

UNDERSTANDING AND SEALING CRIMINAL RECORDS IN OHIO

A joint publication by



OHIO JUSTICE & POLICY CENTER

Reclaiming Lives. Renewing Communities. Restoring Justice.

and



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The Ohio Justice & Policy Center and the Second Chance Project

The Ohio Justice & Policy Center (OJPC) is a Cincinnati-based nonpartisan, nonprofit law firm representing people marginalized by the criminal justice system and advocating for local and statewide smart-on-crime reform. Through outreach legal clinics, community classes, litigation, advocacy, research, and collaborative initiatives, OJPC is *reclaiming lives, renewing communities, and restoring justice*.

OJPC's Second Chance Project works to remove legal barriers that prevent adults and youth with criminal records from becoming productive members of society.

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The Ohio Poverty Law Center

The Ohio Poverty Law Center (OPLC) is the legal services state support center in Ohio. OPLC attorneys are experienced poverty law advocates who advocate on systemic impact issues and provide assistance to the six legal services regions in the Ohio legal services community. OPLC's work includes policy advocacy, litigation support, specialty assistance and consulting, trainings, task forces, publications, strategic communications, and technology resource assistance.

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Disclaimer

This guide is a general source of information about criminal records and expungement. It is *not* a substitute for individualized legal advice. For answers to specific questions, it is best to consult an attorney.

To get a digital copy of this guide or for any questions about its content, please contact the Ohio Justice & Policy Center or the Ohio Poverty Law Center.

What is a Criminal Record?

There are numerous versions of a criminal record. These are the most common:

County Conviction Record Transcript

Where to get it: Your county sheriff's office (e.g., Hamilton County Justice Center, 1000 Sycamore Street, Cincinnati)

Cost: ~\$5.00 (varies by county)

These are sometimes referred to as '*police checks*' even when they are produced by the sheriff's office. They include all convictions that occurred in that county, but they exclude crimes in other counties and charges not resulting in a conviction (cases ignored or dismissed, or defendant found not guilty). Also, these background checks do not reveal expunged offenses. Certain employers may request that applicants obtain a "police check" before being hired.

Clerk of Courts Website

Where to get it: Online (e.g., www.courtclerk.org)

Cost: Free

Anyone in the general public – including landlords, employers, and educational programs – can view a limited criminal record check of any individual by accessing the clerk of courts website for any particular county. Free of charge, such websites reveal *any* case that has a person's name associated with it, including non-expunged criminal convictions, civil cases, and arrests that did not lead to a conviction. Most of these websites only reach back a certain number of years. That is, each clerk of courts began putting its cases online at a particular time in the past; cases before that time can be found in the paper files in the clerk's archive, but will not show up on the website.

Commercial Background-Checking Companies

Where to get it: Usually online (e.g., HireRight, General Information Services, NetDetective)

Cost: Varies

Dozens of companies, most of which operate over the internet, provide criminal record information to employers, landlords, and others reviewing the backgrounds of applicants. Companies conducting these searches are subject to the Fair Credit Reporting Act (FCRA) and can report all non-expunged convictions within the United States for someone's entire life. These services can also report any arrests not leading to conviction that occurred within seven years of the check. A person must grant permission for others to request a private background check on their name. If employers do not hire a person based on a background check, they must notify the applicant about which service provided the check. **If an applicant believes that the check is incorrect or outdated, she should contact the Ohio Justice & Policy Center or the legal aid office that serves her area immediately for legal help.**

BCI and FBI Background Checks

Where to get it: Any approved WebCheck location (see list at: <http://www.ohioattorneygeneral.gov/Services/Business/WebCheck/Webcheck-Community-Listing.aspx>).

Cost: BCI, \$32; FBI, \$34; Both, \$61

The State of Ohio Bureau of Criminal Identification and Investigation (“BCI&I,” or sometimes referred to as just “BCI”) provides official criminal conviction records for Ohio only. The Federal Bureau of Investigation (“FBI”) provides official nation-wide checks. These are the most accurate and comprehensive. A person’s fingerprints and permission are required to run the check. The resulting report includes all convictions and, depending on who requests the search, may also include expunged offenses. For example, if a health-care employer obtains permission to run a BCI check on an applicant, the employer may disqualify the applicant from employment based solely on certain expunged convictions.

What Appears on Background Checks

**This Chart
Applies to
Adult Records Only**

Background Checks

	Non-Convictions	Convictions	Penalties	Expunged Offenses	Locations Covered by Check
Conviction Record Transcript for single county		X	X		Only that county
Clerk of Courts website	X	X	X		Only that county
Commercial background check company	X 7 yrs	X	X		Statewide or Nationwide
Bureau of Criminal Identification and Investigations WebCheck (“BCI Check”)	X	X	X	X depending on employer	Statewide
FBI Background Checks	X	X	X	X always	Nationwide

Introduction to Sealing of an Adult Criminal Record

What is sealing of a record?

When people talk about having a record “expunged,” they usually think this process will completely erase their criminal record, as if it never happened. However, in Ohio, adult convictions cannot be “expunged” or completely erased from your record. Instead of expungement, Ohio uses a court process called “sealing a criminal record.” When a record is sealed, the record of your conviction or criminal charges is filed separately from other persons’ records. The record still exists but it cannot be seen by most people. But there are some significant exceptions, discussed below.

Why should I get my records sealed?

Sealing a criminal record—even a non-conviction—may prove valuable when applying for a job or license, seeking credit, applying for educational programs, obtaining housing, and securing other opportunities. In most cases, an sealed record will not show up on a background check and can be treated as if it does not exist. In fact, after getting a record sealed, an individual may honestly mark on applications that the sealed offense does not exist.

You can’t seal it unless you know what it is.

There are several different processes for sealing criminal records. To decide which process you should use, you *must* know what type of record you want sealed. Is there a conviction, dismissal, or not guilty finding on your record? The easiest way to find this information is to get a copy of your criminal record. In many counties you can go online and look up your criminal record. Go to the clerk’s of courts website for the court your case was handled in; this could be common pleas, municipal, or juvenile court. If your county doesn’t have records online, you need to go to the clerk of courts office in the county where you were convicted or arrested.

Can anyone see the records after they are sealed?

Most employers, all landlords, and anyone else will not be able to access sealed records. Sealed records are sometimes mistakenly disclosed by commercial background-checking companies—if this happens to you, contact your local legal aid or the Ohio Justice & Policy Center for help. By law, however, certain officials and agencies are allowed to see sealed records on BCI checks:

- Prosecutors, judges, and police if there are future criminal investigations;
- Judges considering convictions for sentencing in future crimes;
- A few employers, such as law enforcement, jobs working with children or the elderly (e.g. schools or health-care services), and some jobs in real-estate and financial institutions; and
- Most state professional-licensing boards, such the State Accountancy Board, State Medical Board, State Dental Board, State Board of Nursing, State Board of Psychology, and others, for the purposes of license denial, suspension, or revocation.

Can I get some help with sealing my records?

You can apply for record sealing and succeed without an attorney. But the prosecutor may object to your application and the judge may reject it for reasons you do not fully understand. Most legal aid offices in Ohio will assist with applying for record sealing (in Hamilton County, the Ohio Justice & Policy Center is also available for this kind of legal help).

So am I eligible to get my record sealed? How do I do that?

The series of questions on the following pages will help you determine if you are eligible for expungement. Following those are instructions on how to apply.

Eligibility for Sealing of an Adult Criminal Conviction

QUESTION 1: What was the underlying crime you were convicted of? Is it a prohibited offense?

The law is very clear that following convictions can **never** be sealed, even it is your only conviction:

- Any **first or second degree felony**
- Any offense with a **mandatory prison term**
- Any **'offense of violence,'** which means:
 - 2903.01 Aggravated murder
 - 2903.02 Murder
 - 2903.03 Voluntary manslaughter
 - 2903.04 Involuntary manslaughter
 - 2903.11 Felonious assault
 - 2903.12 Aggravated assault
 - 2903.13 Assault (*exception: this *can* be expunged if it is a first degree misdemeanor)
 - 2903.15 Permitting child abuse
 - 2903.21 Aggravated menacing
 - 2903.211 Menacing by stalking
 - 2903.22 Menacing
 - 2905.01 Kidnapping
 - 2905.02 Abduction
 - 2905.11 Extortion
 - 2907.02 Rape
 - 2907.03 Sexual battery
 - 2907.05 Gross sexual imposition
 - 2907.12 (former) Felonious sexual penetration
 - 2909.02 Aggravated arson
 - 2909.03 Arson
 - 2909.24 Terrorism
 - 2911.01 Aggravated robbery
 - 2911.02 Robbery
 - 2911.11 Aggravated burglary
 - 2917.01 Inciting to violence (*exception: this *can* be expunged if it is a first degree misdemeanor)
 - 2917.02 Aggravated riot
 - 2917.03 Riot (*exception: this *can* be expunged if it is a first degree misdemeanor)
 - 2917.31 Inducing panic (*see exceptions: this *can* be expunged if it is a first degree misdemeanor)
 - 2919.25 Domestic violence
 - 2921.03 Intimidation
 - 2921.04 Intimidation of attorney, victim or witness in criminal case
 - 2921.34 Escape
 - 2923.161 Improperly discharging firearm at or into a habitation, in a school safety zone or with intent to cause harm or panic to persons in a school building or at a school function
 - 2911.12 Burglary (*Division (A)(1), (2), or (3) of section)
 - 2919.22 Endangering children (*Division (B)(1), (2), (3), or (4))

- Also any sexual offense not already listed, including:
 - ▷ Unlawful sexual contact with a minor
 - ▷ Illegal use of a minor in nudity-oriented material or performance
 - ▷ Sexual imposition
 - ▷ Importuning
 - ▷ Pandering obscenity involving a minor
 - ▷ Pandering sexually oriented matter involving a minor
- Knowingly offering to sell a car whose odometer was tampered with
- Tampering with an odometer
- Sale or possession of a master key designed to fit more than one vehicle
- Driving under suspension (after DUI or refusing to take breathalyzer/chemical test)
- Offenses with purpose to conceal or destroy identity of car or its parts
- DUI • Street racing • Various types of hit-and-runs • Leaving the scene of an accident

Note: Traffic offenses can never be sealed, but they are not counted as a criminal conviction unless it is one of the traffic offenses listed above.



⊘ If you have any of the offenses listed under QUESTION 1, you **CANNOT** have your conviction record sealed.

↓ If you do *not* have any of the offenses listed above, go on to **QUESTION 2.**

QUESTION 2: Was the conviction your *only* criminal offense?

To be eligible for sealing, you must fit the law's definition of a 'first offender.' That means that you have **one and only one conviction in Ohio or any other state**. This does not mean your first felony conviction—it means first misdemeanor *or* felony. **But:**

- **Big exception: You can have multiple minor misdemeanors sealed** so long as you have only one or zero other 'real' misdemeanors or felonies. In other words, minor misdemeanors do not count towards your 'one and only one' offense. A minor misdemeanor is a ticket-only offense; it is less than a fourth-degree misdemeanor. To be a minor misdemeanor, jail-time could not have been a possible sentence and the maximum possible fine was \$150.

Examples: Tickets for open flask, after hours in the park, minor misdemeanor drug possession (a.k.a. 'weed tickets'), jaywalking, loud noise, and disorderly conduct.

- If you have **two or more convictions based on the same criminal act**, the multiple convictions will be **treated like one conviction** when you apply to have the records sealed.

Example: You were convicted of shoplifting and resisting arrest in the same incident. The court will consider the two separate convictions as one conviction when you apply to seal the records. These charges may be charged under the same case number or separate case numbers, so long as they arose out of the same set of facts.

- If your **two or three convictions** were *not based on the same criminal act*, but resulted from the same court proceeding and the convictions were for related criminal acts committed within three months of each other, the multiple convictions *may* be treated like one conviction.

Example: You have two convictions for passing bad checks on March 1st and May 10th, and you were convicted of both at the same court proceeding, **the court has the discretion** treat the two convictions as one if you apply to have records sealed. The court can also decide that it is not in the public interest to treat the multiple convictions as one.

- ⊘ If you have more than one conviction (misdemeanor or felony from anywhere), you **CANNOT** have *any* of your criminal conviction records sealed.
- ↓ If you have only one 'real' misdemeanor or felony (that wasn't already excluded under QUESTION 1), go on to **QUESTION 3**.


QUESTION 3: Are there any other criminal charges pending against you right now?


- ⊘ The court will not seal your conviction record if you have any criminal charges pending against you. Wait until those charges are completely dealt with. If any of your convictions or non-convictions are eligible to be sealed at that point, then apply to the court.
- ↓ If you have no charges pending against you, on to **QUESTION 4**.

QUESTION 4: How many years has it been since you completed your sentence?

You must wait a certain amount of time after the ‘**final discharge**’ of the sentence for your conviction before you may apply for the record to be sealed. *Final discharge* means you finished serving any jail or prison sentence, any term of probation or parole, and paid any fines or court costs.

- For **misdemeanors** (including minor misdemeanors) you must wait **one year** after the final discharge of your conviction to apply to have your conviction record sealed.
- For **felonies** you must wait **three years** after the final discharge of your conviction to apply.



 If you haven’t satisfied the waiting period yet, wait to apply until you do.

 If you have satisfied the waiting period, congratulations! You are eligible to get your record sealed. Go to the **APPLICATION INSTRUCTIONS** section of this packet.

Sealing Dismissed or Not Guilty Records



If your criminal record shows that the charges against you were **dismissed** or you were found **not guilty (acquitted)** by a judge or jury, answer the following questions to determine if you are eligible to have those records sealed.

QUESTION 1: Were all the criminal charges against you either dismissed or acquitted?



-  If you were convicted on one or more charges that arose out of the same incident while other charges were dismissed, you **CANNOT** get the dismissed charges sealed *unless* you are also eligible to get the convictions sealed as well (see the earlier rules for sealing convictions).
-  If *all* charges in the case were dismissed, **SKIP QUESTION 2**. Go to **QUESTION 3**.

QUESTION 2: Was a No Bill issued in your case? Were the charges against you Ignored?

In most felony cases and in some misdemeanor cases, the prosecutor first brings the charges and some minimal evidence against you before a *Grand Jury*. The grand jury then decides whether or not to indict you on those charges. If the grand jury decided that there was not even enough evidence for the prosecutor to go forward on the charges, they issued a *No Bill* (this is also referred to as an *Ignored* case).

-  If yes, you must wait **two years** from the date the No Bill was issued to apply. This is because the prosecutor has two years within which to re-file the charges.
-  If it has been more than two years since your case was ignored (since the No Bill was issued), go to **QUESTION 3**.

QUESTION 3: Are there any criminal charges pending against you right now?

-  If *Yes*, the court will not seal your record at this time. Wait until those charges are completely dealt with. If any of your convictions or non-convictions are eligible to be sealed *at that point*, then apply to the court.
-  If you have no charges pending against you, **congratulations!** You are eligible to get your non-conviction record sealed. There is **no waiting period** for non-convictions. Go to the **APPLICATION INSTRUCTIONS** section of this packet.

Application Instructions

STEP 1: Contact the clerk of courts office

The clerk of courts is the official who is responsible for all of the files for every case ever filed in a particular court, including your criminal cases. For each court where you were sentenced to find out:

- a) the **case numbers** of every conviction and non-conviction on your record;
- b) the **name** (e.g. drug possession, theft, assault) and **degree** (e.g. 1st degree misdemeanor or 'M1') of each of your offenses;
- b) the **date** you were **convicted**; and
- c) the **date** you **completed** your entire **sentence** (jail/prison or probation/parole completed, fines paid).

You can go in person, call by telephone, or, in many counties, search the clerk's website. You can find web links for Ohio courts at http://www.sconet.state.oh.us/Web_Sites/courts or go to <http://www.ohiojudges.org> and click on "Ohio Courts" under "Links."

STEP 2: Ask the clerk for their expungement forms

Although the word "expungement" is not actually used in any of the relevant state statutes, many clerks offices still refer to this process by that name and they will refer to their forms that way. Again, some courts also have procedures and forms for record sealing (expungement) online. It is important to review them in case the court you are dealing with has specific procedural requirements. There is no standard form accepted in every court in Ohio—many prefer that you use their forms. The clerk may have different forms for sealing convictions, dismissals, or acquittals, so make sure you get the right packet of forms. Also ask how many copies of the forms you will need to file. Complete the application forms and make the copies the court needs, along with an extra copy for yourself.

STEP 3: File the Application

Bring the completed forms and copies back to the clerk's office. Also, you will need to pay a **\$50 fee** for filing an application to seal a **conviction** record. Filing an application to seal a record of **acquittal, dismissal, or No Bill** is always **free**.

If you cannot afford the fee for conviction-record sealing, **you have the right to have the fee waived**. Do not be dissuaded by a clerk who tells you, "We just don't do that around here." **Demand permission to file a poverty affidavit** (they should have such a form). File a completed and **notarized** poverty affidavit with your application. The judge will review your poverty affidavit, and if the judge concludes that you cannot afford the application fee, the fee will be waived.

Step 4: Decide if you need an attorney

If at any point you feel that the process is too confusing or intimidating, or that the clerk's office is giving you the run-around, **get an attorney**. Many legal aid offices (and, in Hamilton County, the Ohio Justice & Policy Center) assist with expungement/record sealing for qualified low-income people. You can also pay a private defense attorney to handle your expungement. You can search on the Ohio Poverty Law Center website (www.oplc.org) for the legal aid office in your area (or in whatever county you want to apply for record sealing).

STEP 5: Get a hearing date

Depending on your local clerk's practices, you may **get a hearing schedule right when you file or later in the mail**. The judge will also notify the prosecutor of your hearing date. If the prosecutor does not want the judge to seal your record, **the prosecutor may file an objection** that includes specific reasons before the hearing. Between when you file and the hearing date, most courts ask their probation department to verify that you are eligible; that may include running a national criminal background check. **The probation department may call you** with questions during this time as well.

STEP 6: Prepare What You Will Say

A judge is required to decide whether you have been rehabilitated before sealing your record. If the prosecutor object, the judge is also supposed to weigh whether it is in the public interest for your record to be sealed. So, be prepared for the judge to ask you what you have been doing since you were charged or convicted and why you want your record sealed. The judge wants to hear that you have turned your life around. For instance, if you were convicted of a drug-related crime, you should mention if you have received any substance abuse treatment since your conviction or if you are involved with a substance abuse support group.

If you have an attorney, they should help you think through and prepare what you will say.

STEP 7: Go to the hearing

If you don't show up, your application for record sealing will almost certainly denied. At the hearing, the judge will listen to your reasons for requesting that your record be sealed and will listen to any objection from the prosecutor. The court will follow the strict eligibility rules and decide whether to grant your request for sealing. The judge usually decides whether or not to seal your record at the hearing. However, if the judge decides after the hearing, you will be notified by mail.

If the judge grants your application, **congratulations! You're on your way to a fresh start!**

If you were denied and don't understand why, seek out an attorney.

STEP 8: Great! What now?

Your conviction, acquittal or dismissal should no longer appear when a potential employer, landlord, or anyone in the general public runs a check of your criminal history. It is as if charges, court proceedings, and even a conviction, never happened.

However, your record can still be seen by prosecutors and the police if you are involved in a criminal investigation in the future for another crime. If you are convicted of a crime in the future, judges and juries consider your prior convictions for sentencing purposes, even if your records for the conviction are sealed.



Also, a several **employers**, such as **police** departments, **child care** providers, **schools**, and **nursing homes**, will still be able to see your sealed record if you apply for a job with them.

Juvenile Records

Juvenile justice records are *not* criminal records, and juveniles do *not* receive criminal convictions. Instead, juveniles who break the law are referred to as “adjudicated delinquents.” In fact, when a person with ONLY a juvenile record is asked whether he/she has been convicted of a crime, the legally-correct answer is “No.”

Who can access juvenile records?

Since juvenile justice records are not public information, they will not appear on most background checks. The records will not appear on a check from the Clerk of Courts, a sheriff’s check, or on private background checks. However, violent offenses and offenses that would have been a felony if committed by an adult *will* be accessible in a few cases. This includes background checks for jobs in hospitals, schools, daycares, security, and others. Also, juvenile records are available to the police, courts and prosecutors.

If you have been denied public housing because of a juvenile record, or if you believe a background check mistakenly revealed a juvenile record please contact the Ohio Justice & Policy Center.

Sealing juvenile records

Unlike for adult criminal records, sealing a juvenile record is *not the same* as expunging it. Sealed records are removed from the person’s main criminal history file and secured in a separate file accessible only to police, courts and prosecutors. Sealed juvenile records will not appear on any background checks for employment or housing

Juvenile justice records are not automatically sealed at 18 years of age. A person may apply to seal a juvenile record 2 years after the final discharge of the offense (i.e., termination of probation), even if the person is still a juvenile. To seal a juvenile record, obtain and submit the appropriate forms at the Juvenile Clerk of Courts Office. There is no filing fee for sealing juvenile records. The applicant may be required to attend a hearing to determine whether the record can be sealed.

To decide whether a record will be sealed, the court considers: age at time of offense, nature of offense, continued problems with the law, as well as other factors.

Expunging juvenile records

An expunged juvenile record is totally destroyed, in physical and electronic forms, so that the record is permanently irretrievable. A juvenile record can be expunged any time after it is sealed. If a person does not apply for expungement after sealing a juvenile record, expungement will occur automatically 5 years after the record was sealed or when the person is 23 years old (whichever happens first).

Advice for Individuals Not Eligible for Expungement

For people who are not able to expunge their criminal record, other options exist. There are a variety of services helping people with criminal records with re-entry, housing, employment, and other issues (see page 9). People may also seek executive pardons from the Governor as “forgiveness of guilt and punishment.” However, few pardons are granted: in the six years 1999-2004, forty-eight pardons were granted by the Governor.

There are several strategies for a person with a criminal record to increase the chances of obtaining employment or housing.

- **Enroll in a job training program**, particularly one specifically designed to assist ex-offenders. Such programs have established long-standing relationships with employers who are willing to hire ex-offenders that complete the program.
- **Obtain letters of recommendation** from previous employers, landlords, or respected community members who can testify to your character and skills. Some people are uncertain if an ex-offender can be a good employee or tenant. Providing positive information about your past will suggest that you should not be defined by your criminal record.
- **Include a short explanation about why the conviction would not prevent you from being a successful employee/tenant.** Many applications ask “Do you have a past criminal conviction?” or “Have you ever been arrested?” If you answer “Yes”, it may be helpful to add an explanation about why your criminal record should not be a concern. If the offense was committed long ago, for example, indicate that it has been many years since the conviction. If the explanation is very complicated, you can always write “Will discuss at interview.”

Example: “I was arrested for drug possession six years ago. This occurred during a very immature time in my life, and I have had no criminal history since then. I have positively changed my life after the arrest by continuing my education, focusing on rehabilitation through therapeutic groups, and completing an employment training program. I no longer am the person that I was six years ago, and I know that I can be a valuable, effective employee for your company.”

- **Do not lie on your application.** If an employer conducts a background check (which they likely will), they will discover if an applicant lies about a criminal record. Even if they would have hired an ex-offender, employers almost certainly will not hire applicants who lie on their application.
- **Be prepared to answer questions about your record.** Practice answering these types of questions in a mock interview or aloud to yourself. Mention that you have completed all required terms of the conviction, and explain how you have taken steps toward rehabilitation or personal improvement since the offense. Do not make excuses or go into graphic detail about your offense. Do not spend most of the interview focused your criminal history. The important message is that you would be a valuable employee and would not repeat the mistakes of your past.
- **Know the limits.** According to Ohio law, jobs that involve contact with children or the elderly (nursing homes, health agencies, day cares, schools, etc.) cannot legally hire an applicant who has been convicted, at any time, of certain “disqualifying offense.” In some cases, employers may choose to hire applicant who meets all “rehabilitation standards” specified by Ohio law. If you would like to work with children or the elderly, and you have a criminal record, verify whether you can legally work in those fields and be aware of the legal barriers to employment in Ohio. Contact the Ohio Justice & Policy Center for details and questions on “disqualifying offenses.”