 successful completion of a diversion program, deferred prosecution,
31 therapeutic court, or similar program. However, if the person was
32 participating in the diversion program, deferred prosecution,
33 therapeutic court, or other program, for multiple charges on an
34 indictment, information, or affidavit where one or more charged
35 offenses were not qualifying offenses, then the charge for the
36 qualifying offense does not constitute a qualifying nonconviction
37 under this chapter.

38 (9) "Qualifying offense" includes:

39 (a) Any of the following offenses where possession of a substance
40 is criminalized without proof that the person knowingly possessed the

1 substance: RCW 69.50.4013 (simple possession of a controlled
2 substance, 2004-2021); RCW 69.50.401 (simple possession of a
3 controlled substance, 1971-2004); RCW 69.33.020 or 69.33.230 (simple
4 possession of narcotics, 1951-1971); RCW 69.50.401 (possession of
5 less than 40 grams of marijuana, 1971-2004); RCW 69.50.4014
6 (possession of less than 40 grams of marijuana, 2004-2021); RCW
7 69.41.030 and 69.41.070 (possession of legend drugs, 1973-2004); RCW
8 69.41.030 (possession of legend drugs, 2004-2021); RCW 69.50.4011
9 (possession of counterfeit substances, 2004-2021); RCW 69.50.412 (use
10 of drug paraphernalia to inject, ingest, inhale, or otherwise
11 introduce a controlled substance into the human body, 1981-2021);

12 (b) Any offense under any municipal code that criminalizes
13 possession of a controlled substance, legend drug, counterfeit
14 substance, or drug paraphernalia without proof that the person
15 knowingly possessed the controlled substance, legend drug, or
16 counterfeit substance or drug paraphernalia;

17 (c) Any attempt, conspiracy, or solicitation to commit any
18 offense under (a) or (b) of this subsection;

19 (d) Any of the following offenses when such an offense was
20 predicated solely on a conviction of any offense under (a), (b), or
21 (c) of this subsection: RCW 9.41.040(2)(a) (unlawful possession of a
22 firearm, 2003-2021); RCW 9.41.040(1)(b) (unlawful possession of a
23 firearm, 1994-2003); and

24 (e) Any offense that the state supreme court rules
25 unconstitutional in light of *State v. Blake*, No. 96873-0 (decided
26 February 25, 2021).

27 NEW SECTION. **Sec. 2.** Any person with a qualifying conviction is
28 eligible to have such conviction vacated by the sentencing court
29 under this chapter. The restrictions under RCW 9.96.060 and 9.94A.640
30 do not apply to motions or applications filed under this chapter. Any
31 person with a qualifying conviction or qualifying nonconviction is
32 eligible for a refund of all legal financial obligations, collection
33 costs, and document-verified collateral costs paid as a result of the
34 qualifying conviction or qualifying nonconviction as provided in this
35 chapter.

36 NEW SECTION. **Sec. 3.** (1) Upon receipt of a report from the
37 clerk under section 10 of this act, a prosecuting authority shall

1 review all qualifying convictions and qualifying nonconvictions
2 within his or her jurisdiction.

3 (a) For each qualifying conviction and qualifying nonconviction,
4 the prosecuting authority shall:

5 (i) Coordinate with the appropriate clerk and other appropriate
6 entities to develop a list of all legal financial obligation amounts
7 and readily ascertainable collection cost amounts paid as a result of
8 the qualifying conviction or qualifying nonconviction; and

9 (ii) Determine whether the person is currently serving a sentence
10 for any offense under the supervision of the department of
11 corrections, and in such case, notify the office of public defense
12 that the person may be eligible for resentencing under section 6 of
13 this act.

14 (b) For each qualifying conviction, the prosecuting authority
15 shall file an ex parte motion by January 1, 2026, with the applicable
16 sentencing court to dismiss and vacate the conviction under this
17 chapter.

18 (c) For each qualifying nonconviction where legal financial
19 obligations or readily ascertainable collection costs were paid as a
20 result of the qualifying nonconviction, the prosecuting authority
21 shall file an ex parte motion by January 1, 2026, with the applicable
22 sentencing court to refund the legal financial obligations and
23 readily ascertainable collection costs under this chapter.

24 (d) A motion under this section may include documentation of the
25 amount of legal financial obligations and readily ascertainable
26 collection costs paid by the person as a result of the qualifying
27 conviction or nonconviction. The prosecuting authority is not
28 required to notify the defendant of the motion, and the court shall
29 consider a motion under this section without requiring the presence
30 of the parties or counsel.

31 (2)(a) The clerk must conduct an objectively reasonable search
32 for collection cost records and nonconviction legal financial
33 obligation records. The adequacy of a search is judged by the
34 standard of reasonableness. A reasonable search usually begins with
35 the clerk or designated employee deciding where the records are
36 likely to be and who is likely to know where they are.

37 (b) In conducting an objectively reasonable search for collection
38 cost records, in addition to searching the clerk's own records, the
39 clerk shall issue a written request to any current or past contracted
40 collection agency to provide all records and allocations of payments

1 made under qualifying convictions or qualifying nonconvictions. After
2 issuing a written request, the clerk shall also make substantial
3 efforts to obtain the requested records from the collection agency.

4 NEW SECTION. **Sec. 4.** A person with a qualifying conviction or
5 qualifying nonconviction may file a motion with the sentencing court
6 for a vacation of the conviction and a refund of legal financial
7 obligation, collection cost, or document-verified collateral cost
8 amounts, or a refund of nonconviction legal financial obligation,
9 collection cost, or document-verified collateral cost amounts,
10 regardless of whether a prosecuting authority is expected to file a
11 motion under section 3 of this act. A person moving for a vacation of
12 a conviction or a refund under this section shall set the motion for
13 hearing in accordance with local court rules, but in no case sooner
14 than 30 days from the date of filing, unless the court finds good
15 cause to shorten the time. For a motion for a refund brought under
16 this section, the prosecuting authority shall furnish the applicant
17 with the amount paid by the applicant for any legal financial
18 obligations and readily ascertainable collection costs 14 court days
19 in advance of the hearing. The movant may also demonstrate payment of
20 legal financial obligations, collection costs, and document-verified
21 collateral costs by submitting copies of records demonstrating
22 payment and by sworn declaration. The prosecuting authority may
23 object to a motion for vacation of the conviction only on the basis
24 that the conviction is not a qualifying conviction.

25 NEW SECTION. **Sec. 5.** (1) Upon a determination by the court to
26 vacate any qualifying conviction under this chapter, the court shall:

27 (a) Set aside each guilty plea or verdict, dismiss with prejudice
28 the count or counts in the information, indictment, complaint, or
29 citation that relates to the qualifying conviction or convictions,
30 and vacate the judgment and sentence;

31 (b) Quash any outstanding warrants related to the vacated
32 qualifying conviction;

33 (c) Release the individual from all penalties and disabilities
34 resulting from the qualifying conviction;

35 (d) Prohibit the qualifying conviction from being included in a
36 person's criminal history for the purposes of determining bail in a
37 subsequent prosecution or a sentence in any subsequent conviction;

1 (e) Direct the clerk to notify the department of licensing to
2 reinstate the person's privilege to drive, if suspended due to the
3 qualifying conviction;

4 (f) Direct the clerk to cancel any unpaid balances of legal
5 financial obligations imposed upon the person as a result of the
6 qualifying conviction, and direct the clerk to remove the legal
7 financial obligations from collection if collection of legal
8 financial obligations was assigned to a private collection agency;

9 (g) Order the administrative office of the courts to refund any
10 documented legal financial obligation, collection cost, and document-
11 verified collateral cost amounts paid as a result of the qualifying
12 conviction;

13 (h) Include in the order a statement informing the person of the
14 right to challenge the amount refunded under the order and that if
15 the person is indigent, the person may request publicly funded
16 counsel, subject to available funding for this purpose, to assist in
17 reviewing the refund determination and bringing a motion to amend the
18 refund amount, as provided in section 8 of this act; and

19 (i) Include in the order a statement that the defendant's
20 conviction is vacated as unconstitutional pursuant to *State v. Blake*,
21 197 Wn.2d 170, 481 P.3d 521 (2021).

22 (2) Upon receipt of a court order to vacate a qualifying
23 conviction under this section, the clerk shall transmit notice of the
24 vacate order to the Washington state patrol identification section,
25 and shall transmit the certification, and all documentation in
26 support of the certified amount to the administrative office of the
27 courts refund bureau.

28 (3) Upon receipt of notice of a court order to vacate a
29 qualifying conviction under this section, the Washington state patrol
30 shall have no more than seven working days to update their records to
31 reflect the vacation of the qualifying conviction, and shall transmit
32 the order vacating the conviction to the federal bureau of
33 investigation. A qualifying conviction that has been vacated under
34 this section may not be disseminated or disclosed by the state
35 patrol, prosecuting authority, or local law enforcement agency to any
36 person, except other criminal justice enforcement agencies.

37 (4) A qualifying conviction vacated under this chapter may not be
38 included in the person's criminal history for purposes of determining
39 bail in a subsequent prosecution or a sentence in any subsequent
40 conviction, and the person must be released from all penalties and

1 disabilities resulting from the offense. For all purposes, including
2 responding to questions on employment applications, a person whose
3 qualifying conviction has been vacated may state that he or she has
4 never been convicted of that crime. For any qualifying conviction
5 vacated under this section, a prosecuting authority may not refile
6 any charges for acts alleged in the original indictment, information,
7 or affidavit of probable cause filed in relation to the qualifying
8 conviction, and may not file new or additional charges based on acts
9 alleged in any law enforcement report from which the qualifying
10 conviction arose.

11 NEW SECTION. **Sec. 6.** (1) If the vacation of a qualifying
12 conviction under this chapter affects a sentence imposed for a
13 separate conviction by altering the person's criminal history as
14 defined in RCW 9.94A.030, then the person may file a motion to be
15 resentenced in the applicable sentencing court. Any person with a
16 qualifying conviction who is serving a current or pending sentence
17 under the supervision of the department of corrections has a right to
18 court-appointed counsel for resentencing proceedings under this
19 section consistent with the provisions set forth in chapter 10.101
20 RCW. For the purposes of this chapter, individuals incarcerated under
21 the jurisdiction of the department of corrections are presumed
22 indigent.

23 (2) A prosecuting authority may not file or refile previously
24 dismissed charges contained in any indictment, information, or
25 affidavit of probable cause filed in relation to the conviction for
26 which the person qualifies for resentencing under this section, and
27 may not file new or additional charges based on acts alleged in any
28 law enforcement report from which the conviction arose for which the
29 person is being resentenced.

30 NEW SECTION. **Sec. 7.** (1) Upon determination by the court of any
31 valid motion to refund legal obligations for any qualifying
32 nonconviction, the court shall:

33 (a) Direct the clerk to cancel any unpaid balances of legal
34 financial obligations imposed upon the person as a result of the
35 qualifying nonconviction, and direct the clerk to remove the legal
36 financial obligations from collection if collection of legal
37 financial obligations was assigned to a private collection agency;

1 (b) Provide the clerk with an approved itemized and totaled
2 amount of documented legal financial obligation, collection cost, and
3 document-verified collateral cost amounts to be refunded; and

4 (c) Order the administrative office of the courts to refund any
5 documented legal financial obligation, collection cost, and document-
6 verified collateral cost amounts paid as a result of the qualifying
7 nonconviction.

8 (2) The clerk shall transmit the certification to the
9 administrative office of the courts refund bureau.

10 NEW SECTION. **Sec. 8.** (1) Within three years of issuance of a
11 refund amount from the refund bureau, a person may challenge the
12 amount of any legal financial obligation or collection cost refund
13 ordered by the court under section 5 or 7 of this act if the order
14 resulted from a motion brought under section 3 of this act by
15 bringing a motion to amend the order's refund amount in the court
16 that issued the order. A person may also move to amend the refund
17 amount to include document-verified collateral costs paid as a result
18 of the qualifying conviction or qualifying nonconviction. Any motion
19 to challenge or amend the refund amount must include documentation to
20 support any additional refund amounts sought. A person bringing a
21 motion to challenge the refund amount must notify the refund bureau
22 of the challenge.

23 (2) If the person is indigent, and if the refund amount was
24 ordered as a result of a motion brought under section 3 of this act,
25 the person may request the services of counsel, subject to funding
26 appropriated for this specific purpose to the office of civil legal
27 aid or the office of public defense, to review the refund
28 determination and to assist in bringing a good-faith motion to amend
29 the refund amount in the court that issued the order. The provision
30 of publicly funded counsel under this section will be coordinated by
31 the office of public defense and the office of civil legal aid. For
32 the purpose of this section, "indigent" has the same meaning given in
33 RCW 10.101.010.

34 (3) A motion to amend the refund amount brought under this
35 section is not a collateral attack as defined under RCW 10.73.090.
36 Nothing in this chapter shall be construed as limiting a person's
37 right to appeal a court order under applicable Washington court
38 rules.

1 NEW SECTION. **Sec. 9.** (1) Legal financial obligations refunded
2 as a result of a vacated qualifying conviction shall not be
3 reallocated to any other legal financial obligations the person is
4 required to pay under other cause numbers or to legal financial
5 obligations owed on other convictions under the same cause number.

6 (2) When the only crime of conviction under a cause number is a
7 qualifying conviction, the court shall vacate all legal financial
8 obligations imposed under the conviction and order the refund of any
9 documented legal financial obligation, collection cost, and document-
10 verified collateral cost amounts paid.

11 (3) If the person whose qualifying conviction is vacated has
12 multiple convictions under the cause number, the following standards
13 apply for determining the allocation of legal financial obligation,
14 collection cost, and document-verified collateral cost amounts the
15 person is entitled to be refunded under the vacated qualifying
16 conviction:

17 (a) For a victim penalty assessment imposed under RCW 7.68.035:

18 (i) If at least one other nonvacated count is a felony
19 conviction, the victim penalty assessment shall not be vacated or
20 refunded;

21 (ii) If all other nonvacated counts are misdemeanors, but one of
22 those counts was originally charged as a felony, \$250 of the victim
23 penalty assessment principal amount shall be vacated and, if paid,
24 refunded;

25 (iii) If all other nonvacated counts are misdemeanors, and none
26 of those counts were originally charged as a felony, the victim
27 penalty assessment shall be vacated and, if paid, refunded.

28 (b) For a DNA collection fee imposed under RCW 43.43.7541:

29 (i) If at least one nonvacated count is a crime specified in RCW
30 43.43.754, the DNA collection fee shall not be vacated or refunded;

31 (ii) If none of the nonvacated counts are crimes specified in RCW
32 43.43.754, the DNA collection fee shall be vacated and, if paid,
33 refunded.

34 (c) The crime laboratory analysis fee imposed under RCW 43.43.690
35 shall be vacated and, if paid, refunded, unless the fee was imposed
36 for a conviction that is not a qualifying conviction.

37 (d) For a fine imposed under RCW 69.50.430:

38 (i) If at least one nonvacated count is a crime specified in RCW
39 69.50.430, the fine shall not be vacated or refunded;

1 (ii) If none of the nonvacated counts are crimes specified in RCW
2 69.50.430, the fine shall be vacated and, if paid, refunded.

3 (e) For any fee imposed for a county or interlocal drug fund:

4 (i) If at least one nonvacated count is a drug offense, as
5 defined under RCW 9.94A.030, the drug fund fee shall not be vacated
6 or refunded;

7 (ii) If none of the nonvacated counts are drug offenses, as
8 defined under RCW 9.94A.030, the drug fund fee shall be vacated and,
9 if paid, refunded.

10 (f) Drug court costs shall be vacated and, if paid, refunded.

11 (g) All costs of chemical dependency evaluation or treatment
12 shall be refunded where either was ordered as a condition of the
13 judgment and sentence. Upon presentation of proof of document-
14 verified collateral costs associated with a chemical dependency
15 evaluation or treatment, the court shall order a refund amount
16 equaling the proof of payment presented.

17 (h) If any legal financial obligation is reduced, vacated, or
18 refunded pursuant to (a) through (f) of this subsection, accrued
19 interest and collection costs shall be vacated and, if paid,
20 refunded. Accrued interest and collection costs shall be reduced and,
21 if paid, refunded, based on the proportion of the vacated counts
22 under the cause number. The proportionate reduction and refund shall
23 be computed by dividing the number of vacated counts by the original
24 total counts of conviction under the cause number.

25 NEW SECTION. **Sec. 10.** (1) The administrative office of the
26 courts, in coordination with clerks in the superior, district, and
27 municipal courts within each county, shall develop comprehensive
28 reports for each court of all persons with qualifying convictions or
29 qualifying nonconvictions. The report must be based on available
30 court records and list qualifying convictions and qualifying
31 nonconvictions chronologically by cause number in a readily
32 searchable and sortable format. For each cause number, the report
33 must include the person's name, birth date, last known address, date
34 of the judgment and sentence or dismissal pursuant to successful
35 completion of a diversion program or deferred prosecution, a listing
36 of all conviction counts for a qualifying offense in the judgment and
37 sentence or order of dismissal pursuant to successful completion of a
38 diversion program or deferred prosecution, and a listing of all
39 conviction counts for other offenses in the judgment and sentence.

1 The administrative office of the courts shall indicate any period of
2 time where court records are unavailable. This report must be kept
3 confidential and may only be shared with the administrative office of
4 the courts, except as otherwise provided in this section.

5 (2) In compiling the report, the administrative office of the
6 courts, with the assistance of the department of corrections and the
7 clerk of the court, shall prioritize cases in the following order:

8 (a) The person is incarcerated due to a qualifying conviction; (b)
9 the person is incarcerated and has a qualifying conviction in the
10 person's criminal history score; (c) the person is under active or
11 inactive supervision due to a qualifying conviction; and (d) the
12 person has a past qualifying conviction or qualifying nonconviction.

13 (3) Upon availability, the administrative office of the courts
14 shall provide completed installments of the report of qualifying
15 convictions and qualifying nonconvictions to clerks in the superior,
16 district, and municipal courts, and to the office of public defense
17 and the office of civil legal aid. Upon receipt of the reports,
18 clerks in the superior, district, and municipal courts shall provide
19 the reports to local prosecutors. The office of public defense and
20 the office of civil legal aid may provide the reports to local public
21 defense or their contractors providing legal representation to those
22 impacted by *State v. Blake*.

23 (4) The administrative office of the courts shall complete the
24 report for all qualifying convictions and nonconvictions under
25 section 1(9) (a), (b), and (c) of this act by January 1, 2024. The
26 administrative office of the courts shall complete the report for all
27 qualifying convictions and qualifying nonconvictions under section
28 1(9) (d) of this act by July 1, 2024.

29 NEW SECTION. **Sec. 11.** (1) All reports compiled, received, and
30 shared under this chapter are exempt from public disclosure under
31 chapter 42.56 RCW.

32 (2) No public agency, public official, or custodian shall be
33 liable, nor shall a cause of action exist, for any loss or damage
34 based upon a release of a report under this chapter if the public
35 agency, public official, or custodian acted in good faith in
36 attempting to comply with the provisions of this chapter.

37 NEW SECTION. **Sec. 12.** (1) The administrative office of the
38 courts shall create and administer a refund bureau to provide direct

1 refunds to persons who are entitled to a refund of legal financial
2 obligations, collection costs, and document-verified collateral costs
3 paid pursuant to a vacated qualifying conviction or a qualifying
4 nonconviction based on certifications of legal financial obligations
5 received from clerks in the superior, district, or municipal courts,
6 or the department of corrections. The refund bureau shall also
7 provide direct refunds to persons who made payments towards the costs
8 of supervision as a result of a qualifying conviction based on the
9 list certified by the department of corrections under subsection (2)
10 of this section. The administrative office of the courts shall create
11 a model application form that may be used for persons to submit to
12 the refund bureau for purposes of obtaining a refund.

13 (2) The department of corrections shall provide the
14 administrative office of the courts with a certified list of all
15 qualifying convictions in which the defendant paid any amount towards
16 the cost of supervision. This list shall contain the defendant's
17 name, case number, and the amount paid. The department of corrections
18 shall provide this list to the administrative office of the courts by
19 January 1, 2024.

20 (3) The administrative office of the courts shall provide a
21 notice to all persons who are entitled to a refund of legal financial
22 obligations, collection costs, document-verified collateral costs, or
23 costs of supervision paid under a qualifying conviction or qualifying
24 nonconviction of their right to the refund and the process for
25 applying for the refund.

26 (4) (a) Upon the issuance of a refund, the administrative office
27 of the courts refund bureau must also notify the person that:

28 (i) The person has the right to bring a motion to amend the
29 refund amount if the person believes the refund amount is inaccurate;

30 (ii) The person must bring the motion within three years after
31 issuance of the refund; and

32 (iii) If the person is indigent, the person may request publicly
33 funded counsel, subject to available funding for this purpose, to
34 review the determination and assist in bringing a good-faith motion
35 to amend the refund amount in the court that issued the order.

36 (b) The notice must provide information on the process to bring a
37 motion to amend the refund amount and how to contact the office of
38 public defense and the office of civil legal aid if the person is
39 indigent and wishes to obtain the assistance of an attorney.

1 (5) The administrative office of the courts shall create a
2 searchable online database to allow persons to search and determine
3 whether they have a qualifying conviction that has been vacated and
4 whether they are entitled to a refund of legal financial obligations,
5 collection costs, or document-verified collateral costs paid as a
6 result of a vacated qualifying conviction or a qualifying
7 nonconviction.

8 NEW SECTION. **Sec. 13.** Nothing in this chapter is intended to
9 modify or have any affect on the procedures or requirements for, or
10 the consequences of, a vacation of a criminal offense under other
11 provisions of law.

12 NEW SECTION. **Sec. 14.** A new section is added to chapter 42.56
13 RCW to read as follows:

14 Reports compiled, received, and shared under chapter 9.--- RCW
15 (the new chapter created in section 18 of this act) are exempt from
16 disclosure under this chapter.

17 **Sec. 15.** RCW 9.94A.640 and 2021 c 237 s 2 are each amended to
18 read as follows:

19 (1) Every offender who has been discharged under RCW 9.94A.637
20 may apply to the sentencing court for a vacation of the offender's
21 record of conviction. If the court finds the offender meets the tests
22 prescribed in subsection (2) of this section, the court may clear the
23 record of conviction by: (a) Permitting the offender to withdraw the
24 offender's plea of guilty and to enter a plea of not guilty; or (b)
25 if the offender has been convicted after a plea of not guilty, by the
26 court setting aside the verdict of guilty; and (c) by the court
27 dismissing the information or indictment against the offender.

28 (2) ~~((An))~~ Except as provided in section 1 of this act and
29 subsection (3) of this section, an offender may not have the record
30 of conviction cleared if:

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

33 (b) The offense was a violent offense as defined in RCW 9.94A.030
34 or crime against persons as defined in RCW 43.43.830, except the
35 following offenses may be vacated if the conviction did not include a
36 firearm, deadly weapon, or sexual motivation enhancement: (i) Assault
37 in the second degree under RCW 9A.36.021; (ii) assault in the third

1 degree under RCW 9A.36.031 when not committed against a law
2 enforcement officer or peace officer; and (iii) robbery in the second
3 degree under RCW 9A.56.210;

4 (c) The offense is a class B felony and the offender has been
5 convicted of a new crime in this state, another state, or federal
6 court in the ten years prior to the application for vacation;

7 (d) The offense is a class C felony and the offender has been
8 convicted of a new crime in this state, another state, or federal
9 court in the five years prior to the application for vacation;

10 (e) The offense is a class B felony and less than ten years have
11 passed since the later of: (i) The applicant's release from community
12 custody; (ii) the applicant's release from full and partial
13 confinement; or (iii) the applicant's sentencing date;

14 (f) The offense was a class C felony, other than a class C felony
15 described in RCW 46.61.502(6) or 46.61.504(6), and less than five
16 years have passed since the later of: (i) The applicant's release
17 from community custody; (ii) the applicant's release from full and
18 partial confinement; or (iii) the applicant's sentencing date; or

19 (g) The offense was a felony described in RCW 46.61.502 or
20 46.61.504.

21 (3) If the applicant is a victim of sex trafficking,
22 prostitution, or commercial sexual abuse of a minor; sexual assault;
23 or domestic violence as defined in RCW 9.94A.030, the victim or the
24 prosecutor of the county in which the victim was sentenced may apply
25 to the sentencing court or the sentencing court's successor to vacate
26 the victim's record of conviction for a class B or class C felony
27 offense using the process in RCW 9.94A.648. When preparing or filing
28 the petition, the prosecutor is not deemed to be providing legal
29 advice or legal assistance on behalf of the victim, but is fulfilling
30 an administrative function on behalf of the state in order to further
31 their responsibility to seek to reform and improve the administration
32 of criminal justice. A record of conviction vacated using the process
33 in RCW 9.94A.648 is subject to subsection (4) of this section.

34 (4) (a) Except as otherwise provided, once the court vacates a
35 record of conviction under subsection (1) of this section, the fact
36 that the offender has been convicted of the offense shall not be
37 included in the offender's criminal history for purposes of
38 determining a sentence in any subsequent conviction, and the offender
39 shall be released from all penalties and disabilities resulting from
40 the offense. For all purposes, including responding to questions on

1 employment applications, an offender whose conviction has been
2 vacated may state that the offender has never been convicted of that
3 crime. A conviction that has been vacated under this section may not
4 be disseminated or disclosed by the state patrol or local law
5 enforcement agency to any person, except other criminal justice
6 enforcement agencies. Nothing in this section affects or prevents the
7 use of an offender's prior conviction in a later criminal
8 prosecution, and nothing in this section affects the requirements for
9 restoring a right to possess a firearm under RCW 9.41.040.

10 (b) A conviction vacated on or after July 28, 2019, qualifies as
11 a prior conviction for the purpose of charging a present recidivist
12 offense occurring on or after July 28, 2019, and may be used to
13 establish an ongoing pattern of abuse for purposes of RCW 9.94A.535.

14 **Sec. 16.** RCW 9.96.060 and 2022 c 16 s 7 are each amended to read
15 as follows:

16 (1) When vacating a conviction under this section, the court
17 effectuates the vacation by: (a)(i) Permitting the applicant to
18 withdraw the applicant's plea of guilty and to enter a plea of not
19 guilty; or (ii) if the applicant has been convicted after a plea of
20 not guilty, the court setting aside the verdict of guilty; and (b)
21 the court dismissing the information, indictment, complaint, or
22 citation against the applicant and vacating the judgment and
23 sentence.

24 (2) Every person convicted of a misdemeanor or gross misdemeanor
25 offense may apply to the sentencing court for a vacation of the
26 applicant's record of conviction for the offense. If the court finds
27 the applicant meets the requirements of this subsection, the court
28 may in its discretion vacate the record of conviction. Except as
29 provided in section 1 of this act and subsections (3), (4), ~~(and)~~
30 (5), and (6) of this section, an applicant may not have the record of
31 conviction for a misdemeanor or gross misdemeanor offense vacated if
32 any one of the following is present:

33 (a) The applicant has not completed all of the terms of the
34 sentence for the offense;

35 (b) There are any criminal charges against the applicant pending
36 in any court of this state or another state, or in any federal or
37 tribal court, at the time of application;

38 (c) The offense was a violent offense as defined in RCW 9.94A.030
39 or an attempt to commit a violent offense;

1 (d) The offense was a violation of RCW 46.61.502 (driving while
2 under the influence), 46.61.504 (actual physical control while under
3 the influence), 9.91.020 (operating a railroad, etc. while
4 intoxicated), or the offense is considered a "prior offense" under
5 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
6 violation within ten years of the date of arrest for the prior
7 offense or less than ten years has elapsed since the date of the
8 arrest for the prior offense;

9 (e) The offense was any misdemeanor or gross misdemeanor
10 violation, including attempt, of chapter 9.68 RCW (obscenity and
11 pornography), chapter 9.68A RCW (sexual exploitation of children), or
12 chapter 9A.44 RCW (sex offenses), except for failure to register as a
13 sex offender under RCW 9A.44.132;

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

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

30 (ii) The applicant has two or more domestic violence convictions
31 stemming from different incidents. For purposes of this subsection,
32 however, if the current application is for more than one conviction
33 that arose out of a single incident, none of those convictions counts
34 as a previous conviction;

35 (iii) The applicant has signed an affidavit under penalty of
36 perjury affirming that the applicant has not previously had a
37 conviction for a domestic violence offense, and a criminal history
38 check reveals that the applicant has had such a conviction; or

39 (iv) Less than five years have elapsed since the person completed
40 the terms of the original conditions of the sentence, including any

1 financial obligations and successful completion of any treatment
2 ordered as a condition of sentencing;

3 (g) For any offense other than those described in (f) of this
4 subsection, less than three years have passed since the person
5 completed the terms of the sentence, including any financial
6 obligations;

7 (h) The offender has been convicted of a new crime in this state,
8 another state, or federal or tribal court in the three years prior to
9 the vacation application; or

10 (i) The applicant is currently restrained by a domestic violence
11 protection order, a no-contact order, an antiharassment order, or a
12 civil restraining order which restrains one party from contacting the
13 other party or was previously restrained by such an order and was
14 found to have committed one or more violations of the order in the
15 five years prior to the vacation application.

16 (3) If the applicant is a victim of sex trafficking,
17 prostitution, or commercial sexual abuse of a minor; sexual assault;
18 or domestic violence as defined in RCW 9.94A.030, or the prosecutor
19 applies on behalf of the state, the sentencing court may vacate the
20 record of conviction if the application satisfies the requirements of
21 RCW 9.96.080. When preparing or filing the petition, the prosecutor
22 is not deemed to be providing legal advice or legal assistance on
23 behalf of the victim, but is fulfilling an administrative function on
24 behalf of the state in order to further their responsibility to seek
25 to reform and improve the administration of criminal justice. A
26 record of conviction vacated using the process in RCW 9.96.080 is
27 subject to subsections (6) and (7) of this section.

28 (4) Every person convicted prior to January 1, 1975, of violating
29 any statute or rule regarding the regulation of fishing activities,
30 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
31 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
32 who claimed to be exercising a treaty Indian fishing right, may apply
33 to the sentencing court for vacation of the applicant's record of the
34 misdemeanor, gross misdemeanor, or felony conviction for the offense.
35 If the person is deceased, a member of the person's family or an
36 official representative of the tribe of which the person was a member
37 may apply to the court on behalf of the deceased person.
38 Notwithstanding the requirements of RCW 9.94A.640, the court shall
39 vacate the record of conviction if:

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

3 (b) The state has been enjoined from taking enforcement action of
4 the statute or rule to the extent that it interferes with a treaty
5 Indian fishing right as determined under *United States v. Washington*,
6 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
7 899 (D. Oregon 1969), and any posttrial orders of those courts, or
8 any other state supreme court or federal court decision.

9 (5) Every person convicted of a misdemeanor cannabis offense, who
10 was twenty-one years of age or older at the time of the offense, may
11 apply to the sentencing court for a vacation of the applicant's
12 record of conviction for the offense. A misdemeanor cannabis offense
13 includes, but is not limited to: Any offense under RCW 69.50.4014,
14 from July 1, 2004, onward, and its predecessor statutes, including
15 RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW
16 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense
17 under an equivalent municipal ordinance. If an applicant qualifies
18 under this subsection, the court shall vacate the record of
19 conviction.

20 (6) A person who is a family member of a homicide victim may
21 apply to the sentencing court on the behalf of the victim for
22 vacation of the victim's record of conviction for prostitution under
23 RCW 9A.88.030. If an applicant qualifies under this subsection, the
24 court shall vacate the victim's record of conviction.

25 (7)(a) Except as provided in (c) of this subsection, once the
26 court vacates a record of conviction under this section, the person
27 shall be released from all penalties and disabilities resulting from
28 the offense and the fact that the person has been convicted of the
29 offense shall not be included in the person's criminal history for
30 purposes of determining a sentence in any subsequent conviction. For
31 all purposes, including responding to questions on employment or
32 housing applications, a person whose conviction has been vacated
33 under this section may state that he or she has never been convicted
34 of that crime. However, nothing in this section affects the
35 requirements for restoring a right to possess a firearm under RCW
36 9.41.040. Except as provided in (b) of this subsection, nothing in
37 this section affects or prevents the use of an offender's prior
38 conviction in a later criminal prosecution.

39 (b) When a court vacates a record of domestic violence as defined
40 in RCW 10.99.020 under this section, the state may not use the

1 vacated conviction in a later criminal prosecution unless the
2 conviction was for: (i) Violating the provisions of a restraining
3 order, no-contact order, or protection order restraining or enjoining
4 the person or restraining the person from going on to the grounds of
5 or entering a residence, workplace, school, or day care, or
6 prohibiting the person from knowingly coming within, or knowingly
7 remaining within, a specified distance of a location, a protected
8 party's person, or a protected party's vehicle (RCW 10.99.040,
9 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,
10 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and
11 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic
12 violence protection order or vulnerable adult protection order
13 entered under chapter 7.105 RCW. A vacated conviction under this
14 section is not considered a conviction of such an offense for the
15 purposes of 27 C.F.R. 478.11.

16 (c) A conviction vacated on or after July 28, 2019, qualifies as
17 a prior conviction for the purpose of charging a present recidivist
18 offense as defined in RCW 9.94A.030 occurring on or after July 28,
19 2019.

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

32 (9) For the purposes of this section, "cannabis" has the meaning
33 provided in RCW 69.50.101.

34 **Sec. 17.** RCW 72.09.480 and 2015 c 238 s 1 are each amended to
35 read as follows:

36 (1) Unless the context clearly requires otherwise, the
37 definitions in this section apply to this section.

38 (a) "Cost of incarceration" means the cost of providing an inmate
39 with shelter, food, clothing, transportation, supervision, and other

1 services and supplies as may be necessary for the maintenance and
2 support of the inmate while in the custody of the department, based
3 on the average per inmate costs established by the department and the
4 office of financial management.

5 (b) "Minimum term of confinement" means the minimum amount of
6 time an inmate will be confined in the custody of the department,
7 considering the sentence imposed and adjusted for the total potential
8 earned early release time available to the inmate.

9 (c) "Program" means any series of courses or classes necessary to
10 achieve a proficiency standard, certificate, or postsecondary degree
11 or certificate education program.

12 (2) When an inmate, except as provided in subsections (4)
13 (~~and~~), (8), and (9) of this section, receives any funds in addition
14 to his or her wages or gratuities, except settlements or awards
15 resulting from legal action, the additional funds shall be subject to
16 the following deductions and the priorities established in chapter
17 72.11 RCW:

18 (a) Five percent to the crime victims' compensation account
19 provided in RCW 7.68.045;

20 (b) Ten percent to a department personal inmate savings account;

21 (c) Twenty percent for payment of legal financial obligations for
22 all inmates who have legal financial obligations owing in any
23 Washington state superior court;

24 (d) Twenty percent for any child support owed under a support
25 order;

26 (e) Twenty percent to the department to contribute to the cost of
27 incarceration; and

28 (f) Twenty percent for payment of any civil judgment for assault
29 for all inmates who are subject to a civil judgment for assault in
30 any Washington state court or federal court.

31 (3) When an inmate, except as provided in subsection (~~(9)~~) (10)
32 of this section, receives any funds from a settlement or award
33 resulting from a legal action, the additional funds shall be subject
34 to the deductions in RCW 72.09.111(1)(a) and the priorities
35 established in chapter 72.11 RCW.

36 (4) When an inmate who is subject to a child support order
37 receives funds from an inheritance, the deduction required under
38 subsection (2)(e) and (f) of this section shall only apply after the
39 child support obligation has been paid in full.

1 (5) The amount deducted from an inmate's funds under subsection
2 (2) of this section shall not exceed the department's total cost of
3 incarceration for the inmate incurred during the inmate's minimum or
4 actual term of confinement, whichever is longer.

5 (6) (a) The deductions required under subsection (2) of this
6 section shall not apply to funds received by the department from an
7 (~~offender~~) incarcerated individual or from a third party on behalf
8 of an (~~offender~~) incarcerated individual for payment of education
9 or vocational programs or postsecondary (~~education~~) degree or
10 certificate programs as provided in RCW 72.09.460 and 72.09.465.

11 (b) The deductions required under subsection (2) of this section
12 shall not apply to funds received by the department from a third
13 party, including but not limited to a nonprofit entity on behalf of
14 the department's education, vocation, or postsecondary (~~education~~)
15 degree or certificate education programs.

16 (7) The deductions required under subsection (2) of this section
17 shall not apply to any money received by the department, on behalf of
18 an inmate, from family or other outside sources for the payment of
19 postage expenses. Money received under this subsection may only be
20 used for the payment of postage expenses and may not be transferred
21 to any other account or purpose. Money that remains unused in the
22 inmate's postage fund at the time of release shall be subject to the
23 deductions outlined in subsection (2) of this section.

24 (8) The deductions required under subsection (2) of this section
25 do not apply to any money received by the department on behalf of an
26 inmate from family or other outside sources for the payment of
27 certain medical expenses. Money received under this subsection may
28 only be used for the payment of medical expenses associated with the
29 purchase of eyeglasses, over-the-counter medications, and
30 (~~offender~~) incarcerated individual copayments. Funds received
31 specifically for these purposes may not be transferred to any other
32 account or purpose. Money that remains unused in the inmate's medical
33 fund at the time of release is subject to deductions under subsection
34 (2) of this section.

35 (9) Legal financial obligations reimbursed pursuant to State v.
36 Blake under chapter . . . RCW (the new chapter created in section 18
37 of this act) are exempt from the deductions requirements in
38 subsection (2) of this section when the defendant is in custody in a
39 correctional facility.

1 (10) Inmates sentenced to life imprisonment without possibility
2 of release or sentenced to death under chapter 10.95 RCW receives
3 funds, deductions are required under subsection (2) of this section,
4 with the exception of a personal inmate savings account under
5 subsection (2)(b) of this section.

6 (~~(10)~~) (11) The secretary of the department of corrections, or
7 his or her designee, may exempt an inmate from a personal inmate
8 savings account under subsection (2)(b) of this section if the
9 inmate's earliest release date is beyond the inmate's life
10 expectancy.

11 (~~(11)~~) (12) The interest earned on an inmate savings account
12 created as a result of the plan in section 4, chapter 325, Laws of
13 1999 shall be exempt from the mandatory deductions under this section
14 and RCW 72.09.111.

15 (~~(12)~~) (13) Nothing in this section shall limit the authority
16 of the department of social and health services division of child
17 support, the county clerk, or a restitution recipient from taking
18 collection action against an inmate's moneys, assets, or property
19 pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but
20 not limited to, the collection of moneys received by the inmate from
21 settlements or awards resulting from legal action.

22 NEW SECTION. **Sec. 18.** Sections 1 through 13 of this act
23 constitute a new chapter in Title 9 RCW.

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