

A Guide to Sealing and Destroying Court Records, Vacating Convictions, and Deleting Criminal History Records in Washington State



State of Washington
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This brochure provides information about sealing and destroying court records, vacating convictions, and deleting criminal history records.

Courts and law enforcement agencies maintain records of those who are detained, arrested, charged, and convicted or acquitted of crimes. You have the right to inspect court records and criminal history records that pertain to you.

For information about a court record, contact the city or county court where the case was filed. This may be a municipal, district, juvenile, or superior court.

For information about a criminal history record, contact the law enforcement agency responsible for the case. This may be a city police department, county sheriff's office, the Washington State Patrol, or another agency with police powers.

The authority to seal or destroy records and to vacate convictions is established by laws enacted by the Legislature and by rules adopted by the Washington State Supreme Court. State laws concerning court records and criminal history records change frequently, so you may wish to seek legal advice about your specific circumstances. You should consult an attorney to determine if sealing or destroying your record or vacating your conviction could affect your immigration status or your right to possess a firearm.

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Court Records

A court record includes documents, information, and exhibits that are maintained by the court in connection with a judicial proceeding. If a defendant is convicted, the record contains a disposition order or judgment and sentence specifying the crime(s) committed and the punishment imposed. If a defendant is acquitted or the court determines charges should not go forward, the record shows the action has been dismissed.

Court records are maintained by the clerk of each court. Court records, like court hearings, are generally open to the public. Requests to access or review documents in a court file need to be addressed to the Clerk's Office or the Court Administrator for the court where your case is filed. A court can only address requests about cases filed in that court. If you have cases in more than one court, you must make a separate inquiry to each court.

Whether a court record may be sealed and whether a conviction may be vacated depends on the type of crime involved (misdemeanor or felony) and the court where conviction is obtained (juvenile or adult). A decision whether to seal or vacate a criminal case can only be made by a judge in the court where the case was filed.

Sealing or destroying a court record or vacating a conviction does not necessarily affect the records maintained by law enforcement agencies, other government agencies, or private concerns. Requests about records maintained by other agencies must be made to those agencies.

Juvenile Court Records

Sealing. The courts shall hold regularly scheduled sealing hearings to administratively seal individuals' juvenile offender court records pursuant to RCW 13.50.050. At the juvenile offender's disposition hearing, the court shall schedule the sealing for the first regularly scheduled sealing hearing date after the latest of the following events take place:

- ✦ Juvenile offender's eighteenth birthday;
- ✦ Anticipated completion of probation if ordered; or
- ✦ Anticipated release from confinement at the juvenile rehabilitation administration, or the completion of parole, if the respondent is transferred to the juvenile rehabilitation administration.

A contested hearing will be scheduled if there is an objection to the sealing or the court notes a compelling reason not to seal. The juvenile and the juvenile's attorney shall be given notice at least eighteen days before any contested sealing hearing, and allowed the opportunity to respond to any objections. Following a contested sealing hearing, the court shall enter an order sealing the juvenile offender's court record unless the court determines the sealing is not appropriate.

The court shall enter an order sealing a juvenile offender's court record if:

- ✦ At the time of the offense it was not:
 - A most serious offense as defined in RCW 9.94A.030;
 - A sex offense under chapter 9A.44 RCW;
 - A drug offense as defined in RCW 9.94A.030; and
- ✦ The juvenile offender has completed the terms and conditions of disposition, including affirmative conditions and financial obligations.

Alternative Sealing Process

If a juvenile offender court record was not subject to the process described above, and the information was filed pursuant to RCW 13.40.100 or a complaint was filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the juvenile may file a motion with the court to vacate the order and findings and to seal the official juvenile court file, the social file, and records of the court and of any other agency in the case. Reasonable notice shall be given to the prosecution and to any person or agency whose records are sought to be sealed.

The court shall grant any motion to seal records for class A offenses if:

- ✧ Since the last date of release from confinement, including full-time residential treatment, or entry of disposition, the person spent five consecutive years in the community without committing any offense or crime resulting in an adjudication or conviction;
- ✧ No proceeding is pending against the moving party that seeks the conviction of a juvenile offense or a criminal offense;
- ✧ No proceeding is pending that seeks the formation of a diversion agreement with that person;
- ✧ The person is no longer required to register as a sex offender under RCW 9A.44.130 or is relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense;
- ✧ The person was not convicted of rape in the first or second degree, or of indecent liberties that was actually committed with forcible compulsion; and
- ✧ Full restitution has been paid.

The court shall grant a motion to seal records for class B, class C, gross misdemeanor, and misdemeanor offenses and diversions if:

- ✧ Since the date of last release from confinement, including full-time residential treatment, or entry of disposition, or completion of the diversion agreement, the person spent two consecutive years in the community without being convicted of any offense or crime;
- ✧ No proceeding is pending against the moving party that seeks the conviction of a juvenile offense or a criminal offense;
- ✧ No proceeding is pending that seeks the formation of a diversion agreement with that person;
- ✧ The person is no longer required to register as a sex offender under RCW 9A.44.130 or is relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense; and
- ✧ Full restitution has been paid.

The court shall grant any motion to seal records of any deferred disposition vacated under RCW 13.40.127(9) prior to June 7, 2012, if restitution is paid and the person is eighteen or older at the time of the motion.

The court shall immediately seal an official juvenile court record upon the acquittal after a fact finding or upon dismissal of charges. If the subject of the juvenile records receives a full and unconditional pardon, the proceedings shall be treated as if they never occurred.

Effect of Sealing. When a motion to seal records is granted, the order shall seal the official juvenile court record, the social file, and other records relating to the case as named in the order. The proceedings in the case are to be treated as if they never occurred. However, identifying information held by the Washington State Patrol in accordance with chapter 43.43 RCW is not subject to destruction or sealing described above. Subsequent adjudication of a juvenile offense or a crime voids a sealing order and the case will be publicly accessible. However the court may order the juvenile court record resealed upon disposition of the subsequent matter if the case meets the sealing criteria described above and the court record was not previously resealed. Any charging of an adult felony after the sealing voids the sealing order.

The record of an employee is not admissible in an action for liability against the employer based on the former juvenile offender's conduct to show that the employer knew or should have known of the juvenile record of the employee. The record may be admissible if a background check conducted or authorized by the employer contained information in the sealed record.

Destroying. Juvenile records, including those maintained by any court, the prosecutor's office or law enforcement agency are eligible for destruction when:

- ✧ The person who is the subject of the information or complaint is at least 18 years old;
- ✧ The person's criminal history consists entirely of one juvenile diversion agreement or counsel and release entered on or after June 12, 2008;
- ✧ Two years have passed since completion of the juvenile diversion agreement or counsel and release;
- ✧ No proceeding is pending that seeks conviction of the person for a criminal offense; and

- ✧ There is no restitution owing in the case.

State and local governments and their officers and employees are not liable for civil damages for failure to destroy records.

All records maintained by any court, prosecutor's office or law enforcement agency shall be automatically destroyed within thirty days of being notified by the governor's office that the person received a full and unconditional pardon.

A person 23 years of age or older whose criminal history consists only of referrals for juvenile diversion may request that the court order destruction of those case records. Reasonable notice of the motion must be given to the prosecuting attorney and to any agency whose record are sought to be destroyed. The request is granted if the court finds that all diversion agreements have been successfully completed and no proceeding is pending that seeks conviction of the person for a criminal offense. Identifying information described in RCW 13.50.050(13) is not subject to destruction or sealing.

A person 18 years of age or older whose criminal history consists only of one juvenile diversion agreement or counsel and release entered prior to June 12, 2008, may request that the court order destruction of the case records. Reasonable notice of the motion must be given to the prosecuting attorney and to any agency whose record are sought to be destroyed. The request is granted if the court finds that two years have elapsed since the completion of the agreement or counsel and release. Identifying information described in RCW 13.50.050(13) is not subject to destruction or sealing.

Deferred Disposition. If a juvenile is granted a deferral of disposition under RCW 13.40.127, the court may dismiss the deferred disposition and vacate the conviction if:

- ✧ The deferred disposition was not previously revoked;
- ✧ The terms of supervision were completed;
- ✧ There are no pending motions concerning lack of compliance; and
- ✧ Restitution was paid in full or there was a good faith effort to pay the full amount of restitution during the period of supervision.

A conviction under RCW 16.52.205 (first degree animal cruelty) shall not be vacated. If a case is dismissed with restitution still owing, the court shall enter a restitution order for any unpaid restitution.

If the court vacates a conviction as described above, the case shall be sealed if:

- ✧ The deferred disposition was vacated after June 7, 2012;
- ✧ If the juvenile is eighteen years of age or older; and
- ✧ The full amount of restitution ordered is paid.

If the juvenile is not eighteen years or older, but the deferred disposition was vacated after June 7, 2012, and full restitution was paid, the court shall schedule an administrative hearing to take place within thirty days after the juvenile's eighteenth birthday and enter a written order sealing the case. Juveniles can petition the court to seal records under RCW 13.50.050 for deferred dispositions vacated prior to June 7, 2012.

Adult Court Records

Sealing and Destroying. Under General Rule 15, sealing a court record may be ordered when a conviction has been vacated or when the court finds that compelling privacy or safety concerns outweigh the public interest in access to the record. **Current law does not allow for destroying the court record of a criminal action against an adult that results in a conviction or some adverse findings.**

Vacating Misdemeanors. RCW 9.96.060 authorizes a sentencing court to vacate a conviction for a misdemeanor or a gross misdemeanor if:

- ✧ For any offense other than those described in RCW 9.96.060(2)(e), the offender has completed all the terms of his or her sentence, including financial obligations, and more than three years have passed since completion;
- ✧ The offender has no criminal charges pending or has not been convicted of a new crime in any state or federal court;
- ✧ The offender does not have another conviction vacated; or
- ✧ The offender has not been restrained within the last five years by a domestic violence protection order, a no-contact order, an anti-harassment order, or a civil restraining order.

In addition, the offense must not be:

- ✧ A violent offense, as defined in RCW 9.94A.030, or an attempt to commit a violent offense;
- ✧ A violation of RCW 46.61.502 (driving under the influence), RCW 46.61.504 (physical control of a vehicle while under the influence), RCW 9.91.020 (operating a railroad, steamboat, or vehicle while intoxicated), or the offense is considered a “prior offense” under RCW 46.61.5055 and there is a subsequent alcohol or drug violation within ten years of the date of arrest for the prior offense;
- ✧ A 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); or
- ✧ An offense involving domestic violence in some circumstances and as described in RCW 9.96.060(2)(e).

Tribal Fishing Activities

Persons convicted prior to January 1, 1975, of violating any statute or rule regarding the regulation of fishing activities and claimed to be exercising a treaty Indian fishing right, may apply to the sentencing court to vacate the conviction. If the person is deceased, a family member or an official representative of the tribe of which the person was a member, may apply to the court on behalf of the deceased person. The court shall vacate a conviction if:

- ✧ The person is a member of a tribe that may exercise treaty Indian fishing rights at the location where the offense occurred; and
- ✧ The state is enjoined from taking enforcement action of the statute or rule to the extent that it interferes with a treaty Indian fishing right as determined under case law listed in RCW 9.96.060(4)(b).

Prostitution Convictions

Persons convicted of prostitution under RCW 9A.88.030 that committed the offense as a result of being a victim of trafficking per RCW 9A.40.100, of promoting prostitution in the first degree per RCW 9A.88.070, promoting commercial sexual abuse of a minor per RCW 9.86A.101, or of trafficking in persons under the Trafficking Victims Protection Act of 2000, 22 U.S.C. Sec. 7101 et seq., may apply to the sentencing court for vacation of the conviction for the prostitution offense.

The conviction may not be vacated if:

- ✧ The applicant has pending criminal charges in any state or federal court for any crime other than prostitution; or
- ✧ The applicant was convicted of another crime, except prostitution, in any state or federal court since the date of conviction.

In order to vacate a prostitution conviction as a result of being a victim of trafficking per RCW 9A.40.100, the applicant must prove by a preponderance of evidence either:

- ✧ The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person;
- ✧ The person who committed any of the acts previously listed against the applicant acted knowingly or in reckless disregard for the fact that force, fraud, or coercion would be used to cause the applicant to engage in a sexually explicit act or commercial sex act; and
- ✧ The applicant’s conviction record for prostitution resulted in such acts.

Or:

- ✧ The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person;
- ✧ The person who committed any of the acts previously listed against the applicant acted knowingly or in reckless disregard for the fact that the applicant was not the age of eighteen and would be caused to engage in a sexually explicit act or commercial sex act; and
- ✧ The applicant's conviction record for prostitution resulted in such acts.

In order to vacate a prostitution conviction as a result of being a victim of promoting prostitution in the first degree per RCW 9A.88.070, the applicant must prove by a preponderance of evidence either:

- ✧ The applicant was compelled by threat or force to engage in prostitution;
- ✧ The person who compelled the applicant acted knowingly; and
- ✧ The applicant's conviction record for prostitution resulted from the compulsion.

Or:

- ✧ The applicant has a mental incapacity or developmental disability that renders the applicant incapable of consent;
- ✧ The applicant was compelled to engage in prostitution;
- ✧ The person who compelled the applicant acted knowingly; and
- ✧ The applicant's conviction record for prostitution resulted from the compulsion.

In order to vacate a prostitution conviction as a result of being a victim of promoting commercial sexual abuse of a minor per RCW 9.68A.101, the applicant must prove by a preponderance of evidence:

- ✧ The applicant was not eighteen at the time of the prostitution offense;
- ✧ A person advanced commercial sexual abuse or a sexually explicit act, as defined in chapter 9.96 RCW, of the applicant at the time he or she was not eighteen;
- ✧ The person who committed these acts to the applicant acted knowingly; and
- ✧ The applicant's conviction record for prostitution resulted from the acts.

In order to vacate a prostitution conviction as a result of being a victim of trafficking under the Trafficking Victims Protection Act of 2000, 22 U.S.C. Sec. 7101 et seq., the applicant must prove by a preponderance of evidence:

- ✧ The applicant was induced by force, fraud, or coercion to engage in a commercial sex act and the prostitution conviction resulted from the inducement; or
- ✧ The applicant was induced to engage in a commercial sex act prior to being eighteen and the prostitution conviction resulted from the inducement.

Forms to request that a misdemeanor or gross misdemeanor conviction be vacated may be obtained from the courts, online at <http://www.courts.wa.gov/forms/>, or from the Administrative Office of the Courts at (360) 705-5328.

Vacating Felonies. RCW 9.94A.640 provides for vacating some felony convictions. An offender who has been discharged may request, by motion, that the sentencing court vacate the conviction. But the record of conviction may not be cleared if:

- ✧ Criminal charges are pending against the offender in any state or federal court;
- ✧ The conviction was for a violent offense as defined in RCW 9.94A.030 or a crime against persons as defined in RCW 43.43.830;
- ✧ The offender has been convicted of a new crime in any state or federal court since discharge;
- ✧ The offense is a class B felony and less than ten years have passed since discharge;
- ✧ The offense is a class C felony described in RCW 46.61.502(6) or RCW 46.61.504(6);

- The offense is any class C felony, other than those described in RCW 46.61.502(6) or RCW 46.61.504(6), and less than five years have passed since discharge.

Forms to request that a felony conviction be vacated may be obtained from the courts, online at <http://www.courts.wa.gov/forms/>, or from the Administrative Office of the Courts at (360) 705-5328.

Effect of Vacating Conviction. An offender whose conviction has been vacated may state for all purposes that he or she has not been convicted of that crime. When a conviction is vacated, however, the court file is not destroyed and, unless it is sealed, the court file is still accessible to the public. The conviction may be used in a later criminal prosecution.

Deferred Sentence. If an offender receives a deferred sentence and successfully completes probation, he or she may need to file a motion for dismissal with the court.

Civil Cases. Under GR 15, a party may request a hearing to seal or redact court records. A party may request a hearing to destroy court records in a civil case only if there is express statutory authority to permit it.

Criminal History Records

Criminal history record information includes descriptions and notations of detentions, arrests, indictments, informations or other formal criminal charges, and any dispositions. "Criminal history records" are maintained by law enforcement and other criminal justice agencies and should not be confused with "court records," which are maintained by the courts. You have the right to inspect your criminal history record on file with a local police agency or with the Washington State Patrol.

Local police agencies submit criminal history record information to the State Patrol, which maintains the information in a statewide repository. Whether information contained in a law enforcement agency's files may be modified, sealed, or deleted depends on the outcome of the case (acquittal or conviction) and on the court that heard the case (juvenile or adult). Modifying or deleting criminal history records (law enforcement records) does not necessarily change the records maintained by the courts (court records).

A request to modify, seal, or destroy a court record must be directed to the court in which that record is filed.

Juvenile Criminal History Records

A court order to seal a juvenile record results in the removal of references to his or her arrest and disposition from the records maintained by the State Patrol. Identifying information such as photographs, fingerprints, and any other data that identifies a person by name, birthdate, address, or physical characteristics, are not subject to sealing or destruction.

Deletion of Criminal History Records

Under RCW 10.97.060, a criminal history record on file with a law enforcement agency is to be deleted at the request of the person who is the subject of the record if:

- ✧ The file consists of only nonconviction data;
- ✧ At least two years have elapsed since the record became nonconviction data as the result of entry of a disposition favorable to the defendant, or at least three years have elapsed from the date of arrest or issuance of a citation or warrant for which a conviction was not obtained (unless the defendant is a fugitive or the case is under active prosecution);
- ✧ The disposition was not a deferred prosecution or similar diversion of the alleged offender;
- ✧ The person has not had a prior conviction for a felony or gross misdemeanor; and
- ✧ The person has not been arrested for or charged with another crime during the intervening period.

Information about deleting nonconviction criminal record information from the State Patrol repository files may be obtained online at <http://www.wsp.wa.gov/crime/crimhist.htm> or by calling the Criminal History Support Unit at (360) 534 -2000. A separate request must be made to the local (arresting) police agency, in accordance with that agency's procedure, to seek deletion of records in its possession.

Deletion of criminal history records is not available for cases that result in convictions or other dispositions adverse to the defendant, unless the criminal justice agency has been ordered by a court to delete the criminal history record.

Challenges to Criminal History Records

A person who is the subject of a criminal history record may challenge the accuracy or completeness of that record. Challenges must be made in writing. Under RCW 43.43.730, a State Patrol decision declining a request to modify a record may be appealed.

Glossary

CHALLENGE: To assert that a criminal history record on file with a law enforcement agency is inaccurate or incomplete.

CONVICTION OR OTHER DISPOSITION ADVERSE TO THE DEFENDANT: A disposition of charges other than a decision not to prosecute, a dismissal, or an acquittal.

CONVICTION RECORD: Criminal history record information relating to an incident that has led to a conviction or other disposition adverse to the subject.

CRIMINAL HISTORY RECORD INFORMATION: Data contained in records collected by criminal justice agencies other than courts, consisting of descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any dispositions, including sentences, correctional supervision, and release.

DEFERRED SENTENCE: A sentence that will not be carried out if the defendant meets certain requirements, such as complying with conditions of probation. A deferred sentence is considered adverse to the defendant.

DELETE: To eliminate existing information.

DISCHARGE: An offender's release from confinement or supervision after completing sentence requirements.

DISMISSAL: The court-ordered termination of a case.

DISPOSITION: The formal conclusion of a criminal proceeding.

EXPUNGE: To physically destroy information.

FELONY: The offense classification for serious crimes. Felonies are designated class A, class B, and class C, with class A felonies subject to the longest terms of confinement.

GROSS MISDEMEANOR: An offense punishable by no more than 365 days in jail and \$5,000. Gross misdemeanors may be filed in either courts of limited jurisdiction (district or municipal courts) or superior court.

JUVENILE OFFENDER: A person under the age of 18 years who has not been transferred to adult court and who has been found to have committed an offense by the juvenile court. Individuals 18 years of age or older over whom jurisdiction has been extended are also juvenile offenders.

MISDEMEANOR: An offense punishable by no more than 90 days in jail and \$1000. May be filed in either courts of limited jurisdiction (district or municipal courts) or superior court.

MODIFY: To change existing information.

NONCONVICTION DATA: Criminal history record information relating to an incident that has not led to a conviction or other disposition adverse to the individual, and for which proceedings are no longer actively pending.

SEAL: To prevent access to a record.

SUSPENDED SENTENCE: A sentence postponed so the defendant is not required to serve time unless he or she commits another crime or violates a court-imposed condition. A suspended sentence is considered adverse to the defendant.

VACATE: To set aside a conviction.

Statutes, Rules, and Regulations

The following statutes, rules, and regulations concern court records and criminal history records:

Revised Code of Washington (RCW)

9.92.066	Termination of Suspended Sentence-Vacation of Conviction
9.94A.640	Vacation of Offender's Record of Conviction
9.95.240	Dismissal -Vacation of Conviction
9.96.060	Misdemeanor Offenses -Vacating Records
10.97.060	Deletion of Certain Information, Conditions
13.40.127	Deferred Disposition
13.50.050	Records of Juvenile Offenses
43.43.730	Criminal History Records

General Rules (GR)

[Rule 15 Destruction, Sealing, and Redaction of Court Records](#)
[Rule 31 Access to Court Records](#)

Washington Administrative Code (WAC)

[446-16-025 Deletion of Arrest Records](#)
[446-16-030 Inspection by the Subject of Their Record](#) (Courts may also have local rules governing access to court records.)

Resources

Washington Courts:

<http://www.courts.wa.gov/index.cfm>

This site includes a statewide directory of courts, court rules, the most current version of this brochure, forms, and information about legal research and the State Law Library. The Administrative Office of the Courts may be contacted at (360) 357-2130, but **agency personnel cannot provide legal advice.**

Washington State Legislature:

<http://apps.leg.wa.gov/rcw/> and <http://apps.leg.wa.gov/wac/>

These sites contain the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC). Copies of the RCW and the WAC are also available at local libraries.

Washington State Patrol:

<http://www.wsp.wa.gov/crime/crimhist.htm>

This site provides information about criminal history records. Call (360) 534-2000 for assistance from a State Patrol customer service representative.

Washington State Bar Association:

<http://www.wsba.org/atj/contact/lawref.htm>

This site offers contact information about lawyer referral services. The Service Center may be reached at 1-800-945-9722 or (206) 443-9722.

INSTRUCTIONS FOR VACATING MISDEMEANOR AND GROSS MISDEMEANOR CONVICTIONS

Washington law permits the vacation of some misdemeanor or gross misdemeanor convictions.

Vacation of a conviction releases you from all penalties and disabilities resulting from the offense. Once a conviction is vacated, the fact that you have been convicted of the offense shall not be included in your 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 may state that he or she has never been convicted of that crime. Vacation of a conviction, however, does not affect or prevent use of the conviction in a later criminal prosecution. Vacation of a conviction does not automatically restore your right to possess a firearm.

The law does not automatically vacate your conviction. If you want to have a conviction vacated, you must file a motion with the court. The following information will assist you in deciding whether the law applies to your situation and, if so, how to ask the court to vacate your conviction.

If you meet the following criteria, a court may, in its discretion, vacate the conviction.

- ✓ There are no criminal charges pending against you in any court of this state or another state, or in any federal court.
- ✓ You have not been convicted of a new crime in this state, another state, or federal court since the date you were sentenced on the crime you wish to have vacated.
- ✓ You have never had the record of another conviction vacated.
- ✓ You are not currently restrained, and have not been restrained within five years prior to the vacation application, by a domestic violence protection order, a no-contact order, an antiharassment protection order, or a civil restraining order which restrains one party from contacting the other party.
- ✓ The conviction you are seeking to have vacated is **not** for one of the following crimes:

A prostitution offense that you committed as a result of being a victim of trafficking under RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. § 7101 et seq. If it is, skip to the symbol "Ø," below.

Driving while under the influence ("DUI"), RCW 46.61.502
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Actual physical control while under the influence, RCW 46.61.504
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Operating a railroad, etc., while intoxicated, RCW 9.91.020

An offense considered a "prior offense" under RCW 46.61.5055 and you have had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense.

A "prior offense" means:

- Vehicular Homicide while under the influence of intoxicating liquor or any drug. (RCW 46.61.520)
- Vehicular Assault while under the influence of intoxicating liquor or any drug. (RCW 46.61.522).
- Vehicular Homicide or Vehicular Assault committed in a reckless manner or with disregard for the safety of others if the original charge was for Vehicular Homicide or Vehicular Assault while under the influence of intoxicating liquor or any drug.
- Negligent Driving in the 1st degree (RCW 46.61.5249), Reckless Driving (RCW 46.61.500), Reckless Endangerment (RCW 9A.36.050) or equivalent out of state or local ordinance, if the original charge was, DUI, Actual physical control while under the influence, vehicular homicide or vehicular assault.
- Deferred prosecution for DUI/Physical control or equivalent local ordinance.
- Deferred prosecution for Negligent Driving in the 1st degree if the original charge was DUI, Actual physical control, vehicular homicide, vehicular assault;
- (Effective August 1, 2012) An equivalent out-of-state deferred prosecution for DUI/Physical control, including chemical dependency treatment program.

A violation of chapter 9A.44 RCW (sex offenses)

A violation of chapter 9.68 RCW (obscenity and pornography)

A violation of chapter 9.68A RCW (sexual exploitation of children)

A violent offense as defined in RCW 9.94A.030 or an attempt to commit a violent offense

- ✓ If the crime you are seeking to have vacated involved domestic violence, you must:
 - ✓ Provide the prosecuting attorney's office that prosecuted you with timely notice of your motion and declaration for order vacating conviction and file the original notice with the court.
 - ✓ You must not have been convicted of any other domestic violence offense arising out of any other incident. (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.)
 - ✓ Five years have elapsed since you 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.

- ✓ If the crime you are seeking to have vacated did not involve domestic violence, three years must have elapsed since you completed the terms of the original conditions of the sentence, including any financial obligations.

∅ The conviction was for a prostitution offense that was committed while you were a victim of trafficking under state or federal law, of promoting prostitution in the first degree, or of promoting commercial sexual abuse of a minor:

- ✓ If the crime you are seeking to have vacated is a prostitution offense that you committed as a result of being a victim of:

- ✓ trafficking, RCW 9A.40.100,
- ✓ promoting prostitution in the first degree, RCW 9A.88.070,
- ✓ promoting commercial sexual abuse of a minor, RCW 9.68A.101, or
- ✓ trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. §7101 et seq.

And if you meet the following criteria, a court may, in its discretion, vacate the conviction:

- ✓ There are no criminal charges pending against you for any crime other than prostitution in any court of this state, or another state, or in any federal court; or
- ✓ You have not been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction.
- ✓ You prove that it is more likely than not that the following occurred in your case (more than one section may apply):
 - ✓ If you were convicted for a prostitution offense as a result of being a victim of trafficking, RCW 9A.40.100, you must prove:
 - a. Someone harbored, transported, provided, obtained, bought, purchased, or received you.
 - b. That person acted knowingly or in reckless disregard for the fact that force, fraud, or coercion would be used to cause you to engage in a sexually explicit act or commercial sex act
 - c. Your prostitution conviction record resulted from that person's acts.
 - ✓ If you were convicted for a prostitution offense as a result of being a victim of promoting prostitution in the first degree, RCW 9A.88.070:,

If you were compelled by threat or force, you must prove;

 - a. You were compelled by threat or force to engage in prostitution.
 - b. The person knowingly used threat or force to compel you to engage in prostitution.
 - c. Your prostitution conviction record resulted from being compelled by threat or force by that person.

If you were compelled, you must prove;

 - a. You have a mental incapacity or developmental disability that renders you incapable of consent.
 - b. You were compelled to engage in prostitution.
 - c. The person knowingly compelled you to engage in prostitution.

- d. Your prostitution conviction record resulted from being compelled by by that person.
- √ If you were convicted for a prostitution offense as a result of being a victim of promoting commercial sexual abuse of a minor, RCW 9.68A.101, you must prove:
 - a. You were under the age of 18 at the time of the prostitution offense.
 - b. While you were under the age of 18, someone:
 - caused or aided someone else to commit commercial sexual abuse of you; or,
 - asked for or got customers for commercial sexual abuse of you; or
 - provided persons or places for the purpose of commercial sexual abuse of you; or
 - operated or assisted in operating a house or enterprise for the purpose of commercial sexual abuse of you; or
 - did anything else designed to result in commercial sexual abuse of you; or
 - caused or aided someone else to commit a sexually explicit act with you; or,
 - asked for or got customers for a sexually explicit act with you; or
 - provided persons or places for the purpose of a sexually explicit act with you; or
 - did anything else designed to result in a sexually explicit act with you.
 - c. That person acted knowingly.
 - d. Your prostitution conviction record resulted from that person's actions.
 - √ If you were convicted for a prostitution offense as a result of being a victim of trafficking under the trafficking victims protection act of 2000, 22 U.S.C. § 7101 et seq., you must prove either that:
 - a. You were induced by force, fraud, or coercion to engage in a commercial sex act and your prostitution conviction record is a result; or
 - b. You were induced to engage in a commercial sex act while you were under age 18 and your prostitution conviction record is a result.

If you can satisfy each of the requirements with respect to the conviction you are asking the court to vacate, your next step is to complete the form CrRLJ 09.0100, Motion and Declaration for Order Vacating Conviction. This form will allow the court to determine whether you are eligible to have your conviction vacated. If you are asking the court to vacate your prostitution conviction/s, and you were a victim of trafficking under state or federal law of promoting prostitution in the first degree, or of promoting commercial sexual abuse of a minor, you must also complete form CrRLJ 09.0120, Prostitution Conviction Attachment, and attach it to the motion.

You may want to review the court file or the court docket for the offense you are asking the court to vacate to obtain information you need to fill out the form. Some counties may require you to obtain copies of your criminal history records and attach them to your motion. Read the local

court rules or contact the clerk of the court where you will file your motion to find out if this requirement, or any other local requirement, applies to you. Once you have completed and signed the motion and declaration form and the attachment, if it applies, make at least two copies.

The next step is to schedule a hearing for the motion for order vacating conviction. To schedule a hearing, contact the clerk of the court where you were sentenced and ask for the date and time for the hearing. Then complete the form that court uses to schedule a hearing. Make at least two copies of the notice. File the original motion and declaration for order vacating conviction, prostitution conviction attachment, if it applies, and notice document. On the same day that you file those documents with the clerk of the court, you must also provide a copy of the documents to the prosecuting attorney's office that prosecuted you.

To notify the prosecuting attorney's office of the hearing, you may also use form CrRLJ 09.0150, Notice of Motion for Order Vacating Conviction. If you use this form, file the original with the clerk of the court. You must also provide a copy of the notice to the prosecuting attorney's office at the same time that you provide a copy of the motion, declaration, and attachment. Keep a copy of the notice, the motion, the declaration, and any attachments for your information.

The judge will hear your motion for order vacating conviction on the day scheduled for the hearing. You will need to be available to attend the hearing. If the motion is granted, the judge will complete an order vacating your conviction. The clerk of the court will send a copy of the order to the Washington State Patrol and to the local law enforcement agency, if any, which holds criminal history information about you.

<p style="text-align: center;">_____ COURT OF</p> <p>WASHINGTON</p> <p>FOR _____</p>	<p>No. _____</p> <p>Motion and Declaration for Order Vacating Conviction (MTAF)</p>
<p>_____ Plaintiff</p> <p>vs.</p> <p>_____</p> <p>Defendant.</p>	

I. Motion

DEFENDANT asks the court for an order vacating his or her conviction of misdemeanor or gross misdemeanor offenses. This motion is based on RCW 9.96.060, the case record and files, and the declaration of defendant.

Dated: _____

_____ Defendant/ Defendant's Attorney/ WSBA #

_____ Print Name

II. Declaration of Defendant

I, _____, state as follows:

2.1. On _____ (date) I was convicted of the following offense(s):

Cause No: _____ Count No: _____ Offense: _____

Cause No: _____ Count No: _____ Offense: _____

Cause No: _____ Count No: _____ Offense: _____

2.2 There are no criminal charges pending against me in any court of this state or another state, or in any federal court (RCW 9.96.060(2)(a));

2.3 The offense for which I was convicted is **not** one of the following offenses (RCW 9.96.060(2)(b)-(d)):

A prostitution offense that I committed as a result of being a victim of trafficking under RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. §7101 et seq. If it is, skip to paragraph 2.8.
Driving while under the influence ("DUI"), RCW 46.61.502
Actual physical control while under the influence, RCW 46.61.504
Operating a railroad, etc. while intoxicated, RCW 9.91.020
An offense considered a "prior offense" under RCW 46.61.5055 and I have had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense.
A "prior offense" means: <ul style="list-style-type: none"> · Vehicular Homicide while under the influence of intoxicating liquor or any drug. (RCW 46.61.520) · Vehicular Assault while under the influence of intoxicating liquor or any drug. (RCW 46.61.522). · Vehicular Homicide or Vehicular Assault committed in a reckless manner or with disregard for the safety of others if the original charge was for Vehicular Homicide or Vehicular Assault while under the influence of intoxicating liquor or any drug. · Negligent Driving in the 1st degree (RCW 46.61.5249), Reckless Driving (RCW 46.61.500), Reckless Endangerment (RCW 9A.36.050) or equivalent out of state or local ordinance, if the original charge was DUI, Actual physical control while under the influence, vehicular homicide, or vehicular assault. · Deferred prosecution for DUI/Physical control or equivalent local ordinance. · Deferred prosecution for Negligent Driving in the 1st degree if the original charge was DUI, Actual physical control, vehicular homicide, vehicular assault; · (effective August 1, 2012) An equivalent out-of-state Deferred prosecution for DUI/Physical control, including chemical dependency treatment program.
A violation of chapter 9A.44 RCW (sex offenses)
A violation of chapter 9.68 RCW (obscenity and pornography)
A violation of chapter 9.68A RCW (sexual exploitation of children)
A violent offense as defined in RCW 9.94A.030 or an attempt to commit a violent offense

- 2.4 The offense for which I was convicted does **not** involve domestic violence and it has been at least three years since I completed the terms and conditions of the sentence, including restitution/legal financial obligations. RCW 9.96.060(2)(f).
Or
 The offense for which I was convicted **does** involve domestic violence and I have complied with the following conditions (RCW 9.96.060(2)(e)):
- I provided the prosecuting attorney's office that prosecuted the offense with written notice of this petition. RCW 9.96.060(2)(e)(i).
 - I filed the original notice with this court. RCW 9.96.060(2)(e)(i).
 - I have not been convicted of any other domestic violence offense arising out of any other incident. RCW 9.96.060(2)(e)(ii).
 - It has been at least five years since I completed the terms and conditions of the sentence, including restitution/legal financial obligations and successful completion of any treatment ordered. RCW 9.96.060(2)(e)(iv).

- 2.5 I have not been convicted of any new crime in this state, another state, or federal court since I was convicted in this matter. RCW 9.96.060(2)(g).

- 2.6 I have never had the record of another conviction vacated. RCW 9.96.060(2)(h).
- 2.7 I am not currently and have not been restrained within the last five years by a domestic violence protection order, a no-contact order, an antiharassment protection order, or a civil restraining order which restrains one party from contacting the other party. RCW 9.96.060(2)(i).
- 2.8 The conviction was for a prostitution offense that was committed while the defendant was a victim of trafficking under state or federal law, of promoting prostitution in the first degree, or of promoting commercial sexual abuse of a minor:
- The offense listed in paragraph 2.1 is a prostitution offense that I committed as a result of being a victim of trafficking under RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 200, 22 U.S.C. §7101 et seq; and
 - There are no criminal charges pending against me for any crime other than prostitution in any court of this state, or another state, or in any federal court. or
 - I have not been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction.
 - See the attached Statement about Prostitution Convictions.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is, to the best of my knowledge, true and correct.

Signed on _____, at _____,
Washington.

Defendant

Print Name

Address

_____ COURT OF WASHINGTON
FOR _____

_____ Plaintiff
vs. _____
_____ Defendant.

No. _____
Notice of Hearing
(NTHG)

TO: the court clerk of _____ County Superior Court
 _____ District/Municipal Court
TO: _____ City/County Prosecuting Attorney's Office
TO: _____
TO: _____

Please take notice that on _____ at _____ a.m./p.m., at
_____ Court, _____, the
undersigned will ask the court for an order vacating conviction in this matter pursuant to RCW 9.96.060.

Dated: _____

Defendant/Attorney for Defendant/ WSBA #

Print Name

<p style="text-align: center;">_____ COURT OF</p> <p>WASHINGTON</p> <p>FOR _____</p>	<p>No. _____</p> <p>Order on Motion Re: Vacating Conviction</p> <p><input type="checkbox"/> Granted (ORVCJG)</p> <p><input type="checkbox"/> Denied (ORVCJD)</p> <p>Clerk's Action Required</p>
<p style="text-align: right;">_____ Plaintiff</p> <p>vs.</p> <p style="text-align: right;">_____ Defendant.</p>	

I. BASIS

This matter comes before the court on defendant's motion for order vacating misdemeanor or gross misdemeanor conviction pursuant to RCW 9.96.060. The court having heard argument of the parties and considered the case records and files, and the pleadings submitted on the matter.

II. FINDINGS

- 2.1 Adequate notice was was not given to the appropriate parties and agencies.
- 2.2 Defendant _____ satisfied the following requirements of RCW 9.96.060:
- There are no criminal charges pending against the defendant in any court of this state or another state, or in any federal court (RCW 9.96.060(2)(a));
 - The offense for which the defendant was convicted is **not** one of the following offenses (RCW 9.96.060(2)(b)-(d)):

A prostitution offense that the defendant committed as a result of being a victim of trafficking under RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. §7101 et seq. If it is, skip to paragraph 2.4.
Driving while under the influence ("DUI"), RCW 46.61.502
Actual physical control while under the influence, RCW 46.61.504
Operating a railroad, etc. while intoxicated, RCW 9.91.020
An offense considered a "prior offense" under RCW 46.61.5055 and the defendant has had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense.

A "prior offense" means:
<ul style="list-style-type: none"> · Vehicular Homicide while under the influence of intoxicating liquor or any drug. (RCW 46.61.520) · Vehicular Assault while under the influence of intoxicating liquor or any drug. (RCW 46.61.522). · Vehicular Homicide or Vehicular Assault committed in a reckless manner or with disregard for the safety of others if the original charge was for Vehicular Homicide or Vehicular Assault while under the influence of intoxicating liquor or any drug. · Negligent Driving in the 1st degree (RCW 46.61.5249), Reckless Driving (RCW 46.61.500), Reckless Endangerment (RCW 9A.36.050) or equivalent out of state or local ordinance, if the original charge was DUI, Actual physical control while under the influence, vehicular homicide, or vehicular assault. · Deferred prosecution for DUI/Physical control or equivalent local ordinance. · Deferred prosecution for Negligent Driving in the 1st degree if the original charge was DUI, Actual physical control, vehicular homicide, vehicular assault; · (Effective August 1, 2012) An equivalent out-of-state deferred prosecution for DUI/Physical control, including chemical dependency treatment program.
A violation of chapter 9A.44 RCW (sex offenses)
A violation of chapter 9.68 RCW (obscenity and pornography)
A violation of chapter 9.68A RCW (sexual exploitation of children)
A violent offense as defined in RCW 9.94A.030 or an attempt to commit a violent offense

The offense for which the defendant was convicted does **not** involve domestic violence and it has been at least three years since the defendant completed the terms and conditions of the sentence, including restitution/legal financial obligations. RCW 9.96.060(2)(f).

Or

The offense for which the defendant was convicted **does** involve domestic violence and the defendant complied with the following conditions (RCW 9.96.060(2)(e)):

- The defendant provided the prosecuting attorney's office that prosecuted the offense with written notice of this petition. RCW 9.96.060(2)(e)(i).
- The defendant filed the original notice with this court. RCW 9.96.060(2)(e)(i).
- The defendant has not been convicted of any other domestic violence offense arising out of any other incident. RCW 9.96.060(2)(e)(ii).
- It has been at least five years since the defendant completed the terms and conditions of the sentence, including restitution/legal financial obligations and successful completion of any treatment ordered. RCW 9.96.060(2)(e)(iv).

The defendant has not been convicted of any new crime in this state, another state, or federal court since the defendant was convicted in this matter. RCW 9.96.060(2)(g).

The defendant has never had the record of another conviction vacated. RCW 9.96.060(2)(h).

The defendant is not currently and has not been restrained within the last five years by a domestic violence protection order, a no-contact order, an antiharassment protection order, or a civil restraining order which restrains one party from contacting the other party. RCW 9.96.060(2)(i).

2.3 The defendant has has not been convicted of any other domestic violence offense arising out of any other incident and has has not been convicted of a new crime since the date of conviction in this matter based upon the criminal history check of the following records:

- Washington State Crime Information Center (WASIC), RCW 43.43.500 et seq;
- National Crime Information Center (NCIC), including the Interstate Identification Index (Triple I), 28 USC § 534;
- Judicial Information System (JIS), including Defendant Case History (DCH) from the District and Municipal Court Information System (DISCIS), RCW 2.68 et seq. and JISCR.

2.4 The conviction was for a prostitution offense that was committed while the defendant was a victim of trafficking under state or federal law, of promoting prostitution in the first degree, or of promoting commercial sexual abuse of a minor:

- The defendant committed a prostitution offense as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. § 7101 et seq.
- There are no criminal charges pending against the defendant for any crime other than prostitution in any court of this state, or another state, or in any federal court.
- The defendant has not been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction.
- The defendant has has not proved by a preponderance of the evidence the elements required under Laws of 2014, Ch. 109, §2.

III. ORDER

Based on the above findings, it is hereby ordered:

3.1 The motion for order vacating conviction records of the following offense(s) is denied.

Cause No: _____ Count No: ____ Offense: _____

Cause No: _____ Count No: ____ Offense: _____

Cause No: _____ Count No: ____ Offense: _____

3.2 The motion for order vacating conviction records of the following offense(s) is granted.

Cause No: _____ Count No: ____ Offense: _____

Cause No: _____ Count No: ____ Offense: _____

Cause No: _____ Count No: ____ Offense: _____

IT IS FURTHER ORDERED that:

3.3 The defendant's guilty plea for the offense listed in paragraph 3.2 is withdrawn and a not guilty plea is entered.

The guilty verdict for the offense listed in paragraph 3.2 is set aside.

3.4 The charging document is dismissed and the judgment and sentence is vacated for the offense listed in paragraph 3.2.

3.5 The defendant shall be released from all penalties and disabilities resulting from the offense listed in paragraph 3.2 and the conviction of that offense shall not be included in the defendant's

criminal history for purposes of determining a sentence in any subsequent conviction. However, the conviction may be used in a later criminal prosecution.

3.6 For all purposes, the defendant may state that he or she has never been convicted of the offense listed in paragraph 3.2.

3.7 The defendant has paid costs incurred by the court and probation services in the amount of \$_____.

The defendant is indigent and costs are waived. RCW 9.96.060(6).

3.8 The clerk of the court shall immediately transmit a certified copy of this order to the Washington State Patrol and to _____(local law enforcement agency) which agencies shall immediately update their records to reflect the vacation of the conviction of the offense listed in paragraph 3.2. The Washington State Patrol shall transmit a copy of this order to the Federal Bureau of Investigation. The Washington State Patrol or local law enforcement agency may not disseminate or disclose a conviction that has been vacated under RCW 9.96.060 to any person, except to other criminal justice enforcement agencies. RCW 9.96.060(7).

Dated: _____

JUDGE/COMMISSIONER

Submitted by:

Approved:

Defendant/Attorney for Defendant/WSBA #

Deputy Prosecuting Attorney/WSBA #

Print Name

Print Name