

# Vacate criminal records: The basics

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You can clear (vacate) certain Washington state convictions from your record. Get general information about vacating records and learn which guides you need for your situation.

## **What does it mean to “vacate” convictions?**

Vacate is the legal term for “clearing” a conviction from your criminal record. Even though vacating a record cancels the judgement against you, it **does not** make the court record private. If you get a criminal record vacated, you can tell **anyone** who asked that you were **not** convicted of that offense.

## **Why would I want to vacate a conviction?**

It will:

- Give you some protection in background checks.
- Stop the State Patrol from releasing the record to the public.
- Officially “cancel” the conviction. [GR 15\(b\)\(8\)](https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=gr&ruleid=gag)  
([https://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=gr&ruleid=gag](https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=gr&ruleid=gag))
- **You can tell anyone, including someone who might hire you, that you were not convicted of that offense.**

## **Will I need to go to a hearing?**

**Maybe not.** The prosecutor might agree to a vacate order **if** you meet all legal requirements. Local practices vary. Ask the county prosecutor’s office in the county where your conviction occurred if they’ll agree to a vacate order. If they agree to the order, you probably won’t have to go to a hearing.

You'll most likely have to go to the court many times even if you don't have a hearing. Prepare for multiple visits to the courthouse over a period of many weeks.

### **If I vacate my record, will it be totally cleared?**

If you're granted an order that vacates a conviction or record, Washington State Patrol (WSP) will remove the vacated conviction from your public criminal history record. This gives you **some** protection in some background checks.

There may still be a mention of your conviction or record in certain places even if you have the record vacated. But once you have a court order that vacates a conviction, you can show that to prove that the record was vacated any time it does show up.

### **Will this remove all public information about the conviction?**

**No.** It will not remove it from court records and computerized court indexes to court records, such as:

- JIS.
- SCOMIS.
- The Washington Courts public website (<http://www.courts.wa.gov>)

If it was a domestic violence case, these records and indexes will still show the case type.

### **Even if you have your record vacated, it can still show up in these ways:**

- **Information** about the court records **from the case** that led to the conviction **are** still public and accessible on Washington Courts public website (<http://www.courts.wa.gov>).
- Prosecutors **can** still raise evidence of the vacated conviction during a later criminal prosecution or sexually violent predator commitment proceeding.
- **FBI records and private background check service records** may still have info about a vacated conviction.
- **Employers, landlords, and others doing background checks** might still find out about your conviction from sources including court indexes, law enforcement databases, and/or records collected by private data brokers.

## Can I have my conviction expunged?

No. In some states, expungement of a conviction means they delete it from your records entirely. There is no Washington law allowing for the deletion or destruction of an adult conviction record.

## Can I get my non-conviction data deleted?

Yes. You can ask Washington State Patrol (WSP) to delete **non-conviction** data. It is hard for information to qualify as non-conviction data under the rules. This could make it hard for you to get the information deleted. RCW 10.97.030(2) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=10.97.030>) and 10.97.060 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=10.97.060>) describe which kinds of information can be deleted from your record.

## I got a Vacate Order. What if agencies are still reporting that information anyway?

Under state law, law enforcement agencies must report accurate and complete criminal history info. No agency may report criminal history info concerning a conviction without checking with WSP to find out the most current and complete info available. RCW 10.97.040. (<https://app.leg.wa.gov/rcw/default.aspx?cite=10.97.040>)

You may be able to sue an agency that violates this requirement. This might make sense if, for example, you lost a job opportunity because of their mistake. RCW 10.97.110 (<http://apps.leg.wa.gov/RCW/default.aspx?cite=10.97.110>). You may be able to get attorney's fees.

The court file stays open to the public. A background check may still show your conviction if the person doing the background check looks at the court file. If that happens, you can show them the court order that vacated your conviction. That order is supposed to clear your record related to that information. Employers should accept the vacate order as proof that the record was cleared even if the court file information is still public.

Employees at an agency that keeps reporting your vacated conviction may be criminally liable. RCW 10.97.120 (<https://app.leg.wa.gov/rcw/default.aspx?cite=10.97.120>).

## Can I vacate a felony conviction? What about a misdemeanor conviction?

If you meet the requirements and the conviction is eligible to be vacated, you might be able to.

Some felony convictions are able to be vacated. See if you meet the requirements and get the forms you will need if you do.

Some misdemeanor convictions are able to be vacated. See if you meet the requirements and get the forms you will need if you do.

## **Can I vacate a misdemeanor for cannabis (marijuana) use?**

Yes. There is only one requirement. You must have been at least 21 years old at the time of the offense. Vacate a cannabis (marijuana) misdemeanor conviction has the instructions and forms that you need.

## **I am a member of an Indian tribe in Washington. What if my conviction was for exercising my tribal fishing rights?**

You can have the conviction vacated if both these are true:

- You are a member of a tribe that has treaty Indian fishing rights.
- They have those rights at the location where the offense occurred.

How do I vacate a criminal conviction related to treaty Indian fishing rights has the special instructions and forms you need to ask for this unique kind of order to vacate. If you need to ask to vacate a conviction related to your tribal fishing rights, the Native American Unit of the Northwest Justice Project (<https://nwjustice.org/specialized-units#6>) might be able to help you.

## **What if I need to vacate juvenile records?**

Seal, vacate, or destroy juvenile court records has the instructions and forms you need.

## **What if my conviction was related to being a victim of a crime?**

It can be easier to vacate your conviction if you can show that you committed the crime because you were the victim of domestic violence, sex trafficking, prostitution, or commercial sex abuse of a minor. In that situation, you can ask to have your records vacated **even if you didn't receive a Certificate of Discharge**.

You might have to show that you paid the crime victim's penalty assessment or paid any restitution not owed to an insurer.

You might be able to ask for your records to be vacated even if you have pending criminal prostitution charges.

Aside from current pending prostitution charges, you also can't have had any new convictions in state, tribal, or federal court for:

- 3 years if you want a misdemeanor to be vacated
- 10 years if you want a Class B felony to be vacated
- 5 years if you want a Class C felony to be vacated

You'll still have to meet the other requirements (<https://app.leg.wa.gov/RCW/default.aspx?cite=9.96.080>) to get an order that vacates your record. You may want to talk to a lawyer if you are trying to vacate records related to a conviction that happened because you were a crime victim.

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