

Criminal History/Records:

Vacating Non-Violent Class B or C Felony Convictions



Part 1. Questions and Answers

A. Should I use this?

Yes, to vacate records of certain **non-violent felony convictions** in Washington State. State Patrol will remove a “vacated” conviction from your public criminal history record. This gives you some protection in some background checks.

❖ **Vacate** is the legal term for “clearing” a felony conviction from your criminal record.

B. Who should not use this?

If your conviction was for a misdemeanor, read [When and How to Vacate Misdemeanor and Gross Misdemeanor Convictions](#).

If your offense was a felony committed before July 1, 1984, different laws apply. See [RCW 9.94A.640](#).

If there are any other criminal charges currently pending against you in any state or federal court, you cannot vacate any convictions at this time.

C. Why would I want a vacate order?

It will:

- Give you some protection in background checks.
- Stop the State Patrol from releasing the record to the public.
- Officially “cancel” the conviction. [GR 15\(b\) \(8\)](#). **You can tell anyone, including someone who might hire you, that you were not convicted of that offense.**

D. Will this remove all public mention of the conviction?

No. It will not remove it from court records and computerized court indexes to court records, such as

- JIS.
- SCOMIS.
- The Washington Courts public website (www.courts.wa.gov).

❖ These records and indexes will still show the case type, if it was a domestic violence case.

Info about the court records **from the case** that led to the conviction are still public and accessible on www.courts.wa.gov.

Prosecutors can still raise evidence of the vacated conviction during a **later criminal prosecution or sexually violent predator commitment proceeding**.

FBI records and private background check service records may still have info about a vacated conviction.

Employers, landlords, and others doing background checks might still find out about your conviction from sources including those mentioned above, law enforcement databases, and/or records collected by private data brokers.

E. Can I have my conviction “expunged”?

In some states, expungement of a conviction means they delete it from your records. There is no Washington law allowing for the deletion or destruction of an adult conviction record.

You can ask State Patrol to delete non-conviction data. Under state law, not much is non-conviction data. [RCW 10.97.030\(2\)](#); [10.97.060](#).

F. Do I need to go to a hearing?

Maybe not. The prosecutor might agree to a vacate order, if you meet all legal requirements. Local practices vary. Ask the county prosecutor’s office where your conviction occurred if they will agree to a vacate order.

G. What are the requirements for a Vacate Order?

ALL these must be true:

1. You committed the offense that led to your conviction **on or after July 1, 1984**.
2. There are **no** criminal charges currently pending against you in any state or federal court.
3. If the offense was a **class B felony**, you have had no other criminal convictions anywhere in the past **ten years**. At least ten years have passed since the later of your release from custody or your sentencing date.
4. If the offense was a **class C felony**, you have had no other criminal convictions anywhere in the last **five years**. At least five years have passed since the later of your release from custody or your sentencing date.
5. Your conviction was **not** one of these:
 - Any class A felony or attempt to commit a class A felony.
 - Criminal solicitation of or criminal conspiracy to commit a class A felony.
 - Extortion in the first or second degree.
 - Drive-by shooting.
 - Vehicular homicide.
 - Aggravated, first-, or second-degree murder.
 - First or second-degree kidnapping.
 - Vehicular assault, when you were driving while under the influence OR operating a vehicle in a reckless manner.
 - First- -degree assault.
 - Second-degree assault including a firearm, deadly weapon, or sexual motivation enhancement.
 - Third-degree assault including a firearm, deadly weapon, or sexual motivation enhancement.
 - Third-degree assault against a law enforcement officer or peace officer.
 - First-, second-, or third-degree assault of a child.

- First-, second-, or third-degree rape.
- First-, second-, or third-degree rape of a child.
- First-degree robbery.
- Second-degree robbery including a firearm, deadly weapon, or sexual motivation enhancement.
- First- or second-degree arson.
- First-degree burglary.
- First or second-degree manslaughter.
- Indecent liberties.
- Incest.
- First-degree promoting prostitution.
- Communication with a minor.
- Unlawful imprisonment.
- Sexual exploitation of minors.
- First- or second-degree criminal mistreatment.
- Endangerment with a controlled substance.
- Child abuse or neglect (see [RCW 26.44.020](#)).
- First- or second-degree custodial interference.
- First- or second-degree custodial sexual misconduct.
- Malicious harassment.
- First-, second-, or third-degree child molestation.
- First- or second-degree sexual misconduct with a minor.
- Patronizing a juvenile prostitute.
- Child abandonment.
- Promoting pornography.

- Selling/distributing erotic material to a minor.
- Custodial assault.
- Violation of child abuse restraining order.
- Child buying or selling.
- Prostitution.
- Felony indecent exposure.
- Criminal abandonment.
- Possibly any conviction for a felony offense in effect at any time before July 1, 1976 that is comparable to one of the above felonies.
- Possibly any federal or out-of-state conviction for an offense that under the laws of this state that might count in Washington as one of the above felonies.

[RCW 9.94A.030 \(52\)](#); [RCW 43.43.830\(6\)](#) (crimes against children or other people).

❖ If you do not meet any of these requirements, STOP HERE. You cannot vacate your conviction.

H. I got a Vacate Order. What if agencies are still reporting that info anyway?

Contact WSP and the court. Make sure they have taken all steps to follow the vacate order.

Under state law, law enforcement agencies must report accurate and complete criminal history info. No agency may report criminal history info concerning a felony without checking with WSP to find out the most current and complete info available. [RCW 10.97.040](#).

You may be able to sue an agency that violates this requirement. This might make sense if, for example, you lost a job opportunity because of their mistake. [RCW 10.97.110](#). You may be able to get attorney's fees.

❖ Employees at an agency that keeps reporting your vacated conviction may be criminally liable. [RCW 10.97.120](#).

The court file stays open to the public. A background check may still show your conviction if the person doing the background check looks at the court file.

I. Where else can I get info or help?

Washington State Courts Website: www.courts.wa.gov includes a statewide directory of courts, with address/numbers. Also has legal info and forms, including:

1. Forms to seal Juvenile Court Records.
2. Forms and instructions to vacate/seal Misdemeanor and Gross Misdemeanor Conviction Court Records.
3. Forms for petitioning for a Certificate and Order of Discharge.

CLEAR (Northwest Justice Project): If you have a low income, call the Northwest Justice Project's Coordinated Legal Education Advice and Referral (CLEAR) program at **1.888.201.1014**. There are legal publications covering a broad range of legal topics at WashingtonLawHelp.org.



Part 2. How to File your Motion

Step 1: Get a personal criminal history check

You may be able to show you have no new arrests on your record with an "unofficial" copy of your criminal history background report through State Patrol at watch.wsp.wa.gov. This service costs \$12 per search. You must pay with a credit card.

If the WATCH printout is not good enough for the prosecutor or employer, go to your local police or sheriff's office. Have them fingerprint and provide you with TWO official fingerprint cards.

Next, write State Patrol (WSP) a letter asking them to send you an official copy of your personal criminal history background (a **fingerprint search**). Explain that this is for a motion to vacate criminal history records. Include one fingerprint card (NOT a copy) and a \$19 money order. Send everything to:

**Criminal History Section
Washington State Patrol
PO Box 42633
Olympia WA 98504-2633**

WSP can take a long time to process your request. If you have not gotten the report after eight weeks, call them at 360.705.5100.

Step 2: Get court documents

Go to the court that convicted you. Get a copy of these from the court file:

- 1. A copy of your Certificate and Order of Discharge.** They should have filed this in the criminal case file when you finished all sentencing conditions, including payment of legal financial obligations. Ask the court clerk how to look up your case file. Some courts have on-line dockets where you can find out when the court entered the Order of Discharge. If there is not a Certificate and Order of Discharge in your file, you can file a motion with the sentencing court to get one. RCW 9.94A.637.

Talk with a lawyer.

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- ❖ If you have a low income and live outside King County, call CLEAR at 1-888-201-1014 weekdays between 9:15 a.m. to 12:15 p.m.

If you live in King County, call the King County Bar Association's Neighborhood Legal Clinics at (206) 267-7070 between 9:00 a.m. and noon, Monday – Thursday, to schedule a free half-hour of legal advice.

There may be a delay between when you finished all sentence requirements and when the court entered the Discharge Order. Starting July 28, 2019, your certificate of discharge is effective on the date you completed all conditions of your sentence. [RCW 9.94A.637\(1\)](#).

- 2. Judgment and Sentence.** The files with these documents may be in the court archives. You may have to order an archived file. This can take several weeks. There may be a charge for copying these documents.

Step 3: Draft your Motion to Vacate and Declaration in Support

It is better to TYPE. If you must hand-write, make sure it is clear and easy to read.

Fill out the attached **Defendant's Motion and Declaration for Order Vacating...** form. You should attach to it all court and other documents related to your declaration.

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- ❖ Any documents you file with the court may remain public.
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Step 4: Contact the prosecutor's office

Well before scheduling the court hearing, you should contact the prosecutor's office involved in your case. Explain what you are doing. Ask for the name of the prosecutor who handles these matters. Send that prosecutor the motion, declaration, Judgment and Sentence, and Certificate. Ask them to agree to a Vacate Order. The prosecutor's office may sign off on an **Agreed Order** without a court hearing if you give them enough proof you have satisfied the requirements. (See Step 9.)

If the prosecutor requires a court hearing, you must follow court rules and properly notify the prosecutor of the hearing. (See Steps 6 and 7.)

Step 5: Schedule hearing date and fill out Notice of Hearing

When all your papers are in order and you are ready to go to court, contact the Court Clerk. Find out which court or judge will hear your motion, and when to schedule the hearing. You should schedule it three to four weeks in advance.

Ask the Clerk if they have a special form you must use to give notice of the hearing time and date. If not, use our **Notice of Hearing re Motion for Order...** form.

Ask the clerk if there is a fee for this motion. Even where there is no hearing, they might charge an **ex parte fee** for an agreed order. If the clerk believes a fee applies, ask them to check with their supervisor and/or the court's accounting department.

Step 6: Copy, file, and serve the documents

Make THREE complete sets of copies of all documents – one original and two copies. You may also need at least TWO other copies of your **Notice of Hearing**.

At the Clerk's office, file your originals of the **Motion and Declaration** (with attachments) and **Notice of Hearing**. Pay any applicable fee. Have them date stamp one set of your documents (the first page of each document in the set).

Go to the prosecutor's office. Hand someone who works there a copy of the **Motion, Declaration, and Notice of Hearing**. Have them date stamp the same set of documents the Court Clerk stamped. The person who receives the documents must understand there is a notice of a hearing that will happen very soon and they should give your documents to a prosecutor right away.

If there were identifiable victims of your crime, write the prosecuting attorney asking them to send each victim notice of the hearing. Include a copy of the **Notice of Hearing** and an envelope with the right amount of postage.

Step 7: Declaration of Service

Fill out the **Declaration of Service** form here. Explain **how** you sent **what** papers to **whom** and **when**.

Make **four** copies. File the original with the Court Clerk before your hearing date. Have the clerk date-stamp one of your copies. Bring the three copies to the hearing:

- One for yourself (the date stamped copy)
- One for the prosecutor
- One for the judge

Step 8: Get ready for and go to the hearing. Get an order.

Fill out everything in the **Order to Vacate** here except where the judge and prosecutor sign and date. If the prosecutor will sign off on your order, check the box under the heading next to **Agreed Order**. Have the prosecutor sign it at the end. The prosecutor might agree to present the Agreed Order to the judge for the judge's signature. If not, make and bring **three** copies of your proposed Order to the hearing.

Before the hearing, make a brief outline of what to say to the court. It should look like this:

1. Brief intro. Introduce yourself. Thank the court for letting you be heard. Explain that you are bringing a motion to vacate criminal history records.
2. State that you have met all of [RCW 9.94A.640](#)'s statutory requirements:
 - a) You committed the offense **on or after July 1, 1984**.
 - b) There are **no** current criminal charges against you anywhere.
 - c) If you were convicted of a **class B felony**, you have had no new criminal convictions in any state or federal court in the **ten years** prior to your application to vacate. If you were convicted of a **class C felony**, you have had no new criminal convictions in any state or federal court in the **five years** prior to your application to vacate.
 - d) You were convicted of a **class B felony**. Over **ten years** have passed since the latter of your release from custody or your sentencing date
 - e) You were convicted of a **class C felony** and over **five years** have passed since the latter of your release from custody or your sentencing date.
 - f) The offense was **not** a crime that cannot be vacated.
3. Present a copy of your proposed order to the prosecution and judge. Explain that your proposed order tracks the language in [RCW 9.94A.640](#).
4. Ask the court if it has any questions. If so, answer them to the best of your ability.

Go to the hearing. Bring at least TWO extra copies of your documents (THREE copies of your **Declaration of Service** and **Order to Vacate...**, including the copy the court and prosecutor date stamped).

4. Be 30 minutes early.
5. Dress as if you were going to a job interview.
6. Do NOT bring your children, if possible.
7. Check in with the clerk of the judge's courtroom.
8. Try to find the prosecutor. Go over any last minute details with them before the hearing.
9. When they call your case, walk up to the table or podium for lawyers in front of the judge. Wait for them to tell you it is your turn to speak. Follow your outline.
10. Speak only to the judge. Speak only when it is your turn. Do NOT interrupt the judge or speak to the prosecutor, even if they interrupt or speak to you. Be polite, reasonable, and calm. If you are confused or do not understand something, politely tell the judge so. Ask for clarification.

If the judge grants and signs your orders, ask that the judge or courtroom clerk give you the orders. File it at the Court Clerk's office and get **five** copies of the orders. There will be a charge. **If the orders do not have the court's file stamp, Washington State Patrol will not accept it.**

Step 9: Send the orders to Washington State Patrol (WSP) & other agencies

Fill out and sign the attached letter to WSP. It asks them to stop disseminating to the public all info about your conviction. It also asks them to forward this info to other agencies, including the Department of Corrections, local law enforcement, and FBI. You **must** enclose the copy of the signed order you got from the Court Clerk after your hearing.

Mail this letter with delivery confirmation requested to the WSP at the same address where you sent your criminal history report request. **Do not send by certified mail.** After a few weeks have passed, call WSP. Make sure they got the order and are processing your request.

About ninety days after you got the Vacate Order, you should confirm that your criminal history record with WSP is up-to-date and correct. Do this by ordering a new official and/or unofficial copy of your criminal history report.

Your criminal history info may have found its way into **other databases**. Contact the FBI, local law enforcement, Department of Corrections, Department of Licensing, and other agencies to ask them to remove their records concerning this info from public dissemination.

A **private data company** may have your conviction record. Ask the agencies to inform any private company that has gotten the record from them in the past to update their records and stop disseminating it because of the vacate order. You may need to send them a court-stamped copy of your order.

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- ❖ You should keep a court-stamped copy of your order with you in case someone like a **prospective employer** gets negative info from some other source.
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Count: _____ Offense (include degree): _____
RCW _____.

- 2.2 I was discharged under RCW 9.94A.637, effective _____ (date) for the offenses listed in paragraph 2.1 (RCW 9.94A.640).
- 2.3 There are no criminal charges pending against me in any court of this state or another state, or in any federal court (RCW 9.94A.640(2)(a)).
- 2.4 The offense for which I was convicted is **not** one of the following offenses (RCW 9.94A.640(2)(b) and (g)):

A violent offense (including <u>all</u> Class A felonies) as defined in RCW 9.94A.030
A crime against persons as defined in RCW 43.43.830, except I can vacate my conviction if it was for one of the following crimes and the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement: <ul style="list-style-type: none">▪ Assault in the second degree (RCW 9A.36.021)▪ Assault in the third degree (RCW 9A.36.031) when not committed against a law enforcement officer or peace officer▪ Robbery in the second degree (RCW 9A.56.210)
A felony described in RCW 46.61.502 or 46.61.504

- 2.5 The offense I committed was a class B felony and I have not been convicted of any new crime in this state, another state, or federal court in the last 10 years. (RCW 9.94A.640(2)(c)).
- Or
- The offense I committed was a class C felony and I have not been convicted of any new crime in this state, another state, or federal court in the last five years. (RCW 9.94A.640(2)(d)).
- 2.6 The offense I committed was a class B felony and at least ten years have passed since the later of my: a) release from community custody, b) release from full and partial confinement; or c) sentencing date (RCW 9.94A.640(2)(e)).
- Or
- The offense I committed was a class C felony, other than a class C felony described in RCW 46.61.504(6), and at least five years have passed since the later of my: a) release from community custody, b) release from full and partial confinement; or c) sentencing date (RCW 9.94A.640(2)(f)).

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed on _____ (date) at _____, Washington.

Defendant

Print Name

Address _____

Attach the following documents:

Copy of judgment and sentence

Copy of certificate of discharge, or other document showing completion of all conditions of sentence

Copy of current criminal history

2.2. On _____ (date) defendant was convicted of the following offense(s):

Count: _____ Offense (include degree): _____ RCW _____.
Count: _____ Offense (include degree): _____ RCW _____.

2.3 Defendant was discharged under RCW 9.94A.637, effective _____ (date) for the offenses listed in paragraph 2.2 (RCW 9.94A.640).

2.4 Defendant has satisfied the following requirements of RCW 9.94A.640(2) or has met the equivalent of these requirements as they would be applied to a person convicted of a crime committed after July 1, 1984:

There are no criminal charges pending against the defendant in any court of this state or another state, or in any federal court (RCW 9.94A.640(2)(a)).

The offense for which the defendant was convicted is **not** one of the following offenses:

A violent offense (including all class A felonies) as defined in RCW 9.94A.030
A crime against persons as defined in RCW 43.43.830, except the defendant's conviction for one of the following crimes can be vacated if the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement: <ul style="list-style-type: none">▪ Assault in the second degree (RCW 9A.36.021)▪ Assault in the third degree (RCW 9A.36.031) when not committed against a law enforcement officer or peace officer▪ Robbery in the second degree (RCW 9A.56.210)
A felony described in RCW 46.61.502 or 46.61.504

(RCW 9.94A.640(2)(b), (g))

2.5 The defendant committed a class B felony and has has not been convicted of any new crime in this state, another state, or federal court in the last 10 years, based upon the criminal history check of the records listed below (RCW 9.94A.640(2)(c)):

Or

The defendant committed a class C felony and has has not been convicted of any new crime in this state, another state, or federal court in the last five years, based upon the criminal history check of the records listed below (RCW 9.94A.640(2)(d)):

- Washington State Crime Information Center (WACIC), RCW 43.43.500 et seq;
- National Crime Information Center (NCIC), including the Interstate Identification Index (Triple I), 28 USC Section 534;
- Judicial Information System (JIS), RCW 2.68 et seq. and JISCR.
- Other:_____.

2.6 The offense for which the defendant was convicted was a class B felony and it has been at least ten years since the later of the defendant's: a) release from community custody, b) release from full and partial confinement; or c) sentencing date (RCW 9.94A.640(2)(e)).

Or

The offense for which the defendant was convicted was a class C felony, other than a class C felony described in RCW 46.61.504(6), and it has been at least five years since the later of the defendant's: a) release from community custody, b) release from full and partial confinement; or c) sentencing date (RCW 9.94A.640(2)(f)).

III. Order

The court orders:

3.1 The motion for order vacating conviction records of the following offense is granted
 denied.

Count: ___ Offense (include degree): _____ RCW_____.

If granted, the court further orders that:

3.2 The defendant's guilty plea for every offense listed in paragraph 3.1 is withdrawn and a not guilty plea is entered.

Or

The guilty verdict for every offense listed in paragraph 3.1 is set aside.

3.3 The information or indictment for every offense listed in paragraph 3.1 is dismissed.

3.4 The defendant shall be released from all penalties and disabilities resulting from every offense listed in paragraph 3.1 and the conviction for those offense/s 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. A conviction vacated on or after July 28, 2019, qualifies as a prior conviction for the purpose of charging a present recidivist offense occurring on or after that date, and may be used to establish an ongoing pattern of abuse for purposes of RCW 9.94A.535.

- 3.5 This order does not affect the separate legal requirements for restoring a right to possess a firearm under RCW 9.41.040.
- 3.6 For all purposes, including responding to questions on employment applications, the defendant may state that he or she has never been convicted of any offense listed in paragraph 3.1.
- 3.7 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 record of conviction of the offense(s) listed in paragraph 3.1. 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 9.94A.640 to any person, except to other criminal justice enforcement agencies.

Dated: _____

Judge/Print Name:

Prosecuting Attorney WSBA No.
No.

Defendant/Defendant's Attorney WSBA

Print Name

Print Name

**Superior Court of Washington
County of _____**

State of Washington, Plaintiff,

vs.

_____,
Defendant.

PCN:

SID:

DOB

No. _____

Declaration of Service

I.

I DECLARE that:

A. I hand-delivered/mailed by regular mail First Class U.S. Mail postage prepaid/mailed by certified mail First Class U.S. mail return receipt requested postage prepaid/e-mailed/faxed (circle one or more) to the Office of the Prosecutor of _____ County the following documents:

1. Notice of Hearing Re Motion for Order to Vacate Conviction Records;
2. Defendant's Motion for Order to Vacate Conviction Record; and
3. Defendant's Declaration in Support of Motion for Order to Vacate Conviction Record.

On/at the following date, time and place:

Date: _____

Time: _____ a.m./p.m.

Address: _____

B. I hand-delivered/mailed by regular mail First Class U.S. Mail postage prepaid/mailed by certified mail First Class U.S. mail return receipt requested postage prepaid/e-mailed/faxed (circle one or more) to _____ (the identified victim)

To the Prosecuting Attorney's Office to be forwarded to victim identified above.

The following document:

1. Notice of Hearing re Defendant's Motion to Vacate.

On/at the following date, time and place:

Date: _____ Time: _____ a.m./p.m.

Address: _____

II.

In accordance with RCW 9A.72.085 and GR 13, I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at _____, on ____ day of _____, 20__.
(City and State)

Signature

Printed/Typed Name

PHONE: _____

DATED this ____ day of _____, 20__.

Signature

Printed/Typed Name

Address

Phone

DATE: _____

TO: Records Officer
Washington State Patrol
Criminal Records and Identification Section
P.O. Box 42633
Olympia, WA 98504-2633

RE: Court order vacating record of _____,
Date of birth _____

Dear Officer:

Pursuant to RCW 9.94A.640, on _____, 20____, the court entered the attached order vacating my conviction record. The court has also ordered me released from all penalties resulting from my conviction.

Please seal the record from dissemination in background checks. This will let me state, consistent with the court's order, that I have no conviction for this offense. You may disseminate a conviction only until a court vacates it. WAC 446-20-030.

Please remove the record from your databases and notify other agencies as appropriate of the court order and its impact. State Patrol can seal the conviction from public disclosure as to its own records and the records of other law enforcement agencies who may have given you the record (such as local police) or gotten it from you (such as the FBI). RCW 10.97.040.

Please confirm in writing once you have taken these actions. This will greatly help to put the past behind me and be a productive member of our community. I appreciate your cooperation.

Sincerely,

Print or Type Name

Address

Phone