
SECOND SUBSTITUTE HOUSE BILL 1492

State of Washington

68th Legislature

2023 Regular Session

By House Appropriations (originally sponsored by Representatives Simmons, Peterson, Santos, Doglio, Pollet, Macri, and Reed)

READ FIRST TIME 02/24/23.

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 chapter to Title 9 RCW; and creating a new section.

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

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

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

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

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

18 (4) "Document-verified collateral cost" means any fee or cost
19 paid for a person's participation in a program or activity resulting
20 from a qualifying conviction or qualifying nonconviction, including
21 but not limited to electronic home monitoring costs, work release

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

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

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

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

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

37 (9) "Qualifying offense" includes:

38 (a) Any of the following offenses where possession of a substance
39 is criminalized without proof that the person knowingly possessed the
40 substance: RCW 69.50.4013 (simple possession of a controlled

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

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

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

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

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

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

35 NEW SECTION. **Sec. 3.** (1) Upon receipt of a report from the
36 clerk under section 10 of this act, a prosecuting authority shall
37 review all qualifying convictions and qualifying nonconvictions
38 within his or her jurisdiction.

1 (a) For each qualifying conviction and qualifying nonconviction,
2 the prosecuting authority shall:

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

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

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

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

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

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

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

1 issuing a written request, the clerk shall also make substantial
2 efforts to obtain the requested records from the collection agency.

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

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

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

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

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

34 (d) Prohibit the qualifying conviction from being included in a
35 person's criminal history for the purposes of determining bail in a
36 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 date of the judgment and sentence or dismissal
34 pursuant to successful completion of a diversion program or deferred
35 prosecution, a listing of all conviction counts for a qualifying
36 offense in the judgment and sentence or order of dismissal pursuant
37 to successful completion of a diversion program or deferred
38 prosecution, and a listing of all conviction counts for other
39 offenses in the judgment and sentence. The administrative office of

1 the courts shall indicate any period of time where court records are
2 unavailable.

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

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

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

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

27 NEW SECTION. **Sec. 11.** No public agency, public official, or
28 custodian shall be liable, nor shall a cause of action exist, for any
29 loss or damage based upon a release of a report under this chapter if
30 the public agency, public official, or custodian acted in good faith
31 in attempting to comply with the provisions of this chapter.

32 NEW SECTION. **Sec. 12.** (1) The administrative office of the
33 courts shall create and administer a refund bureau to provide direct
34 refunds to persons who are entitled to a refund of legal financial
35 obligations, collection costs, and document-verified collateral costs
36 paid pursuant to a vacated qualifying conviction or a qualifying
37 nonconviction based on certifications of legal financial obligations
38 received from clerks in the superior, district, or municipal courts,

1 or the department of corrections. The refund bureau shall also
2 provide direct refunds to persons who made payments towards the costs
3 of supervision as a result of a qualifying conviction based on the
4 list certified by the department of corrections under subsection (2)
5 of this section. The administrative office of the courts shall create
6 a model application form that may be used for persons to submit to
7 the refund bureau for purposes of obtaining a refund.

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

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

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

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

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

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

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

35 (5) The administrative office of the courts shall create a
36 searchable online database to allow persons to search and determine
37 whether they have a qualifying conviction that has been vacated and
38 whether they are entitled to a refund of legal financial obligations,
39 collection costs, or document-verified collateral costs paid as a

1 result of a vacated qualifying conviction or a qualifying
2 nonconviction.

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

7 **Sec. 14.** RCW 9.94A.640 and 2021 c 237 s 2 are each amended to
8 read as follows:

9 (1) Every offender who has been discharged under RCW 9.94A.637
10 may apply to the sentencing court for a vacation of the offender's
11 record of conviction. If the court finds the offender meets the tests
12 prescribed in subsection (2) of this section, the court may clear the
13 record of conviction by: (a) Permitting the offender to withdraw the
14 offender's plea of guilty and to enter a plea of not guilty; or (b)
15 if the offender has been convicted after a plea of not guilty, by the
16 court setting aside the verdict of guilty; and (c) by the court
17 dismissing the information or indictment against the offender.

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

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

23 (b) The offense was a violent offense as defined in RCW 9.94A.030
24 or crime against persons as defined in RCW 43.43.830, except the
25 following offenses may be vacated if the conviction did not include a
26 firearm, deadly weapon, or sexual motivation enhancement: (i) Assault
27 in the second degree under RCW 9A.36.021; (ii) assault in the third
28 degree under RCW 9A.36.031 when not committed against a law
29 enforcement officer or peace officer; and (iii) robbery in the second
30 degree under RCW 9A.56.210;

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

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

37 (e) The offense is a class B felony and less than ten years have
38 passed since the later of: (i) The applicant's release from community

1 custody; (ii) the applicant's release from full and partial
2 confinement; or (iii) the applicant's sentencing date;

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

8 (g) The offense was a felony described in RCW 46.61.502 or
9 46.61.504.

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

23 (4)(a) Except as otherwise provided, once the court vacates a
24 record of conviction under subsection (1) of this section, the fact
25 that the offender has been convicted of the offense shall not be
26 included in the offender's criminal history for purposes of
27 determining a sentence in any subsequent conviction, and the offender
28 shall be released from all penalties and disabilities resulting from
29 the offense. For all purposes, including responding to questions on
30 employment applications, an offender whose conviction has been
31 vacated may state that the offender has never been convicted of that
32 crime. A conviction that has been vacated under this section may not
33 be disseminated or disclosed by the state patrol or local law
34 enforcement agency to any person, except other criminal justice
35 enforcement agencies. Nothing in this section affects or prevents the
36 use of an offender's prior conviction in a later criminal
37 prosecution, and nothing in this section affects the requirements for
38 restoring a right to possess a firearm under RCW 9.41.040.

39 (b) A conviction vacated on or after July 28, 2019, qualifies as
40 a prior conviction for the purpose of charging a present recidivist

1 offense occurring on or after July 28, 2019, and may be used to
2 establish an ongoing pattern of abuse for purposes of RCW 9.94A.535.

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

5 (1) When vacating a conviction under this section, the court
6 effectuates the vacation by: (a)(i) Permitting the applicant to
7 withdraw the applicant's plea of guilty and to enter a plea of not
8 guilty; or (ii) if the applicant has been convicted after a plea of
9 not guilty, the court setting aside the verdict of guilty; and (b)
10 the court dismissing the information, indictment, complaint, or
11 citation against the applicant and vacating the judgment and
12 sentence.

13 (2) Every person convicted of a misdemeanor or gross misdemeanor
14 offense may apply to the sentencing court for a vacation of the
15 applicant's record of conviction for the offense. If the court finds
16 the applicant meets the requirements of this subsection, the court
17 may in its discretion vacate the record of conviction. Except as
18 provided in section 1 of this act and subsections (3), (4), ~~((and))~~
19 (5), and (6) of this section, an applicant may not have the record of
20 conviction for a misdemeanor or gross misdemeanor offense vacated if
21 any one of the following is present:

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

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

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

29 (d) The offense was a violation of RCW 46.61.502 (driving while
30 under the influence), 46.61.504 (actual physical control while under
31 the influence), 9.91.020 (operating a railroad, etc. while
32 intoxicated), or the offense is considered a "prior offense" under
33 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
34 violation within ten years of the date of arrest for the prior
35 offense or less than ten years has elapsed since the date of the
36 arrest for the prior offense;

37 (e) The offense was any misdemeanor or gross misdemeanor
38 violation, including attempt, of chapter 9.68 RCW (obscenity and
39 pornography), chapter 9.68A RCW (sexual exploitation of children), or

1 chapter 9A.44 RCW (sex offenses), except for failure to register as a
2 sex offender under RCW 9A.44.132;

3 (f) The applicant was convicted of a misdemeanor or gross
4 misdemeanor offense as defined in RCW 10.99.020, or the court
5 determines after a review of the court file that the offense was
6 committed by one family or household member against another or by one
7 intimate partner against another, or the court, after considering the
8 damage to person or property that resulted in the conviction, any
9 prior convictions for crimes defined in RCW 10.99.020, or for
10 comparable offenses in another state or in federal court, and the
11 totality of the records under review by the court regarding the
12 conviction being considered for vacation, determines that the offense
13 involved domestic violence, and any one of the following factors
14 exist:

15 (i) The applicant has not provided written notification of the
16 vacation petition to the prosecuting attorney's office that
17 prosecuted the offense for which vacation is sought, or has not
18 provided that notification to the court;

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

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

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

32 (g) For any offense other than those described in (f) of this
33 subsection, less than three years have passed since the person
34 completed the terms of the sentence, including any financial
35 obligations;

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

39 (i) The applicant is currently restrained by a domestic violence
40 protection order, a no-contact order, an antiharassment order, or a

1 civil restraining order which restrains one party from contacting the
2 other party or was previously restrained by such an order and was
3 found to have committed one or more violations of the order in the
4 five years prior to the vacation application.

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

17 (4) Every person convicted prior to January 1, 1975, of violating
18 any statute or rule regarding the regulation of fishing activities,
19 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
20 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
21 who claimed to be exercising a treaty Indian fishing right, may apply
22 to the sentencing court for vacation of the applicant's record of the
23 misdemeanor, gross misdemeanor, or felony conviction for the offense.
24 If the person is deceased, a member of the person's family or an
25 official representative of the tribe of which the person was a member
26 may apply to the court on behalf of the deceased person.
27 Notwithstanding the requirements of RCW 9.94A.640, the court shall
28 vacate the record of conviction if:

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

31 (b) The state has been enjoined from taking enforcement action of
32 the statute or rule to the extent that it interferes with a treaty
33 Indian fishing right as determined under *United States v. Washington*,
34 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
35 899 (D. Oregon 1969), and any posttrial orders of those courts, or
36 any other state supreme court or federal court decision.

37 (5) Every person convicted of a misdemeanor cannabis offense, who
38 was twenty-one years of age or older at the time of the offense, may
39 apply to the sentencing court for a vacation of the applicant's
40 record of conviction for the offense. A misdemeanor cannabis offense

1 includes, but is not limited to: Any offense under RCW 69.50.4014,
2 from July 1, 2004, onward, and its predecessor statutes, including
3 RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW
4 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense
5 under an equivalent municipal ordinance. If an applicant qualifies
6 under this subsection, the court shall vacate the record of
7 conviction.

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

13 (7)(a) Except as provided in (c) of this subsection, once the
14 court vacates a record of conviction under this section, the person
15 shall be released from all penalties and disabilities resulting from
16 the offense and the fact that the person has been convicted of the
17 offense shall not be included in the person's criminal history for
18 purposes of determining a sentence in any subsequent conviction. For
19 all purposes, including responding to questions on employment or
20 housing applications, a person whose conviction has been vacated
21 under this section may state that he or she has never been convicted
22 of that crime. However, nothing in this section affects the
23 requirements for restoring a right to possess a firearm under RCW
24 9.41.040. Except as provided in (b) of this subsection, nothing in
25 this section affects or prevents the use of an offender's prior
26 conviction in a later criminal prosecution.

27 (b) When a court vacates a record of domestic violence as defined
28 in RCW 10.99.020 under this section, the state may not use the
29 vacated conviction in a later criminal prosecution unless the
30 conviction was for: (i) Violating the provisions of a restraining
31 order, no-contact order, or protection order restraining or enjoining
32 the person or restraining the person from going on to the grounds of
33 or entering a residence, workplace, school, or day care, or
34 prohibiting the person from knowingly coming within, or knowingly
35 remaining within, a specified distance of a location, a protected
36 party's person, or a protected party's vehicle (RCW 10.99.040,
37 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,
38 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and
39 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic
40 violence protection order or vulnerable adult protection order

1 entered under chapter 7.105 RCW. A vacated conviction under this
2 section is not considered a conviction of such an offense for the
3 purposes of 27 C.F.R. 478.11.

4 (c) A conviction vacated on or after July 28, 2019, qualifies as
5 a prior conviction for the purpose of charging a present recidivist
6 offense as defined in RCW 9.94A.030 occurring on or after July 28,
7 2019.

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

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

22 **Sec. 16.** RCW 72.09.480 and 2015 c 238 s 1 are each amended to
23 read as follows:

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

26 (a) "Cost of incarceration" means the cost of providing an inmate
27 with shelter, food, clothing, transportation, supervision, and other
28 services and supplies as may be necessary for the maintenance and
29 support of the inmate while in the custody of the department, based
30 on the average per inmate costs established by the department and the
31 office of financial management.

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

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

1 (2) When an inmate, except as provided in subsections (4)
2 (~~and~~), (8), and (9) of this section, receives any funds in addition
3 to his or her wages or gratuities, except settlements or awards
4 resulting from legal action, the additional funds shall be subject to
5 the following deductions and the priorities established in chapter
6 72.11 RCW:

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

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

10 (c) Twenty percent for payment of legal financial obligations for
11 all inmates who have legal financial obligations owing in any
12 Washington state superior court;

13 (d) Twenty percent for any child support owed under a support
14 order;

15 (e) Twenty percent to the department to contribute to the cost of
16 incarceration; and

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

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

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

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

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

39 (b) The deductions required under subsection (2) of this section
40 shall not apply to funds received by the department from a third

1 party, including but not limited to a nonprofit entity on behalf of
2 the department's education, vocation, or postsecondary (~~education~~)
3 degree or certificate education programs.

4 (7) The deductions required under subsection (2) of this section
5 shall not apply to any money received by the department, on behalf of
6 an inmate, from family or other outside sources for the payment of
7 postage expenses. Money received under this subsection may only be
8 used for the payment of postage expenses and may not be transferred
9 to any other account or purpose. Money that remains unused in the
10 inmate's postage fund at the time of release shall be subject to the
11 deductions outlined in subsection (2) of this section.

12 (8) The deductions required under subsection (2) of this section
13 do not apply to any money received by the department on behalf of an
14 inmate from family or other outside sources for the payment of
15 certain medical expenses. Money received under this subsection may
16 only be used for the payment of medical expenses associated with the
17 purchase of eyeglasses, over-the-counter medications, and
18 (~~offender~~) incarcerated individual copayments. Funds received
19 specifically for these purposes may not be transferred to any other
20 account or purpose. Money that remains unused in the inmate's medical
21 fund at the time of release is subject to deductions under subsection
22 (2) of this section.

23 (9) Legal financial obligations reimbursed pursuant to *State v.*
24 *Blake* under chapter . . . RCW (the new chapter created in section 17
25 of this act) are exempt from the deductions requirements in
26 subsection (2) of this section when the defendant is in custody in a
27 correctional facility.

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

33 (~~(10)~~) (11) The secretary of the department of corrections, or
34 his or her designee, may exempt an inmate from a personal inmate
35 savings account under subsection (2)(b) of this section if the
36 inmate's earliest release date is beyond the inmate's life
37 expectancy.

38 (~~(11)~~) (12) The interest earned on an inmate savings account
39 created as a result of the plan in section 4, chapter 325, Laws of

1 1999 shall be exempt from the mandatory deductions under this section
2 and RCW 72.09.111.

3 ~~((12))~~ (13) Nothing in this section shall limit the authority
4 of the department of social and health services division of child
5 support, the county clerk, or a restitution recipient from taking
6 collection action against an inmate's moneys, assets, or property
7 pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but
8 not limited to, the collection of moneys received by the inmate from
9 settlements or awards resulting from legal action.

10 NEW SECTION. **Sec. 17.** Sections 1 through 13 of this act
11 constitute a new chapter in Title 9 RCW.

12 NEW SECTION. **Sec. 18.** If specific funding for the purposes of
13 this act, referencing this act by bill or chapter number, is not
14 provided by June 30, 2023, in the omnibus appropriations act, this
15 act is null and void.

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