

Statutes, Rules, and Regulations

The following statutes, rules, and regulations concern court records and criminal history records:

Revised Code of Washington (RCW)

- 9.92.066 Termination of Suspended Sentence-Vacation of Conviction**
- 9.94A.640 Vacation of Offender's Record of Conviction**
- 9.95.240 Dismissal -Vacation of Conviction**
- 9.96.060 Misdemeanor Offenses -Vacating Records**
- 10.97.060 Deletion of Certain Information, Conditions**
- 13.40.127 Deferred Disposition**
- 13.50.050 Records of Juvenile Offenses**
- 43.43.730 Criminal History Records**

General Rules (GR)

Rule 15 Destruction, Sealing, and Redaction of Court Records
Rule 31 Access to Court Records

Washington Administrative Code (WAC)

446-16-025 Deletion of Arrest Records 446-16-030 Inspection by the Subject of Their Record (Courts may also have local rules governing access to court records.)

Resources

Washington Courts:

<http://www.courts.wa.gov/index.cfm>

This site includes a statewide directory of courts, court rules, the most current version of this brochure, forms, and information about legal research and the State Law Library. The Administrative Office of the Courts may be contacted at (360) 357-2130, but *agency personnel cannot provide legal advice.*

Washington State Legislature:

<http://apps.leg.wa.gov/rcw/> and <http://apps.leg.wa.gov/wac/>

These sites contain the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC). Copies of the RCW and the WAC are also available at local libraries.

Washington State Patrol:

<http://www.wsp.wa.gov/crime/crimhist.htm>

This site provides information about criminal history records. Call (360) 534-2000 for assistance from a State Patrol customer service representative.

Washington State Bar Association:

<http://www.wsba.org/atj/contact/lawref.htm>

This site offers contact information about lawyer referral services. The Service Center may be reached at 1-800-945-9722 or (206) 443-9722.

CRIMINAL HISTORY AND CRIMINAL RECORDS

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

*State of Washington
June 2014*

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

A court record includes documents, information, and exhibits that are maintained by the court in connection with a judicial proceeding. If a defendant is convicted, the record contains a disposition order or judgment and sentence specifying the crime(s) committed and the punishment imposed. If a defendant is acquitted or the court determines charges should not go forward, the record shows the action has been dismissed.

Court records are maintained by the clerk of each court. Court records, like court hearings, are generally open to the public. Requests to access or review documents in a court file need to be addressed to the Clerk's Office or the Court Administrator for the court where your case is filed. A court can only address requests about cases filed in that court. If you have cases in more than one court, you must make a separate inquiry to each court.

Whether a court record may be sealed and whether a conviction may be vacated depends on the type of crime involved (misdemeanor or felony) and the court where conviction is obtained (juvenile or adult). A decision whether to seal or vacate a criminal case can only be made by a judge in the court where the case was filed.

Sealing or destroying a court record or vacating a conviction does not necessarily affect the records maintained by law enforcement agencies, other government agencies, or private concerns. Requests about records maintained by other agencies must be made to those agencies.

JUVENILE COURT RECORDS

Sealing. The courts shall hold regularly scheduled sealing hearings to administratively seal individuals' juvenile offender court records pursuant to RCW 13.50.050. At the juvenile offender's disposition hearing, the court shall schedule the sealing for the first regularly scheduled sealing hearing date after the latest of the following events take place:

- Juvenile offender's eighteenth birthday;
- Anticipated completion of probation if ordered; or
- Anticipated release from confinement at the juvenile rehabilitation administration, or the completion of parole, if the respondent is transferred to the juvenile rehabilitation administration.

A contested hearing will be scheduled if there is an objection to the sealing or the court notes a compelling reason not to seal. The juvenile and the juvenile's attorney shall be given notice at least eighteen days before any contested sealing hearing, and allowed the opportunity to respond to any objections.

Following a contested sealing hearing, the court shall enter an order sealing the juvenile offender's court record unless the court determines the sealing is not appropriate.

The court shall enter an order sealing a juvenile offender's court record if:

- At the time of the offense it was not:
 - A most serious offense as defined in RCW 9.94A.030;
 - A sex offense under chapter 9A.44 RCW;
 - A drug offense as defined in RCW 9.94A.030; and
- The juvenile offender has completed the terms and conditions of disposition, including affirmative conditions and financial obligations.

Alternative Sealing Process

If a juvenile offender court record was not subject to the process described above, and the information was filed pursuant to RCW 13.40.100 or a complaint was filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the juvenile may file a motion with the court to vacate the order and findings and to seal the official juvenile court file, the social file, and records of the court and of any other agency in the case. Reasonable notice shall be given to the prosecution and to any person or agency whose records are sought to be sealed.

The court shall grant any motion to seal records for class A offenses if:

- Since the last date of release from confinement, \ including full-time residential treatment, or entry of disposition, the person spent five consecutive years in the community without committing any offense or crime resulting in an adjudication or conviction;
- No proceeding is pending against the moving party that seeks the conviction of a juvenile offense or a criminal offense;
- No proceeding is pending that seeks the formation of a diversion agreement with that person;
- The person is no longer required to register as a sex offender under RCW 9A.44.130 or is relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense;
- The person was not convicted of rape in the first or second degree, or of indecent liberties that was actually Committed with forcible compulsion; and
- Full restitution has been paid.

The court shall grant a motion to seal records for class B, class C, gross misdemeanor, and misdemeanor offenses and diversions if:

- Since the date of last release from confinement, including full-time residential treatment, or entry of disposition, or completion of the diversion agreement, the person spent two consecutive years in the community without being convicted of any offense or crime;

- No proceeding is pending against the moving party that seeks the conviction of a juvenile offense or a criminal offense;
- No proceeding is pending that seeks the formation of a diversion agreement with that person;
- The person is no longer required to register as a sex offender under RCW 9A.44.130 or is relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense; and
- Full restitution has been paid.

The court shall grant any motion to seal records of any deferred disposition vacated under RCW 13.40.127(9) prior to June 7, 2012, if restitution is paid and the person is eighteen or older at the time of the motion.

The court shall immediately seal an official juvenile court record upon the acquittal after a fact finding or upon dismissal of charges. If the subject of the juvenile records receives a full and unconditional pardon, the proceedings shall be treated as if they never occurred.

Effect of Sealing. When a motion to seal records is granted, the order shall seal the official juvenile court record, the social file, and other records relating to the case as named in the order. The proceedings in the case are to be treated as if they never occurred. However, identifying information held by the Washington State Patrol in accordance with chapter 43.43 RCW is not subject to destruction or sealing described above. Subsequent adjudication of a juvenile offense or a crime voids a sealing order and the case will be publicly accessible. However the court may order the juvenile court record resealed upon disposition of the subsequent matter if the case meets the sealing criteria described above and the court record was not previously resealed. Any charging of an adult felony after the sealing voids the sealing order.

The record of an employee is not admissible in an action for liability against the employer based on the former juvenile offender's conduct to show that the employer knew or should have known of the juvenile record of the employee. The record may be admissible if a background check conducted or authorized by the employer contained information in the sealed record.

Destroying. Juvenile records, including those maintained by any court, the prosecutor's office or law enforcement agency are eligible for destruction when:

- The person who is the subject of the information or complaint is at least 18 years old;
- The person's criminal history consists entirely of one juvenile diversion agreement or counsel and release entered on or after June 12, 2008;
- Two years have passed since completion of the juvenile diversion agreement or counsel and release;
- No proceeding is pending that seeks conviction of the person for a criminal offense; and
- There is no restitution owing in the case.

State and local governments and their officers and employees are not liable for civil damages for failure to destroy records.

All records maintained by any court, prosecutor's office or law enforcement agency shall be automatically destroyed within thirty days of being notified by the governor's office that the person received a full and unconditional pardon.

A person 23 years of age or older whose criminal history consists only of referrals for juvenile diversion may request that the court order destruction of those case records. Reasonable notice of the motion must be given to the prosecuting attorney and to any agency whose record are sought to be destroyed. The request is granted if the court finds that all diversion agreements have been successfully completed and no proceeding is pending that seeks conviction of the person for a criminal offense. Identifying information described in RCW 13.50.050(13) is not subject to destruction or sealing.

A person 18 years of age or older whose criminal history consists only of one juvenile diversion agreement or counsel and release entered prior to June 12, 2008, may request that the court order destruction of the case records. Reasonable notice of the motion must be given to the prosecuting attorney and to any agency whose record are sought to be destroyed. The request is granted if the court finds that two years have elapsed since the completion of the agreement or counsel and release. Identifying information described in RCW 13.50.050(13) is not subject to destruction or sealing.

Deferred Disposition. If a juvenile is granted a deferral of disposition under RCW 13.40.127, the court may dismiss the deferred disposition and vacate the conviction if:

- The deferred disposition was not previously revoked;
- The terms of supervision were completed;
- There are no pending motions concerning lack of compliance; and
- Restitution was paid in full or there was a good faith effort to pay the full amount of restitution during the period of supervision.

A conviction under RCW 16.52.205 (first degree animal cruelty) shall not be vacated. If a case is dismissed with restitution still owing, the court shall enter a restitution order for any unpaid restitution.

If the court vacates a conviction as described above, the case shall be sealed if:

- The deferred disposition was vacated after June 7, 2012;
- If the juvenile is eighteen years of age or older; and
- The full amount of restitution ordered is paid.

If the juvenile is not eighteen years or older, but the deferred disposition was vacated after June 7, 2012, and full restitution was paid, the court shall schedule an administrative hearing to take place within thirty days after the juvenile's eighteenth birthday and enter a written order sealing the case. Juveniles can petition the court to seal records under RCW 13.50.050 for deferred dispositions vacated prior to June 7, 2012.

Criminal History Records

Criminal history record information includes descriptions and notations of detentions, arrests, indictments, informations or other formal criminal charges, and any dispositions. "Criminal history records" are maintained by law enforcement and other criminal justice agencies and should not be confused with "court records," which are maintained by the courts. You have the right to inspect your criminal history record on file with a local police agency or with the Washington State Patrol.

Local police agencies submit criminal history record information to the State Patrol, which maintains the information in a statewide repository. Whether information contained in a law enforcement agency's files may be modified, sealed, or deleted depends on the outcome of the case (acquittal or conviction) and on the court that heard the case (juvenile or adult). Modifying or deleting criminal history records (law enforcement records) does not necessarily change the records maintained by the courts (court records).

A request to modify, seal, or destroy a court record must be directed to the court in which that record is filed.

Juvenile Criminal History Records

A court order to seal a juvenile record results in the removal of references to his or her arrest and disposition from the records maintained by the State Patrol. Identifying information such as photographs, fingerprints, and any other data that identifies a person by name, birthdate, address, or physical characteristics, are not subject to sealing or destruction.

Deletion of Criminal History Records

Under RCW 10.97.060, a criminal history record on file with a law enforcement agency is to be deleted at the request of the person who is the subject of the record if:

- The file consists of only nonconviction data;
- At least two years have elapsed since the record became nonconviction data as the result of entry of a disposition favorable to the defendant, or at least three years have elapsed from the date of arrest or issuance of a citation or warrant for which a conviction was not obtained (unless the defendant is a fugitive or the case is under active prosecution);
- The disposition was not a deferred prosecution or similar diversion of the alleged offender;
- The person has not had a prior conviction for a felony or gross misdemeanor; and
- The person has not been arrested for or charged with another crime during the intervening period.

Information about deleting nonconviction criminal record information from the State Patrol repository files may be obtained online at <http://www.wsp.wa.gov/crime/crimhist.htm> or by calling the Criminal History Support Unit at (360) 534-2000.

Challenges to Criminal History Records

A person who is the subject of a criminal history record may challenge the accuracy or completeness of that record. Challenges must be made in writing. Under RCW 43.43.730, a State Patrol decision declining a request to modify a record may be appealed.

Glossary

CHALLENGE: To assert that a criminal history record on file with a law enforcement agency is inaccurate or incomplete.

CONVICTION OR OTHER DISPOSITION ADVERSE TO THE DEFENDANT: A disposition of charges other than a decision not to prosecute, a dismissal, or an acquittal.

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

CRIMINAL HISTORY RECORD INFORMATION: Data contained in records collected by criminal justice agencies other than courts, consisting of descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any dispositions, including sentences, correctional supervision, and release.

DEFERRED SENTENCE: A sentence that will not be carried out if the defendant meets certain requirements, such as complying with conditions of probation. A deferred sentence is considered adverse to the defendant.

DELETE: To eliminate existing information.

DISCHARGE: An offender's release from confinement or supervision after completing sentence requirements.

DISMISSAL: The court-ordered termination of a case.

DISPOSITION: The formal conclusion of a criminal proceeding.

EXPUNGE: To physically destroy information.

FELONY: The offense classification for serious crimes. Felonies are designated class A, class B, and class C, with class A felonies subject to the longest terms of confinement.

GROSS MISDEMEANOR: An offense punishable by no more than 365 days in jail and \$5,000. Gross misdemeanors may be filed in either courts of limited jurisdiction (district or municipal courts) or superior court..

JUVENILE OFFENDER: A person under the age of 18 years who has not been transferred to adult court and who has been found to have committed an offense by the juvenile court. Individuals 18 years of age or older over whom jurisdiction has been extended are also juvenile offenders.

MISDEMEANOR: An offense punishable by no more than 90 days in jail and \$1000. May be filed in either courts of limited jurisdiction (district or municipal courts) or superior court.

MODIFY: To change existing information.

NONCONVICTION DATA: Criminal history record information relating to an incident that has not led to a conviction or other disposition adverse to the individual, and for which proceedings are no longer actively pending.

SEAL: To prevent access to a record.

SUSPENDED SENTENCE: A sentence postponed so the defendant is not required to serve time unless he or she commits another crime or violates a court-imposed condition. A suspended sentence is considered adverse to the defendant.

VACATE: To set aside a conviction.