

Reducing Collateral Consequences of Criminal and Juvenile Court Records



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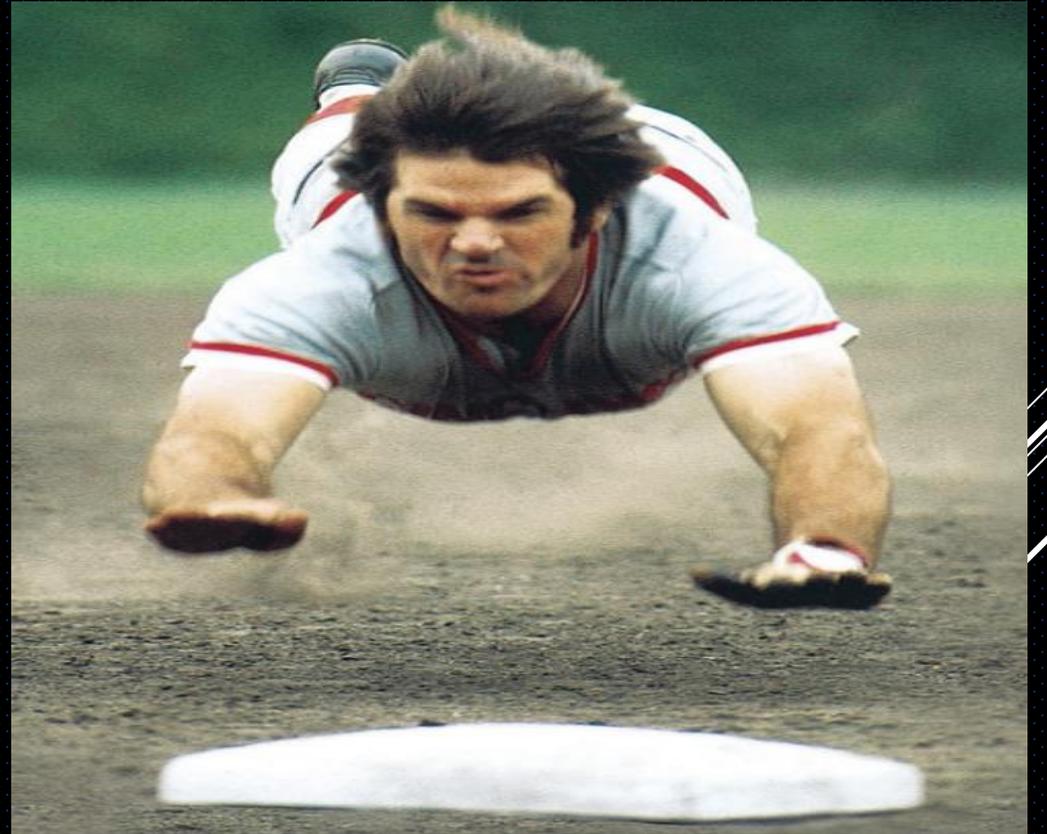
“There is no man, however wise, who has not at some period of his youth said things, or lived in a way the consciousness of which is so unpleasant to him in later life that he would gladly, if he could, expunge it from his memory.”

-Marcel Proust



“If somebody is gracious enough to give me a second chance, I won’t need a third.”

-Pete Rose



Ohio Facts

-1 in 6 Ohioans (about 1.9 million people) have a criminal record

-18,690 are on the SOR (11/2015)

-ODRC population in June 2016: 51,000

-Male – 49,700 (average age 37)

-Female – 4,300 (average age 35)

-Average stay – 2.33 years



What we'll talk about today:



1. Sealing and expunging criminal records
2. Sealing and expunging juvenile adjudications
3. Voting!
4. Criminal justice reform in Ohio



More specifically . . .

- What is sealing and expungement?
- What records can be sealed vs. expunged?
- Sealing a record of conviction
- Sealing records after not guilty, dismissal, or no bill by grand jury
- Expungement for victims of human trafficking
- Sealing and expungement of juvenile records



Sealing vs. Expungement

Sealing: The electronic and paper records of criminal charges are filed in a separate, secure location. The record still exists, but it cannot be seen by most people.



Expungement: To destroy, delete, and erase a record so that it is permanently irretrievable.



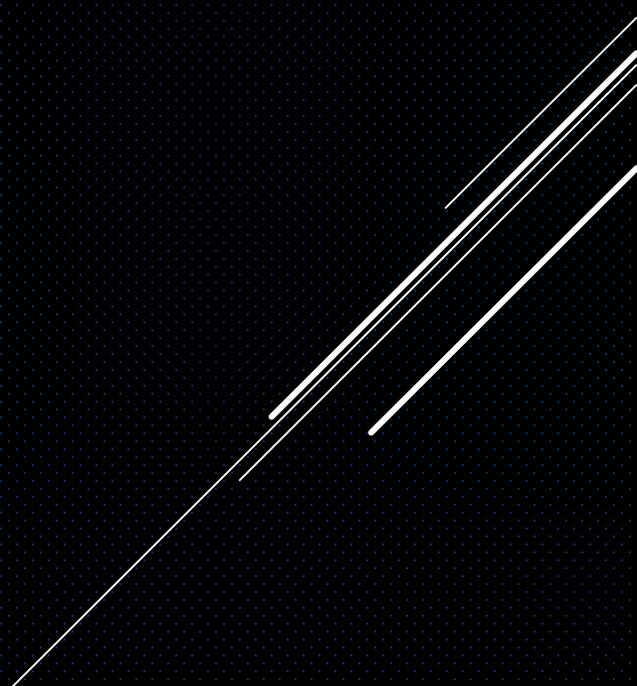
Sealing vs. Expungement

Sealing

- Criminal records
- Juvenile records

Expungement

- Very limited criminal records
- Sealed juvenile records

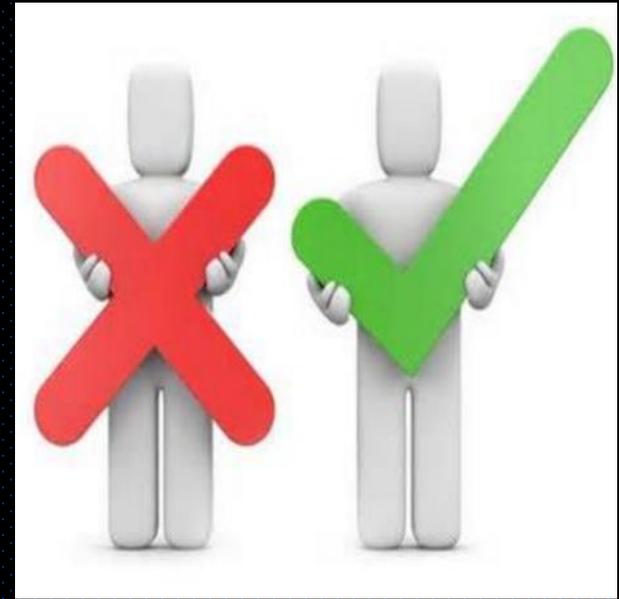


Sealing a Conviction

“Eligible Offender”

- Has only 1 felony conviction
- Has only 1 or 2 misdemeanor convictions
- Has only 1 felony and 1 misdemeanor conviction

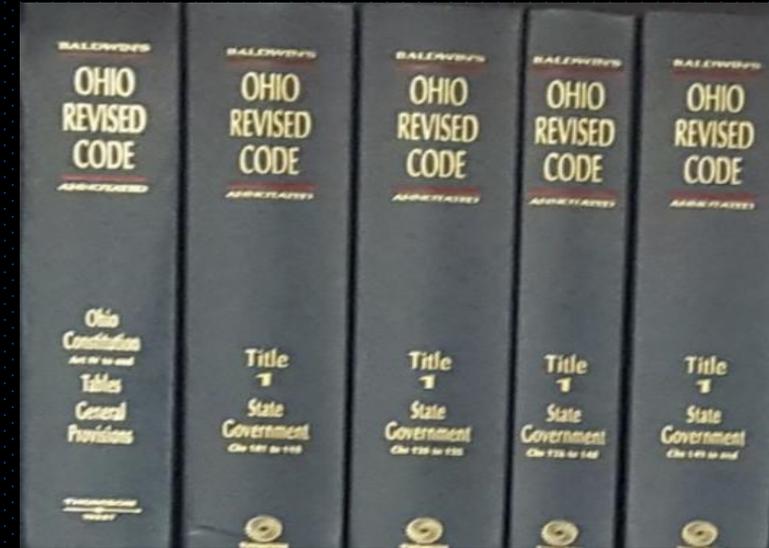
- Traffic offenses *usually* do not count
- Minor misdemeanors do not count



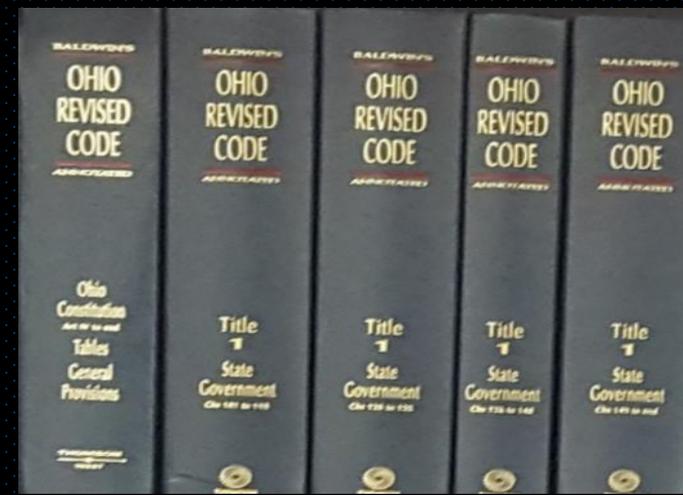
Sealing a Conviction

“Eligible Offender”

- If 2 or more convictions arising from the same incident, counted as 1 conviction
 - Example: Person convicted of shoplifting and resisting arrest in the same incident. The court can consider the 2 charges as one conviction for purposes of sealing



Sealing a Conviction



“Eligible Offender”

- If 2 or 3 convictions did not arise from the same incident, but resulted from the same court proceeding, and the convictions were for related criminal acts committed within 3 months of each other, the multiple convictions may be treated like one conviction
 - Example: Convictions for passing bad checks on March 1st and May 10th and convicted of both during the same official proceeding
 - Court has discretion to treat as one conviction (or not, public interest)

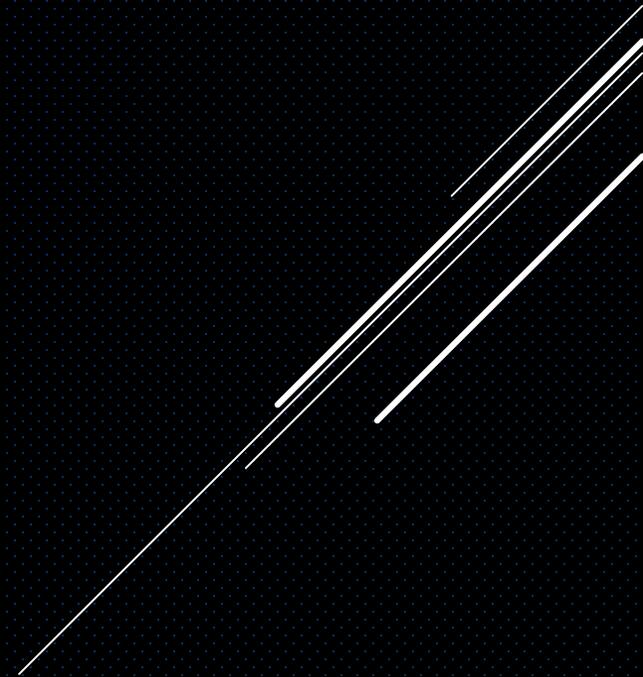
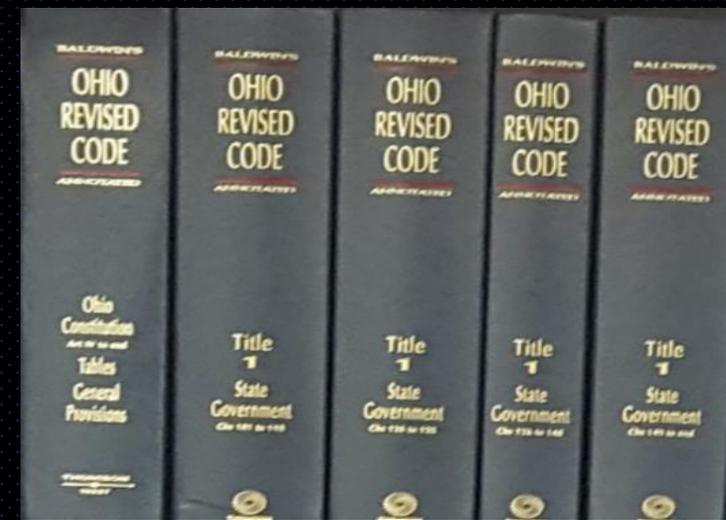
Sealing a Conviction

- Offenses that cannot be sealed

- Convictions with mandatory prison terms

- Felonies of the 1st or 2nd degree

- Misdemeanor of the 1st degree or felony when the victim was under 18 years old (exception: non-support of dependents)



Sealing a Conviction

Offenses that cannot be sealed

-Any offense of violence:

Aggravated murder

Murder

Voluntary Manslaughter

Involuntary Manslaughter

Felonious Assault

Aggravated Assault

Permitting Child Abuse

Menacing by Stalking

Aggravated Menacing

Menacing

Kidnapping

Abduction

Extortion

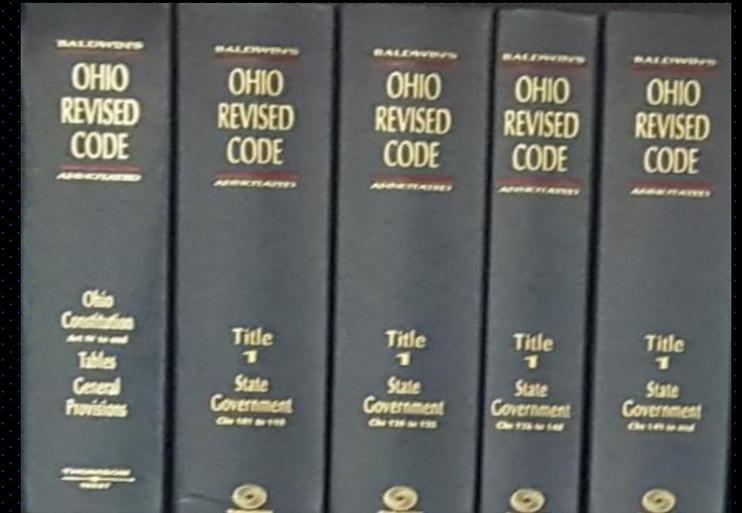
Rape

Sexual Battery

Gross Sexual Imposition

Aggravated Arson

Terrorism



Sealing a Conviction

Offenses that cannot be sealed

-Any offense of violence (cont.):

Aggravated Robbery

Robbery

Aggravated Burglary

Burglary

Inciting to Violence – felony

Aggravated Riot

Riot – felony

Domestic Violence

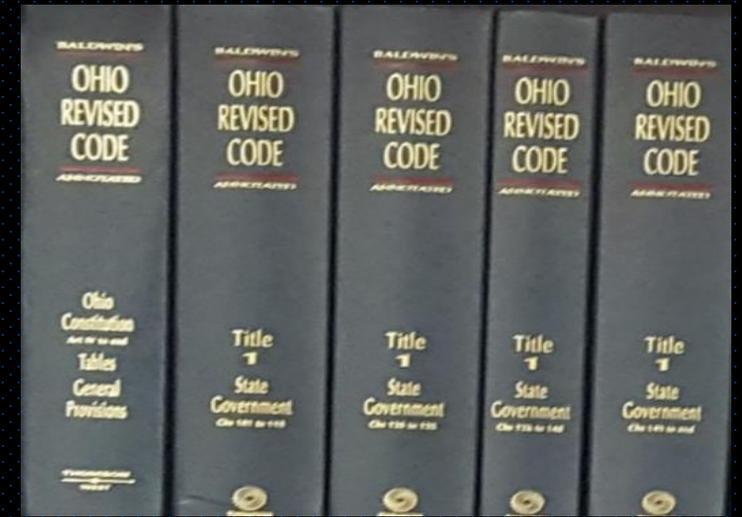
Intimidation

Inducing Panic – felony

Escape

Endangering Children

Improperly Discharging Firearm
(habitation, school safety zone,
intent to cause harm or panic)

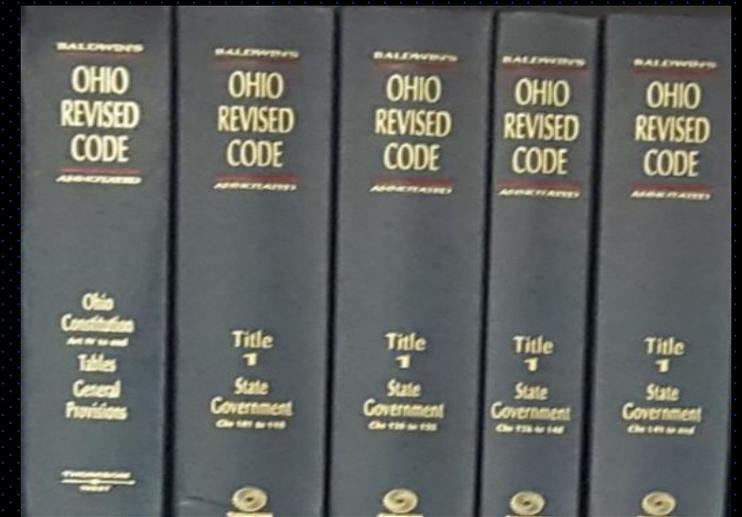


Sealing a Conviction

Offenses that cannot be sealed

-Sex offenses not already listed, including . . .

1. Unlawful Sexual Conduct with a Minor
2. Illegal Use of a Minor in Nudity-Oriented Material
3. Sexual Imposition
4. Importuning
5. Pandering Obscenity Involving a Minor
6. Pandering Sexually Oriented Material Involving a Minor

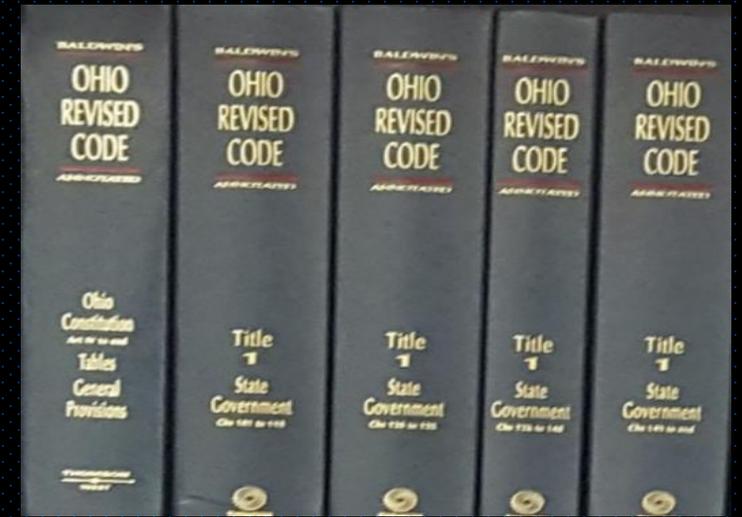


Sealing a Conviction

Offenses that cannot be sealed

-Automobile-related offenses . . .

- Odometer tampering (or selling a car knowing of tampering)
- Sale or possession of master key designed to fit multiple vehicles
- OVI
- DUS related to an OVI or refusal to take a breathalyzer test
- Street racing
- Hit-and-run

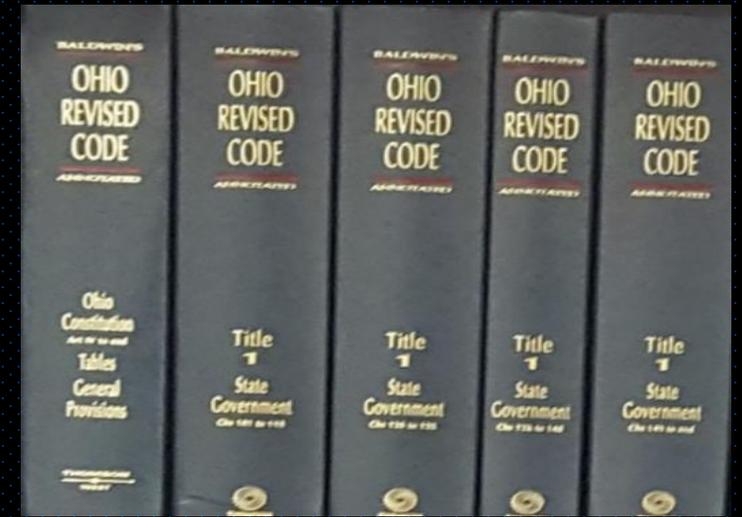


Sealing a Conviction

Offenses that cannot be sealed

-Traffic offenses ...

*But, most are not counted as criminal convictions, so they do not prevent getting other eligible offenses sealed



Sealing a Conviction

-Where can someone apply?

- If convicted in Ohio, the sentencing court
- If convicted in another state or federal court, the Court of Common Pleas

-When can someone apply?

- 3 years after final discharge on a felony
- 1 year after final discharge on a misdemeanor



Sealing a Conviction

*Note: “Final discharge” happens after sentencing obligations have been met (e.g., after postrelease control has ended in a felony case).

-Payment of court costs should not count



Sealing a Conviction

-Where does someone apply?

- Many courts have printed forms
- Stop by the clerk's office or check the web
- Franklin County Municipal Court:
<http://www.fcmmcclerk.com/dept/clerk/criminal.php#1>
- Applications to seal court record available in the Criminal/Traffic Department on the second floor
- \$50 non-refundable filing fee (indigency)



Sealing a Conviction

-Where does someone apply?

- Many courts have printed forms
- Stop by the clerk's office or check the web
- Franklin County Court of Common Pleas:
<http://clerk.franklincountyohio.gov/docs/general/eligibleSealRecords.pdf>
- \$50 non-refundable filing fee (indigency)



Sealing a Conviction



-What happens?

- The court will schedule a hearing
- Sometimes the hearing is non-oral (don't have to attend)
- The prosecutor can file objections
- The court will ask probation to make inquiries and issue a report
- Records check for warrants, pending charges, ineligibilities
- Financial penalties paid in full?
- Again, court costs are not part of the sentence and should not count

Sealing a Conviction

-What does the court look for?

- Is the applicant an “eligible offender”?
- Criminal proceedings pending?
- Rehabilitated to court’s satisfaction?
- Prosecutor’s objections
- Weigh applicant’s interests in sealed records against the government’s need to maintain them



Sealing a Conviction

-What does it mean if the court orders the record sealed?

- Court orders all official records pertaining to the conviction sealed
- Proceedings in the case shall be considered not to have occurred and the conviction sealed
- But, the court can maintain a manual or computerized index of the sealed records
 - Example: name and “sealed”



Sealing a Conviction

-When can a sealed record be used?

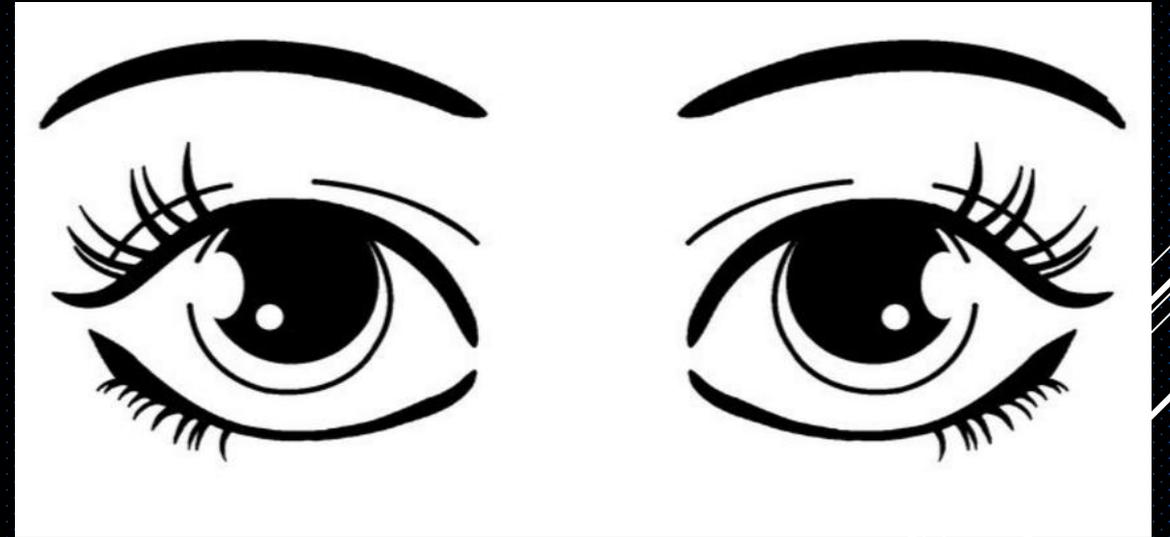


- If convicted of subsequent offense, sealed record can be considered in determining sentence
- DNA in database and fingerprints filed with BCI shall not be sealed unless court overturns person's conviction

Sealing a Conviction

-Who can see a sealed record?

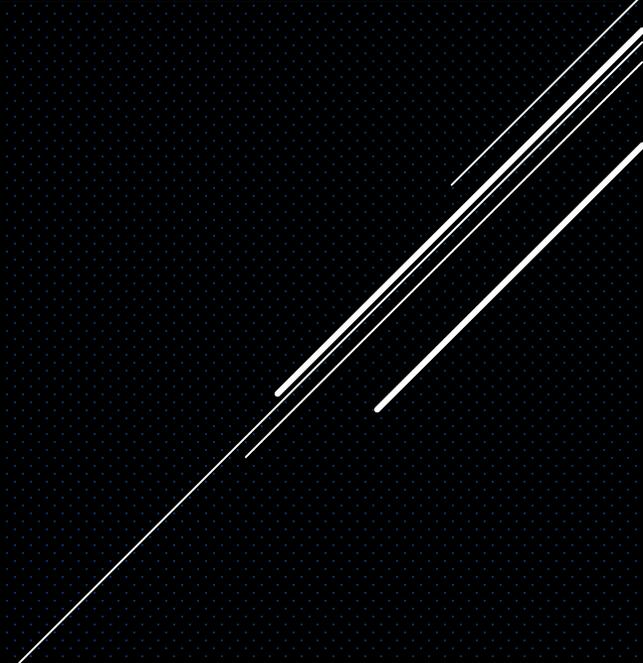
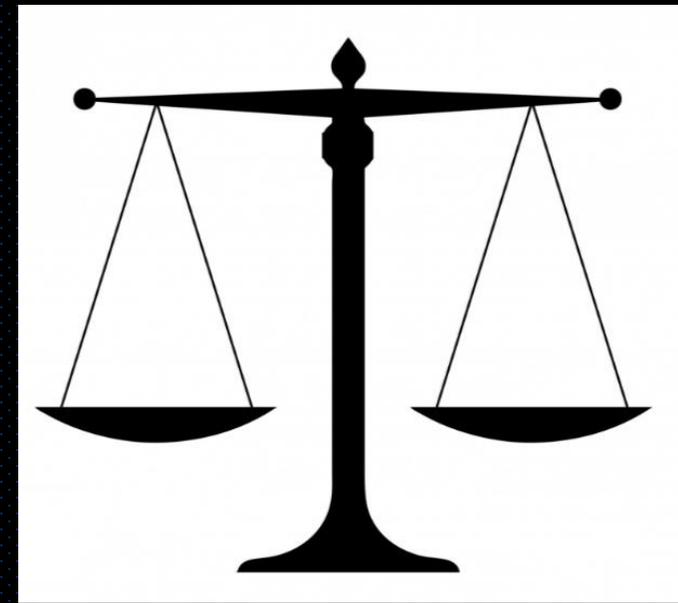
- ✓ Law enforcement
- ✓ Prosecutor
- ✓ Probation/Parole
- ✓ BCI
- ✓ ODRC
- ✓ Attorney General's Office
- ✓ Inspector General's Office
- ✓ Court
- ✓ Registrar of Motor Vehicles
- ✓ The Applicant



Sealing a Conviction

-What rights does sealing restore?

- Restores the person to all rights and privileges not otherwise restored by termination of case
- Application for employment: A person may be questioned only with respect to convictions not sealed, unless the question bears a direct and substantial relationship to the position





Sealing Records of Not Guilty, Dismissal, or No Bill

- Not guilty = by judge or jury after trial
- Dismissal = case dismissed
- No bill = grand jury did not indict



Sealing Records of Not Guilty, Dismissal, or No Bill



-When can someone apply?

- Any time after not-guilty finding or dismissal
- No bill = 2 years after grand jury issued the no bill

-Should not be a filing fee!

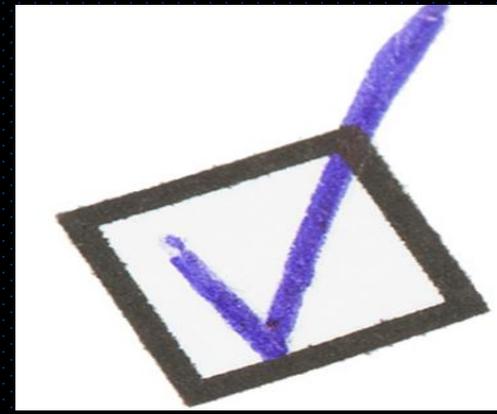
Sealing Records of Not Guilty, Dismissal, or No Bill



-What does the court look for?

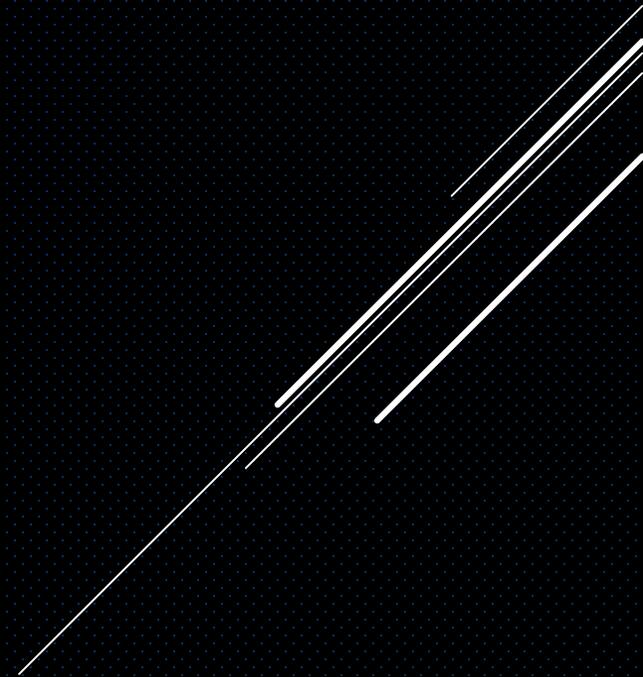
- Eligible?
- If dismissal, court determines if with or without “prejudice”
- “Without prejudice” means charges can be filed again
- If without prejudice, determine if statute of limitations has run
- Statute of limitations different for many offenses
- R.C. 2901.13 (felony usually 6 years; misdemeanor usually 2 years)

Sealing Records of Not Guilty, Dismissal, or No Bill



-What does the court look for? (cont.)

- Determine if criminal proceedings pending
- Consider prosecutor's objections
- Applicant's interests against government's need to maintain



Sealing – Tips

- Most applicants are pro se
- Probation will ensure requirements met
- Most courts prefer application (better than a letter)
- If indigent, file an indigency affidavit
- Common mistake: not knowing criminal history well enough to determine eligibility
- Better chance of a hearing if mistake made
- Thorough and honest
- Explain to court how record is holding back progress





Expungement

-Certain offenses by human-trafficking victims



- Expunge = destroy, delete, erase
- A human-trafficking victim is a person who is or was a victim of trafficking in persons (see R.C. 2905.32)
- Regardless of if someone was convicted of human trafficking or another offense for victimizing the applicant

Expungement

-Certain offenses by human-trafficking victims

- Solicitation
- Loitering to Engage in Solicitation
- Prostitution

- May apply if the offense “was a result of the person having been a victim of human trafficking”

- May apply at any time





Juvenile Records

-Sealing

- On court's own motion
- On application of the juvenile
(cannot seal Aggravated Murder, Murder, Rape – R.C. 2151.356(C))
- Juvenile cannot be under jurisdiction of court on a delinquency matter
- No filing fee! (R.C. 2151.356(C))
- Factors demonstrating rehabilitation
- Barriers



Juvenile Records

-Expungement

- After a record is sealed
 - Court *shall* expunge the record 5 years later or at age 23, whichever is earlier
 - Child can apply for expungement sooner





Exercise the Right to Vote!

- If convicted of a crime, still might have the right to vote
 - ✓ Misdemeanor – can vote even if incarcerated
 - ✓ If arrested for a felony, but not convicted, still have the right to vote
 - ✓ If convicted of a felony but not incarcerated, have the right to vote
 - Must re-register



Exercise the Right to Vote!

○ Registration

✓ Must be registered 30 days before Election Day (by October 11, 2016)

✓ Obtain voter registration forms from . . .

-County Board of Elections

-<http://www.sos.state.oh.us/sos/elections/Voters.aspx>

-Ohio BMV

-Public Libraries



Criminal Justice Reform

Ohio Criminal Sentencing Commission

- Juvenile Justice Committee
- Sentencing and Criminal Justice Committee
 - Sealing Records – Rights restoration
 - Financial sanctions, fines, collection
- Data Collection and Sharing Committee
- Ad Hoc Committee on Bail and Pretrial Services



Criminal Justice Reform

Ohio Criminal Recodification Committee

- Created by the 130th General Assembly to study Ohio's existing criminal statutes, and . . .
 - Enhance public safety
 - Enhance administration of criminal justice
- Recommend plan for simplified criminal code
- Members include Judges, Prosecutors, Defenders, Community Providers, Law Enforcement, Legislators, DYS, ODRC, OJPC



Primary Statutes re: Sealing Records

R.C. 2953.31 – R.C. 2953.61





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