

NO. 63458-5-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,

Appellant,

v.

JASON D. SMITH,

Respondent.

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BRIEF OF APPELLANT

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### **I. ASSIGNMENT OF ERROR**

The trial court erred in vacating the record of defendant's felony conviction.

### **II. ISSUE**

Where a defendant is convicted of a misdemeanor, is the fact of the misdemeanor conviction obviated by vacation of the record of conviction?

### **III. STATEMENT OF THE CASE**

On May 9, 1989, defendant was charged with Second Degree Burglary, a class B felony, in Snohomish County Superior Court, No. 89-1-00520-9. CP 64. The affidavit of probable cause reveals defendant entered into a residence's garage without permission and stole property belonging to the homeowner. CP 63.

On October 9, 1989, defendant pleaded guilty to the charge. CP 52-62. He was convicted and sentenced to a jail term followed by 12 months community supervision pursuant to a Judgment and Sentence filed October 27, 1989. CP 46-51.

On December 28, 1990, defendant requested he be discharged from the conviction. This request was granted. A certificate and order of discharge in the above matter was filed January 8, 1991. CP 6-7.

Subsequently, defendant was charged in King County Superior Court, No. 95-1-05412-5, with Possession of Stolen Property in the First Degree, a class B felony. CP 24. The charge was ultimately amended to Possession of Stolen Property in the Third Degree, a misdemeanor. Defendant pleaded guilty to that charge on December 6, 1995. CP 15. Defendant was subsequently adjudged guilty of the amended charge. CP 15. He received a suspended sentence under RCW 9.92.060 which included a jail term followed by 12 months of probation pursuant to Judgment and Sentence filed January 16, 1996. CP 15.

On January 5, 2009, defendant requested and received an order vacating the record of his Possession of Stolen Property conviction. CP 19-21. The order was granted, in part, based on the court's finding that the "defendant has never had the record of another conviction vacated." CP 20.

On January 27, 2009, defendant filed a motion in the Snohomish County Superior Court seeking to vacate the record of his Second Degree Burglary conviction. CP 41-44.

The State opposed, noting that since the 1991 discharge on present offense, defendant had been convicted of another criminal offense: Possession of Stolen Property in the Third Degree.

Though that new offense had been vacated, he had nonetheless been convicted of a new offense since discharge and was thus statutorily ineligible to have the record of his second degree burglary conviction vacated. CP 22-25.

Defendant filed a reply claiming that vacating the misdemeanor removed all “penalties or disabilities” of that conviction. To allow that conviction to stand as a bar to vacating the record of his previous Burglary conviction would constitute a “penalty or disability” of the misdemeanor conviction. CP 8-21.

Oral argument was heard by the sentencing court on April 30, 2009. The court granted defendant’s motion, noting:

[Defendant], his rights were restored to him, I signed an order discharging that. The only thing that is preventing him, potentially preventing him from the relief that he’s requesting is a conviction, misdemeanor conviction which has been vacated. And I treat that literally, it’s for naught. It didn’t happen. He wasn’t convicted. And it should not be an impediment from granting the relief that he now requests...

RP 10.

The State timely appeals the order granting defendant’s motion to vacate. CP 6-7.

#### **IV. ARGUMENT**

##### **A. DEFENDANT'S CONVICTION OF A MISDEMEANOR AFTER HE WAS DISCHARGED FROM HIS FELONY CONVICTION MAKES HIM INELIGIBLE TO HAVE HIS FELONY VACATED.**

The question for this Court is does the fact defendant was convicted of a misdemeanor after his discharge survive vacation of that misdemeanor and preclude him from having his prior felony vacated. The issue here is one of statutory interpretation. Review is de novo. State v. Argueta, 107 Wn. App. 532, 536, 27 P.3d 242 (2001).

In reviewing a statute, a court must rely on the plain language of the statute alone where that language is not ambiguous:

Statutory construction begins by reading the text of the statute or statutes involved. If the language is unambiguous, a reviewing court is to rely solely on the statutory language.

State v. Roggenkamp, 153 Wn.2d 614, 621, 106 P.3d 196 (2005).

If a statute is unambiguous, its meaning must be derived from its language alone. If the statute is ambiguous, resort may be had to other sources to determine its meaning.

Everett Concrete Products, Inc. v. Department of Labor & Industries, 109 Wn.2d 819, 822, 748 P.2d 1112 (1988).

RCW 9.94A.640 alone governs whether or not a defendant may have a felony vacated – the issue before this court. That statute is not ambiguous. By its plain language, an offender may not have a felony conviction vacated if the offender “has been convicted of a new crime in this state, another state, or federal court since the date of the offender’s discharge under RCW 9.94A.637[.]”<sup>1</sup> RCW 9.94A.640(2)(d).<sup>2</sup>

RCW 9.94A.030(12) defines a conviction as “an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.”

By the plain language of the above, defendant has been convicted of a new crime in this state since the date of discharge for the felony offense. CP 15.

Below, the defendant pointed to a separate statute, one governing vacation of *misdemeanor* convictions, in an attempt to read an ambiguity into the relevant felony vacate statutes. That misdemeanor statute reads:

Once the court vacates a record of conviction under subsection (1) of this section, the person shall be released from all penalties and disabilities resulting from the offense

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<sup>1</sup> A copy of RCW 9.94A.637 is at Appendix A.

<sup>2</sup> A copy of RCW 9.94A.640 is at Appendix B.

RCW 9.96.030(3)<sup>3</sup>

In essence, the trial court read into RCW 9.94A.640's "has been convicted" language a non-existent "unless that conviction has been vacated" exception. This is inappropriate.

If a statute is unambiguous, it is not subject to judicial construction and its meaning is to be derived from the language of the statute alone. The court may not add language to a clear statute, even if it believes the Legislature intended something else but failed to express it adequately.

State v. Chester, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997). See also, Everett Concrete, 109 Wn.2d at 822 ("If a statute is unambiguous, its meaning must be derived from its language alone.")

RCW 9.94A.640 is not ambiguous. It does not ask a court to examine the "penalties or disabilities" resulting from subsequent convictions. It speaks solely of examining whether or not defendant "has been convicted of a new crime in this state... since the date of the offenders discharge[.]" RCW 9.94A.640(2)(d). In other words, RCW 9.94A.060 requires us to look to the *fact* of the subsequent conviction, not to the whether any *penalties or disabilities* of the subsequent conviction continue to exist. Here, defendant has

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<sup>3</sup> A copy of RCW 9.96.060 is at Appendix C.

unambiguously been convicted of a subsequent offense whether or not its resultant penalties or disabilities still exist.

Moreover, even if one accepted defendant's argument that one should look to the misdemeanor statute to interpret the felony statute, his claim still fails. This is because the ineligibility to vacate an earlier felony conviction is not a "penalty or disability" of a subsequent vacated misdemeanor offense. The inability to vacate the felony conviction, if a "penalty or disability" at all, can only be said to be a "penalty or disability" of the *felony* conviction.

Furthermore, any language dismissing the misdemeanor conviction in RCW 9.96.060 cannot be said to obviate the fact defendant "has been convicted of a new crime... since the date of the offender's discharge" under RCW 9.94A.640.

In State v. Partida, 51 Wn. App. 760, 762, 756 P.2d 743 (1988), the court recognized a subsequent dismissal (there the dismissal granted after successful completion of probation on a deferred sentence) did not mean defendant "has never been convicted of a felony" – the relevant statutory language under the then first time offender sentencing statute, RCW 9.94A.030(12).

The court examined the definition of a conviction under RCW 9.94A.030 above (then defined under RCW 9.94A.030(6)) and

found that he had been convicted, despite the conviction's subsequent dismissal.

[Defendant] pleaded guilty to the grand larceny charge and served probation. The order of dismissal after fulfilling the terms of his probation is of no moment.

Partida, 51 Wn. App. at 762.

Similarly, any language in RCW 9.96.060 dismissing the subsequent misdemeanor conviction here does not alter the fact that defendant has been convicted (as conviction is defined in RCW 9.94A.030) of a new offense since the date of discharge for the felony offense.

Moreover, examining RCW 9.96.060 reveals the legislature did not intend that vacating a misdemeanor would make a defendant eligible to vacate an earlier conviction. That statute specifically provides that a person is not eligible to have a misdemeanor conviction vacated "if the applicant has ever had the record of another conviction vacated[.]" RCW 9.96.060(2)(h).

The legislature made one exception to release from the penalties and disabilities of a conviction – use in a later criminal prosecution. RCW 9.96.060(3). If the legislature had intended that ineligibility to vacate an earlier conviction was a penalty or disability

of the vacated crime, yet wanted to provide for the vacation of only one conviction, it would have included that exception in RCW 9.96.060(3).

“When [a court] reads a statute, [it] must read it as a whole and give effect to all language used.” State v. Young, 125 Wn.2d 688, 696, 888 P.2d 142 (1995). Where parts of a statute appear to be in conflict, it is the duty of the reviewing court to harmonize the statutes if possible, to effect the intent of the legislature and to maintain the integrity of the statutes within the overall statutory scheme. See In re Parentage of J.M.K., 155 Wn.2d 374, 377, 119 P.3d 840 (2005). The parts of RCW 9.96.060 can be harmonized by determining that the fact of a conviction is not a penalty or disability of that conviction.

Should this Court find that the fact of a conviction is a “penalty or disability” of that conviction, it would lead to the absurd result that a defendant who has been convicted of two or more felonies may have all of his convictions vacated and his criminal record cleared, simply starting with the most recent felony and vacating them sequentially in backward fashion. Contrariwise, a defendant who has been convicted of the same number of misdemeanors can never have his misdemeanor convictions

vacated, only the last. If the defendant has been convicted of both felonies and a misdemeanor, if the misdemeanor was committed last, all records of conviction may be vacated. If the misdemeanor was committed before any of the felonies, the defendant would not be able to vacate the misdemeanor, even if all the felony convictions were vacated. “[U]nlikely or absurd consequences resulting from a literal reading [of a statute] are to be avoided.” State v. Neher, 112 Wn.2d 347, 351, 771 P.2d 330 (1989).

Every part of RCW 9.96.060 can be given effect, and absurd or unlikely consequences may be avoided if this Court determines that the fact of a subsequent conviction is not a penalty or disability of that conviction.

Matsen v. Kaiser, 74 Wn.2d 231, 443 P.2d 843 (1968), relied upon by defendant before the trial court, does not indicate a contrary result. There, the defendant had been sheriff of Klickitat County. He resigned and was charged with felony misappropriating public records while in office. The defendant pled guilty. The court accepted the plea but deferred sentence. After completing probation, the sheriff petitioned the court to allow him to withdraw his plea, enter a plea of not guilty, have the information dismissed, and be released from “all penalties and disabilities resulting from

the information” as provided in RCW 9.95.240. The court granted the petition. The defendant then ran and was again elected to be sheriff. Matsen v. Kaiser, 74 Wn.2d at 233-34. The plaintiff contested the election, arguing that the defendant was statutorily precluded from holding public office.

The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his office, and shall disqualify him from ever afterward holding any public office in this state.

RCW 9.92.120.

The Supreme Court framed the issue:

Did the entry and the court's acceptance of the sheriff's plea of guilty to a felony charge, when followed by deferment of sentence, probation, withdrawal of plea, dismissal of the information and removal of all penalties and disabilities, amount to a conviction of felony under RCW 9.92.120, or constitute the establishment of malfeasance in office so as to disqualify the sheriff from election to or thereafter serving in any public office?

74 Wn.2d at 235.

The lead opinion stated:

[A] finding of guilt in an order deferring imposition of sentence and granting probation is not the legal equivalent of a judgment and sentence, except where, by statute, a plea or verdict shall be deemed a conviction.

74 Wn.2d at 235 (emphasis added).

As applied here, however, RCW 9.94A.030(12) defines a conviction as a verdict, finding, or plea of guilty. Defendant was found guilty of the misdemeanor charge on January 12, 1996. CP 15. Under the reasoning set out above, the fact of defendant's misdemeanor conviction survives vacation of that conviction.

In concurrence, four Justices also found that the sheriff was eligible to hold public office. They looked at the language from RCW 9.92.120 on penalties for conviction of a public officer of felony or malfeasance in office: "In addition to such other penalty as may be imposed . . . shall disqualify him from ever afterward holding any public office in this state." These justices then found:

The language utilized by the legislature would appear to indicate that it equated the consequences provided by the statute with the term "penalty," and the import of that term as generally recognized in criminal law parlance.

Matsen v. Kaiser, 74 Wn.2d at 238 (Hamilton, J. concurring).

These justices concluded that the statute permitting the defendant to be released from all penalties and disabilities of his offense erased "the disability of the future disqualification [from holding public office] feature of RCW 9.92.120. Id. Under this reasoning, unless the language of RCW 9.94A.640 or the defendant's subsequent possession of stolen property, RCW

9A.56.170, indicated that the legislature intended that the *fact* of defendant's misdemeanor conviction was "equated" with a penalty or disability, the fact of that conviction would survive vacation.

Here, the fact of the subsequent conviction cannot be said to be a penalty of that conviction. Defendant was convicted of a felony – second degree burglary. After completing the requirements of his sentence, defendant was discharged. After the date of the discharge, defendant was in fact convicted of a new crime. Nothing in any of the statutes involved in this case indicate that the legislature considered the fact of the misdemeanor conviction was a "penalty or disability" of that conviction. See State v. Hazard, 139 Wash 487, 489, 247 P. 957 (1926) (loss of medical license not a penalty of manslaughter conviction, even though that conviction was the basis for revocation of the license).

Following the Supreme Court ruling in Matsen v. Kaiser, this Court should hold that the fact of defendant's misdemeanor conviction survives vacation of that conviction.

**V. CONCLUSION**

The decision of the trial court vacating defendant's felony conviction for second degree burglary should be reversed.

Respectfully submitted on September 21, 2009.

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RCWs > Title 9 > Chapter 9.94A > Section 9.94A.637

9.94A.634 << 9.94A.637 >> 9.94A.640

**RCW 9.94A.637**

**Discharge upon completion of sentence — Certificate of discharge — Obligations, counseling after discharge.**

\*\*\* CHANGE IN 2009 \*\*\* (SEE 1002-S.SL) \*\*\*

\*\*\* CHANGE IN 2009 \*\*\* (SEE 1517.SL) \*\*\*

(1)(a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(b)(i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence.

(ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(c) When an offender who is subject to requirements of the sentence in addition to the payment of legal financial obligations either is not subject to supervision by the department or does not complete the requirements while under supervision of the department, it is the offender's responsibility to provide the court with verification of the completion of the sentence conditions other than the payment of legal financial obligations. When the offender satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court that the legal financial obligations have been satisfied. When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(2) Every signed certificate and order of discharge shall be filed with the county clerk of the sentencing county. In addition, the court shall send to the department a copy of every signed certificate and order of discharge for offender sentences under the authority of the department. The county clerk shall enter into a database maintained by the administrator for the courts the names of all felons who have been issued certificates of discharge, the date of discharge, and the date of conviction and offense.

(3) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

(4) Except as provided in subsection (5) of this section, the discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

(5) Unless otherwise ordered by the sentencing court, a certificate of discharge shall not terminate the offender's obligation to comply with an order issued under chapter 10.99 RCW that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has been issued shall be subject to prosecution according to the chapter under which the order was originally issued.

(6) Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody.

[2007 c 171 § 1; 2004 c 121 § 2; 2003 c 379 § 19; 2002 c 16 § 2; 2000 c 119 § 3; 1994 c 271 § 901; 1984 c 209 § 14; 1981 c 137 § 22.  
Formerly RCW 9.94A.220.]

**Notes:**

**Severability -- Effective dates -- 2003 c 379:** See notes following RCW 9.94A.728.

**Intent -- Purpose -- 2003 c 379 §§ 13-27:** See note following RCW 9.94A.760.

**Intent -- 2002 c 16:** "The legislature recognizes that an individual's right to vote is a hallmark of a free and inclusive society and that it is in the best interests of society to provide reasonable opportunities and processes for an offender to regain the right to vote after completion of all of the requirements of his or her sentence. The legislature intends to clarify the method by which the court may fulfill its already existing direction to provide discharged offenders with their certificates of discharge." [2002 c 16 § 1.]

**Application -- 2000 c 119:** See note following RCW 26.50.021.

**Purpose -- Severability -- 1994 c 271:** See notes following RCW 9A.28.020.

**Effective dates -- 1984 c 209:** See note following RCW 9.94A.030.

**Effective date -- 1981 c 137:** See RCW 9.94A.905.

RCWs > Title 9 > Chapter 9.94A > Section 9.94A.640

9.94A.637 << 9.94A.640 >> 9.94A.650

### **RCW 9.94A.640**

## **Vacation of offender's record of conviction.**

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

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender 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; (c) the offense was a crime against persons as defined in RCW 43.43.830; (d) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.637; (e) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.637; (f) the offense was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504 (6), and less than five years have passed since the date the applicant was discharged under RCW 9.94A.637; or (g) the offense was a class C felony described in RCW 46.61.502(6) or 46.61.504 (6) and less than ten years have passed since the applicant was discharged under RCW 9.94A.637.

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

[2006 c 73 § 8; 1987 c 486 § 7; 1981 c 137 § 23. Formerly RCW 9.94A.230.]

#### **Notes:**

**Effective date -- 2006 c 73:** See note following RCW 46.61.502.

**Effective date -- 1981 c 137:** See RCW 9.94A.905.

RCWs > Title 9 > Chapter 9.96 > Section 9.96.060

9.96.050 << 9.96.060 >> End of Chapter

### **RCW 9.96.060**

## **Misdemeanor offenses — Vacating 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 or an attempt to commit a violent offense;

(c) The offense was a violation of RCW 46.61.502 (driving while under the influence), 46.61.504 (actual physical control while under the influence), or 9.91.020 (operating a railroad, etc. while intoxicated);

(d) The offense was any misdemeanor or gross misdemeanor violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses);

(e) The applicant was convicted of a misdemeanor or gross misdemeanor offense as defined in RCW 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, 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) Once the court vacates a record of conviction under subsection (1) of 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 subsection (1) of this section may state that he or she has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

(4) 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 RCW that the person making the motion is indigent, at the time the motion is brought.

(5) 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.

[2001 c 140 § 1.]