

Vacate a Marijuana Misdemeanor Conviction



Part 1. Questions and Answers

What does this mean?

Read [Get Misdemeanor Convictions off Your Criminal Record](#). Find it at WashingtonLawHelp.org.

Can I vacate my marijuana misdemeanor conviction?

Yes, if you were 21 or older at the time of conviction.

Does this law apply to marijuana felonies?

No.

How can I tell if my conviction was for a misdemeanor or a felony?

Marijuana misdemeanor offenses include, but are not limited to:

- Any offense under [RCW 69.50.4014](#) from July 1, 2004 onward
- RCW 69.50.401(e), from March 21, 1979 to July 1, 2004
- RCW 69.50.401(d) from May 21, 1971 to March 21, 1979
- Any equivalent misdemeanor ordinance

Why would I want a vacate order?

It will:

- Give you some protection in background checks.

- Stop the State Patrol's 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.**

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 prosecutor's office in the county that convicted you if they will agree to a vacate order.



Part 2. Steps to ask a court to vacate a marijuana misdemeanor conviction

Step 1: Fill out the forms in this packet. Find out what else you need.

-
- ❖ It is better to TYPE these. If you must hand-write, your penmanship must be clear and easy to read.
-

In some counties, you must include copies of your judgment and sentence, and criminal history with your motion. Contact the clerk of the court that sentenced you. Ask what you need to include.

Step 2: Schedule a hearing date. Fill out the Notice of Hearing.

Contact the Court Clerk again. Get a hearing date and time. 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 the **Notice of Hearing to Vacate Conviction** form here.

Step 3: Copy, file, and serve the documents.

1. **Copy:** Make **three** complete sets of all documents. You will have one set of originals and two copies.
2. **File:** At the Clerk's office, file your originals of the **Motion and Declaration for Order Vacating Marijuana Conviction** (with attachments), and **Notice of Hearing**. Have the clerk date stamp every set of your documents (the first page of each document in the set).
3. **Serve:** Go to the prosecutor's office. Hand someone who works there a copy of the **Motion and Declaration for Order Vacating Marijuana Conviction** and **Notice of Hearing**. Have them date stamp the same set of documents the Court Clerk stamped. Tell the person who receives the documents that there is a notice of a hearing that will happen very soon and they should give your documents to a prosecutor right away.

❖ The prosecutor might agree to your motion to vacate. After you serve the prosecutor's office, try to call the prosecutor who handles vacate motions. Ask if they will agree to your motion.

Step 4: Fill out and file the Declaration of Service.

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

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

- ✓ One for yourself
- ✓ One for the prosecutor
- ✓ One for the judge

Step 5: Get ready for and go to the hearing.

A. Get ready for the hearing

Fill out everything in the **Order on Motion to Vacate Marijuana Conviction** (Vacate Order) here, except where the judge and prosecutor sign and date it.

If the prosecutor will sign your order, have the prosecutor sign it at the end.

The prosecutor may agree to present an 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:

- Brief intro. Introduce yourself. Thank the judge for hearing your motion.
- Explain that you are bringing a motion to vacate criminal history records. State that you have met the law's requirements.
- Present a copy of your proposed order to the prosecution and judge. Explain that your proposed order uses the language in [RCW 9.96.060](#).
- Ask the court if it has any questions. Answer them as best you can.

B. Go to the hearing

Bring at least **two** extra copies of your documents (**three** copies of your **Declaration of Service** and **Order on Motion to Vacate Marijuana Conviction**, including the copy the court and prosecutor date stamped).

- Be 30 minutes early.
- Dress as if you were going to a job interview.
- Do **not** bring your children, if possible.
- Check in with the clerk of the judge's courtroom.
- Try to find the prosecutor. Go over any last minute details with them before the hearing.
- When they call your case, walk up to the table or podium for lawyers in front of the judge. Wait for the judge to tell you it is your turn to speak. Follow your outline.
- Speak only to the judge, 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.

Step 6: Get an order. Send the orders to Washington State Patrol (WSP) & other agencies. Follow up with those agencies.

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. **If the orders do not have the court's file stamp, Washington State Patrol will not accept it.** There will be a charge.

Fill out and sign the attached letter to WSP asking them to stop giving out info about your conviction. The letter also asks them to forward this info to other agencies, such as the Department of Corrections, local law enforcement, and FBI. You **must** attach 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. You 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. 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 tell any private company that got the record from them in the past to update their records and stop giving it out because of the vacate order. You may need to send them a court-stamped copy of your order.

❖ 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.

I got a Vacate Order. Agencies are still reporting that info anyway.

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

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.

-
- ❖ If someone asks for info about your conviction, you can show your Vacate Order. It confirms you have the right to say you were not convicted of that offense.
-

Get Legal Help

Outside King County: Call the CLEAR Hotline at 1-888-201-1014 weekdays from 9:15 a.m. - 12:15 p.m.

In King County: Call 211 for referral to a legal services provider weekdays from 8:00 am – 6:00 pm.

Persons 60 and Over can call CLEAR*Sr at 1-888-387-7111 (statewide).

Deaf, hard of hearing or speech impaired callers can call CLEAR or 211 (or toll-free 1-877-211-9274) using a relay service of their choice.

Apply online with [CLEAR*Online](https://nwjustice.org/get-legal-help) - nwjustice.org/get-legal-help

CLEAR and 211 will provide a free interpreter.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

This information is current as of October 2019.

©2019 Northwest Justice Project — 1-888-201-1014

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)

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 also ordered me released from all penalties and disabilities resulting from my conviction.

Please seal the record from dissemination in background checks. This will allow me to 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 9.96.060(7).

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

_____ COURT OF WASHINGTON
FOR _____

_____ Plaintiff
vs.
_____ Defendant.

No. _____

**Motion and Declaration
for Order Vacating Marijuana
Conviction
(MTAF)**

Defendant asks the court for an order vacating his or her misdemeanor marijuana conviction. This motion is based on RCW 9.96.060, the case record and files, and the defendant's declaration.

Dated: _____

Defendant/ Defendant's Attorney/WSBA #

Print Name

Defendant's Declaration:

I, _____, state as follows:

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

Count No: ____ Offense: _____

Count No: ____ Offense: _____

Count No: ____ Offense: _____

I was 21 years of age or older at the time of each offense. My birthdate is: _____.

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 _____ (date), at _____, Washington.

Signature of Defendant

Print Name

Address

<p style="text-align: center;">COURT OF</p> <p>WASHINGTON FOR _____</p>	<p>No. _____</p>
<p>_____ Plaintiff</p> <p>vs.</p> <p>_____</p> <p>Defendant.</p>	<p>Order on Motion to Vacate Marijuana Conviction</p> <p><input type="checkbox"/> Vacated (in full or in part) (ORVCJG)</p> <p><input type="checkbox"/> Not vacated (ORVCJD)</p> <p>Clerk's Action Required: 3, 9</p>

The Defendant filed a motion for an order to vacate a misdemeanor marijuana conviction under RCW 9.96.060. The court heard argument of the parties and considered the case records and files, and the pleadings submitted on the matter.

The court finds:

1. Adequate notice was was not given to the appropriate parties and agencies.
2. The defendant was 21 years of age or older at the time the defendant committed the offense(s).

The court orders:

3. Based on the motion, the court orders that the following offense(s) is/are:
 Count No: ____ Offense: _____ Vacated Not vacated
 Count No: ____ Offense: _____ Vacated Not vacated
 Count No: ____ Offense: _____ Vacated Not vacated

For the counts in which the court vacated the conviction, the court further orders that:

4. The defendant's guilty plea for the offense is withdrawn and a not guilty plea is entered.
 The guilty verdict for the offense is set aside.
5. The charging document is dismissed and the judgment and sentence is vacated.

6. The defendant shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment or housing applications, the defendant may state that he or she has never been convicted of that offense.
7. The fact that the defendant has been convicted of the offense shall not be included in defendant's criminal history for purposes of determining a sentence in any subsequent conviction. Although a vacated conviction will not be used for subsequent sentencing purposes, it may be used for other purposes in a later criminal prosecution with the following exception: when a court vacates a record of domestic violence as defined in RCW 10.99.020, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (i) violating the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location; or (ii) stalking.

A vacated conviction for domestic violence is not considered a conviction of such an offense for the purposes of 27 C.F.R. 478.11, regarding reinstatement of firearms or explosives rights.

8. 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(7).

9. 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(s) as listed in paragraph 3. 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(8).

Dated: _____

Judge/Commissioner

Submitted by: _____

Approved: _____

Defendant/Attorney for Defendant/WSBA #

Deputy Prosecuting Attorney/WSBA #

Print Name

Print Name

_____ Court of Washington
For _____

_____ Plaintiff
vs. _____
_____ Defendant.

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. Motion and Declaration for Order Vacating Marijuana Conviction
2. Order on Motion to Vacate Marijuana Conviction
3. Notice of Hearing

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