

Deleting Non-Conviction Law Enforcement Data

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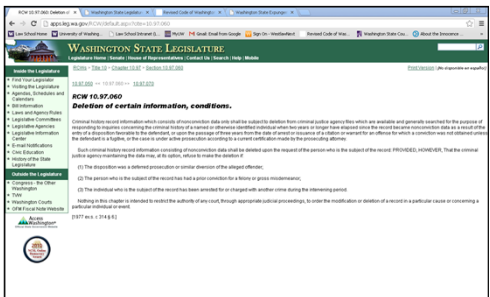
Can I get this off my "record"?

- ▶ Washington State Patrol (WSP) Record
 - Arrests
 - Convictions
- ▶ Court record
 - (Almost) all cases that get filed in court, no matter the disposition, create a court record.
- ▶ Other agency record
 - DSHS (sourced by self-reports, WSP, the courts, internal database on abuse & neglect findings)
 - Consumer reporting agencies (source is likely the courts, the WSP; maybe other "historical database")
- ▶ FBI record
 - Source is the WSP

Dispositions & Terms of Art

- ▶ Non-conviction data
 - Arrests
 - Dismissed cases*
 - Vacated cases
- ▶ Conviction data
- ▶ *Deferred/diverted cases
 - Deferred prosecutions (RCW 10.05)
 - Stipulated order of continuance (SOC)
 - Deferred sentence (RCW 3.50.320)
 - Pretrial diversion

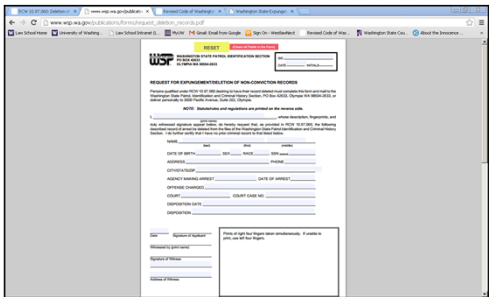
RCW 10.97.060




Deleting law enforcement non-conviction data

- ▶ RCW 10.97.060 allows the deletion of non-conviction data only from criminal justice agency files.
 - But not from courts
- ▶ 2 years after record became non-conviction data
 - 2 years after case was dismissed*
 - 2 years after acquittal
- ▶ 3 years after arrest

Ask the WSP to delete record






Correcting and Sealing Non-Conviction Records

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What types of errors may you see?

- Identity mismatch
- Repeats
- Erroneous charges
- Erroneous date (closing/conviction date)
- Erroneous offense level (or “classification unknown”)
- Reporting cases that have been vacated/sealed



How to correct?

- Get copies of original source material
- Transmit, with letter and specific update language, to entity making erroneous report (15 USC 1681i)
- CRA has 30 days from notice to correct
- Make sure to ask that the company transmit corrections to everyone to have received the error in the past year.
- Keep detailed records for potential FCRA litigation



When does sealing help?

- Remove case from FBI background check
- Sealed cases removed from courts website, SCOMIS data dump (differing levels of access in JIS, LINX)
- Limitation of reporting based on FCRA
 - 15 U.S.C. 1681e(c): “follow reasonable procedures to assure maximum possible accuracy”
 - 15 U.S.C. 1681k(a): Notification or “strict procedures” to ensure complete and up to date.



Caution!

- Sealing may not be necessary: FCRA prohibits reporting of arrest 7 years from date of entry
- GR 15(c)(4): When a case is sealed (and not vacated), the information in the public indices includes
 - name,
 - case number,
 - case type (CR)
 - and charge.
- If the case involved a plea, vacate first!



Historical background

- Article 1, s. 10: Justice shall in all cases be administered openly
- *Ishikawa*
 - Serious and imminent threat to compelling interest
 - Private interest outweighs public interest in access
 - Least restrictive means
 - Notice and opportunity to object
 - Order limited in duration and scope



Application of Ishikawa to records

- *Allied Daily News v. Eikenberry*: 121 Wn. 2d 205 (1993)
- *Dreiling v. Jain*, 151 Wn. 2d 900 (2004)
- *Rufer v. Abbott Labs*, 154 Wn. 2d 530 (2005)



Media attention



What facts help make the case?

- Identifiable loss of job, housing
- Continued unemployment, homelessness
- Record of how case was reported and explanation of how sealing will limit
- Evidence of person's qualifications and innocence/rehabilitation
- Evidence that person has deleted law enforcement data
- See *J.S. v. State*, *Hundtofte v. Encarnacion*



Ishikawa “plus”

- *Hundtofte v. Encarnacion*: 280 P.3d 513 (2012).
 - Tenant screening case
 - Nothing “distinguishes” the tenants from all others similarly situated
- Initial proposed GR 15 – would apply Encarnacion to all vacated, dismissed and pardoned cases.



Redaction of Records

- *Indigo Real Estate v. Rousey*
- *Encarnacion*
- Proposed GR 15 to prohibit redaction of party names in index, with no exceptions.



What happens after sealing?

- Notice to law enforcement
- Review SCOMIS/JIS/LINX to ensure accurate entry of the order
- Notice to CRAs?
- Expungement clearinghouse?



Juvenile Sealing

- RCW 13.50.050
- Proposed revisions to GR 15 would incorporate Ishikawa on juvenile sealing motions
- State v. SJC (Division 1)



Options other than sealing

- Seattle Jobs Assistance Legislation
- Title VII and EEOC Guidance
 - Tailored screens justified by business necessity (arrest itself never justified by business necessity)
 - Strong recommendation for individualized assessment