

CAN I CLEAR MY CRIMINAL RECORD?

This memo is not intended to give legal advice, but to guide you to the laws and other resources.



Legal Information & Referral: 206-621-7691
Toll-Free: 1-866-259-7720
TTY: 206-521-4317
Web: www.legalvoice.org

How Does My Criminal Record Affect Me?

If you have been charged with criminal violations in the past, the record of those charges may affect your ability to get work, housing, public benefits, financial aid for education, to drive or to enjoy other rights or privileges, such as voting. This memo will help you understand what rights and options you have and what procedures you must use to limit access to your criminal record by others.

It is important to note that in very limited circumstances can you actually clear your criminal record, as in remove or destroy information. In those very limited instances that you will be able to delete information from your record, you will only be able to remove information that is explained below as “non-conviction data” (see the “Deleting Non-Conviction Law Enforcement Records” section).

Am I Eligible to Clear My Criminal Record?

It is important to try to decide if you are eligible to apply to have your record cleared before you spend time and money hiring an attorney or trying to use these procedures yourself.

Your options under Washington law generally depend on:

- How many and what kind of crimes you have been accused of committing;
- The result of each charge (this is called “disposition”). Were you convicted? Was there a deferred prosecution? These court decisions are defined as “adverse to the defendant”); and
- How long has it been since the last time any charges, convictions, or other adverse dispositions were made?

There are other requirements, depending on the crime. See the specific information for your situation on the following pages.

Will Clearing My Record Solve My Problem?

Successfully clearing your record does not restore all the rights or privileges you have lost, such as the right to possess firearms, or if you are not an American citizen.

Also, information about your record could get out some other way. For example, if someone has found information about your record on the Internet and saved it before your record was cleared or vacated, they will still be able to distribute the information if a potential employer or landlord uses their service.

Where Do I File My Request?

Which court or law enforcement agency you apply to depends on the location of the crime and the court in which it was heard. Sometimes the arrest, citation or warrant that resulted in the charges comes from a different place than the law enforcement agency that maintains the records or the court that heard the case and maintains those records.

This memo does not help you deal with criminal records that are kept outside of the state of Washington, or convictions in federal court, even if the federal court is in Washington. In these situations, you will need to talk to an attorney. See the Resources at the end of this memo.

How Do I Begin?

You need to get the following information:

- Where the criminal record was recorded,
- The date of the conviction, acquittal, or certificate of discharge,
- The date that all sentence requirements were completed, and
- The law that was allegedly violated (including the number in the Revised Code of Washington where that law can be found).

The first step is to figure out where in the state the crime happened – this is called the “jurisdiction”, what law enforcement agency investigated the incident, and their central location in the state.

There are state (highway patrol), county (sheriffs) and local (police, marshals) agencies. Try to identify every agency which has recorded information on you. For example, local police agencies are required by law to send fingerprint arrest cards and identification information to the Washington State Patrol on adults and juveniles accused of felonies and misdemeanors.

The Washington State Patrol Identification and Criminal History Section maintains records on arrests, detentions, charges, convictions and acquittals within the state. See the Resource List at the end of this memo. You have a legal right to inspect this criminal history and record information.

If you had to appear at a court or send a fine to a particular court, then there will also be a court record. If you can't remember exactly which court it went to (a city, county, state or federal, adult or juvenile court), the law enforcement agency may be able to tell you which court has your records. The court website (see Resource List) has a statewide directory of courts including addresses, phone numbers and court rules. If you don't have access to the Internet, you may call the Administrative Office of the Courts for information on how and where to get the information you need to begin the process.

The state law in the Revised Code of Washington (RCW) that applies for each situation and any Washington Administrative Code (WAC) sections that may apply when you are contacting a state agency are listed in each section below. Laws and codes can be found on the internet (see the Resource List) or you can check your local library for copies of the RCW and WAC.

Each section below tells you other specific information you need to get, whether or not there are forms available, and what laws apply.

Types of Records and Available Remedies

Correcting Inaccurate or Incomplete Criminal History Records

Who Can Do This?

This procedure applies if a state, county, or local law enforcement agency is keeping or giving out information about your criminal history which is not accurate. It does not apply if you are trying to argue that a particular action by a court or police agency was not proper. For example, inaccurate information is a record that you were arrested, charged or convicted for something when it never happened to you. Another example is information about an incident when you were arrested for one crime but charged or convicted of a less serious crime.

How to Do This:

You must make a challenge, asking the agency to correct the wrong information. Clearly identify the information you feel is wrong. Contact the agency that has the record of that information. Ask the law enforcement agency what written form they want the request in (such as a letter or a special form) and the name of the person to send it to, to make sure it gets to the right person for a decision. If the agency refuses to change it, you can appeal their decision to the superior court in the county where you live, the county where the disputed record comes from, or Thurston County.

Where to Find More Information:

The law that outlines this right is contained in the Revised Code of Washington (RCW) Sec. 43.43.730.

Deleting Non Conviction Law Enforcement Records

Who Can Do This?

If you were accused of a crime, but there was never a final decision against you, (a conviction, a deferred disposition, or a dismissal after completion of a sentence) law enforcement agencies, especially the Washington State Patrol, may still have a record that you were arrested, charged, or issued a citation. This information may exist in records even if your case was never filed with the court, was dismissed, was vacated, or you were found not guilty. Other agencies like the FBI may have been given this information also. Whether the information will be deleted depends on:

- How much time has gone by (in which you were not a fugitive),
- Whether you have other prior convictions,
- What the result was in this incident, and
- Whether you have been accused of any other crimes since then.

You cannot use this process if the case was dismissed after a period of probation or a deferred sentence.

How to Do This:

Petition the Washington State Patrol (WSP) (see the Resource list) and/or other agency keeping the record to delete it. The WSP has a standard form they use and other agencies may have their own, so it is a good idea to contact the agency to make sure you send in the request the right way. It is a good idea to also file requests with the law enforcement agency that handled the investigation of the incident.

What Will the Result Be?

This process results in the Washington State Patrol (WSP) deleting the information from their database. You should also inform other local and federal keepers of such records of the deletion. It is a good idea to keep a copy of the result for yourself also. This process of deleting or expunging does not necessarily mean the records are destroyed. It denies public access to the records and requires all mention of the charge be removed from your permanent public record.

Where to Find More Information:

For specific information on qualifying, see “A Guide on When and How to Challenge, Seal, Vacate or Expunge”, on the court website (see Resource List). For the information you need to submit, refer to the Washington State Patrol or local police agency form. See RCW Sec. 10.97.060 and WAC Sec., 446-16-025 for the specific laws that apply.

Vacating Records of Misdemeanor Convictions

Who Can Do This?

A misdemeanor is generally an offense punishable by a fine of no more than \$1000 and up to 90 days in jail. A gross misdemeanor is a crime punishable by no more than a \$5000 fine and up to one year (365) days in jail.

You can file a motion to vacate your conviction if:

- At least three years have passed since you completed your sentence (including probation), or five years have passed for a DV offense; and
- You have no pending criminal charges or new convictions; and
- You have satisfied all of the conditions of your sentence.

Except, you cannot request that your conviction be vacated if:

- Your offense or attempted offense was violent, as defined in RCW 9.94A.030; or
- Your offense involved DUI or a related offense; or
- Your offense was a sex offense; or
- You had a different conviction vacated before this; or
- You have been the subject of a protection, no contact, or restraining order within the past five years.

Check the state statute or local law you were convicted under carefully to see if your crime is included in the list above. You must meet additional requirements if your crime was defined as a domestic violence crime.

How to Do This:

If you have a misdemeanor or gross misdemeanor conviction that is affecting you, you need to petition the court where the conviction was entered.

You need to use the forms provided by the court. You can get the state forms from the Administrative Office of the Courts (see Resource List). You need to contact the local court that handled your case to:

- Make sure you have the information that you need to fill out the forms,
- Find out if the forms provided by the state are the only documents that the local court will require (some require a copy of your criminal record),
- Find out how many copies you will need, and
- To learn the procedure the local court uses to get your request heard and decided.

You will need to provide notice and a copy of the motion to the prosecutor's office that handled the matter. That notice includes a hearing time -- you need to ask court staff how, when and where the hearing will be held. Also ask them if the instructions you found are the only court procedures you need to be aware of.

This request can be made only once in a lifetime, so make sure you have requested everything you have a right to, for each crime you qualify for. Remember the court has the choice to grant or deny the motion.

What Will the Result Be?

If the court grants your motion and signs the order, you may say you have never been convicted of that crime. The information cannot be included in your criminal history, but can be used for some purposes in a later prosecution. The court is supposed to send notice of the order to the Washington State Patrol. You can get certified copies of the order from the clerk of the court after the judge signs the order and send them to other law enforcement agencies that may have

these records. Please note that vacating the conviction will not remove the record from public eye or destroy the court file, it will only act to change the disposition from convicted to vacated. A vacated conviction may still show up on many background checks, so always be prepared with a certified copy of the vacation order if you get a chance to explain your position.

Where to Find More Information:

Read the statute, RCW 9.96.060. Refer to the forms and the "Guide on When and How to Seal, Vacate, or Expunge", available from the Administrative Office of the Courts (see Resource List). Instructions are included with the forms, but each court has their own rules and procedures, so you will also need to check with the specific local court.

Sealing or Destruction of Criminal Records:

-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.

-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.

Sealing the record does not necessarily restore your right to own or possess firearms. There are strict additional limitations under different federal and state laws. You should consult a lawyer about if and how you can restore this right under both state and federal law because a firearms violation is a very serious crime.

Vacating Felony Convictions

Who Can Do This?

If you have a felony conviction in this state, you may apply to the court that sentenced you to vacate the conviction. This does not include federal convictions by a federal court. Vacating federal felony convictions is determined under federal law, which is much stricter.

It is difficult to get a felony vacated. First, you have to successfully complete the sentence you were given, and then wait five or ten years, depending on the class of the crime. The timing of your conviction and when you completed your sentence and received a "Certificate of Discharge" may affect your rights, because the law has changed. You should consult a lawyer if your conviction occurred before 1984.

You can file a motion to vacate your felony conviction if:

- at least five years have passed for Felony C convictions, or at least ten years have passed for Felony B convictions from the date on the Certificate of Discharge; and
- there are no pending criminal charges; and
- the conviction was not for a violent offense (see RCW 9.94.030); and
- the offense was not a "crime against a person" (see RCW 43.43.830); and
- there is no new criminal conviction since the date of the Certificate of Discharge.

How to Do This:

It is up to the court to decide whether or not to grant or deny the relief, that is, whether or not to vacate your record.

You will file your motion in the court where you were convicted. Make sure you have the Certificate of Discharge, which is the record in your file which verifies that you completed your sentence. Please be aware that the Certificate of Discharge will not be issued automatically at the completion of your case. As soon as you think you are eligible, you should begin to pursue obtaining a Certificate of Discharge immediately. Information on getting a Certificate of Discharge can be found in the Resources at the end of this memo.

What will the Result Be?

If the court decides in your favor, it will withdraw or set aside the verdict or plea of guilty, grant your motion, and sign an order dismissing the charge. This order gets filed with your court record. The information cannot be used in your criminal record. Under state law, you may state you have never been convicted of that crime. Please note that by vacating the conviction, this will not remove the record from public eye or destroy the court file, it will only act to change the disposition from convicted to vacated. To seal from the public eye, see below.

Sealing or Destruction of Criminal Records:

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.

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. However, it may be difficult to get a court order sealing the court file for a vacated conviction because of a 2009 Court of Appeals decision. See the self help packet "Criminal History/Records: A Guide on When and How to Seal/Vacate Non-violent Class B or C Felony Convictions Occurring On or After July 1, 1984" for the latest information on this issue.

Sealing the record does not necessarily restore your right to own or possess firearms. There are strict additional limitations under different federal and state laws. You should consult a lawyer about if and how you can restore this right under both state and federal law because a firearms violation is a very serious crime.

Where to Find More Information:

See the "Guide on When and How to Seal, Vacate or Expunge", and NJP's "Criminal History/Records: A Guide on When and How to Seal/ Vacate Non-violent Class B or C Felony Convictions Occurring On or After July 1, 1984" (see Resource List) for more information. The law that applies is RCW Sec. 9.94A.640.

Sealing or Destroying Juvenile Records

Who Can Do This?

In Washington, juvenile records do not automatically disappear once the individual turns 18. If your case was decided by a Superior Court in a juvenile court action and you were under 18 at the time of the crime, and the case was not transferred to an adult court, the court has the power to seal or destroy records of that case. If you have only diversions, you may request destruction of those records after a certain period of time. If it is a decision against you, the court can only seal the records. In juvenile court the result of your case is recorded by law as an "adjudication."

If you were sentenced after July 1, 1997 and:

- your offense was not a sex offense or a Class A felony; and
- since you were last released from confinement, you have spent a certain number of years in the community (Class B felony – 5 years; Class C felony – 2 years; gross misdemeanor, misdemeanor or diversion – 2 years) without committing any offense or crime that resulted in a conviction; and
- there are no pending proceedings against you for a juvenile or criminal offense or for a diversion agreement; and
- you have paid all restitution,

You may qualify to apply to have your record sealed.

How to Do This:

You need to file a motion with the court and send a notice to the government. You can get a self help packet, "Sealing Juvenile Court Records in Washington State" on the Washington Law Help website (see Resource list). Notice, with a copy of the motion, must be given to the prosecuting agency along with other agencies outlined in the forms. You should contact the clerk of the particular juvenile court in which the adjudication was entered or heard to find out if these forms are the only documents you need to file. Also ask the clerk how you get the required order under local court rules, including how many copies you will need.

What Will the Result Be?

If you qualify and are granted relief, the result is your record is sealed. Your offense and the proceedings in the case are treated as though they never happened. You may say "No" on any job, employment or housing application that asks if you committed the offense. Sealed records are protected from public examination, but they do not cease to exist. If you are charged or convicted of crimes after this, the sealing order may become void automatically, so that it will no longer protect you. The court can use your record for any reason authorized by law in connection with a new case.

Where to Find More Information:

See RCW 13.50.050 for the special rules regarding the release of information on juveniles. See the Resource List.

The timing of your conviction may affect your rights because the law has changed. You may have to consult a lawyer, if your conviction occurred before 1997. The laws that apply to these rights can be found at RCW 13.50.050.

See the packet “Sealing Juvenile Court Records in Washington State.” See Resource list.

Other Remedies

Certificate of Rehabilitation

Some states have procedures to apply for a certificate of rehabilitation. “As currently drafted, there is no provision in Washington statutes for the issuance of a certificate of rehabilitation.”¹

Sealing for Manifest Injustice

If you do not qualify under any of the procedures described in this memo, you may want to discuss with a lawyer if there is any way to seal your file for “manifest injustice”. The court may have this power separate from the laws outlined above.

Civil Rights

The governor may restore civil rights to a person by granting a pardon or when the maximum term of imprisonment for which a person was committed has expired (RCW 9.96.010).

Voting Rights

Washington State recently passed a law that automatically restores the right to vote to individuals convicted of felonies when they have completed their time in prison and have served any required community custody supervised by the State Department of Corrections. This law took effect on July 26, 2009. For information about restoring your voting rights, see the Resource list.

Employer Hiring Procedure

Washington State law RCW 9.96A.020 states that a felony conviction does not disqualify a person for state or local government employment or licenses, with some exceptions for certain types of crimes and employment. However, information about convictions can be considered in the hiring or licensing process. Also, Washington Administrative Code (WAC) 162-12-140 limits employers and employment agencies to asking about convictions in cases where the convictions reasonably relate to job duties and the conviction or release from prison occurred within the last ten years. In both cases, there are exceptions for law enforcement agencies, state agencies, school districts, businesses, and other organizations that have direct responsibility for the supervision, care, or treatment of children, mentally ill people, developmentally disabled people, or other vulnerable adults.

Other Strategies

You may need to try other strategies, including informal explanations to the person who may consider your record, such as a prospective employer or landlord. Since many of the laws are very strict and limit your ability to keep your past record secret, concentrating on your positive present situation, the changes you have made in your life since the criminal behavior, or the

¹ Harry Avery Smith v. State of Washington, No. 21366-8-III, slip op. at 4 (WA App., September 18, 2003).

reason for it, and the fact that you deserve a chance may convince the person that policies or rules should be guidelines, and not apply to your particular situation.

In some areas, there are organizations that work with ex-offenders. They can give you valuable advice and support (see the Resource list).

Resources

Legal Information and Self Help

List of courts in Washington State www.courts.wa.gov/directory
Administrative Office of the Courts, Phone: (360) 705-5328

This website provides easy access to state law (RCW's) and administrative codes (WAC's): www.legalwa.org. Public libraries and law libraries also have copies.

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

www.courts.wa.gov/newsinfo/resources/brochure_criminal/CrimPamphlet.pdf

This guide contains definitions and other information that may not be in this memo. It should help you figure out if your particular case qualifies.

For information on getting your criminal history records:

Washington State Patrol Identification and Criminal History Section (360) 534-2000

www.wsp.wa.gov/crime/crimhist.htm

To request forms to expunge non-conviction data, call the Washington State Patrol number above or email: watch.help@wsp.wa.gov You may also write to: Identification and Criminal history Section, Washington State Patrol, PO Box 42633, Olympia, WA 98504

Forms requesting the court to vacate your misdemeanor or gross misdemeanor: Go to www.courts.wa.gov/forms. Search for "Vacating/Sealing records". You should also check with the court or police agencies holding the record to determine if they have other forms or rules that you need to use.

Forms and instructions requesting a Certificate of Discharge can be found at:

Washington State: www.courts.wa.gov/forms/?fa=forms.contribute&formID=43

Spokane County: www.spokanecounty.org/superiorcourt/content.aspx?c=1105

Information on Legal Financial Obligations can be found at:

<http://www.washingtonlawhelp.org/documents/472551SULFOBrochure.pdf?stateabbrev=/WA/>

"Criminal History/Records: A Guide on When and How to Seal/Vacate Non-Violent Class B or C Felony Convictions Occurring On or After July 1, 1984" www.washingtonlawhelp.org under "Criminal". Forms necessary for filing the motion are included. If you do not have access to the Internet, call Legal Voice.

Forms and instructions on "Sealing Juvenile Court Records": www.washingtonlawhelp.org, under "Criminal".

"Answering Questions from Employers about Criminal Records or Arrests"

www.legalmomentum.org/assets/pdfs/answeringcrquestions.pdf

This guide helps to answer questions about the law to help protect you against discrimination and afford you some privacy.

Information on restoring your voting rights can be found at these websites:

www.aclu.org/files/pdfs/votingrights/wa_VRRbrochureDec09_english.pdf - English

www.aclu.org/files/pdfs/votingrights/wa_VRRbrochureDec09_spanish.pdf - Spanish

www.srb.wa.gov/documents/felonflyer_1442.pdf; and www.secstate.wa.gov/elections/faq.aspx

Legal Services

If you can afford to pay an attorney for a consultation, you can contact Legal Voice for referral to attorneys statewide, or for the memo "How to Find a Lawyer", which includes telephone numbers for county bar association lawyer referral services (206) 621-7691 or 1-866-259-7720.

Some counties have clinics that offer a free visit with an attorney who can give you legal advice and help you with paperwork.

Juvenile Record Sealing Clinics

Lawyers Fostering Independence Program, Seattle, (206) 696-7503, ext. 17
Center for Children & Youth Justice Clinic – Third Thursday of each month, 4-6 PM

Street Youth Legal Advocates of Washington (must be over 18), (206) 384-6378

Seattle Clinic – First Wednesdays 6-8 p.m. at SCRAP

Everett Clinic – First Mondays at Northwest Justice Project

Kitsap Legal Services, (360) 479-6125

Bremerton Clinic – Monday-Friday, 8:30-3:30

Legal Advice and Assistance

If you are very low-income, one of these legal services organizations may be able to help you with free legal advice and assistance using the materials.

Outside King County:

CLEAR at 1-888-201-1014

Weekdays from 9:30-12:30 A.M. and Tuesdays from 3:30-6:15 P.M. Help by telephone.

In King County:

King County Bar Association Lawyer Referral at 206-267-7010 (for screening)

9:00-5:00 Monday-Friday for an appointment with a volunteer attorney.

Open Door Legal Services at 206-682-4642

9:30-5:00 M-F. Walk-in clinic every Friday. Must be there by 1:45 to be seen that afternoon.

In Spokane:

Center for Justice, 509-835-5211, 8:30-5:00 Monday-Friday

Employment Assistance and Other Re-entry Support

CAMP, Seattle, 206-812-4940

Re-entry program for ex-offenders.

POCAAN: Corrections Connections, Seattle, 206-760-5586

Prisoner initiative re-entry program. Provides comprehensive services for the formerly incarcerated, non-violent offender.

Interaction Transition, Seattle, 206-324-3932

Assist ex-offenders' transition from prison to life in the free community; help with housing, work, and social support.

Justice Works!, Seattle, 206-309-2087

Undoing racism in the criminal justice system as experienced by African Americans, through court system accountability and re-entry support teams.

Center for Career Alternatives, Seattle, 206-322-9080

Job placement assistance for low-income King County and Snohomish County residents.

First Avenue Service Center, Seattle, 206-441-8405

Ex-offender assistance, work readiness. Get a ticket on the first Sunday of every month from 6:30-8:30 A.M. If just released from prison or in crisis, may be admitted at other times

Solanus Casey Services, Seattle, 206-223-0907 1008 James St.

Drop in daytime referral center provides services to people just out of jail or prison.

King Co. Dept. of Community and Human Services Veterans Incarcerated Project, 206-296-7564

Connects veterans with transitional housing, chemical dependency programs, employment and medical services. Fourteen to 90 days before expected release day, veteran should send a "white kite" message requesting an appointment with the VIP office.

Goodwill Industries Inland Northwest, Spokane, 509-444-4319

Employment resources for people with a criminal history who have been released from custody within the last year, including counseling on how to address your criminal history.

Many community colleges have employment counselors who have experience assisting ex-offenders. Some of these college programs and other WorkSource Centers and Affiliates are listed by county at: www.wa.gov/esd/wsdirectory_local.htm. These centers provide resource rooms, workshops and consultations for job seekers.

Thank you to Cassandra L. Stamm for her outline and review of this memo and to the Northwest Justice Project for their Guide, which served as a valuable resource for the preparation of the original version of this document, as did the brochure prepared by the State of Washington, also referenced in this memo.

Revised 04/14/10 Katie McGinley., 09/22/10 June Krumpotick