

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.

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.

You may **not** have the record of your felony conviction vacated if any of the following are true:

- ❖ There are any criminal charges pending against you in any court of this state or another state, or in any federal court;
- ❖ The offense was a violent offense (this includes **all** class A felonies);
- ❖ The offense was a crime against persons; except the following offenses may be vacated if the conviction 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)
- ❖ The offense was a felony described in RCW 46.61.502 or RCW 46.61.504;
- ❖ The offense was a class B felony and you have been convicted of a new

offense in this state, another state, or federal court, or elsewhere in the 10 years before filing a motion to vacate a felony conviction; or

- ❖ The offense was a class C felony and you have been convicted of a new offense in this state, another state, or federal court, or elsewhere, in the five years before filing a motion to vacate felony conviction; or
- ❖ The offense was a class B felony and less than 10 years have passed since the **later** of your: a) release from community custody, b) release from full and partial confinement; or c) sentencing date; or
- ❖ You were convicted of a class C felony, other than a class C felony described in RCW 46.61.504(6), and less than five years have passed since the **later** of your: a) release from community custody, b) release from full and partial confinement; or c) sentencing date.

If you committed a felony prior to July 1, 1984, or your conviction is a misdemeanor, you will need to look at laws other than those discussed here.

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.

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.