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HOUSE BILL 1819

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives Lovick, Moeller, Darneille, Flannigan and Chase

Read first time 02/07/2005. Referred to Committee on Judiciary.

1            AN ACT Relating to sealing felony records that have been vacated;  
2 amending RCW 9.94A.640; and creating a new section.

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

4            NEW SECTION.    **Sec. 1.** The legislature declares that it is the  
5 policy of the state of Washington to encourage and contribute to the  
6 rehabilitation of felons and to assist them in the assumption of the  
7 responsibilities of citizenship. The legislature recognizes that the  
8 opportunity to secure employment or to pursue, practice, or engage in  
9 a meaningful and profitable trade, occupation, vocation, profession, or  
10 business is an essential ingredient to rehabilitation and the  
11 assumption of the responsibilities of citizenship. To this end, it is  
12 important for the offender to be able to respond to employment  
13 inquiries according to RCW 9.94A.640(3) without fear of being  
14 contradicted by a court file disclosing the vacated conviction.

15            **Sec. 2.** RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read  
16 as follows:

17            (1) Every offender who has been discharged under RCW 9.94A.637 may  
18 apply to the sentencing court for a vacation of the offender's record

1 of conviction. If the court finds the offender meets the tests  
2 prescribed in subsection (2) of this section, the court may clear the  
3 record of conviction by: (a) Permitting the offender to withdraw the  
4 offender's plea of guilty and to enter a plea of not guilty; or (b) if  
5 the offender has been convicted after a plea of not guilty, by the  
6 court setting aside the verdict of guilty; and (c) by the court  
7 dismissing the information or indictment against the offender.

8 (2) An offender may not have the record of conviction cleared if:  
9 (a) There are any criminal charges against the offender pending in any  
10 court of this state or another state, or in any federal court; (b) the  
11 offense was a violent offense as defined in RCW 9.94A.030; (c) the  
12 offense was a crime against persons as defined in RCW 43.43.830; (d)  
13 the offender has been convicted of a new crime in this state, another  
14 state, or federal court since the date of the offender's discharge  
15 under RCW 9.94A.637; (e) the offense is a class B felony and less than  
16 ten years have passed since the date the applicant was discharged under  
17 RCW 9.94A.637; and (f) the offense was a class C felony and less than  
18 five years have passed since the date the applicant was discharged  
19 under RCW 9.94A.637.

20 (3) Once the court vacates a record of conviction under subsection  
21 (1) of this section, the fact that the offender has been convicted of  
22 the offense shall not be included in the offender's criminal history  
23 for purposes of determining a sentence in any subsequent conviction,  
24 and the offender shall be released from all penalties and disabilities  
25 resulting from the offense. For all purposes, including responding to  
26 questions on employment applications, an offender whose conviction has  
27 been vacated may state that the offender has never been convicted of  
28 that crime. Nothing in this section affects or prevents the use of an  
29 offender's prior conviction in a later criminal prosecution.

30 (4) When a court vacates a record of conviction under this section,  
31 the court may order the court clerk to seal the court file as provided  
32 for under court rules, without requiring the offender to demonstrate  
33 compelling circumstances. The order to seal the court file may allow  
34 the deletion of the offender's name in the case index and the  
35 substitution of the offender's name with his or her initials.

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