



# THE SUPREME COURT *of* OHIO

OFFICE OF JUDICIAL SERVICES

## Court-Ordered Sealing of Criminal Record with Consideration of Indigency

Sealing of a criminal record is governed by [R.C. 2953.31](#) et seq.

### Eligible Offender

An eligible offender is statutorily defined by [R.C. 2953.31\(A\)](#) as:

[A]nyone who has been convicted of an offense in this state or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions, or not more than one felony conviction and one misdemeanor conviction in this state or any other jurisdiction.<sup>1</sup>

[R.C. 2953.31\(A\)](#) further provides for merger of convictions for purposes of sealing the record if:

- (1) Two or more convictions result from or are connected with the same act or result from offenses committed at the same time, or,
- (2) Two or three convictions result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, unless the court determines that it is not in the public interest for the two or three convictions to be counted as one conviction in accordance with [R.C. 2953.32\(C\)\(1\)\(a\)](#).

### Final Discharge

A defendant may file for sealing of a record of conviction from the defendant's final discharge after three (3) years from a felony conviction or after one (1) year from a misdemeanor conviction pursuant to [R.C. 2953.32\(A\)](#).<sup>2</sup> A trial court may seal the record in a case dismissed pursuant to R.C. 2953.52, even if the statute of limitations has not expired. *State v. Dye*, \_\_\_ Ohio St.3d \_\_\_ 2017-Ohio-7823. If there are unpaid, but collectable fines, it is deemed that there is no final discharge.<sup>3</sup> Correspondingly, if community service was ordered but not completed, there is no final discharge.<sup>4</sup> If there are unpaid court costs, that is not a bar to final discharge.<sup>5</sup>

[R.C. 2953.32\(C\)](#) provides the considerations of a court for sealing the record of conviction or bail forfeiture.

- (1) The court shall do each of the following:
  - (a) Determine if the offender is an eligible offender as set forth in [R.C. 2953.31\(A\)](#);
  - (b) Determine whether criminal proceedings are pending against the applicant;
  - (c) Determine whether the applicant has been rehabilitated to the satisfaction of the court;
  - (d) If the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection;
  - (e) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed against the legitimate needs, if any, of the government to maintain those records.

### Fee and Waiver of Fee

[R.C. 2953.32\(C\)\(3\)](#) Upon the filing of an application to seal the record, the applicant, unless indigent,<sup>6</sup> shall pay a fee of fifty dollars, regardless of the number of records the application requests to have sealed.

[R.C. 2953.52](#) Sealing of records after not guilty finding, dismissal of proceedings or no bill by grand jury. This section does not require a filing fee.<sup>7</sup>

## Proposed Form of Entry upon Application to Seal Record Accompanied by Affidavit of Indigency

This case is before the court on the movant's motion for waiver of filing fees on the basis of an assertion of indigency.

Upon review of the record and in accordance with [R.C. 2953.32\(C\)\(3\)](#), the court finds that payment of filing fees are conditionally waived and the movant is entitled to proceed at this time without a deposit for court cost and filing fees. The clerk of court shall process the motion to seal the record and proceed with this case as if the appropriate fees had been paid.

At any stage of the proceedings the court reserves the right to question the movant on the claim of lack of financial ability to pay the filing fees. Based upon a later determination, the court may order the fees to be assessed or paid. If the judge or magistrate finds that the movant is able to pay the filing fees and other court costs, then such fees and court cost will be assessed against the movant and may be ordered to be paid prior to proceeding with the case. Failure of the movant to comply with the order to pay any such fees or costs may result in dismissal of the proceeding.

1. The term "Eligible Offender" includes both the *number* and *type* of prior convictions. Certain convictions, as set out in R.C. 2953.36, cannot be sealed, regardless of the lack of prior convictions.  
But see:
  - (1) R.C. 2953.37, regarding a conviction for improper handling of a firearm in a motor vehicle;
  - (2) R.C. 2953.38, regarding an exception to the number of solicitation or prostitution convictions if the movant was a victim of human trafficking; and
  - (3) R.C. 2953.31(A), regarding convictions for minor misdemeanors and *most* traffic offenses that are not included as prior convictions.
2. The term "final discharge" is not defined by statute. In *State v. Hoover*, Nos. 12-AP-818 & 826, 10th. Dist. 2013-Ohio-3337, the court stated that an offender is not finally discharged until he has served any sentence imposed by the court. This definition was cited and approved by the court in *State v. Aguirre*, 144 Ohio St 3d 179, 2014-Ohio-4603. While final discharge generally occurs when community control supervision expires, or at the time all other sanctions imposed from a criminal conviction have been completed. Failure to pay a financial sanction imposed in a criminal case delays final discharge, even though community control supervision has expired. *State v. Aguirre*.
3. *State v. Paige*, No. 15AP-510, 10th. Dist. 2015-Ohio-4876. Defendant was not an eligible offender who was permitted to seal record of conviction when there were unpaid fines.  
*State v. T.M.*, No. 101194, 8th. Dist. 2014-Ohio-5688. The trial court waived the suspended fines 22 years after felony conviction and granted the defendant's application to seal the record of conviction. Although the court of appeals reversed on the grounds that the trial court did not have the authority to waive the fines based upon the applicable law in effect at the time, the appellate court further noted that even if the fines had been properly waived, final discharge would have occurred at the time of fine waiver and the defendant would be required to wait 3 years to seal the record of conviction.  
*State v. Braun*, No. 46082, 8th. Dist. (1983). Final discharge includes payment of fines, not just completion of jail sentence when probation was not imposed.
4. *State v. Gaine*y, No. 14AP-583, 10th. Dist. 2015-Ohio-3119. No final discharge to seal record of conviction when the defendant failed to complete community service that was imposed as part of the sentence.
5. *State v. Ushery*, No. C-120515, 1st. Dist. 2013-Ohio-2509. Reversal of denial of sealing of record for unpaid court costs. The appellate court held that court costs were civil in nature and not part of punishment, as compared to fines or other financial sanctions. As such, unpaid court costs were not grounds, by itself, to deny motion to seal record of conviction.  
*State v. Summers*, 71 Ohio App.3d. 1, 8th. Dist. (1990). Court costs are civil in nature and not part of a criminal sentence and, therefore, cannot be grounds for denying motion to seal record of conviction.
6. *State ex. Rel. Workman v. Miller*, 3rd. Dist. Allen County, No. 1-15-40, 2016-Ohio-1494, which was decided April 11, 2016. *Workman* was a mandamus proceeding in which the clerk of court refused to accept an affidavit of indigency to waive the sealing fee for sealing a record of conviction. The fee in that case was \$275.00, which included the \$50.00 statutory fee. The local rule provided that all fees must be paid in advance. The ruling in this case was based upon other local rules of that court, as well as R.C. 2323.30. The court held the clerk of court had a duty to accept the motion for filing without prepayment of the fee. The court in *Workman*, indicated that even though the filing fees are initially waived, the court reserves the right to review the issue at any stage of the proceedings. (Par. 13).
7. *State v. Hilliard*, Union County Common Pleas Court, No. 04CR 85, 2012 Ohio Misc. Lexis No. 3704 (2012) & *State v. Miller*, Union County Common Pleas Court, No. 05CR56, 2012 Ohio Misc. Lexis No. 3720 (2012). If a court requires a local fee for the sealing of a record after dismissal, R.C. 2323.30 and 2323.31 provide a basis for the waiver of this fee upon an affidavit of indigency.