



Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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Sealing or Expunging a Conviction

Some opportunities for employment, education, or housing may be unavailable or more difficult to obtain for a person convicted of a criminal offense. A person who has been convicted of a criminal offense in Ohio may wish to have records of the conviction sealed or expunged so that those records are not publicly accessible, and the stigma caused by those records is not a barrier to opportunities. This *Members Brief* outlines the process for seeking and obtaining a sealing or expungement of criminal conviction records.

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Sealing or expunging the record of a conviction

When a conviction record is **sealed** it is removed from public access and may be inspected or accessed only by specified persons under specified circumstances. For example, a sealed record may be inspected by a person’s parole or probation officer for purposes of supervision and reporting.¹ **Expungement**, on the other hand, involves the destruction, deletion, or erasure of a record, as appropriate for its physical or electronic form, so that the record is permanently irretrievable.²

¹ R.C. 2953.34(A).

² R.C. 2953.31(B).

Eligibility and cost

Any person may apply to have their conviction records sealed or expunged, provided the offenses are eligible for sealing or expungement.³ An applicant must pay an application fee of \$50, and may pay a local court fee of not more than \$50, regardless of the number of records to be sealed or expunged. The fee may be waived if the applicant provides a poverty affidavit establishing that the applicant is indigent.⁴

Timing of application

The appropriate time to file an application for sealing or expungement depends on the conviction for which the applicant seeks sealing or expungement. The table below provides a breakdown of when an application may be made.⁵ Each of these timing provisions require that a specified period of time elapse after “final discharge.” While final discharge is not defined in the Revised Code, the Ohio Supreme Court has found that final discharge occurs when the offender has completed all sentencing requirements, including any order to make restitution.⁶ Where an application contains multiple convictions, the application may be made after the longest of the applicable waiting periods has elapsed.⁷

Conviction in question	Time for sealing or expungement
A felony of the third degree (F3)	Three years after final discharge for sealing; 13 years after final discharge for expungement
A felony of the fourth or fifth degree (F4)	One year after final discharge for sealing; 11 years after final discharge for expungement
Misdemeanors (M1-M4)	One year after final discharge
Minor misdemeanors	Six months after final discharge
Soliciting improper compensation	Seven years after final discharge for sealing; 17 years after final discharge for expungement
An offense that requires Sex Offender Registration and Notification (SORN) registration	Five years after SORN registration duties have expired or been terminated for sealing; 15 years after SORN registration duties have expired or been terminated for expungement

³ R.C. 2953.32(A).

⁴ R.C. 2953.32(D)(3).

⁵ R.C. 2953.32(B).

⁶ *State v. Aguirre*, 2014-Ohio-4603, at ¶2.

⁷ R.C. 2953.61.

Timing of hearing

When an application for sealing or expungement is filed, the court must hold a hearing between 45 and 90 days from the filing date of the application. However, the court also must notify the prosecutor for the case of the hearing not less than 60 days prior to the hearing. The prosecutor must provide timely notice of the application and the date and time of the hearing to a victim and victim's representative, if applicable, if the victim or representative requested notice of the proceedings in the underlying case. If the prosecutor chooses to file an objection, the objection must be filed no later than 30 days prior to the hearing date.⁸

Barriers to relief

An application for sealing or expungement may be denied for any of the following reasons:⁹

- The application includes an offense that is not eligible for sealing or expungement (ineligible offenses¹⁰ include traffic offenses, first and second degree felonies, and felony offenses of violence);
- The application was filed before the waiting period described in **Timing of application**, above, has elapsed;
- The court does not find that the applicant has been rehabilitated;
- The court finds that the needs of the government to maintain the record of conviction outweigh the applicant's interests in having the record sealed;
- A criminal proceeding is pending against the applicant at the time of the hearing.

Additional considerations

In addition, a court deciding whether to grant sealing or expungement of a conviction must consider any objections or reasons against granting the sealing or expungement specified by the prosecutor or any victim in the case.¹¹

Court's order

If the court does not find any of these barriers apply, the court must order all official records of the case that pertain to the conviction be sealed if the application was for sealing, or expunged if the application was for expungement, and must order all index references to the case that pertain to the conviction be deleted. The proceedings in the case that pertain to the conviction are considered not to have occurred, and the conviction must be sealed if the application was for sealing or expunged if the application was for expungement.¹²

⁸ R.C. 2953.32(C).

⁹ R.C. 2953.32(D)(2).

¹⁰ R.C. 2953.32(A).

¹¹ R.C. 2953.32(D)(1).

¹² R.C. 2953.32(D)(2).

Records that must be sealed or expunged

An “official record” means all records possessed by a public office or agency that relate to a criminal case. The following are some examples of official records associated with a criminal case that are subject to a sealing or expungement order:¹³

- The notation in the criminal docket;
- Subpoenas issued in the case;
- Fingerprints and photographs;
- DNA records;
- Investigative reports, other than the investigatory work product of a law enforcement officer or agency in the possession of that officer or agency;
- Court files and references to the case.

Exceptions to sealing or expungement

Certain records may be maintained under Ohio law, despite being subject to an order for sealing or expungement.¹⁴

Who may maintain the record	Records to be maintained	Purpose for maintaining the records
The Bureau of Criminal Identification and Investigation (BCII)	Records of expunged convictions	For the limited purpose of determining an individual’s qualification or disqualification for employment in law enforcement
	DNA records collected in the DNA database and fingerprints filed for record by BCII	Pending finality of the judgment; BCII must maintain these until the Superintendent receives a certified copy of a final court order establishing that the underlying conviction has been overturned

¹³ R.C. 2953.31(A)(3).

¹⁴ R.C. 2953.32(D)(5), R.C. 2953.34.

Who may maintain the record	Records to be maintained	Purpose for maintaining the records
The person or governmental agency, office, or department that maintains criminal conviction records that have been sealed	A manual or computerized index to the sealed records, containing only the name of, and alphanumeric identifiers that relate to, the persons who are the subject of the sealed records, the word "sealed," and the name of the person, agency, office, or department that has custody of the sealed records, without the name of the crime committed	For inspection by permitted persons, for proof of otherwise admissible prior conviction evidence in a criminal proceeding, or for purposes of maintaining an order of exclusion from public schools
A board of education of a city, local, exempted village, or joint vocational school district that maintains orders permanently excluding pupils from public schools	Records regarding a conviction that was used as the basis for permanent exclusion	Maintaining an order permanently excluding a pupil from public schools
The Auditor of State or a prosecutor	Records, reports, or audits of an individual who has been forever disqualified from holding public office, employment, or a position of trust in this state based on a theft in office conviction, a soliciting improper compensation conviction, or any other offense conviction based on the records, reports, or audits of the Auditor of State	Maintaining records used as the basis for the disqualification or conviction
The Bureau of Motor Vehicles	The assessment of points for traffic offenses	Maintaining and not erasing the points assessed