

IS MY CLIENT ELIGIBLE TO VACATE AN ADULT CRIMINAL CONVICTION?

NOW, THEREFORE, IT IS HEREBY ORDERED:

I. Pursuant to RCW 9.94A.640, the defendant is permitted to withdraw his plea of guilty, and a plea of not guilty is substituted. The judgment and sentence and conviction in the above case is substituted. The judgement and sentence and conviction in the above case are hereby vacated, and the information filed in this matter is dismissed with prejudice.

II. The defendant is released from all penalties and disabilities resulting from the conviction.

III. For all purposes, including applications for employment or housing, the defendant may state that he has never been convicted of the offense charged in the cause number.

**SECOND
CHANCES**

**Seeking Fair Treatment
for People with
Criminal Records**

I. INTRODUCTION

This guide is intended for social service providers and others who work directly with individuals who have criminal records. It is intended to provide general information about the requirements to vacate and is not a substitute for legal advice.

Many people with a criminal record want to “expunge” or “clear” their criminal histories. While Washington law does not permit the destruction of adult, conviction records, some people may be eligible to “vacate” a conviction record.¹

When a court “vacates” a conviction, it withdraws a guilty verdict and dismisses the case. If a conviction is vacated, a person is permitted by law to say that he or she has never been convicted. The Washington State Patrol does not report vacated convictions, but court records will still be available. If the case is reported in a background check, it should be clear that the case was “dismissed” or “vacated.”

If you have questions about vacating criminal convictions, or would like to refer a client for more information or services, you should contact the ACLU of Washington’s Second Chances Project. You can reach us at 206.624.2180 or through our website: www.aclu-wa.org/secondchances.

¹ Juvenile convictions are governed by different laws. Under RCW 13.50.050 many juvenile records may be sealed. For more information, visit www.sealyourjuvenilerecord.com.

II. If the client has only ONE MISDEMEANOR conviction

Your client meets the requirements under Washington Law (RCW 9.96.060) for vacating a single misdemeanor if you can answer “YES” to all of the following questions:

	The offense was not a violent offense , or an attempt to commit a violent offense, as defined by RCW 9.94A.030.
	The offense was not a DUI offense listed in RCW 46.61.502, RCW 46.61.504, or RCW 9.91.020. ²
	The offense was not a sex offense , or attempt to commit a sex offense listed in RCW chapters 9.68, 9.68A, and 9A.44.
	The person has completed the terms of the sentence , including paying all fines.
	It has been three years since s/he completed the terms of the sentence. ³
	Since completing the sentence, s/he has not been convicted of a new crime in any state or federal court.
	There are no criminal charges against the person pending in any court.
	During the past five years , s/he has not been subject to a domestic violence protection order, no-contact order, anti-harassment order, or civil restraining order.
	S/he has not previously vacated any conviction. ⁴

²There are additional requirements for other DUI or DUI-related crimes. If the offense could be considered a “prior offense” as defined by RCW 46.61.5055 (14)(a), it cannot be vacated if the applicant has had a subsequent drug or alcohol violation within ten years of the date of arrest for the prior offense.

³There are additional requirements for domestic violence crimes. If your client’s crime involved domestic violence, contact an attorney.

⁴An individual who wants to vacate a conviction for prostitution and who was the victim of certain trafficking offense is ineligible if s/he has previously vacated any prostitution conviction. If your client wants to vacate a prostitution conviction, contact an attorney.

III. If the client has only **FELONY** convictions

Your client may meet the requirements under state law (RCW 9.94A.640) for vacating a felony conviction if you can answer “YES” to all of the following questions:

	The offense was not a violent offense as defined by RCW 9.94A.030.
	The offense was not a crime against persons as defined by RCW 43.43.830.
	The offense was not a DUI offense listed in RCW 46.61.502(6) or RCW 46.504(6).
	The client has received a “Certificate of Discharge” certifying that s/he has completed all of the terms of the sentence, including payment of all fines, fees and restitution. -OR- The client has completed all terms of sentence and is eligible to receive a certificate of discharge. -OR- The conviction was before July 2000 and (a) the client has completed all terms of the sentence except paying fines and fees, (b) ten years have passed since the client was released from prison or jail; and (c) the court did not enter an order extending jurisdiction to collect fees and fines.
	The crime was a class C felony and it has been 5 years since the client received or became eligible for the certificate of discharge. -OR- The crime was a class B felony and it has been 10 years since the client received or became eligible for the certificate of discharge.
	There are no criminal charges against the individual pending in any court.
	Since receiving or becoming eligible for a certificate of discharge, s/he has not been convicted of any crime .

IV. If the client has **MULTIPLE** convictions

Typically, a person can vacate only his or her most recent conviction if it meets the statutory requirements. In some circumstances, a person who has multiple convictions can vacate more than one conviction. If each of the convictions, standing alone, could be vacated, you should refer the client to an attorney.

V. If you aren't sure whether the client qualifies

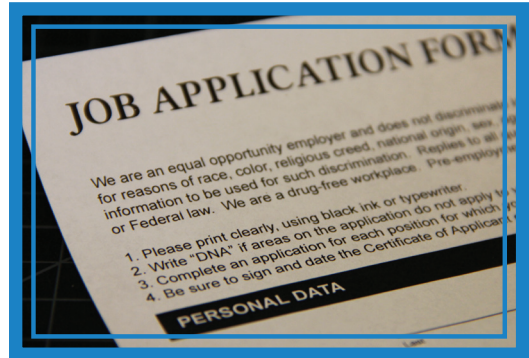
If you think that your client might qualify for vacating a conviction, but aren't sure whether s/he meets some of the requirements, you should refer your client to an attorney. An attorney can help your client review court records and the laws to determine whether he or she should petition to vacate.

VI. If you'd like more information and attorney assistance

The ACLU of Washington has attorneys and volunteers who are able to help individuals gather and interpret court records. We can also assist people with filing a motion to vacate. You can reach us at 206.624.2180 or through our Web site: www.aclu-wa.org/secondchances.

For more information, see the ACLU of Washington's "Guide to Getting and Understanding a Criminal Record", and our "Guide to Criminal Records and Employment", available at our web site: www.aclu-wa.org/criminalrecords.

GUIDE TO CRIMINAL RECORDS AND EMPLOYMENT IN WASHINGTON STATE



This guide provides general information about the rights and responsibilities of people with a criminal record who are looking for a job. It is not intended to provide legal advice.

If you have a specific problem related to criminal records and employment, you should contact an attorney. See the "Resources" section for more information.

**SECOND
CHANCES**

**Seeking Fair Treatment
for People with
Criminal Records**

I. HOW SHOULD I ANSWER QUESTIONS ABOUT MY CRIMINAL BACKGROUND ON AN APPLICATION?

Answer accurately.

You should answer employment application questions accurately. Most employers run criminal background checks. If you do not answer an employer's questions accurately, it can easily find out from other sources.

More importantly, an employer may legally deny you the job or fire you because you gave inaccurate information. This is true even if you shouldn't have been disqualified by your criminal record. You may not be fully protected by anti-discrimination laws unless you answer the employer's question accurately.

Many people do not know what is in their criminal record. There may also be mistakes in your record. You should first get a copy of your criminal history report, so that you may answer application questions accurately and correct mistakes. For more information on how to get a copy of your criminal history report, see the ACLU of Washington's "Guide to Getting and Reading Criminal History Reports."

•Should I give more information than the employer asks for?

Employers ask all sorts of questions about criminal histories. Some employers ask if you've ever been convicted of any crime. Some will ask if you've been convicted of specific types of crimes — violent crimes, for example. Some will only ask about convictions that are within a specific time period—like 7 years.

Whatever the employer asks, you should answer accurately. But what if you have something on your record that the employer's question doesn't cover? For example, what if an employer only asks about convictions that are within the last 7 years, but you have a conviction that is 15 years old?

You are not legally obligated to disclose information that an employer does not ask for. But, even if you do not disclose it, the employer may find out about it. There is no easy solution to this problem. When deciding whether to disclose additional information, you may want consider:

- ▶ the age and nature of the conviction;
- ▶ the type of job and how the conviction relates to it;

- ▶whether the employer will conduct a background check; and
- ▶whether the employer will give you a chance to explain your situation.

•What do I say about vacated or sealed cases?

It depends on the type of case. A “sealed” case is one where the court records are not available to the public. A “vacated” case is one where, after a person has completed his or her sentence and met other conditions, the court withdraws a guilty plea or judgment, and then dismisses the case.

If you have a **juvenile conviction** for which the case records have been **sealed**, you do not need to disclose it. According to state law, if juvenile case records have been sealed, the case is treated as if it does not exist and you can answer that it never happened.¹

If your case has been **vacated** under Washington law, state law gives you the right to say that you have never been convicted in that case.² In addition, the Washington State Patrol will not report your vacated conviction. But, the court records of the case will still be open to the public and information from the records could be reported on background checks. If you have a vacated case, talk to an attorney about how to proceed with employment applications.

Records of adult convictions are generally open to the public, and can typically be reported in employment background checks, even if they are many years old. These convictions may not appear in background checks if you have had your record sealed. Sealing is rare, but may happen in extraordinary circumstances. Talk to an attorney if you are interested in learning more about sealing court records.

•What can a private employer ask me about convictions?

Private employers may ask about convictions, even ones that are many years old. According to regulations created by the Washington Human Rights Commission, employers should not ask about convictions unless the convictions (1) are related to the job and (2) occurred within the last 10 years.

Employers may also ask about **juvenile adjudications**. Juvenile court records are not confidential in Washington.

•What can a private employer ask me about arrests?

Private employers may ask if you have ever been arrested, even if the charges against you were eventually dismissed. But, the employer must investigate whether you actually committed the conduct for which you were arrested.

Under Washington law, employers asking about arrests must also ask whether:

- ▶ charges are still pending or have been dismissed
- ▶ the arrest led to a conviction of a crime that would adversely affect job performance, and
- ▶ the arrest occurred within the last 10 years. ³

•What can government employers ask me about?

Some public or government employers are governed by additional rules.

For example, the City of Seattle will not consider arrest records. ⁴ So, Seattle City agencies should not ask you if you've ever been arrested.

In addition, neither **City of Seattle nor King County** will do a background check until after deciding a person is qualified and extending a conditional offer of employment.

This rule only applies to jobs with Seattle or County government agencies. It does not apply to private employers in the city, state agencies, or government jobs in other cities or counties.

II. HOW DO EMPLOYERS GET AND USE BACKGROUND CHECKS?

•What sources can an employer use to find out about my background? What will the employer find out from each source?

There are many different types of background checks, and the same information may not be available from all sources. Employers may find out about your criminal history through:

- ▶ **Washington State Patrol Criminal History Reports:** The Washington State Patrol collects and reports criminal history information for Washington State. It will report all adult and juvenile convictions in Washington courts, no matter how old the conviction is. The Washington State Patrol will not report sealed or vacated convictions. Anyone, including employers, can purchase a copy of a Washington State Patrol Criminal History Report
- ▶ **Consumer Reporting Agency Reports:** There are hundreds of companies that gather information (including records from courts, law enforcement agencies, and jails) and then compile it into background check reports. They are often called "consumer reporting agencies" or "CRAs." Many CRAs report information from more than one state. Any employer can pay a CRA to get background checks.
- ▶ **FBI Reports:** The FBI collects and reports criminal history information for all states and the

federal government, but does not report all juvenile convictions. The FBI does not report cases if the court records have been sealed, but it does report cases that have been vacated. The FBI limits access to its criminal history records. They are not available to the general public, and can only be accessed by the individual, law enforcement, and employers who are authorized by law.

► **An Employer's Own Investigation:** An employer may also choose to conduct its own investigation into your criminal history. Court records remain public unless they are sealed, so an employer could learn about your criminal history by searching court records.

• **Do I have a right to know whether an employer is doing a background check on me?**

Usually yes. If an employer does its own investigation, you don't have a right to know about the investigation. But, if an employer uses a consumer reporting agency, you have a right to know that it is doing the background check.

The federal Fair Credit Reporting Act (FCRA) says that **before an employer can request a background check from a CRA, it must get your consent in writing.** The employer must also notify you in writing, in a separate document, that the report may be used to deny you employment.

• **Do I have a right to know if an employer is going to deny me a job based on a background check?**

Yes. Before an employer takes adverse action (for example, denies you a job, refuses to promote you, or fires you) based on a criminal record, **it must notify you that it has decided to act based on the background check.**

The notice must include

- A copy of the background report that the employer used
- A document called "A Summary of Your Rights Under the Fair Credit Reporting Act" ⁵

Again, an employer must give you the notice before it takes the action, to give you time to dispute anything in the background check. There is no set time that must pass between the notice and the employer taking action against you, but courts have said that an employer who gives between 5 and 14 days notice before denying a job has acted reasonably. ⁶

These rules apply even if an employer has other reasons to reject you. So long as the background check was part of the employer's decision, the employer has to follow federal law and

give you notice.

Finally, **once an employer has taken adverse action against you** because of a background check, it has to issue a second notice. The notice does not need to be written, but it must include

- ▶ The name, address, and phone number of the CRA that supplied the report
- ▶ A statement that the CRA that supplied the report did not make the decision to take the adverse action and it cannot give specific reasons for the decision; and
- ▶ A notice of your right to dispute the accuracy or completeness of any information in the report
- ▶ A notice of your right to an additional free consumer report from the agency within 60 days, if you request one.

• **Do I have a right to get a copy of any background check that an employer uses?**

Yes. If an employer has denied you a job based on a background check performed by a CRA, the federal Fair Credit Reporting Act says you are entitled to get a copy of the background check. If the employer did not offer you one, you should request it.

If an employer hasn't done a background check, but you would like to learn what may be in a background check, you may get a copy of your criminal history report from the Washington State Patrol or FBI. For more information about how to get those reports, see the ACLU of Washington's Guide to Getting and Reading a Criminal History Report.

• **Do I have a right to request that a consumer reporting agency stop reporting something in my criminal history?**

Yes, if it is inaccurate or cannot be legally reported.

Federal law requires CRAs to make sure that information in reports is complete, up to date, and as accurate as possible. So, you can usually get a CRA to stop reporting information that is incorrect or misleading.

State and federal law limit what can be reported to most employers.

Federal law says that CRAs cannot report:

- ▶ Arrests that are older than seven years, if the arrest did not result in a conviction;⁷
- ▶ Other negative information (except for convictions) older than seven years.

Washington law also says that CRAs cannot report:

- ▶ Convictions older than seven years.
- ▶ Juvenile convictions, if you've turned 21.⁸

•How do I remove or change incorrect information in a background check?

If the information that is being reported is incorrect, you should write a letter to the organization that produced the report. Your letter should explain why the report is incorrect and explain the correct information. You should attach a copy of the report (with the incorrect information circled) and any documents showing the correct information.

If a CRA is reporting information that it cannot legally report, you should contact a lawyer for assistance. See the “Resources” section for more information.

•How should a CRA respond to a request that it correct information in a background check?

If you complain to a CRA that its background check contains inaccurate information:

- ▶The CRA must conduct an investigation on the dispute **within 30 days** of you contacting them. ⁹
- ▶The CRA must consider any information you submit with your complaint.¹⁰
- ▶If, after 30 days, the CRA determines that the information is inaccurate or cannot verify that the information is accurate, it must delete or modify the information. ¹¹
- ▶The CRA must implement reasonable procedures to ensure that deleted information doesn't get re-inserted into future reports.
- ▶The CRA **must notify any employer** that received the inaccurate or unverified information within the past two years (or any others who received the information in the past six months) that the information has been deleted. The CRA is only required to do this **after you make a request**. ¹²

•What if an employer or CRA doesn't follow the law about background checks?

There are legal consequences for employers and CRAs that don't follow the requirements of the FCRA. If you think an employer or CRA has violated the FCRA, you should:

- ▶Talk to an attorney. The FCRA allows people to sue employers in state or federal court for certain violations. If the suit is successful, people may recover damages.
- ▶Report the violation to the Fair Trade Commission. The law allows the FTC, other federal agencies, and states to sue employers who don't comply with the law's provisions. To file a complaint you should either call toll-free, 1-877-FTC-HELP (1-877-382-4357), or go online to <https://www.ftccomplaintassistant.gov/>

III. MAY AN EMPLOYER DENY ME A JOB BECAUSE OF MY CRIMINAL RECORD?

Employers cannot legally refuse to consider any application from anyone with a criminal record. But, if an employer considers your application individually, it may legally deny a job depending on the type of criminal record you have and the type of job you applied for.

•Can an employer deny me employment because of a conviction?

It depends. The EEOC recommends that employers develop “targeted screens” to determine whether a conviction is related to the job. They recommend that employers consider:

- ▶The nature and seriousness of the crime
- ▶The duties of the job and environment where the job is performed
- ▶The time that has passed since the conviction

If, after considering these factors, the employer determines that a conviction is job related, it can deny you a job based on the conviction.

•Should an employer consider my individual circumstances before denying me a job because of a conviction?

Yes. The EEOC recommends that before an employer denies a job because of a conviction, the employer should give the individual the opportunity to provide additional information. This is called an **individualized assessment**.

The federal Equal Employment Opportunity Commission recommends employers do an individualized assessment and consider:

- ▶The facts or circumstances surrounding the offense
- ▶The number of offenses that you have
- ▶Your age at the time of conviction or release from prison
- ▶Evidence that you’ve had similar jobs in the past
- ▶Your employment history
- ▶Education, training, or other efforts at rehabilitation
- ▶Employment or character references
- ▶Whether you can be bonded under a federal, state, or local program.

•Can an employer deny me employment because of an arrest?

The fact that you have been arrested does not prove that you committed a crime. Because of that, the EEOC says that an employer cannot deny you employment simply because you have been arrested. But, an employer can legally make an employment decision based on the conduct underlying the arrest, if the conduct involved makes you unfit for the job.

•What should I do if an employer illegally denies me a job based on a criminal record?

If you have been denied employment because of a criminal record that is not related to the job, you should contact an attorney for advice on filing a state or federal discrimination claim.

There are many federal, state, and local agencies that investigate employment discrimination claims. Some of those agencies are:

a. Equal Employment Opportunity Commission

Federal claims are first filed with the EEOC. The EEOC can only accept a complaint if:

- ▶It is filed within 300 days of the discriminatory action; and
- ▶The employer has 15 or more employees

If the EEOC agrees that you have been discriminated against, it will schedule a “conciliation” session with the employer. If conciliation is successful, the employer may agree to compensate you and change its practice.

If conciliation is not successful, or if the EEOC does not agree that you have been discriminated against, it will authorize you to file suit in federal court. If you win a federal court case, you may be entitled to hiring/reinstatement, back/front pay, injunctive relief to change the employer’s policy, and attorney’s fees.

You can reach the EEOC’s regional office in Seattle at:

EEOC Seattle Field Office
909 First Avenue, # 400
Seattle WA 98104
1-800-669-4000
<http://www.eeoc.gov/employees/charge.cfm>.

b. Washington State Human Rights Commission

State claims can be filed with the Washington State Human Rights Commission (HRC). HRC will

only accept a claim if:

- ▶ The complaint is filed within 6 months of the discriminatory act; and
- ▶ The employer has more than 8 employees.

Like the EEOC, HRC will investigate the claim and, if it finds discrimination, schedule a conciliation session with the employer. If conciliation is successful, the employer may agree to compensate you and change its practices. You can reach the HRC at:

State Human Rights Commission
1-800-233-3247
[http://www.hum.wa.gov/ComplaintProcess/
Index.html](http://www.hum.wa.gov/ComplaintProcess/Index.html)

c. King County Office of Civil Rights

If the employer is in King County, you can file a complaint with the King County Office of Civil Rights (KCOCR). KCOCR will investigate your claim and can help you and the employer find a solution. You can reach KCOCR at:

King County Office of Civil Rights
Chinook Building, 401 5th Ave # 215
Seattle, WA 98104
206-296-7592
[http://www.kingcounty.gov/exec/CivilRights/
FileComplaint.aspx](http://www.kingcounty.gov/exec/CivilRights/FileComplaint.aspx)

d. Seattle Office of Civil Rights

If the employer is in the city of Seattle, you can also file a complaint with the Seattle Office of Civil Rights (SOCR). SOCR will also investigate discrimination complaints and try to work with you and the employer to come to an agreement. SOCR can be reached at:

Seattle Office of Civil Rights
810 3rd Ave, # 750
Seattle, WA 98104
206-684-5400
<http://www.seattle.gov/civilrights/howtoocr.htm>

IV. RESOURCES

If you have questions about employment and criminal records, or if you believe your rights have been violated, you should contact the ACLU for more information.

Due to limited resources, we are generally not able to provide representation in individual cases, but we will provide you with information and referrals. You can reach us at 206.624.2180 or through our Website: www.aclu-wa.org

SOURCES

¹RCW 13.50.050(14)(a).

²RCW 9.94A.637(3).

³See Washington Administrative Code (“WAC”) 162-12-140. These regulations do not apply to law enforcement agencies, school districts, and businesses that supervise, care for, or treat children or vulnerable adults. They also do not apply to companies with fewer than eight employees.

⁴Seattle Personnel Rule 10.3. These rules does not apply to all positions. For example, law enforcement agencies and agencies which work with children and vulnerable adults are exempt.

⁵You can get a copy of the summary here: <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre35.pdf>

⁶See *Johnson v. ADP Screening and Selection Services, Inc.*, 768 F.Supp.2d 979 (D. Minn. 2011) (14 days); *Obabueki v. Int’l Bus. Machines Corp.*, 145 F.Supp.2d 371 (S.D.N.Y. 2001) (5 days)

⁷15 U.S.C. § 1681c(a)(2). These rules do not apply to reports prepared for employers where the annual salary of the job you are seeking is \$75,000 or more

⁸RCW 19.182.040(f). These rules do not apply to reports prepared for employers where the annual salary of the job you are seeking is \$20,000 or more

⁹15 U.S.C. § 1681i(a)(1)(A).

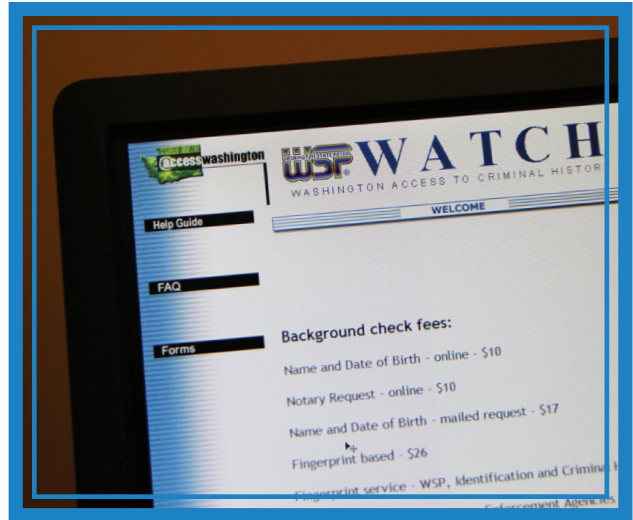
¹⁰15 U.S.C. § 1681i(a)(4).

¹¹15 U.S.C. § 1681i(a)(5).

¹²15 U.S.C. § 1681i(d).

Thank you to Columbia Legal Services and the Northwest Justice Project for their review of this guide; to the Legal Action Center, Ohio Justice & Police Center, H.I.R.E. Network, and the Michigan Reentry Law Wiki, whose guides on criminal records provided inspiration and information; and to the numerous ACLU clients who shared their questions and experiences.

GETTING AND READING CRIMINAL HISTORY REPORTS IN WASHINGTON



This guide is designed to help people get, understand, and correct criminal history reports. It provides general information about these records in Washington state. Different states have different laws on criminal records. This guide is not meant to provide legal advice.

For more information, see the ACLU of Washington's Guide to Criminal Records and Employment, available at www.aclu-wa.org/secondchances

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February 2013

GETTING A CRIMINAL HISTORY RECORD

•How do I know if I have a criminal record?

If you have ever been arrested and fingerprinted, you have a criminal history record. A written summary of your criminal history is called a criminal history report, “WATCH” report or a “rap sheet.”

•Who creates my criminal history reports?

Many different government agencies and private companies produce criminal history reports.

Law enforcement agencies create criminal history reports. The Washington State Patrol (WSP) collects and distributes criminal history reports for Washington state. WSP gets its information from local and county law enforcement agencies and courts. The FBI also maintains a database of all federal criminal history reports and collects information from all states.

Washington courts also create and maintain a record of your criminal history related to court proceedings. These records are separate from the WSP record.

In addition, hundreds of private companies purchase information from the courts and law enforcement, and compile that information into background check reports. The reports produced by each company look different and may contain different information.

•Why is it important to see my criminal history report?

Criminal records can be used by employers, housing providers, volunteer organizations, and other groups deciding whether to accept or approve an application, or take other action.

Any person who has a criminal history should know exactly what is on his or her criminal record before applying for housing or employment. Getting a copy of your criminal history report is crucial so that you can:

- (1) Make sure that everything on the report is accurate and correct mistakes
- (2) **Ensure that your answer to any application question about your criminal history is accurate.** Washington employers are allowed to ask about arrests and convictions and are legally permitted to fire a person who gives inaccurate information about criminal history. This is true even if you thought you were giving a correct answer. You could also face eviction if your landlord finds out that you provided misleading information on your rental application.

•How do I get a copy of my criminal history report?

There are several ways to get a criminal history report.

SUMMARY OF WAYS TO GET CRIMINAL RECORDS

WHO MAKES THE REPORT	WHAT IT CONTAINS	WHAT YOU NEED TO GET IT	HOW LONG IT TAKES	WHAT IT COSTS
Washington State Patrol (online)	* Washington state information only * Both adult and juvenile records	* Credit Card * Name and Birth Date	Immediate	\$10
Washington State Patrol (in Olympia)	* Washington state information only * Both adult and juvenile records	* Identification (possibly fingerprints)	½ hour if you go to Olympia; 2-3 weeks at local law enforcement agency	Free to review the record; possible charge of \$7-\$15 for fingerprints and possible charge for copies
Washington Courts	* Separate files for each case related to you in that court	* Case numbers for each case	Varies	* Small fee for copies * Additional fees for archived files
FBI	* Information from all states * Federal convictions * Will not include all juvenile records * Will include convictions that have been vacated under Washington law	* Credit Card or Money Order * Application Form (available online) * Full set of fingerprints	2-3 weeks	\$18 for application \$7-15 for fingerprints -or- \$50 to \$70 for an expedited request
Consumer Reporting Agency	* May include adult and juvenile information from all states * May include federal convictions	* Usually just a name and birth date	Varies	\$50 to \$70
LexisNexis or Hire Right Full File Disclosure	* Information from all states * Both adult and juvenile records * Will only include a criminal background check report if an employer has asked the company to prepare one.	* Application * Copy of specified form of personal identification * Copy of specified form of address verification	Varies	Free, if you make only one request per year

How do I get a criminal history record from WSP?

The Washington State Patrol runs a program called WATCH, which stands for Washington Access to Criminal History. **WATCH does not report convictions from out of state, but will report all Washington convictions, including juvenile adjudications.** There are three primary ways to obtain a WATCH report.

- (1) **ONLINE.** The easiest way to get a WATCH report is to search online by name and date of birth online. The web address is <https://fortress.wa.gov/wsp/watch/>. You will need to create an account linked to your credit card. The cost is \$10.00, and the record will be produced immediately. You can also save a copy.
- (2) **BY MAIL for Conviction Records.**
 - a) You can send in a written Request for a Conviction Criminal History Record. The form can be found online at: http://www.wsp.wa.gov/crime/docs/misc/240569_request_for_chri-convicted_criminal.pdf. The cost for a mail request is \$17.00. It will take between one and two weeks to get the record.
 - b) You can also submit a request based on full fingerprints. The cost for a fingerprint background check is \$26.00. You will also have to pay your local law enforcement agency to take the fingerprints (the cost for fingerprints varies, but is between \$5 and \$15.) It will take between one and two weeks to get the record.
- (3) **IN PERSON.**

Every person has a right to review his or her personal criminal history record. You may also request a copy of the record.

 - a) In Olympia. You may inspect your criminal history record at the Washington State Patrol Office in Olympia. To make an appointment, call 360-634-2000. The Washington State Patrol may require you to submit fingerprints for identification, and may charge \$13 for fingerprinting. WSP staff will help explain the information on the WATCH report to you.
 - b) At your local police office. If you cannot get to Olympia, you can ask to access your criminal history record at your local law enforcement agency. Law enforcement may charge you a fee to take your fingerprints. WATCH will then send your criminal history file to the local law enforcement agency. It usually takes around two weeks to get the file.

HOW DO I GET A COPY OF MY FINGERPRINTS?

You should probably have a law enforcement agency take fingerprints for you. Your local law enforcement agency may charge a small fee for this service.

•How do I get criminal records from the Washington courts?

Each court will keep records of cases filed in that court only. The Washington Courts website (www.courts.wa.gov) permits you to search an online index of cases by name. **The website will not give you a complete and accurate criminal history.** It will identify any record of any person with the name entered, and there may be many people in Washington who share that name. It will not show you whether there was a judgment or conviction in each case. In addition, some older records do not show up on the Washington Courts webpage.

If you know the date of an offense, county, and type of offense, the Washington Courts webpage may help you to identify specific case numbers. With case numbers, you can go directly to the court and ask to review and copy individual case records. Case records are public information and can be reviewed by other people. To get copies of case records, you will need to pay a small fee.

•What if I have a record in other states?

In most states, you can get a criminal history report directly from that state's law enforcement agencies. To get information about each individual state, visit the National H.I.R.E. Network's resource guide at <http://www.hirenetwork.org/resource.html>. Click on the state, and then scroll down to the "Criminal Record Repository" section.

If you would like to get a record with information from more than one state, you can contact either the FBI or a private background check company.

•How do I get a criminal history report from the FBI?

The FBI maintains criminal history records for all 50 states and the District of Columbia. The FBI gets its records from the states, so if a state has not reported information to the FBI, it will not be in the FBI databases. An FBI record will usually include state convictions that have been vacated. It does not include all juvenile records, and is usually limited to juvenile crimes that are violent felonies or involve drug distribution.

The FBI gets its records from the states; state and county law enforcement agencies report their records to the FBI. If the state has not reported information to the FBI, it will not be in the FBI's databases. The FBI will not report state convictions that have been expunged or sealed. It does, however, report convictions that have been vacated under Washington law.

There are two ways to get an FBI record.

A. **FROM THE FBI BY MAIL.** To get your record directly from the FBI, you must:

- (1) Complete an FBI standard fingerprint form. You can get a copy of the fingerprint form at <http://www.fbi.gov/about-us/cjis/background-checks/standard-fingerprint-form-fd-258>

(2) Complete an Applicant Information Form. The form is available at <http://www.fbi.gov/about-us/cjis/background-checks/applicant-information-form>

(3) Obtain a money order or cashier's check for \$18.00, made payable to the Treasury of the United States OR complete a credit card authorization form. The credit card form is available at <http://www.fbi.gov/about-us/cjis/background-checks/credit-card-payment-form>

(4) Send the above items to
FBI CJIS Division --- Record Request
1000 Custer Hollow Road
Clarksburg, WV 26306

(5) If you need to contact the FBI about a background check request, you can reach them by phone at (304) 625-5590.

- B. **FROM AN FBI-APPROVED CHANNELER.** The FBI has contracted with a few private companies that expedite fingerprint requests and provide electronic copies of the results. You can go through these companies to get a copy of your FBI record. These companies charge fees of around \$50.00-\$75.00. Some FBI-approved channelers are:

Accurate Biometrics: www.accuratebiometrics.com

Axiom Information Security Services, Inc.: www.axiom.com

Eid Passport, Inc.: www.eidpassport.com

Fieldprint, Inc.: www.fieldprint.com/FBI

National Background Check, Inc.: www.fastfingerprints.com

•How do I get a criminal history report from a private company?

There are thousands of companies that perform background checks for a fee, usually ranging from \$20 to \$50. They are also called “consumer reporting agencies” (CRAs). Companies that specialize in background checks for landlords also call themselves “tenant screeners.”

Many CRAs purchase court records and maintain those records in their own databases. Federal and state laws require these companies to take steps to ensure that the information they report is accurate and up to date. Still, many people complain that some CRAs rely on outdated databases and report inaccurate information.

Under the Fair Credit Reporting Act, CRAs are required to disclose to consumers all information in the consumer's file at the time of request. This includes “all information on [the] consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.” Unfortunately, it is almost impossible to know the names of all CRAs who have information regarding your criminal history. This can make it challenging to completely correct inaccurate information.

Two of the largest CRAs have set up ways to get a full disclosure of your file with the company. Here

are instructions for each.

A. LexisNexis Full File Disclosure. LexisNexis will provide one “full file disclosure” per year. For more information about this service, you can call (866)312-8075. To get the report, you must:

(1) Complete an application form (available at https://personalreports.lexisnexis.com/pdfs/CD107_CP-File-Disclosure-Request-Form_pg-3.pdf)

(2) Make a copy of one of the following documents as proof of identity

- i. Non expired driver’s license
- ii. Non-expired state issued ID
- iii. Social Security Card
- iv. Military ID Card
- v. Passport

(3) Make a copy of one of the following documents (**no more than 2 months old**) as proof of mailing address

- i. Major credit card billing statement
- ii. Major bank statement
- iii. Major gas company credit card billing statement
- iv. Major department store credit card billing statement
- v. Utility bill
- vi. Telephone bill
- vii. Insurance declaration page

(4) Mail form and verification documents to LexisNexis Consumer Center, Attn. Full File Disclosure, PO Box 105108, Atlanta, GA 30348-5108

B. HireRight. You can access HireRight’s online report request at <https://www.hireright.com/Disputes/Report.aspx>.

The file disclosures provided by CRAs **will not include an employment-related background check** unless an employer has asked the company to prepare one. If an employer decides to take a negative action against you because of information in a background check, the employer is required by law to provide you a copy of the background check before it takes negative action.

•Are there any other ways to get this information?

If you can’t get a criminal history report in the ways discussed above, there may be other ways to get that information.

When you go to court for a criminal case, your lawyer should get a criminal history report. This should stay in your lawyer’s file, and you can ask for a copy.

If you have a probation or community corrections officer, he or she should have a summary of your criminal history, usually compiled by the courts. You can ask to see it.

If you applied for a job or employment license and were denied on account of a background check, the employer is required by law to provide you a copy of the background check.

READING A WASHINGTON CRIMINAL HISTORY (WATCH) REPORT

It can be very difficult to interpret a criminal history record. Every criminal history report looks different, and each agency and company uses its own format. This section summarizes how to read and interpret a Washington State Patrol criminal history record or WATCH report.

If you are trying to understand a criminal history record before applying for employment or housing, you will be looking for 5 main pieces of information.

- 1) **When** the event occurred
- 2) **Which county** the event occurred in
- 3) What **the charge** was (or if charges were never filed). The “charge” is the crime that was involved, usually listed by the statute or law number.
- 4) The **status** of the case. The status should tell you if there was a conviction or if the case is still pending.
- 5) **The disposition** of the case. A disposition is the final result--- for example, a conviction, or that the case was dismissed

Many times, this information will be listed in multiple places on a WATCH report. Here is an explanation of the layout of a WATCH Report and some examples of the information contained in each section, then a discussion of common errors in these reports.

•How is a WATCH report organized?

There are several sections in a WATCH Report.

A. Personal Information Section

This section includes **personal information** about the subject of the report and will look something like this.

This is your identification number with the Washington State Patrol. It will appear on every WATCH for you.

Any names or aliases associated with the SID number.

SID NUMBER	NAME	FBI NUMBER	DOC NUMBER				
WA12345678	Doe, Jane B.						
=====							
PERSONAL INFORMATION							
=====							
SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR	PLACE OF BIRTH	CITIZENSHIP
F	W	5 04	155	BRO	BLK	CA	
=====							
NAMES USED	DATES OF BIRTH	SOC SEC NUMBER	MISC NUMBER				
Doe, Janet B	6/20/1965						

B. Conviction or Adverse Finding Summary

This section summarizes all convictions or cases that ended with a negative finding. It is organized by level of offense. This section **will NOT** give you complete information on the offenses—the details will be in the “Criminal History Information” section.

CONVICTION AND/OR ADVERSE FINDING SUMMARY		
1	FELONY (S)	DISPOSITION DATE
	BURGLARY -2 CLASS B FELONY	08/02/1993
2	GROSS MISDEMEANOR (S)	
	ASSAULT - 4	10/10/2001
	OBSTRUCTING A LAW ENFORCEMENT OFFICER	03/12/1986
1	CLASSIFICATION (S) UNKNOWN	
	VUCSA – POSS MARIJ	12/29/1997

Here, “Burglary” is the type of crime, and “2” is the degree. First degree crimes are the most serious.

This means that there is a conviction, but there is no information in the report about whether the crime was a felony or misdemeanor. To find out, you will need to get the records on file with the court.

Here, “Burglary” is the type of crime, and “2” is the degree. First degree crimes are the most serious.

The disposition date is when a conviction or guilty plea was entered.

C. DOC Summary

DOC stands for Department of Corrections. When a person is incarcerated in state prisons, DOC takes a fingerprint card and then reports information on the incarceration to the WSP. DOC does not collect information on commitment to local or county jails, and does not collect information on federal prisons.

This section is just a summary of the times a person has been committed to state prison. Details will be found in the “Department of Corrections Information” section below.

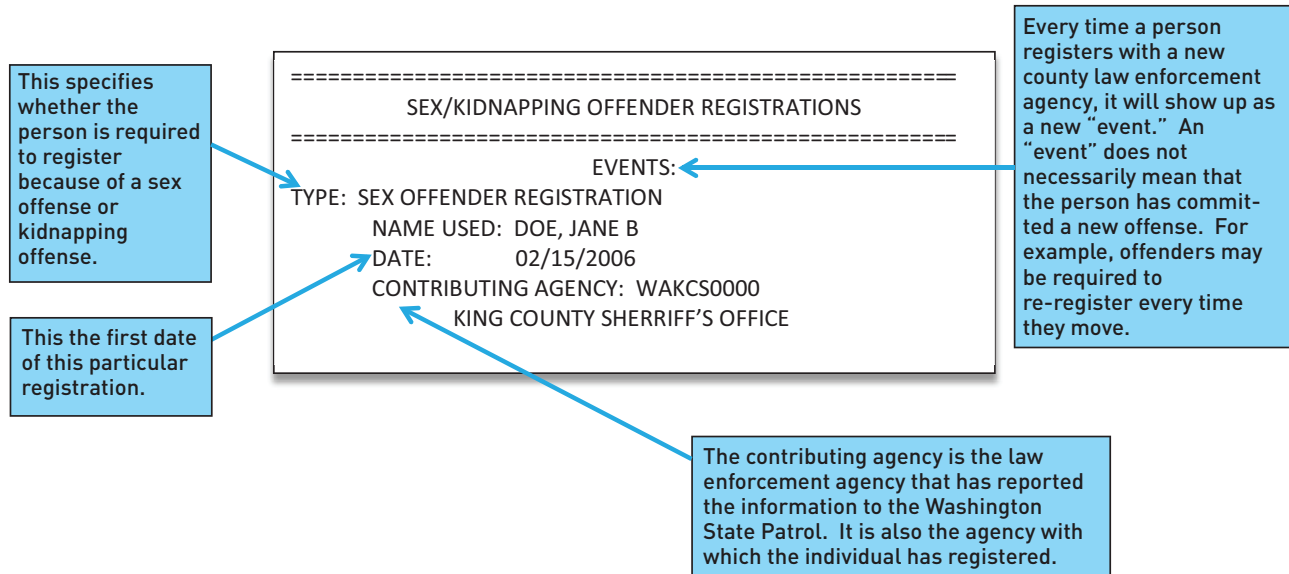
DOC SUMMARY		
FIREARM POSSESSION UNLAWFUL-1	COMMITMENT	08/12/2003
ASSAULT-2	COMMITMENT	03/01/1998

The crime for which the person was incarcerated.

The date commitment began. It may or may not be the same as the date of offense.

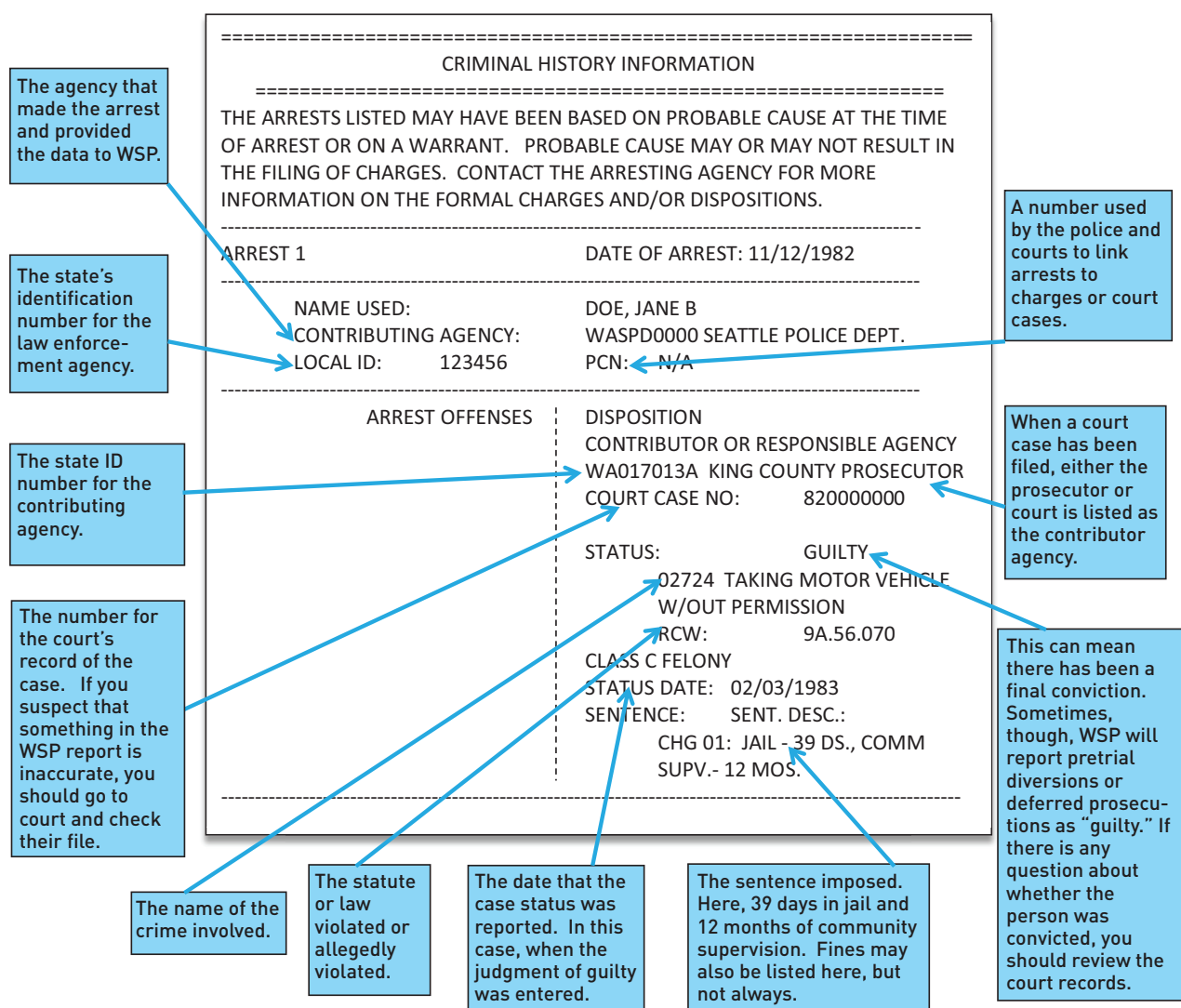
D. Sex or Kidnapping Offender Registration

Under state and federal law, individuals who have committed certain sex offenses or kidnapping offenses need to register with local law enforcement. This section shows where an individual is or has been registered.



E. Criminal History Information

This section provides details about each arrest that resulted in a conviction or other “adverse finding.” It will also include arrests where charges are still pending, unless the case has been dismissed or the arrest occurred more than a year ago.



Here is another example of an entry in the criminal history information section. This time, the case was **dismissed** after a deferred disposition, deferred sentence, or other probation period.

ARREST 2		DATE OF ARREST: 1/11/2000	
NAME USED:		DOE, JOHN C.	
CONTRIBUTING AGENCY:		WASPD0000 SEATTLE POLICE DEPT	
LOCAL ID:	123456	PCN: 987654321	
ARREST OFFENSES		DISPOSITION	
		CONTRIBUTOR OR RESPONSIBLE AGENCY:	
		WA018041J BAINBRIDGE ISLAND	
		MUNICIPAL CT.	
		COURT CASE NO: C000001111	
		STATUS: GUILTY	
		01134 ASSAULT 4	
		RCW: 9A.36.041	
		DOMESTIC VIOLENCE	
		GROSS MISDEMEANOR	
		STATUS DATE: 03/10/2000	
		COMMENT: 03/15/2001 DISMISSED	

Here, the status date is when the person was found or pled guilty.

This is the date the person completed the requirements of the deferred sentence and the case was dismissed.

F. Department of Corrections Information

This section is organized by commitments and will show each time a person has been incarcerated in state prison, even if they were incarcerated on multiple charges. Here, there is only one commitment, even though the person was incarcerated on two counts arising out of a single incident.

CUSTODY HISTORY	
* COMMITMENT *	
	DATE: 02/18/2004
NAME USED:	DOE, JOHN B.
CONTRIBUTING AGENCY:	WA023025C WA DOC-SHELTON CORRECTIONS
COURT CASE NO:	031234567 COUNTY/STATE: KING
CHARGE:	07346 VUCSA-POSS HEROIN OR SCHED 1 OR 2 NON NARC-CLASS C FELONY 69.50.401 (D)
DOO:	2/18/2004
COURT CASE NO:	031234567 COUNTY/STATE: KING
CHARGE:	0054300 FIREARM POSSESSION UNLAWFUL CLASS B FELONY 9.41.040(1)(B)
DOO:	2/18/2004

The date the offense was committed.

The second charge for which the person was incarcerated.

The date incarceration began.

The statute violated.

H. Other Sources of Information

If something in your criminal history record is confusing, you can contact the Washington State Patrol. The Criminal History Information Section has staff available to answer your questions. Their contact information is:

Phone: (360) 534-2000 and press option 5
Email: crimhis@wsp.wa.gov
Mail: Washington State Patrol
Identification and Criminal History Section
PO Box 42633
Olympia WA 98504-2633

WHAT ARE SOME COMMON ERRORS ON WATCH REPORTS?

1) No Disposition Reported

Sometimes, a criminal history report will show an arrest but will not show how the case ended. This mistake can hurt your chances of getting a job or housing because employers and landlords might assume that the charges are still open, or that you were found guilty of all of the original

arrest charges (when instead the case might have been dismissed, or you might have been convicted of different or lesser charges).

2) No Information on the Type or Level of the Offense (“Classification Unknown”)

If the clerk who reported the incident did not provide information on the specific statute that was violated, or did not report whether the arrest was for a misdemeanor or felony, that will show up on your WSP report as “classification unknown.” This can hurt your chances of getting a job because an employer might assume that the crime is worse than it actually is, or might not know what crime was involved.

3) Traffic Infractions Reported as Criminal Convictions

If you were charged with a traffic crime, the court may have found only that you committed a traffic infraction, for which you have to pay a fine but do not need to serve any jail or probation time. Occasionally, the WSP will report traffic infractions as “guilty” or “convictions” when they are not crimes.

4) Typing Errors

Any system is open to human error, and criminal history records may include typing errors. For example, one Washington man discovered that his misdemeanor conviction was entered into the court’s computer system as a felony conviction.

5) Pre-Trial Diversions or Similar Cases Reported as Convictions

For some juvenile offenses and minor adult offenses, the court may agree to dismiss the case without finding the defendant guilty, so long as the defendant successfully completes court-ordered conditions. Sometimes these cases are called pre-trial diversions or stipulated continuances.

Another variation of this type of case is a bail forfeiture. In some courts, after a person is arrested and posts bail, the prosecutor agrees to have a defendant give up the bail in exchange for an agreement not to pursue the case in court. Sometimes, a person can get a bail forfeiture without pleading guilty to a crime.

Occasionally, even though there is no guilty finding in these types of cases, they are reported as guilty convictions. This can hurt your chances of getting a job or home because others might assume that you were found guilty of something when that is not the case.

6) Deferred Prosecution Reported as a Guilty Conviction when Pending

If you have ever been subject to a deferred prosecution, you may have been promised that, once you completed probation or treatment, the charges would be dismissed and would not appear on your record. In reality, criminal history reports may continue to report these charges.

If you are still working to complete probation or treatment, the charges may show up on your crimi-

nal history record with a disposition of “guilty.” So, if you have to complete three years of probation before the charges are dismissed, you will have a “guilty” verdict on your record for three years.

Once the WSP receives notice that you completed probation or treatment, it should add a “comment” stating that the charges were dismissed. The charges will continue to be reported on your WSP report, but it should be clear that there was no conviction.

7) Identity Theft

If another person gave your name to police officers or the court, your criminal history record may report incidents you were not involved in. The WSP has a special procedure for challenging identity theft, which will be discussed in the next section.

•How do I fix inaccurate information on a WATCH report?

Modification of Information in the Report

If something in your criminal history report is inaccurate, you may request that the WSP correct it. The WSP has a “Request for Modification of Record” form available online. You can access it at http://www.wsp.wa.gov/crime/docs/misc/modification_record_request.pdf.

To complete the form, you must:

- (1) Get a copy of the “SID” number from your WSP criminal history record. Page 8 of this guide shows where your SID number is located.
- (2) Identify the inaccurate information.
- (3) Write an accurate entry —what your record should say.
- (4) Attach court documents or other official records that show your record is inaccurate. You can get documents directly from the court involved in the case.

The WSP will not modify or correct information unless there is something official in the court record establishing the inaccuracy. In order to write an accurate entry, you will need to go to the court where the case was heard and get a copy of the court records from the clerk. If you have your case number, you can often pull up your case files on computers in the clerk’s office. The clerk will charge a small fee for copying the file – usually about 25 cents per page. You should submit copies of the accurate information with your request to the WSP.

Identity Theft (“Compromised Identity Claims”)

WSP has a special mechanism to assist victims of identity theft. It can:

- Provide you with a letter identifying your state identification (SID) number and verifying that the claimant is not the same person as the other individual(s) in the data base with similar name and date of birth descriptors.
- Provide you with a wallet card bearing your SID, photograph, and thumbprint.
- Note on your background check that a personal identification card has been submitted to WSP.

In order to submit a compromised identity claim you should:

(1) Gather the following items:

- a. The WSP “**Compromised Identity Claim Form.**” Complete the “Claimant’s Personal Information” section but **DO NOT SIGN THE FORM.** The form is available at:
http://www.wsp.wa.gov/crime/docs/misc/compromised_identity_claim.pdf.
- b. A **passport photo.** The photo must be 2 inches by 2 inches, show your full face from a front view, and be in front of a plain white background.
- c. An official government-issued **photo identification**
- d. A **check or money** order for \$26, payable to the Washington State Patrol

(2) Bring the items listed above to your local law enforcement agency. The law enforcement agency will then:

- a. Verify your ID
- b. Apply your fingerprints to the Personal Identification card and claim form. The law enforcement agency may charge a fee for fingerprints, usually between \$5 and \$15.
- c. Have you sign the Compromised Identity Claim Form
- d. Mail the form to the WSP for processing.

Once the WSP receives the form, it will take them between 2 and 4 weeks to process the information and act on the request.

What if there is inaccurate information on another type of report (i.e., FBI report or CRA report)?

If you discover inaccurate information on an FBI report, or a report prepared by a CRA, you should contact an attorney to assist you.

RESOURCES

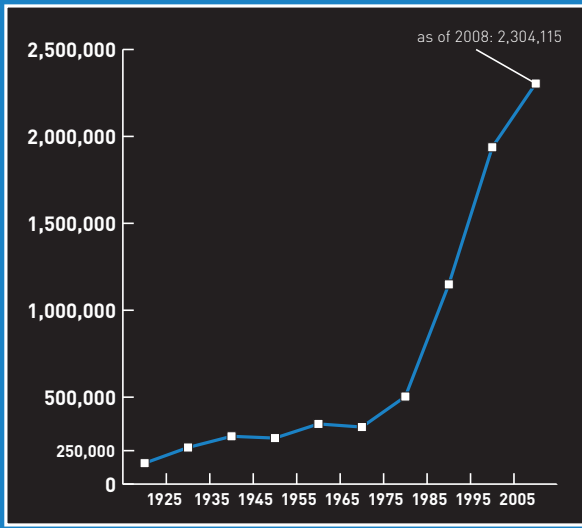
For more information or to request assistance, please contact the ACLU of Washington. Due to limited resources, we are generally not able to provide representation in individual cases, but we may be able to provide you with some information. You can reach us at 206.624.2180 or through our Website: www.aclu-wa.org/secondchances.

Thank you to Columbia Legal Services, Legal Voice, and the Defender Association for their review of this guide; to the Legal Action Center, Ohio Justice & Police Center, H.I.R.E. Network, and the Michigan Reentry Law Wiki, whose guides on criminal records provided inspiration and information; and to the numerous ACLU clients who shared their records and information.

Criminal Records: A Growing Problem

- Arrest rates are on the rise. By the age of 23, over 30% of young people will have been arrested, according to a 2011 study.
- Over the past three decades, hundreds of thousands of Americans have been convicted of low-level drug and property crimes.
- The United States incarcerates a greater percentage of its population than any other country in the world.
- People of color are arrested, prosecuted, and jailed at much higher rates. Nationwide, African American men are six times

U.S. PRISON POPULATION 1923-2008



more likely and Hispanic and Native American men two times more likely than white men to have served time in prison.

One in four Americans — nearly 65 million people — have a criminal record. The social consequences are far-reaching.

What Are the Consequences of a Criminal Record for Individuals?

Many people who are convicted of a crime never serve any jail time, and 98% of those who are jailed are eventually released. Yet, people suffer the consequences of a record long after they have paid their debt to society.

- Most employers conduct criminal background checks. Individuals with a criminal record are half as likely to be called in for a follow-up interview.
- As a result, people with criminal records work fewer hours and make less money than others; this affects the financial stability of families.
- Individuals with criminal records have repeatedly been denied housing. They can spend hundreds of dollars on screening fees only to be denied because of old convictions.

Why Does It Matter to Society?

- People with jobs and stable places to live are much less likely to commit crimes.
- Increasing employment and housing opportunities for ex-offenders improves public safety, decreases poverty, and combats racial injustice.

What We Do

The Second Chances Project works to eliminate policies that unfairly prevent ex-offenders from obtaining jobs. We seek to promote policies that permit individuals who have served their sentences to fully re-integrate in society. The project engages in a range of activities.

1) Helping Individuals Limit Criminal Records

Individuals who have completed their sentences and then spent a number of years in the community without committing any crimes may be eligible to vacate convictions or seal court records. This helps individuals put their past behind them and get jobs and housing.

ACLU attorneys are able to help people work through this process. You can request assistance by completing an intake form at www.aclu-wa.org/secondchances

2) Challenging Overly Broad Employment and Housing Policies

Under state and federal anti-discrimination law, employers and landlords cannot refuse to consider an applicant solely because of criminal history, unless the practice is justified by “business necessity.” They must consider the nature of the crime, type of employment or housing, and the age of conviction.

The ACLU of Washington opposes employment practices that automatically reject

anyone with a criminal record, regardless of the type or age of offense. Though we cannot represent every individual harmed by such practices, we can provide information on enforcement and referrals.

3) Providing Information, Promoting Dialogue

Project staff work with community groups to document the barriers to employment facing individuals with criminal records and develop innovative solutions.

The project has produced guides to understanding criminal records and employment with a criminal record. Project staff also train social service providers on the legal limits to using criminal records to deny employment, and the ways that individuals can clear criminal records.

If you have questions about how a criminal record impacts you, contact the ACLU of Washington at 206.624.2180 or through our Web site: www.aclu-wa.org/secondchances

How You Can Help

Raise Awareness

Start a conversation with community groups and other organizations about the long-term consequences of criminal records. The ACLU of Washington offers resources to help you get started.

- For publications and information, visit

our Second Chances home page at www.aclu-wa.org/secondchances

- ACLU Second Chances staff are available to speak to community groups about the rise in mass incarceration, and the impact of criminal records on individuals. To request a speaker, visit us on the web at www.aclu-wa.org.



The American Civil Liberties Union is our nation's guardian of liberty. We work daily in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution guarantees everyone in this country. The ACLU is nonprofit and non-partisan, with more than 500,000 members and supporters nationwide and more than 25,000 in Washington.

It takes a lot of time, resources, and dedicated volunteers to safeguard liberty. Want to support the work of the ACLU? Please visit us on the web at www.aclu-wa.org.



Seeking Fair Treatment for People with Criminal Records

