

# **1. Why Bother To Vacate Your Conviction?**

**Released From Penalties.** Washington law, RCW 9.96.060, permits the vacation of some misdemeanor and gross misdemeanor convictions. Vacation of a conviction releases you from all penalties and disabilities resulting from your conviction.

**Employment And Housing Applications.** For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated may state that they have never been convicted of that vacated crime.

**Criminal History.** Once a conviction is vacated, the fact that you have been convicted of the offense shall not be included in your criminal history for purposes of determining a sentence in any subsequent conviction.

Although a vacated conviction will not be used for future sentencing purposes, it may be used for other purposes in a later criminal prosecution with the following exception –

When a court vacates a record of domestic violence, as defined in RCW 10.99.020, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for –

- (i) Violating the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or daycare, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle; or
- (ii) Stalking; or
- (iii) Domestic violence protection order or vulnerable adult protection order.

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

Vacation of a conviction does not automatically restore your right to possess a firearm.

**Vacation Not Automatic – You Must Petition The Court.** The law does not automatically vacate your conviction. If you want to have your conviction vacated, you must file a Petition to Vacate Conviction and Notice of Hearing with the court.

**Do I Have To Pay A Fee To Vacate My Conviction?** No. The Court does not charge a fee.

## **2. Choosing The Correct Petition Form**

### **You Must Select The Correct Form on the Kitsap County District Court Website.**

Washington law authorizes a court to vacate a misdemeanor or gross misdemeanor conviction in six separate situations. Each situation has different requirements.

You must submit to the Court the correct form called a Petition to Vacate Conviction. Your six Petition to Vacate Conviction form options available on the Kitsap County District Court website are –

- (1) Cannabis conviction – RCW 9.96.060(5) (form 950765);
- (2) Controlled Substance Treatment completed – RCW 9.96.060(6) (form 950770);
- (3) Crime Victim (Sex or Domestic Violence) – RCW 9.96.060(3); .080 (form 950775);
- (4) Prostitution Homicide Victim – RCW 9.96.060(7) (form 950780);
- (5) Treaty Indian Fishing Rights conviction – RCW 9.96.060(4) (form 950785); and
- (6) Vacation when none of the above apply – RCW 9.96.060(2) (form 950760).

**What Do I Have To Prove?** Each of the six petition to vacate conviction forms include what you need to prove to successfully convince a judge to vacate your conviction. To determine if you are eligible to have your conviction vacated, you should look at all of the forms before filing any of the forms with the Court to make sure you have selected the correct one.

See RCW 9.96.060 and RCW 9.96.080 below to help you determine whether you can meet the statutory requirements to have your conviction vacated by a Judge.

**Not All Convictions Can Be Vacated.** Depending on the form you select, you may not legally qualify to have your conviction vacated. This means that the judge would have to deny your request to have your conviction vacated.

Also, a few misdemeanor and gross misdemeanor convictions do not qualify to be vacated under Washington law. To repeat, you should carefully look at all six Petition to Vacate Conviction forms before filing any forms with the Court.

### **3. What Do I Need To Do?**

This checklist outlines the process you need to follow to vacate your conviction –

- \_\_\_ 1. **Only Website Forms.** You must only use Kitsap County District Court website forms. Any other conviction vacation forms will be rejected for filing.
- \_\_\_ 2. **Only One Case Number Per Form.** Only one case number is permitted on each form. If you have more than one case, you need to prepare and file separate forms for each of your cases.
- \_\_\_ 3. **Petition to Vacate Conviction.** Select the correct petition.
- \_\_\_ 4. **Fill Out the Petition.** Carefully read and fill out the petition.
- \_\_\_ 5. **Make 2 Copies of the Petition.** Make 2 copies of your completed petition. 1 copy is for the prosecutor and 1 copy is for yourself.
- \_\_\_ 6. **Notice of Hearing.** Carefully read and fill out the Notice of Hearing to Vacate Conviction (form 950790).
  - \_\_\_ **You Select the Hearing Date.** The hearing date you select must be at least 2 business days from the date the Notice of Hearing is filed with the Court.
  - \_\_\_ **Every Friday.** Vacate conviction hearings are held every Friday at 9:00 AM in courtroom 104.
  - \_\_\_ **Maximum.** Only 25 hearings are permitted on this court calendar. If defendant is represented, counsel must check courtroom availability through the District Court ePortal by conducting a courtroom 104 Calendar Search by Courtroom before filing the Notice of Hearing form.
- \_\_\_ 7. **Make 2 Copies of the Notice of Hearing.** Make 2 copies of your completed Notice of Hearing. 1 copy is for the prosecutor and 1 copy is for yourself.
- \_\_\_ 8. **File Both Documents.** File the original Petition to Vacate Conviction and the original Notice of Hearing to Vacate Conviction with the Court.
- \_\_\_ 9. **Copies to Prosecutor.** On the same day you file the documents with the Court, provide a copy of your Petition to Vacate Conviction and your Notice of Hearing to Vacate Conviction to the prosecutor.
- \_\_\_ 10. **Appear.** Make sure to appear for your hearing.
- \_\_\_ 11. **An Order is Not Required.** You do not need to prepare an order because the Judge will do so at the hearing.

## **RCW 9.96.060**

### **Vacating records of conviction for misdemeanor and gross misdemeanor offenses.**

- (1) **Court Action.** When vacating a conviction under this section, the court effectuates the vacation by:
  - (a)(i) **Withdraw Guilty Plea.** Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or
  - (a)(ii) **Set Aside Verdict.** If the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and
  - (b) **Dismissal.** The court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.
- (2) **Vacation When None of the Others Apply.** Every person convicted of a misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. If the court finds the applicant meets the requirements of this subsection, the court may in its discretion vacate the record of conviction.

**Vacation Must Be Denied.** Except as provided in subsections (3), (4), (5), and (6) of this section, an applicant may not have the record of conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present:

- (2)(a) **Sentence Terms Not Completed.** The applicant has not completed all of the terms of the sentence for the offense, including satisfaction of financial obligations;
- (2)(b) **Pending Charges.** There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal or tribal court, at the time of application;
- (2)(c) **Violent Offense.** The offense was a violent offense as defined in RCW 9.94A.030 or an attempt to commit a violent offense;
- (2)(d) **DUI, Physical Control, Operating Railroad While Intoxicated Conviction.** The offense was a violation of RCW 46.61.502 (driving while under the influence), 46.61.504 (actual physical control while under the influence), 9.91.020 (operating a railroad, etc. while intoxicated), or

**DUI "Prior Offense" Conviction.** The offense is considered a "prior offense" under RCW 46.61.5055 and

**Alcohol/Drug Violations Within 10 Years of Arrest.** The applicant has had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense or

**Ten Years Not Elapsed Since Arrest.** Less than 10 years has elapsed since the date of the arrest for the prior offense;

- (2)(e) **Sex Offense Conviction (Except Failure to Register).** The offense was any misdemeanor or gross misdemeanor 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), except for failure to register as a sex offender under RCW 9A.44.132;

- (2)(f) **Domestic Violence Conviction**. The applicant was convicted of a misdemeanor or gross misdemeanor offense as defined in RCW 10.99.020, or the court determines after a review of the court file that the offense was committed by one family or household member against another or by one intimate partner against another, or the court, after considering the damage to person or property that resulted in the conviction, any prior convictions for crimes defined in RCW 10.99.020, or for comparable offenses in another state or in federal court, and the totality of the records under review by the court regarding the conviction being considered for vacation, determines that the offense involved domestic violence, and any one of the following factors exist:
- (i) **No Written Notice to Prosecutor and Court**. The applicant has not provided written notification of the vacation petition to the prosecuting attorney's office that prosecuted the offense for which vacation is sought, or has not provided that notification to the court;
  - (ii) **Two or More DV Convictions**. The applicant has two or more domestic violence convictions stemming from different incidents. For purposes of this subsection, however, if the current application is for more than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction;
  - (iii) **False Affidavit**. The applicant has signed an affidavit under penalty of perjury affirming that the applicant has not previously had a conviction for a domestic violence offense, and a criminal history check reveals that the applicant has had such a conviction; or
  - (iv) **Five Years Not Elapsed Since Sentence Terms Completed**. Less than five years have elapsed since the person completed the terms of the original conditions of the sentence, including successful completion of any treatment ordered as a condition of sentencing, but excluding the payment of financial obligations;
- (2)(g) **Not Three Years Since Later of Sentencing Date or Release From Probation**. For any offense other than those described in (f) of this subsection, less than three years have passed since the later of the applicant's release from supervision or probation; the applicant's release from total and partial confinement, as defined in RCW 9.94A.030; or the applicant's sentencing date;
- (2)(h) **New Conviction Within 3 Years**. The offender has been convicted of a new crime in this state, another state, or federal or tribal court in the three years prior to the vacation application; or
- (2)(i) **Court Order Violation Within 5 Years**. The applicant is currently restrained by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order which restrains one party from contacting the other party or was previously restrained by such an order and was found to have committed one or more violations of the order in the five years prior to the vacation application.

- (3) **Crime Victim – Sex or Domestic Violence Victim.** If the applicant is a victim of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence as defined in RCW 9.94A.030, or the prosecutor applies on behalf of the state, the sentencing court may vacate the record of conviction if the application satisfies the requirements of RCW 9.96.080.

When preparing or filing the petition, the prosecutor is not deemed to be providing legal advice or legal assistance on behalf of the victim, but is fulfilling an administrative function on behalf of the state in order to further their responsibility to seek to reform and improve the administration of criminal justice.

A record of conviction vacated using the process in RCW 9.96.080 is subject to subsections (7) and (8) of this section.

[See also RCW 9.96.080 for additional requirements.]

- (4) **Treaty Indian Fishing Rights.** Every person convicted prior to January 1, 1975, of violating any statute or rule regarding the regulation of fishing activities, including, but not limited to, [former] RCW 75.08.260, 75.12.060, 75.12.070, 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240 who claimed to be exercising a treaty Indian fishing right, may apply to the sentencing court for vacation of the applicant’s record of the misdemeanor, gross misdemeanor, or felony conviction for the offense.

If the person is deceased, a member of the person’s family or an official representative of the tribe of which the person was a member may apply to the court on behalf of the deceased person.

Notwithstanding the requirements of RCW 9.94A.640, the court shall vacate the record of conviction if:

- (a) **Treaty Indian Fishing Rights At Crime Location.** The applicant is a member of a tribe that may exercise treaty Indian fishing rights at the location where the offense occurred; and
- (b) **State Enjoined.** The state has been enjoined from taking enforcement action of the statute or rule to the extent that it interferes with a treaty Indian fishing right as determined under *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon 1969), and any posttrial orders of those courts, or any other state supreme court or federal court decision.

- (5) **Cannabis Conviction.** Every person convicted of a misdemeanor cannabis offense, who was 21 years of age or older at the time of the offense, may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense.

A misdemeanor cannabis offense includes, but is not limited to: Any offense under RCW 69.50.4014, from July 1, 2004, onward, and its predecessor statutes, including RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense under an equivalent municipal ordinance.

If an applicant qualifies under this subsection, the court shall vacate the record of conviction.

- (6) **Substance Use Treatment.** If a person convicted of violating RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) –

**Substance Use Program.** Completes a substance use disorder program and files proof of completion with the court, or

**Other Program.** Obtains an assessment from a recovery navigator program established under RCW 71.24.115, an arrest and jail alternative program established under RCW 36.28A.450, or a law enforcement assisted diversion program established under RCW 71.24.589, and has six months of substantial compliance with recommended treatment or services and progress toward recovery goals as reflected by a written status update,

**Court Verification.** Upon verification the court must vacate the conviction or convictions.

- (7) **Prostitution Conviction – Homicide Victim.** A person who is a family member of a homicide victim may apply to the sentencing court on the behalf of the victim for vacation of the victim's record of conviction for prostitution under RCW 9A.88.030. If an applicant qualifies under this subsection, the court shall vacate the victim's record of conviction.

- (8)(a) **Benefits of Conviction Vacation.** Except as provided in (c) of this subsection, once the court vacates a record of conviction under this section, the person shall be released from all penalties and disabilities resulting from the offense and the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction.

For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated under this section may state that he or she has never been convicted of that crime.

However, nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.041.

Except as provided in (b) of this subsection, nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

- (8)(b) **Criminal History.** When a court vacates a record of domestic violence as defined in RCW 10.99.020 under this section, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (i) Violating the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going on to the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle (RCW 10.99.040, 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070, or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic violence protection order or vulnerable adult protection order entered under chapter 7.105 RCW. A vacated conviction under this section is not considered a conviction of such an offense for the purposes of 27 C.F.R. 478.11.
- (8)(c) **Prior Conviction.** A conviction vacated on or after July 28, 2019, qualifies as a prior conviction for the purpose of charging a present recidivist offense as defined in RCW 9.94A.030 occurring on or after July 28, 2019.

- (9) **Clerk and Law Enforcement Action Required.** The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction.

The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation.

A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.

- (10) **“Cannabis” Definition.** For the purposes of this section, “cannabis” has the meaning provided in RCW 69.50.101.

[RCW 69.50.101(4) – “Cannabis” means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis during the growing cycle through harvest and usable cannabis. "Cannabis" does not include hemp or industrial hemp as defined in RCW 15.140.020, or seeds used for licensed hemp production under chapter 15.140 RCW.]



## **RCW 9.96.080**

### **Victims of certain crimes vacating records of conviction.**

[See also RCW 9.96.060(3) for additional requirements.]

- (1)(a) **Crime Victim – Sex or Domestic Violence Victim.** A victim of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence, as defined in RCW 9.94A.030 may apply to the sentencing court or the sentencing court’s successor to vacate the applicant's record of conviction for the offense; or
- (1)(b) **Prosecutor May Apply.** The prosecutor of a county or municipality in which a victim of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence was sentenced for a misdemeanor or gross misdemeanor offense may exercise discretion to apply to the court on behalf of the state recommending that the court vacate the victim’s record of conviction by submitting the information required in subsection (2) of this section.

If the court finds the application meets the requirements of subsection (2) of this section, the court may decide whether to grant the application to vacate the record.

- (2) **Requirements.** In order to vacate a record of conviction for a gross misdemeanor or misdemeanor offense committed as a result of being a victim of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence as defined in RCW 9.94A.030, the applicant must meet the following requirements:
- (a) **Proof a Victim.** Provide an affidavit, under penalty of perjury, stating the specific facts and circumstances proving, by a preponderance of evidence that the offense was committed as a result of being a victim of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence as defined in RCW 9.94A.030;
  - (b) **No Pending Charges (Except Prostitution).** There are no criminal charges against the applicant pending in any court of this state or another state, or in any federal court for any crime other than prostitution;
  - (c) **No Convictions Within 3 Years.** If the offense is a misdemeanor, the offender has not been convicted of a new crime in this state, another state, or federal or tribal court in the three years prior to the vacation application;
  - (d) **Crime Victim Penalty Assessment Paid.** Except where the conviction to be vacated is for the crime of prostitution, prostitution loitering, or stay out of area of prostitution, provide proof that the crime victim penalty assessment, RCW 7.68.035, has been paid in full;
  - (e) **Restitution Paid.** If applicable, restitution owed to any victim, excluding restitution owed to any insurance provider under Title 48 RCW, has been paid in full.

- (3) **Vacation Prohibited for Certain Convictions.** An applicant may not have a record of conviction for a gross misdemeanor or misdemeanor offense vacated if:
- (a) **Sex Offenses (Except Failure to Register).** The offense was any misdemeanor or gross misdemeanor 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), except for failure to register as a sex offender under RCW 9A.44.132;
  - (b) **DUI or Physical Control.** The offense was a conviction as described in RCW 46.61.5055; or
  - (c) **Patronizing a Prostitute.** The offense was patronizing a prostitute as described in RCW 9A.88.110.