

VACATING CRIMINAL CONVICTIONS

Notes:

- *A Motion to Vacate must be done in the court of origin.*
- *Look at RCW 9.96.060*
- *All forms can be found at:*
<http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=38>

“Vacate” is the legal term for the process for “clearing” a misdemeanor conviction from a criminal record when an individual meets certain requirements.

Certain non-violent misdemeanor convictions can be vacated in Washington State so long as these offenses that took place on/after July 1, 1984. The Washington State Patrol (“State Patrol”) will remove a “vacated” conviction from a public criminal history record. This gives some protection in background checks for employment, housing, and other purposes.

Once a conviction has been vacated, the individual may state that they have never been convicted of that crime. This may help answer questions on employment or housing applications.

Vacation of a conviction does not do the following:

- It does not keep the conviction from coming up in a later criminal prosecution.
- It does not automatically give back the right to own a gun (see RCW 9.41.040(4) and RCW 9.41.047.
- It does not erase all information about the conviction from every place it might be found.

When Can a Misdemeanor Conviction be Vacated?

All of the following must be true before a court may, in its discretion, vacate the conviction:

1. There are no criminal charges pending against you in any court of this state or another state, or in any federal court;
2. No state or federal court has convicted you of a new crime since the date of sentencing for the crime you wish to have vacated;
3. You have never had the record of another misdemeanor or gross misdemeanor conviction vacated;
4. You are not currently restrained, and have not been restrained within the past five years, by a domestic violence protection order, a no-contact order, an anti-harassment protection order, or a civil restraining order which restrains you from contacting the other party; and
5. It must be three years since you finished your sentence, including any financial obligations.

Vacating Domestic Violence Convictions:

- The individual must not have been convicted of any other domestic violence offense arising out of any other incident. (If the current motion is for more than one conviction that came out of a single incident, none of those convictions counts as a previous conviction.)
- It has been five years since the terms of the original conditions of the sentence has been finished, including any financial obligations and successful completion of any treatment ordered.

The Following Convictions Cannot be Vacated:

- 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
- 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, RCW 9.96.060

STEP-BY-STEP GUIDE

Here is a step-by-step guide to vacating your misdemeanor convictions.

Step 1: Review the court file or the court docket for the offense you want the court to vacate. This will get you the information you need to fill out the motion form. (See Step 2 below.)

You may have to get copies of your criminal history records and attach them to your motion. For more information, read the local court rules (available online here: http://www.courts.wa.gov/court_rules/?fa=court_rules.local&group=local) or contact the clerk of the court where you will file your motion.

Step 2: Fill out the forms. The forms you need are in this packet.

CrRLJ 09.0100 (Motion and Declaration for Order Vacating Conviction): Use this form to ask the court to decide whether you can have your conviction vacated.

CrRLJ 09.0150 (Notice of Motion for Order Vacating Conviction): Use this form to let the prosecuting attorney's office know about the hearing.

CrRLJ 09.0200 (Order on Motion re: Vacating Conviction): Use this form as a courtesy to the court. If the court agrees to vacate your conviction, the court will just need to sign and date this form.

Step 3: Make at least two copies of each form after filling them out and signing where your name where needed. Keep a copy of each for your records.

Step 4: Schedule a hearing for the motion for order vacating conviction. Contact the clerk of the court where you were sentenced. Ask for the date and time for the hearing. Fill out the form that court uses to schedule a hearing. Make at least two copies of the notice. Keep one for yourself.

Step 5: File the original Motion and Declaration for Order Vacating Conviction and Notice of Motion for Order Vacating Conviction forms.

Step 6: Serve the prosecuting attorney. On the same day that you file those documents with the clerk of the court, you must also give a copy of the documents to the prosecuting attorney's office that prosecuted you. You can hand-deliver the documents to the Office of the Prosecuting Attorney.

Step 7: Go to the hearing. If the judge grants the motion, ask the judge for permission to hand the Order on Motion re: Vacating Conviction to him/her. The judge will then sign the Order. The clerk of the court will send a copy of the order to the Washington State Patrol and to any local law enforcement agency that has criminal history information about you.

Other Resources

Washington State Court's Website: <http://www.courts.wa.gov> includes a statewide directory of courts, with address/numbers. It also has legal information and forms, including:

Criminal History and Criminal Records: A Guide on When and How to Challenge, Seal, Vacate or Expunge, written by the Administrative Office of the Courts (AOC). This publication has information on juvenile and adult criminal history court and law enforcement records.

ELIGIBILITY AND PROCEDURES FOR VACATING

ELIGIBILITY	
Not Eligible	
DUI (RCW 46.61.502)	
Physical Control (RCW 46.61.504)	
Operating a Railroad (RCW 9.91.020)	
Sex Offense (RCW 9A.44)	
Obscenity & Pornography (RCW 9.68)	
Sexual Exploitation of Children (RCW 9.68A)	
Violent Crime (RCW 9.94A.030)	
Attempt to Commit Violent Crime (RCW 9.96.060)	
No New Criminal Charges pending in any Court/State	
No New Criminal Convictions since date of sentencing	
No Protection Orders (or similar) in previous 5 years	
More than 3 years since completion of sentencing	
More than 3 years since final and complete payment of fines	
LINK: http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=38	
PROCEDURAL	
Review Court File or Docket	
Complete Forms (make two copies):	
1. Motion and Declaration for Order Vacating Conviction	
2. Notice of Motion for Order Vacating Conviction	
3. Order on Motion re: Vacating Conviction	
Schedule Hearing – Calendar Note	
File Completed Forms with Court	
Serve Prosecuting Attorney the Completed Forms	
Be Prepared for and Appear at Hearing	