
SENATE BILL 5998

State of Washington

68th Legislature

2024 Regular Session

By Senator Hansen

Prefiled 01/05/24.

1 AN ACT Relating to timing of eligibility for vacation of
2 nonfelony convictions; and amending RCW 9.96.060.

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

4 **Sec. 1.** RCW 9.96.060 and 2023 sp.s. c 1 s 11 are each amended to
5 read as follows:

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

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

1 gross misdemeanor offense vacated if any one of the following is
2 present:

3 (a) The applicant has not completed all of the terms of the
4 sentence for the offense, including satisfaction of financial
5 obligations;

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

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

11 (d) The offense was a violation of RCW 46.61.502 (driving while
12 under the influence), 46.61.504 (actual physical control while under
13 the influence), 9.91.020 (operating a railroad, etc. while
14 intoxicated), or the offense is considered a "prior offense" under
15 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
16 violation within (~~ten~~) 10 years of the date of arrest for the prior
17 offense or less than (~~ten~~) 10 years has elapsed since the date of
18 the arrest for the prior offense;

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

24 (f) The applicant was convicted of a misdemeanor or gross
25 misdemeanor offense as defined in RCW 10.99.020, or the court
26 determines after a review of the court file that the offense was
27 committed by one family or household member against another or by one
28 intimate partner against another, or the court, after considering the
29 damage to person or property that resulted in the conviction, any
30 prior convictions for crimes defined in RCW 10.99.020, or for
31 comparable offenses in another state or in federal court, and the
32 totality of the records under review by the court regarding the
33 conviction being considered for vacation, determines that the offense
34 involved domestic violence, and any one of the following factors
35 exist:

36 (i) The applicant has not provided written notification of the
37 vacation petition to the prosecuting attorney's office that
38 prosecuted the offense for which vacation is sought, or has not
39 provided that notification to the court;

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

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

10 (iv) Less than five years have elapsed since the person completed
11 the terms of the original conditions of the sentence, including (~~any~~
12 ~~financial obligations and~~) successful completion of any treatment
13 ordered as a condition of sentencing, but excluding the payment of
14 financial obligations;

15 (g) For any offense other than those described in (f) of this
16 subsection, less than three years have passed since the (~~person~~
17 ~~completed the terms of the sentence, including any financial~~
18 ~~obligations~~) later of the applicant's release from supervision; the
19 applicant's release from total and partial confinement, as defined in
20 RCW 9.94A.030; or the applicant's sentencing date;

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

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

30 (3) If the applicant is a victim of sex trafficking,
31 prostitution, or commercial sexual abuse of a minor; sexual assault;
32 or domestic violence as defined in RCW 9.94A.030, or the prosecutor
33 applies on behalf of the state, the sentencing court may vacate the
34 record of conviction if the application satisfies the requirements of
35 RCW 9.96.080. When preparing or filing the petition, the prosecutor
36 is not deemed to be providing legal advice or legal assistance on
37 behalf of the victim, but is fulfilling an administrative function on
38 behalf of the state in order to further their responsibility to seek
39 to reform and improve the administration of criminal justice. A

1 record of conviction vacated using the process in RCW 9.96.080 is
2 subject to subsections (7) and (8) of this section.

3 (4) Every person convicted prior to January 1, 1975, of violating
4 any statute or rule regarding the regulation of fishing activities,
5 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
6 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
7 who claimed to be exercising a treaty Indian fishing right, may apply
8 to the sentencing court for vacation of the applicant's record of the
9 misdemeanor, gross misdemeanor, or felony conviction for the offense.
10 If the person is deceased, a member of the person's family or an
11 official representative of the tribe of which the person was a member
12 may apply to the court on behalf of the deceased person.
13 Notwithstanding the requirements of RCW 9.94A.640, the court shall
14 vacate the record of conviction if:

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

17 (b) The state has been enjoined from taking enforcement action of
18 the statute or rule to the extent that it interferes with a treaty
19 Indian fishing right as determined under *United States v. Washington*,
20 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
21 899 (D. Oregon 1969), and any posttrial orders of those courts, or
22 any other state supreme court or federal court decision.

23 (5) Every person convicted of a misdemeanor cannabis offense, who
24 was 21 years of age or older at the time of the offense, may apply to
25 the sentencing court for a vacation of the applicant's record of
26 conviction for the offense. A misdemeanor cannabis offense includes,
27 but is not limited to: Any offense under RCW 69.50.4014, from July 1,
28 2004, onward, and its predecessor statutes, including RCW
29 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW
30 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense
31 under an equivalent municipal ordinance. If an applicant qualifies
32 under this subsection, the court shall vacate the record of
33 conviction.

34 (6) If a person convicted of violating RCW 69.50.4011(1) (b) or
35 (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) completes a
36 substance use disorder program and files proof of completion with the
37 court, or obtains an assessment from a recovery navigator program
38 established under RCW 71.24.115, an arrest and jail alternative
39 program established under RCW 36.28A.450, or a law enforcement
40 assisted diversion program established under RCW 71.24.589, and has

1 six months of substantial compliance with recommended treatment or
2 services and progress toward recovery goals as reflected by a written
3 status update, upon verification the court must vacate the conviction
4 or convictions.

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

10 (8)(a) Except as provided in (c) of this subsection, once the
11 court vacates a record of conviction under this section, the person
12 shall be released from all penalties and disabilities resulting from
13 the offense and the fact that the person has been convicted of the
14 offense shall not be included in the person's criminal history for
15 purposes of determining a sentence in any subsequent conviction. For
16 all purposes, including responding to questions on employment or
17 housing applications, a person whose conviction has been vacated
18 under this section may state that he or she has never been convicted
19 of that crime. However, nothing in this section affects the
20 requirements for restoring a right to possess a firearm under RCW
21 (~~9.41.040~~) 9.41.041. Except as provided in (b) of this subsection,
22 nothing in this section affects or prevents the use of an offender's
23 prior conviction in a later criminal prosecution.

24 (b) When a court vacates a record of domestic violence as defined
25 in RCW 10.99.020 under this section, the state may not use the
26 vacated conviction in a later criminal prosecution unless the
27 conviction was for: (i) Violating the provisions of a restraining
28 order, no-contact order, or protection order restraining or enjoining
29 the person or restraining the person from going on to the grounds of
30 or entering a residence, workplace, school, or day care, or
31 prohibiting the person from knowingly coming within, or knowingly
32 remaining within, a specified distance of a location, a protected
33 party's person, or a protected party's vehicle (RCW 10.99.040,
34 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070,
35 or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and
36 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic
37 violence protection order or vulnerable adult protection order
38 entered under chapter 7.105 RCW. A vacated conviction under this
39 section is not considered a conviction of such an offense for the
40 purposes of 27 C.F.R. 478.11.

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

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

17 (10) For the purposes of this section, "cannabis" has the meaning
18 provided in RCW 69.50.101.

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