

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

RCW 10.97.060

Deletion of certain information, conditions.

Criminal history record information which consists of conviction data and shall be subject to deletion from criminal justice agency files which are available and generally searched for the purpose of employment, licensing, or other purposes, if the record has been sealed under chapter 43.34, or if the record has been expunged under chapter 43.43, or if the record has been destroyed by the criminal justice agency or a division thereof to be destroyed, or under the process of time from the date of arrest or issuance of a citation or warrant for an offense for which a conviction was not obtained unless such criminal history record information consisting of conviction data shall be deleted upon the request of the person who is the subject of the record. PROVIDED, HOWEVER, that the criminal justice agency may retain the information for the following purposes:

(1) The individual is a felon in possession of a dangerous offender;

(2) The person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor;

(3) The individual who is the subject of the record has been arrested for a charged and another crime during the intervening period.

Nothing in this chapter is intended to restrict the authority of any court, through appropriate judicial proceedings, to order the modification or deletion of a record in a particular cause or concerning a particular individual.

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

REQUEST FOR EXPUNGEMENT/DELETION OF NON-CONVICTION RECORDS

Please complete this WSP 10-17 form to request that your record be deleted from the files of the Washington State Patrol. This request will be processed by the Washington State Patrol's Privacy Unit. Please attach a copy of your driver's license or state identification card to this request. Your request will be processed by the Privacy Unit.

The attached request must be submitted in writing. In order to expedite processing, the Privacy Unit recommends that you attach a copy of your driver's license or state identification card to this request. If you do not have a copy of your driver's license or state identification card, you may attach a copy of your birth certificate or other government issued photo identification card.

NAME: _____
MIDDLE NAME: _____
LAST NAME: _____
ADDRESS: _____
CITY: _____ STATE: _____ ZIP CODE: _____
OFFENSE DATE: _____
OFFENSE CHARGE: _____ CRIMINAL CASE NO.: _____
DEPORTATION DATE: _____
DEPORTATION: _____

SIGNATURE: _____
Signature of Applicant
Address of print copy
Requester's Name
Signature of Requester



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


