CRIMINAL HISTORY/RECORDS:

When and How to Vacate Non-Violent Class B or C Felony Convictions Occurring On or After July 1, 1984

Should I Use This Publication?

This publication has information and forms on how to vacate records on certain **non-violent Class B** or **C felony convictions** in Washington State for offenses occurring **on/after July 1, 1984.** The Washington State Patrol ("State Patrol") will remove a "vacated" conviction from your public criminal history record. This gives you some limited protection in background checks for employment, housing, and other purposes. It does not stop disclosure of all information about your conviction.[1]

◈ "Vacate" is the legal term for the process for "clearing" a felony conviction from your criminal record when you meet certain requirements.

Information about the court records from the case that led to the conviction are still public and easily accessible on the Washington Courts web site (www.courts.wa.gov) unless you get a vacate order and an order to seal or redact the court records and court indexes. (See the Special Note section.) There are other limitations. Evidence of the vacated conviction can be raised during a later criminal prosecution or sexually violent predator commitment proceeding. Also, getting an order to vacate does NOT by itself restore your right to own or have firearms.[2]

◈ If your conviction was for a misdemeanor, do not use this packet. Read our packet called *When and How to Vacate Misdemeanor and Gross Misdemeanor Convictions.*

So this will not remove all public mention of the conviction?

No. It will not remove record of the conviction from court records and computerized court indexes to court records, such as

- JIS,
- SCOMIS and
- The Washington Courts public web site (www.courts.wa.gov).

[1] You will see footnotes in this packet. They will tell you the law that supports the statement that comes before the footnote, or will give you other information. Use the legal references in the footnotes to look up the law at your local law library, or online. GR stands for General Rules. The General Court Rules section of the Washington Courts web site is at http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=GR. RCW stands for Revised Code of Washington, which is the law of Washington State. Get the RCWs at www.leg.wa.gov/rcw.

[2] You can file a petition to restore rights concerning firearms under RCW 9.41.040(4). See also RCW 9.41.047.

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

Also, FBI records and private background check service records may still have information about a vacated conviction.

Employers, landlords and others performing background checks may still be able to find out about your conviction from a wide variety of sources, including those mentioned above, law enforcement databases, and/or records collected by private data brokers.

Then why should I try to get an order vacating my record?

It will give you some protection in background checks. Most important, it will officially "cancel" the conviction. GR 15(b)(8). Your record will be removed from public dissemination in the State Patrol's official records.

Can I have my conviction "expunged?"

Vacating a conviction or clearing it from your record is sometimes informally called "expungement." In other states, expungement of a conviction may mean that it is deleted from your records. Washington has no law that would allow for the literal deletion or destruction of an adult conviction record.

You can ask the State Patrol to delete non-conviction data, but the law defines non-conviction data narrowly. RCW 10.97.030(2); 10.97.060.

This publication explains how you can ask the sentencing court to vacate your conviction record. If you get a vacate order from the court, state law says you can tell anyone, including prospective employers, that you were NOT convicted of that offense.

SPECIAL NOTE ABOUT SEALING AND REDACTION

This publication is about how to get a court order vacating a felony conviction. There is a court rule which also appears to allow for sealing (removing from public access) or redacting (replacing a name or other information) of court records of vacated convictions, including public indexes of those court records. See GR 15. However, in two important rulings, the Washington courts have recently held that you must meet extra requirements if you want a sealing or redaction order. The two rulings are State v. Waldon, 148 Wn.App. 952, 202 P.3d 325 (2009) and Indigo Real Estate Services v. Rousey, 151 Wn.App. 941 (2009). (A copy of both rulings is attached to this publication.)

The Court in Waldon ruled that GR 15's process for sealing court files of vacated convictions violates the state constitutional provision on open courts, unless you can meet five extra factors (called the "Ishikawa" test, after a case by that name). When the case was sent back to Superior Court for consideration of the "Ishikawa" factors, a sealing order was issued in Waldon's case. This is unusual. Very few sealing orders are ever granted.

The Court in Rousey ruled that the redaction she was asking for might be authorized, but only if the "Ishikawa" factors were also met, as well as the GR 15 requirements. The redaction requested in Rousey was replacing a tenant's name with her initials, in the SCOMIS index about the

case, so that the case would not show up in a housing background check. For more information about how these cases apply to you, talk with an attorney.

WE STRONGLY RECOMMEND THAT YOU GET AN ATTORNEY TO REPRESENT YOU IF YOU WANT A SEALING OR REDACTION ORDER as well as a vacate order. The law on sealing and redaction is complex. You will be asked to prove that you are suffering actual harm from not sealing or redacting the records. Examples: loss of a job or housing opportunity specifically because of the court record of your vacated conviction. You also will have to prove that no less restrictive method will work. And you will have to show that your interest in sealing or redacting the record outweighs the strong public interest in open court records. Our checklist in the "Basic Requirements" section has more information.

Prosecutors and media lawyers around the state are fighting hard against sealing and redaction motions. They may appeal them if a trial court grants them. In contrast, you may be able to get just a vacate order by agreement with the prosecutor, if you meet all the legal requirements, without having your own attorney. Check with the county prosecutor's office where your conviction occurred to see if they will agree to a vacate order. Local practices vary.

Basic Requirements for a Vacate or Vacate and Seal Order

The circumstances under which you may get conviction records vacated, or vacated and sealed, are very limited. Check to see that ALL of these are true before you begin the vacate process:

1. The offense you were convicted for was committed **ON/AFTER July 1, 1984**;
2. There are **NO** criminal charges against you pending in any court in any state or federal court;
3. You have **NOT** been convicted of a new crime in any state or federal court since the date of the your discharge (this is the date the sentencing court issued an order called a "Certificate of Discharge," certifying that all requirements of your sentence had been completed);
4. A) The offense was a **class B felony** and at least **TEN YEARS** have passed since the date your sentence was discharged; or b) The offense was a **class C felony** and at least **FIVEYEARS** have passed since the date your sentence was discharged; **AND**
5. The offense you were convicted for was **NOT** one of the following:[3]
    - Any felony defined under any law as a class A felony or an 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

[3] This list of crimes comes from RCW 9.94A.030(52) ("violent crimes") and RCW 43.43.830(6) ("crimes against children or other persons").

- Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug, or by operation of any vehicle in a reckless manner
- First, second, or third degree assault (for misdemeanor/fourth degree assault, check the statute on vacating and sealing misdemeanors)
- 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 or second degree robbery
- 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 as defined in 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 or 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 of the above crimes as they may be renamed in the future
- Possibly any conviction for a felony offense in effect at any time prior to 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 would be classified as one of the above felonies.

- If you do not meet any of the above requirements, you do NOT qualify for vacation of your conviction. Do NOT try to get an order to vacate.

- If your conviction is a misdemeanor or your offense was a felony committed before July 1, 1984, you will need to look at different laws than we discuss in this publication.[4]

STEP-BY-STEP GUIDE

The following is a step-by-step guide to vacating your criminal history records.

Step 1: Get a Personal Criminal History Check

In many cases, your local prosecutor and your employer will be satisfied that you have no new arrests on your record if you get an "unofficial" copy of your criminal history background report through the WSP on the Internet at https://watch.wsp.wa.gov. This service costs $10 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 law enforcement office (police or sheriff). Have them fingerprint you and provide you with TWO official fingerprint cards.

Next, write the Washington State Patrol ("WSP"). Ask them to send you an official copy of your personal criminal history background (sometimes called a "fingerprint search"). Explain that you are making this request in connection with your motion to vacate criminal history records. Include one of the official fingerprint cards (NOT a copy) and a $25 money order. Send everything to:

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

It can take eight weeks or more for the WSP to process your request. If you have not gotten the report within eight weeks of your mailing, call the WSP at 360.705.5100. Ask about the status of your request.

[4] RCW 9.94A.640 (formerly RCW 9.94A.230).

Step 2: Get Court Documents

Go to the court where you were convicted. Get a copy of the following documents from the court file:

1. A copy of your **Certificate and Order of Discharge**. This document should have been filed in the criminal case file at the time you finished all sentencing conditions, including payment of legal financial obligations. Ask the court clerk how to look up the file for your case. Some courts have on-line dockets where you can find out what date it was entered. Often it will have been mailed to you at an out-of-date address.[5] Your ability to vacate a conviction is based on the date the Order of Discharge was issued. You will NOT be able to vacate your conviction until an Order of Discharge has been issued. It is possible to petition for a Certificate and Order of Discharge (RCW 9.94A.637) if you do not already have one. Contact an attorney.

◈ If you are low-income and live outside King County, call CLEAR at 1-888-201-1014 weekdays between 9:10 a.m. and 12:25 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 problem with the date of your Certificate and Order of Discharge. Sometimes there is a delay between when you finished all sentence requirements and when the court entered the Discharge Order. If you believe the date on your Certificate and Order of Discharge would unfairly make you wait too long to get a vacate order, TALK TO AN ATTORNEY. The attorney may be able to make a motion to change the "effective date" of the Discharge.

2. A copy of your Judgment and Sentence. The files with these documents may be in the court's archives. Your request may take several weeks to process. There may be charges for copying these documents.

[5] See RCW 9.94A.637(1).

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

> ◈ It is better to TYPE any documents you fill out for the court. If you must hand-write, your penmanship must be clear and easy to read.

Fill out the attached "Defendant's Motion and Declaration for Order Vacating. . ." form. You should also attach all court/other documents related to your declaration. You should attach documents only to your Vacate Motion and Sealing Motion. DO NOT attach documents to the Sealing Order. That document will remain public. Any documents you file with the court may remain public, unless you also get a sealing or redaction order. That is very hard to do.

Also fill out the attached separate "Defendant's Motion for Order Sealing Court File" form. The Vacate Motion must be separate from the Sealing Motion. Also, the Vacate Order and the Sealing Order must be separate documents, and the Sealing Motion must be a separate document from the Sealing Order.

Step 4: Contact the Prosecutor's Office/Victim's Information

Well before scheduling your court hearing, you should contact the prosecutor's office that was involved in your case. Explain what you are doing. Ask for the name of the prosecutor in their office who handles such matters. Then send the motion, declaration, Judgment and Sentence, and Certificate and Order of Discharge to that prosecutor. Ask if they will agree to a Vacate Order because you have proven that you meet the requirements.

You may learn that the prosecutor's office does not need the formality of a court hearing for a Vacate Motion and will agree to sign off on an "Agreed Order" if you provide them with sufficient proof you have satisfied the statutory requirements. (See Step 9 for more information.)

However, often the prosecutor will have you schedule and go to a court hearing. If so, you must properly notify the prosecutor of the hearing by following the right court rules. (See Step 6 and Step 7, below).

Step 5: Schedule Hearing Date/Notice of Hearing

When you have all your papers in order and are ready to go to court, contact the Court Clerk. Find out which court/judge will hear your motion, and on what day of the week/time it can be heard. Plan to schedule your hearing 3-4 weeks in advance. V Check with the Clerk that there are no conflicts around this time.

Also, ask the Clerk if there is a special form that you must use to note the time/date of the hearing. If not, use the attached **"Notice of Hearing re Motion for Order . . ."** form.

Finally, ask whether there is a fee for this type of motion. At least some courts do not require a fee, because you are filing the

motion under the original case number. Some courts charge an "ex parte fee" for an agreed order where there is no hearing. If the clerk believes a fee applies, ask that they check with their supervisor and/or the court's accounting department.

Step 6: Copy/File/Serve the Documents

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

Go to the Clerk's office. File the originals – the **"Motion and Declaration"** (with attachments) and the **"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).

Then, go directly to the prosecutor's office. Hand a copy of your documents – the **"Motion"**, "**Declaration,"** and **"Notice of Hearing"** to an employee at the prosecutor's office. Have this person date stamp the same set of documents that the Court Clerk stamped. Also, make sure that the person who receives the documents understands that there is a notice regarding a hearing that will happen very soon and the documents should be given to a prosecutor right away.

If there were any identifiable victims of your crime, write the prosecuting attorney a letter asking that that they send notice of the hearing to each victim. Include a copy of the **"Notice of Hearing"** and an envelope with sufficient postage.

Step 7: Declaration of Service

Fill out the attached **"Declaration of Service"** form with information on HOW you sent WHAT papers to WHOM and WHEN.

Make FOUR copies. File the original with the Court Clerk some time before your hearing. Have one of your copies date stamped by the clerk. Bring the three copies with you to the hearing:

- One for yourself (the date stamped copy);
- one for the prosecutor; and
- One for the judge.

Step 8: Get Ready for & Go to the Hearing/Get an Order

Fill in the attached **"Order to Vacate"**– everything except where the judge and prosecutor signs/dates it. If the prosecutor decides to sign off on your order, check the box under the heading next to "AGREED ORDER." Have the prosecutor sign it at the end. Sometimes the prosecutor will agree to present an Agreed Order to the judge and ask the judge to sign it. If not, make THREE copies of your proposed Order and bring them to the hearing.

If you are seeking sealing or redaction in addition to a Vacate Order, you may need to present witnesses in support of your motion. Witnesses may be helpful if they have personal knowledge about how your life has been harmed by disclosure of your criminal record in background checks.

Get ready for the hearing by writing a brief outline of what you plan to say to the court. Your outline should follow the following format:

1. Brief introduction. Introduce yourself. Thank the court for allowing you to be heard. Explain why you are there. Example: You are bringing a motion to vacate criminal history records.
2. Briefly state that you have satisfied

all of RCW 9.94A.640's statutory requirements.

a) Your offense was committed **ON/AFTER July 1, 1984**;

b) There are **NO** pending criminal charges against you anywhere;

c) You have **NOT** been convicted of a new crime in any state or federal court since your discharge;

d) You were convicted of a **class B felony** and over **10 YEARS** have passed since your discharge, or you were convicted of a **class C felony** and over **5 YEARS** have passed since your discharge; AND

e) The offense involved was **NOT** a "violent crime" under RCW 9.94A.030(48), or a "crime against persons" under RCW 43.43.830(5).

3. Present a copy of your proposed order to the prosecution and to the 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 ..."**, which includes the copy that was date stamped by the court and the prosecutor).

1. Be 30 minutes early.

2. Dress as if you were going to a job interview.

3. Do NOT bring your children, if at all possible.

4. Check in with the clerk of the judge's courtroom.

5. Try to find the prosecutor. Go over any last minute details with him/her before the hearing.

6. When your case is called, walk up to the table or podium for lawyers in front of the judge. Wait to be instructed by the judge to speak. Follow your prepared outline.

7. Speak only to the judge and only when it is your turn. Do NOT interrupt the judge or speak to the prosecutor, even if they interrupt or speak to you. You want to appear polite and reasonable. Staying calm will impress the judge. 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 either the judge or courtroom clerk give the orders to you so that you may go to the Court Clerk's office to file it and get FIVE copies of the orders. **If the orders do not have the court's file stamp on them, the Washington State Patrol will not accept it.** There will be a charge.

Step 9: Send the orders to the Washington State Patrol (WSP) & Other Agencies

Fill in and sign the attached letter to the WSP asking them to stop disseminating all information regarding your conviction to the public. The letter also asks them to forward this information to any other relevant agencies, including the Department of Corrections, local law enforcement and the FBI, for the purpose of

those agencies all ceasing public dissemination of the conviction record. You MUST enclose the copy of your signed order that you got from the Court Clerk after your hearing.

Mail this letter to the WSP at the same address where you sent your criminal history report request. Send this letter with delivery confirmation requested. DO NOT send by certified mail. You are sending it to a P.O. Box. No one is there to personally accept delivery.

After a few weeks have passed, call the WSP to make sure that 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 the 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 information may have found its way into databases other than the WSP's. So you should also contact the FBI, local law enforcement, the Department of Corrections, Department of Licensing and other relevant agencies to ask that their records concerning this information be removed from public dissemination. Also, a private data company may have your conviction record. You should ask that the agencies inform any private company that has gotten the record from them in the past that they must update their records and stop disseminating it in light of the vacate order. You may need to send them a court-stamped copy of your order. You should also keep a court-stamped copy of your order ready to present if someone -like a prospective employer - gets negative information from some other source. If you find out that the FBI, DoC or any other agency or private company are still making disclosures about your record, contact the WSP and the court to make sure that they have taken all necessary steps to follow the vacate order.

Washington law says that Washington law enforcement agencies must report accurate and complete criminal history information. No agency may report criminal history information concerning a felony without checking with State Patrol to find out the most current and complete information available.[6] If such an agency violates these requirements, you may be able to sue to force the agency to act in a certain way, or for damages. This might make sense if, for example, you were to lose a job opportunity because of their mistake.[7] You may in other cases be able to get attorney's fees.

- Violations of these requirements are a criminal misdemeanor. Members of an agency that keeps reporting your vacated conviction may be criminally liable.[8]

If you did not get an order sealing or redacting the court file, the court file stays open to the public. This means that a background check may still show your conviction if the person doing the background check looks at the court file. Also be aware that even if your motion to seal the court file is granted, the sealing order and the reason for it remain public. It is unclear whether the docket also remains public. TALK WITH AN ATTORNEY for help with this.

[6] See RCW 10.97.040.
[7] See RCW 10.97.110.
[8] See RCW 10.97.120.

Other Resources

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

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

CLEAR (**Northwest Justice Project):** If you are low-income, additional legal advice is available by calling the Northwest Justice Project's **C**oordinated **L**egal **E**ducation **A**dvice and **R**eferral (CLEAR) program at **1.888.201.1014.** You will also find legal publications covering a broad range of legal topics at www.washingtonlawhelp.org.

9910EN

Superior Court of Washington
County of

State of Washington, Plaintiff, vs. _____, Defendant. DOB PCN: SID:	**No**. **Motion and Declaration for Order Vacating Record of Felony Conviction** (**MTAF)**

I. Motion

Defendant asks the court for an order vacating the record of his or her conviction of a felony offense the defendant committed on or after July 1, 1984. This motion is based on RCW 9.94A.640, the case record and files, and the declaration of defendant.

Dated: _____ _____
Defendant/ Defendant's Attorney/ WSBA No.

_____
Print Name

II. Declaration of Defendant

I, _____, declare as follows:

2.1. On _____(date) I was convicted of the following offense: Cause No: _____ Count: _____ Offense (include degree): _____ RCW_____.

2.2 I was discharged under RCW 9.94A.637 as having completed the requirement of my sentence for the offense 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), (c), (g):

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
A class C felony described in RCW 46.61.502(6) or 46.61.504(6)

2.5 I have not been convicted of any new crime in this state, another state, or federal court since the date of discharge under RCW 9.94A.637 or expiration of probation (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 date I was discharged under RCW 9.94A.637 or expiration of probation (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 46.61.502(6) or 46.61.504(6), and at least five years have passed since the date I was discharged under RCW 9.94A.637 or expiration of probation (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.

Executed this _____ day of _____, 20__, 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

Superior Court of Washington
County of

State of Washington, Plaintiff, vs. _____, Defendant. DOB PCN: SID:	**No**. **NOTICE OF HEARING RE MOTION FOR ORDER TO VACATE CONVICTION RECORD PURSUANT TO RCW 9.94A.640** **CLERK'S ACTION: REQUIRED**

TO: THE COUNTY CLERK;
PROSECUTING ATTORNEY;
_____ (Identified Victim, if applicable)
_____ (Probationary/Supervisory Agency, if applicable)

PLEASE TAKE NOTICE that on a hearing on **Defendant's Motion for Order to Vacate Conviction Record** will be heard at the following date, time and location:

DATE: _____

TIME: _____

PLACE: _____ County Superior Court

Judge _____'s courtroom

ADDRESS: _____

PHONE: _____

DATED this _____ day of _____, 20__.

_____
Signature

_____
Printed/Typed Name

_____
Address
_____
_____
_____
_____
Phone

Superior Court of Washington
County of

State of Washington, Plaintiff, vs. _____, Defendant. DOB PCN: SID:	**No**. **Order on Motion Re: Vacating Record of Felony Conviction** ☐ **Granted (ORVCJG)** ☐ **Denied (ORDYMT)** **Clerk's Action Required, para. 3.6**

I. Basis

This matter comes before the court on defendant's motion for order vacating record of felony conviction pursuant to RCW 9.94A.640. 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. On _____ (date) defendant was convicted of the following offense(s):

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

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

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

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

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

2.3 Defendant was discharged under RCW 9.94A.637 as having completed the requirement of his or her sentence for the offense listed in paragraph 2.2 (RCW 9.94A.640).

2.4 Defendant 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 (RCW 9.94A.640(2)(b), (c), (g)):

A violent offense as defined in RCW 9.94A.030
A crime against persons as defined in RCW 43.43.830
A class C felony described in RCW 46.61.502(6) or 46.61.504(6)

2.5 The defendant ☐ has ☐ has not been convicted of any new crime in this state, another state, or federal court since the date of discharge under RCW 9.94A.637 or expiration of probation, based upon the criminal history check of the following records (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), including Defendant Case History (DCH) from the District and Municipal Court Information System (DISCIS), 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 date of discharge under RCW 9.94A.637 or expiration of probation (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 46.61.502(6) or 46.61.504(6), and it has been at least five years since the date of discharge under RCW 9.94A.637 or expiration of probation (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_____.

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

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

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

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

The court further orders that:

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

Or

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

3.3 The information or indictment for the offense listed in paragraph 3.2 is dismissed.

3.4 The defendant shall be released from all penalties and disabilities resulting from the offense listed in paragraph 3.1 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.

3.5 For all purposes, including responding to questions on employment applications, the defendant may state that he or she has never been convicted of the offense listed in paragraph 3.1.

3.6 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.

_____

Print Name

_____

Defendant/ Defendant's Attorney WSBA No.

_____

Print Name

Superior Court of Washington
County of

State of Washington, Plaintiff, vs. _____, Defendant. DOB PCN: SID:	**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

NOTE: **We do not include forms for a motion to seal or redact the court file in this packet. Talk with legal counsel if you are seeking these remedies. A checklist for a sealing or redaction motion follows.**

CHECKLIST – Motion to Seal and/or Redact Court Records Including Indexes Pursuant To GR 15

- Sealing of the entire court file in this case after the conviction has been vacated is justified by identified compelling privacy concerns that outweigh the public interest in access to the court record. BE SPECIFIC

- These identified compelling concerns are that the Defendant will experience significant harm in lost employment, housing and other opportunities if the court file remains accessible in a background check. BE SPECIFIC

- GR 15 states "Sufficient privacy or safety concerns that may be weighed against the public interest include findings that: ... (C) A conviction has been vacated; ...." GR 15(c)(2) and (d). Under GR 15(d) there is an identified compelling privacy concern (RCW 9.94A.640's assurance that the defendant can state they have not been convicted of an offense once it has been vacated) that outweighs the public interest in access to the court record.

- GR 15(d) further states that following a Vacate Order and an Order to Seal Court File for a vacated conviction, the information in the public court indices shall be limited to the case number, case type with the notation "DV" if the case involved domestic violence, the adult or juvenile's name, and the notation "vacated." The Court should order the Clerk to take all steps necessary to comply with this requirement for all public court indices whether in paper or electronic form.

- On ___ (date), the Court entered a Vacate Order, dismissed my conviction and ordered that I have the right to state I have not been convicted of the offense.

- Having the record of conviction has affected, and continues to affect, my professional and personal life, including opportunities for employment and housing, in the following ways (include specific housing or employment or volunteer opportunities that have been or will be impaired – also include any specific risk of identity theft or financial exploitation or need for protection from a particular person or class of persons) – this is WHY I need the records sealed and/or redacted:

_____
_____
_____
_____

- Here is why the public interest in keeping my court records public is not strong: my record has been public for __ years and with the passage of time the public interest in it is less. I am not a public figure. The information is no longer useful in monitoring or evaluating judicial performance. [If applicable - The information consists of false or misleading facts.] Other SPECIFIC reasons why the public interest in these records is slight:

- Here is exactly what I want the court to order in sealing or redacting the court records in my case (EXPLAIN SPECIFICALLY): seal the entire file. Redact my name from the case index and replace it with my initials or “Name redacted”. Specify WHICH records should be sealed or redacted – paper file, all electronic files, electronic indexes, Specify how long the records should

be sealed or redacted - forever? Only for 7 years or until consumer reporting agencies will be prohibited from reporting it? Other time period?

- I have considered the following less restrictive methods of sealing or redacting the records:

_____
_____

- Here is why the less restrictive methods will not work to prevent the harm that will result from the records being kept public:

_____
_____
_____

- To support a sealing or redaction order, the Court must enter findings of fact that show the GR 15 and Ishikawa factors are met (see cases at the end of this document).

- The Ishikawa factors are met in my case because:

1. _____
2. _____
3. _____
4. _____
5. _____

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:

On _____, 20___ the court, pursuant to RCW 9.94A.640, entered the attached order vacating my conviction record.

I am requesting that your office take appropriate action to implement this order. To effectuate the court's order, this action should include sealing the record from dissemination in background checks. This will allow me, consistent with the court's order, to state that I have not been convicted of this offense. WAC 446-20-030 states that a conviction may be disseminated only until it is vacated by a court. Such vacation has occurred here.

The court has further ordered that I am released from all penalties and disabilities resulting from my conviction. The State Patrol has the authority to seal the conviction from public disclosure, not only as to its own records but also as to all other law enforcement agencies who may have given the record to the State Patrol (such as local police) or received it from them (such as the FBI). See, RCW 10.97.040. Again, in order to effectuate the court's order, it is necessary, and I request, that you remove the record from your databases and that you in turn notify any other agency or entity you would have transmitted the record to of the court's order and its impact.

I would appreciate your notifying me in writing to confirm that the nature of the action you have taken pursuant to the court order. Having this record removed from public dissemination is very important to my ability to put my past behind me and be a productive member of our community. Your cooperation is very much appreciated.

Sincerely,

_____
Print or Type Name

_____
Address

_____

_____
Phone

APPENDIX

151 Wn. App. 941, INDIGO REAL ESTATE SERVS. V. ROUSEY

[No. 61831-8-I. Division One. August 31, 2009.]
INDIGO REAL ESTATE SERVICES, Respondent, v. ASHLEE ROUSEY, Appellant.

July 16, 2009, Oral Argument
Eric Dunn (of Northwest Justice Project), for appellant.
Sarah Dunne, James K. Pharris, Allyson Zipp, Thomas F. Peterson, Leona Correia Bratz, Maria D. Garcia, Duane M. Swinton, and Robert K. Valz, Jr., amici curiae.
Authored by J. Robert Leach.
Concurring: Stephen J Dwyer, Mary Kay Becker.J. Robert Leach
¶1 LEACH, J. -- In this case, we are asked to decide whether the superior court erred when it denied Ashlee Rousey's uncontested motion to redact her full name from the record of a dismissed unlawful detainer action publicly available through the Superior Court Management Information System (SCOMIS), the statewide computer system managed by the administrator for the courts. We conclude that the superior court erred. General Rule (GR) 15 and the factors set forth in Seattle Times Co. v. Ishikawa «1» provide the legal standard that a court must apply when ruling on a motion to redact court records. The court failed to apply this standard in deciding whether to redact Rousey's record in the SCOMIS index. Accordingly, we reverse and remand to the superior court to apply the correct standard.

«1» 97 Wn.2d 30, 640 P.2d 716 (1982).»

Background
¶2 Rousey lives with her child in an apartment that she rents from Indigo Real Estate Services. In January 2008, Rousey contacted the YWCA (Young Women's Christian Association) Domestic Advocacy Services because Vernon Noel, her former partner and father of her child, had abused her. On February 24, 2008, Noel came to her home, refused to leave, became abusive and threatening, and threw a rock at her window. Rousey called the police, and they issued a "trespass notice" prohibiting Noel from coming to her home. When Rousey informed Indigo about the incident, Indigo demanded that she move out of her apartment by February 29, 2008. Rousey initially agreed to Indigo's demand but later, after consulting with her attorney, decided not to move. Her attorney sent Indigo a letter dated March 1, 2008, explaining her decision and providing corroborating evidence that Noel's actions occurred during a domestic violence incident. Rousey asserted that Indigo had improperly pressured her to surrender her tenancy in violation of the victim protection act, RCW 59.18.580(1). «2»

«2» RCW 59.18.580(1) provides, "A landlord may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant's or applicant's or a household member's status as a victim of domestic violence."»

¶3 On March 4, 2008, Indigo filed an unlawful detainer action seeking to enforce Rousey's agreement to leave. But after Indigo reviewed Rousey's letter and proof of domestic violence, the parties agreed to a voluntary dismissal of the case. On March 13, 2008, the court entered an agreed order of dismissal that did not specify any reason for the dismissal.

¶4 Although the unlawful detainer action was dismissed, the record of it remained publicly available through SCOMIS. Rousey moved under GR 15 to replace her full name with her initials in the SCOMIS index, claiming that her privacy interest in preserving her future rental opportunities outweighed the public interest in having her full name available in the SCOMIS index.

¶5 On May 2, 2008, the superior court denied Rousey's motion, finding "no basis under the law or GR 15 to seal the file." The court also denied her motion for reconsideration. This order states that in reaching its May 2, 2008, decision, "[T]his Court did not decide whether the privacy interest that Ms. Rousey asserted (i.e., protection against unjustified disqualification from future housing opportunities) was compelling or whether that privacy interest outweighs the public interest in having Ms. Rousey's full name remain in the SCOMIS index (rather than her initials)."

¶6 Rousey appeals both orders. «3»

«3» Indigo did not participate in this appeal. At this court's invitation, the Washington Coalition for Open Government and the Washington Landlord Association filed amicus briefs opposing Rousey's appeal. The Attorney General of the State of Washington, the American Civil Liberties Union of Washington Foundation and the American Civil Liberties Union Women's Rights Project (on behalf of a number of organizations), the King and Snohomish County Housing Justice Projects, and Solid Ground filed amicus briefs in support of Rousey. We thank all amici for participating and assisting the court in deciding this appeal.»

Standard of Review

[1, 2] ¶7 The legal standard for sealing or redacting records is an issue of law this court reviews de novo. «4» We review a trial court's decision on a motion to seal or redact records for an abuse of discretion, but if the trial court applied an incorrect legal standard, we remand for application of the correct standard. «5»

«4» In re Marriage of Treseler, 145 Wn. App. 278, 283, 187 P.3d 773 (2008) (citing Rufer v. Abbott Labs., 154 Wn.2d 530, 540, 114 P.3d 1182 (2005)).»

«5» Treseler, 145 Wn. App. at 283 (citing Rufer, 154 Wn.2d at 540).»

Discussion

¶8 Rousey argues the superior court failed to apply the correct legal standard when it denied her motion to redact her full name from the SCOMIS index. Specifically, she asserts that, in evaluating her request, the court should have applied GR 15 and the Ishikawa factors.

[3] ¶9 We first consider whether GR 15 authorizes any redaction of information contained in the SCOMIS index. GR 15 "sets forth a uniform procedure for the destruction, sealing, and redaction of court records." «6» This rule "applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record." «7» Under GR 15(b)(2), "court record" is defined to include

(i) Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial proceeding.
«[8]»
The Judicial Information System (JIS) is the primary information system for courts in Washington, «9» and SCOMIS is the major JIS application for Washington superior courts. «10» Superior courts use SCOMIS to "record parties and legal instruments filed in superior court cases, to set cases on court calendars, and to enter case judgments and final dispositions." «11» SCOMIS thus meets both prongs of the definition of "court record" for purposes of GR 15. Accordingly, the standard for redacting court records under GR 15 applies to Rousey's motion to redact the record of the unlawful detainer action in the SCOMIS index.
«6» GR 15(a).»

«7» GR 15(a).»

«8» GR 31(c)(4). GR 15(b)(2) cross references the definition of "court record" in GR 31(c)(4).»

«9» Washington Courts, JIS Case Management Systems, Judicial Information System, http://www.courts.wa.gov/jis/ (last visited Aug. 11, 2009).»

«10» Washington Courts, Judicial Information System, JIS Case Management Systems, http://www.courts.wa.gov/jis?fa+jis.display&theFile=caseManagementSystems (last visited Aug. 11, 2009). JIS is "the primary information system for courts in Washington. It provides case management automation to appellate, superior, limited jurisdiction and juvenile courts." Washington Courts, JIS Case Management Systems, Judicial Information System, http://www.courts.wa.gov/jis/ (last visited Aug. 11, 2009). JIS is "designed and operated by the Administrator for the Courts under the direction of the Judicial Information System Committee and with the approval of the Supreme Court pursuant to RCW 2.56." Judicial Information System Committee Rule 1.»

«11» Washington Courts, JIS-Link Manual, http://www.courts.wa.gov/jislink/index.cfm?fa=jislink_manual.display&file=JIS-LinkManual-05 (last visited Aug. 11, 2009).»

[4] ¶10 Under the standard provided in GR 15(c)(2), a court may order redaction, following a hearing upon reasonable notice, if it determines in written findings that redaction is "justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record." When denying a motion to redact, the court is not required to enter written findings, but it still must weigh the identified privacy concerns against the public interest. «12» Among the six " [s]ufficient privacy or safety concerns that may be weighed against the public interest" listed in GR 15 is an "identified compelling circumstance . . . that requires the . . . redaction." «13» In this case, Rousey asserts that the potential impairment of her future rental opportunities constitutes such a circumstance.

«12» Treseler, 145 Wn. App. at 291.»

«13» GR 15(c)(2)(F).»

[5, 6] ¶11 The standard for redacting court records under GR 15(c)(2), however, must be harmonized with the five-part analysis in Ishikawa since any request to redact court records implicates the public's right of access to court records under article I, section 10 of the Washington State Constitution. «14» As the public's right of access " 'serves to enhance the basic fairness of the proceedings and to safeguard the integrity of the fact-finding process,' " «15» this right "may be limited only to protect significant interests, and any limitation must be carefully considered and specifically justified." «16» In Ishikawa, our Supreme Court set forth five factors that a court must consider in deciding whether a motion to restrict access to court records meets constitutional requirements:

1. The proponent of closure and/or sealing must make some showing of the need therefor. In demonstrating that need, the movant should state the interests or rights which give rise to that need as specifically as possible without endangering those interests.
. . . If closure and/or sealing is sought to further any right or interest besides the defendant's right to a fair trial, a "serious and imminent threat to some other important interest" must be shown.
. . . .
2. "Anyone present when the closure [and/or sealing] motion is made must be given an opportunity to object to the [suggested restriction]."
. . . .
3. The court, the proponents and the objectors should carefully analyze whether the requested method for curtailing access would be both the least restrictive means available and effective in protecting the interests threatened. ? If the endangered interests do not include the defendant's Sixth Amendment rights, that burden rests with the proponents.
4. "The court must weigh the competing interests of the defendant and the public," and consider the alternative methods suggested. Its consideration of these issues should be articulated in its findings and conclusions, which should be as specific as possible rather than conclusory.
5. "The order must be no broader in its application or duration than necessary to serve its purpose . . . ." If the order involves sealing of records, it shall apply for a specific time period with a burden on the proponent to come before the court at a time specified to justify continued sealing. «[17]»
For nearly three decades, these five Ishikawa factors have served as "the benchmark constitutional analysis regarding attempts to restrict access to courtroom proceedings or records." «18» In analyzing GR 15, as revised in 2006, this court in State v. Waldon «19» held that "GR 15 does not fully comply with the constitutional benchmark defined in Ishikawa. But it can be harmonized with Ishikawa to preserve its constitutionality." The court concluded that "GR 15 and Ishikawa must be read together when ruling on a motion to seal or redact court records." «20»
«14» State v. Waldon, 148 Wn. App. 952, 957, 962, 202 P.3d 325 (2009). Article I, section 10 provides, "Justice in all cases shall be administered openly, and without unnecessary delay."»

«15» Dreiling v. Jain, 151 Wn.2d 900, 908-09, 93 P.3d 861 (2004) (quoting Republic of Phillippines v. Westinghouse Elec. Corp., 139 F.R.D. 50, 56 (D.N.J. 1991)).»

«16» Dreiling, 151 Wn.2d at 904.»

«17» Ishikawa, 97 Wn.2d at 37-39 (some alterations in original) (citations omitted) (quoting Federated Publ'ns, Inc. v. Kurtz, 94 Wn.2d 51, 62, 64, 615 P.2d 440 (1980)).»

«18» Waldon, 148 Wn. App. at 960-61.»

«19» 148 Wn. App. 952, 967, 202 P.3d 325 (2009).»

«20» Waldon, 148 Wn. App. at 967.»

¶12 In sum, GR 15 authorizes courts to redact information in SCOMIS, and GR 15 and the Ishikawa factors together provide the legal standard for evaluating Rousey's motion to redact her name from the SCOMIS index.

[7] ¶13 We next consider whether the superior court applied the correct legal standard in denying Rousey's motion to redact. The record of the court's action on the motion consists of the court's oral ruling and two written orders: the order to redact or seal court record--GR 15(c) and the order denying motion for reconsideration. It is unclear from examining the oral ruling and written orders whether the court applied GR 15 and the Ishikawa factors.

¶14 The court's oral ruling is ambiguous as to what standard it applied in denying the motion to redact. The verbatim transcript of the hearing shows that when Rousey requested redaction of the record of the unlawful detainer action on SCOMIS, the court stated that it did not believe that voluntary dismissal of a case provided a basis for her request. The court reasoned,

[T]he parties may have stipulated to a dismissal, but I don't know why they dismissed it. And it may well be that . . . Ms. Rousey didn't, in fact, pay her rent or did some other thing that entitled the landlord to file an action and the parties settled it and dismissed it. There are lots of cases every day that are filed and either a voluntary nonsuit is taken or a stipulation order is taken. We don't get to . . . essentially seal the names of the defendants in all of those cases.
The court further stated, "I understand that this has a different effect . . . on the tenant potentially, but I still don't think that it's a basis upon which the Court can seal a file." «21» The court concluded, "I just don't see that under the rules that this is an appropriate case to seal. So I denominate it as a denied order." While the court referred to "the rules" as the framework for its decision, the court did not mention either GR 15 or the Ishikawa factors. In addition, the court did not articulate that it had weighed Rousey's asserted privacy interest against the public interest as required under GR 15(c)(2) and the fourth Ishikawa factor.
«21» The court suggested that sealing was unnecessary because Rousey could file an explanation with any application for tenancy.»

¶15 The court's initial order mentions GR 15, as it states in full: "Denied order. No basis under the law or GR 15 to seal the file." But the court's order on Rousey's motion for reconsideration expressly states that, in initially denying the motion, the court did not perform the analysis required under GR 15 and the Ishikawa factors:

3. In reaching May 2, 2008, order, this Court did not decide whether the privacy interest that Ms. Rousey asserted (i.e., protection against unjustified disqualification from future housing

opportunities) was compelling or whether that privacy interest outweighs the public interest in having Ms. Rousey's full name remain in the SCOMIS index (rather than her initials).
After providing this explanation, the court concluded that "the May 2, 2008, order was legally correct and substantially just."
¶16 While written findings are not required when a motion to seal or redact is denied, «22» this case illustrates why it is advisable to make them. At best, the court's oral ruling and written orders are ambiguous as to the standard the court applied in deciding Rousey's motion to redact. Since we cannot determine whether the trial court used the correct standard, the appropriate remedy is remand to the trial court to apply it. «23»

«22» Treseler, 145 Wn. App. at 290.»

«23» Waldon, 148 Wn. App. at 967 n.10.»

¶17 Various amici ask that we reach the merits of Rousey's request, but a review of certain requirements under GR 15 and Ishikawa demonstrates why remand is more appropriate. GR 15(c)(2) and Ishikawa require written findings to support an order for redaction. «24» Here, the trial court made no findings. Nor was it presented with any evidence in the form of declarations, affidavits, or live testimony that would support findings of fact. Further, this court does not engage in fact finding. «25» Even if this was permitted, the record contains no evidence to weigh under GR 15 and the Ishikawa factors. We therefore decline to accept amici's invitation to address the merits of Rousey's need for redaction.

«24» GR 15(c)(2); Ishikawa, 97 Wn.2d at 38.»

«25» Edwards v. Morrison-Knudsen Co., 61 Wn.2d 593, 598-99, 379 P.2d 735 (1963) ("The function of ultimate fact finding is exclusively vested in the trial court.").»

¶18 Amici have raised several issues, however, to which we provide the following considerations to facilitate proceedings on remand. We first note the analytical framework regarding access to court records provided by our Supreme Court. In its rule-making capacity, the court has declared the policy and purpose of access to court records as follows:

It is the policy of the courts to facilitate access to court records as provided by article I, section 10 of the Washington State Constitution. Access to court records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article I, section 7 of the Washington State Constitution and shall not unduly burden the business of the courts. «[26]» Consistent with this policy, the court has identified by rule particular records and information to which access is restricted. These include certain health care and financial records filed in family law and guardianship cases. «27» Notably, the court has not established similar general restrictions for unlawful detainer proceedings. Instead, it has emphasized by rule and decision that requests to restrict access to court records and information must be decided on a case-by-case basis, starting with the presumption of openness. «28»
«26» GR 31(a).»

«27» GR 22.»

«28» GR 15; Rufer, 154 Wn.2d at 535, 549-50.»

¶19 When using this framework and applying GR 15 and the Ishikawa factors, the court hearing Rousey's motion should consider whether redaction is the least restrictive means available. Amicus Washington Coalition for Open Government has suggested that a tenant could insert an explanation into the SCOMIS case record analogous to that which an individual can insert into a credit history. Representatives of the superior court clerk and JIS each may wish to provide the court with information concerning the feasibility of this alternative and the capacity of SCOMIS to accommodate it.

¶20 The court should also consider whether redaction will protect Rousey's threatened interest. The record is silent as to when private tenant screening services first acquire the identity of parties to a pending unlawful detainer action. If this information is first retrieved either at the time of filing or entry of the order of dismissal, the relief requested by Rousey may not accomplish her goal nor that of similarly situated tenants in the future. Evidence from a tenant screening service as to when this information is collected and how it is disseminated could inform the trial court about this issue.

¶21 Finally, we emphasize that after the trial court properly applies GR 15 and the Ishikawa factors, it still must exercise discretion to decide whether the interests asserted by Rousey are compelling enough to override the presumption of openness. «29»

«29» Rufer, 154 Wn.2d at 549.»

Conclusion
¶22 GR 15 authorizes the redaction of information in SCOMIS. In deciding Rousey's motion to redact her name from the SCOMIS index, the superior court should have applied GR 15 and the Ishikawa factors. But because the record is unclear as to whether the superior court applied this standard when denying the motion, we remand for application of the correct standard.

¶23 Reversed and remanded.

DWYER, A.C.J., and BECKER, J., concur.

---

148 Wn. App. 952, STATE V. WALDON

[No. 61019-8-I. Division One. February 23, 2009.]
THE STATE OF WASHINGTON, Appellant, v. KAREN R. WALDON, Respondent.

Janice E. Ellis, Prosecuting Attorney, and Charles F. Blackman, Deputy, for appellant.
Steven G. Rosen and Ryan B. Robertson, for respondent.
Duane M. Swinton and Steven J. Dixson on behalf of Washington Coalition for Open Government, amicus curiae.
Authored by Linda Lau.
Concurring: Mary Kay Becker, Ronald Cox.

¶1 LAU, J. -- We are asked to determine the correct legal standard to apply when ruling on a motion to seal court records for a vacated criminal conviction under the current version of General Rule (GR) 15. Karen Waldon sought to have her 1985 theft conviction vacated and the court record sealed to assist her in finding new employment. Opposing Waldon's motion to seal, the State argued that trial courts are constitutionally required to construe GR 15 with the mandatory five-part individualized analysis articulated in Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982) and that Waldon failed to meet that standard. The trial court granted Waldon's motions to vacate and to seal the court records under GR 15. Concurrent with the sealing order, the court entered written findings of fact and conclusions of law. But it did not analyze the Ishikawa factors. We hold that trial courts must apply GR 15 and the Ishikawa factors in ruling on a motion to seal court records. Because the trial court did not apply the Ishikawa factors in determining whether to seal Waldon's court file, we reverse and remand to the trial court to apply the correct legal rule.

FACTS

¶2 In 1985, Karen Waldon was charged with one count of first degree theft. Waldon entered a plea of guilty, admitting that she misappropriated money from her employer. She received a deferred sentence. In 1990, the trial court granted Waldon's petition to withdraw her guilty plea, enter a plea of not guilty, and dismiss the cause. By 1993, Waldon had paid all restitution, and since then, she has not been charged or convicted of any crimes.

¶3 In August 2007, Waldon brought a motion to vacate her conviction, restore her firearm rights, and seal her court file. She claimed that revised GR 15 provides an alternate means of sealing court records, separate and distinct from Ishikawa. Waldon argued that she met the standard for sealing because a vacated conviction constitutes a sufficient privacy interest that outweighs the public interest. She further argued that compelling circumstances existed to seal her court records because she was about to reenter the job market after 10 years working as a client services manager, and her theft conviction would severely limit her chances of finding employment. «1»

«1» Waldon also argued that sealing was separately authorized pursuant to RCW 9.94A.640, the statute governing vacation of an offender's record of conviction. She has abandoned that argument on appeal.»

¶4 The State agreed with Waldon's motion to vacate and restore firearm rights but opposed her motion to seal. The State argued that revised GR 15 cannot dilute or supplant the constitutionally mandated Ishikawa analysis, under which Waldon failed to meet her burden to justify sealing because the potential effect of a vacated theft conviction on her upcoming job search was too speculative and insufficient to overcome the public interest in open records. The State further argued that vacating Waldon's conviction was sufficient relief that comprised a less restrictive remedy and that Waldon should wait and see how that works before seeking to have her court record sealed.

¶5 The trial court granted Waldon's unopposed motion to vacate and restore firearm rights but took the motion to seal under advisement. In November 2007, the trial court granted Waldon's motion to seal, finding that "[s]ufficiently compelling privacy or safety concerns outweigh the public interest in access to the court records." Clerk's Papers at 8. The State appealed the sealing order. «2»

«2» The Washington Coalition for Open Government also filed a brief as amicus curiae.»

ANALYSIS
¶6 The sole question presented is whether the trial court erred in granting Waldon's motion to seal her vacated record of conviction under revised GR 15 without incorporating the Ishikawa factors into its analysis. «3»

«3» It is undisputed that the trial court did not apply the Ishikawa factors in granting Waldon's motion to seal.»

[1, 2] ¶7 The legal standard for sealing or unsealing records is an issue of law reviewed de novo. In re Marriage of Treseler, 145 Wn. App. 278, 283, 187 P.3d 773 (2008). "We review a trial court's decision to seal records for abuse of discretion." State v. McEnry, 124 Wn. App. 918, 923-24, 103 P.3d 857 (2004). But if the trial court applied an incorrect legal rule, the appellate court remands for application of the correct rule. Rufer v. Abbott Labs., 154 Wn.2d 530, 540, 114 P.3d 1182 (2005).

[3, 4] ¶8 Article I, section 10 of the Washington Constitution provides, "Justice in all cases shall be administered openly, and without unnecessary delay." Compliance is mandatory. State v. Duckett, 141 Wn. App. 797, 804, 173 P.3d 948 (2007) (citing Rauch v. Chapman, 16 Wash. 568, 575, 48 P. 253 (1897)). Article I, section 10 ensures public access to court records as well as court proceedings. Dreiling v. Jain, 151 Wn.2d 900, 908, 93 P.3d 861 (2004).

[5-7] ¶9 "In determining whether court records may be sealed from public disclosure, we start with the presumption of openness." Rufer, 154 Wn.2d at 540.

The open operation of our courts is of utmost public importance. Justice must be conducted openly to foster the public's understanding and trust in our judicial system and to give judges the check of public scrutiny. Secrecy fosters mistrust. This openness is a vital part of our constitution and our history.
Dreiling, 151 Wn.2d at 903-04. The public's right of access is not absolute. It may be limited "to protect other significant and fundamental rights." Id. at 909. But "any limitation must be carefully considered and specifically justified." Id. at 904.
¶10 In Federated Publications, Inc. v. Kurtz, 94 Wn.2d 51, 62-63, 615 P.2d 440 (1980), the Washington Supreme Court announced guidelines for trial courts to follow in balancing competing constitutional interests in suppression hearing closure questions. Two years later, in Ishikawa, the Washington Supreme Court expanded Kurtz by setting forth five factors that a trial court must consider in deciding whether a motion to restrict access to court proceedings or records meets constitutional requirements.

1. The proponent of closure and/or sealing must make some showing of the need therefor. In demonstrating that need, the movant should state the interests or rights which give rise to that need as specifically as possible without endangering those interests.
. . . If closure and/or sealing is sought to further any right or interest besides the defendant's right to a fair trial, a "serious and imminent threat to some other important interest" must be shown.
. . . .

2. "Anyone present when the closure [and/or sealing] motion is made must be given an opportunity to object to the [suggested restriction]".
. . . .
3. The court, the proponents and the objectors should carefully analyze whether the requested method for curtailing access would be both the least restrictive means available and effective in protecting the interests threatened. . . . If the endangered interests do not include the defendant's Sixth Amendment rights, that burden rests with the proponents.
4. "The court must weigh the competing interests of the defendant and the public" and consider the alternative methods suggested. Its consideration of these issues should be articulated in its findings and conclusions, which should be as specific as possible rather than conclusory.
5. "The order must be no broader in its application or duration than necessary to serve its purpose . . . ." If the order involves sealing of records, it shall apply for a specific time period with a burden on the proponent to come before the court at a time specified to justify continued sealing.
Ishikawa, 97 Wn.2d at 37-39 (some alterations in original) (citations omitted) (quoting Kurtz, 94 Wn.2d at 62, 64).
¶11 GR 15(a) "sets forth a uniform procedure for the destruction, sealing, and redaction of court records. . . ." Former GR 15, which was initially adopted in 1989, provided the following procedure for requesting the sealing of court records in a criminal case:

Sealing of Files and Records. Subject to the provisions of RCW 4.24 and CR 26(j), on motion of any interested person in a criminal case or juvenile proceeding, or on the court's own motion, and after a hearing, the court may order the files and records in the proceeding, or any part thereof, to be sealed if the court finds that such action is expressly permitted by statute or that there are compelling circumstances requiring such action. Reasonable notice of the hearing shall be given by the moving party to: (1) the prosecuting authority of the city or county; (2) the affected adult or juvenile defendant; (3) the victim, if ascertainable; and (4) the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile defendant.
Former GR 15(c)(1)(B) (1995) (emphasis added).
¶12 GR 15 was substantially revised in July 2006. "For all practical purposes, the 2006 version of GR 15 is an entirely new rule. . . . Some of the new provisions are procedural. Others are more substantive and establish standards for determining whether a court file should be destroyed, sealed or redacted." 2 KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE GR 15 author's cmts. at 16 (6th ed. Supp. 2008).

¶13 Revised GR 15, which applies to Waldon's case, provides in relevant part,

Sealing or Redacting Court Records.
(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).

(2) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:
(A) The sealing or redaction is permitted by statute; or
(B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or
(C) A conviction has been vacated; or
(D) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or
(E) The redaction includes only restricted personal identifiers contained in the court record; or
(F) Another identified compelling circumstance exists that requires the sealing or redaction.
(3) A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court pursuant to subsection (2) above.
The revised rule goes on to provide detailed procedures that the court clerk must follow regarding entry of orders to seal an entire file, orders to seal specified court records, and orders to redact. GR 15(c)(4)-(6). For vacated criminal convictions in which an order to seal has been entered, the revised rule specifies that "the information in the public court indices shall be limited to the case number, case type with the notation 'DV' if the case involved domestic violence, the adult or juvenile's name, and the notation 'vacated.'" GR 15(d) (emphasis omitted).
[8] ¶14 For nearly three decades, Ishikawa has served as the benchmark constitutional analysis regarding attempts to restrict access to courtroom proceedings or records. «4» See, e.g., In re Pers. Restraint of Orange, 152 Wn.2d 795, 822, 100 P.3d 291 (2004); State v. Bone-Club, 128 Wn.2d 254, 258-59, 906 P.2d 325 (1995); Allied Daily Newspapers of Wash. v. Eikenberry, 121 Wn.2d 205, 848 P.2d 1258 (1993). The analysis is the same, whether under article I, section 10 or article I, section 22. State v. Easterling, 157 Wn.2d 167, 175, 137 P.3d 825 (2006). Courts do not hesitate to invalidate rules or statutes that prevent compliance with Ishikawa's constitutional inquiry. Eikenberry, 121 Wn.2d at 212; In re Det. of D.F.F., 144 Wn. App. 214, 220, 183 P.3d 302, review granted, 164 Wn.2d 1034 (2008).

«4» Opinions citing Ishikawa sometimes summarize or reiterate the Ishikawa factors in slightly different ways. For example, in Dreiling, the Washington Supreme Court expressly reiterated that Ishikawa provides the appropriate analytical approach for ruling on a motion to seal and quoted an abbreviated version of the Ishikawa factors. In so doing, the court omitted without explanation the "serious and imminent threat of harm" language from the first factor. Several published opinions since then have cited Dreiling's abbreviated version of the Ishikawa factors. See, e.g., Rufer, 154 Wn.2d at 530; In re Marriage of R.E., 144 Wn. App. 393, 399, 183 P.3d 339 (2008). But there is nothing in Dreiling or Rufer to suggest that the Washington Supreme Court intended to overrule Ishikawa's "serious and imminent threat" requirement.»

¶15 Washington courts have repeatedly construed the standard for sealing court documents under GR 15--both before and after the 2006 revisions--as subject to the five-part Ishikawa analysis. Rufer, 154 Wn.2d at 549 (documents filed with court in anticipation of a court decision, whether dispositive or not); Dreiling, 151 Wn.2d at 915 (documents filed in support of dispositive motions); In re Dependency of J.B.S., 122 Wn.2d 131, 139, 856 P.2d 694 (1993) (appellate review of a dependency proceeding); Treseler, 145 Wn. App. at 286-87 (documents filed in

dissolution proceeding); Duckett, 141 Wn. App. at 808 (reading GR 31's juror privacy interests in accord with GR 15); State v. McEnry, 124 Wn. App. 918, 925-26, 103 P.3d 857 (2004) (sealing file after all judicial proceedings have concluded). None of the post-2006 cases, however, has expressly considered whether revised GR 15 may constitutionally supplant Ishikawa.

¶16 The State argues that revised GR 15--standing alone--falls short of the constitutional benchmark defined by Ishikawa. It therefore contends that the revised rule must be harmonized with Ishikawa to pass constitutional muster. Conversely, Waldon argues that revised GR 15 meets constitutional requirements, thereby rendering Ishikawa unnecessary.

[9-13] ¶17 '"The construction of court rules is governed by the principles of statutory construction."' State v. Kennar, 135 Wn. App. 68, 73, 143 P.3d 326 (2006) (quoting State v. Hutchinson, 111 Wn.2d 872, 877, 766 P.2d 447 (1989)), review denied, 161 Wn.2d 1013 (2007). "Our primary duty is to give effect to the Supreme Court's intent." Id. "Where a statute or rule is unambiguous, the drafter's intent is determined from the language of the rule." State v. Whelchel, 97 Wn. App. 813, 817, 988 P.2d 20 (1999). Statutes are presumed constitutional as written and should be construed to be constitutional if possible. State v. Rudolph, 141 Wn. App. 59, 64, 168 P.3d 430 (2007). "[A] court rule will not be construed to circumvent or supersede a constitutional mandate." Duckett, 141 Wn. App. at 808.

[14] ¶18 We conclude that revised GR 15, standing alone, does not meet the constitutional benchmark established by Ishikawa.

¶19 Revised GR 15 provides that the court may order sealing or redaction upon written findings that it is "justified by identified compelling privacy or safety concerns" and includes a list of six "[s]ufficient privacy or safety concerns that may be weighed against the public interest." «5» GR 15(c)(2) (emphasis omitted). But the first Ishikawa factor specifies that for any right or interest other than the defendant's right to a fair trial, the moving party must establish a "serious and imminent threat to some other important interest." This requires a showing that is more specific, concrete, certain, and definite than a "compelling" concern. «6»

«5» The origins of this phrase are unclear. It does not appear in case law prior to the 2006 revision of GR 15.»

«6» The standard for sealing is often referred to as a "compelling interest test." But this standard is construed with the "serious and imminent threat" requirement of Ishikawa. See, e.g., Rufer, 154 Wn.2d at 534 ("documents filed with the court will presumptively be open to the public unless compelling reasons for closure exist consistent with the [Ishikawa] standards"); Bone-Club, 128 Wn.2d at 258 ('"The proponent of closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a "serious and imminent threat" to that right."' (quoting Eikenberry, 121 Wn.2d at 210)).»

¶20 The second Ishikawa factor requires that anyone present when the sealing motion is made must be given an opportunity to object and that the proponent must state the grounds for the motion with reasonable specificity. Revised GR 15 does require that reasonable notice be given

to all parties, but it is silent regarding the opportunity to object. Nor does the revised rule include the "reasonable specificity" standard.

¶21 The third Ishikawa factor requires that the court impose the "least restrictive means" necessary to protect the threatened interests and specifies that the burden rests with the proponent unless Sixth Amendment rights are implicated. But revised GR 15 states only that "[a] court record shall not be sealed under this section when redaction will adequately resolve the issues . . . ." GR 15(c)(3). And it is silent regarding which party bears the burden of proof on this issue.

¶22 The fourth Ishikawa factor describes the balancing test. It requires that the court weigh the competing interests of the defendant and the public, consider the suggested alternatives, and articulate its findings and conclusions as specifically as possible. Revised GR 15 does require the trial court to enter "written findings that the sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record." GR 15(c)(2). But it does not contain the specificity requirement.

¶23 The fifth Ishikawa factor specifies, '"The order must be no broader in its application or duration than necessary to serve its purpose . . .' [and] it shall apply for a specific time period with a burden on the proponent to come before the court at a time specified to justify continued sealing." Dreiling, 151 Wn.2d at 914 (quoting Kurtz, 94 Wn.2d at 64). Revised GR 15 does not contain equivalent restrictions.

¶24 The Judicial Information Systems Committee (JISC) GR 9 disclosure form regarding proposed GR 15 amendments provides some insight into the Washington Supreme Court's intent regarding the 2006 amendments to GR 15. The previous version of GR 15 was "criticized as giving insufficient guidance to the trial courts and trial attorneys." Wash. St. Reg. 05-13-019 (June 2, 2005). In response, a work group consisting of several judges, lawyers, court clerks, a court commissioner, and a media representative was formed to draft amendments to the rule. Id. These changes were ultimately adopted by the Washington Supreme Court. Significantly, the comments are silent regarding any impact of the revised rule on nearly three decades of case law mandating application of the Ishikawa factors in analyzing a motion to seal court records. «7» This omission strongly suggests that the JISC and the Washington Supreme Court did not intend revised GR 15 to displace Ishikawa.

«7» The comments note that "redaction" was added to the rule and treated similarly to "seal" in response to Dreiling and that "[v]acated criminal convictions were addressed separately in response to RCW 9.94A.230(3) and the Supreme Court's interpretation of this statute in State v. Breazeale, 144 Wn.2d 829, 837-838, 31 P.[3d] 1155, 1159 (2001)." Wash. St. Reg. 05-13-019.»

¶25 Similarly, editorial commentary regarding revised GR 15 states that the rule was revised in response to Rufer and Dreiling and expressly states, "Prior to entering an order authorizing the sealing of documents, the court must make, in writing, the findings required by the five-factor Ishikawa test set forth above." 1 WASHINGTON COURT RULES ANN. GR 15 editorial commentary at 21 (2d ed. 2008-09).

¶26 Waldon argues that revised GR 15 is clear and not in need of judicial interpretation. She contends that cases requiring trial courts to construe former GR 15 with Ishikawa are

inapplicable to the revised rule, which expressly incorporates a balancing test. According to Waldon, it is unnecessary to address the State's appeal as a constitutional challenge. But even clear, unambiguous rules must comply with constitutional requirements. The constitutional standard for restricting access to court proceedings and records is articulated in Ishikawa and its progeny. Court rules cannot be interpreted to circumvent or supersede constitutional mandates. Duckett, 141 Wn. App. at 808.

¶27 Waldon relies primarily on In re Marriage of R.E., 144 Wn. App. 393, 183 P.3d 339 (2008) for the rationale that Ishikawa need not be construed with revised GR 15. In R.E., a former wife moved to unseal her marriage dissolution file. The court unsealed the file, except for 39 documents that remained sealed to protect the privacy of the children. Id. at 397-98. The former husband appealed, arguing that RCW 26.12.080 gave the court discretion to seal all documents related to the children. We declined to adopt a different standard for sealing records in family law cases. We then concluded that "when a party moves to unseal records that were sealed under the former rule and the original sealing order does not conform to the current rule, it is not appropriate to apply the current standard for unsealing." Id. at 403. Rather, the unsealing proponent may show that the original order was unjustified or overbroad in light of the standards articulated in the new rule. Waldon contends that the R.E. court properly applied revised GR 15 without reference to Ishikawa. But the issue of whether revised GR 15 must be construed with Ishikawa was not before us in R.E.

¶28 Waldon also relies on In re Dependency of G.A.R., 137 Wn. App. 1, 11-13, 150 P.3d 643 (2007) for the proposition that revised GR 15 and Ishikawa are alternate analytical routes for determining whether to seal court records. In G.A.R., we held that "'the record, briefs, and arguments in an appellate review of a dependency determination are open to the public unless a motion is granted under GR 15 or Ishikawa to close the proceedings.'" Id. at 12 (quoting In re Dependency of J.B.S., 122 Wn.2d 131, 140, 856 P.2d 694 (1993)). But we recited the Ishikawa factors in determining that the verbatim reports could be sealed under GR 15 or Ishikawa. And as with R.E., the constitutionality of revised GR 15 was not at issue.

¶29 We conclude that revised GR 15 cannot constitutionally serve as a stand-alone alternative to Ishikawa. Both the State and amicus argue that the revised rule can be harmonized with Ishikawa to preserve its constitutionality. We agree.

¶30 Revised GR 15(c)(2) states that sealing or redaction must be "justified by identified compelling privacy or safety concerns that outweigh the public interest." (Emphasis omitted.) The rule then provides a list of six "[s]ufficient privacy or safety concerns that may be weighed against the public interest." «8» GR 15(c)(2). This does not create a presumption that the movant can satisfy the compelling interest standard merely by showing that one or more of these concerns are present in her case. Rather, the rule recognizes that these are important concerns to be considered by the trial court, along with the Ishikawa factors, in ruling on a motion to seal.

«8» The trial court found that two of these six criteria applied to Waldon: her "conviction had been vacated" (GR 15(c)(2)(C)) and "another identified compelling circumstance exists that requires the sealing or redaction" (GR 15(c)(2)(F)).»

¶31 For example, one of the "sufficient" privacy concerns in the revised rule is a finding that a conviction has been vacated. The vacation statute "'is a legislative expression of public policy . . . [that] a deserving offender [is restored] to his [or her] preconviction status as a full-fledged citizen.'" State v. Breazeale, 144 Wn.2d 829, 837, 31 P.3d 1155 (2001) (alterations in original) (quoting Matsen v. Kaiser, 74 Wn.2d 231, 237, 443 P.2d 843 (1968) (Hamilton, J., concurring)). But "[a]lthough [the vacation statute] grants an offender the right to state that he or she has never been convicted, it does not explicitly authorize trial courts to seal an offender's criminal court records without first considering the public's constitutional right of access." McEnry, 124 Wn. App. at 927 (holding that the trial court erred in relying on the vacation statute to find a compelling interest justifying sealing, rather than applying Ishikawa). Although a vacated judgment is included in the rule's list of six sufficient privacy concerns, revised GR 15 merely acknowledges what the legislature has expressed: a vacated conviction is an important interest. It does not foreclose application of Ishikawa in determining whether sealing or redaction meets constitutional requirements.

¶32 Accordingly, when a trial court finds that the sealing proponent meets one or more of the listed criteria, the court can comply with Ishikawa by analyzing whether the identified compelling concern also poses a serious and imminent threat. The remainder of the Ishikawa factors can be applied as they were with the former rule. «9»

«9» Although we do not condemn trial courts' general reliance on form orders, we note that the form order used in this case misstates the legal standard to be applied when deciding motions to seal. For example, the current form fails to include the "serious and imminent threat" and temporal factors. The form should be revised to conform with the particularized showing required under the five-part Ishikawa analysis.»

¶33 In sum, revised GR 15 does not fully comply with the constitutional benchmark defined in Ishikawa. But it can be harmonized with Ishikawa to preserve its constitutionality. We conclude that GR 15 and Ishikawa must be read together when ruling on a motion to seal or redact court records. We reverse and remand to the trial court to apply the correct legal rule. «10»

«10» The State contends that even applying Ishikawa, Waldon cannot satisfy the requirements for sealing. But because the trial court rested its decision to seal on an improper legal rule, the appropriate remedy is to remand to the trial court to apply the correct legal rule. McEnry, 124 Wn. App. at 924 (citing Dreiling, 151 Wn.2d at 907). We therefore do not address whether the sealing order is proper under Ishikawa.»

BECKER and COX, JJ., concur.