

MOTION FOR RCW 9.94A.640 VACATION OF RECORD OF CONVICTION

For your information:

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. For all purposes, including responding to questions on employment or housing 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 or prevent use of the record of felony conviction in a later criminal prosecution.

- Successful Completion of this process WILL NOT EXPUNGE a criminal conviction from your record.
- Vacation of a record of felony conviction Does Not restore your right to possess a firearm.
- Before a vacation of conviction can be accomplished you must have a Certificate of Discharge.
- Successful completion of this process will change the designation of your conviction history to reflect successful completion of probation.
- 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.

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. The following information will assist you in deciding whether the law applies to your situation.

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.
- You have been convicted of a new crime in this state, another state, or federal court since the date you were discharged.
- The offense was a violent offense (this includes **all** class A felonies).
- The offense was a crime against persons.
- The offense was a class C felony described in RCW 46.61.502(6) or RCW 46.61.504(2).
- You were convicted of a class B felony and less than ten years have passed since the date you were discharged.
- You were convicted of a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(2), and less than five years have passed since the date you were discharged.

If you can satisfy each of the above requirements with respect to the record of felony conviction of which you want vacated your next step is to Motion the Court. This will allow the court to determine whether you are eligible to have our record of felony conviction vacated.

INSTRUCTIONS

1. Please read and fill-out the Motion and Declaration for Order Vacating Record of Felony Conviction. Sign and date the Motion with contact information.
2. **Attach a Certified copy** of the Certificate of Discharge to the Motion. If the offense is out of county or out of state, you must contact that court to obtain the necessary order.
3. **Attach a Certified copy** – of your Criminal record issued not more than thirty (30) days prior to filing the Motion - of your local, state and national (FBI NCII) criminal history. To obtain this record, you must contact the Washington State Patrol (WSP), and they will make a copy of your state criminal record for a fee. This record must be attached to your Petition. The WSP can be contacted as follows:

Washington State Patrol
Identification and Criminal History Section
P.O. Box 42633
Olympia, WA 98504-2633

Customer Service: 360-534-2000
Email: crimhis@wsp.wa.gov or watch.help@wsp.wa.gov
Url: <http://watch.wsp.wa.gov>
4. Make **two copies** of the Completed Motion and the documents from above instructions.
5. Complete the Note for Hearing from the packet.
 - a. Contact the Unassigned Civil Motion Judge’s Judicial Assistant (509-477-5792) for a hearing date.
 - b. Make 3 copies.
6. From the packet take out the ORIGINAL Order on Motion Re: Vacating Record of Felony Conviction. You will need to include ORIGINAL Order with your copies to the Prosecuting Attorney.
 - a. Sign the second page
 - b. Fill out address, email & Phone number
7. File with the **Spokane County Superior Court Clerk’s Office Rm. 300**, Spokane County Superior Courthouse.
 - a. Original Motion with attachments
 - b. Original Note for Hearing
8. Conform with Clerk’s date stamp all copies.
9. Take One Copy of the Note for Hearing to the Court Administrator’s Office located on the third floor of the Annex. The Copy of the Note for Hearing needs to go in the **Unassigned Civil Motion Docket Judge’s box**.

10. You must serve the **Spokane County Prosecuting Attorney's office** with a copy of:
 - a. Copy of Motion & Attachments
 - b. Copy of Note for Hearing that includes the date and time of the hearing.
 - c. The **Original** Order Vacating Record of Felony Conviction that you have signed.
 - i. They have agreed to accept service of this paperwork at their main office in the Public Safety Building. **The Note for Hearing form has a place where the Prosecutor's office can stamp your copy accepting service.** The Prosecuting Attorney is entitled to a minimum of seven working days' notice of the hearing.
11. For your records keep a complete copy of:
 - d. Motion & Attachments
 - e. Note for Hearing that includes the date and time of the hearing that has been stamped by the Prosecutors office.
12. If you have **not received a signed copy of the Order Vacating Record of Felony Conviction by the Tuesday** before the scheduled hearing date, then you must Contact the JA by email (LMHill@spokanecounty.org) regarding the status of the hearing.

(Copy Receipt)

(Clerk's Date Stamp)



Petitioner: _____

CASE NO. _____

vs.

NOTE FOR HEARING RE:
RCW 9.41.040
CERTIFICATE

Respondent: STATE OF WASHINGTON

TO THE CLERK OF COURT AND TO: Prosecuting Attorney's office

Please take notice that the undersigned will bring on for hearing the motion for RCW 9.41.040/9.41.047 Certificate. The hearing is to be held:

On: Date: _____ Time: _____

At: Spokane County Superior Court
Unassigned Civil Motion Judge, Courtroom _____
1116 W. Broadway Avenue
Spokane, WA 99260

The hearing will be held before the Presiding Judge or other judicial officer designated to hear this petition.

Dated: _____

PROSECUTOR'S STAMP:

Signed: _____

Address _____

Email
Address _____

Due service is admitted this, _____ day, of
_____, 20____.

**Superior Court of Washington
County of Spokane**

State of Washington, Plaintiff,

vs.

No.

**Motion and Declaration for Order Vacating
Record of Felony Conviction
(MTAF)**

Defendant.

DOB _____

PCN: _____

SID: _____

I. Motion

Defendant asks the court for an order vacating the record of his or her conviction of a felony offense the defendant committed on or after July 1, 1984. This motion is based on RCW 9.94A.640, the case record and files, and the declaration of defendant.

Dated: _____

Defendant/ Defendant's Attorney/ WSBA

Print Name

II. Declaration of Defendant

I, _____, declare as follows:

2.1. On _____ (date) I was convicted of the following offense: Cause No: _____ Count: _____ Offense (include degree): _____ RCW _____.

2.2 I was discharged under RCW 9.94A.637 as having completed the requirement of my sentence for the offense listed in paragraph 2.1 (RCW 9.94A.640).

2.3 There are no criminal charges pending against me in any court of this state or another state, or in any federal court (RCW 9.94A.640(2)(a)).

2.4 The offense for which I was convicted is **not** one of the following offenses (RCW 9.94A.640(2)(b), (c), (g)):

A violent offense (including <u>all</u> Class A felonies) as defined in RCW 9.94A.030
A crime against persons as defined in RCW 43.43.830
A class C felony described in RCW 46.61.502(6) or 46.61.504(6)

2.5 I have not been convicted of any new crime in this state, another state, or federal court since the date of discharge under RCW 9.94A.637 or expiration of probation (RCW 9.94A.640(2)(d)).

2.6 The offense I committed was a class B felony and at least ten years have passed since the date I was discharged under RCW 9.94A.637 or expiration of probation (RCW 9.94A.640(2)(e)).

Or

The offense I committed was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and at least five years have passed since the date I was discharged under RCW 9.94A.637 or expiration of probation (RCW 9.94A.640(2)(f)).

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Executed this _____ day of _____, 20____, at _____, Washington.

Defendant

Mailing Address

Email Address

Phone

Attach the following documents:

Copy of judgment and sentence, copy of certificate of discharge, or other document showing completion of all conditions of sentence & Copy of current criminal history

**Superior Court of Washington
County of Spokane**

State of Washington, Plaintiff,

vs.

_____,
Defendant.

DOB _____

PCN: _____

SID: _____

No. _____

**Order on Motion Re: Vacating Record of
Felony Conviction**

Granted (ORVCJG)

Denied (ORDYMT)

Clerk's Action Required, para. 3.6

I. Basis

This matter comes before the court on defendant's motion for order vacating record of felony conviction pursuant to RCW 9.94A.640. The court having heard argument of the parties and considered the case records and files, and the pleadings submitted on the matter.

II. Findings

2.1 Adequate notice was was not given to the appropriate parties and agencies.

2.2. On _____ (date) defendant was convicted of the following offense(s):

Count: _____ Offense (include degree): _____ RCW _____.

Count: _____ Offense (include degree): _____ RCW _____.

Count: _____ Offense (include degree): _____ RCW _____.

Count: _____ Offense (include degree): _____ RCW _____.

Count: _____ Offense (include degree): _____ RCW _____.

2.3 Defendant was discharged under RCW 9.94A.637 as having completed the requirement of his or her sentence for the offense listed in paragraph 2.2 (RCW 9.94A.640).

2.4 Defendant satisfied the following requirements of RCW 9.94A.640(2) or has met the equivalent of these requirements as they would be applied to a person convicted of a crime committed after July 1, 1984:

- There are no criminal charges pending against the defendant in any court of this state or another state, or in any federal court (RCW 9.94A.640(2)(a)).
- The offense for which the defendant was convicted is **not** one of the following offenses (RCW 9.94A.640(2)(b), (c), (g)):

A violent offense as defined in RCW 9.94A.030
A crime against persons as defined in RCW 43.43.830
A class C felony described in RCW 46.61.502(6) or 46.61.504(6)

2.5 The defendant has has not been convicted of any new crime in this state, another state, or federal court since the date of discharge under RCW 9.94A.637 or expiration of probation, based upon the criminal history check of the following records (RCW 9.94A.640(2)(d)):

- Washington State Crime Information Center (WACIC), RCW 43.43.500 et seq;
- National Crime Information Center (NCIC), including the Interstate Identification Index (Triple I), 28 USC Section 534;
- Judicial Information System (JIS), including Defendant Case History (DCH) from the District and Municipal Court Information System (DISCIS), RCW 2.68 et seq. and JISCR.
- Other: _____.

2.6 The offense for which the defendant was convicted was a class B felony and it has been at least ten years since the date of discharge under RCW 9.94A.637 or expiration of probation (RCW 9.94A.640(2)(e)).

Or

- The offense for which the defendant was convicted was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and it has been at least five years since the date of discharge under RCW 9.94A.637 or expiration of probation (RCW 9.94A.640(2)(f)).

III. Order

The court orders:

3.1 The motion for order vacating conviction records of the following offense is granted denied.

Count: _____ Offense (include degree): _____ RCW _____.

Count: _____ Offense (include degree): _____ RCW _____.

Count: _____ Offense (include degree): _____ RCW _____.

Count: _____ Offense (include degree): _____ RCW _____.

Count: _____ Offense (include degree): _____ RCW _____.

The court further orders that:

3.2 The defendant's guilty plea for the offense listed in paragraph 3.1 is withdrawn and a not guilty plea is entered.

Or

The guilty verdict for the offense listed in paragraph 3.1 is set aside.

3.3 The information or indictment for the offense listed in paragraph 3.2 is dismissed.

3.4 The defendant shall be released from all penalties and disabilities resulting from the offense listed in paragraph 3.1 and the conviction of that offense shall not be included in the defendant's criminal history for purposes of determining a sentence in any subsequent conviction. However, the conviction may be used in a later criminal prosecution.

3.5 For all purposes, including responding to questions on employment applications, the defendant may state that he or she has never been convicted of the offense listed in paragraph 3.1.

3.6 The clerk of the court shall immediately transmit a certified copy of this order to the Washington State Patrol and to Spokane Police Records which agencies shall immediately update their records to reflect the vacation of the record of conviction of the offense(s) listed in paragraph 3.1. The Washington State Patrol shall transmit a copy of this order to the Federal Bureau of Investigation. The Washington State Patrol or local law enforcement agency may not disseminate or disclose a conviction that has been vacated under RCW 9.94A.640 to any person, except to other criminal justice enforcement agencies.

Dated: _____

Judge

Presented by:

Approved for entry without further notice:

Attorney for Defendant/WSBA No.

Deputy Prosecuting Attorney/WSBA No.

Defendant

Mailing Address

Email Address

Phone Number