**RCW**[**9.96.060**](http://app.leg.wa.gov/RCW/default.aspx?cite=9.96.060)

**Misdemeanor or gross misdemeanor offenses, persons convicted of prostitution who committed the offense as a result of being a victim of trafficking, promoting prostitution in the first degree, promoting commercial sexual abuse of a minor, or trafficking in persons, or of violating a certain statute or rule regarding the regulation of fishing—Vacating records—Domestic violence records.**

(1) Every person convicted of a misdemeanor or gross misdemeanor offense who has completed all of the terms of the sentence for the misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. If the court finds the applicant meets the tests prescribed in subsection (2) of this section, the court may in its discretion vacate the record of conviction by: (a)(i) Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

(2) An applicant may not have the record of conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present:

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

(b) The offense was a violent offense as defined in RCW [**9.94A.030**](http://app.leg.wa.gov/RCW/default.aspx?cite=9.94A.030) or an attempt to commit a violent offense;

(c) The offense was a violation of RCW [**46.61.502**](http://app.leg.wa.gov/RCW/default.aspx?cite=46.61.502) (driving while under the influence), [**46.61.504**](http://app.leg.wa.gov/RCW/default.aspx?cite=46.61.504) (actual physical control while under the influence), [**9.91.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=9.91.020) (operating a railroad, etc. while intoxicated), or the offense is considered a "prior offense" under RCW [**46.61.5055**](http://app.leg.wa.gov/RCW/default.aspx?cite=46.61.5055) and the applicant has had a subsequent alcohol or drug violation within ten years of the date of arrest for the prior offense or less than ten years has elapsed since the date of the arrest for the prior offense;

(d) The offense was any misdemeanor or gross misdemeanor violation, including attempt, of chapter [**9.68**](http://app.leg.wa.gov/RCW/default.aspx?cite=9.68) RCW (obscenity and pornography), chapter [**9.68A**](http://app.leg.wa.gov/RCW/default.aspx?cite=9.68A) RCW (sexual exploitation of children), or chapter [**9A.44**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.44) RCW (sex offenses);

(e) The applicant was convicted of a misdemeanor or gross misdemeanor offense as defined in RCW [**10.99.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=10.99.020), or the court determines after a review of the court file that the offense was committed by one family member or household member against another, or the court, after considering the damage to person or property that resulted in the conviction, any prior convictions for crimes defined in RCW [**10.99.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=10.99.020), or for comparable offenses in another state or in federal court, and the totality of the records under review by the court regarding the conviction being considered for vacation, determines that the offense involved domestic violence, and any one of the following factors exist:

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

(ii) The applicant has previously had a conviction for domestic violence. For purposes of this subsection, however, if the current application is for more than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction;

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

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

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

(g) The offender has been convicted of a new crime in this state, another state, or federal court since the date of conviction;

(h) The applicant has ever had the record of another conviction vacated; or

(i) The applicant is currently restrained, or has been restrained within five years prior to the vacation application, by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order which restrains one party from contacting the other party.

(3) Subject to RCW [**9.96.070**](http://app.leg.wa.gov/RCW/default.aspx?cite=9.96.070), every person convicted of prostitution under RCW [**9A.88.030**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.88.030) who committed the offense as a result of being a victim of trafficking, RCW[**9A.40.100**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.40.100), promoting prostitution in the first degree, RCW [**9A.88.070**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.88.070), promoting commercial sexual abuse of a minor, RCW [**9.68A.101**](http://app.leg.wa.gov/RCW/default.aspx?cite=9.68A.101), or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the sentencing court for vacation of the applicant's record of conviction for the prostitution offense. An applicant may not have the record of conviction for prostitution vacated if any one of the following is present:

(a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court, for any crime other than prostitution; or

(b) The offender has been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction. The limitation in this subsection (3)(b) does not apply to convictions where the offender proves by a preponderance of the evidence that he or she committed the crime as a result of being a victim of trafficking, RCW [**9A.40.100**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.40.100), promoting prostitution in the first degree, RCW [**9A.88.070**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.88.070), promoting commercial sexual abuse of a minor, RCW [**9.68A.101**](http://app.leg.wa.gov/RCW/default.aspx?cite=9.68A.101), or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq., according to the requirements provided in RCW [**9.96.070**](http://app.leg.wa.gov/RCW/default.aspx?cite=9.96.070) for each respective conviction.

(4) Every person convicted prior to January 1, 1975, of violating any statute or rule regarding the regulation of fishing activities, including, but not limited to, RCW[**75.08.260**](http://app.leg.wa.gov/RCW/default.aspx?cite=75.08.260), [**75.12.060**](http://app.leg.wa.gov/RCW/default.aspx?cite=75.12.060), [**75.12.070**](http://app.leg.wa.gov/RCW/default.aspx?cite=75.12.070), [**75.12.160**](http://app.leg.wa.gov/RCW/default.aspx?cite=75.12.160), [**77.16.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=77.16.020), [**77.16.030**](http://app.leg.wa.gov/RCW/default.aspx?cite=77.16.030), [**77.16.040**](http://app.leg.wa.gov/RCW/default.aspx?cite=77.16.040), [**77.16.060**](http://app.leg.wa.gov/RCW/default.aspx?cite=77.16.060), and [**77.16.240**](http://app.leg.wa.gov/RCW/default.aspx?cite=77.16.240) who claimed to be exercising a treaty Indian fishing right, may apply to the sentencing court for vacation of the applicant's record of the misdemeanor, gross misdemeanor, or felony conviction for the offense. If the person is deceased, a member of the person's family or an official representative of the tribe of which the person was a member may apply to the court on behalf of the deceased person. Notwithstanding the requirements of RCW [**9.94A.640**](http://app.leg.wa.gov/RCW/default.aspx?cite=9.94A.640), the court shall vacate the record of conviction if:

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

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

(5)(a) Once the court vacates a record of conviction under this section, the person shall be released from all penalties and disabilities resulting from the offense and the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated under this section may state that he or she has never been convicted of that crime. Except as provided in (b) of this subsection, nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

(b) When a court vacates a record of domestic violence as defined in RCW [**10.99.020**](http://app.leg.wa.gov/RCW/default.aspx?cite=10.99.020) under this section, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (i) Violating the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going on to the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW [**10.99.040**](http://app.leg.wa.gov/RCW/default.aspx?cite=10.99.040), [**10.99.050**](http://app.leg.wa.gov/RCW/default.aspx?cite=10.99.050), [**26.09.300**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.09.300), [**26.10.220**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.10.220), \* [**26.26.138**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.26.138), [**26.44.063**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.44.063), [**26.44.150**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.44.150), [**26.50.060**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.50.060), [**26.50.070**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.50.070),[**26.50.130**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.50.130), [**26.52.070**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.52.070), or [**74.34.145**](http://app.leg.wa.gov/RCW/default.aspx?cite=74.34.145)); or (ii) stalking (RCW [**9A.46.110**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.46.110)). A vacated conviction under this section is not considered a conviction of such an offense for the purposes of 27 C.F.R. 478.11.

(6) All costs incurred by the court and probation services shall be paid by the person making the motion to vacate the record unless a determination is made pursuant to chapter [**10.101**](http://app.leg.wa.gov/RCW/default.aspx?cite=10.101) RCW that the person making the motion is indigent, at the time the motion is brought.

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

[ **[2017 c 336 § 2;](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/1614-S2.SL.pdf?cite=2017%20c%20336%20%C2%A7%202;)** [**2017 c 272 § 9;**](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/1163-S2.SL.pdf?cite=2017%20c%20272%20%C2%A7%209;) [**2017 c 128 § 1.**](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/5272-S.SL.pdf?cite=2017%20c%20128%20%C2%A7%201.) Prior: [**2014 c 176 § 1;**](http://lawfilesext.leg.wa.gov/biennium/2013-14/Pdf/Bills/Session%20Laws/House/2080-S.SL.pdf?cite=2014%20c%20176%20%C2%A7%201;) [**2014 c 109 § 1;**](http://lawfilesext.leg.wa.gov/biennium/2013-14/Pdf/Bills/Session%20Laws/House/1292-S.SL.pdf?cite=2014%20c%20109%20%C2%A7%201;) prior: [**2012 c 183 § 5;**](http://lawfilesext.leg.wa.gov/biennium/2011-12/Pdf/Bills/Session%20Laws/House/2443-S2.SL.pdf?cite=2012%20c%20183%20%C2%A7%205;) [**2012 c 142 § 2;**](http://lawfilesext.leg.wa.gov/biennium/2011-12/Pdf/Bills/Session%20Laws/Senate/6255.SL.pdf?cite=2012%20c%20142%20%C2%A7%202;) [**2001 c 140 § 1.**](http://lawfilesext.leg.wa.gov/biennium/2001-02/Pdf/Bills/Session%20Laws/House/1174-S.SL.pdf?cite=2001%20c%20140%20%C2%A7%201.)]

**NOTES:**

**Reviser's note:** \*(1) RCW [**26.26.138**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.26.138) was recodified as RCW [**26.26B.050**](http://app.leg.wa.gov/RCW/default.aspx?cite=26.26B.050) by the code reviser, effective January 1, 2019.

(2) This section was amended by 2017 c 128 § 1, 2017 c 272 § 9, and by 2017 c 336 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW [**1.12.025**](http://app.leg.wa.gov/RCW/default.aspx?cite=1.12.025)(2). For rule of construction, see RCW [**1.12.025**](http://app.leg.wa.gov/RCW/default.aspx?cite=1.12.025)(1).

**Findings—2017 c 336:** "The legislature finds that there is significant value in diligently combating the crime of driving under the influence and promoting the safety of all persons using our public roadways. The legislature also finds that phlebotomy, also known as venipuncture, is a health care procedure that involves removing blood from the body by making an incision in a vein with a needle. The legislature finds further that the use of forensic phlebotomy can be a useful tool when investigating whether a person may be impaired while operating a motor vehicle. The legislature also finds, however, that despite the value of forensic phlebotomy, both motorists and law enforcement officers must be protected from the potentially significant health risks inherent in allowing the practice of phlebotomy without adequate and appropriate training, as defined by the department of health." [ [**2017 c 336 § 1.**](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/1614-S2.SL.pdf?cite=2017%20c%20336%20%C2%A7%201.)]

**Finding—2017 c 272:** See note following RCW [**9A.36.041**](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.36.041).

**Effective date—2012 c 183:** See note following RCW [**9.94A.4**](http://app.leg.wa.gov/RCW/default.aspx?cite=9.94A.475)