

INSTRUCTIONS FOR VACATING MISDEMEANOR AND GROSS MISDEMEANOR CONVICTIONS

1. BACKGROUND INFORMATION

Washington law permits the vacation of some misdemeanor or gross misdemeanor convictions. Vacation of a conviction releases you from all penalties and disabilities resulting from the offense. 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 crime.

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 subsequent 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; (ii) stalking; or (iii) domestic violence protection order or vulnerable adult protection order. RCW 9.96.060.

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.

The law does not automatically vacate your conviction. If you want to have a conviction vacated, you must file a petition with the court. The following information will assist you in asking the court to vacate your conviction.

2. CHOOSING THE CORRECT FORM

a. Cannabis Offenses

If you qualify for vacating a cannabis conviction, use form CrRLJ 09.0800, *Petition and Declaration for Order to Vacate Cannabis Conviction*. A court will vacate the conviction(s), if you meet the following criteria for cannabis offenses:

- You were 21 years of age or older at the time of the offense.
- Cannabis offenses eligible to be vacated include, but are not limited to:
 - Any offense under RCW 69.50.4014 from July 1, 2004 onward;
 - RCW 69.50.401(e) from March 21, 1979 to July 1, 2004;
 - RCW 69.50.401(d) from May 21, 1971 to March 21, 1979; and
 - any equivalent misdemeanor ordinance.

See Section 3 to schedule the hearing, file your petition, and notify the prosecutor's office.

b. Offenses Committed as the Victim of Certain Crimes

If you were the victim of sex-trafficking, prostitution, commercial sexual abuse of a minor, sexual assault, or domestic violence and you committed an offense because you were such a victim, you can file a petition asking the court to vacate the conviction. Use form CrRLJ 09.0100, *Petition and Declaration for Order Vacating Conviction*. Review and fill out Sections 1, 2, and 3

of the form. Review each of the requirements listed on the petition to make sure you are eligible. Complete the statement explaining how the crime you committed was caused by being a victim of either sex-trafficking, prostitution, commercial sexual abuse of a minor, sexual assault, or domestic violence.

Note: You may request assistance from the prosecuting authority in preparing and/or filing a petition.

c. All Other Misdemeanor and Gross Misdemeanor Offenses

If you want to vacate an offense other than a cannabis conviction or a conviction which occurred because you were a victim as described in Section 2.b above, you can file a petition asking the court to vacate the conviction(s) if you have satisfied certain requirements.

To determine if you are eligible, use form CrRLJ 09.0100, *Petition and Declaration for Order Vacating Conviction*. Review and fill out sections 1, 2, 4, 5, 6, and 7 of the form. You will fill out different sections of the form depending on if your offense is a DUI-related “prior offense,” a domestic violence offense, or an offense not otherwise covered by other sections in the form. Review each of the requirements listed on the appropriate section of the form to ensure you are eligible.

In order to complete the form, you may need to obtain information from the court file or the court docket for the offense(s) you are asking the court to vacate. Some courts may require you to obtain copies of your criminal history records and attach them to your petition. Read the local court rules or contact the clerk of the court where you will file your petition to find out if this requirement or any other local requirement applies to you. Once you have completed and signed the petition and declaration form, make at least 2 copies (1 copy for the prosecutor’s office and 1 copy for yourself).

3. SCHEDULE THE HEARING, FILE YOUR PETITION, AND PROVIDE A COPY TO THE PROSECUTOR’S OFFICE

The next step is to schedule a hearing for the petition. To schedule a hearing, contact the clerk of the court where you were sentenced and ask for the date and time for the hearing. Then, complete the form that the court uses to schedule a hearing. If the court does not require a specific form, you may use CrRLJ 09.0150, *Notice of Hearing to Vacate Conviction*. Make at least 2 copies of the scheduling notice (1 copy for the prosecutor’s office and 1 copy for yourself).

File the original petition and declaration, and the original notice document with the clerk of the court. On the same day that you file those documents with the clerk of the court, you must also provide a copy of each document (the petition and declaration, and the scheduling notice) to the prosecuting attorney’s office that prosecuted you. Keep a copy of the scheduling notice, the petition and declaration, and any attachments for your information.

The judge will hear your petition on the day scheduled for the hearing. You will need to attend the hearing. If the petition is granted, the judge will complete an order vacating your conviction. The clerk of the court will send a copy of the order to the Washington State Patrol and to the local law enforcement agency, if any, which holds criminal history information about you.

Spokane District Court **Court of Washington**
County of _____ Spokane _____

Plaintiff
vs.

Defendant

No.
**Petition and Declaration
for Order Vacating Conviction
(PT)**

Petition and Declaration for Order Vacating Conviction

I. Petition

1. 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 and RCW 9.96.080, the case record and files, and the declaration of defendant.

Dated: _____

Defendant/Defendant's Attorney, WSBA #

Print Name

II. Declaration of Defendant

2. I, (name) _____, state as follows:

On (date) _____ I was convicted of the following offense(s):

Count No: ____ Offense: _____

Count No: ____ Offense: _____

Count No: ____ Offense: _____

Offense Committed as a Victim of Certain Crimes

3. [] **Conviction as Victim.** The offense for which I was convicted was a misdemeanor or gross misdemeanor, and the conviction was 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, and all of the following are true:

- I am providing to the sentencing court or the sentencing court's successor, my statement of the specific facts and circumstances below that prove by a preponderance of the evidence that the offense was committed as a result of being a victim of one of the above offenses:

See attached.

- I have no criminal charges pending in any court of this or another state, or in any federal court for any crime other than prostitution.
- The offense for which I was convicted was a misdemeanor, and I have not been convicted of a new crime in this state, another state, or tribal court in the 3 years prior to date of the filing of this petition. RCW 9.96.060(2)(h).
- I have provided proof that the crime victim penalty assessment (RCW 7.68.035) has been paid in full, except where the conviction being vacated is for the crime of prostitution, prostitution loitering, or stay out of the area of prostitution.
- Restitution owed to any victim, excluding restitution owed to any insurance provider under Title 48 RCW, has been paid in full.
- The offense was not any misdemeanor or gross misdemeanor violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9A.44 RCW (sex offense), except for failure to register as a sex offender under RCW 9A.44.132.
- The offense was not a conviction as described in RCW 46.61.5055.
- The offense was not patronizing a prostitute as described in RCW 9A.88.110.

Other Misdemeanor and Gross Misdemeanor Offenses

4. **Excluded Offenses:** I cannot vacate a conviction for the following offenses. RCW 9.96.060(2)(c)-(e):

- A violation of chapter 9A.44 RCW (sex offenses), except for failure to register as a sex offender under RCW 9A.44.132.
- A violation of chapter 9.68 RCW (obscenity and pornography).
- A violation of chapter 9.68A RCW (sexual exploitation of children).
- A violent offense as defined in RCW 9.94A.030, or an attempt to commit a violent offense.
- Driving while under the influence ("DUI") (RCW 46.61.502).
- Actual physical control while under the influence (RCW 46.61.504).
- Operating a railroad, etc., while intoxicated (RCW 9.91.020).

5. **Prior Offense:** The offense for which I was convicted is considered a "prior offense" under RCW 46.61.5055 (see below), and all of the following are true:

- The prior offense is not a DUI (RCW 46.61.502) or Physical Control (RCW 46.61.504). RCW 9.96.060(2)(d).

- I have not been convicted of any new crime in this state, another state, or federal or tribal court in the 3 years prior to this vacation application. RCW 9.96.060(2)(h).
- At least 3 years have passed since I completed the terms and conditions of the sentence, including restitution/legal financial obligations. RCW 9.96.060(2)(g).
- I have not had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense. RCW 9.96.060(2)(d).
- More than 10 years have passed since the date of the arrest for the prior offense. RCW 9.96.060(2)(d).
- 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).
- I am not currently restrained by a domestic violence protection order, a no-contact order, an anti-harassment protection order, or a civil restraining order which restrains one party from contacting the other party. I was not previously restrained by such an order and found to have committed 1 or more violations of the order in the last 5 years. RCW 9.96.060(2)(i).

A "prior offense" means (RCW 46.61.5055(14)):

Original Convictions, including equivalent local ordinances, for:

- Driving Under the Influence (DUI) (RCW 46.61.502) or an equivalent out-of-state conviction.
- Physical Control of a Vehicle under the Influence (Physical Control) (RCW 46.61.504) or an equivalent out-of-state conviction.
- Commercial Vehicle DUI/Physical Control (RCW 46.25.110).
- Watercraft DUI (RCW 79A.60.040(2)).
- Aircraft DUI (RCW 47.68.220).
- Nonhighway vehicle DUI (RCW 46.09.470(2)).
- Snowmobile DUI (RCW 46.10.490(2)).

Amended Convictions:

- **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 also 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.

Deferred Prosecution Granted for:

- Driving Under the Influence (DUI) (RCW 46.61.502), including local and out-of-state equivalents.
- Physical Control of a Vehicle under the Influence (Physical Control) (RCW 46.61.504), including local and out-of-state equivalents.

- Negligent Driving 1st (RCW 46.61.5249) or equivalent local ordinance if the charge under which the deferred prosecution was granted was originally filed as a violation of 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).
- An equivalent out-of-state deferred prosecution for DUI or Physical Control, including a substance use disorder treatment program. (RCW 46.61.5055(14)(a)(xvi)).

Deferred Sentences for:

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 deferred sentence was imposed for Negligent Driving 1st (RCW 46.61.5249), Reckless Driving (RCW 46.61.500), Reckless Endangerment (RCW 9A.36.050), or an equivalent local ordinance.

6. [] **Domestic Violence:** The offense for which I was convicted involves domestic violence and I have complied with the following conditions (RCW 9.96.060(2)(f)) and all the following statements are true:

- I provided the prosecuting attorney's office that prosecuted the offense with written notice of this petition. RCW 9.96.060(2)(f)(i).
- I filed the original notice with this court. RCW 9.96.060(2)(f)(i).
- I have not been convicted of 2 or more domestic violence offenses stemming from different incidents. RCW 9.96.060(2)(f)(ii).
- 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);
- It has been at least 5 years since I completed the terms and conditions of the sentence, including restitution/legal financial obligations and successful completion of any treatment ordered. RCW 9.96.060(2)(f)(iv).
- I have not been convicted of any new crime in this state, another state, or federal or tribal court in the 3 years prior to this vacation application. RCW 9.96.060(2)(h).
- 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).
- I am not currently restrained by a domestic violence protection order, a no-contact order, an anti-harassment protection order, or a civil restraining order which restrains one party from contacting the other party. I was not previously restrained by such an order and found to have committed 1 or more violations of the order in the last 5 years. RCW 9.96.060(2)(i).

7. [] **Offenses not otherwise specified above,** and all the following statements are true:

- At least 3 years have passed since I completed the terms and conditions of the sentence, including restitution/legal financial obligations. RCW 9.96.060(2)(g).
- I have not been convicted of any new crime in this state, another state, or federal or tribal court in the 3 years prior to this vacation application. RCW 9.96.060(2)(h).
- 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).

- I am not currently restrained by a domestic violence protection order, a no-contact order, an anti-harassment protection order, or a civil restraining order which restrains one party from contacting the other party. I was not previously restrained by such an order and found to have committed one or more violations of the order in the last 5 years. RCW 9.96.060(2)(i).

I declare under penalty of perjury under the laws of the state of Washington that the foregoing and any attachments are, to the best of my knowledge, true and correct.

Signed at (*city or county*) Spokane, Washington on (*date*) _____.

Defendant's Signature

Print Name

Mailing Address, unless confidential:

Street Address or PO Box *City* *State* *Zip*