

JUDICIAL IMPACT FISCAL NOTE

Bill Number: 2793-S2 AMS LAW S7013.1	Title: Vacating Criminal Records	Agency: 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
Total:					

Estimated Expenditures from:

STATE	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE – Staff Years		5.0	2.5	4.0	4.0
Account					
General Fund – State (001-1)		1,213,806	1,213,806	1,431,952	792,292
State Subtotal		1,213,806	1,213,806	1,431,952	792,292
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.

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Part II: Narrative Explanation

This bill would require the Administrative Office of the Courts (AOC) to conduct a study and a pilot project on streamlining the vacation of criminal convictions under RCW 9.96.060(2)(b) and (5)(a) and RCW 9.94A.640(2) through an administrative, court-driven process.

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

Section 1(1) – The AOC would be required to conduct a study and a pilot project on streamlining the vacation of criminal convictions under RCW 9.96.060(2)(b) and (5)(a) and RCW 9.94A.640(2) through an administrative, court-driven process.

Section 1(2) – The AOC would be required to:

- (a) Determine the types of data currently available to the AOC to assess eligibility under RCW 9.96.060(2)(b) and (5)(a) and RCW 9.94A.640(2);
- (b) Evaluate additional types of information that should be reported to judicial information systems or directly to sentencing courts or the AOC to improve the reliability of the screening process;
- (c) Propose procedures for conducting queries of available records to assess eligibility;
- (d) Assess whether any changes to laws, policies, or practices or additional resources are necessary to improve the reliability of the process for the pilot program and for launching a similar program statewide;
- (e) Develop an implementation plan for the pilot program required in Section 2; and
- (f) Make additional recommendations deemed appropriate and necessary by the AOC.

Section 1(3) – Would require the AOC to report to the Governor and appropriate committees of the Legislature, as follows:

- (a) A report with findings, recommendations, and an implementation plan to be submitted by December 1, 2020;
- (b) A status update on the pilot program submitted by December 1, 2021; and
- (c) A final report on the pilot program, including a summary of data collected under the conditions of Section 2 and other findings and recommendations, submitted by December 1, 2022.

Section 1(4) – Would require the AOC to consult with county clerks, court administrators, judges, prosecuting attorneys, defense attorneys, the Department of Corrections (DOC), county and city departments, national and local organizations with interest or experience in vacating or sealing criminal convictions, national and local organizations with experience in developing automated vacating or sealing procedures in other states, organizations and persons with relevant technical expertise in computer and records systems, and any other entities with relevant records.

Section 2(1) – Would require the AOC to conduct a pilot program for streamlining the vacation of criminal convictions under RCW 9.96.060(2)(b) and (5)(a) and RCW 9.94A.640(2) through an administrative, court-driven process. Subsequent to consulting with courts of general and limited jurisdiction, the AOC would be required to select a county in which to conduct the pilot program. Sentencing courts within the county selected would be required to comply with the requirements of this Section, and would be required to provide information to the AOC necessary for the reporting requirements detailed in subsection (4).

Section 2(2) – Would require that when conducting the pilot program, the AOC shall review convictions from the participating county for the purpose of determining whether those convictions should be scheduled for administrative vacation hearings. The AOC may limit the screening process to certain types or classes of convictions of defendants. The process must:

- (a) Review convictions beginning at the earliest period for which electronic court records are reliable, but no later than January 1, 2000;
- (b) Rely on records available to the AOC through judicial information systems and other agencies, including (but not limited to) the Washington State Patrol (WSP) and DOC;
- (c) Determine whether a defendant is currently incarcerated for a criminal offense, and whether available records indicate that person is precluded from qualifying to vacate their conviction;
- (d) Notify sentencing courts to schedule administrative vacation hearings for any defendant where a review of available records does not indicate that the defendant is precluded from qualifying to vacate their conviction;
- (e) Prioritize potentially qualifying defendants according to criteria established by the AOC so as not to hinder sentencing courts with excessive notifications; and
- (f) Review records and provide notifications on a monthly or quarterly basis, as determined by the AOC.

Section 2(3)(a) – Would require that beginning July 1, 2021, through June 30, 2022, sentencing courts within the county selected for the pilot program would be required to conduct regularly scheduled administrative vacation hearings.

Section 2(3)(b) – Would require that when a participating court receives notice from the AOC regarding a potentially qualifying candidate, the court shall set an administrative vacation hearing. Would require that at the administrative vacation hearing the court shall determine whether to vacate the conviction based on the requirements of the particular offense under RCW 9.96.060(2)(b) and (5)(a) and RCW 9.94A.640(2). The defendant is presumed to meet the requirements and the court would be required to vacate the conviction, unless: court records indicate that the defendant does not meet the requirements, or the prosecutor objects on the basis that the defendant does not meet the requirements, or that the defendant is currently incarcerated for a criminal offense. Would require that if the court determines the defendant is not currently eligible, but is likely to be eligible in the future, the court may set a subsequent administrative vacation hearing at an appropriate date determined by the court.

Section 2(4) – Would require the AOC to collect the following information with respect to convictions where notifications were sent to sentencing courts through the pilot program, including: the number of notifications sent to sentencing courts, the number of administrative hearings held, the number of vacations granted at administrative hearings, the number of convictions where the court set a future administrative hearing based on predicted eligibility, the number of convictions where the court declined to vacate the convictions without setting a future administrative hearing, and other data deemed relevant by the AOC. The AOC would be required to include a summary of the data, including by type of court and for the entire pilot program.

II.B - Cash Receipt Impact

None.

II.C – Expenditures

The AOC does not have the necessary staff resources, data resources, processes, and reporting capabilities to meet the incarceration provisions of this bill striker. The AOC assumes consultant time, additional AOC staff, report development, forms, bench books, other judicial resources, and information technology (IT) modifications would be required to implement the pilot / program.

Pilot / Program Implementation Notes

This bill striker differs from 2SHB 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. The striker would require the AOC to conduct a pilot program for streamlining the vacation of criminal convictions under RCW 9.96.060(2)(b) and (5)(a) and RCW 9.94A.640(2) through an administrative, court-driven process. Subsequent to consulting with courts of general and limited jurisdiction, the AOC would be required to select a county in which to conduct the pilot program.

A significant amount of work would be required at implementation 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.

Consultant Costs

The AOC assumes that a consultant would be retained to work with the AOC, county clerks, court administrators, judges, prosecuting attorneys, Department of Corrections, Washington State Patrol, county and city departments, national and local organizations, and other entities with technical experience in computer and records systems to lead and conduct the pilot program required by this bill. It is assumed the consultant would work with the AOC to select the county for participation in the pilot program.

The consultant would be required to:

- (g) Determine the types of data currently available to the AOC to assess eligibility under RCW 9.96.060(2)(b) and (5)(a) and RCW 9.94A.640(2);
- (h) Evaluate additional types of information that should be reported to judicial information systems or directly to sentencing courts or the AOC to improve the reliability of the screening process;
- (i) Propose procedures for conducting queries of available records to assess eligibility;
- (j) Assess whether any changes to laws, policies, or practices or additional resources are necessary to improve the reliability of the process for the pilot program and for launching a similar program statewide;
- (k) Develop an implementation plan for the pilot program required in Section 2; and
- (l) Make additional recommendations deemed appropriate and necessary by the AOC.

The consultant would further be required to fulfill the following reporting requirements to the Governor and appropriate committees of the legislature:

- (a) A report with findings, recommendations, and an implementation plan to be submitted by December 1, 2020;
- (b) A status update on the pilot program submitted by December 1, 2021; and

- (c) A final report on the pilot program, including a summary of data collected under the conditions of Section 2 and other findings and recommendations, submitted by December 1, 2022.

The consultant would be required to work with the AOC to review convictions from the selected participating county to determine whether those convictions should be scheduled for administrative vacation hearing.

The AOC assumes the consultant retained to fulfill the requirements of this bill must have experience in law, judicial branch operations and court processes, information technology solutions, pilot / program management, and Washington state legislative processes and statutes. It is estimated that consultant costs would be \$250,000 per year through Fiscal Year 2023.

Information Technology Costs

The AOC assumes information technology modifications will be required for the pilot program. New coding, queries, reporting capabilities, business analysis, and testing 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
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

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.

³ One-time costs for development.

AOC Staffing Costs

The AOC currently does not have the necessary staff resources to implement the pilot program required by this bill.

The following table displays costs and responsibilities associated with staff required for pilot / program implementation.

Table II – Staff Summary

Position	FTE	Description
Pilot / Program Coordinator	1.0 (ongoing)	Implement and manage the pilot program, manage and direct pilot 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 pilot 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 pilot program.
Research Assistants	2.0 (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 1.0 FTE for district and municipal courts.
Total	5.0	

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 officers needed for administrative review hearings may increase the active pending civil cases as a result of moving judges from civil hearings to administrative vacation hearings. The estimated costs for this 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 proposed pilot program. At this time, it is unknown what this workload will encompass. Thus, the estimated cost for these efforts is indeterminate.

Part III: Expenditure Detail

III.A – Expenditures by Object or Purpose

Object	2020	2021	2019 - 2021	2022	2023	2021-2023
FTE		5.0	2.5	5.0	4.0	4.5
Salaries		378,697	378,697	378,697	280,497	659,194
Benefits		113,609	113,609	113,609	84,149	197,758
Consultant		250,000	250,000	250,000	250,000	500,000
Goods/Services		25,000	25,000	25,000	20,000	45,000
Travel		8,000	8,000	8,000	8,000	16,000
Equipment		35,000	35,000	10,500	3,500	14,000
IT Modifications		403,500	403,500	-	-	-
Total	-	1,213,806	1,213,806	785,806	646,146	1,431,952

III.B – Detail:

Job Classification	Salary	FY 2020	FY 2021	2019-21	2021-23	2023-25
Pilot / 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			2.0	1.0	2.0	2.0
Total FTE's			5.0	2.5	4.5	4

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

None.