

Q. Once my record is sealed, can anyone get the information?

A. 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 (with the exceptions noted in 2953.37 and 2953.38). Instead of expungement, Ohio uses a Court process called “sealing of criminal record”. When a record is sealed, the record of your conviction(s) or criminal charge(s) is filed separately from other persons’ records. The record still exists but cannot be seen by anyone, with a few exceptions. For example, federal law enforcement agencies do not recognize Ohio orders (or orders from other states) sealing a criminal case. Someone with access to federal database information may be able to see your sealed record if the record was submitted to the FBI. Other exceptions can be reviewed in section 2933.32 (D) of the Ohio Revised Code.

Q. How can I review my criminal record?

A. You can review the Clerk of Courts file on your case either by going to the Records section of the Clerk of Courts located at the Montgomery County Courts Building, 41 N. Perry St., RM. 104, Dayton, OH 45422 or by searching online using the PRO System at:

<http://www.clerk.co.montgomery.oh.us/pro/>

Enter either your name or your case number to view the information on your case.

WAITING PERIOD TO FILE MOTION TO SEAL RECORD

Felony Conviction	1-3 years after final release
No True Bill Issued by Grand Jury	2 years after Grand Jury decision
Misdemeanor Conviction	1 year after final release
Completed Diversion	No waiting period, apply after dismissal of case
Dismissal of Charge (with Prejudice)	No waiting period
Dismissal of Charge (without Prejudice)	See Ohio Statute
Completed Treatment In Lieu of Conviction or Intervention in Lieu of Conviction	No waiting period
Found Not Guilty	No Waiting period

This brochure is a general source of information about the process to seal/expunge a criminal record and is not a form of legal advice. Deputy Clerks in the Montgomery County Clerk of Courts Offices and the staff of the General Division are not permitted to give legal advice. For answers to specific questions, it is best to consult an attorney. If you cannot afford an attorney, call the Legal Aid Society of Greater Dayton at (937) 228-8088. Prior to filing, you are encouraged to visit an interactive website to review your eligibility. You will enter information on felony/misdemeanor convictions and conviction dates at: https://lawhelpinteractive.org/groups/OH-OSLSA/template.2011-07-19.6862174436/template_info?Go=Proceed

MONTGOMERY COUNTY COMMON PLEAS COURT, GENERAL DIVISION

EXPUNGEMENT AND SEALING OF CRIMINAL RECORD



“TOGETHER WE PROVIDE FAIR AND EFFICIENT JUSTICE UNDER THE LAW FOR ALL”

SEALING OF CRIMINAL RECORD

Defendants who have been charged with a criminal offense in the Montgomery County Common Pleas Court and who:

- have been convicted,
- had the charge(s) dismissed, or
- who were charged but not indicted by a Grand Jury, can apply to the Court to have their case sealed under Ohio law.

How to file

You may submit a motion to the Montgomery County Common Pleas Court without the assistance of an attorney if you so choose. You can locate the form to file such a motion at:

<http://www.mcclerkofcourts.org>

Deputy Clerks in the Clerk of Courts Office are not permitted to give legal advice. If you are uncertain regarding your eligibility to have your criminal case sealed by the Court, you should consult with an attorney before paying any filing fee. If you cannot afford to hire an attorney, you may call the Legal Aid Society of Dayton at 937-228-8088 to see if you qualify for their services.

FREQUENTLY ASKED QUESTIONS

Q. How long do I have to wait before I can file a motion to have my record sealed?

A. It depends on the type of criminal record you are trying to seal.

- If you have a felony conviction of the fourth or fifth degree, you must wait 1 year from the final release from prison, parole, or

probation. Felony of the third degree must wait 3 years from the final release from prison, parole, or probation. You cannot have your record sealed if you served a mandatory prison sentence.

- If you have a misdemeanor conviction, you must wait 1 year from the final release.
- If your case was ignored by a Grand Jury, you must wait 2 years from the date of the Grand Jury report.
- If your case was dismissed with prejudice, you can apply immediately upon the filing of the dismissal entry. If your case was dismissed without prejudice, you must refer to the applicable Ohio statute regarding the statute of limitations.
- If you are found not guilty, there is no waiting period.

Q. Can I have more than one case sealed?

A. Yes. Also,

- 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.
- if your 2 or more convictions were not based on the same criminal act, but resulted from the same court proceeding and the convictions were related crimes committed within 3 months of each other, the multiple convictions may be treated like 1 conviction.
- convictions for violating most driver's license and traffic laws are not considered convictions when applying for sealing of records.

Q. Are there any convictions that cannot be sealed?

A. Yes. Conviction records for certain felonies and misdemeanors are not allowed to be sealed:

- Convictions for first and second degree felonies
- Conviction for a felony or first degree misdemeanor and the victim was under the age of 18 when the crime took place, EXCEPT conviction for Non-Support of Dependents
- Most convictions for crimes involving violence, **EXCEPT conviction for first degree misdemeanor riot, assault, inciting violence and inducing panic**
- Most sex-based convictions
- Rape or sexual battery
- Unlawful sexual conduct with a minor
- Sexual imposition
- Child pornography
- Pandering sexually oriented matter or obscenity of a minor
- Illegal use of a minor in nudity oriented material or performance
- Driver's license or traffic violations
- Any conviction carrying with it a mandatory prison term
- Any conviction involving a firearm specification
- Theft in Office
- Bail forfeitures in traffic case

The court will not seal your conviction unless you are an "Eligible Offender" as defined by the Ohio statute. Also, the Court will not seal your conviction record if you have any criminal charges pending against you. If you are not eligible to have your record sealed, you may be eligible for clemency from the Governor. You can obtain an application for guidelines at: www.drc.ohio.gov/web/forms/DRC3068instructions.pdf.

Q. Where do I file my motion to have my record sealed?

A. You may file your motion at the Montgomery County Clerk of Courts Office, Criminal Division, 41 N. Perry Street, Room 104. A filing fee is required. They accept Money Orders payable to Montgomery County Clerk of Courts Office, cash, credit/debit cards (3% convenience fee) and personal checks drawn on a local bank with appropriate identification. If you were convicted in another state or Federal Court, contact the local Common Pleas Court in that jurisdiction or the Federal Court.

Q. After I file my application to have my record sealed, what happens next?

A. The Court will review your criminal history as it pertains to your application and determine whether you meet the criteria for sealing of records according to the statute. The Prosecuting Attorney can offer evidence and testimony in opposition to your application. The Court will conduct an investigation in most cases before making a decision. There is no set time frame for this decision. You will be notified if you are to be present at the hearing. You will also be notified of the Judge's decision.

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