

# Vacating Record of Felony Conviction

Many offenders who have an effective Certificate of Discharge under RCW 9.94A.637 may apply to the sentencing court for a vacation of the offender’s record of felony conviction. Offenders that have been victims of domestic violence, sex trafficking, prostitution, or commercial sex abuse of a minor may not need a discharge under RCW 9.94A.637, provided the facts and circumstance indicate they committed the crime because they were a victim.

Vacation of a record of felony conviction releases you from all penalties and disabilities resulting from the offense. Once a record of felony 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. Vacation of a record of felony conviction, however, does not affect or prevent use of the record of felony conviction in a later criminal prosecution. A conviction vacated on or after July 28, 2019, qualifies as a prior conviction for the purpose of charging a present recidivist offense occurring on or after that date, and may be used to establish an ongoing pattern of abuse for purposes of RCW 9.94A.535.

For all purposes, including responding to questions on employment applications, a person whose record of felony conviction has been vacated may state that he or she has never been convicted of that crime. Vacation of a record of felony conviction does not affect the separate legal requirements for restoring a right to possess a firearm under RCW 9.41.040.

The law does not automatically vacate your record of felony conviction. If you want to have a record of felony conviction vacated, you must file a motion with the court in which you were convicted. 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.

To vacate a:

<b>Class B Felony</b>	<b>Class C Felony</b>	<b>Victim of Certain Crimes</b>
Discharged under RCW 9.94A.637.	Discharged under RCW 9.94A.637.	Paid crime victim’s penalty assessment.  Paid restitution not owed to an insurer.
Can have no criminal charges pending.	Can have no criminal charges pending.	Only criminal charge pending is prostitution.
No new conviction in any state or federal court in the last 10 years.	No new conviction in any state or federal court in the last 5 years.	No new conviction in any state or federal court in the last 5 years for a class C felony or 10 years for a class B felony.
It has been at least 10 years since the later of the	It has been at least 5 years since the later of the	Able to show that by a preponderance of evidence,

defendant's: a) release from community custody, b) release from full and partial confinement; or c) sentencing date.	defendant's: a) release from community custody, b) release from full and partial confinement; or c) sentencing date.	that the offense was committed as a result of being a victim of sex trafficking, prostitution, or commercial sexual abuse of a minor; domestic violence; or sexual assault.
--	--	---

You cannot vacate the following convictions:

- Any class A felony
- A violent offense:
  - Criminal solicitation of or criminal conspiracy to commit a class A felony;
  - Manslaughter in the first degree;
  - Manslaughter in the second degree;
  - Indecent liberties if committed by forcible compulsion;
  - Kidnapping in the second degree;
  - Arson in the second degree;
  - Assault in the second degree;
  - Assault of a child in the second degree;
  - Extortion in the first degree;
  - Robbery in the second degree;
  - Drive-by shooting;
  - Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and
  - Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
- Driving under the influence (RCW 46.61.592);
- Physical control of vehicle while under the influence (RCW 46.61.504);
- A crime against a person as defined in RCW 43.43.830 except one of the following crimes that did **not** include a firearm, deadly weapon, or sexual motivation enhancement:
  - Assault in the second degree (RCW 9A.36.021)
  - Assault in the third degree (RCW 9A.36.031) when not committed against a law enforcement officer or peace officer
  - Robbery in the second degree (RCW 9A.56.210)
- Crimes against the person are:
  - first, second, or third degree assault; fourth degree assault (if a violation of RCW [9A.36.041](#) (3));
  - first, second, or third degree assault of a child;
  - first, second, or third degree rape;
  - first, second, or third degree rape of a child;
  - first or second degree robbery;
  - first degree arson;
  - first degree burglary;
  - first or second degree manslaughter;
  - first or second degree extortion;

- indecent liberties;
- incest;
- vehicular homicide;
- first degree promoting prostitution;
- communication with a minor;
- unlawful imprisonment;
- simple assault;
- sexual exploitation of minors;
- first or second degree criminal mistreatment;
- endangerment with a controlled substance;
- child abuse or neglect as defined in RCW 26.44.020;
- first or second degree custodial interference;
- first or second degree custodial sexual misconduct;
- hate crime;
- first, second, or third degree child molestation;
- first or second degree sexual misconduct with a minor;
- commercial sexual abuse of a minor;
- child abandonment;
- promoting pornography;
- selling or distributing erotic material to a minor;
- custodial assault;
- violation of child abuse restraining order;
- child buying or selling;
- prostitution;
- felony indecent exposure; or
- criminal abandonment

If you can satisfy each of the above requirements with respect to the record of felony conviction you are asking the court to vacate, your next step is to complete the *Motion and Declaration for Order Vacating Record of Felony Conviction* form CR 08.0900. This form will allow the court to determine whether you are eligible to have your record of felony conviction vacated. 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 judgment and sentence, certificate of discharge, and 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 these requirements, or any other local requirements, apply to you. Once you have completed and signed the motion and declaration form, make at least two copies.

The next step is to schedule a hearing for your motion. 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 notice of motion form that court uses to schedule a hearing. Make at least two copies of the notice. File the original motion 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 motion and notice documents to the prosecuting attorney's office that prosecuted you. Keep copies for your records. You can find the address and phone number of the Prosecutor's Office here: <https://waprosecutors.org/prosecutordirectory/>

The judge will hear your motion for order vacating record of felony conviction on the day scheduled for the hearing. You will need to attend the hearing. Bring a proposed order vacating the records of your felony conviction for the judge's signature. If the motion is granted, the judge

will sign the order. 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.