

The Ohio Justice & Policy Center's

Criminal Records Manual

**UNDERSTANDING OHIO CRIMINAL RECORDS
AND OVERCOMING THE BARRIERS THEY CREATE**

Version: 05/22/2020

Check that you have the most up-to-date version of this manual:

<http://bit.ly/OhioCriminalRecords>



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. OJPC's mission is to create fair, intelligent, redemptive criminal-justice systems through zealous client-centered advocacy, innovative policy reform, and cross-sector community education. We deliver on this mission using a three-plank strategy:

- o Substantially reduce the size and racial disparity of the state prison population;
- o Expand the freedom of people with criminal records to participate fully in the community; and
- o Protect human rights and dignity of incarcerated people.

In 2004, OJPC began its Second Chance Project to help people overcome criminal-records-based barriers to employment, housing, education, and positive community reintegration. Through free outreach legal clinics, OJPC helps people address outstanding criminal debt and apply for record sealing, expungement, Certificates of Qualification for Employment. The project has grown from individual client representation to include extensive statewide public education, legislative advocacy, and collaboration with community partners.

For more information about the Second Chance Project, please visit ohiojpc.org. A calendar of outreach legal clinics is available at <http://ohiojpc.org/what-we-do/legal-services/second-chance-clinic/>.

DISCLAIMER

This guide is offered as a general source of information and a public service to the community. It is *not* a substitute for individualized legal advice. For answers to specific questions, it is best to consult an attorney licensed or authorized to practice in your jurisdiction. Nothing on this manual is intended to create an attorney-client relationship or to constitute legal advice of any kind.

Given the speed at which laws can develop, we cannot guarantee that the information in this manual is an accurate, complete or up-to-date compilation. We intend to make every attempt to keep the information in this manual current and suggest that you check for our most recent version at <http://bit.ly/OhioCriminalRecords>.

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Table of Contents

What is a Criminal Record?	1
EEOC & Title VII Compliance	3
The Fair Credit Reporting Act	4
Correcting a Commercial Background Check	5
Correcting a State or Federal Criminal Record	6
Sealing Adult Criminal Records	7
Sealing Convictions	8
Sealing Non-Convictions	11
Sealing Application Instructions	15
Expunging of Adult Criminal Records	16
Juvenile Records	19
Certificates That Remove Job Barriers	23
CQE Roadmap	25
Governor's Pardons	26
Advice for Job Seekers with Criminal Records	27

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

What is a Criminal Record?

A criminal record is not one, uniform document. There are numerous types of background checks and they may all contain different information. These are the most common types:

County Conviction Record Transcript

Where to get it: County Sheriff's office (e.g., Hamilton County Justice Center, 1000 Sycamore St., Cincinnati)

Cost: Varies (\$5-10 usually)

These background checks, sometimes referred to as “police checks,” include all convictions that occurred in that county. 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 or expunged offenses.

Clerk of Courts Website

Where to get it: Online (e.g., 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 criminal convictions and non-convictions, as well as civil cases, associated with the person's name in that county. They exclude sealed or expunged offenses. Most of these websites only reach back a certain number of years. Older cases 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, backgroundchecks.com)

Cost: Varies

Dozens of private companies, most of which operate over the internet, sell criminal-record information. Employers, landlords, and others reviewing the backgrounds of applicants often purchase statewide or nationwide background checks from these services. Commercial background check companies are subject to the Fair Credit Reporting Act (FCRA) and can report all 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. They cannot report sealed or expunged offenses. A person must grant permission for others to request a private background check on their name for employment purposes. If employers do not hire a person based on a background check, they must notify the applicant about which service provided the check. **If you believe that the check is incorrect or outdated, contact the Ohio Justice & Policy Center or the legal aid office that serves your 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 <http://www.ohioattorneygeneral.gov/Business-and-Non-Profits/Business/Webcheck/Webcheck-Community-Listing>).

Cost: Varies. (In Hamilton County, BCI is \$32 and FBI is \$34)

The State of Ohio Bureau of Criminal Investigation (“BCI”) provides official criminal records for Ohio. The Federal Bureau of Investigation (“FBI”) provides official nation-wide checks. A person’s fingerprints and permission are required to run these checks. Sometimes, employers request BCI to provide *both* a statewide-BCI check and a nationwide-FBI checks from the same set of fingerprints.

State law mandates that individuals applying for certain professional licenses or jobs (e.g., schools, daycare centers, health care facilities, banks) undergo these background checks as part of the hiring/licensing process. BCI completes such background checks by comparing fingerprints received against a database of criminal fingerprints to determine if there is a criminal record. All fingerprints must be submitted to BCI electronically through WebCheck or a card scan unless the required reasons for an exemption are met

These background checks include all convictions and, depending on who requests the search, may also include sealed offenses. For example, if a healthcare employer obtains permission to run a BCI check on an applicant, the employer may disqualify the applicant from employment based solely on certain sealed convictions.

WHAT APPEARS ON VARIOUS BACKGROUND CHECKS

*This Chart Applies to Adult Records *Only*

Type of Background Check	Non-convictions	Convictions	Penalties	Sealed offenses	Jurisdictions covered by check
Conviction Record Transcript for single county		X			Only that county
Clerk of Courts website	X	X	X		Only that county
Commercial background check company	X Depending on situation	X	X		Statewide or Nationwide
Bureau of Criminal Identification and Investigations WebCheck (“BCI Check”)	X	X	X	X Depending on situation	Statewide
FBI Background Checks	X	X	X	X Depending on situation	Nationwide

EEOC & Title VII Compliance

When employers consider job applicants with criminal records, they must comply with rules and regulations set by the Equal Employment Opportunity Commission (EEOC). This federal agency requires that any hiring exclusion based on criminal records must be job-related and consistent with business necessity. Courts have ruled that categorically excluding job applicants based on criminal records *may violate Title VII of the Civil Rights Act*, because such a policy often has a racially disparate impact.

In April 2012, the U.S. EEOC updated its guidance on how it enforces that law. Instead of using categorical exclusions, the EEOC strongly encourages employers to individually assess criminal records using three factors:

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense and completion of any sentence; and
- The nature of the job held or sought.

Also, it is illegal to check the background of applicants based on a person's race, national origin, color, sex, religion, disability, genetic information (e.g., family medical history), or age. For example, requiring people only of one race to disclose criminal records is evidence of discrimination. Employers must apply the same standards to everyone.

Even if employers treat all people with criminal records the same way, they may still be discriminating illegally if they use a policy or practice that excludes *all* people with criminal records or large categories of people with criminal records (e.g. "no felons"). Employers should not have a hiring policy or practice that significantly disadvantages individuals of a particular race, national origin, or another protected characteristic, and does not accurately predict who will be a responsible, reliable, or safe employee. In legal terms, the policy or practice has a "disparate impact" and is not "job related and consistent with business necessity."

If you think that you were denied a job because of a discriminatory hiring restriction, contact immediately the Ohio Justice & Policy Center or EEOC.



The Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA) governs commercial background-checking companies and the employers who use them. It is enforced by the Consumer Financial Protection Bureau.

Requirements for commercial criminal record reporting agencies:

- Agencies can report convictions of any age. In some circumstances, 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 consumer reporting agency gets notified about a potential error in a background check, the agency must investigate unless the dispute is frivolous.

Requirements for employers using commercial criminal record reporting agencies:

- Employers must give job applicants written notice of intent to check criminal records and must receive written authorization from applicants to do the check.
- If the employer chooses to take action against you based on negative information in the report, the employer must give you: a copy of a standard FCRA notice form, notice of the adverse decision, a copy of the background check itself, and contact info for the background-checking agency. This is because background checks sometimes contain mistakes that could even cost applicants their jobs. If a job applicant finds a mistake on a background check, they may ask the background reporting agency to fix it and to send a corrected copy to the employer. The employer must offer reasonable time to correct this error.

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 adverse action against you because of information in your credit report;
 - you are the victim of identity theft and place a fraud alert in your file;
 - your file contains inaccurate information as a result of fraud;
 - you are on public assistance; or
 - you are unemployed but expect to apply for employment within 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. Check the particular company's website for additional instructions and options for correction background check errors.

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”?

In most cases, when people talk about “expungement” they are actually referring to “sealing a criminal record” (Ohio Revised Code § 2953.31 – 2953.62). Convictions and non-convictions can be sealed or **“hidden” from most background checks**. Sealed electronic and paper records are filed in a separate, secured location. The records still exist but cannot be seen by most people. In contrast, expunged records are totally destroyed. Expungement can *only* happen for juvenile records, limited weapons charges, and records related to human trafficking.

Why should I get my records sealed?

Sealing a criminal record—even a non-conviction—may prove valuable when applying for jobs, professional licenses, credit, educational programs, housing, and other opportunities. In most cases, a 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 in Ohio. 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 have records available online for you to search. If the records are not online, you can go to the clerk of courts office and request paper copies of documents in your case that show whether it was a conviction or not (you may need to find a “Judge’s Sheet” or an entry/order with the judge’s final decision). You may also purchase a background check from BCI/FBI, sheriffs’ offices, or reputable private companies.

Can anyone see the records after they are sealed?

Most people are not allowed to access sealed records. For example, landlords can never see sealed offenses for housing applicants. Sealed records should never appear online, on county police checks, on clerk of courts’ background checks, or on commercial background checks. Sometimes, commercial background-checking companies will mistakenly report sealed records; if this happens to you, contact your local legal aid or the Ohio Justice & Policy Center for help.

Only certain employers, criminal-justice-system officials, and certain professional-licensing agencies are allowed by law to see sealed records, such as:

- Prosecutors, judges, and police if there are future criminal cases or investigations;
- Some employers in law enforcement, employers working with children or elderly (e.g. schools, daycares, nursing homes), healthcare services, and jobs in real-estate, casinos, and financial institutions – all depending the job-duties, position, criminal record, and other factors.
- Most state professional-licensing boards, such the State Accountancy 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?

In most cases, a person can successfully apply for record sealing without an attorney. Sometimes, the prosecutor may object to your application and the judge may reject it for reasons you do not fully understand. Many 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. ***Continue reading to see if you are eligible for record sealing!***

Sealing Adult Criminal Records: Convictions

Answer the questions on the next few pages to see if your CONVICTION records can be sealed.

QUESTION 1: Are you eligible to apply for record sealing?

The number and type of convictions that you have must fit the law’s definitions of an “**eligible offender**” (Revised Code Section 2953.31). **Convictions from anywhere in the United States are counted** in this process.

To determine whether you are an “eligible offender,” start at Pathway #1 for Eligibility:

- **PATHWAY #1 for Eligibility:** An eligible offender under Pathway #1 has **never** been convicted of: (a) more than five felonies; (b) first, second, or third-degree felonies; (c) **any** statutorily defined “offense of violence” (listed in Table 1A below); **or** (d) any felony-degree sex offense (listed in Table 1B below).
 - Felony-degree traffic offenses are considered when counting the number of felonies an applicant has.
 - The applicant can have any number of misdemeanors.

TABLE 1A: Offenses of Violence

2905.01 Abduction	2905.11 Extortion	2905.01 Kidnapping
2909.02 Aggravated arson	2903.11 Felonious assault	2903.22 Menacing
2903.12 Aggravated assault	2907.12 (former) Felonious sexual penetration	2903.211 Menacing by stalking
2911.11 Aggravated burglary	2907.05 Gross sexual imposition	2903.02 Murder
2903.21 Aggravated menacing	2917.01 Inciting to violence	2903.34(A)(1) Patient Abuse or Neglect
2903.01 Aggravated murder	2917.31 Inducing panic	2903.15 Permitting child abuse
2917.02 Aggravated riot	Intimidation	2907.02 Rape
2911.01 Aggravated robbery	Intimidation of attorney, victim or witness	2917.03 Riot
2909.03 Arson	2923.161 Improperly discharging firearm	2911.02 Robbery
2903.13 Assault	2903.04 Involuntary Manslaughter	2907.03 Sexual battery
2911.12(A)(1), (2), or (3) Burglary		2909.24 Terrorism
2919.25 Domestic violence		2905.32 Trafficking in Persons
2921.34 Escape		2903.03 Voluntary Manslaughter
2919.22(B)(1), (2), (3), or (4) Endangering children		

TABLE 1B: Felony Sex Offenses

2907.34 Compelling acceptance of objectionable materials	2907.32 Pandering obscenity
2907.21 Compelling prostitution	Pandering obscenity involving a minor
2907.19 Commercial sexual exploitation of a minor	Pandering sexually oriented matter involving a minor
2907.31 Disseminating matter harmful to juveniles	2907.22 Promoting prostitution
2907.311 Displaying matter harmful to juveniles	2907.25 Prostitution
2907.23 Enticement or solicitation to patronize a prostitute; procurement of a prostitute for another	2907.09 Public Indecency
2907.05 Gross sexual imposition	Rape
2907.323 Illegal use of minor in nudity-oriented material or performance	Sexual battery
2907.07 Importuning	2907.06 Sexual imposition
2908.241 Loitering to engage in solicitation	2907.24 Soliciting
	2907.04 Unlawful sexual conduct with minor
	2907.08 Voyeurism

- ↓ If you qualify under Pathway #1, you are an “eligible offender”, go to QUESTION 2.
- ↓ If you do not qualify under Pathway #1, go to Pathway #2.


- **PATHWAY #2 for Eligibility**: An eligible offender under Pathway #2 can have **only been convicted of**: (a) one or two misdemeanors **and** no felonies, or (b) one misdemeanor **and** one felony. It does not matter how old they are.
 - Minor misdemeanors (e.g. tickets) 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.
 - Traffic offenses do not count towards the number of convictions, except for the traffic offenses listed in Table 1C below.
 - If you have two or more convictions arising from the same incident, the multiple convictions may 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 1st and May 10th 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 to 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.


TABLE 1C: Traffic Offenses

4511.19 Operating vehicle under the influence of alcohol or drugs- OVI
4511.251 Street racing
4549.02 Stopping after accident on public roads or highways
4549.021 Stopping after accident on other than public roads or highways
4549.03 Stopping after accident involving damage to realty or personal property attached to real property
4549.042 Sale or possession of master key designed to fit more than one motor vehicle
4549.62 Offenses with purpose to conceal or destroy identity
Odometer rollback and disclosure act
Tampering with or disconnection of odometers
Sale or use of fraudulent odometer
Operating with disconnected or nonfunctional odometer
Written notice of tampering or nonfunction
4549.451 Auctioneer’s statement of disconnected or nonfunctional odometer
4549.46 Written odometer disclosure statement
4510.11 Driving under suspension or in violation of license restriction
4510.14 Driving under OVI suspension
4511.191 Implied consent
4511.196 Initial appearance
Felony violation of Title XLV of the ORC

- **FOR EITHER PATHWAY:**

- 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 do not qualify under either Pathway to be an “eligible offender,” then you **CANNOT** have any of your felony or misdemeanor conviction records sealed.

 If you do qualify under Pathway #2, you are an “eligible offender”, **go to QUESTION 2.**

QUESTION 2: What can you have sealed?

Even if an applicant is found to be an “eligible offender,” it does not mean that every case can be sealed.

The law provides that any offense can be sealed **EXCEPT**:

- Convictions with a mandatory prison term;
- Any first or second-degree felonies;
- Traffic offenses;
- Offenses of violence in Table 2A below marked as (*) if the offense is a first-degree misdemeanor or a felony;
- Offense of violence in Table 2A below marked as (+) if the offense is a felony;
- Sex offenses in Table 2B below marked as (x);
- Sex offenses in Table 2B below marked as (#) if the victim of the offense was under 18 years of age;
- Any offense where the victim is less than 16 years of age when the offense is a 1st degree misdemeanor or a felony (except Section 2929.21 Nonsupport or contributing to nonsupport of dependents).

TABLE 2A: Offenses of Violence

2905.01 Abduction (*)	2905.11 Extortion (*)	2905.01 Kidnapping (*)
2909.02 Aggravated arson (*)	2903.11 Felonious assault (*)	2903.22 Menacing (*)
2903.12 Aggravated assault (*)	2907.12 (former) Felonious sexual penetration (*)	2903.211 Menacing by stalking (*)
2911.11 Aggravated burglary (*)	2907.05 Gross sexual imposition (*)	2903.02 Murder (*)
2903.21 Aggravated menacing (*)	2917.01 Inciting to violence (+)	2903.34(A)(1) Patient Abuse or Neglect (*)
2903.01 Aggravated murder (*)	2917.31 Inducing panic (+) Intimidation (*)	2903.15 Permitting child abuse (*)
2917.02 Aggravated riot (*)	Intimidation of attorney, victim or witness (*)	2907.02 Rape (*)
2911.01 Aggravated robbery (*)	2923.161 Improperly discharging firearm (*)	2917.03 Riot (+)
2909.03 Arson (*)	2903.04 Involuntary Manslaughter (*)	2911.02 Robbery (*)
2903.13 Assault (+)		2907.03 Sexual battery (*)
2911.12(A)(1), (2), or (3) Burglary (*)		2909.24 Terrorism (*)
2919.25 Domestic violence (*)		2905.32 Trafficking in Persons (*)
2921.34 Escape (*)		2903.03 Voluntary Manslaughter (*)
2919.22(B)(1), (2), (3), or (4) Endangering children (*)		

TABLE 2B: Sex Offenses

2907.21 Compelling prostitution (#)
2907.33 Deception to obtain matter harmful to juveniles (#)
2907.311 Displaying matter harmful to juveniles (#)
2907.31 Disseminating matter harmful to juveniles (#)
2907.23 Enticement or solicitation to patronize a prostitute; procurement of a prostitute for another (#)
2907.05 Gross sexual imposition (x)
2907.323 Illegal use of minor in nudity-oriented material or performance (x)
2907.07 Importuning (x) if convicted on or after 10/10/2007)
2907.32 Pandering obscenity (#)
Pandering obscenity involving a minor (x)
Pandering sexually oriented matter involving a minor (x)
2907.22 Promoting prostitution (#)
2907.09 Public Indecency (#)
Rape (x)
Sexual battery (x)
2907.06 Sexual imposition (x)
2907.08 Voyeurism (#)
2907.04 Unlawful sexual conduct with minor (x)





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



If you have prohibited offenses, you can still seal your other cases. If you have cases that can be sealed, 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, PRC, or parole, and paid any fines. Court costs, however, are not part of your sentence and do not automatically disqualify you. Courts consider unpaid court costs as another factor in their decision-making.

- **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.
- If your record contains **only 1 felony conviction**, you must wait **three years** after the final discharge of that felony conviction to apply.
- If your record contains **only 2 felony convictions**, you must wait **four years** after each felony is discharged. Each felony has its own waiting period.
- If your record contains **3-5 felony convictions**, you must wait **five years** after each felony is discharged. Each felony has its own waiting period.

 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

A “non-conviction” happens when a criminal case was started against you, but you were not convicted for a crime. It is a dismissal, acquittal, or “no bill” (also called an ignored case). If your criminal record shows that charges against you were non-convictions, answer the following questions to determine if you are eligible to have those records sealed. You should determine eligibility for each case separately.


QUESTION 1: Were all the criminal charges from the case or incident non-convictions?


 If you were convicted on one or more charges that arose out of the same incident while other charges were non-convictions, you generally 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 or incident were non-convictions, or if the simultaneous convictions are eligible for record sealing, Go to QUESTION 2.


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.

 If your non-convictions are all dismissals or acquittals, 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 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. The \$50 fee covers **all conviction records** you are requesting to be sealed. Filing an application to seal a record of **acquittal, dismissal, or No Bill should be 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) for the legal aid office in the county where you want to apply for record sealing. Alternatively, 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 through another means. 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.

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 frequently 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.

Expunging of Adult Criminal Records

Erasing Records for Survivors of Human Trafficking

Through Ohio Revised Code 2953.38 and 2953.521, Ohio Legislature created an expungement process for survivors of sex trafficking who were compelled or forced to commit illegal acts. Unlike sealed records, expunged records are truly **destroyed, deleted, and erased**, in all physical or electronic forms. In Ohio, human trafficking expungement is *only* available for these sex trafficking-survivors. In some courts this is called a “Safe Harbor Expungement.”

What is Human Trafficking?

Human trafficking in Ohio is a fast-growing and highly underreported form of modern day slavery. Often, victims are unaware that they are in a human trafficking situation; they may perceive the traffickers as protectors, boyfriends/girlfriends, relatives, friends, or landlords. Traffickers use evolving methods of control, including physical violence, sexual abuse, and drugs to compel victims to commit illegal acts like prostitution for their traffickers’ financial gain. As a result of being trafficked, victims suffer long-term trauma and accumulate criminal records.

Who are the victims?

The media often portrays human trafficking as a “foreign” problem that takes place in developing countries—far away from the United States. This is actually a misconception. According to the International Labour Organization, there is an estimated 40.3 million victims of human trafficking globally. These victims can be of any age, gender, nationality, or economic background.

- 81% of victims are trapped in forced labor.
- 75% of victims are women and girls.
- 25% of victims are children.

How can I get some help with expunging my records?

The expungement application is complicated and you should get help from an attorney. Contact the Ohio Justice & Policy Center for assistance.

REQUIREMENTS FOR SAFE HARBOR EXPUNGEMENT:

1. The applicant must have been a victim of human trafficking.

- A victim of human trafficking is defined as a person who is or was a victim of Trafficking in Persons under R.C. 2905.32, regardless of whether anyone has been convicted for victimizing the person.
 - a. Trafficking in Persons occurs when someone knowingly recruits, lures, entices, isolates, harbors, transports, provides, obtains, or maintains another person to be subjected to involuntary servitude or to be compelled to engage in sexual activity for hire.
 - i. A victim is “compelled” through force, fear, duress, intimidation, or fraud; this element does not require openly-displayed or physically-exerted action.

2. The criminal record must be the result of the trafficking.

- An applicant must demonstrate by a preponderance of the evidence that the applicant’s participation in the offense that is the subject of the application was a result of the applicant having been a victim of human trafficking.
- A person can apply to expunge **ANY** record **EXCEPT** a conviction for aggravated murder, murder, or rape.
 - a. **FOR CONVICTIONS:** To have convictions expunged, the applicant must have (or have had) a conviction of at least one of the following predicate offenses: soliciting, loitering to engage in solicitation, or prostitution. These convictions do not have to be from the same court or happen at the same time as the convictions that are being applied for.
 - b. **FOR NON-CONVICTIONS:** To have non-convictions expunged, the applicant does not need to have predicate offenses. The court must additionally determine:
 - i. (1) If the application pertains to a dismissed complaint/indictment/information; (2) whether the dismissal was with or without prejudice and, (3) if the dismissal was without prejudice, whether the period of limitations applicable to the offense that was the subject of that complaint/indictment/information has expired; and
 - ii. Whether any criminal proceedings are pending against the applicant.

3. The applicant must be able to pass the “interest test.”

- The court will determine whether the interests of the applicant in having the record expunged are not outweighed by any legitimate needs of the government to maintain the record.

Application:

The application must be submitted to the sentencing court for each offense. The application must:

- Identify the applicant, the offense for which the expungement is sought, the date of the conviction of that offense, and the court in which the conviction occurred.
- Describe the evidence and provide copies of any documentation showing that the person is entitled to relief under this section.
- Include a request for expungement of the record of conviction of that offense.

What else can be included in the application?

- A memorandum in support of the expungement.
- A sworn affidavit by the applicant, describing the human trafficking, the context of the criminal records, the need for expungement, and present-day healthy, productive, law-abiding behavior.
- Other evidence that the criminal record resulted from human trafficking, if available (e.g., medical records, photos of scars/tattoos, statements from witnesses, statements from social services agencies, therapy records, etc.). If no such evidence is available, the testimony of the applicant can be sufficient evidence.
- Other evidence that the applicant's need for expungement outweighs any government interest in keeping the criminal records (e.g., letters of support, certificates of accomplishment/competition, transcripts or degrees, employment offers/rejections, documentation of community service, etc.)

Is there a cost to apply?

There is a \$50 filing fee that can be waived through a poverty affidavit (or "affidavit of indigency").

Hearing:

The court may deny the application if it finds that the application fails to assert grounds on which relief may be granted. If the court does not deny the application, it must set a hearing date. Prosecutors can file an objection prior to the hearing date and specify the reasons for believing a denial is justified. The court may also direct a probation officer to make inquiries and written reports as the court requires concerning the applicant.

At the hearing, the court may consider the reasons provided in the prosecutor's objection, if any, and all of the Requirements for Safe Harbor Expungement as detailed above.

NOTE: Additional factors are considered when the subject offense is a **first or second degree felony**. The court must also consider:

- **Degree of duress** under which the applicant acted in committing the subject offense, including but not limited to: (1) History of use of force/threatened use of force against applicant/another person; (2) Whether the applicant's judgement/control was impaired by the administration to the applicant of any intoxicant/drug/controlled substance; and (3) Any threat of withholding food/water/drug;
- **Seriousness** of the subject offense;
- **Relative degree of physical harm** done to any person in the commission of the subject offense;
- **Length of time that has expired** since the commission of the subject offense;
- **Whether** the prosecutor represents to the court that **criminal proceedings are likely to still be initiated** against the applicant for a felony offense for which the period of limitations has not expired; and
- Whether the applicant at the time of the hearing is **subject to supervision** as a result of the offense.

Post-Hearing:

If the Safe Harbor Expungement is granted, the court must give notice of the expungement order to relevant public offices and agencies that the court has reason to believe may have an official record pertaining to the case. After that, records related to the conviction must be destroyed, deleted, or erased in all physical or electronic forms.

Juvenile Records

Juveniles who break the law do not receive criminal convictions; rather, they are “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.” Juvenile records can be **sealed and expunged**.

Who can access juvenile records?

Juvenile records are not public information and **should *not* be accessible through most background check**. They should not appear on Clerk of Courts’ websites, police checks, or private background checks (including internet sources). BCI is allowed to disclose juvenile records for aggravated murder, murder, and any registration-eligible sex offense. Also, violent offenses and offenses that would have been a felony if committed by an adult may come up on BCI checks *only* for job applicants who work with vulnerable populations or in high-security situations, such as jobs in hospitals, nursing homes, schools, daycares, banks, law enforcement, and others. Juvenile records are also 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

How do I apply? 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.

- Cases that are dropped or dismissed are sealed automatically.
- If a person is adjudicated delinquent (meaning, they were found to have committed the offense), the case records are not automatically sealed, even when the person turns 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. The applicant may be required to attend a hearing to determine whether the record can be sealed and the prosecutor may file objections. 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, education and employment history, continued problems with the law, as well as other factors

Who can see sealed juvenile records? A sealed record is removed from “main file” and secured in a separate file accessible only to the juvenile court. In rare cases, a school board in the youth’s district, prosecutors, and law enforcement can access sealed juvenile records. The attorney general’s office can access sealed juvenile sex offenses to maintain a juvenile sex offender registry. Sealed juvenile records **will not appear on any background checks**.

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). Offenses for aggravated murder, murder, and rape cannot be expunged. When a juvenile record is expunged, it is as if the proceedings never occurred.

Safe Harbor Expungement and Protections for Juveniles

Similar to the Safe Harbor expungement for adults, as discussed earlier, the Ohio Legislature recognizes that juveniles can also be compelled to engage in sexual activity for hire through force, fear, duress, intimidation and fraud. In response, Ohio juvenile courts may use Safe Harbor protections to help stop exploitation and get victims the services they need. The key question is whether the court has reason to believe the juvenile is a trafficking victim.

2. The court has to make a finding that there is reason to believe that the juvenile is being trafficked and the charges are related to the juvenile's victimization.

- The court may hold a hearing to make this determination but it does not necessarily have to. The court can make this determination on its own accord if it wants to.

3. The court will place the "complaint in abeyance" meaning that it will temporarily suspend the complaint if it finds that there is reason to believe the juvenile is a trafficking victim or is being exploited.

- The juvenile has to agree to the Safe Harbor hearing but the juvenile does not need to admit to any victimization related to the trafficking during the hearing.

4. The court must appoint a guardian ad litem, who is a separate professional from defense counsel.

- The guardian ad litem is responsible for making recommendations to the court that are in the best interest of the child.

5. The court can order appropriate treatment and services to divert the juvenile away from prosecution and prevent further victimization.

- The complaint will temporarily suspended for 90 days. If more time is needed to complete diversion activities, the time can be extended.

6. If the juvenile completes the diversion activities to the court's satisfaction, the case must be dismissed and records must be expunged.

- If the juvenile fails to complete the diversion activities to the court's satisfaction, the complaint will be taken off of suspension and the court will carry on with the proceedings against the juvenile.

Certificates That Remove Job Barriers

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

1 in 6 Ohioans—over 16% of our available workforce—has a misdemeanor or felony conviction record. Economic research suggests that Ohio is losing \$2 billion GDP annually because otherwise qualified workers are excluded by over-restrictive criminal-record-based barriers. For many years, the only legal tool for overcoming these barriers was criminal-record sealing or “expungement.”

The Ohio General Assembly created two new certificates that help remove *employment-related* barriers and reintegrates these forgotten workers into our economy. Though Certificates of Achievement and Employability (“CAEs”; created by House Bill 86, 2011) and Certificates of Qualification for Employment (“CQEs”, created by Senate Bill 337) are used in different situations, they produce **the same two legal effects** described below.



A CQE & CAE ERASE TWO KINDS OF JOB BARRIERS

1) Erasing mandatory legal barriers

Many Ohio laws prevent people with criminal records from getting certain government-issued licenses or from working in certain jobs. **CQEs and CAEs create relief from mandatory restrictions** — laws that absolutely prevent the person with a specific criminal conviction from working or being licensed in a field. Instead of relying on the blanket restriction, the state agency that governs that field of employment is required to individually assess someone with a CQE or CAE to determine whether they are fit for the job. The certificates create flexibility.

A CQE does not guarantee the job—it allows an employer to let you into a field of employment. The employer is not required to hire you but they must determine whether you are fit for the field of employment opened up by the license.

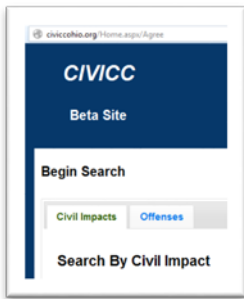
A CQE creates a “rebuttable presumption” when you apply for professional licensing. This means that a person’s criminal convictions are insufficient evidence that the person is unfit for the license, employment opportunity, or certificate in question.



2) Erasing employer fear: immunity from negligent hiring liability

The #1 reason employers request criminal-record checks and do not hire people with criminal records is because they are afraid that, if the new employee does something bad in the future, the employer will get sued. The CQE and CAE creates **immunity (legal protection) from negligent-hiring lawsuits** for employers who knowingly hire certificate-holders. This immunity means that an employer can feel confident that hiring a person with a criminal record does not create a legal liability.

HOW DO I FIND OUT WHAT LEGAL BARRIERS AFFECT ME?



CQE applicants must identify the specific state-law barrier they want relief from. OJPC has 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 Conviction Database (<http://CIVICCOhio.org>).

While CIVICC is no substitute for the advice of a licensed attorney, it is an excellent starting point for research and anyone can use it without any special training.

Certificates That Remove Job Barriers

Certificates of Qualification for Employment (CQE)

How do I apply for a CQE?

- A CQE application can be filed any time after the person is **one year out from the discharge of the last felony** and **six months out from the discharge of the last misdemeanor**;

OR

- A CQE application can be filed earlier if a person:
 - a. Is **released early from prison** after earning the full possible credit (90 days or a 10% reduction) by productively participating in education programs, vocational training, employment in prison industries, treatment for substance abuse, or any other constructive programs. This only applies to a release under R.C. 2967.193(A)(2);
 - b. Is released from prison with a **CAE**;
 - c. Is **released from jail (meaning a local holding facility, not a state prison) and gets a recommendation from the Sheriff or “designee.”** The person may apply at any time after release from incarceration, even if fines/fees/costs are still unpaid;
 - d. Was **neither incarcerated nor under community control as a sentence**. This will usually mean they just got a ticket or lower-level citation, and were ordered to pay fines, costs/fees, or restitution. The law does not require that the moneys be paid; or
 - e. Received **early termination of community control**, has complied with all special conditions, and has no outstanding fines or restitution.

Additional key points

Application: The first step of applying for a CQE is completing the online application found at 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 currently live*. If you live outside of Ohio, you may file the application in a common pleas court of any county where a conviction in the CQE application occurred. It is a *civil* filing, not a criminal filing. Each court of common pleas has its own rules, procedures, filing fees, and forms for CQE petitions. If you believe you are unable to pay, ask the clerk’s office for a filing fee waiver (sometimes referred to as an affidavit of indigency).

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;
- The applicant has a *substantial need* for a CQE in order to live a law-abiding life; *and*
- Granting a CQE will not create an *unreasonable risk* to public safety.

If 1 year has elapsed since the final discharge of applicant’s misdemeanor sentence and/or 3 years have elapsed since the final discharge of applicant’s felony sentence:

- There is a rebuttable presumption that the applicant is eligible for a CQE and that their petition should be granted. This means that the applicant is assumed to be rehabilitated and deserving of a CQE.
- In order to deny a petition for CQE after these timeframes have passed, there must be a finding, by

clear and convincing evidence, that the applicant has **not** been rehabilitated.

Revocation: A CQE will be revoked if a person commits a felony.

Need more information?

Look at the Roadmap on the next page and use OJPC's CQE workbook (available for free at <http://bit.ly/OJPC-CQEworkbook>)!

Certificates of Achievement & Employability (CAEs)

How do I apply for a CAE?

CAEs are issued by the Ohio Department of Rehabilitations and Corrections to offenders who are currently incarcerated or on supervision with the Adult Parole Authority. Here are some key points:

Timing: If you are serving a prison term, the application must be submitted no earlier than one year prior to release. 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 parole officer for all the details about how, when, and where to apply.

Application: The application form is available at <http://bit.ly/CAEapplication>.

DRC review: The applicant must successfully complete an in-prison vocational program, at least one cognitive or behavioral improvement programs (while incarcerated and/or on supervision), and 120 hours of community service. The applicant must also show other evidence of achievement and rehabilitation while incarcerated and/or on supervision), such as completing victims-awareness programing, obtaining a GED, or taking anger management classes.

Revocation: Certificates can be revoked if the person is convicted of any offense other than a minor misdemeanor or traffic offense. The certificate cannot be revoked for a violation of a condition of release unless the violation is also a criminal offense

CQE Roadmap

CQEs are for people who are **out in the community**, not in prison. To get a CQE, you must have the courage to tell your story—what was going on in your life when you were convicted of crimes and how your life has changed. Getting a CQE also takes a great deal of persistence and attention to detail. Below is a general map of the steps involved. Every step takes more or less time depending on how quickly you work, and on how quickly the other government actors complete their parts. The overall process usually takes 3–6 months. To get detailed guidance on every step in the process, use OJPC’s CQE workbook available for free at <http://bit.ly/OJPC-CQEworkbook>.

Step 1

Are you eligible to apply yet... or at all?

- You must wait 6 mons. from the end of your last misdemeanor sentence or 1 yr. from the end of your last felony sentence or qualify for “early filing.” See *above*.
- CQEs are not effective for a federal offense, for removing a federal-law job barrier, or for removing a job barrier in another state.
- There is a limited list of severe offenses that bar you from getting CQE only for healthcare-related licenses.

Step 2

Identify your records and goals

- Think through the kinds of jobs you are, or might become, qualified for. Where do you *want* to work?
- Gather info about *all* your criminal offenses.
- Think about the kinds of barriers you may face when applying for employment or professional licensing. You can explore Ohio’s collateral sanctions at <http://CIVICCOhio.org>

Step 3*

Apply for a CQE online

- You must submit your application online using Department of Rehabilitation and Corrections’ (DRC) website for CQE applications: <https://drccqe.com>.
 - After you create your account on that website, there is a lengthy, multi-part form to complete. You may need an attorney’s advice to answer some of the legal or technical questions
- (*Because the application is so complicated, this step is broken up into steps 3–6 in OJPC’s CQE workbook, available at <http://bit.ly/OJPC-CQEworkbook>.)

Step 4

Wait for DRC’s approval, then file in court

- The CQE law requires most applicants to first have their applications screened by the DRC. You must wait for an email indicating that DRC is satisfied that your application is complete.
- It is then your responsibility to print off the complete application from <https://drccqe.com> and file it in the court of common pleas for the county where you live. It may be helpful to attach supporting documents, like letters of recommendation.
- There is a \$50 filing fee that must be paid with the filing of a CQE petition. If you do not have enough income to pay for the filing fee, ask the court for a filing fee waiver.

Step 5

Court investigation and possible hearing

- The court will gather information from every other Ohio court where you have a conviction. There is no time limit on the investigation process.
- After the court completes its investigation, it has 60 days within which to make a decision.
- The prosecutor may object and may also seek input from any crime victims from your past offenses.
- The court is not required to hold a hearing, but many choose to.

Step 6

CQE granted! (Or not.)

- If the court decides in your favor, it will issue an order to DRC to give you a CQE. The court order is not the CQE.
- You must go back to <https://drccqe.com> to print off the actual CQE.
- You or any employer can verify the current validity of your CQE at <https://drccqe.com>. Check to make sure your name is listed on this site.
- If the court denies your CQE, you can appeal. Or, the court may put conditions on your reapplying, such as completing certain programs or waiting longer to demonstrate your rehabilitation.

Governor's Pardons

A pardon is one type of executive clemency that the Governor of the state of Ohio has the power to grant. It represents a complete forgiveness for a crime and relieves the pardoned person from some or all of the ramifications of lawful punishment. So, a pardon can eliminate all penalties and other legal consequences for the offense. In fact, an individual granted a full and unconditional pardon is deemed, by law, to have never committed the offense. This means that you may answer “no” (or “no, I have Pardon from the Governor of Ohio”) when asked if you have been convicted of a crime. However, a pardon does *not* entitle people to seal criminal records if the person was otherwise not eligible for record sealing.

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. Applicants must submit a **paper application**, which will include information about the applicant’s employment history, community service, copies of criminal records, and more. Along with the application, a person can send a personalized **letter to the Governor**. This letter should address the circumstances that contributed to the conviction(s) and explain what the applicant have done to improve his/her life (e.g., how the person and the circumstances are different today). Applicants can also attach **supporting documents** like letters of recommendations, professional degrees/coursework, and awards. The applicant’s letter and supporting documents can highlight the applicant’s accomplishments, present evidence of being a law-abiding citizen, and even show some of the criminal-records-based barriers that a Pardon would remove.

The Ohio Parole Board is the bureau of the Adult Parole Authority assigned to process, review, and investigate the clemency application. The Board can seek input from interested parties such as prosecutors, arresting agencies and victims. They can also consider the applicant’s need for clemency and whether the applicant made positive strides in his/her life (such as verification of continued education or letters of support from family, employers, or members of the community). 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 Governor will decide which clemency applications to grant. Individual whose pardons are granted 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. Virtually every case involves an individual who has not reoffended for many years, maybe with the exceptions of traffic violations.

In 2014, the Governor granted 17 of 433 clemency requests, or about 4%. All of the cases approved were pardons, some going back to crimes committed more than 25 years ago. A pardon wipes out a past criminal record.

The forms and instructions required to file for a pardon can be found on the Department of Rehabilitation and Corrections website: <http://www.drc.state.oh.us/web/ExecClemency.htm>.

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.

We create fair, intelligent, and redemptive criminal justice systems through zealous client-centered advocacy, collaborative policy reform, and empowering community education. We are a non-profit law office based in Cincinnati and working all across the state.

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