

# INSTRUCTIONS FOR VACATING MISDEMEANOR AND GROSS MISDEMEANOR CONVICTIONS

## 1. BACKGROUND INFORMATION

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 they have 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 sentencing 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 onto the grounds of or entering a residence, workplace, school, or daycare, 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 petition with the court. The following information will assist you in asking the court to vacate your conviction.

## 2. CHOOSING THE CORRECT FORM

### a. Marijuana Offenses

If you qualify for vacating a marijuana conviction, use form CrRLJ 09.0800, *Motion and Declaration for Order Vacating Marijuana Conviction*. A court will vacate the conviction(s), if you meet the following criteria for marijuana offenses:

- You were 21 years of age or older at the time of the offense.
- Marijuana offenses eligible to be vacated 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.

See Section 3 to schedule the hearing, file your motion, and notify the prosecutor's office.

### b. Offenses Committed as the Victim of Certain Crimes

If you were the victim of sex-trafficking, prostitution, commercial sexual abuse of a minor, sexual assault, or domestic violence and you committed an offense because you were such a victim, you can file a petition asking the court to vacate the conviction. Use form CrRLJ 09.0100, *Petition and Declaration for Order Vacating Conviction*. Review and fill out Sections 1, 2, and 3 of the form. Review each of the requirements listed on the petition to make sure you are eligible.

Complete the statement explaining how the crime you committed was caused by being a victim of either sex-trafficking, prostitution, commercial sexual abuse of a minor, sexual assault, or domestic violence.

Note: You may request assistance from the prosecuting authority in preparing and/or filing a petition.

c. All Other Misdemeanor and Gross Misdemeanor Offenses

If you want to vacate an offense other than a marijuana conviction or a conviction which occurred because you were a victim as described in Section 2.b above, you can file a petition asking the court to vacate the conviction(s) if you have satisfied certain requirements.

To determine if you are eligible, use form CrRLJ 09.0100, *Petition and Declaration for Order Vacating Conviction*. Review and fill out sections 1, 2, 4, 5, 6, and 7 of the form. You will fill out different sections of the form depending on if your offense is a DUI-related “prior offense,” a domestic violence offense, or an offense not otherwise covered by other sections in the form. Review each of the requirements listed on the appropriate section of the form to ensure you are eligible.

In order to complete the form, you may need to obtain information from the court file or the court docket for the offense(s) you are asking the court to vacate. Some courts may require you to obtain copies of your criminal history records and attach them to your petition. Read the local court rules or contact the clerk of the court where you will file your petition to find out if this requirement or any other local requirement applies to you. Once you have completed and signed the petition and declaration form, make at least 2 copies (1 copy for the prosecutor’s office and 1 copy for yourself).

**3. SCHEDULE THE HEARING, FILE YOUR MOTION/PETITION, AND PROVIDE A COPY TO THE PROSECUTOR’S OFFICE**

The next step is to schedule a hearing for the motion/petition 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 the court uses to schedule a hearing. If the court does not require a specific form, you may use CrRLJ 09.0150, *Notice of Hearing to Vacate Conviction*. Make at least 2 copies of the scheduling notice (1 copy for the prosecutor’s office and 1 copy for yourself).

File the original motion/petition and declaration for order vacating conviction and the original notice document and a filing fee of \$50 with the clerk. On the same day that you file those documents with the clerk of the court, you must also provide a copy of each document (the motion/petition and declaration and the scheduling notice) to the prosecuting attorney’s office that prosecuted you. Keep a copy of the scheduling notice, the motion/petition and declaration, and any attachments for your information.

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