

# JUDICIAL IMPACT FISCAL NOTE

<b>Bill Number:</b> 2793 HB	<b>Title:</b> Clean Slate Act	<b>Agency:</b> 055 – Administrative Office of the Courts (AOC)
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## Part I: Estimates

☐ **No Fiscal Impact**

### Estimated Cash Receipts to:

	FY 2020	FY 2021	2019-21	2021-23	2023-25
<b>Total:</b>					

### 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
<b>Account</b>					
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
<b>COUNTY</b>					
County FTE Staff Years					
<b>Account</b>					
Local - Counties	INDETERMINATE				
Counties Subtotal					
<b>CITY</b>					
City FTE Staff Years					
<b>Account</b>					
Local – Cities	INDETERMINATE				
Cities Subtotal					
Local Subtotal					
<b>Total Estimated Expenditures:</b>					

*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.

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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 require the Administrative Office of the Courts (AOC) to develop a process in which criminal convictions on or after January 1, 2000 are reviewed to determine whether those convictions should be scheduled for administrative vacation hearings. The process must:

- (a) Rely upon records available to the AOC through judicial information systems and other sources;
- (b) 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 their misdemeanor conviction under RCW 9.96.060(2)(b) or (5)(a) or their felony conviction under RCW 9.94A.640(2);
- (c) Notify sentencing courts to schedule an administrative vacation hearing for any defendant where a review of records does not indicate that the defendant is currently incarcerated for a criminal offense or is precluded from qualifying to vacate their conviction; and
- (d) Review records and provide notifications on a monthly or quarterly basis, as determined by the AOC.

Section 1(2) – Would provide that the AOC, in consultation with courts of general jurisdiction and limited jurisdiction, may establish an implementation plan for complying with the requirements of this section. The implementation plan may establish criteria for prioritizing potentially qualifying defendants. The implementation plan may also include a phased process by which to notify courts of any defendants meeting requirements under RCW 9.96.060(2)(b) or (5)(a) or 9.94A.640(2) for convictions on or after January 1, 2000, and prior to the effective date of this section so as to not hinder sentencing courts with excessive notices and directives to schedule hearings.

Section 2(1) – Would require sentencing courts to conduct regularly scheduled vacation hearings to carry out the requirements of this section.

Section 2(2)(a) – 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.

Section 2(2)(b) – 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(3) – 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(4) – 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(5)(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(5)(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(6) – 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 3(1) – 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) – Would require the AOC to evaluate;

- (a) 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);
- (b) 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;
- (c) 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

- (d) Any changes to laws, policies, or practices or additional resources necessary to improve the reliability of notifications provided under Section 1.

Section 4(2) – Would provide that in conducting the evaluation under this section, 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(3) – Would require the AOC to submit a report with its findings to the Governor and the appropriate committees of the legislature by December 1, 2020.

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.

Section 8 – Would provide an effective date of July 1, 2022 for Sections 1 through 3 of this act.

## **II.B - Cash Receipt Impact**

None.

## **II.C – Expenditures**

This bill would require the AOC to develop a 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 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 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 courts and the district and municipal courts. Each of these court levels has different business processes, coding practices, and separate case management systems. 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.

### 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.

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

**Table I – IT (and related) Modifications**

Description	Estimated Hours	Cost
<sup>1</sup> 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).	<sup>2</sup> 530	\$79,500
<p><b>(a) Initial</b> 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.</p> <p><b>(b) Initial</b> development necessary to produce and 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.</p>	1,000	\$150,000

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

<sup>2</sup> 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.

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

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.
<b>Total</b>	<b>8.5</b>	

### **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 is 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**

<sup>3</sup> One-time costs for development.

<b>Object</b>	<b>2020</b>	<b>2021</b>	<b>2019 - 2021</b>	<b>2022</b>	<b>2023</b>	<b>2021-2023</b>
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	-	-	-
<b>Total</b>	<b>-</b>	<b>1,234,192</b>	<b>1,234,192</b>	<b>737,913</b>	<b>598,253</b>	<b>1,336,165</b>

### **III.B – Detail:**

<b>Job Classification</b>	<b>Salary</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>2019-21</b>	<b>2021-23</b>	<b>2023-25</b>
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		
<b>Total FTE's</b>			<b>8.5</b>	<b>4.3</b>	<b>7.5</b>	<b>7.0</b>

### **Part IV: Capital Budget Impact**

None.

### **Part V: New Rule Making Required**

None.