

**KITSAP COUNTY DISTRICT COURT
STATE OF WASHINGTON**

STATE OF WASHINGTON, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">_____ , Defendant.</p>	No. _____ PETITION AND DECLARATION TO VACATE CONVICTION
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CHOOSING THE CORRECT FORM

Washington law authorizes a court to vacate a misdemeanor or gross misdemeanor conviction in six separate situations. You must submit the correct petition to vacate conviction. Your options 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).

Use this form 950760 when (1) through (5) above do not apply to the conviction you want vacated.

1. PETITION

Defendant asks the Court for an order vacating defendant’s conviction(s) of misdemeanor or gross misdemeanor offenses. This petition is based on RCW 9.96.060(2), the case record and files, and the declaration of defendant.

DATED – _____

/s/ Signed Electronically

Defendant/Defendant’s Attorney, WSBA No.

[Note – By typing your name, you intend to sign electronically and agree your electronic signature is the same as a handwritten signature for the purpose of validity, enforceability, and admissibility.]

2. DECLARATION OF DEFENDANT

I, (name) _____ state as follows –

2.1 **Conviction(s)**. On (date) _____, I was convicted of the following offense(s) in this case –

Count No. 1 Offense – _____

Count No. 2 Offense – _____

Count No. 3 Offense – _____

Count No. 4 Offense – _____

Count No. 5 Offense – _____

Count No. 6 Offense – _____

Count No. 7 Offense – _____

Count No. 8 Offense – _____

Count No. 9 Offense – _____

Count No. 10 Offense – _____

2.2 **Prohibited Offenses**. I understand that the Court cannot vacate my conviction if I was convicted of any the following offenses (RCW 9.96.060(2)(c) through (e)) –

- **DUI**. Driving while under the influence (RCW 46.61.502).
- **Physical Control**. Actual physical control while under the influence (RCW 46.61.504).
- **Railroad While Intoxicated**. Operating a railroad, etc. while intoxicated (RCW 9.91.020).
- **Obscenity And Pornography**. A violation of chapter 9.68 RCW.
- **Sexual Exploitation Of Children**. A violation of chapter 9.68A RCW.
- **Sex Offenses**. A violation of chapter 9A.44 RCW (sex offenses), except for failure to register as a sex offender under RCW 9A.44.132.
- **Violent Offense**. A violent offense as defined in RCW 9.94A.030, or an attempt to commit a violent offense. This only applies to vacation of a felony conviction.

2.3 **All Must Be True.** I understand that the Court cannot vacate my conviction unless all of the following statements are true –

- **Three Years Since Later of – (a) Sentencing Date; or (b) Release from Probation.** Three years have elapsed since the later of my sentencing date or the date I was released from supervision or probation. RCW 9.96.060(2)(g).
- **Sentence Terms Completed.** I have completed all the terms of the sentence, including satisfaction of financial obligations. RCW 9.96.060(2)(a).
- **Three Years – No New Conviction.** I have not been convicted of any new crime in this state, another state, or federal or tribal court in the three years prior to this vacation application. RCW 9.96.060(2)(h).
- **No Pending Charges.** There are no criminal charges pending against me in any court of this state or another state, or in any federal or tribal court as of the date I file this petition. RCW 9.96.060(2)(b).
- **Restrained by Court Order.** RCW 9.96.060(2)(i).

_____ **Never Restrained by Court Order.** I have never been restrained by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order.

_____ **Restrained by Court Order – No Violations in Past Five Years.** I am currently restrained or previously have been restrained by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order.

I have not been found to have committed one or more violations of the order in five years prior to my vacation application.

2.4 _____ **DUI “Prior Offense” Conviction.** My conviction being vacated is considered a “prior offense” under RCW 46.61.5055 (see the end of this petition for a definition of “prior offense”).

All of the following are true (all must be true or the Court cannot vacate the conviction) –

- **Not DUI/Physical Control Conviction.** My conviction being vacated is not a DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504). RCW 9.96.060(2)(d).
- **No Alcohol/Drug Violations Within 10 Years Of Arrest.** I have not had a subsequent alcohol or drug violation within 10 years of the date of my arrest for the conviction being vacated. RCW 9.96.060(2)(d).
- **Ten Years Have Elapsed Since Date of Arrest.** At least 10 years have elapsed since the date of my arrest for the conviction being vacated. RCW 9.96.060(2)(d).

2.5 _____ **Domestic Violence Conviction.** My conviction being vacated involves domestic violence and I have complied with the following conditions (RCW 9.96.060(2)(f)) – All of the following statements are true (all must be true or the Court cannot vacate the conviction) –

- **Written Notice to Prosecutor and Court.** I provided the prosecuting attorney’s office that prosecuted the offense with written notice of this petition and provided that notice to the Court. RCW 9.96.060(2)(f)(i).
- **Not Two or More DV Convictions.** I have not been convicted of 2 or more domestic violence offenses stemming from different incidents. RCW 9.96.060(2)(f)(ii).
- **False Affidavit.** I have never signed an affidavit under penalty of perjury affirming that I have not previously had a conviction for a domestic violence offense, and a criminal history check reveals that I have had such a conviction, RCW 9.96.060(2)(f)(iii).
- **Five Years Elapsed Since Sentence Terms Completed.** At least 5 years have elapsed since I completed the terms of the original conditions of my sentence, including successful completion of any treatment ordered. RCW 9.96.060(2)(f)(iv).

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, and that I am the person whose name I typed (or wrote) below.

SIGNED at (city) _____, (state) _____ on (date) _____.

/s/ Signed Electronically

[Note – By typing your name, you intend to sign electronically and agree your electronic signature is the same as a handwritten signature for the purpose of validity, enforceability, and admissibility.]

WHAT ELSE DO I NEED TO DO?

1. **Schedule Hearing.** Schedule a hearing by preparing a Notice of Hearing to Vacate Conviction (form 950790).
2. **Make 2 Copies.** Make 2 copies of the Petition to Vacate Conviction and 2 copies of the Notice of Hearing to Vacate Conviction (1 copy for the prosecutor and 1 copy for yourself).
3. **File Documents.** File the original Petition to Vacate Conviction and the original Notice of Hearing to Vacate Conviction with the Court.
4. **Copies To Prosecutor.** On the same day you file the documents with the Court, provide a copy of the Petition to Vacate Conviction and Notice of Hearing to Vacate Conviction to the prosecutor.
5. **Appear.** Appear for your hearing.
6. **Order.** You do not need to prepare an order because the Judge will do so at the hearing.

A “prior offense” as used in paragraph 2.4 means (RCW 46.61.5055(14)) –

Conviction On An Amended Charge –

- **Originally charged with** DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504) or an equivalent local ordinance, or Vehicular Homicide (RCW 46.61.520) or Vehicular Assault (RCW 46.61.522); **but convicted of** Negligent Driving 1st (RCW 46.61.5249), Reckless Driving (RCW 46.61.500), or Reckless Endangerment (RCW 9A.36.050) or an equivalent local ordinance. This section applies for equivalent out-of-state convictions.
- **Originally charged with** Watercraft DUI (RCW 79A.60.040(2)) or an equivalent local ordinance, **but convicted of** Operating a Watercraft in a reckless manner (RCW 79A.60.040(1)) or an equivalent local ordinance.
- **Originally charged with** Aircraft DUI (RCW 47.68.220) or an equivalent local ordinance, **but convicted of** Operating an Aircraft in a careless or reckless manner (RCW 47.68.220) or an equivalent local ordinance.