

When and How to Vacate Misdemeanor and Gross Misdemeanor Convictions

Should I use this publication?

This publication has information and forms on how to vacate records on certain **non-violent misdemeanor convictions** in Washington State for offenses that took place **on/after July 1, 1984**. Washington law allows you to vacate some misdemeanor or gross misdemeanor convictions. The Washington State Patrol (“State Patrol”) will remove a “vacated” conviction from your public criminal history record. This gives you some protection in background checks for employment, housing, and other purposes. It also releases you for all penalties and disabilities resulting from the conviction. **It does not erase all information about your conviction from every place you might find it.**

◆ **“Vacate”** is the legal term for the process for “clearing” a misdemeanor conviction from your criminal record when you meet certain requirements.

Once your conviction has been vacated, you may state that you have never been convicted of that crime. This will help you 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 your right to own a gun.¹
- It does not erase all information about your conviction from every place you might find it.

The law does not automatically vacate your conviction for you. If you want a conviction vacated, you must file a motion with the court. This publication will help you decide:

- Whether the law applies to your situation and, if so,
- How to ask the court to vacate your conviction.

◆ If your conviction was for a felony, do not use this packet. Read our packet called [Criminal History/Records: When and How to Vacate Non-Violent Class B or C Felony Convictions](#), available at www.washingtonlawhelp.org.

When can I get a misdemeanor conviction vacated?

All of the following must be true before 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.

¹ You can file a petition to restore these rights under [RCW 9.41.040\(4\)](#). See also [RCW 9.41.047](#).

- 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.
- You have never had the record of another misdemeanor or gross misdemeanor conviction vacated.
- 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.

The conviction you want to vacate **cannot** be for one of the following crimes:

- 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](#)

If the conviction you want to vacate involved domestic violence:

- You must not have been convicted of any other domestic violence offense arising out of any other incident. (If your 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 you finished the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment ordered.

If the crime you want to have vacated did not involve domestic violence:

- It must be three years since you finished your sentence, including any financial obligations.

◆ If you meet each of the above requirements, go on to the next section. If you do not, **stop here. Do not use this packet.**

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. You can also get it by calling AOC directly at **360.705.5328**.

What if I need legal help?

- Apply online with **CLEAR*Online** - <http://nwjustice.org/clear-online> or
- Call CLEAR at **1-888-201-1014**

CLEAR is Washington’s toll-free, statewide intake, advice and referral service for low-income people looking for free legal help with civil legal problems.

- **Outside King County:** Call 1-888-201-1014 weekdays from 9:10 a.m. until 12:25 p.m. CLEAR works with a language line to provide free interpreters as needed. If you are deaf or hard of hearing, call 1-888-201-1014 using your preferred TTY or Video relay service.

- **King County:** Call 211 for information and referral to a legal services provider Monday through Friday from 8:00 am – 6:00 pm. Or call (206) 461-3200, or the toll-free number 1-877-211-WASH (9274). 211 works with a language line to provide free interpreters as needed. If you are deaf or hard of hearing, call 1-800-833-6384 or 711. You will be connected to a relay operator at no cost, who will then connect you with 211. You may also find information on King County legal service providers on 211’s website: www.resourcehouse.com/win211/.
- **If you are age 60 or Over:** Call CLEAR*Sr. at 1-888-387-7111, regardless of your income.

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 March 2014.

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<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>_____ 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 first 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, or trafficking in persons under the trafficking victims protection act of 200, 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 First conviction for a prostitution offense that was committed while the defendant was a victim of trafficking under state or federal law or of promoting prostitution in the first degree:

- 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, or trafficking in persons under the trafficking victims protection act of 200, 22 U.S.C. §7101 et seq;
- There are no criminal charges pending against me in any court of this state, or another state, or in any federal court.
- I have not been convicted of another crime in this state, another state, or federal court since the date of conviction.
- I have never had the record of another prostitution conviction vacated.

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 MOTION FOR ORDER
VACATING CONVICTION
(NT)**

- TO: _____ County Superior Court Clerk's Office
- TO: _____ District/Municipal Court Clerk's Office
- 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. A copy of the motion is
attached.

Dated: _____

Defendant/Attorney for Defendant/ WSBA #

Print Name

[Attach the Motion and Declaration for Order Vacating Conviction.]

<p style="text-align: center;">_____ COURT OF</p> <p>WASHINGTON</p> <p>FOR _____</p> <hr/> <p style="text-align: right;">Plaintiff</p> <p>vs.</p> <hr/> <p>Defendant.</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>
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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 first 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, or trafficking in persons under the trafficking victims protection act of 200, 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 Section 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 First conviction for a prostitution offense that was committed while the defendant was a victim of trafficking under state or federal law or of promoting prostitution in the first degree:
- 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, 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 in any court of this state, or another state, or in any federal court.
 - The defendant has not been convicted of another crime in this state, another state, or federal court since the date of conviction.
 - The defendant has never had the record of another prostitution conviction vacated.

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(4).

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(5).

Dated: _____

JUDGE/COMMISSIONER

Submitted by:

Defendant/Attorney for Defendant/WSBA #

Print Name