



# Office of the Ohio Public Defender

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*Timothy Young, State Public Defender*

## **Testimony in Support of SB288 Sealing and Expunging Sponsor Senator Manning**

Chairman Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Senate Judiciary Committee. My name is Niki Clum, and I'm the Legislative Policy Manager for the Office of the Ohio Public Defender. Thank you for the opportunity to provide proponent testimony regarding the portions of Senate Bill 288 that address record sealing and expungement.

The terms sealing and expunging are often used interchangeably, however, they are different processes that result in very different amounts of access to an individual's criminal record. Currently, Ohio Revised Code 2953.31-2953.62 speaks to sealing records. Sealing a record occurs when a court orders the record to be filed in an alternate, secure location. During the sealing hearing, the court must weigh the government's interests in maintaining the record of conviction against the defendant's interests in having the record sealed.<sup>1</sup> However, expunging a record means the court orders the record to be physically destroyed. Expunged records may not be used for any purpose, must be removed from the Law Enforcement Automated Data System (LEADS), and courts must indicate that no record exists when asked. Currently, expungement is only available for most juvenile records and a certain few adult convictions, including prostitution and solicitation where the person is found to be a victim of human trafficking.

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<sup>1</sup> *State v. Rojas*, 180 Ohio App. 3d 52, 2008-Ohio-6339.

For record sealing to provide true relief from the collateral consequences of a conviction, Ohio's record sealing statute must be written so that average Ohioans can navigate the process without having to pay an attorney. Under current record sealing law, an individual must first determine if they are barred from sealing their conviction due to it being one of 41 specified offenses. Those 41 offenses are mostly violent or sexual offenses. If the person is not barred, the individual must determine if all their convictions are fourth or fifth degree felonies or misdemeanors. If so, to remain eligible, the individual must determine if they are prohibited from sealing their record because they have a conviction for one of fifteen additional specified felony offenses.

Let's backup to someone who has been convicted of a felony that is not a felony of the fourth or fifth degree or one of the 41 barred offenses. That individual must determine if they have been convicted of not more than two felonies, four misdemeanors, or not more than two felonies and two misdemeanors. If they are still eligible, they should note that minor misdemeanors, or a violation of any section of Revised Code Chapters 4507, 4510, 4511, 4513 or 4549 do not count as a conviction, except violations of R.C. 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, 4549.62, 4549.41 to 4549.46, 4510.11 or 4510.14 that are based upon the offender's operation of a motor vehicle during a suspension imposed by R.C. 4511.191 or 4511.196, and any felony violation traffic offense do count as a conviction. They must also consider that two or three convictions from the same indictment, complaint or information and that result from related criminal acts that were committed within a three-month period but do not result from the same act or offenses committed at the same time, may be treated as one conviction if the court finds that it is in the public interest. If the individual is still eligible, they must then determine if they are barred by one of the 10 delineated exceptions in statute.



If the person is still eligible, and they are trying to seal a third-degree felony they must make sure that at least three years has lapsed since they completed either the term of incarceration or supervision, whichever is later. If the individual is trying seal a fourth or fifth degree felony or misdemeanor convictions, they must ensure that at least one year has lapsed since they completed either the term of incarceration or supervision. Finally, they must make sure all of the fines and costs associated with the convictions are paid.

According to the Ohio Department of Rehabilitation & Correction, approximately 2 million citizens, 17% of Ohioans, have a felony or misdemeanor conviction. That's 2 million Ohioans who may benefit from an expanded sealing and expungement law. However, most Ohioans would not be able to understand this statute without the assistance of an attorney. This is why Ohio really needs a large overhaul of the sealing statute to simplify it. Until Ohio's sealing statute is easy to understand and use without an attorney, getting one's record sealed will not be a meaningful option for many Ohioans to obtain relief from the collateral sanctions of a conviction.

SB288 seeks to simplify the sealing and expunging process and make more individuals eligible to ask the court for relief. First, the bill restructures the sealing and expungement statutes to be easier to navigate and understand. Under the bill, any number of convictions can be sealed or expunged. The bill makes explicitly clear that there are only five categories of offenses for which sealing and expungement is inapplicable – (1) traffic offenses, (2) felony offenses of violence, (3) sex offenses [misdemeanor or felony] when the person is still on the SORN registry, (4) offenses where the victim was a child under the age of 13 [exempt non-support], and (5) first- and second-degree felonies. More serious convictions have longer waiting periods before they are eligible for sealing or expungement: Six months for minor misdemeanors; one year for misdemeanors that are not an offense of violence and fourth- and fifth-



degree felonies; three years for third-degree felonies; and five years after the client was removed from the SORN registry.

Prosecutors may object to an application for sealing or expungement and are required to do so in writing at least 30 days before the hearing. Victims can object to an application as well. The court must hold a hearing on the application for sealing or expungement not less than 45 days and not more than 90 days after the application is filed. Finally, the bill allows convictions that have been pardoned by the governor to be sealed as soon as the pardon is granted or when the conditions of the pardon are met. Under current law, pardons are not sealable.

OPD appreciates the intent through SB288 to expand not just criminal record sealing but also expungement. The problem with just having one's record sealed is that certain agencies and people, as delineated by the legislature,<sup>2</sup> can still access the record. The record also still exists in the county clerk's office. According to the Ohio Civil Impacts of Criminal Convictions (CIVICC) Database, the Revised Code contains 37 statutes that require applicants to disclose sealed convictions when applying for employment or a professional license. Therefore, even after having one's record sealed, many individuals still have trouble obtaining housing, student loans, employment, or a professional license.

That is why Ohio needs to expand expungement as well as sealing eligibility. Last session, I recall that witnesses testified before this committee that individuals with felony convictions have no problem obtaining employment in Ohio. While it may be true that some individuals can get a part-time or minimum wage job, individuals with criminal records, even sealed criminal records, are often prevented from obtaining professional licenses necessary to work in

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<sup>2</sup> Those who can see sealed records include: Prosecutors, judges and police for future criminal investigations, judges considering convictions for enhanced subsequent sentences, employers in law enforcement, jobs working with children or other protected groups, real estate institutions, and professional licensing boards (i.e. Ohio State Medical Board).



“fast-growing industries such as health care, human services and some mechanical trades.”<sup>3</sup>  
The ability to seal and expunge criminal records will give these Ohioans access to a career, not just a job. SB288 will help many individuals make a better life for themselves and their family.

Thank you for the opportunity to testify in support of SB288. I am happy to answer any questions at this time.

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<sup>3</sup> Tracy Jan, *After Prison, More Punishment*, The Washington Post, September 3, 2019, <https://www.washingtonpost.com/graphics/2019/business/jobs-after-prison-rhode-island-recently-occupational-licensing/?noredirect=on>.

