

# Sealing Criminal Records

for Convictions, Acquittals, & Dismissals

“Expungements in Ohio”



May, 2008

## **Why Should You Have Your Criminal Record Sealed?**

When you apply for jobs, apartments, and licenses, the people reviewing your application will likely look up your criminal record. If you have a criminal record, even if it is not a conviction, it is less likely that you will be chosen for the job, given the apartment, or allowed to get a license.

After your record is sealed, if you are asked on applications if you have a criminal record, you can honestly say that you do not. You can act as if the arrest or conviction never took place. However, even if your record is sealed, your past criminal record can be used against you for sentencing if you are convicted of another crime. In certain situations, police, prosecutors, and probation officers can view your sealed records. Sealed criminal records may also be reviewed if you apply for a job in law enforcement, working with children, or working with the elderly.

## **What is SEALING a CRIMINAL 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 anyone, with a few exceptions.

## **IMPORTANT FIRST STEP!**

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 court 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.

## **FIND OHIO COURT WEBSITES AT:**

[http://www.sconet.state.oh.us/Web\\_Sites/courts/default.asp](http://www.sconet.state.oh.us/Web_Sites/courts/default.asp)



# SEALING A CRIMINAL CONVICTION RECORD

If your criminal record shows you were **CONVICTED** of a felony or misdemeanor, answer the following questions to determine if you are eligible to have the conviction record sealed.


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## QUESTION #1 - Was the conviction your **FIRST OFFENSE**?

You may only apply to have your conviction record sealed if it was your 1<sup>st</sup> conviction in Ohio or any other state.

- If you have **2 or more convictions based on the same criminal act**, the multiple convictions will be treated like 1 conviction when you apply to have the records sealed.
  - **EXAMPLE:** If you were convicted of shoplifting and resisting arrest immediately after shoplifting, the court will consider the 2 separate convictions as 1 conviction when you apply to seal the records.
- If your **2 or 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 3 months of each other, the multiple convictions *may* be treated like 1 conviction.
  - **EXAMPLE:** If you have 2 convictions for passing bad checks on March 1<sup>st</sup> and May 10<sup>th</sup>, and you were convicted of both at the same court proceeding, the court *may* treat the 2 convictions as 1 if you apply to have records sealed. **BUT**, the court can decide that it is not in the public interest to treat the multiple convictions as 1.
- Convictions for violating most **driver's license and traffic laws** are NOT considered convictions when applying for sealing records.
  - **EXAMPLE:** If you had a conviction for driving with an expired license 6 years ago and a conviction for theft 5 years ago, the theft conviction is considered your first offense and you may apply to have your record sealed.
  - **EXCEPTIONS:** convictions for DUI, street racing, failure to stop after a traffic accident, vehicle identification number fraud, odometer rollback violations, driving under suspension for DUI, and refusal to take a breathalyzer **ARE** considered convictions for purposes of sealing criminal records.





 **NO** - if the conviction record you want sealed was not your first offense, you **CANNOT** have your criminal conviction record sealed.

 **YES** - if it was your first offense, go on to **QUESTION #2**.

## QUESTION #2 - Have you had any convictions since your first offense? Are there any other criminal charges pending against you right now?

The court will not seal your conviction record if you have had any other convictions (besides minor traffic misdemeanors) since your first conviction. Also, the court will not seal your conviction record if you have any criminal charges pending against you.

 **YES** - you **CANNOT** have your criminal conviction record sealed.

 **NO** - go on to **QUESTION #3**.

**QUESTION #3 - What was the underlying crime you were convicted of?**

You can find the crime you were convicted of on your criminal record. Your record will also tell you if your conviction was for a felony or misdemeanor and the degree of the felony or misdemeanor. Conviction records for certain felonies and misdemeanors are not allowed to be sealed. The following questions will help determine if you were convicted of a “sealable” crime.

- A. Was your conviction for a first or second degree felony?**
- B. Was your conviction for a felony or a first degree misdemeanor AND the victim was under the age of 18 when the crime took place?**
- C. Was your conviction for a felony or a first degree misdemeanor AND the conviction was for a violent crime?**
- D. Was your conviction for any of the following crimes?**
  - Rape or Sexual Battery
  - Unlawful Sexual Conduct with a Minor
  - Sexual Imposition
  - Pandering Sexually Oriented Matter or Obscenity Involving a Minor
  - Illegal Use of a Minor in Nudity Oriented Material or Performance
  - Driver’s License or Traffic Violations



**YES** - if you answered yes to any part of QUESTION #3, you CANNOT have your conviction record sealed.



**NO** - if you answered no to all parts of QUESTION #3, go on to **QUESTION #4**.

**QUESTION #4 - Were you subject to a mandatory prison term for your conviction?**

If you served a mandatory prison sentence for the crime you were convicted of, you cannot have your record sealed. If you were told that you were not eligible for parole, you were subject to a mandatory prison sentence.



**YES** - you CANNOT have your conviction record sealed.



**NO** - go on to **QUESTION #5**.

**QUESTION #5 - How many years has it been since you completed your jail sentence, prison sentence, probation, or parole for the conviction?**

You must wait a certain amount of time after the “final discharge” of your conviction before you may apply for the record to be sealed. Final discharge means you finished serving your punishment for the conviction (jail or prison sentence, probation, parole, or any combination).

- **MISDEMEANOR** - you must wait 1 year after the final discharge of your conviction to apply to have your conviction record sealed
- **FELONY** - you must wait 3 years after the final discharge of your conviction to apply.

**Go to the APPLICATION INSTRUCTIONS section of this packet.**

# SEALING DISMISSAL or NOT GUILTY RECORDS

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

## QUESTION #1 - Were all the criminal charges against you dismissed?



**NO** - GO TO QUESTION #2



**YES** - SKIP QUESTIONS #2 and #3, and GO ON TO QUESTION #4

## QUESTION #2 - Were you found not guilty of all charges that weren't dismissed?



**NO** - GO TO QUESTION #3



**YES** - SKIP QUESTION #3, and GO ON TO QUESTION #4

## QUESTION #3 - How many years has it been since you completed your sentence for the criminal charges you were convicted of?

If you were charged with more than one crime related to the same incident, and the charges had different outcomes (for example, you were convicted of one charge but the other charge was dismissed) you may NOT apply to seal the dismissal or acquittal records until enough time has passed that you would be allowed to apply to seal the other related convictions.

You must wait a certain amount of time after the "final discharge" of your conviction charges before you may apply to seal the related charges that were dismissed and/or you were acquitted of. Final discharge means you finished serving your punishment for the conviction (jail or prison sentence, probation, parole, or any combination).

- **MISDEMEANOR** - you must wait 1 year after the final discharge of your conviction to apply to seal the related charges that you were acquitted of or were dismissed.
- **FELONY** - you must wait 3 years after the final discharge of your conviction to apply to seal the related charges that you were acquitted of or were dismissed.

## QUESTION #4 - Are there any criminal charges pending against you right now?



**YES** - you **CANNOT** have your records of criminal charges (or arrests) sealed.



**NO** - You may apply to have records of criminal charges (or arrests) sealed.

**Go to the APPLICATION INSTRUCTIONS section of this packet.**

# How do I APPLY to Have My RECORD SEALED?

**STEP #1** - Contact the **CLERK of COURTS OFFICE** for the court where you were sentenced. If you were convicted in another state or federal court, contact your local common pleas court.

- If you live near your sentencing court, it is easiest to go to the clerk's office in person.
- If you can't go to in person, call the clerk's office. You can find the court phone # and address in your phone book.
- If you have internet access, you can also check the court's website. Some courts also have procedures and forms for record sealing (expungement) online. You can find web links for Ohio courts at [http://www.sconet.state.oh.us/Web\\_Sites/courts](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 a **COPY of your CRIMINAL RECORD**. The record will help you determine if you were convicted of the charges against you, if you were acquitted of the charges against you, or if the charges were dismissed. Your record will also help you figure out if you are a "first offender," the crime(s) you were charged with, and how long ago you completed your sentence.

- Ask the clerk if you will need a certified copy of your Judgement Order of Conviction, and if so, ask for one. There is usually a small fee (a few dollars) for a certified copy.

**STEP #3** - Ask the clerk for **APPLICATION FORMS to have your RECORD SEALED**. 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 #4** - Go back to the clerk's office and **FILE the APPLICATION**.

- There is a **\$50 FEE** for filing an application to seal a **CONVICTION** record.
  - If you cannot afford the fee, ask the clerk for a poverty affidavit and file a completed poverty affidavit with your application. The judge will review your poverty affidavit and if she concludes that you cannot afford the application fee, the fee will be waived.
- Filing an application to seal a record of **ACQUITTAL or DISMISSAL** is **FREE**.

**STEP #6** - After you file your application, the **JUDGE will set a HEARING DATE**. You will get a notice about the hearing date 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 must file an objection (that includes specific reasons) before the hearing.



**STEP #7** - Before the hearing, **PREPARE what you WILL SAY TO the JUDGE** at the hearing. The judge will likely 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.

**STEP #8** - At your hearing the **JUDGE WILL WEIGH THESE FACTORS:**

- Are there currently any criminal proceedings pending against you?
- Has the prosecutor filed objections to sealing your record? Are the objections reasonable?
- Does your need to have your record sealed outweigh the needs of the government to keep your record public?
- If you are applying to have a conviction record sealed:
  - Are you a “first offender”?
  - Have you been rehabilitated?

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 #9 - IF JUDGE ORDERS your RECORD SEALED**, your conviction, acquittal or dismissal will 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.



- **EXCEPTIONS** - 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 your records for the conviction are sealed.
- Also, a few potential **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.

