

# Expungement & Record Sealing

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# Dealing with Juvenile Records

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- Expungement vs. Sealing?
  - Juvenile records are EXPUNGED, which means they are erased. (ORC 2151.358)
  - Adult records are SEALED (ORC 2953.32)
    - not erased. They are filed in a different location, but the records still exists.
    - Once sealed, the record cannot be seen by most people, but there are exceptions.
      - \*\*\*There are a few adult crimes that can be expunged, such as certain crimes relating to firearms (ORC 2953. 37) and crimes committed by persons who are victims of human trafficking (ORC 2953.38)

# What can be Sealed

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- Any offense can be sealed except:
  - Convictions with a mandatory prison term;
  - First or Second felonies
  - Offenses of Violence that are either:
    - A first degree misdemeanor -or-
    - A felony
  - Sex Offenses that either:
    - Has a victim that is under eighteen years old -or-
    - A felony

# Who can Apply?

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- Cannot have an open criminal case
- Cannot owe restitution
- Cannot be on probation
- Must wait a certain period of time
  - One year for misdemeanors
  - Three years for one felony conviction
  - Four years for two felony convictions
  - Five years for three – five felony convictions

\* Each felony has its own waiting period

# Precluding Offenses

- 2903.01 Aggravated murder
- 2903.02 Murder
- 2903.03 Voluntary manslaughter
- 2903.04 Involuntary manslaughter
- 2903.11 Felonious assault
- 2903.12 Aggravated assault
- 2903.13 Assault  
(exception: this can be expunged if it is only a first degree misdemeanor)
- 2903.15 Permitting child abuse
- 2903.21 Aggravated menacing
- 2903.211 Menacing by stalking
- 2903.22 Menacing
- 2905.01 Kidnapping
- 2905.02 Abduction
- 2905.11 Extortion
- 2907.02 Rape
- 2907.03 Sexual battery
- 2907.05 Gross sexual imposition
- 2907.12 (former) Felonious sexual penetration
- 2909.02 Aggravated arson
- 2909.03 Arson
- 2909.24 Terrorism
- 2911.01 Aggravated robbery
- 2911.02 Robbery
- 2911.11 Aggravated burglary
- 2917.01 Inciting to violence  
(exception: this can be expunged if it is only a first degree misdemeanor)
- 2917.02 Aggravated riot
- 2917.03 Riot  
(exception: this can be expunged if it is only a first degree misdemeanor)
- 2917.31 Inducing panic  
•(exception: this can be expunged if it is only a first degree misdemeanor)
- 2919.25 Domestic violence
- 2921.03 Intimidation
- 2921.04 Intimidation of attorney, victim or witness in criminal case
- 2921.34 Escape
- 2923.161 Improperly discharging firearm at or into a habitation, in a school safety zone or with intent to cause harm or panic to persons in a school building or at a school function
- 2911.12 Burglary  
(Division (A)(1), (2), or (3) of section)
- 2919.22 Endangering children  
(Division (B)(1), (2), (3), or (4))

## Old Law on Eligibility

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- Applicant can only be convicted of:
  - One or two misdemeanor offences and no felonies -or-
  - One misdemeanor and one felony

## New Law on Eligibility - Ohio Senate Bill 66

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- Applicant can apply if **they have fewer than six felonies ( $\leq 5$ ) on their record**
- They may have any number of misdemeanors

## Complexities of Ohio Senate Bill 66

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- What about third-degree felonies?
- What happens if someone commits a crime of violence or sex crime?

**Use the old eligibility standard**



# Example 1

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Our Applicant has:

- One low level felony drug possession from six years ago:

- Old Law:



- New Law:



## Example 2

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Our Applicant has:

- Five low level felony drug possessions from six years ago:

- Old Law:




- New Law:



## Example 3

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Our Applicant has:


- Two OVIs from twenty years ago;
- One Domestic Violence (M<sub>1</sub>) from fifteen years ago
  - Old Law: 
  - New Law: 

# Example 4

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Our Applicant has:

- Two low level felony drug possessions;
- Five aggravated disorderly conducts (M4);

• Old Law: 

• New Law: 

# Example 5

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Our Applicant has:



- One domestic violence (M<sub>1</sub>)
- One aggravated disorderly conducts (M<sub>4</sub>);

• Old Law:		(DV)		(DC)
• New Law:		(DV)		(DC)

# Example 4

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Our Applicant has:

- One domestic violence (M<sub>1</sub>)
- Five aggravated disorderly conducts (M<sub>4</sub>);
  - Old Law: 
  - New Law: 

# Case Law

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- **Gyugo v. Franklin Cty. Bd. of Dev. Disabilities, 2017 -Ohio- 6953:** Job applicant must disclose any prior conviction, even if sealed, if the application requests information on sealed convictions.
- **State v. V.M.D., 2016 -Ohio- 8090:** Attempted crimes of violence (e.g. attempted robbery) are crimes of violence under R.C. 2953.36 and cannot be sealed.
- **State v. J.M., 2016 -Ohio- 2803:** Traffic misdemeanors of the fourth degree or higher qualify as convictions for the purposes of determining eligibility.
- **State v. Radcliff, 2015 -Ohio- 235:** A gubernatorial pardon does not make one eligible to have their conviction sealed.
- **State v. Aguirre, 2014-Ohio-4603:** An applicant is ineligible for sealing their record if they owe restitution .
- **State ex rel. Cincinnati Enquirer v. Lyons, 140 Ohio St.3d 7:** Minor misdemeanors are subject to one year waiting requirement before they may be sealed.
- **State v. Niesen-Pennycuff, 2012 -Ohio- 2730:** After an applicant completes treatment-in-lieu the court has discretion as to whether the applicant must wait three years before they may apply to seal their record.