

CAN I CLEAR MY CRIMINAL RECORD?

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 clear or limit access to your criminal record by others.



Legal Information & Referral:

206-621-7691

Toll-Free:

1-866-259-7720

TTY:

206-521-4317

Web:

www.LegalVoice.org

This memo is not intended to give legal advice, but to guide you to the laws and other resources. It is important to try to decide whether 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.

Situations in which criminal history records can be protected from use are very limited by the laws and court rules. The options that you are entitled to under Washington law generally depend on:

- 1) the number and type of crimes you have been accused of committing;
- 2) the result of the charge (disposition) (that is, whether there was a conviction or a deferred prosecution -- a decision defined as “adverse to the defendant”); and
- 3) the length of time that has gone by without any charges or legal accusations made,
among other requirements, depending on the crime.

Which court and/or law enforcement agency you apply to in order to get protection from disclosure of a previous charge also may depend on the location of the crime and the court in which it was heard. Keep in mind the arrest, citation or warrant that resulted in the charges may have occurred in a different place than the law enforcement agency that maintains the records, or the court that heard and maintains those records.

This memo cannot be relied upon to determine how to deal with criminal records outside of the state of Washington, or convictions that occurred in federal court, even if they occurred in Washington. Successfully clearing your record by either sealing, expunging, vacating, or destroying it does not have the effect of restoring all the rights or privileges you have lost because of your record, particularly when it comes to possessing firearms, or if you are not an American citizen.

In addition, there is no guarantee that information about your record will not 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, they will still be able to distribute the information if a potential employer or landlord uses their service.

WHERE TO BEGIN

You need to get the following information: where the criminal record was recorded, the date of the crime, the date of the conviction or acquittal, 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 determine where in the state the crime occurred, i.e. the jurisdiction, what law enforcement agency was responsible for investigating the incident, and their central location in the state.

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 criminal history and record information.

Remember that there are state (highway patrol), county (sheriffs) and local (police, marshals) agencies, so identifying every agency which has recorded information on you may be important to make sure where your records are maintained and which court may also be keeping it. (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.)

If you had to appear at a court or send a fine to a particular court, the clerk of that court will probably have a file and 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, including an informational brochure. 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 type of 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

1) Correcting Inaccurate or Incomplete Criminal History Records

Who Can Do This

The following procedure applies if a state, county, or local law enforcement agency is keeping and or giving out information regarding 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. Inaccurate information might consist of a record that you were arrested, charged or convicted for something when it never happened to you. It may include information about an incident in which you were arrested for one crime and 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 inaccurate. 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 help ensure it gets to the right person for a decision. If the agency declines to change it, their decision can be appealed 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.

2) Deleting Non Conviction Law Enforcement Records

Who Can Do This

If you were accused of a crime, but there was never a final decision adverse to you, (a conviction, a deferred disposition, or a dismissal after completion of a sentence)) law enforcement agencies, particularly the Washington State Patrol, may still have a record that you were arrested, charged, or issued a citation, in other words, accused of a particular crime. 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 disposition was in this incident, and whether you have been accused of any other crimes since then. You cannot use this process if the disposition was dismissal 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 file additional 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.

3) 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); 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 driving while intoxicated 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. There are additional requirements that must be met 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 necessary to fill out the forms, that the same forms provided by the state are the only documents they will require (some require a copy of your criminal record), the number of copies you will need, and the procedure they use for getting your request heard and decided.

You will need to provide notice to 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 is 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 all of the relief you are entitled 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 may want to send other copies of the order, certified by the clerk of the court after the judge signs it, to other law enforcement agencies that may have these records.

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 regarding if and how you can restore this right in compliance with both state and federal law because a firearms violation is a very serious crime.

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 that may require additional action, documents and copies, so you will also need to check with the specific court.

4) Vacating/Sealing Records of 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, since a state court did not sentence you and vacation of federal felony convictions is determined under federal law, which is much stricter.

The type and category of felony limits your options; the self help packet described below has a list of the offenses for which convictions cannot be vacated, mostly violent and sex offenses.

Successful completion of the sentence you were given, and very long waiting periods (five or ten years depending on the class of the crime) make it difficult to get a felony vacated. 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 prior to 1984.

How to Do This

The court has discretion (it is up to the court) to grant or deny the relief, so you will want to make sure you have the record in your file which verifies you completed your sentence (Certificate of Discharge).

You will file your motion in the court where you were convicted. You can get a free self help packet called "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" written by the Northwest Justice Project (NJP). Forms and step-by-step instructions are included in the guide (see 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 that gets filed with your court record. An order for sealing is sent to the Washington State Patrol. You may state you have never been convicted of that crime. The information cannot be used in your criminal record. However, the records are not destroyed; they are sealed, so that the general public does not have access to them. The court has the ability to unseal sealed documents under certain circumstances. This means it can be used by the court for any reason authorized by law in connection with a new case.

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 regarding if and how you can restore this right in compliance with 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 .

5) Sealing or Destroying Juvenile Records

Who Can Do This

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 particular period of time. If it is a decision adverse to 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 and 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 determine if the forms are the only documents you need to file and 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; that crime is treated as if it never happened and you may claim that publicly. However, if you are charged or convicted of crimes after this, the sealing order may become void automatically, so that it will not 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 prior to 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

Although 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

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.

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).

Some states, for example New York, have laws prohibiting employment discrimination against ex-offenders. Washington State does not; however Washington State law RCW 9.96A.020 does state that conviction of a felony 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. In addition, Washington Administrative Code (WAC) 162-12-140 limits employers and employment agencies asking about convictions to 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.

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

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 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

Administrative Office of the Courts (360) 705-5328

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

<http://www.courts.wa.gov/brochure/criminal/home.cfm>

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

Forms requesting the court to vacate your **misdemeanor or gross misdemeanor**

<http://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 on **"Sealing Juvenile Court Records,"**

<http://www.washingtonlawhelp.org>, under Civil Rights.

"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"
<http://www.washingtonlawhelp.org>, under Civil Rights. **Forms** necessary for filing the motion are included. If you do not have access to the Internet, call Legal Voice at 206-621-7691.

List of courts in Washington State <http://www.courts.wa.gov/directory/>

Washington State Patrol Identification and Criminal History Section

360-705-5100

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

For information on getting your criminal history records.

The Washington State Bar 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.

You can find information about **restoring your voting rights** at these websites:

<http://www.srb.wa.gov/restorevotingrights.html>

www.secstate.wa.gov/elections/voterguide/faq.aspx

In October, 2004, the ACLU filed a lawsuit in King County Superior Court challenging the denial of voting rights to ex-felons who have served their prison terms but are denied the right to vote solely because they owe money to the state. A decision has not been reached yet.

LEGAL SERVICES

If you can afford to pay an attorney for a consultation, you can contact

Legal Voice 206-621-7691

for referral to attorneys statewide, or for the memo "Working with a Lawyer", which includes telephone numbers for county bar association lawyer referral services.

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, call CLEAR at 1-888-201-1014 weekdays from 9:30-12:30 A.M. and Tuesdays from 3:30-6:15 P.M.

In King County, call King County Bar Association Lawyer Referral at 206-267-7010 (for screening) 9:00-5:00 Monday-Friday.

In Spokane, call the Center for Justice, 509-835-5211, 8:30-5:00 Monday-Friday.

These organizations provide **employment assistance and/or other types of re-entry support**:

- CAMP, Seattle, 206-812-4940
Re-entry program for ex-offenders.
- 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, 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.
Ex-offender assistance, work readiness.
- 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.
- *King County Dept. of Community and Human Services Veterans Incarcerated Project, 206-296-7564*

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

- 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: http://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 this document, as did the brochure prepared by the State of Washington, also referenced in this memo.