

GOVERNING STATUTES AND REGULATIONS

The following constitutional provisions, statutes, and regulations currently control requests for modification, vacation, sealing, or deletion of criminal records.

Washington Constitution Article I, Section 10

Revised Code of Washington (RCW) 9.92.066

Revised Code of Washington (RCW) 9.94A.640

Revised Code of Washington (RCW) 9.95.240

Revised Code of Washington (RCW) 9.96

Revised Code of Washington (RCW) 10.97.060

Revised Code of Washington (RCW) 13.40.127

Revised Code of Washington (RCW) 13.50.050

Revised Code of Washington (RCW) 43.43.730

General Rule (GR) 15 of the Washington Court Rules

Washington Administrative Code (WAC) 446-16-025 & 446-16-030

Local law enforcement agencies and courts may have additional procedural rules or regulations.

FOR MORE INFORMATION

- **Washington State Court Internet Site:** <http://www.courts.wa.gov>
This site includes a statewide directory of courts, including addresses and telephone numbers, court rules, the most current version of this brochure, forms and information about assistance with legal research from the state law library. The Administrative Office of the Courts may also be reached at (360) 357-2130. *Please note that this office cannot offer any legal advice.*
- **Office of the Code Reviser:** <http://slc.leg.wa.gov>
This internet site contains the complete Revised Code of Washington (RCW) and the Washington Administrative Code (WAC). Also check your local library for copies of the RCW and the WAC.
- **Washington State Patrol Identification and Criminal History Section:** <http://watch.wsp.wa.gov>. Check the website or call (360) 534-2000 for information about criminal record history information maintained by the WSP.
- **Washington State Bar Association:** www.wsba.org
Check the website or call (206) 727-8200 for information on how to find an attorney in your area (or contact your local county bar association).

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

For more information on your police record, contact the local police agency that was responsible for the case. This may be a city police department, county sheriff's office, the WSP or other agency with police powers.



Administrative Office of the Courts

CRIMINAL HISTORY AND CRIMINAL RECORDS

A Guide on When and How to Challenge, Seal, Vacate or Expunge

State of Washington
November 20, 2009

CRIMINAL JUSTICE RECORDS

This brochure provides information on the current state of the law regarding how to **seal** court records, how to **vacate** court records, and how to obtain the **destruction** or **expungement** of such records. **You should be aware that the circumstances under which records may be vacated, destroyed or sealed are very limited.** The power of judges to vacate, seal or expunge is limited by laws enacted by the legislature, court rules promulgated by the Supreme Court of Washington and the Constitution.

The term “**criminal justice agency**,” as used in this brochure, refers to courts, police agencies, probation departments, prisons and jails. All of these agencies maintain records on adults and juveniles who are arrested, detained, charged, convicted or acquitted. You have the legal right to inspect **criminal history information** or **criminal record information** that is about you.

This brochure also includes information on how to challenge the records maintained by law enforcement agencies, if you think those records are inaccurate.

The laws concerning criminal records and criminal history change frequently. You may wish to consult an attorney regarding your own circumstances.

You should consult an attorney to find out if sealing, vacating or destroying an adult or juvenile court or law enforcement record will have an effect on either your right to own or possess a firearm or your immigration status.

COURT RECORDS

Court records are maintained by the clerk of each separate court. A court can only address requests made concerning records of cases filed in that court. If you were charged with crimes in several different courts, you will need to make your request to each separate court.

Court records consist of the documents filed by the prosecutor, you or your attorney, court orders and some probation reports. If you were convicted of a crime, the court record will contain a disposition order or judgment and sentence that will specify what crimes you were found to have committed and what punishment was imposed. If you were acquitted of charges, the court record will indicate that the action was dismissed. A record of dismissal will also be present if the court determined that the charges should not go forward.

Criminal court records, like court hearings, are generally open to the public. Whether a court record of conviction may be vacated, sealed, or destroyed depends upon the type of conviction (felony or misdemeanor), and the court where the conviction was obtained (juvenile or adult).

The vacating, sealing, or destroying of a court record does not necessarily change or delete the records maintained by law enforcement agencies, the Department of Licensing or other government agencies. Requests to change or delete records maintained by other agencies should be made to that agency.

JUVENILE COURT RECORDS

If you were found guilty of an offense in juvenile court, you may ask the court to **seal** the records of conviction by filing a motion with the court. You must provide a copy of the motion (request) to seal the record to the prosecuting attorney. Notice to the Washington State Patrol is also advisable. You may also be required to notify the victim. Forms requesting that the court seal your juvenile record are available from the court or by calling the Administrative Office of the Courts at (360) 705-5328.

The court may grant your request in cases where the sentence was announced after July 1, 1995, if:

- your offense was not a sex offense or a Class A felony;
- since you were last released from confinement, you have spent a specified number of years in the community (five years for a Class B felony, two years for a Class C felony, two years for a gross misdemeanor or a misdemeanor or a diversion agreement) without committing any offense or crime that resulted in a conviction,
- no proceedings are pending against you seeking the conviction of a juvenile offense or a criminal offense,
- no proceeding is pending against you seeking the formation of a diversion agreement,
- you have paid all restitution.

Once your record is sealed, your case is treated as if it never occurred and you may state that you were not convicted of that offense. The records will be unsealed, however, if you are found guilty of a juvenile offense or a crime after the court granted your request to seal the record or if you are charged with a felony after the court has granted your request to seal the record.

If you enter into a deferred disposition of a juvenile case, and you fully complete all of the conditions of supervision and pay full restitution, your conviction will be vacated by the court and the case dismissed (unless it is a conviction of animal cruelty in the first degree.) The case records will also be sealed by the court within 30 days of your 18th birthday if you turn 18 on or after July 26, 2009. If you turned 18 before July 26, 2009 and have had a deferred disposition vacated by the court, and do not have any charges pending, you may ask the court to seal the case.

If you are 18 years old and your only criminal history is a single juvenile diversion agreement or counsel and release entered into before June 12, 2008, you may request that the court destroy its record in the matter if two years have passed since your diversion or counsel and release was completed. If your single juvenile diversion agreement or counsel and release was entered into on or after June 12, 2008, the court will automatically destroy its records if two years have passed since the diversion or counsel and release was completed and you have no criminal matter pending and you do not owe any restitution. If your only criminal history consists of more than one referral for diversion, you may request that the court destroy its records in the matters if you are at least 23 years old and you have no pending criminal matters.

ADULT COURT RECORDS

Sealing or Destruction. There is currently no statute that would allow for **destruction** of a court record from a proceeding involving a criminal action against an adult. However, **sealing** may be ordered by the court when a conviction is vacated or for compelling privacy or safety concerns that outweigh the public interest in access to the court records.

Vacating Felonies. RCW's 9.92.066, 9.95.240 and 9.94A.640 allow for the vacating of some felony convictions. You may request, by motion, that the court vacate the conviction. Such a motion may only be granted if:

- you have completed your sentence and you have been discharged,
- there are no criminal charges pending against you in any court of this state, or another state, or in any federal court,
- your conviction was for a nonviolent offense, and was not an offense defined as a “crime against a person”,
- since you were issued a discharge, you have spent a specified number of years in the community (10 years for a Class B felony and certain Class C driving offenses, 5 years for most Class C felonies) without committing any offense or crime that resulted in a criminal conviction.

Vacating Misdemeanors. RCW Chapter 9.96 authorizes the court to vacate misdemeanor and gross misdemeanor convictions. You may request by motion that the court vacate your conviction if at least three years have elapsed since the completion of your sentence, including any period of probation (five for domestic violence convictions) and:

- You have no pending criminal charges or new convictions.
- Your offense was not violent as defined by RCW 9.94A.030, or an attempt at such an offense.
- The offense did not involve driving while intoxicated or a related offense.
- The offense was not a sex offense.
- You have satisfied all conditions of your sentence.
- You have not had another conviction vacated.
- You have not been the subject of a protection, no-contact or restraining order within the last five years.

Forms requesting that the court vacate your misdemeanor or gross misdemeanor conviction may be obtained from the court or from the Administrative Office of the Courts at (360) 705-5328. There are no forms available for the purpose of requesting that the court vacate your felony conviction. You may wish to consult an attorney for further assistance with regard to the vacation of a felony conviction.

Effect of Vacating Conviction. Once the court vacates the record of conviction, you may state that you have never been convicted of that crime. However, when the court vacates the record of conviction, the court file is not destroyed.

If you received a **deferred sentence** and successfully completed probation, you may need to file a motion with the court for dismissal.

LAW ENFORCEMENT RECORDS

You have the right to **inspect** the criminal history record information (CHRI) on file with the Washington State Patrol (WSP) or a local police agency. Requests to inspect the CHRI must comply with the local police agency's or the WSP's rules.

Such information includes reports of investigations, records of arrests, and identification information obtained from adults and juveniles who are arrested for offenses.

Local police agencies are required by state statute to send a fingerprint arrest card to the WSP on all adults and many juveniles arrested for the commission of a felony or gross misdemeanor. On serious offenses, fingerprints are also sent to the Federal Bureau of Investigation (FBI).

A record of the disposition of the case is also sent to the FBI and the WSP. A report of an individual's arrest record, as maintained by the WSP or FBI, is frequently called a "rapsheet."

Whether information contained on a rapsheet or in a law enforcement agency's files may be modified, vacated or expunged depends upon whether the result of the case was a conviction or acquittal, and the court where the case was heard (juvenile or adult).

The vacating, sealing, or expungement of a law enforcement record does not necessarily change or delete the records maintained by the courts. ***Requests to change or delete court records must be made to that particular court.***

CHALLENGES FOR ACCURACY

You must make any challenge to the accuracy or completeness of the CHRI in writing, clearly identifying the information which you feel is inaccurate or incomplete. If the agency refuses to change the information, you may appeal that decision to the head of the agency that created the record.

DELETION OR EXPUNGEMENT

You may request **deletion** or **expungement** of CHRI in the WSP if: (1) the file consists only of non-conviction data; (2) you are not under prosecution and you have not been arrested for or charged with a new crime; and either (3a) two years or longer has elapsed since the record became non-conviction data as a result of the entry of a disposition favorable to you, or (3b) three years or longer have elapsed from the date of arrest or filing of charges and you are not a fugitive and the case is not still pending in court.

Information regarding how to make a request for deletion or expungement of criminal record information may be obtained from the WSP. Following the WSP's procedure will not delete or expunge CHRI in the possession of a local police agency. A separate request must be made to the local (arresting) police agency in accordance with that agency's procedure.

You may not obtain the deletion or expungement of a record related to a case that resulted in a **conviction or other disposition adverse to you**. Examples of dispositions that are adverse to you include the entry of an order to dismiss entered after the successful completion of a period of probation, suspension, or deferral of sentence. However, when the superior court has vacated your felony conviction, the public will not have access to information about the conviction in your CHRI.

JUVENILE RECORDS

A court order to seal a juvenile record may also result in the removal of all reference to the arrest incident and disposition from the records maintained by the WSP, but **identifying information** held by the WSP is not subject to sealing or destruction. **Identifying information** includes fingerprints, palmprints, soleprints, toeprints, and any other data that identifies you by physical characteristics, name, birthdate or address. The documents related to the arrest and disposition named in the court order are sealed in an envelope. The envelope is not opened unless the WSP is ordered to do so by a court or if you are later arrested for a felony or are found guilty of a crime or juvenile offense.

GLOSSARY

ADVERSE TO THE DEFENDANT: Referring to conviction information, any disposition of charges except a decision not to prosecute, a dismissal, an acquittal except when the acquittal is due to a finding of not guilty by reason of insanity, or a dismissal due to the incompetency of the defendant. A dismissal following the successful completion of a deferred sentence is also adverse.

CHALLENGE: A claim that the records on file with a law enforcement agency do not accurately reflect the actions taken by the court. A challenge will not address whether the action taken by the court was proper or not.

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

CRIMINAL HISTORY RECORD INFORMATION (CHRI): Information on individuals contained in records collected by criminal justice agencies other than courts, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including sentences, correctional supervision, and release.

DEFERRED SENTENCE: A sentence, the execution of which is postponed until a future time (considered as adverse to the defendant).

DEFERRED PROSECUTION: A person charged with a misdemeanor or gross misdemeanor which is the result of or caused by alcoholism, drug addiction or mental problems may petition a district or municipal court to attend a treatment program as an alternative to punishment.

DISMISSAL: A dismissal is a court order terminating the case. A dismissal may occur before a finding or plea of guilty, or after a period of probation, suspension, or deferral of sentence.

DISPOSITION: The formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

DISSEMINATION: Disclosing criminal history record information to any person or agency outside the agency possessing the information.

EXPUNGE: To physically destroy information — including criminal records in files, computers, or other depositories. A motion or order to expunge shall be treated as a motion or order to destroy.

FELONY: The offense classification designating the more severe crimes. For purposes of sentencing, classified felonies are designated as one of three classes: Class A, Class B, and Class C, with Class A felonies subject to the longest terms of confinement.

FINAL DISCHARGE: Defendant has completed the requirements of his/her sentence and has received a final discharge from confinement or supervision and may also have some civil rights restored.

JUVENILE OFFENDER: An individual who is under the age of eighteen years (and who has not been previously transferred to adult court) and has been found by the juvenile court to have committed an offense. This also includes persons eighteen years of age or older over whom jurisdiction has been extended.

MISDEMEANOR: A misdemeanor is an offense generally punishable by no more than \$1000 and 90 days in jail; a gross misdemeanor is an offense punishable by no more than \$5000 and 365 days in jail. Misdemeanors and gross misdemeanors may be filed in either courts of limited jurisdiction (district or municipal courts) or superior court.

MODIFY: To change or revise the existing information.

NON-CONVICTION DATA: All criminal history record information relating to an incident which has not led to the conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending more than one year since arrest, citation, charge, or service of warrant with no disposition entered.

RAPSHEET: Transcript of criminal history record information.

SEAL: To seal means to protect from examination by the public and unauthorized court personnel. An entire record may be sealed or parts of a record may be sealed. Evidence of the existence of a sealed file, unless protected by statute, is available for viewing by the public on court indices, but is limited to the case number, names of the parties, the notation "case sealed," the case type in civil cases and the cause of action or charge in criminal cases. (See, also, Vacating of Record of Conviction below.) A sealed court record may be ordered unsealed under certain circumstances.

SUSPENDED SENTENCE: Execution of the sentence has been withheld by the court based on certain terms and conditions (considered as adverse to the defendant).

VACATING OF RECORD OF CONVICTION: An offender may apply to the sentencing court to set aside a conviction. The court may clear the record of conviction and the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history record. In cases where a criminal conviction has been vacated and ordered sealed, 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."