

CRIMINAL RECORDS & EXPUNGEMENT

A Guide for Hamilton County Service Providers



OHIO JUSTICE & POLICY CENTER

Reclaiming Lives. Renewing Communities. Restoring Justice.

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Organizations helping people with criminal records know how complicated and frustrating it can be for their clients to access housing, employment, education, and other important opportunities. Understanding the relevant laws and procedures allows organizations to help their clients overcome these challenges.

This guide is practical tool for helping your clients understand their criminal record, the possibility of expungement, and what to do if they cannot get an expungement.

THE OHIO JUSTICE & POLICY CENTER AND THE SECOND CHANCE PROJECT

The Ohio Justice & Policy Center (OJPC) is a non-profit, non-partisan, public-interest law firm representing people marginalized by the criminal justice system. OJPC promotes evidence-based, best-practice criminal justice reform through litigation, advocacy, research, and collaborative initiatives.

The Second Chance Project serves adults and youth with criminal records who want to become productive members of society. The Second Chance Project is an integral part of OJPC's work:

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DISCLAIMER

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

If you have any questions about this guide or the Ohio Justice & Policy Center, please contact us at (513) 421-1108 ext. 25.

WHAT IS A “CRIMINAL RECORD”?

An adult criminal record is not one coherent document. Depending on the source of a background check, different entries appear on a criminal record, including convictions, arrests not leading to a conviction, sentencing dates, and penalties (fines, probation, confinement).

Hamilton County Conviction Record Transcript

In Hamilton County, the sheriff’s office provides background checks at the Justice Center, 1000 Sycamore Street, for \$5.00. These “**blue sheets**” (often referred to as “**police checks**” even though they are run by the sheriff’s office) include all convictions that occurred in Hamilton 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.

Hamilton County Clerk of Courts Website

Anyone in the general public – including landlords, employers, and educational programs – can view a limited criminal record check of any individual by accessing the Hamilton County Clerk of Courts website. Free of charge, the website reveals non-expunged criminal convictions, civil cases, and arrests (including arrests not leading to a conviction) that occurred in Hamilton County since the early 1990s. The website does not reveal expunged offenses. Offenses predating the early 1990s may be unavailable or have incomplete listings.

Private Background Check Companies

Private companies, many 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 throughout a person’s adulthood. 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 immediately.**

BCI and FBI Background Checks

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.

*There is no “expiration date” on an arrest or conviction record.
Unless you expunge the offense, it will always be on your record.*

EXPUNGEMENT AND SEALING OF AN ADULT RECORD

In Ohio, expungement of an adult record is the act of *sealing the criminal record* so that it is no longer accessible to certain sources; that is, ‘sealing a criminal record’ means the same thing as ‘expungement.’ Records of convictions, as well as criminal cases that did not result in convictions, may be sealed.

Why seek expungement?

Expunging 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 expunged record will not show up on a background check and can be treated as if it does not exist. In fact, after an expungement, an individual may honestly mark on applications that the sealed offense does not exist.

Who can get an expungement?

All *criminal non-convictions* can be expunged. *Civil* cases, including divorces, personal injury cases, and evictions, cannot be expunged. ‘*Non-convictions*’ means dismissed cases, acquittals (client found not guilty), and ignored cases (grand jury returned a ‘no-bill’). Even if the only penalty for the crime was a fine and even if the fine was paid, it still means that the client was found guilty and the charge will be on their record.

The “Road to Expungement” chart on the next page can help you determine if a client is eligible for expungement of a *conviction*. Understand that the rules are strict: *any* conviction from *any* state counts and the court reviewing the expungement application *will find* the conviction no matter where it was from. And if the client does not meet those criteria, there is no wiggle room for the judge to grant an exception; the judge does not have the legal authority to grant an expungement to someone who is not eligible. It is a waste of time and money to apply for an expungement that is guaranteed to be denied.

Call the Ohio Justice & Policy Center for any legal questions about expungement.

How do you get an expungement?

People who are eligible for expungement should contact the clerk of courts for the court (mayor’s court, court of common pleas, county court, etc.) in which they were sentenced to obtain application forms to have a record sealed. Most courts have their own expungement forms and they tend to be very particular about them, so make sure you use the right forms. There is a \$50 fee for filing an expungement application for a conviction; non-convictions are always free. Those who cannot afford the filing fee can file an “Affidavit of Indigency” with the expungement application. A judge or magistrate will review the request for the fee waiver separate from and before the expungement application. A hearing date will be set and the applicant *must appear* in court on that date in person.

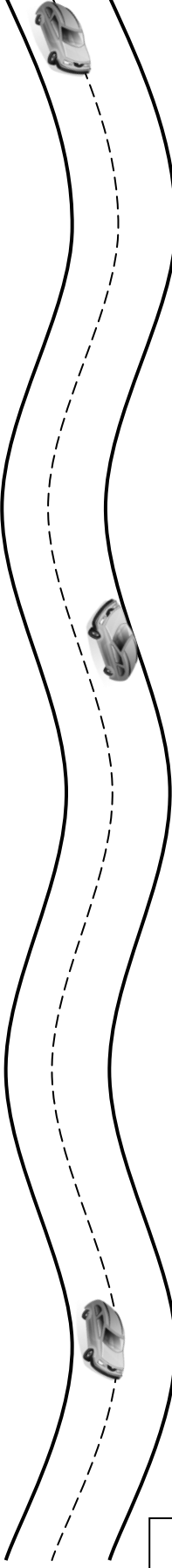

If the conviction occurred in Hamilton County, the offender should contact **OJPC** or **the Legal Aid Society of Greater Cincinnati** to receive free help in obtaining the expungement. Those in other counties should contact their local legal aid office.


Who can see expunged records?

If a judge orders the sealing of a person’s adult record, the record will no longer appear when *most* employers, landlords, or people in the general public obtain a check of that person’s criminal history. However, there are some significant exceptions. Sealed records may still be seen by:


- 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
- Some licensing boards of different professions, 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.

THE ROAD TO EXPUNGEMENT

- 
- 1. Are you trying to expunge a traffic conviction? If YES, . If NO, continue...**

Very few traffic offenses are expungeable. However, you may be able to expunge non-traffic offenses. If you have questions about expunging a traffic offense, contact the Ohio Justice & Policy Center.
 - 2. By the definition below, are you a “first time offender”? If NO, . If YES, continue...**

You are a first-time offender if you have ...

 - only minor misdemeanors — OR —
 - only *one* conviction (felonies *and* ‘regular’ misdemeanors count!) on your record other than minor misdemeanors — OR —
 - Only one set of multiple convictions that came out of the *same act* or were in court at the *same time*.
 - 3. Do you have a conviction for one of the offenses below? If YES,  you may *not* expunge the conviction below or any other misdemeanor or felony on your record. If *all* of your *other* convictions are minor misdemeanors, continue (to expunge only minor misdemeanors)...**


If NO, continue...


 - A first or second degree felony
 - An offense with a mandatory prison term

Sexual Offenses


 - Unlawful sexual contact with a minor
 - Illegal use of a minor in nudity-oriented material or performance
 - Rape • Sexual battery • Gross sexual imposition • Sexual imposition
 - Importuning • Pandering obscenity involving a minor • Felonious sexual penetration
 - Pandering sexually oriented matter involving a minor

Traffic Offenses

 - Knowingly selling or offering for sale a car that has had its odometer tampered with
 - 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 • Tampering with an odometer
 - 4. Were you convicted of a crime listed below AND the victim of the crime was under 18 years old? If YES, . You may *not* expunge the conviction below or any other misdemeanor or felony on your record. If *all* of your *other* convictions are minor misdemeanors, continue (to expunge only minor misdemeanors)...** **If NO, continue...**

 - Any felony or a first degree misdemeanor
 - A conviction after October 10, 2007 for: voyeurism, public indecency, compelling prostitution, promoting prostitution, procuring, disseminating matter harmful to juveniles, displaying matter harmful to juveniles, pandering obscenity, or deception to obtain matter harmful to juveniles
 - 5. Were you convicted of an offense of violence (see back of this page for a list of “offenses of violence”)? If YES, and the conviction is not an “exception” listed below, . If NO, or if you have an “exception” listed below, continue ...**

The following offenses are “exceptions” and MAY qualify for expungement:

 - Any violent misdemeanor of the second, third, or fourth degree
 - Any minor misdemeanor
 - A first degree misdemeanor for: riot, assault, inciting violence, or inducing panic
 - 6. Do you have any charges currently pending against you? If YES, . If NO, continue...**

You cannot get an expungement if you have charges currently pending against you. You must wait until your current case is resolved and then see if you still qualify for expungement.
 - 7. Has the waiting period passed? You must wait **1 year** from the *final discharge* (paid fine, finished jail/prison term, discharged from probation/parole) of a **misdemeanor**; **3 years** for a **felony**. If NO, apply for expungement when sufficient time has passed. But if YES...**

...CONGRATULATIONS! You made it! You are eligible for an expungement!

Note that even though you are eligible, the judge may still deny the application if the prosecutor objects.
If you are not eligible, the judge simply cannot legally grant your expungement.

Offenses of Violence (by Ohio Revised Code statute and by name)

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. (*see exceptions: 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. (*see exceptions: this CAN be expunged if it is a first degree misdemeanor)
 2917.02 Aggravated riot.
 2917.03 Riot. (*see exceptions: 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))

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 8). 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.”

SELECTED SERVICES FOR PEOPLE WITH A CRIMINAL RECORD

This list is intended for use as a guide only and is not a guarantee of aid, employment, housing, or any other services. The list does not include all services/programs offered in Cincinnati.

Legal Services			
Ohio Justice & Policy Center	421-1108	Legal Aid Society of Greater Cincinnati	241-9400
Employment Programs			
Urban League	281-9955	Goodwill Placement Assistance Center	631-4500
Talbert House Reentry Program	684-7977	Literacy Center West	244-5062
Jobs Plus	241-1800	Cincinnati Works	744-9675
Super Jobs	731-9800	Community Action Agency Fresh Start Program	569-1840
Educational/GED Programs			
Literacy Network of Greater Cincinnati (free adult reading classes, GED program referrals)			621-7323
Cincinnati Public Schools ABLE/GED Program (free instruction for adults)			363-6100
Urban Appalachian Council (free GED services)			251-0202
Housing			
Tender Mercies (persons with mental illness)	639-7034	Better Housing League (tenant-landlord problems)	721-6855
Freestore Foodbank (help with rent, utilities, tenant rights)	241-1064	Recovery Hotel	455-5046
Homeless Shelters			
Drop Inn Center	721-0643	Mt. Airy Center	661-4620
House of Refuge	221-3619		
Bethany House Services Inc. Family Transitional Housing Program	557-2873	Interfaith Hospitality Network (temporary shelter for homeless families)	471-1100
Job & Family Services			
Medicaid, Food Stamps & Assistance	946-1000	Child Support Services	946-7837
Food Assistance/Soup Kitchens			
Over-the-Rhine Soup Kitchen, 37 Back St.		421-5121	
St. Francis Soup Kitchen & Pantry, 14 E. Liberty St.		421-2547	
Walnut Hills Soup Kitchen, 2631 Gilbert Ave.		961-1983	