

## CRIMINAL DIVISION

Basically, municipal courts have criminal jurisdiction in all of the following areas:

- (1) Violation of any ordinance of any municipal corporation within a jurisdiction, except parking violations required to be handled by a parking violations bureau, pursuant to Chapter 4521, Ohio Revised Code;
- (2) Violation of any misdemeanor committed within the limits of the municipal court's jurisdiction;
- (3) Violation of a parking resolution or regulation, if a local authority has specified that it is not to be considered a criminal offense and it is not to be handled by a parking violations bureau; and
- (4) Appeals from judgments or default judgments entered pursuant to Chapter 4521, Ohio Revised Code. It should also be noted that Municipal courts have limited jurisdiction in felony cases. They hold a preliminary hearing, when proper, solely for the purpose of determining probable cause. If probable cause is found to exist, the court must bind the accused over to the Court of Common Pleas. If probable cause is not found to exist, the court must order the accused discharged. If the court finds no probable cause on the felony charge, but does find probable cause to believe the accused committed a misdemeanor, then the municipal court retains the case after causing a complaint to issue charging the accused with the appropriate misdemeanor.

In any criminal case or proceeding, the practice and procedure, and mode of bringing and conducting prosecutions for offenses are the same as those, which are conferred upon mayor's courts. See, generally, Chapter 1905, Ohio Revised Code. If no practice or procedure is provided for Mayor's courts then the practice and procedure of the County court applies.

The Ohio Rules of Criminal Procedure apply to Municipal courts.

RECORDS – CRIMINAL RULE 55

Upon the commencement of a criminal action, by the filing of a complaint (Cr. R. 3) the clerk shall assign each action a case number (Sup. R. 43)

This number shall be placed on all papers filed in the action, in the appearance docket, and the index.

#### VIOLATIONS BUREAU Cr. R. 4.1

Sup. R. 18 provides that court shall establish a violations bureau for minor misdemeanors utilizing the citation system and procedure set forth in Cr. R. 4.1

The court shall appoint its clerk as violations clerk. If there is no clerk, the clerk shall appoint any appropriate person of the municipality or county in which the court sits.

The violations bureau shall accept appearance, waiver of trial, plea of guilty and payment of fine and costs for offense within its authority.

All minor misdemeanor offenses (penalty does not exceed a fine of \$150.00) may be disposed of through the violations bureau.

The court shall establish and publish a schedule of fines and costs for all offenses. The schedule shall be distributed to all law enforcement agencies operating within the jurisdiction of the court and shall be prominently displayed at the place in the violations bureau where the fines are paid.

A defendant charged with an offense, which can be processed by the violations, bureau may, within the time stated on the violation:

- (1) Appear in person at the violations bureau, sign a plea of guilty and waiver of trial provision of the ticket and pay the total amount of the fine and costs, or
- (2) Sign the guilty plea and waiver of the trial provision of the ticket, and mail the ticket and check for the total amount of fines and costs to the violations bureau.

Remittance by mail of fine and costs to the violations bureau constitutes a guilty plea and waiver of trial whether or not the guilty plea and waiver of trial provision of the ticket are signed by the defender.

NOTE: Rule 410, Ohio Rules of Evidence, reads in part as follows: Inadmissibility of Pleas... or a plea of guilty in a violations bureau... is not admissible in any civil or criminal proceeding against the person who made the plea...

All cases processed in the violations bureau shall be numbered and recorded for identification and statistical purposes. In any, statistical

reports required by law, the number of cases disposed of by the violations bureau shall be listed separately from those disposed of in open court.

#### ARRAIGNMENT - CRIMINAL RULE 10

Arraignment of a minor misdemeanor offense (penalty does not exceed a fine of \$150.00) may be made through the Violations Bureau. Otherwise arraignment shall be conducted in open court, and the defendant must be present. The Court may permit arraignment without the presence of the Defendant if a plea of not guilty is entered. This is done with the written consent of the Defendant, and the approval of the Law Director, or as local rules provide.

#### PLEAS, RIGHTS UPON PLEA – CRIMINAL RULE 11

A defendant may plead not guilty, not guilty by reason of insanity, guilty, or, with the consent of the court, no contest.

When a plea of guilty or no contest is accepted pursuant to this rule, the court shall proceed with sentencing under Rule 32 (B) 3. A judgment of the conviction shall be signed by the judge, and entered by the clerk. Cr. R. 32 (C). The clerk shall collect and receipt the fine and cost, or secure them to be paid.

When a plea of Not Guilty by Reason of Insanity is entered it must be made in writing by either the Defendant or his attorney.

When a plea of Not Guilty is entered a time and date of trial shall be set by the Court. A notice of the trial date shall be given to the defendant in writing. The time within which a trial or hearing must be held (Speedy Trial Requirement) is prescribed in Sections 2945.71 and .72.

#### PLEADINGS AND MOTIONS BEFORE TRIAL – CRIMINAL RULE 12

Pleadings in criminal proceedings shall be the complaint, and the indictment, and the pleas of not guilty, not guilty by reason of insanity, guilty and no contest.

All pretrial motions except as provided in Rule 16 (F) shall be made within thirty-five days after arraignment or seven days before trial, whichever is earlier.

## SUBPOENA – CRIMINAL RULE 17

Every subpoena issued by the clerk shall be under the seal of the court. Shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The Clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise blank, to a party requesting it, who shall fill it in and file a copy therefore with the clerk before service.

*REFER TO CRIMINAL RULE 17 FOR ALL SUBPOENA ISSUANCE, SERVICE INFORMATION.*

## WARRANT OR SUMMONS – CRIMINAL RULE 4

Upon complaint. If it appears from the complaint, or from a sworn affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.

The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is factual basis for the information furnished.

By law enforcement officer with warrant. In misdemeanor cases where a warrant has been issued to a law enforcement officer he may, unless the issuing authority includes a probation against it in the warrant, issue a summons in lieu of executing the warrant by arrest, when issuance of a summons appears reasonably calculated to assure the defendant's appearance.

By law enforcement officer without a warrant. In misdemeanor cases where a law enforcement officer is empowered to arrest without a warrant, he may issue a summons in lieu of making an arrest. The officer shall file a complaint describing the offense. No warrant shall be issued unless the defendant fails to appear in response to the summons.

Multiple issuance; sanction. More than one warrant or summons may issue on the same complaint. If the defendant fails to appear in response to summons, a warrant or alias warrant shall issue.

The warrant shall contain the name of the defendant, or if that is unknown, any name or description by which he can be identified with

reasonable certainty. It shall describe the offense in the complaint, and shall state the numerical designation of the applicable statute or ordinance. A copy of the complaint shall be attached to the warrant. The warrant shall command that the defendant be arrested and brought before the court issuing it without unnecessary delay. The amount of the bond set by the court shall also appear on the warrant.

Summons. The summons shall be in the same form as the warrant, and shall order the defendant to appear at the stated time and place and inform him that he may be arrested if he fails to appear at the time and place stated in the summons. A copy of the complaint shall be attached to the summons. Summons may be served personally, at the residence, or by certified mail. (Same as Civil Summons.)

#### DEMAND FOR TRIAL BY JURY – CRIMINAL RULE 23

If the potential penalty is over \$150.00 fine and could carry a jail sentence, the defendant is entitled to a Jury Trial. A demand for a jury trial must be in writing EXCEPT where the right to a Jury Trial is automatic. If the right to a Jury Trial is automatic and is not desired, it must be waived in writing. (Form at the end of this section)

#### BAIL – CRIMINAL RULE 46

Refer to CR 46 for all bail information and procedures.

#### PRELIMINARY HEARING – CRIMINAL RULE 5

In felon cases a defendant is entitled to a preliminary hearing unless waived in writing. (Form-4 at the end of this section) the hearing shall be no later than fifteen days if he is not in custody.

If the defendant is ordered bound over, the clerk shall within seven days, transmit a copy of the complaint and any affidavits along with a transcript of the appearance docket entries, together with the order setting bail, and the bail including any bail deposit, if any, filed to the clerk of court in which defendant is to appear. Such transcript shall contain an itemized account of the costs accrued.

TRANSFER FROM MAYOR'S COURT – CRIMINAL CASES ONLY  
S2937.20

APPEAL FROM MAYOR'S COURT Cr. R. 23 and Tr. R. 9 (B)  
TRIAL DE NOVA S1905.22 .23 .24 .25

The defendant may appeal, within ten days, the decision of the Mayor's Court and request the case be transferred to the Municipal or County Court. A certified copy of the proceedings, together with all the original papers, including any bail, shall be forwarded to the Clerk of Court, within fifteen days, where it will be assigned a new case number and follow Regular procedures. (Form-5 at the end of this section)

SEALING OF RECORD OF CONVICTION (EXPUNGEMENT) S2953.32

Sections 2953.31 through 2953.36 as amended provides a "first offender" with a means for having the public record of his conviction "sealed" (formerly referred to as expunged"). The intent of these provisions is to provide a means for an individual who has made one mistake to have the record of his arrest, and conviction, taken out of public dockets and files.

The following criteria must be met in order for an individual to file an application for the Sealing of his conviction:

1. At least one (1) year must have passed since the final discharge of the defendant from his obligations to the court arising from the conviction (three years for a felony).
2. The conviction must have occurred in the court to which the application is being made.
3. The case must have culminated in a CONVICTION. (Dismissals and Not Guilty findings are not eligible – although there is presently legislation under consideration to change that.)
4. The defendant must have no other convictions from any court before or since, NOR presently have any criminal proceedings against him.
5. The conviction must be criminal in nature- that is, convictions under chapters 4507., 4511., 4549. (or similar local ordinances) are NOT eligible for sealing.

If an application meets all the above criteria, then he is eligible to file an application with the court of record to have the public records of his conviction sealed. (Form-6 at the end of this section) There is a non-

refundable application fee of \$50.00 to cover the costs, unless the applicant is indigent. These moneys are disbursed by the clerk of courts in the following manner:

1. VIOLATION OF A STATE ORDINANCE - \$30.00 to the state treasurer, \$20.00 to the county general fund;
2. VIOLATION OF A MUNICIPAL ORDINANCE - \$30.00 to the state treasurer, \$20.00 to the general fund of the municipality involved.

Upon the filing of the application, the case is referred to the probation for a pre-hearing investigation; a hearing date is established; The Law Director or Prosecuting Attorney is notified of the application.

If the applicant meets all the requirements, the court may order that the record be "sealed". This means that all docket and index references to that case are to be deleted, the case itself, and all related paperwork, is to be gathered and "sealed" and kept in a secure place and that the defendant need not report the conviction (even under oath) on any application or during any testimony (with only a few exceptions of the law). (Form- 7 at the end of this section)

The statute is moot on who (if anyone) is responsible for notifying the various law enforcement agencies who may have files relative to the case that was ordered sealed. Some clerks within the state have assumed this responsibility others have not.

MOST CLERKS NOTIFY ALL AGENCIES LISTED IN THE CASE FILE TO EXPUNGE RECORD, EVEN VICTIMS, DUE TO POTENTIAL LIABILITY ISSUES.

CLERICAL MISTAKES – CRIMINAL RULE 36 (CRIMINAL TRAFFIC ONLY)

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission, may be corrected by the court at any time.

**(CIVIL CLERICAL MISTAKES IS CIVIL RULE 40)**

(NAME OF COURT)  
(JURISDICTION)

State of Ohio

CASE NO. -CR-A\_\_\_\_\_

-VS-

**WRITTEN WAIVER OF  
PRELIMINARY HEARING**

\_\_\_\_\_

I, (Defendant's name) having been fully advised in open court by the Judge thereof of my legal rights upon a Complaint which reads in part as follows:

On or about \_\_\_\_\_, 20\_\_\_\_ (Defendant's name) did (offense) in violation of Section (number) of the Ohio Revised Code.

Do hereby enter my waiver in writing; do waive my right to have the Court take evidence in a preliminary hearing concerning the offense; and consent that the Court may fix recognizance to appear before the Court of Common Pleas pursuant to indictment by the Grand Jury.

\_\_\_\_\_  
Defendant

Taken before me this \_\_\_\_\_ day of \_\_\_\_\_, 20

\_\_\_\_\_  
Judge

(Name of Mayor's Court)  
(Jurisdiction)

Village of \_\_\_\_\_

Case No. \_\_\_\_\_

\_\_\_\_\_  
(Address)  
vs.

**TRANSFER ORDER**

\_\_\_\_\_  
(Name and address of defendant)

It is hereby ORDERED that the above-captioned defendant appear in the \_\_\_\_\_ Municipal Court for arraignment on the within charge, and shall report before \_\_\_\_\_ PM on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

- Bail in this matter is hereby:  
 A. Set as follows:  
 B. Continued on previous set.

Said defendant's appearance in the \_\_\_\_\_ Municipal Court for arraignment on this charge as set above is hereby made a specific condition of said bail.

It is further ORDERED that there be transferred to the Clerk of the \_\_\_\_\_ Municipal Court: the ticket and all other in the case together with any bail taken in the case, and said papers shall arrive at the office of said clerk of the court at least 48 hours before the date of said defendant's arraignment, unless defendant is presently incarcerated.

\_\_\_\_\_  
(Signature of Mayor)

I hereby acknowledge the receipt of a copy of this Transfer Order.

\_\_\_\_\_  
(Signature of defendant)

FORM-6

(Name of Court)

(Jurisdiction)

**APPLICATION FOR SEALING OF RECORDS**

PETITIONER: Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

DOB: \_\_\_\_/\_\_\_\_/\_\_\_\_

SSN: \_\_\_\_\_  
(month) (day) (year)

Telephone: \_\_\_\_ (\_\_\_\_) \_\_\_\_\_

In accordance with S2953.32 (A) of the Ohio Revised Code, I  
\_\_\_\_\_.

State that I am a first offender and I hereby apply for sealing the Record of my conviction

Of \_\_\_\_\_ on \_\_\_\_\_  
In (name of Court) Case No. \_\_\_\_\_.

I fully understand that if the application is granted, the subsequent order will have the following affect:

1. The public records of the (Name of Court) will be sealed.
2. The petitioner will be responsible for delivering/sending certified copies of the Journal Entry granting the sealing to the various law enforcement agencies that may have a record of the conviction. Certified copies of the Journal Entry will be provided upon request.

I further understand that I have an obligation to contact the (name of court) Probation Office (court address) (phone number) within 72 hours of application in order that pre-hearing investigation procedures may be initiated.

I further understand that my application hearing has been set for \_\_\_\_\_, 20\_\_ at \_\_\_\_ AM/PM before Judge \_\_\_\_\_, Room \_\_\_\_\_.

\_\_\_\_\_  
Signature of Application/Attorney

\_\_\_\_\_  
Date of Application

(Name of Court)  
(Jurisdiction)

JOURNAL ENTRY

STATE OF OHIO  
PETITIONER \_\_\_\_\_  
CITY OF \_\_\_\_\_

Case \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, this cause came on to be heard on the application of the Petitioner herein, for an expungement of the conviction of record pursuant to Revised Code s2593.31, effective July 1, 1975.

The COURT finds that the crime for which the Petitioner was convicted is not one which prohibits the use of the expungement statute; that based on the evidence offered by the Petitioner and the report of the (Name of city) Probation Department, the Petitioner falls within the category of a first offender; that there are no criminal proceedings pending currently against the petitioner that more than one (1) year has expired since the final discharge; and that the expungement of the record would be consistent with the public interest.

Therefore it is ORDERED, Adjudged. And Decreed that all official records pertaining to the within cause shall be and are the same hereby ordered sealed pursuant to Revised Code S2593.32.

The Clerk of Courts of the (name of court) is hereby instructed to seal all the official records of the (name of court).

The Petitioner is hereby instructed to deliver certified copies of this order to the various law enforcement agencies who may have opened a file reference this case

Approved:

Signed:

\_\_\_\_\_  
City of ( ) Prosecutor

\_\_\_\_\_  
Judge of (name of court)

\_\_\_\_\_  
Attorney for Petitioner

NOTE: THIS IS A SAMPLE OF ONE COURT'S JOURNAL ENTRY. IT IS INCLUDED FOR THE PURPOSE OF ASSISTING OTHER COURTS.