

HELPING JUSTICE-INVOLVED INDIVIDUALS WITH SUBSTANCE USE AND/OR MENTAL HEALTH DISORDERS: UNDERSTANDING HOW LAWS, REGULATIONS, & POLICIES AFFECT THEIR OPPORTUNITIES

OHIO



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OHIO

This section summarizes Ohio State laws, policies and practices that promote or hinder successful re-entry for justice-involved Ohio residents, particularly those with substance use or mental health disorders. Re-entry service providers, such as peer-support coaches, mentors and outreach workers will find that if they understand these laws and policies, they will be better equipped to help individuals successfully re-enter their communities.

Providers also should read [Section I](#) of this guide, which summarizes federal barriers to jobs, housing, and higher education for people with criminal records. Section I also summarizes federal legal protections and initiatives to help people overcome these barriers.

EMPLOYMENT

A broad range of Ohio laws and policies restrict the ability of justice-involved individuals to work in specific jobs and industries. [Section I](#) highlighted the federal laws that limit employment in health care, commercial transportation, insurance, financial and other sectors. Ohio state law also imposes criminal record restrictions on certain jobs and occupational licenses. Ohio has over 100 occupational license laws that contain mandatory restrictions on hiring someone with a felony conviction.

- **Ohio Industry-Specific Restriction on Employment**

Ohio law requires that all applicants for jobs involving the care of children or the elderly undergo a criminal background check and people with certain convictions for some positions must be disqualified. Applicants with certain convictions are also presumptively disqualified from working as a firefighter or emergency medical technician (EMT).

Ohio employers, other than school districts, are prohibited from asking applicants about expunged records and may not question applicants about sealed convictions or bail forfeitures, unless they “bear a direct and substantial relationship to the position for which the person is being considered.” Private employers, on the other hand, are otherwise free to ask about criminal history at any point in the hiring process and may deny applicants on that basis.

- **Background Screens**

Ohio’s criminal record reporting system is maintained by the Bureau of Criminal Identification & Investigation (BCI&I). BCII is a division of the state’s Attorney General Office. The release of BCI records is limited to those who are authorized to receive state records through fingerprint checks. Individuals may request a copy of their own computerized criminal history from BCI to review for accuracy and completeness. Most employers, however, are not authorized to receive fingerprint-based reports.

Legal Protections for Job-Seekers and Workers in Ohio

- **Ohio Employment Laws**

The Ohio Fair Hiring Act, which became effective in March 2016, bars public employers, including state, city, and county employers, from including questions about criminal records in initial applications. State employers are also required to consider the EEOC factors discussed in Section I when determining whether to exclude an applicant based on his/her criminal record, and may only disqualify an applicant if, after such assessment, they determine a “sufficient nexus” exists between the conviction and position.

Several local jurisdictions Cleveland, Canton, Akron, Cincinnati, Dayton, Massillon, Hamilton County, Cuyahoga County, Franklin County, Summit County and Lucas County, all have criminal record policies for public employers that include some individualized assessment and consideration of factors for applicants with criminal convictions.ⁱ

- **Sealing Records**

Under Ohio law, some individuals can apply to have their records sealed. In order to be eligible, the individual cannot have more than one felony conviction, two misdemeanor convictions, or more than one misdemeanor and one felony conviction.ⁱⁱ Many types of offenses are ineligible for sealing, including any first- or second-degree felony convictions.ⁱⁱⁱ An individual may apply to seal a felony three years after completing the sentence. Individuals with misdemeanor convictions may apply after one year.^{iv} Applicants are entitled to a court hearing.

An employer or licensing board may not ask about a sealed record of an arrest that did not lead to conviction,^v and is prohibited from inquiring about a sealed conviction “unless the question bears a direct and substantial relationship to the position for which the person is being considered.”^{vi}

- **Fair Credit Reporting Act**

As described in [Section I](#), commercial background screening companies and private-sector employers who use them mostly follow the federal Fair Credit Reporting Act (FCRA). FCRA requires procedures to ensure accuracy as well as timely communication with employees being screened. Ohio has its own FRCA but it does not require additional provisions for criminal history information.

- **Certificates of Rehabilitation**

Many of these automatic bars are lifted if the applicant has been granted a Certificate of Achievement and Employability (CAE) or Certificate of Qualification for Employment (CQE), which then requires employers to conduct an individualized consideration of the candidate going beyond the fact of the criminal record and considering other qualifying factors. The Certificate of Achievement and Employability (CAE) also creates a “rebuttable presumption that the convictions are insufficient evidence that the person is unfit for the license or certification in

question.” Importantly, both the CQE and CAE also provide immunity to an employer from negligent hiring lawsuits based the on hiring of a former offender.

Licensing authorities are barred from questioning applicants about sealed convictions or bail forfeitures “unless the question bears a direct and substantial relationship to the position for which the person is being considered,” and may not inquire about expunged records.

Resources

- See Ohio Ex-Offender Reentry Coalition: <http://reentrycoalition.ohio.gov/>
- See Collateral Consequences Resource Center Restoration of Rights procedures, available at <http://ccresourcecenter.org/state-restoration-profiles/ohio-restoration-of-rights-pardon-expungement-sealing/>
- The Ohio Justice & Policy Center (OJPC) holds Second Chance Legal Clinics: <http://www.ohiojpc.org/what-we-do/legal-services/second-chance-clinic/>

How Providers Can Help

- **Advise clients to get copies of arrest and conviction records – “RAP sheets”—when possible.** It is critical for job seekers to know exactly what is on their RAP sheet so they can describe their criminal record accurately, when asked. People with criminal histories usually do not know the disposition of certain charges or have forgotten some arrests. Finding out the details will enable them to present their criminal record to employers in the most accurate and straightforward way possible. They also may need to correct errors, which are common, *before* the employer sees them.
- **Help clients gather evidence of rehabilitation.** Useful suggestions for how to do this are in the Legal Action Center’s “[*How to Gather Evidence of Rehabilitation*](#)”

HOUSING

People with criminal records in Ohio confront a wide variety of restrictions to housing. Some of the greatest hurdles are federal statutes that apply to public and federally-assisted housing; they are described in [Section I](#). These federal laws give the Department of Housing and Urban Development (HUD), public housing authorities (PHAs), and private landlords broad discretion to deny housing to people with criminal histories and their families.

As is the case across the country, Public Housing Authorities (PHAs) and private landlords are able to set their own screening criteria. Many have flat bans against leasing to individuals convicted of a felony or other offense and do not consider evidence of rehabilitation or individually assess a housing applicant's risk or threat to others' safety.

Ohio's law protecting against discrimination in housing does not prohibit discrimination on the basis of criminal records.^{vii} However, it does protect prospective renters or buyers based on other factors such as race, ethnicity, and other qualities as described in the federal Fair Housing Act in [Section I](#). Ohio law does prohibits housing providers from having housing considerations in a listing, sale, or other transaction that implies or expresses that the presence or anticipated presence of people in a protected class, such as race or national origin, will cause an "increase in criminal or antisocial behavior in the block, neighborhood, or other area."^{viii}

Resources

- Ohio Poverty Law Center's One-Page Resource on Housing and Criminal Records <http://www.ohiopovertylawcenter.org/wp-content/uploads/2016/10/HUD-Project-PHAs-One-Pager.pdf>
- Southeastern Ohio Legal Services Clinics: <http://www.seols.org/clinics/>

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EDUCATION

There are no laws in Ohio restricting public or private higher education institutions from asking applicants about their criminal history or denying admission on that basis. Moreover, questions about criminal records during the application process often discourage justice-involved people from following through with that process.

A report by the U.S. Department of Education, however, praises Cuyahoga Community College, located in Cleveland, for its support for students with convictions.^{ix} Cuyahoga's Office of Legal

Services helps students with barriers caused by criminal records, assists with sealing and expungement, obtains certifications of qualification for employment and helps students with convictions in the job application process.^x

Pell Grant Pilot

In July 2015, the U.S. Department of Education announced that it would implement a Second Chance Pell Pilot program to test new models that allow incarcerated individuals to receive Pell Grants and pursue postsecondary education.

Ashland University was selected as a pilot site and is partnering with a host of correctional institutions to serve over 1,000 students.^{xi}

ⁱ See NAT'L EMP'L. PROJECT, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, at 33, <http://www.nelp.org/content/uploads/Ban-the-Box-Fair-Chance-http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>. Retrieved June 1, 2017.

ⁱⁱ OHIO REV. CODE ANN. § 2953.31 (West 2014). Multiple convictions resulting from the same act or related act within three months may be counted as a single conviction, although a court can determine it not in the public interest to do so.

ⁱⁱⁱ OHIO REV. CODE ANN. § 2953.36(A) (West 2016).

^{iv} OHIO REV. CODE ANN. § 2953.32 (West 2014).

^v OHIO REV. CODE ANN. § 2953.55 (West 2010).

^{vi} OHIO REV. CODE ANN. § 2953.33 (West 2011).

^{vii} OHIO REV. CODE ANN. § 4112.02 (West 2013).

^{viii} OHIO REV. CODE ANN. § 4112.02(H)(10) (West 2013).

^{ix} U.S. DEP'T OF EDUC., *Beyond the Box: Increasing Access to Higher Education for Justice-Involved Individuals*. (May 9, 2016) at 32, available at <http://www2.ed.gov/documents/beyond-the-box/guidance.pdf>; Cuyahoga Community College Legal Clinics, available at <http://www.tri-c.edu/administrative-departments/office-of-legal-services/legal-clinics.html>.

^x *Id.*

^{xi} ASHLAND U. NEWS CTR, *Ashland University One of 67 Colleges and Universities Nationwide to Participate in Second Chance Pell Pilot Program* (June 25, 2016), available at <http://news.ashland.edu/article/ashland-university-one-67-colleges-and-universities-nationwide-participate-second-chance>; *Institutions selected for participation in the Second Chance Pell experiment in the 2016-2017 award year*, <https://www2.ed.gov/documents/press-releases/second-chance-pell-institutions.pdf>. Partner Correctional Institutions include: Richland, Grafton, Chillicothe, Allen Correction, Avoyelles, B.B. Ryburn, David Wade, Dixon, Elayn Hunt, Louisiana, Louisiana State Penitentiary, Ohio Reformatory for Women, Belmont, Noble, Mt. Olive, Huttonsville, Lakin, and St. Mary's.