

# Eligibility for Sealing of Adult Criminal Conviction(s)

QUESTION 1: What was the underlying crime (s) you were convicted of? Are they prohibited offense (s)?



The law is very clear by stating that the following convictions can **never** be sealed, even if it is your only conviction. You can find the Ohio revised Code of your conviction in your criminal history record.

- Any **first or second degree felony**
- Any offense(s) with a **mandatory prison term**,
- Any “**offense(s) 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:
  1. Unlawful sexual contact with a minor,
  2. Illegal use of a minor in nudity-oriented material or performance
  3. Sexual imposition,
  4. Importuning,
  5. Pandering obscenity involving a minor,
  6. Pandering sexually oriented matter involving a minor.
  
- Knowingly offering to sell a car whose odometer was tampered with Tampering with an odometer,
- 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 ),
- Offense(s) with purpose to conceal or destroy identity of car or its parts,
- DUI - Street racing - Hit-and-Runs and leaving the scene of an accident.



**Note:** **Traffic offense(s)** 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 to **QUESTION 2**.



## **QUESTION 2: Are you an “Eligible Offender”?**

“Eligible Offender” – Anyone who has been convicted of an offense in the State of Ohio or any other jurisdiction and who has not more than one (1) felony conviction, and not more than two (2) misdemeanor convictions, if the convictions are not of the same offense, or not more than one (1) felony conviction and one (1) misdemeanor conviction.

To be eligible for sealing your record, you must fit the law’s definition of an “Eligible Offender.”

- **Big exception: You can have multiple minor misdemeanors sealed** so long as you have two or less “real” misdemeanors or felonies. In other words, minor misdemeanors do not count towards your “Eligible Offender” status. 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 would have been \$150.

*Examples:* Tickets for open flask, after hours in the park, minor misdemeanor drug possession, jaywalking, loud noise, and disorderly conduct.

- If you have **two (2) 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 (2) or three (3) 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 (3) months of each other, the multiple convictions **may** be treated like one conviction.

*Example:* You have two (2) 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 to treat the two (2) convictions as one (1) if you apply to have the records sealed. The court can also decide that it is not in the public's best interest to treat the multiple convictions as one (1).



If you have more than two (2) conviction (misdemeanor or felony from anywhere), **you CANNOT** have **any** of your criminal conviction records sealed.



If you have not more than one (1) felony conviction, OR two (2) or less misdemeanor conviction (not of the same offense) OR not more than one (1) felony conviction and one (1) misdemeanor conviction (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 conviction(s) or non-conviction(s) are eligible to be sealed at that point, then apply to the court.



If you have no charges pending against you, go to **QUESTION 4**.

### **QUESTION 4: Are you NON-COMPLIANT with a child support order, if you have been convicted or plead guilty to a violation of Non-support?**



If *Yes*, the court will **NOT** seal your record at this time. You **MUST** be compliant with your Child Support in order for the Court to seal your record.



If you are compliant with child support, or if child support is not applicable to you, go to **QUESTION 5**.

### **QUESTION 5: How many years has it been since the final discharge of your case(s)?**

You must wait a certain amount of time after the “**final discharge**” of the sentence for your conviction(s) 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 (1) year** after the final discharge of your conviction(s) to apply to have your conviction record sealed.
- **For Felonies** you must wait **three (3) years** after the final discharge of your conviction(s) to apply.



If you **HAVN'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 (1) 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 conviction(s) sealed as well (see the earlier rules for sealing conviction(s)).



If all charges in the case were dismissed. Skip 2 and 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 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 (2) years** from the date the No Bill was issued to apply. This is because the prosecutor has two (2) years within which to re-file the charges.



If it has been more than two (2) 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 conviction(s) or non-conviction(s) 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(s) record sealed. There is **no waiting period** for non-conviction(s). 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. You will need to contact the Court where the conviction(s), or non-conviction(s) occurred and obtain the following information for **each case** you are attempting to seal;

- a) The **case number(s)**,
- b) The **name** (e.g. drug possession, theft) and **degree** (e.g. 1<sup>st</sup> degree misdemeanor or “M1”,
- b) The **date** you were **convicted**, and
- c) The **date** you **completed** your entire **sentence** (jail/prison or probation/parole completed, fines paid, etc...).

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/WebSites/courts> or go to <http://www.ohiojudges.org> and click on “Ohio Courts” under “Links”. The Miami County Municipal Court Public Access website is <http://www.co.miami.oh.us/pa/index.htm>.

Ask the Clerk for a copy of your CRIMINAL RECORD. The record will help you determine if you are an “ELIGIBLE OFFENDER”, the crime(s) you were convicted of, and how much time has passed since the final discharge of your sentence. Ask a Clerk if you will need a certified copy of your Judgment of conviction(s). There is usually a fee (a few dollars) for a certified copy.

## **STEP 2: Ask the clerk for the 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. **If you cannot afford the fee** for conviction-record sealing, **you have the right to have the fee waived**. 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, **get an attorney**. Many legal aid offices 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](http://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**

After you file your application with the Clerk's Office, the **Judge will set a hearing date**. You will get notice about the hearing in the mail. The judge will also notify the prosecutor of your hearing date. The Court's Probation Department may recommend that your application be denied as a result of an investigation that proves you are **NOT ELIGIBLE**. **The prosecutor may also file an objection** that includes specific reasons before the hearing.

## **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 objects, the judge will weigh whether it is in the public's best 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 since your convictions. 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 be 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.



## 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.

