

The Ohio Justice & Policy Center's

# Criminal Records Manual

## Understanding and Clearing Up Ohio Criminal Records, and Overcom- ing the Barriers They Create

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# The Ohio Justice & Policy Center's 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 state-wide smart-on-crime reform. Through outreach legal clinics, community education, litigation, advocacy, research, and collaborative initiatives, OJPC is *Reclaiming Lives, Renewing Communities, and Restoring Justice*.

OJPC's Second Chance Project aims to expand the freedom of people with criminal records to contribute to their communities.



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## Acknowledgement

Portions of the record-sealing-eligibility portions of this guide were derived from an earlier manual published by 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. For more information contact them at:

Contact: 555 Buttrick Avenue, Columbus, Ohio 43215  
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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.

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# What is a Criminal Record?

A criminal record is not one, uniform document. There are numerous versions of a criminal record or a “rap sheet” and they may all have different information. These are the most common types:

## *County Conviction Record Transcript*

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

**Cost:** \$5-10? (varies by county)

These are sometimes referred to as ‘**police checks.**’ 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 sealed (“expunged”) offenses.

## *Clerk of Courts Website*

**Where to get it:** Online (e.g., [www.courtclerk.org](http://www.courtclerk.org) for Hamilton County)

**Cost:** Free

Anyone in the general public – including landlords, employers, and educational programs – can view criminal-record information through a 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-sealed criminal convictions and non-convictions, and civil cases. 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, background-checks.com)

**Cost:** Varies

Dozens of companies, most of which operate offer their services 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.**

See the National Consumer Law Center’s report, “Broken Records,” for more information on problems related to commercial background checks: <http://bit.ly/NCLC-BrokenRecords>.

## 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 Various Background Checks

<div style="border: 1px solid black; border-radius: 15px; padding: 5px; text-align: center; background-color: #4b3621; color: white; width: fit-content; margin: 0 auto;">                     This Chart Applies to Adult Records Only                 </div> Type of Background Check	Non-convictions	Convictions	Penalties	Sealed/ expunged of- fenses	Jurisdictions covered by check
	Conviction Record Transcript for single county		X	X	
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		Nationwide

# The Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA) governs commercial criminal record reporting agencies. There are requirements by the FCRA for the agencies reporting as well as the employers who use the reports from the agencies.

## *Requirements for commercial criminal record reporting agencies:*

- Agencies can report convictions of any age. Agencies may not report arrests or other non conviction cases that are more than 7 years old.
- Agencies must insure that their information is correct, complete, and up to date.
- If the agency is reporting information that may be harmful, they must notify the person of the record and provide the name and address of the person requesting the information.

## *Requirements for employers using commercial criminal record reporting agencies:*

- The employer must let the applicant know that it may obtain a report from an agency. It must also receive permission from the applicant to get the report. Ex offenders must be made aware that their criminal record will be examined.
- If the employer chooses to take action based on negative information in the report, a copy of the report and a Federal Trade Commission Summary of Rights must be given to the job applicant before action is taken.
- If a final decision is based on the report, the employer must provide the name, address, and telephone number of the agency.

## *Your rights under the FCRA:*

- Your information can only be disclosed to your employers if they have your written consent.
- You must be told if any information in your file has been used against you.
- You have the right to know what is in your file. You may receive full disclosure of your file if:
  - A person has taken negative action based on information in your report.
  - You are on public assistance.
  - You are unemployed but expect employment in 60 days.
- You have the right to dispute incomplete or inaccurate information. The agency must correct inaccurate information. **Contact Ohio Justice & Policy Center or a legal aid office for assistance in getting a correction.** Alternatively, you can pursue the correction yourself using the model letter on the next page.
- You may seek money damages if an employer using an agencies' report or the commercial criminal reporting agency violates the FCRA.

# Correcting a Commercial Background Check

If there is a problem with your background check provided by a commercial background check agency, you can contact the agency to get the information corrected. You can correct the inaccurate information by getting a certified court record and sending it to the agency with a cover letter stating the information that you would like to be corrected.

Sample Cover Letter:

[date]

[ Name of Commercial Background Agency]  
[Address of Agency]

To Whom It May Concern:

I am writing to request a correction to my criminal background check. Currently, your records show my case as: [precisely state what the background check says].

But I was not convicted of [...]. I have enclosed a copy of certified court records from [name of county, common pleas, or municipal court] for case number [...] that show that I was actually convicted of [precisely state final charge]. Please add this final disposition information to my Computerized Criminal History entry for this case.

Also, please send me a revised version of my background check once this correction is made. If you have any questions about this correction request, please contact me at [area code + phone number].

Sincerely,  
*signature*  
[Name]  
[full mailing address]

# Correcting a State or Federal Criminal Record

You can correct an inaccurate state criminal record by getting a certified court record documenting the accurate information and sending it to BCI with a cover letter listing the corrections that need to be made. Once the record is fixed at the state level with the BCI, the corrections will instantly be recognized by the FBI.

Sample Cover Letter:

[date]

**Bureau of Criminal Identification and Investigation  
P.O. Box 365  
London, OH 43140**

To Whom It May Concern:

I am writing to request a correction to my BCI criminal check. Currently, your records show my case as:  
[precisely state what BCI check says].

But I was not convicted of [...]. I have enclosed a copy of certified court records from [name of county, common pleas, or municipal court] for case number [...] that show that I was actually convicted of [precisely state final charge]. Please add this final disposition information to my Computerized Criminal History entry for this case.

Please be certain to electronically notify the FBI of this correction so that that office can also correct its records.

Also, please send me a revised version of my BCI check once this correction is made. If you have any questions about this correction request, please contact me at [area code + phone number].

Sincerely,  
*signature*  
[Name]  
[full mailing address]

# Sealing Adult Criminal Records: Introduction

*What does it mean to get my criminal record sealed? What about “expungement”?*

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. In fact, the word “expungement” is no longer used in Ohio law for the process we’re discussing here. Instead, it is called “sealing a criminal record” (Ohio Revised Code § 2953.31 – 2953.62). When a record is sealed, the electronic and paper records of your criminal charges are filed in a separate, secured location. The record still exists but it cannot be seen by most people. There are some significant exceptions, however, 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.

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

There are different rules and processes for sealing different kinds of criminal records. To decide which process you should use, you *must* know what type of record you want sealed. Is it a conviction, dismissal, or not guilty finding on your record? Did a grand jury enter a ‘no bill’ on the charges? The most reliable source for this information is the clerk for the court where the criminal case was handled. Many clerks of courts now have their records available online for you to search. If the records are not online, you will need to go to the clerk of courts office and request paper copies of the documents in your case that show whether it was a conviction or not. The documents you may need to look for a “Judges Sheet” or an entry or order that spells out the judge’s final decision in your case.

*Can anyone see the records after they are sealed?*

Most employers and landlords are not allowed to access sealed records from a government source, such as the clerk of courts, the police, or the state Bureau of Identification and Investigation (BCI). However, sealed records are often 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. In addition, certain employers, officials, and agencies are allowed by law 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;

- Employers in law enforcement, jobs working with children or the elderly (e.g. schools, day-cares, and 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?*

Read on!

**Make sure you have the most up-to-date version of this manual with the most accurate legal information:**

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# Sealing Adult Criminal Records: Convictions

## QUESTION 1: *How many convictions do you have?*

The number of convictions you have must fit the law's definition of an “**eligible offender**” (Revised Code Section 2953.31). To determine whether you fit that definition, you need to know several rules about how offenses are counted:

- **THE BASIC RULE:** An eligible offender can have **at most two misdemeanor convictions, or one misdemeanor and one felony conviction**. It does not matter how old they are.
- **Convictions from anywhere in the United States are counted** in this process. The court will likely order a national background check to verify the number of convictions you have.
- **Traffic offenses are not counted** towards your total number of convictions, unless they are any of the more serious vehicle-related offenses listed under Question 2 as a prohibited offense.
- **Minor misdemeanors are not counted** towards your total number of convictions. A minor misdemeanor is a ticket-only offense; it is less than a fourth-degree misdemeanor. To be a minor misdemeanor, jail-time or probation could not even have been a *possible* sentence, and the maximum possible fine had to have been \$150 or less.
- There is **no legal limit on the number of minor misdemeanors you can have sealed**, so long as the number non-minor misdemeanors or felonies on your record is still within the “eligible offender” limits. Even if your two non-minor misdemeanors, or one non-minor misdemeanor and a felony, are prohibited offenses, you can still have your minor misdemeanors sealed.
- If you have **two or more convictions arising from the same incident**, the multiple convictions will be **treated like one conviction**.

*Example:* You were convicted of shoplifting and resisting arrest in the same incident. The court will consider the two separate charges as one conviction when you apply to seal the records.

- If you have **two or three convictions not arising from the same incident**, but that 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 1<sup>st</sup> and May 10<sup>th</sup> of the same year and you were convicted of both **during the same official proceeding**. “Official proceeding” can mean a *series* of related court hearings. In that case, **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 exceed the “eligible offender” limits on the number of convictions, you **CANNOT** have any of your criminal conviction records sealed.

➡ If you do not exceed the “eligible offender” limits, **go to QUESTION 2**.

## QUESTION 2: Do you have a *prohibited offense*?

The law is clear that following convictions can **never** be sealed:

- Any **first or second degree felony** or any offense with a **mandatory prison term**;
- Any **first degree misdemeanor or felony** offense where the **victim was under 18 years old** except for **non-support of dependents** (Revised Code § 2919.21; this offense became sealable under SB 337)
- Any **offense of violence**, as defined by Revised Code § 2901.01(A)(9):

2903.01 Aggravated murder	2905.02 Abduction	2917.03 Riot*
2903.02 Murder	2905.11 Extortion	2917.31 Inducing panic*
2903.03 Voluntary manslaughter	2907.02 Rape	2919.25 Domestic violence, M1 <sup>†</sup>
2903.04 Involuntary manslaughter	2907.03 Sexual battery	2921.03 Intimidation
2903.11 Felonious assault	2907.05 Gross sexual imposition	2921.04 Intimidation of attorney, victim or witness in criminal case
2903.12 Aggravated assault	2907.12 (former) Felonious sexual penetration	2921.34 Escape
2903.13 Assault*	2909.02 Aggravated arson	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
2903.15 Permitting child abuse	2909.03 Arson	
2903.21 Aggravated menacing	2909.24 Terrorism	
2903.211 Menacing by stalking	2911.01 Aggravated robbery	
2903.22 Menacing	2911.02 Robbery	
2905.01 Kidnapping	2911.11 Aggravated burglary	2911.12(A)(1), (2), or (3) Burglary
	2917.01 Inciting to violence*	2919.22(B)(1), (2), (3), or (4) Endangering children
	2917.02 Aggravated riot	

**Offense-of-violence exceptions:** \* These offenses are *not* prohibited if they are misdemeanors

<sup>†</sup> Domestic Violence is *not* prohibited if it is a 4th degree misdemeanor

- 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
- Several **automobile-related offenses**
  - ▶ Tampering with an odometer
  - ▶ Knowingly offering to sell a car whose odometer was tampered with
  - ▶ Sale or possession of a master key designed to fit more than one vehicle
  - ▶ Offenses with purpose to conceal or destroy identity of car or its parts
  - ▶ DUI
  - ▶ Driving under suspension related to a DUI or refusal to take breathalyzer/chemical test
  - ▶ Street racing
  - ▶ All types of hit-and-runs
- **Traffic offenses** can never be sealed, but they are not counted as criminal convictions (they do not prevent you from getting other offenses sealed) unless they are one of the automobile offenses above.

 You **CANNOT** have any prohibited offenses sealed, but...

 If you have only one prohibited offense but have other offenses you want sealed, or if you do not have any of the prohibited offenses, **go to QUESTION 3.**

*QUESTION 3: Are any other criminal charges pending against you?*

⊘ The court will not seal your conviction record if you have any criminal charges pending against you 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, **go 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. Court costs, however, are not part of your sentence and unpaid court costs should not be used as a reason to block your sealing application.

- **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 now eligible to get your record sealed!**

Go to the **APPLICATION INSTRUCTIONS**  
(following the section on non-convictions).

# Sealing Adult Criminal Records: Non-Convictions

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 or 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 sometimes called 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 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, other than No-Bills. Go to the **APPLICATION INSTRUCTIONS** section of this packet.

# Sealing Adult Criminal Records: 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 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](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. **You must file in the county where the case originated.** 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 criminal-record sealing for qualified low-income people. You can search on the Ohio Poverty Law Center website ([www.oplc.org](http://www.oplc.org)) for the legal aid office in the county where you want to apply for record sealing. Alternatviely, you could pay a private attorney to handle your record-sealing application.

### *STEP 5: Get a hearing date*

Depending on your local clerk's practices, you may get a hearing scheduled 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 objects, 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, it is their job to 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.

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: My record is sealed! Now what?*

It often takes at least six weeks for the court, police, and other agencies to seal all the records pertaining to your case. After that point, 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. You can legally say on job and housing applications that you have not been convicted of the sealed crimes.

**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, state law permits several types of employers, including police departments, child-care providers, any medical-care providers, schools, and nursing homes, to see your sealed record if you apply for a job with them.**

**Also**, commercial background-checking companies frequent fail to update their databases once someone has had their record sealed. You may find that you do not disclose your sealed record on a job application only to have your employer later come back and ask you about the sealed record because they found it on a commercial background check. If this happens to you, **you may have a legal claim against the background-checking company**. See the chapter of this manual on the Fair Credit Reporting Act for more information.

# 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 records are not public information, they are *not* supposed to appear on most background checks. Until recently, however, BCI was reporting all juvenile adjudications that would have been a felony if committed by an adult. Under Senate Bill 337, however, BCI is now only allowed to disclose juvenile records for aggravated murder, murder, and any registration-eligible sex offense (as defined by Revised Code § 2950.01). Other juvenile records should 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 6 months 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. But any outstanding court fees from the original case must be paid before the court will consider your juvenile-record-sealing request.

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).

# Certificates That Remove Job Barriers

## *Certificates of Qualification for Employment (CQEs) and Certificates of Achievement & Employability (CAEs)*

Many Ohioans think of criminal-record sealing (“expungement”) as the only way to overcome the civil impacts (“collateral consequences”) of a criminal conviction. In 2011 and 2012, however, the Ohio General Assembly created two new certificates that also remove *employment-related* civil impacts without erasing or hiding the criminal record itself. Certificates of Achievement and Employability (“CAEs”; created by House Bill 86, 2011) and Certificates of Qualification for Employment (“CQEs”, created by Senate Bill 337) have **the same two legal effects** but are used in different situations.

**First, the CQEs and CAEs remove mandatory bars** created by statutes or regulations that prevent people with criminal records from obtaining an occupational license or working in facilities that serve “vulnerable populations” (hospitals, schools, daycares, nursing homes, etc). The licensing agency or employer must presume—unless additional evidence is presented—that the criminal convictions alone are insufficient evidence that you are unfit for the license or employment. The licensing agency or employer still has the discretion to grant or deny the license or employment. **Second, employers** who hire anyone with a CQE or CAE are **protected from negligent-hiring liability**. This removes the fear of litigation that often dissuades businesses from hiring people with criminal records.

### *How can I find the mandatory civil impacts that effect me?*

Applicants for both CAEs and CQEs must identify the specific state-law barrier they want relief from. This can be difficult because many fields of employment will carry multiple civil impacts. For example, one state law can bar an applicant from receiving an STNA license, while another will bar an applicant from working in a hospital or nursing home. It is important to include all the mandatory civil impacts that will prevent employment in the applications. The Ohio Justice & Policy Center and the Ohio Public Defenders have developed a precise, easy-to-use web-based tool for identifying the state-law barriers triggered by a particular criminal offense:

**The Ohio Civil Impacts of Criminal Convictions Database** <http://opd.ohio.gov/CIVICC>

### *How do I apply for a CQE?*

**Timing:** You may not apply until 1 year from completion of sentence if the offense that triggers the collateral sanction is a felony and 6 months from completion of sentence if it is a misdemeanor.

**Online application:** The first step of applying for a CQE is completing the online application found at [www.drccqe.com](http://www.drccqe.com). The Ohio Department of Rehabilitation and Corrections (DRC) will verify that the application is complete. If it is, DRC will notify you *by email* that the application can be printed off and filed in the applicant’s local court of common pleas.

**Court of Common Pleas review:** *You are responsible* for filing the CQE application in the court of common pleas in the county where you. It is a *civil* filing, not a criminal filing. If you have convictions in more than one county, you do not apply in each county. You only apply in the county you currently live in. You do not apply in the municipal court or “county court;” you may only apply in the court of common pleas and there is only one such court for each county. Each court of common pleas has its own rules, procedures, filing fees, and forms for CQE petitions. Some courts charge very little (\$0 or \$35) while others charge as much as \$300.

To grant a CQE, the Court of Common Pleas must find by a preponderance of the evidence that: A CQE will *materially assist* the applicant in obtaining employment or related license;

1. The applicant has a *substantial need* for a CQE in order to live a law-abiding life; *and*
2. Granting a CQE will not create an *unreasonable risk* to public safety.
3. Court may also order other reports, investigations, or disclosures by applicants.

Applying for a CQE can take several months. OJPC has developed a separate workbook to walk you through every step of the process. View or download it at <http://bit.ly/OJPC-CQEworkbook>.

### *How do I apply for a CAE?*

Only current inmates or people who are under parole or post-release control are eligible to apply.

- If you are serving a prison term, the application must be submitted no **earlier than one year prior to release** and **no later than your date of release from DRC**. Request the application from Ohio Central School System (OCSS) staff and ask them all the details about how, when, and where to apply.
- If you are under parole or post-release control, the application must be submitted **before your period of parole or post release control concludes**. Request the application from your parole officer; ask your p.o. all the details about how, when, and where to apply .

The application form is also available at <http://www.drc.ohio.gov/OCSS/AandEbrochure.pdf>

# Governor's Pardons

The Ohio Parole Board and Governor Strickland consider various forms of clemency applications, one of which is a **pardon**. A pardon is a complete forgiveness for a crime committed, eliminating all penalties and other legal consequences for the commission of a crime. An individual granted a full and unconditional pardon is deemed, by law, to have never committed the offense. One Ohio appellate court has said that once granted a pardon, you are also entitled to get your record sealed, even if you were not otherwise eligible under the criminal-records-sealing statutes described earlier in this manual. However, other appellate courts have disagreed. The Ohio Supreme Court will likely resolve this conflict in 2013.

A pardon is the remission of a penalty. It is an act of grace or forgiveness that relieves the person pardoned from some or all of the ramifications of lawful punishment. A pardon may be conditional or unconditional.

Executive Clemency can only be granted by the Governor of the State of Ohio. Section 2967.07 of the Ohio Revised Code requires that all applications for clemency be made in writing to the Adult Parole Authority. The Ohio Parole Board is the bureau of the Adult Parole Authority assigned to process clemency applications. The Governor may also direct the Parole Board to investigate and examine any case for the propriety of clemency. Upon completion of its examination, the Parole Board sends a report to the governor providing a summary of the facts in the case, a recommendation for or against the granting of clemency, and the reasoning behind the recommendation.

The individual granted pardons have demonstrated that they have been rehabilitated and have assumed the responsibilities of citizenship. Most of the governor's favorable clemency decisions are grants of pardons associated with minor and/or non-violent offenses. In every case these pardons have been granted to individuals who have completed their sentence, usually many years ago. Virtually every case involves an individual who has not reoffended with the exceptions of traffic violations.

In 2009, the Governor granted clemency 33 times, 29 (46%) of which were pardons, of the 63 clemency requests from 2005 and 2006. Of the 233 clemency requests from 2007, 45 clemencies were granted, 39 (17%) of which were pardons.

The forms and instructions required to file for a pardon are attached. They may also be found on the Department of Rehabilitation and Corrections website:

<http://www.drc.state.oh.us/web/ExecClemency.htm>

**Make sure you have the most up-to-date version of this manual, with the most accurate legal information:**

<http://bit.ly/OJPC-CrimRecManual>

# Other Advice for Job Seekers with Criminal Records

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 since then by continuing my education, attending group therapy, 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 not only successfully completed your sentence, but have also taken specific steps toward rehabilitation and personal improvement since then. Do not make excuses or go into graphic detail about your offense. Do not spend most of the interview focused on 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.** There are hundreds of legal barriers that apply to people with criminal records. OJPC has catalogued these in an easy-to-use online tool: the Ohio Civil Impacts of Criminal Convictions Database – <http://opd.ohio.gov/CIVICC>. You can use CIVICC to look up the specific criminal conviction you have and then find a list of all the civil legal barriers triggered by that conviction. Conversely, you can look up a specific area of civil regulation you are concerned about (e.g. “nursing”) and find all the criminal convictions that create a barrier to a specific license or opportunity in that field.