

JUDICIAL IMPACT FISCAL NOTE

Bill Number: 2793 2SHB	Title: Clean Slate Act	Agency: 055 – Administrative Office of the Courts (AOC)
----------------------------------	----------------------------------	--

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

	FY 2020	FY 2021	2019-21	2021-23	2023-25
Total:					

Estimated Expenditures from:

STATE	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE – Staff Years		8.5	4.3	7.5	7.0
Account					
General Fund – State (001-1)		1,234,192	1,234,192	1,336,165	1,196,505
State Subtotal		1,234,192	1,234,192	1,336,165	1,196,505
COUNTY					
County FTE Staff Years					
Account					
Local - Counties	INDETERMINATE				
Counties Subtotal					
CITY					
City FTE Staff Years					
Account					
Local – Cities	INDETERMINATE				
Cities Subtotal					
Local Subtotal					
Total Estimated Expenditures:					

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form parts I-V

☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

Legislative Contact:	Phone:	Date:
Agency Preparation: Sam Knutson	Phone: 360-704-5528	Date: 2/21/2020
Agency Approval: Ramsey Radwan	Phone: 360-357-2406	Date:
OFM Review:	Phone:	Date:

Part II: Narrative Explanation

This bill would create the “Washington Clean Slate Act”.

Part II.A – Brief Description of what the Measure does that has fiscal impact on the Courts

Section 1(1) – Would provide that, except as provided in Section 4(2) of this bill, beginning July 1, 2022, the Administrative Office of the Courts (AOC) would be required to develop an automated process by which criminal convictions are reviewed to determine whether those convictions should be scheduled for administrative vacation hearings under Section 2 of this bill. The process would be required to:

- (a) Review convictions beginning at the earliest period for which electronic court records are reliable, provided that the review applies to all convictions beginning no later than January 1, 2000;
- (b) Rely upon records available to the AOC through judicial information systems;
- (c) Determine whether a defendant is currently incarcerated for a criminal offense, and whether available records indicate that he or she is precluded from qualifying to vacate his or her misdemeanor conviction under RCW 9.96.060(2)(b) or (5)(a) or his or her felony conviction under RCW 9.94A.640(2), provided that: (i) if applicable, whether a person completed his or her sentencing conditions, excluding legal financial obligations, and satisfied the waiting period under RCW 9.96.060(2)(b)(vi)(D) or (vii) or 9.94A.640(2)(e) or (f) is determined by adding the waiting period to the terms of confinement and community custody reflected in the applicable judgment and sentence document; and (iii) if applicable, the period for which a person must not have been convicted of any new criminal offense under RCW 9.96.060(2)(b)(viii) or 9.94A.640(2)(c) or (d) is determined based on the date of the query conducted by the AOC rather than the date of application;
- (d) Notify sentencing courts to schedule an administrative vacation hearing for any defendant where a review of available court records does not indicate that the defendant is precluded from qualifying to vacate his or her conviction; and
- (e) Review records and provide notifications on a monthly or quarterly basis, as determined by the AOC.

Section 1(2) – Would require the AOC to develop a process by which a person seeking to vacate his or her conviction may submit an inquiry with supporting information and documentation to assist or otherwise expedite the review under subsection (1) of this section.

Section 2(1) – Would require sentencing courts to conduct regularly scheduled vacation hearings to carry out the requirements of this section. Would provide that when a sentencing court receives notice from the AOC under Section 1 of this bill regarding a defendant potentially qualifying to vacate their conviction, a court shall set an administrative vacation hearing. Would provide that for the purposes of conducting proceedings under this section, the requirements under RCW 9.96.060(2)(b) and (5)(a) apply to misdemeanors and the requirements under RCW 9.94A.640(2) apply to felonies, except a defendant is not required to file a petition or application to provide notice to relevant parties. A defendant would not be required to appear at an administrative or contested hearing for the court to vacate a conviction under this section.

Section 2(2) – Would require a court, at an administrative vacation hearing, to determine whether to vacate the conviction based on the requirements for the particular offense under RCW 9.96.060(2)(b) or (5)(a) or 9.94A.640(2). Would provide that if a defendant is currently incarcerated for a criminal offense he or she would be disqualified from having their record

vacated. Would provide that if a defendant is presumed to meet the requirements the court shall vacate the conviction, unless court records indicate the defendant does not meet the requirements or the prosecutor objects on the basis that the defendant does not meet the requirements, in which case the court shall set a contested hearing. Would provide that the contested hearing must be set no sooner than 18 days after notice of the contested hearing has been provided to the defendant.

Section 2(3) – Would provide that at a contested hearing, a court shall vacate the record unless the court determines the defendant does not meet the requirements under RCW 9.96.060(2)(b) or (5)(a) or 9.94A.640(2). Would provide that if a court determines a defendant is not currently eligible but is likely to become eligible in the future, a court may set a subsequent administrative vacation hearing at an appropriate date determined by the court.

Section 2(4)(a) – Would provide that if a court vacates a conviction under this section, it shall achieve the vacation by: (i) withdrawing the plea of guilty and entering a plea of not guilty; and (ii) dismissing the information or indictment against the defendant and vacating the judgment and sentence.

Section 2(4)(b) – Would provide that if a court vacates a conviction under this section, it would be processed in the same manner and has the same effect as provided under RCW 9.96.060 (6) and (7) for a misdemeanor or RCW 9.94A.640(3) for a felony.

Section 2(5) – Would provide that regardless of whether a hearing under this section has previously occurred or is scheduled for a future date, nothing in this section would prohibit a defendant from applying to the court to vacate a conviction under RCW 9.96.060 or 9.94A.640, or seal his or her conviction or vacation records under court rules.

Section 2(6) – Would provide that beginning July 1, 2022, sentencing courts would be required to conduct regularly scheduled vacation hearings to carry out the requirements of this bill. However, sentencing courts within the county selected for the pilot program in Section 4 of this bill would be required to begin conducting scheduled vacation hearings by July 1, 2021.

Section 3(1) – Beginning July 1, 2022, would require the AOC to regularly collect and report the following information with respect to convictions where notifications were sent to sentencing courts under Section 1 of this act:

- (a) The number of convictions where notifications were sent;
- (b) The number of convictions where the sentencing court scheduled an administrative hearing within 90 days of receiving the notification;
- (c) The number of convictions where the court vacated the conviction at an administrative hearing;
- (d) The number of convictions where the court set a contested hearing;
- (e) The number of convictions where the court vacated the conviction at a contested hearing;
- (f) The number of convictions where the court denied vacation of the conviction at a contested hearing; and
- (g) Other data deemed relevant by the AOC.

Section 3(2) – Would provide that that requirement to regularly report information under this section may be satisfied by including the information in publicly available caseload reports, or submitting a quarterly or annual report to the Governor and appropriate committees of the legislature.

Section 4(1)(a) – Would require the AOC to evaluate;

- (i) The requirements of Section 1 and 2 of this act and determine the types of data currently available to assess eligibility under RCW 9.96.060(2)(b) or (5)(a) or 9.94A.640(2);
- (ii) Any additional types of information that should be reported to sentencing courts or directly to the AOC to improve the reliability of notifications provided under Section 1;
- (iii) Any additional types of information that should be reported through judicial information systems by clerks and court administrators to improve the reliability of notifications provided under Section 1; and
- (iv) Any changes to laws, policies, or practices or additional resources necessary to improve the reliability of notifications provided under Section 1.

Section 4(1)(b) – Would require the AOC, in consultation with courts of general jurisdiction and limited jurisdiction, to establish an implementation plan for complying with the requirements of Section 1 of this bill. The implementation plan would be required to include a pilot program required under subsection (2) of this section. The implementation plan may establish criteria for prioritizing potentially qualifying defendants, and may also include a phased process by which to notify courts of any defendants meeting the requirements for convictions occurring prior to July 1, 2022, or for the county participating in the pilot program under subsection (2) of this section, prior to July 1, 2021, so as to not hinder sentencing courts with excessive notices and directives to schedule hearings.

Section 4(2) – Would require the AOC, in consultation with courts of general and limited jurisdiction, to conduct a pilot program, from July 1, 2021 through June 30, 2022, for carrying out the requirements of Section 1 of this bill for convictions from a single county. The AOC would be required to consult with courts of general and limited jurisdiction and other appropriate entities to select the county for the pilot program. Would require the sentencing courts within the county selected for the pilot program to comply with the requirements of Section 2 of this bill, and to provide information to the AOC necessary for the reporting requirements under subsection (4) of this section. Would require the pilot program to be designed in a manner so as to implement the same process statewide beginning July 1, 2022.

Section 4(3) – Would provide that the AOC may consult with county clerks and court administrators, judges, prosecuting attorneys, defense attorneys, the Department of Corrections, county and city departments, and any other entities with relevant records.

Section 4(4) – Would require the AOC to report to the governor and legislature as follows: (a) preliminary report with findings required under subsection (1) of this section and an initial implementation plan for the pilot program under subsection (2) of this section must be submitted by December 1, 2020; (b) a status update of the pilot program and a statewide implementation plan must be submitted by December 1, 2021; and (c) a final report on the pilot program, including a summary of applicable data under Section (3) of this bill and other findings and recommendations, and a status update on statewide implementation must be submitted by December 1, 2022.

Section 5 – Would amend RCW 9.96.060 to replace "applicant" with "defendant".

Section 6 – Would provide that this act would be known as the Washington Clean Slate Act.

II.B - Cash Receipt Impact

None.

II.C – Expenditures

This bill would require the AOC to develop an automated process to identify convictions after January 1, 2000 that may be eligible for an administrative hearing to determine if the conviction may be vacated. The bill would require the AOC to develop a process by which a person seeking to vacate his or her conviction may submit an inquiry with supporting information and documentation to assist or otherwise expedite the review. The bill anticipates that a court would receive these reports on a regularly scheduled basis to provide for the scheduling of the administrative hearings. Contested hearings on the issue of vacating a conviction are also anticipated under this bill.

The bill would require the AOC to collect and report on conviction vacation hearing outcomes and would set out the report criteria. The conviction vacation hearing outcomes would be anticipated to be part of the published caseload reports available on the Washington Courts web site.

Implementation Assumptions

The AOC assessed the scope, time, and available resources to implement the Clean Slate Act. Based on that assessment, the AOC has determined that the broad scope, multiple tasks with varying deadlines, staff requirements, iterative review, and system and process modifications would require implementing the Clean Slate Act as a new program of the AOC in order to fully meet AOC responsibilities to the judiciary, stakeholders, affected defendants, and the public.

The Clean Slate Act would affect defendants with convictions in the superior, district and municipal courts. Each of these court levels has different business processes, coding practices, and separate case management systems at the state and local level. The data points and requirements needed for all of the reports required under this bill would not be consistent across the different court levels. In addition, the different case management source systems would be required to transmit newly implemented code data that would be required to be mapped to data standards to provide for consistent reporting purposes.

Section 1 of the bill would require determination of current incarceration status. The AOC currently does not have the necessary data nor a method to collect the data that would be required from the institutions and jail facilities within the state of Washington or outside of Washington to include in the report. That determination would require manual review and follow-up with institutions and jail facilities that might have held or are holding the named case defendant based on the current case history reports. It is assumed this review would be completed by staff review of rosters posted on city, county, and Department of Corrections web sites, or phone or email contacts. Out-of-state conviction information would need to be addressed or investigated on a case-by-case basis when information is received that the case defendant may have such a conviction. It is assumed that this would be a manual process.

Section 3 of this bill would require collection and regular reporting of convictions, notification and vacation data, as well as other data that would be deemed relevant. The AOC currently does not have the necessary staff resources nor data methods to meet the current incarceration provisions of Section 1.

Section 4 of the bill would require the AOC to consult with courts and other stakeholders to ascertain if there is additional information needed to improve the reliability and notification of the conviction eligibility reports. Annual review of report eligibility would be necessary to ensure that future legislative changes related to laws and modifications to the bill are implemented in a timely and accurate manner.

Section 4 would require the AOC to consult with courts and other stakeholder to develop a pilot program in a selected county, designed in a manner so as to provide for statewide implementation by July 1, 2022. Additional reporting requirements are included.

Part III: Expenditure Detail

The AOC currently does not have the necessary staff resources, data resources, processes, and reporting capabilities to meet the current incarceration provisions of this bill. The AOC assumes additional staff, report development, forms, bench books, other judicial resources, and information technology (IT) modifications would be required to implement the Clean Slate Act.

Pilot Program / Program Implementation Notes

This bill differs from SHB 2793 by requiring the AOC to consult with courts and other stakeholders to develop a pilot program in a selected county that would be designed in a manner so as to provide for statewide implementation by July 1, 2022. No criteria is established or proposed for selection of the county for the pilot program.

A significant amount of work would be required at implementation, even if only for the pilot program. The AOC does not currently have the staff and other resources needed to complete the work necessary for implementation. Incarceration verification work and report development would be required. Limiting these tasks to a pilot county may reduce the amount of research staff needed, but would not eliminate these costs. If the pilot program is determined to be successful and statewide implementation occurs, the full requested staffing would be required.

The following table displays estimated IT (and related) development and modification costs.

Table I – IT (and related) Modifications

Description	Estimated Hours	Cost
¹ Codes needed for report development; District and Municipal Courts (new codes for tracking vacation conviction proceedings and case conditions codes); Superior Courts (new codes for the orders entered as the result of the vacation conviction proceedings).	² 530	\$79,500
(a) Initial development of potential eligibility reports: gathering report requirements, writing the query, testing, analysis and validation. Requirements gathering, analysis, and validation require work completed by business analysts and Legal Services staff. It is assumed the AOC's system integrators would write the queries and prepare the reports. (b) Initial development necessary to produce caseload reports on conviction vacation outcomes. Tasks require completion of a statewide data warehouse, extract, transform, and load functions necessary for differing source system data, data universe design changes to accommodate new data fields and queries, caseload report building, and testing.	1,000	\$150,000

¹ One-time costs unless additional codes are deemed necessary as the result of feedback from courts and other stakeholders.

² Code implementation includes task assignments to business analysts, educators for manual updates, programmers and testers. Implementation includes Enterprise Data Repository mapping to existing data elements and associated tasks.

Initial tasks associated with building new web pages for reporting HTML conviction vacation outcomes on www.Courts.wa.gov . This would include monthly, year-to-date, and annual reports for each court level's published caseloads.	1,000	\$150,000
Initial business analysis tasks for changes required to published caseload reports and web page changes.	³ 160	\$24,000
Sub-Total, IT and related modifications	2,690	\$403,500

The following table displays costs associated with staff required for Clean Slate Act implementation.

Table II – Staff Summary

Position	FTE	Description
Program Coordinator	1.0 (ongoing)	Implement and manage the program, manage and direct program staff, conduct court and stakeholder reviews, data reporting and other program deliverables.
Legal Analyst	1.0 (ongoing)	Analyze legislative changes and their impacts to existing Clean Slate Act program deliverables and facilitate current and ongoing changes to court rules, forms, brochures, bench books, and other judicial resource documentation.
Senior System Integrator	1.0 (two years)	Technical support required for oversight and completion of IT and related tasks associated with the program.
Research Assistants	5.0 (ongoing)	Provide incarceration research for each case defendant on scheduled reports for each court. It is estimated 1.0 FTE would be dedicated to superior courts and 4.0 FTE for district and municipal courts.
Human Resources Specialist	0.5 (first year)	Required for recruitment, hiring, and onboarding new program staff.
Total	8.5	

Indeterminate Costs

Additional resource expenditures for staff time and mailing costs will be borne by local courts in order to send administrative hearing notices to case defendants to meet constitutional and due process considerations. The AOC estimates that each administrative hearing notice will require at least fifteen minutes of staff time for each administrative or contested hearing, print notices, and prepare mailings. At this time, there is no data available to estimate the number of hearings that would be required, thus the estimated cost for these efforts is indeterminate.

Judicial time to conduct an administrative hearing is estimated to be ten to fifteen minutes if *ex parte*, or fifteen to thirty minutes with prosecutorial staff in attendance. It is unknown how many hearings will be conducted, and how many will be *ex parte* or conducted in the presence of a prosecutor, thus the estimated costs for hearings is indeterminate.

It is assumed that county clerks and district and municipal court staff will experience an increase in workload to transmit all of the vacated conviction orders anticipated under the Clean Slate Act. At this time, it is unknown what this workload will encompass. Thus, the estimated cost for these efforts is indeterminate.

III.A – Expenditures by Object or Purpose

³ One-time costs for development.

Object	2020	2021	2019 - 2021	2022	2023	2021-2023
FTE		8.5	4.3	8.0	7.0	7.5
Salaries		557,071	557,071	522,625	424,425	947,050
Benefits		167,121	167,121	156,788	127,328	284,115
Goods/Services		42,500	42,500	40,000	35,000	75,000
Travel		8,000	8,000	8,000	8,000	16,000
Equipment		56,000	56,000	10,500	3,500	14,000
IT Modifications		403,500	403,500	-	-	-
Total	-	1,234,192	1,234,192	737,913	598,253	1,336,165

III.B – Detail:

Job Classification	Salary	FY 2020	FY 2021	2019-21	2021-23	2023-25
Program Coordinator			1.0	0.5	1.0	1.0
Legal Analyst			1.0	0.5	1.0	1.0
Senior System Integrator			1.0	0.5	0.5	
Research Assistants			5.0	2.5	5.0	5.0
Human Resource Specialist			0.5	0.3		
Total FTE's			8.5	4.3	7.5	7.0

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

None.