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SENATE BILL 6255

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State of Washington

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By Senators Fraser, Kline, Eide, Kohl-Welles, Shin, Litzow, Chase, Stevens, Pflug, Regala, Nelson, Keiser, Roach, Conway, Holmquist Newbry, and Frockt

Read first time 01/16/12. Referred to Committee on Judiciary.

1 AN ACT Relating to victims of human trafficking and promoting  
2 prostitution; amending RCW 9.96.060; and adding a new section to  
3 chapter 9A.88 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.88 RCW  
6 to read as follows:

7 In any prosecution for prostitution under RCW 9A.88.030, it is an  
8 affirmative defense that the actor committed the offense as a result of  
9 having been a victim of trafficking, RCW 9A.40.100, promoting  
10 prostitution in the first degree, RCW 9A.88.070, or trafficking in  
11 persons under the trafficking victims protection act of 2000, 22 U.S.C.  
12 Sec. 7101 et seq. Documentation of the person's status as a victim of  
13 trafficking, promoting prostitution in the first degree, or trafficking  
14 in persons shall create a presumption that the person's participation  
15 in prostitution was a result of having been a victim of trafficking,  
16 promoting prostitution in the first degree, or trafficking in persons.

17 **Sec. 2.** RCW 9.96.060 and 2001 c 140 s 1 are each amended to read  
18 as follows:

1 (1) Every person convicted of a misdemeanor or gross misdemeanor  
2 offense who has completed all of the terms of the sentence for the  
3 misdemeanor or gross misdemeanor offense may apply to the sentencing  
4 court for a vacation of the applicant's record of conviction for the  
5 offense. If the court finds the applicant meets the tests prescribed  
6 in subsection (2) of this section, the court may in its discretion  
7 vacate the record of conviction by: (a)(i) Permitting the applicant to  
8 withdraw the applicant's plea of guilty and to enter a plea of not  
9 guilty; or (ii) if the applicant has been convicted after a plea of not  
10 guilty, the court setting aside the verdict of guilty; and (b) the  
11 court dismissing the information, indictment, complaint, or citation  
12 against the applicant and vacating the judgment and sentence.

13 (2) An applicant may not have the record of conviction for a  
14 misdemeanor or gross misdemeanor offense vacated if any one of the  
15 following is present:

16 (a) There are any criminal charges against the applicant pending in  
17 any court of this state or another state, or in any federal court;

18 (b) The offense was a violent offense as defined in RCW 9.94A.030  
19 or an attempt to commit a violent offense;

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

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

28 (e) The applicant was convicted of a misdemeanor or gross  
29 misdemeanor offense as defined in RCW 10.99.020, or the court  
30 determines after a review of the court file that the offense was  
31 committed by one family member or household member against another, or  
32 the court, after considering the damage to person or property that  
33 resulted in the conviction, any prior convictions for crimes defined in  
34 RCW 10.99.020, or for comparable offenses in another state or in  
35 federal court, and the totality of the records under review by the  
36 court regarding the conviction being considered for vacation,  
37 determines that the offense involved domestic violence, and any one of  
38 the following factors exist:

1 (i) The applicant has not provided written notification of the  
2 vacation petition to the prosecuting attorney's office that prosecuted  
3 the offense for which vacation is sought, or has not provided that  
4 notification to the court;

5 (ii) The applicant has previously had a conviction for domestic  
6 violence. For purposes of this subsection, however, if the current  
7 application is for more than one conviction that arose out of a single  
8 incident, none of those convictions counts as a previous conviction;

9 (iii) The applicant has signed an affidavit under penalty of  
10 perjury affirming that the applicant has not previously had a  
11 conviction for a domestic violence offense, and a criminal history  
12 check reveals that the applicant has had such a conviction; or

13 (iv) Less than five years have elapsed since the person completed  
14 the terms of the original conditions of the sentence, including any  
15 financial obligations and successful completion of any treatment  
16 ordered as a condition of sentencing;

17 (f) For any offense other than those described in (e) of this  
18 subsection, less than three years have passed since the person  
19 completed the terms of the sentence, including any financial  
20 obligations;

21 (g) The offender has been convicted of a new crime in this state,  
22 another state, or federal court since the date of conviction;

23 (h) The applicant has ever had the record of another conviction  
24 vacated; or

25 (i) The applicant is currently restrained, or has been restrained  
26 within five years prior to the vacation application, by a domestic  
27 violence protection order, a no-contact order, an antiharassment order,  
28 or a civil restraining order which restrains one party from contacting  
29 the other party.

30 (3) Every person convicted of prostitution under RCW 9A.88.030 who  
31 committed the offense as a result of being a victim of trafficking, RCW  
32 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070,  
33 or trafficking in persons under the trafficking victims protection act  
34 of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the sentencing court  
35 for vacation of the applicant's record of conviction for the  
36 prostitution offense. An applicant may not have the record of  
37 conviction for prostitution vacated if any one of the following is  
38 present:

1        (a) There are any criminal charges against the applicant pending in  
2 any court of this state or another state, or in any federal court;

3        (b) The offender has been convicted of another crime in this state,  
4 another state, or federal court since the date of conviction; or

5        (c) The applicant has ever had the record of another prostitution  
6 conviction vacated.

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

18        ~~((+4))~~ (5) All costs incurred by the court and probation services  
19 shall be paid by the person making the motion to vacate the record  
20 unless a determination is made pursuant to chapter 10.101 RCW that the  
21 person making the motion is indigent, at the time the motion is  
22 brought.

23        ~~((+5))~~ (6) The clerk of the court in which the vacation order is  
24 entered shall immediately transmit the order vacating the conviction to  
25 the Washington state patrol identification section and to the local  
26 police agency, if any, which holds criminal history information for the  
27 person who is the subject of the conviction. The Washington state  
28 patrol and any such local police agency shall immediately update their  
29 records to reflect the vacation of the conviction, and shall transmit  
30 the order vacating the conviction to the federal bureau of  
31 investigation. A conviction that has been vacated under this section  
32 may not be disseminated or disclosed by the state patrol or local law  
33 enforcement agency to any person, except other criminal justice  
34 enforcement agencies.

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