

**INDEPENDENCE MAYOR'S COURT
MOTION TO SEAL CONVICTION RECORD
INSTRUCTIONS**

**BEFORE YOU FILE YOUR MOTION TO SEAL CONVICTION(S),
READ THE INSTRUCTIONS CAREFULLY.**

Ohio Revised Code (R.C.) sections 2953.31, 2953.32, 2953.36, 2953.58, and 2953.61 are the State laws that set forth and explain:

- the process for filing a Motion to Seal Conviction Record(s),
- the factors the Court considers when ruling on a Motion to Seal, and
- the circumstances under which a motion may be granted.

These instructions are one of many sources that can be used to assist you in filling out your motion. This is not intended as legal advice.

**If you have questions regarding your eligibility, how to fill out
this form, and/or the sealing process,
CONSULT AN ATTORNEY BEFORE you file the motion.**

OVERVIEW TO FILING YOUR MOTION TO SEAL CONVICTION(S):

STEP 1 - Determine: "Am I an eligible offender?"

STEP 2 - Determine: "Are my offense(s) ones that can be sealed?"

STEP 3 - Determine: "Has one year passed since the "final discharge" of the misdemeanor case(s) I want sealed in Independence Mayor's Court?"

**If the answer to all three STEPS above are "YES", proceed
to STEP 4, if the answer is "NO" or YOU ARE UNSURE, you may
wish to CONSULT AN ATTORNEY BEFORE filing your motion.**

STEP 4 - Fill out, serve and file your Motion to Seal.

STEP 1: Am I an eligible offender?

There are two types of eligible offenders under Ohio Law. First look to whether you qualify under the first definition. If not, then look to see if you qualify under the second definition.

FIRST DEFINITION (an R.C. 2953.31(A)(1)(a) eligible offender).

You are an “eligible offender” if ***ALL of these apply***:

- You have been convicted of ***no more than*** five felony offenses; ***and***
- all of your convictions are either misdemeanor offenses or felonies of the fourth or fifth degree; ***and***
- none of your convictions are a “felony sex offense” or an “offense of violence”

Note: to find out what are “felony sex offenses” or “offenses of violence” see “FAQ 2” and “FAQ 3” below.

SECOND DEFINITION (an R.C. 2953.31(A)(1)(b) eligible offender).

If you don’t qualify as an eligible offender under the FIRST DEFINITION you are an “eligible offender” under the second definition if you have been convicted of **no more than *either***:

- Two misdemeanors, ***or***
- one felony, ***or***
- one felony and one misdemeanor.

Note: Under this SECOND DEFINITION if you had **multiple convictions in a short period of time they may be able to be counted as one** to still allow you to qualify but you have to ask the court to treat multiple convictions as one on your motion. To find out more about how multiple convictions can be treated as one, see “FAQ 4” below.

FAQ 1: What counts as a conviction when I am counting my number of convictions to see if I qualify as an eligible offender under the FIRST or SECOND DEFINITIONS?

ANSWER: Ohio Revised Code §2953.31(A)(2) defines what is considered a conviction under the sealing statutes. Minor Misdemeanor offenses are **NOT** considered a conviction when you are counting the number of convictions you have when determining if you are an “eligible offender”. All other criminal offenses that are felonies or misdemeanors of the 1st, 2nd, 3rd or 4th degree are considered convictions. Also, ***most*** traffic or motor vehicle violations are **NOT**

considered convictions under the sealing statutes. However the following traffic or motor vehicle violations or violations of a similar statute **ARE** considered convictions that count towards your number of convictions when determining whether you are an eligible offender:

- R.C. 4510.10 - Driving Under Suspension **but only IF** that suspension
- was an ALS suspension imposed under R.C. 4511.191 or a court
- suspension imposed under R.C. 4511.196 while an OVI, Physical Control
- or Vehicular Assault case is pending.
- R.C. 4511.14 - Driving Under an OVI Suspension
- R.C. 4511.19 - OVI
- R.C. 4511.251 - Drag Racing
- R.C. 4549.02, 4549.021, 4549.03 - Hit Skip offenses
- R.C. 4549.042 - Vehicle Master Key fraud offense
- R.C. 4549.63 - VIN number fraud offense
- R.C. 4549.41 to 4549.46 - Odometer fraud related offenses

FAQ 2: What offenses are considered a “felony sex offense”?

ANSWER: Ohio Revised Code §2967.28(A)(3) defines a “felony sex offense” as any violation of Chapter 2907 of the Ohio Revised Code that is a felony. In other words, your conviction would be a “felony sex offense” **IF**

- if you have a conviction for an offense that begins with the first four digits of “2907”, **and**
- that offense is a felony of the 1st, 2nd, 3rd, or 4th degree

Examples include, but are not limited to: R.C. 2907.02 (Rape), R.C. 2907.03 (Sexual Battery), and R.C. 2907.05 (Gross Sexual Imposition).

FAQ 3: What offenses are considered an “offense of violence”?

ANSWER: Offenses of violence are defined under Ohio Revised Code § 2901.01(A)(9). Your conviction is an offense of violence if it is in the following table OR you were convicted of an attempt, complicity or conspiracy to commit any of the offenses in the table below (this includes if the conviction was charged under the State Code or similar City Code):

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Chart 1: “Offenses of violence”

2903.01 (Agg. Murder)	2905.02 (Abduction)	2917.02 (Agg Riot)
2903.02 (Murder)	2905.11 (Extortion)	2917.03 (Riot)
2903.03 (Vol. Manslau)	2905.32 (Human Traff)	2917.31 (Inducing Panic)
2903.04 (Invol. Mansla)	2907.02 (Rape)	2919.25 (Dom. Violence)
2903.11 (Fel. Assault)	2907.03 (Sexual Battery)	2921.03 (Intimidation)
2903.12 (Agg Assault)	2907.05 (GSI)	2921.04 (Intimidation atty, wit)
2903.13 (Assault)	2909.02 (Agg. Arson)	2921.34 (Escape)
2903.15 (Child Abuse)	2909.24 (Terrorism)	2923.161 (Imp. Dis. Gun)
2903.21 (Agg. Men.)	2911.01 (Agg Robbery)	2903.34(A)(1) (Patient Abuse)
2903.211 (Men. by Stalk)	2911.02 (Robbery)	2911.12(A)(1), (2), or (3) (Burglary)
2903.22 (Menacing)	2911.11 (Agg Burglary)	2919.22(B)(1), (2), (3), or (4) (Child Endangering)
2905.01 (Kidnapping)	2917.01 (Inciting to Viol.)	Former 2907.12 (Fel Sex Penetration)

FAQ 4: I will only qualify as an eligible offender under the SECOND DEFINITION, but I have more convictions than what appears to be allowed under that definition, how to do I know if my multiple convictions could be treated as one by the Court?

ANSWER: Two or more convictions may be able to be treated as one (so that you can be eligible for sealing under this section) if:

- 2 or more of your convictions arose from the same acts or were committed at the same time; **or**
- 2 or 3 of your convictions were committed within a three month period of time **and**:
 - were on the same complaint, **or**
 - resulted from the same plea of guilty, **or**
 - resulted from the same proceeding.

Again, if any of this is confusing or you are unsure it is best to consult an attorney before filing your motion, but make sure to ask the Court in your motion to treat multiple convictions as one if you believe you would qualify.

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STEP 2: “Are my offense(s) ones that can be sealed?”

Ohio Revised Code §2953.36 lists the following convictions which are NOT able to be sealed. This means by law the court cannot seal the following offenses:

- Convictions with mandatory prison terms
- Certain Sex Convictions (see the Chart 2, below):

Chart 2: Sex Convictions that CANNOT be sealed

2907.02 (Rape)	2907.03 (Sexual Battery)	2907.04 (Unlawful Sexual Conduct w/ a Minor)
2907.05 (Gross Sexual Imposition)	2907.06 (Sexual Imposition)	2907.321 (Pandering obscenity involving minor or impaired person)
2907.322 (Pandering sexually oriented matter involving a minor or impaired person)	2907.323 (Illegal Use of a Minor or Impaired Person in Nudity-oriented Material or Performance)	Former section 2907.12 (Felonious Sexual Penetration)

- Traffic or Motor Vehicle offense convictions

Note: However R.C. 2953.61 does allow for the sealing of **ONE** Traffic or Motor Vehicle conviction so long as you do not hold a CDL license **AND** the conviction is **NOT** Operating a Vehicle Under the Influence or Physical Control **AND** is part of a case with other offenses where all of the other offenses charged at that time were either DISMISSED or you were found NOT GUILTY of them.

- Convictions of an “offense of violence” that is a felony or misdemeanor of the 1st degree; **EXCEPT you CAN** have the following M1 offenses of violence sealed (see Chart 3):

Chart 3: Misdemeanor Offenses of Violence that CAN be sealed

2917.03 (Riot)	2903.13 (Assault)
2917.01 (Inciting to Violence)	2917.31 (Inducing Panic)

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- Convictions on or after 10/10/2007 of 2907.07 (Importuning)
- Convictions on or after 10/10/2007, when the victim is under 18 years or age, and is a violation of:
 - 2907.08 (Voyeurism)
 - 2907.09 (Public Indecency)
 - 2907.21 (Compelling Prostitution)
 - 2907.22 (Promoting Prostitution)
 - 2907.23 (Enticing or Soliciting Prostitution)
 - 2907.31 (Disseminating Matter Harmful to Juveniles)
 - 2907.311 (Displaying Matter Harmful to Juveniles)
 - 2907.32 (Pandering Obscenity)
 - 2907.33 (Deception to Obtain Matter Harmful to Juveniles)
- Convictions where victim is under 16 years of age and is an M1 or higher and not a violation of 2919.21 (Non-support)
- Convictions of a F1 or F2
- Bail forfeitures in traffic cases (as defined in Traffic Rule 2)

STEP 3: Has one year passed since the “final discharge” of the case(s) I want sealed?

The law says you have to wait for 1 year from the “final discharge” of your misdemeanor case **BEFORE YOU FILE** for sealing; otherwise the court has to deny the Motion to Seal for any conviction listed where you haven’ t waited the full 1 year period.

At this point, “final discharge” has been defined by case law from our Eighth District Court of Appeals as being **1 year from the completion of your sentence** (e.g. jail time, probation including inactive probation, etc) **AND payment** of any collectible **finances and restitution**. However, court costs that are not fines and restitution cannot bar you from filing a motion to seal.

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STEP 4: Filling out, serving and filing my Motion to Seal.

The next page is a **blank “Motion to Seal Conviction Record” form**. This form is provided as a courtesy, however you are not required to use this form. Neither the Court nor the Clerks Office can provide you with legal advice regarding this form. You are responsible for anything contained in the Motion to Seal upon filing so make sure you understand it fully before filling it out, signing and filing.

- Fill out the Motion to Seal form **truthfully, accurately and completely**; filling in all of the applicable blanks.
- **Attach to the motion all evidence you would like the Court to consider.** Do not assume that you will have a hearing or another chance to submit additional evidence. The Court may review the motion and rule on it without a hearing.
- **Before you file your motion, make two copies** of the completed motion with all attachments. The original is for the Clerk of Court, one copy is for the prosecutor, and one copy is for your records.
- You are required to **serve (deliver) a copy of your motion** with all attachments **to the prosecuting attorney** of the city where your conviction(s) are. The business addresses for each city’s prosecutor is on the Certificate of Service page on the blank form. Make sure this is filled out properly and that a copy is properly served to the prosecutor as the Court cannot consider any filings that are not properly served to all parties.
- Within 3 days of serving the prosecutor, you must **file the original**, completed motion with the Clerk of Court. There is a **\$50.00 charge for filing** a Motion to Seal Conviction Record, which must be paid at the time of filing unless the Court waives the same by court order after the filing of an Affidavit of Indigency.

AFTER YOUR MOTION IS FILED:

- The Court may schedule a hearing on your motion. If a hearing is scheduled, be sure to arrive on time for the hearing, and bring all your paperwork, evidence and witnesses with you.
- The Court will notify you in writing of its decision on your motion. Make sure we have your current address in your motion, so we can notify you of the results. If you change residences while the motion is pending, file a Notice of Change of Address with the Court.