



# Office of the Ohio Public Defender

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*Timothy Young, State Public Defender*

## **Testimony in Support of SB288 Expungement Sponsor Senator Manning**

Chair LaRe, Vice Chair White, and Ranking Member Leland, and members of the House Criminal Justice Committee. My name is Niki Clum, and I'm the Legislative Policy Manager for the Office of the Ohio Public Defender. Thank you for allowing me to testify again regarding the expungement provisions in Senate Bill 288.

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. However, SB288 does provide exemptions against record destruction for certain entities.<sup>2</sup> Under current

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

<sup>2</sup> R.C. 2953.34(B) allows expunged convictions to be used in subsequent cases. R.C. 2953.34(D) allows board of educations to keep expunged records of individuals permanently excluded from employment. R.C. 2953.34(E) allows the prosecutor to keep expunged records of individuals forever disqualified from holding public office, employment, or a position of trust in this state. R.C. 2953.34(F) allows the superintendent of the fingerprint and DNA database to keep expunged records unless the superintendent receives a final order that the conviction has been overturned. R.C. 4723.28(E) permits the Board of Nursing to not destroy records that are expunged. R.C. 4729.16(G), 4729.57(F), & 4729.96(E) permit the Board of Pharmacy to not destroy records that are expunged.

law, expungement is only available for juvenile records, some repealed firearm offenses, and convictions where the person is found to be a victim of human trafficking.

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 benefited from an expanded sealing and expungement law. The problem with just having one's record sealed is that certain agencies and people, as delineated by the legislature,<sup>3</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 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 "fast-growing industries such as health care, human services and some mechanical trades."<sup>4</sup> The ability to expunge

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R.C. 4730.25(E), 4731.22(E), 4752.09(K), 4760.13(F), 4761.09(J), 4762.13(F), 4774.13(F) & 4778.14(F) permit the State Medical Board to not destroy records that are expunged. R.C. 4734.31(F) permits the State Chiropractic Board to not destroy records that are expunged.

<sup>3</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).

<sup>4</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>.



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.

Under SB288, individuals must wait three years after sealing eligibility to expunge misdemeanors and 10 years after sealing eligibility to expunge a felony. This will result in some individuals waiting decades before they are eligible to **apply** for expungement. Below is a chart that gives some examples of the waiting periods for sealing and expungement.

	Sealing	Expungement
	<i>These waiting periods do not start until <u>after</u> fines and restitution are paid – 70% of defendants qualify for a free attorney and may need additional time to pay</i>	<i>These waiting periods do not start until <u>after</u> fines and restitution are paid - 70% of defendants qualify for a free attorney and may need additional time to pay</i>
<b>Third Degree Felony</b>		
Shortest possible sentence – Fine or Restitution Only ( <i>highly unlikely</i> )	<b>3 years</b>	<b>13 years</b>
Longest possible sentence – 3 years incarceration, 2 years post-release control	<b>8 years</b>	<b>18 years</b>
<b>Fourth Degree Felony</b>		
Shortest possible sentence – Fine or Restitution Only ( <i>highly unlikely</i> )	<b>1 year</b>	<b>11 years</b>
Longest possible sentence – 1.5 years incarceration, 2 years post-release control	<b>4.5 years</b>	<b>14.5 years</b>
<b>Fifth Degree Felony</b>		
Shortest possible sentence – Fine or Restitution Only ( <i>unlikely</i> )	<b>1 year</b>	<b>11 years</b>
Longest possible sentence – 1 year incarceration, 2 years post-release control	<b>4 years</b>	<b>14 years</b>
<b>First Degree Misdemeanor</b>		
Shortest possible sentence – Fine or Restitution Only ( <i>unlikely</i> )	<b>1 year</b>	<b>4 years</b>
Longest possible sentence – 6 months in jail, 5 years community control	<b>6.5 years</b>	<b>16.5 years</b>
<b>Tier 1 Sex Offender – 15 Years Registration</b>		
Possible M1 Sentence – 6 months in jail, 3 years community control	<b>20.5 years</b>	<b>23.5 years</b>
Possible F3 Sentence – 3 years incarceration, 1-year post-release control	<b>23 years</b>	<b>33 years</b>
<b>Tier 2 Sex Offender – 25 Years Registration</b>		
Possible F5 Sentence – 1 year incarceration, 1 year post-release control	<b>31 years</b>	<b>41 years</b>
Possible F3 Sentence – 3 years incarceration, 1-year post-release control	<b>33 years</b>	<b>43 years</b>



Expungement is not automatic. Prosecutors may object to an application for 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 expungement not less than 45 days and not more than 90 days after the application is filed. The court must decide if the government's interest in maintaining the record outweighs the person's interest in expunging the record. This is a particularly hard standard when the applicant is asking for an expungement. Judges know that this person may apply to be a teacher or law enforcement officer and there will be no record of that conviction if they grant the expungement. For that reason, the court will rightly see the government as having a strong interest in maintaining the record. Only applicants who have shown truly remarkable reform and rehabilitation will be able to over the government's interest and be granted expungement. It will be extremely difficult. But perhaps Ohio would benefit from having more people as teachers or in law enforcement who understand the experiences of the kids they teach or the communities they serve. People who know what it is like to suffer from addiction or be tempted by crime. People who can actually relate to the people they serve, and who can be an example of what is possible if you take responsibility and work hard to right your wrongs.

Whether you support this provision of SB288 likely comes down to personal philosophy. You either believe people are capable of reform and rehabilitation and deserve a fresh start, or you don't. With literally over a decade worth of behavior and information to consider, sometimes three or four decades, Ohioans should trust their elected judges to make these decisions. Last session, Senate President Obhof stood on the Senate Floor and said, "We are a nation that believes in redemption." Members of this committee must decide if they believe in redemption.

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

