



United States Department of the Interior

F INDIAN AFFAIRS
Puget Sound Agency 2707
Colby Avenue, Suite 1101
Everett, Washington 98201

In Reply Refer To:
Division of Tribal Government

Honorable Teri Gobin, Chairperson
Tulalip Tribes
6406 Marine Drive
Tulalip, Washington 98271

Dear Chairperson Gobin:

We are in receipt of Tulalip Tribes Resolution 2024-472, Amendment to Tulalip Tribal Code-2.25 Adding .200 Order Setting Aside Conviction Offense.

Resolution No. 2024-472 was adopted by the Board of the Tulalip Tribes of Washington on October 4, 2024, and received by us at Puget Sound Agency on October 10, 2024. This resolution is accepted as reviewed and approved by the Superintendent on October 15, 2024. This resolution is in accordance with Article VI, Section 1(K) and (L) of the Tulalip Constitution.

The resolution is subject to a 90 day secretarial review pursuant to your Constitution and was forwarded to the regional office on October 15, 2024

If you have any questions, please email Administrative Officer, Stephanie Ancheta at stephanie.ancheta@bia.gov.

Sincerely,

Digitally signed by
JANINE VAN DUSEN
Date: 2024.10.15
12:37:16 -07'00'

Janine B. Van Dusen
Superintendent

THE TULALIP TRIBES OF WASHINGTON
Resolution 2024-472

Amendment to Tulalip Tribal Code -2.25 Adding .220 Order Setting Aside Conviction Offense

WHEREAS, the Board of Directors is the governing body of the Tulalip Tribes under the Constitution and Bylaws of the Tribes approved by the United States Commissioner of Indian Affairs and the Secretary of the Interior on January 24, 1936, pursuant to the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 5123);

WHEREAS, under the Tulalip Tribes Constitution Article VI, Sections 1 (K) & (L), the Board of Directors has the authority to safeguard and promote the peace, safety, morals, and general welfare of the Tulalip Reservation by regulating the conduct of trade and the use and disposition of property upon the reservation, and to promulgate and enforce ordinances governing the conduct of members of the Tribes providing for the maintenance of law and order and the administration of justice by establishing a tribal court and defining its duties and powers; and

WHEREAS, the Board of Directors recognizes that the collateral effects of criminal convictions in employment and other areas have detrimental effects on individuals and the community; and

NOW THEREFORE BE IT ENACTED, by the Board of Directors of the Tulalip Tribes:

Section 1. TTC 2.25.220. A new section in Chapter 2.25 Criminal Procedures of the Tulalip Tribal Code, to be codified as Section new section number is hereby enacted as attached in both a track changes version as attachment number one, with additions indicated by underline and deletions indicated by strikethrough and a clean version as attachment number two.

Section 2. *Effective date.* This ordinance shall be in full force and effect on January 1, 2025, immediately upon the sooner of its approval by the Superintendent of the reservation or ten (10) days following presentation to the Superintendent of the reservation pursuant to the Tulalip Constitution.

ADOPTED by the Board of Directors of the Tulalip Tribes of Washington at a regular board meeting assembled on the 4 day of October, 2024, with a quorum present, by a vote of 6 For, 0 Against, and 0 Abstain.

THE TULALIP TRIBES OF WASHINGTON



Teri Gobin, Chair

The within document is hereby approved pursuant to
209 DM8, 230 DM 1, 3IAM 4

ATTEST:



Theresa Sheldon, Secretary



Digitally signed by JANINE VAN
DUSEN
Date: 2024.10.15 12:37:37 -07'00'

Superintendent, Puget Sound Agency

THE TULALIP TRIBES OF WASHINGTON
Resolution 2024-472

**Amendment to Tulalip Tribal Code -2.25 Adding .220 Order Setting Aside Conviction
Offense**

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THE TULALIP TRIBES OF WASHINGTON



Teri Gobin, Chair

ATTEST:



Theresa Sheldon, Secretary

Orders setting aside a conviction

Brief Summary of Ordinance

- Allows a person convicted of an eligible misdemeanor to petition the court to have their conviction removed from their criminal history (vacated).
 - Domestic and family violence, sex crimes and felony convictions are not eligible
 - The person must have a clean criminal history for a period of years before they may petition to have a conviction vacated
- Vacated convictions cannot be used to prevent someone from getting a job or housing.
- A vacated conviction can be used in bedahel placement determinations and in any subsequent prosecution.

Background

Many Tribes and States allow an individual who has been convicted of certain crimes to petition a court to have that conviction removed from their history. An order setting aside a criminal conviction is often referred to as "vacating" or "expunging" a conviction.

Current Tulalip law only allows convictions for marijuana-related conduct that is now legal to be vacated. There is broad support in the criminal justice community here to expand the kinds of criminal offenses that can be vacated.

What happens when a conviction is vacated?

When a conviction is vacated, the Court will withdraw the guilty plea or finding of guilt. The criminal history of a person who has had a vacated conviction will reflect a disposition of "vacated" instead of "guilty."

The vacated conviction does not need to be reported on employment, housing, or other applications. A person who has had a conviction vacated can legally say they were not convicted of the offense. Employers and others in the community cannot discriminate against the person based on the vacated conviction.

However, the current draft provides that a vacated conviction can be used by bedahel when making placement determinations or in a later criminal prosecution (for example, to enhance a sentence based on prior convictions).

What convictions can be vacated?

All jurisdictions that allow convictions to be vacated place limits on the types of convictions that can be vacated. Common categories of crimes that are not eligible for vacation include:

- Murder, manslaughter, and any crime that results in the death or serious injury of a person
- Sex offenses

- The most serious classification of felony crimes
- Driving Under the Influence (DUI) and related crimes
- Crimes of domestic violence
- Crimes of violence

The current draft does not allow for felony crimes, sex crimes, or domestic/family violence crimes to be vacated. It does allow DUI and related crimes to be vacated, but after seven years, a longer waiting period than other crimes.

How many convictions can be vacated?

Many jurisdictions limit the number of convictions that a person can vacate. For example, at Lummi, a person may vacate no more than two criminal judgements and no more than one judgement of a single type (e.g. “crime against person” or “crime against property”). In Washington, only the most recent felony can be vacated, but any number of misdemeanors can be vacated.

The current draft version does not place a limit on the number of convictions that a person can vacate.

Who decides if a conviction is vacated?

The current draft provides that a Tulalip Tribal Judge will decide whether the conviction is vacated. The Court must consider:

- the criminal history of the offender
- the facts and nature of the offense committed,
- its impact on the victim and the community, and
- the circumstances and behavior of the offender after conviction

The current draft requires notice to the prosecutor and any victims, who may contest the petition.

If the Court finds by clear and convincing evidence that granting the motion would be in the best interests of justice, the Court shall grant the motion.

How soon can a person petition to have their conviction vacated?

All jurisdictions with a process for vacating convictions require a petitioner to have a clean criminal history for a period of some years before a conviction can be vacated.

The current draft proposes a three-year waiting period for class A, B or C, a five-year waiting period for class D or E offenses other than DUI or Reckless Driving, and a seven-year waiting period for DUI or reckless driving.

A person who has graduated from Wellness Court is immediately eligible to have any qualifying conviction vacated, provided victim notification has been complied with.

TTC 2.25.220 Order setting aside conviction.

- (1) Motion. Any offender who does not have any pending criminal charges in any court, who has fully complied with and completed the sentence of the Court, and whose conviction is a qualifying conviction as defined in subsection (2) of this section may petition the Court for an order setting aside the conviction. Opportunity shall be given to contest the petition as provided in subsection (3) of this section.
- (2) A conviction, other than for an offense of domestic violence, family violence, or a violation of TTC 3.20, is a qualifying conviction for:
 - (a) Any class A, B, or C offense if three or more years have passed since the later of the date of conviction, the last probation revocation, or the offender's last conviction in any court.
 - (b) Any class D or E offense other than reckless driving, TTC 3.60.130(9), or driving under the influence or physical control, TTC 3.60.130(10), if five or more years have passed since the later of the date of conviction, the last probation revocation, or the offender's last conviction in any court.
 - (c) Reckless driving, TTC 3.60.130(9), and driving under the influence or physical control, TTC 3.60.130(10), if seven or more years have passed since the later of the date of conviction, the last probation revocation, or the offender's last conviction in any court.
- (3) Hearing.
 - (a) The Court shall serve the Prosecutor's Office with a copy of the petition and set a hearing within 30 to 90 days of the date the motion was filed. The Prosecutor shall provide a copy of the petition and notice of the hearing date to the victim(s), if any, of the crime. The Prosecutor may provide the victim with the petition and notice of hearing by mail to the victim's last-known address.
 - (b) Upon hearing the petition, the Court shall consider the offender's criminal history, the facts and nature of the offense committed, its impact on the victim and the community, and the circumstances and behavior of the offender from the date of conviction to the date of the hearing. The Court shall allow the Prosecutor, the victim(s), and any interested community members to make a statement at the hearing and may require the filing of affidavits or other such evidence as the Court deems proper. If the Court finds by clear and convincing evidence that granting the petition would be in the best interests of justice, the Court shall grant the petition.
- (4) When the Court grants a petition to set aside a conviction, the Court shall clear the record of conviction by permitting the offender to withdraw the offender's plea of guilty, or by setting aside the verdict of guilty, and entering a disposition of "Vacated."
- (5) Once the Court vacates a record of conviction, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history, and the offender shall be released from all penalties and disabilities resulting from the offense except as provided in subsection (6) below. For all other purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime.

- (6) Notwithstanding subsection (5) above, an offender's vacated conviction may be used in a later criminal prosecution, for the purpose of determining a sentence, or by the court when making placement determinations. Vacating a conviction does not restore firearms possession rights. An offender must separately apply to the Court for relief under TTC chapter 11.40 in order to restore firearms possession rights.
- (7) Problem-solving courts. The Court has discretion to waive the period of time required in subsection (2) of this section for any graduate of the Tulalip Wellness Court, Family Wellness Court, or MAP court. The Court may vacate a qualifying conviction upon graduation on its own motion or the motion of either party; however, if the qualifying conviction has a victim, the Court and Prosecutor must comply with subsection 3(a) of this subsection by providing notice and an opportunity to be heard to such victim before the Court enters an order vacating a conviction.



Tulalip Tribes Office Of The
**Reservation
Attorney**

Phone: 360-716-4548

Fax: 360-716-0634

ira-contracts@tulaliptribes-nsn.gov

LEGAL REVIEW FORM

Complete Submittal Received by ORA: _____ Is this a policy? No Yes

If yes, has this been created/uploaded to PolicyTech? No Yes

Title of Submittal: Order Setting Aside Conviction first read

Document Type: Resolution

Contract Amount: \$ N/A

Funding Source: **Choose Funding Source**

Submitted By: Brian Kilgore/Lead Prosecutor/ORA
(Name/Title/Department)

Return Submittal To: Jennifer Cristophani/Paralegal/ORA
(Name/Title/Department)

- Submittal is **APPROVED**
- Submittal Requires **ADDITIONAL INFORMATION**
- Submittal is **DISAPPROVED**
- Submittal is Approved With the (Following/Attached) Revisions:

Notes/Comments:

Reviewed By: 7/18/2024 _____
Date Signed Reservation Attorney Signature

Notice/Disclaimer:
Program or enterprise is responsible for keeping records of their documents and this Legal Review – the Reservation Attorney Office only keeps copies of the Legal Review cover sheet for its own Records. **Please Read: This is review for the policy or contract's legal effect only, and the Office of Reservation Attorney does not evaluate the advisability of executing the policy or contract as a business or governmental decision.**

Legal Review Returned By: Email Interoffice Mail In-Person

To: _____ on _____ by _____
Name of Recipient Month/Date Initials

