

# INSTRUCTIONS FOR VACATING MISDEMEANOR AND GROSS MISDEMEANOR CONVICTIONS

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 he or she has 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 sentences 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 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; or (ii) stalking.

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 motion with the court. The following information will assist you in deciding whether the law applies to your situation and, if so, how to ask the court to vacate your conviction.

If you meet the following criteria for marijuana offenses, a court will vacate the conviction/s:

- ❖ You were 21 years of age or older at the time of the offense.
- ❖ Marijuana offenses 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.

If you qualify for vacating a marijuana conviction, use form *Motion and Declaration for Order Vacating Marijuana Conviction*, CrRLJ 09.0800. (**Skip** to the section “File your motion and notify the Prosecutor’s office” at the end of this document.)

If you meet the following criteria for offenses other than a marijuana conviction, a court

may, in its discretion, vacate the conviction.

- ❖ There are no criminal charges pending against you in any court of this state or another state, or in any federal or tribal court as of the date you file the motion.
- ❖ You have 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.
- ❖ You are not currently restrained by a domestic violence protection order, a no-contact order, an antiharassment protection order, or a civil restraining order which restrains one party from contacting the other party and you were not previously restrained by such an order and found to have committed one or more violations of the order in the five years prior to the vacation application.
- ❖ **Excluded Offenses:** The conviction you are seeking to have vacated is a misdemeanor offense and is **not** for one of the following crimes:
  - A violation of chapter 9A.44 RCW (sex offenses), except you can vacate a conviction 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
- ❖ **Prior Offense:** If the crime you are seeking to have vacated is considered a “prior offense” as defined below, then the following additional criteria must be met:
  - The offense is not excluded from being vacated (see excluded offenses above); and
  - You have not been convicted of a new crime in this state, another state, or federal or tribal court in the three years since the date you were sentenced on the crime you wish to have vacated; and
  - at least three years have passed since you completed the terms and conditions of the sentence, including restitution/legal financial obligations. RCW 9.96.060(2)(g); and
  - You have not had any subsequent alcohol or drug violations within 10 years of the date of arrest for the prior offense; and
  - More than 10 years has elapsed since the date of the arrest for the prior offense.

A “prior offense” means (RCW 46.61.5055(14)):

- **Original Convictions for the following** (including equivalent local ordinances):
  - Driving Under the Influence (DUI) RCW 46.61.502,
  - Actual physical control while under the influence (Physical Control) RCW 46.61.504,
  - Commercial Vehicle DUI/Physical Control, RCW 46.25.110,
  - Watercraft DUI, RCW 79A.60.040(2),

- Aircraft DUI, RCW 47.68.220, committed under the influence of intoxicating liquor or any drug,
- Nonhighway vehicle DUI, RCW 46.09.470(2),
- Snowmobile DUI, RCW 46.10.490(2),
- Equivalent out-of-state statute for any of the above offenses.
- **Amended Convictions for the following:** *If originally charged with DUI or Physical Control, 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,
  - Reckless Endangerment RCW 9A.36.050,
  - Equivalent out-of-state or local ordinance for the above offenses.*If originally charged with Watercraft DUI, RCW 79A.60.040(2); but convicted of:*
  - Operating a Watercraft in a reckless manner, RCW 79A.60.040(1), or
  - Equivalent local ordinance.*If originally charged with Aircraft DUI, RCW 47.68.220; but convicted of*
  - Operating an Aircraft in a careless or reckless manner, RCW 47.68.220, or
  - Equivalent local ordinance.
- **Deferred Sentences for the following:** *If originally charged with DUI or Physical Control 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,
  - Equivalent out-of-state or local ordinance for the above offenses.

- ❖ **Domestic Violence:** If the crime you are seeking to have vacated involved domestic violence, you must:
  - Provide the prosecuting attorney's office that prosecuted you with timely notice of your motion and declaration for order vacating conviction and file the original notice with the court.
  - You must not have been convicted of two or more domestic violence offenses stemming from different incidents. (If the current application is for more than one conviction that arose out of a single incident, none of those convictions count as a previous conviction.)
  - Five years have elapsed since you completed the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment ordered as a condition of sentencing.
  - You have not been convicted of any new crime in this state, another state, or federal or tribal court in the three years prior to the vacation application. RCW 9.96.060(2)(h).
- ❖ **Prostitution Conviction as a Victim:** If the crime you are seeking to have vacated is a prostitution offense that you committed as a result of being a victim

of:

- trafficking, RCW 9A.40.100,
- promoting prostitution in the first degree, RCW 9A.88.070,
- promoting commercial sexual abuse of a minor, RCW 9.68A.101, or
- trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. §7101 et seq.

And if you meet the following criteria, a court may, in its discretion, vacate the conviction:

- There are no criminal charges pending against you for any crime other than prostitution in any court of this state, or another state, or in any federal court.
- You have not been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction. This limitation does not apply to convictions where the offender proves by a preponderance of the evidence that he or she committed the crime as a result of being the victim of trafficking, RCW 9A.40.100; promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. § 7101 et seq., according to the requirements provided in RCW 9.96.070 for each respective conviction.
- You prove that it is more likely than not that the following occurred in your case (more than one section may apply):
  - If you were convicted for a prostitution offense as a result of being a victim of trafficking, RCW 9A.40.100, you must prove:
    - Someone harbored, transported, provided, obtained, bought, purchased, or received you.
    - That person acted knowingly or in reckless disregard for the fact that force, fraud, or coercion would be used to cause you to engage in a sexually explicit act or commercial sex act.
    - Your prostitution conviction record and other applicable convictions under RCW 9.96.060(3)(b) resulted from that person's acts.
  - If you were convicted for a prostitution offense as a result of being a victim of promoting prostitution in the first degree, RCW 9A.88.070, and:

If you were compelled by threat or force, you must prove:

    - You were compelled by threat or force to engage in prostitution.
    - The person knowingly used threat or force to compel you to engage in prostitution.
    - Your prostitution conviction record and other applicable convictions under RCW 9.96.060(3)(b) resulted from being compelled by threat or force by that person.

If you were compelled, you must prove:

- You have a mental incapacity or developmental disability that renders you incapable of consent.
  - You were compelled to engage in prostitution.
  - The person knowingly compelled you to engage in prostitution.
  - Your prostitution conviction record and other applicable convictions under RCW 9.96.060(3)(b) resulted from being compelled by that person.
- If you were convicted for a prostitution offense as a result of being a victim of promoting commercial sexual abuse of a minor, RCW 9.68A.101, you must prove:
- You were under the age of 18 at the time of the prostitution offense.
  - While you were under the age of 18, someone:
    - caused or aided someone else to commit commercial sexual abuse of you, or
    - asked for or got customers for commercial sexual abuse of you; or
    - provided persons or places for the purpose of commercial sexual abuse of you, or
    - operated or assisted in operating a house or enterprise for the purpose of commercial sexual abuse of you, or
    - did anything else designed to result in commercial sexual abuse of you, or
    - caused or aided someone else to commit a sexually explicit act with you, or
    - asked for or got customers for a sexually explicit act with you, or
    - provided persons or places for the purpose of a sexually explicit act with you, or
    - did anything else designed to result in a sexually explicit act with you.
  - That person acted knowingly.
  - Your prostitution conviction record and other applicable convictions under RCW 9.96.060(3)(b) resulted from that person's actions.
- If you were convicted for a prostitution offense as a result of being a victim of trafficking under the trafficking victims protection act of 2000, 22 U.S.C. § 7101 et seq., you must prove either that:
- You were induced by force, fraud, or coercion to engage in a commercial sex act and your prostitution conviction record is a result, or
  - You were induced to engage in a commercial sex act while you were under age 18 and your prostitution conviction record and other applicable convictions under RCW 9.96.060(3)(b) is a result.

❖ **Offenses not otherwise specified above.** If the conviction you want to vacate was for an offense that is not an Excluded Offense, a Prior Offense, a Conviction

for Prostitution as a Victim of Trafficking, and did not involve Domestic Violence, you must meet this criteria:

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

If you can satisfy each of the requirements with respect to the conviction you are asking the court to vacate, your next step is to complete the form CrRLJ 09.0100, *Motion and Declaration for Order Vacating Conviction*. This form will allow the court to determine whether you are eligible to have your conviction vacated. If you are asking the court to vacate your prostitution conviction/s, and you were a victim of trafficking under state or federal law of promoting prostitution in the first degree, or of promoting commercial sexual abuse of a minor, you must also complete form CrRLJ 09.0120, *Prostitution Conviction Attachment*, and attach it to the motion.

You may want to review the court file or the court docket for the offense you are asking the court to vacate to obtain information you need to fill out the form. Some counties may require you to obtain copies of your criminal history records and attach them to your motion. Read the local court rules or contact the clerk of the court where you will file your motion to find out if this requirement, or any other local requirement, applies to you. Once you have completed and signed the motion and declaration form and the attachment, if it applies, make at least two copies.

#### **File your motion and notify the Prosecutor's office:**

The next step is to schedule a hearing for the motion for order vacating conviction. 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 court uses to schedule a hearing. Make at least two copies of the notice. File the original motion and declaration for order vacating conviction, prostitution conviction attachment, if it applies, and notice document. On the same day that you file those documents with the clerk of the court, you must also provide a copy of the documents to the prosecuting attorney's office that prosecuted you.

To notify the prosecuting attorney's office of the hearing, you may also use form CrRLJ 09.0150, *Notice of Hearing to Vacate Conviction*. If you use this form, file the original with the clerk of the court. You must also provide a copy of the notice to the prosecuting attorney's office at the same time that you provide a copy of the motion, declaration, and attachment. Keep a copy of the notice, the motion, the declaration, and any attachments for your information.

The judge will hear your motion for order vacating conviction on the day scheduled for the hearing. You will need to be available to attend the hearing. If the motion 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.