

STATUTES, RULES, AND REGULATIONS

The following statutes, rules, and regulations concern court records and criminal history records:

Revised Code of Washington (RCW)

- 9.92.066 Termination of Suspended Sentence-Vacation of Conviction
- 9.94A.640 Vacation of Offender's Record of Conviction
- 9.95.240 Dismissal -Vacation of Conviction
- 9.96.060 Misdemeanor Offenses -Vacating Records
- 10.97.060 Deletion of Certain Information, Conditions
- 13.40.127 Deferred Disposition
- 13.50.050 Records of Juvenile Offenses
- 43.43.730 Criminal History Records

General Rules (GR)

- Rule 15 Destruction, Sealing, and Redaction of Court Records
- Rule 31 Access to Court Records

Washington Administrative Code (WAC)

- 446-16-025 Deletion of Arrest Records
- 446-16-030 Inspection by the Subject of Their Record
(Courts may also have local rules governing access to court records.)

RESOURCES

- **Washington Courts:** <http://www.courts.wa.gov/index.cfm>
This site includes a statewide directory of courts, court rules, the most current version of this brochure, forms, and information about legal research and the State Law Library. The Administrative Office of the Courts may be contacted at (360) 357-2130, but **agency personnel cannot provide legal advice.**
- **Washington State Legislature:** <http://apps.leg.wa.gov/rcw/> and <http://apps.leg.wa.gov/wac/>
This site contains the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC). Copies of the RCW and the WAC are also available at local libraries.
- **Washington State Patrol:** <http://www.wsp.wa.gov/crime/crimhist.htm>
This site provides information about criminal history records. Call (360) 534-2000 for assistance from a State Patrol customer service representative.
- **Washington State Bar Association:** <http://www.wsba.org/atj/contact/lawref.htm>
This site offers contact information about lawyer referral services. The Service Center may be reached at 1-800-945-9722 or (206) 443-9722.

A Guide to Sealing and Destroying Court Records, Vacating Convictions, and Deleting Criminal History Records State of Washington August 2010

This brochure provides information about sealing and destroying court records, vacating convictions, and deleting criminal history records.

Courts and law enforcement agencies maintain records of those who are detained, arrested, charged, and convicted or acquitted of crimes. You have the right to inspect court records and criminal history records that pertain to you.

For information about a court record, contact the city or county court where the case was filed. This may be a municipal, district, juvenile, or superior court.

For information about a criminal history record, contact the law enforcement agency responsible for the case. This may be a city police department, county sheriff's office, the Washington State Patrol, or another agency with police powers.

The authority to seal or destroy records and to vacate convictions is established by laws enacted by the Legislature and by rules adopted by the Washington State Supreme Court. State laws concerning court records and criminal history records change frequently, so you may wish to seek legal advice about your specific circumstances. You should consult an attorney to determine if sealing or destroying your record or vacating your conviction could affect your immigration status or your right to possess a firearm.

COURT RECORDS

A court record includes documents, information, and exhibits that are maintained by the court in connection with a judicial proceeding. If a defendant is convicted, the record contains a disposition order or judgment and sentence specifying the crime(s) committed and the punishment imposed. If a defendant is acquitted or the court determines charges should not go forward, the record shows the action has been dismissed.

Court records are maintained by the clerk of each court. Court records, like court hearings, are generally open to the public. But a court can only address requests about cases filed in that court. If you have cases in more than one court, you must make a separate inquiry to each court.

Whether a court record may be sealed or destroyed and whether a conviction may be vacated depends on the type of crime involved (misdemeanor or felony) and the court where conviction is obtained (juvenile or adult).

Sealing or destroying a court record or vacating a conviction does not necessarily affect the records maintained by law enforcement agencies, other government agencies, or private concerns. Requests about records maintained by other agencies must be made to those agencies.

Juvenile Court Records

Sealing. The juvenile court file of an alleged or proven juvenile offender, which includes the petition or information, motions, memorandums, briefs, findings of the court, and court orders, is open to public inspection unless it is sealed under RCW 13.50.050.

A person who is the subject of an information filed under RCW 13.40.100 or a complaint filed with the prosecutor and referred for diversion under RCW 13.40.070 may file a motion to have the court order the sealing of the juvenile court file and other records relating to his or her case.

The court is not to grant a motion to seal records for class A offenses filed on or after July 1, 1997 **unless:**

- Since the last date of release from confinement, including full-time residential treatment, or entry of disposition, the person has spent five consecutive years in the community without committing an offense or crime resulting in an adjudication or conviction;
- No proceeding seeking conviction for a juvenile or criminal offense is pending against the person;
- No proceeding seeking formation of a diversion agreement is pending;
- The person has not been convicted of a sex offense; and
- Full restitution has been paid.

The court is not to grant a motion to seal records for class B, class C, gross misdemeanor, and misdemeanor offenses and diversions **unless:**

- Since the date of last release from confinement, including full-time residential treatment, entry of disposition, or completion of the diversion agreement, the person has spent two consecutive years in the community without being convicted of any offense or crime;
- No proceeding seeking conviction for a juvenile or criminal offense is pending;
- No proceeding seeking formation of a diversion agreement is pending;
- The person has not been convicted of a sex offense; and
- Full restitution has been paid.

Effect of Sealing. When a motion to seal records is granted, the proceedings in the case are to be treated as if they never occurred. Subsequent adjudication of a juvenile offense or a crime or charging of an adult felony voids a sealing order.

Destroying. Juvenile records, including those maintained by any court or law enforcement agency, are to be destroyed when:

- The person who is the subject of the information or complaint is at least 18 years old;
- The person's criminal history consists entirely of one diversion agreement or counsel and release entered on or after June 12, 2008;
- Two years have passed since completion of the agreement or counsel and release;
- No proceeding is pending that seeks conviction of the person for a criminal offense; and
- There is no restitution owing in the case.

A person 18 years of age or older whose only criminal history is one juvenile diversion agreement or counsel and release entered before June 12, 2008 may request that the court order destruction of his or her case record if the court finds that two years have passed since completion of the diversion agreement or counsel and release.

A person 23 years of age or older whose criminal history consists only of referrals for diversion may request that the court order destruction of the records of his or her case. The request is to be granted if the court finds that all diversion agreements have been successfully completed and no proceeding is pending that seeks conviction of the person for a criminal offense.

Deferred Disposition. If a juvenile is granted a deferral of disposition under RCW 13.40.127, at the conclusion of the period set forth in the order of deferral and upon the court's finding of full compliance with conditions of supervision and payment of full restitution, his or her conviction, except under RCW 16.52.205 (first degree animal cruelty), is to be vacated. Records of deferred disposition cases are to be sealed no later than 30 days after the juvenile's 18th birthday, provided that the



juvenile does not have any charges pending at that time. If a juvenile has reached his or her 18th birthday before July 26, 2009 and does not have any charges pending, his or her request that the court issue an order sealing the records of the deferred disposition is to be granted.

Adult Court Records

Sealing and Destroying. Under General Rule 15, sealing a court record may be ordered when a conviction has been vacated or when the court finds that compelling privacy or safety concerns outweigh the public interest in access to the record. Current law does not allow for destroying the court record of a criminal action against an adult that results in a conviction or adverse finding.

Vacating Misdemeanors. RCW 9.96.060 authorizes a sentencing court to vacate a conviction for a misdemeanor or a gross misdemeanor if:

- The offender has completed all the terms of his or her sentence and more than three years have passed since completion;
- No criminal charges are pending against the offender and he or she has not been convicted of a new crime in state or federal court;
- The offender has not had the record of another conviction vacated; and
- The offender has not been restrained within the last five years by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order.

In addition, the offense must not be:

- A violent offense, as defined in RCW 9.94A.030, or an attempt to commit a violent offense;
- A violation of RCW 46.61.502 (driving under the influence), 46.61.504 (physical control of a vehicle while under the influence), or 9.91.20 (operating a railroad, steamboat, or vehicle while intoxicated);
- A violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses); or
- An offense involving domestic violence in some circumstances.

Forms to request that a misdemeanor or gross misdemeanor conviction be vacated may be obtained from the courts, online at <http://www.courts.wa.gov/forms/>, or from the Administrative Office of the Courts at (360) 705-5328.

Vacating Felonies. RCW 9.94A.640 provides for vacating some felony convictions. An offender who has been discharged may request, by motion, that the sentencing court vacate the conviction. But the record of conviction may not be cleared if:

- Criminal charges are pending against the offender in state or federal court;
- The conviction was for a violent offense as defined in RCW 9.94A.030 or a crime against persons as defined in RCW 43.43.830;
- The offender has been convicted of a new crime in state or federal court since discharge;
- The offense is a class B felony and less than ten years have passed since discharge;
- The offense is a class C felony described in RCW 46.61.502(6) or 46.61.504(6) and less than ten years have passed since discharge, or the offense is any other class C felony and less than five years have passed since discharge.

No forms are available to request that felony convictions be vacated.

Effect of Vacating Conviction. An offender whose conviction has been vacated may state for all purposes that he or she has not been convicted of that crime. When a conviction is vacated, however, the court file is not destroyed. The conviction may be used in a later criminal prosecution.

Deferred Sentence. If an offender receives a deferred sentence and successfully completes probation, he or she may need to file a motion for dismissal with the court.

CRIMINAL HISTORY RECORDS

Criminal history record information includes descriptions and notations of detentions, arrests, indictments, informations or other formal criminal charges, and any dispositions. You have the right to inspect your criminal history record on file with a local police agency or with the Washington State Patrol.

Local police agencies submit criminal history record information to the State Patrol, which maintains the information in a statewide repository. Whether information contained in a law enforcement agency's files may be modified, sealed, or deleted depends on the outcome of the case (acquittal or conviction) and on the court that heard the case (juvenile or adult). Modifying or deleting criminal history records does not necessarily change the records maintained by the courts.

A request to modify, seal, or destroy a court record must be directed to the court in which that record is filed.

Juvenile Records

A court order to seal a juvenile record results in the removal of references to his or her arrest and disposition from the records maintained by the State Patrol. Identifying information, however, is not subject to sealing or destruction. Identifying information includes photographs, fingerprints, and any other data that identifies a person by name, birth date, address, or physical characteristics.

Deletion of Criminal History Records

Under RCW 10.97.060, a criminal history record on file with a law enforcement agency is to be deleted at the request of the person who is the subject of the record if:

- The file consists of nonconviction data only;
- At least two years have elapsed since the record became nonconviction data as the result of entry of a disposition favorable to the defendant, or at least three years have elapsed from the date of arrest or issuance of a citation or warrant for which a conviction was not obtained (unless the defendant is a fugitive or the case is under active prosecution);
- The person has not had a prior conviction for a felony or gross misdemeanor; and
- The person has not been arrested for or charged with another crime during the intervening period.

Information about deleting nonconviction criminal record information from the State Patrol repository files may be obtained online at <http://www.wsp.wa.gov/crime/crimhist.htm> or by calling the Criminal History Support Unit at (360) 534-2000. A separate request must be made to the local (arresting) police agency, in accordance with that agency's procedure, to seek deletion of records in its possession.

Deletion of criminal history records is not available for cases that result in convictions or other dispositions adverse to the defendant.

Challenges to Criminal History Records

A person who is the subject of a criminal history record may challenge the accuracy or completeness of that record. Challenges must be made in writing. Under RCW 43.43.730, a State Patrol decision declining a request to modify a record may be appealed.

GLOSSARY

CHALLENGE: To assert that a criminal history record on file with a law enforcement agency is inaccurate or incomplete.

CONVICTION OR OTHER DISPOSITION ADVERSE TO THE DEFENDANT: A disposition of charges other than a decision not to prosecute, a dismissal, or an acquittal.

CONVICTION RECORD: Criminal history record information relating to an incident that has led to a conviction or other disposition adverse to the subject.

CRIMINAL HISTORY RECORD INFORMATION: Data contained in records collected by criminal justice agencies other than courts, consisting of descriptions and notations of arrests, detentions, indictments, informations, or other formal

criminal charges, and any dispositions, including sentences, correctional supervision, and release.

DEFERRED SENTENCE: A sentence that will not be carried out if the defendant meets certain requirements, such as complying with conditions of probation. A deferred sentence is considered adverse to the defendant.

DELETE: To eliminate existing information.

DISCHARGE: An offender's release from confinement or supervision after completing sentence requirements.

DISMISSAL: The court-ordered termination of a case.

DISPOSITION: The formal conclusion of a criminal proceeding.

EXPUNGE: To physically destroy information.

FELONY: The offense classification for serious crimes. Felonies are designated class A, class B, and class C, with class A felonies subject to the longest terms of confinement.

GROSS MISDEMEANOR: An offense punishable by no more than 365 days in jail and \$5,000. Gross misdemeanors may be filed in either courts of limited jurisdiction (district or municipal courts) or superior court.

JUVENILE OFFENDER: A person under the age of 18 years who has not been transferred to adult court and who has been found to have committed an offense by the juvenile court. Individuals 18 years of age or older over whom jurisdiction has been extended are also juvenile offenders.

MISDEMEANOR: An offense punishable by no more than 90 days in jail and \$1000. May be filed in either courts of limited jurisdiction (district or municipal courts) or superior court.

MODIFY: To change existing information.

NONCONVICTION DATA: Criminal history record information relating to an incident that has not led to a conviction or other disposition adverse to the individual, and for which proceedings are no longer actively pending.

SEAL: To prevent access to a record.

SUSPENDED SENTENCE: A sentence postponed so the defendant is not required to serve time unless he or she commits another crime or violates a court-imposed condition. A suspended sentence is considered adverse to the defendant.

VACATE: To set aside a conviction.