

# RECORD SEALING & EXPUNGEMENT

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# Disclaimer

- The information contained in this presentation is NOT legal advice, it is only information.
- The information contained in this presentation generally describes the laws and process concerning record sealing and expungement. Each court has it's own rules and procedures, so you will need to contact the court that originally heard your case directly for more information.
- An attorney client relationship does not exist between you and the Family and Youth Law Center at Capital University Law School.

# Roadmap

## **Adult Criminal Offenses**

- Sealing convictions
- Sealing non-convictions

## **Juvenile Offenses**

- Sealing adjudications
- Expunging adjudications
- Automatic sealing and expunging

# ADULT CRIMINAL RECORD SEALING



# “Expungement”

- Civil proceeding – public defenders do not provide representation
- “Expungement” is actually record sealing in Ohio, but most people/courts still use the old term
- After a record is sealed, it is only viewable by a limited number of government agencies
- There are different rules for sealing records of convictions and records of non-convictions

# Sealing of Adult Convictions

- Must meet all 4 requirements to be eligible
  - Only 2 prior convictions
  - Eligible offense
  - No pending charges
  - Waiting period
- Must apply at the court of conviction
  - Franklin County Municipal Court: 2<sup>nd</sup> Floor Clerk of Courts Office – 375 S. High Street, Columbus, Ohio 43215
- At least \$50 filing fee – some as high as \$300
  - \$50 at FCMC

# Sealing of Adult Convictions

- Requirement 1: Only 2 convictions\*\*
  - Applies to misdemeanors and felonies
    - I.e. 2 misdemeanors or 1 misdemeanor and 1 felony
    - Both convictions are eligible for sealing in the courts of conviction
  - Applies to convictions in Ohio and other states
- Exceptions
  - Multiple minor misdemeanors
  - Two or more convictions based on the same criminal act
  - Two or three convictions were not based on the same criminal act, but resulted from the same court proceeding and the convictions were for related criminal acts committed within three months of each other.

\*\*The law recently changed – used to be only 1 conviction

# Sealing of Adult Convictions

- Requirement 1: Only 2 convictions
  - Exceptions
    - **Multiple minor misdemeanors** can be sealed so long as one has only one or two other misdemeanors of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, or 4<sup>th</sup> degree or felonies. Minor misdemeanors do not count towards the conviction count.
    - A minor misdemeanor is a ticket-only offense; it is less than a fourth-degree misdemeanor. To be a minor misdemeanor, jail-time or probation could not have been a possible sentence and the maximum possible fine was \$150.
    - Traffic offenses are never sealable, including minor misdemeanor traffic offenses.

# Sealing of Adult Convictions

- Requirement 1: Only 2 convictions
- Exceptions
  - **Two or more convictions based on the same criminal act** will be treated like one conviction when you apply to have the records sealed.
  - The court will consider the two separate convictions as one conviction when one applies to seal the records. These charges may be charged under the same case number or separate case numbers, so long as they arose out of the same set of facts or incident.
  - Example: You were convicted of shoplifting and resisting arrest in the same incident.

# Sealing of Adult Convictions

- Requirement 1: Only 2 convictions
  - Exceptions
    - **Two or three convictions were not based on the same criminal act, but resulted from the same court proceeding and the convictions were for related criminal acts committed within three months of each other.**
    - This is entirely within the judge's discretion. The judge may decide to treat these as one offense, but is not obligated to.
    - Example: You have two convictions for passing bad checks on March 1st and May 10th, and you were convicted of both at the same court proceeding.

# Sealing of Adult Convictions

- Requirement 2: Must be eligible offense
  - There are many conviction offenses that can never be sealed, even if the other requirements are met
  - Generally:
    - Any first (F1) or second (F2) degree felony
    - Any offense with a mandatory prison term
      - Gun specifications

# Sealing of Adult Convictions

- Requirement 2: Must be eligible offense
  - List of ineligible 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

# Sealing of Adult Convictions

- Requirement 2: Must be eligible offense
  - List of ineligible offenses:
    - 2903.22 Menacing
    - 2905.01 Kidnapping
    - 2905.02 Abduction
    - 2905.11 Extortion
    - 2907.02 Rape
    - 2907.03 Sexual battery
    - 2907.04 Unlawful sexual contact with a minor
    - 2907.05 Gross sexual imposition
    - 2907.06 Sexual Imposition
    - 2907.07 Importuning

# Sealing of Adult Convictions

- Requirement 2: Must be eligible offense
  - List of ineligible offenses:
    - 2907.12 (former) Felonious sexual penetration
    - 2907.321 Pandering Obscenity Involving a Minor
    - 2907.322 Pandering Sexually Oriented Material Involving a Minor
    - 2907.323 (A)(3) Illegal Use of a Minor in Nudity-oriented Material or Performance
    - 2909.02 Aggravated arson
    - 2909.03 Arson
    - 2909.24 Terrorism
    - 2911.01 Aggravated robbery

# Sealing of Adult Convictions

- Requirement 2: Must be eligible offense
  - List of ineligible offenses:
    - 2911.02 Robbery
    - 2911.11 Aggravated burglary
    - 2911.12 Burglary (\*Division (A)(1), (2), or (3) of section)
    - 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)
    - 2919.22 Endangering children (\*Division (B)(1), (2), (3), or (4))

# Sealing of Adult Convictions

- Requirement 2: Must be eligible offense
  - List of ineligible offenses:
    - 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
    - 4510.14 Driving under OVI suspension
    - 4511.19 Operating vehicle under the influence of alcohol or drugs - OVI.

# Sealing of Adult Convictions

- Requirement 2: Must be eligible offense
  - List of ineligible offenses:
    - 4511.251 Street racing.
    - 4517.19 Motor vehicle wholesaler - prohibited acts.
    - 4549.02 Stopping after accident on public roads or highways.
    - 4549.021 Stopping after accident on other than public roads or highways.
    - 4549.03 Stopping after accident involving damage to realty or personal property attached to real property.
    - 4549.042 Sale or possession of master key designed to fit more than one motor vehicle.
    - 4549.62 Offenses with purpose to conceal or destroy identity.

# Sealing of Adult Convictions

- Requirement 3: No pending criminal charges
- Not eligible for record sealing if there are currently criminal charges pending against the individual

# Sealing of Adult Convictions

- Requirement 4: Waiting period
  - An applicant must wait a specified amount of time after the final discharge of the sentence to apply for record sealing.
  - Final discharge means that the jail or prison sentence has been served, any term of probation or parole has been served, and any fines or court costs have been paid.
  - For misdemeanors (including minor misdemeanors) the waiting period is one year after the final discharge of the conviction.
  - For felonies the waiting period is three years after the final discharge of the conviction.

# Sealing of Adult Non-Convictions

- Must meet all 3 requirements to be eligible
  - All charges dismissed/acquitted
  - Waiting period (Grand Jury no bill only)
  - No pending criminal charges
- Must apply at the court where the charges were brought
  - Apply at same location as convictions – FCMC Clerk
- Should not be a filing fee, but some courts charge up to \$250
  - Free at FCMC

# Sealing of Adult Non-Convictions

- Requirement 1: All charges against you dismissed or acquitted
  - Dismissed = prosecutor drops the case, judge dismisses the charges
  - Acquitted = found not guilty by a jury or judge
- If you were convicted on one or more of the charges that arose out of the same incident, you cannot get the dismissed charges sealed unless you are also eligible to have the convictions sealed.

# Sealing of Adult Non-Convictions

- Requirement 2: Waiting period for No Bill only
  - In cases where a Grand Jury is used to decide indictments and the Grand Jury chooses not to indict, it is said that a No Bill is issued. This is also sometimes called an Ignored case.
  - Must wait 2 years after the issuance of a No Bill to apply to have it sealed.
  - This is not the same thing as a dismissal for future indictment

# Sealing of Adult Non-Convictions

- Requirement 3: No pending criminal charges
  - Not eligible for record sealing if there are currently criminal charges pending against the individual



# JUVENILE RECORD SEALING & EXPUNGEMENT

# Sealing vs. Expungement

- To completely remove juvenile adjudication records, Ohio law has a two step process
  - Sealing is the first step and means that the court moves the record to a separate location and it can only be seen by a few government agencies.
  - Expungement is the second step and means that the court permanently destroys the record and it cannot be seen by anyone.

# Automatic Sealing

- Some juvenile records are sealed automatically
  - If youth was arrested, but charges were never filed
  - If youth was charged with underage drinking, but youth took a class and the case was dismissed
  - If the court dismissed the case after a trial or found that youth was not delinquent, unruly, or a juvenile traffic offender
  - If the court found youth was unruly (not delinquent) and youth has since turned 18

# Juvenile Record Sealing

- Two requirements must be met
  - Must be an eligible offense
    - Aggravated murder, murder, and rape are not able to be sealed
    - All other juvenile offenses are eligible to be sealed
  - 6 month waiting period from the final discharge of case
    - Only if youth is under 18 at the time of application for juvenile record sealing
      - Over 18 = no waiting period
    - Final discharge is the same as adult record sealing – all fines and costs have been paid, all incarceration sentences have been served, and all terms of probation or other court orders have been satisfied

# Juvenile Record Sealing

- Applications must be filed at the juvenile court where the case was originally heard
  - And any other juvenile courts if the case was transferred at any point
- Complete the application and include as much supporting documentation as possible
  - Supporting documentation: work, school, volunteer, other evidence of rehabilitation since juvenile adjudication
- File the application at the Clerk of Court for the juvenile court where the case was originally heard
  - FREE! No filing fee

# Juvenile Record Sealing

- After filing the application to seal a juvenile record, local court policies determine what happens next
  - All courts ask the prosecutor's office to agree to the record sealing or to object
  - Some courts will not set a hearing if the prosecutor agrees to seal the record
  - Some courts will set a hearing even if the prosecutor agrees to seal the record
  - All courts will set a hearing if the prosecutor files an objection to the sealing of the record
  - If a hearing is set, the youth will need to be present

# Juvenile Record Sealing

- The judge will make the final decision about whether or not to seal a juvenile record
- This decision is **TOTALLY** within the judge's discretion. The judge can grant or deny the sealing for any or no reason.
- The law lays out factors that the judge should take into account when deciding whether to seal a juvenile record
  - Nature of the offense
  - Age of the juvenile offender at the time of the offense and at the time of application for sealing
  - School, work, volunteer and other activities since the time of the offense that show rehabilitation
  - Any other juvenile or adult criminal record

# Juvenile Record Sealing

- If the judge grants the record sealing application, the youth can honestly say that he or she does not have a juvenile record
- But, there are some government agencies that can still see a sealed juvenile record
- If the youth does nothing else, the sealed record will be expunged in 5 years or when you turn 23, whichever happens first
  - Youth should follow up to ensure this has happened

# Juvenile Record Expungement

- Expungement is the step AFTER sealing and means that the court permanently destroys the juvenile record and no one can see it.
- If you do nothing after your record is sealed, your record will automatically be expunged in 5 years or when you turn 23, whichever happens first.
- If the youth does nothing else, the sealed record will be expunged in 5 years or when you turn 23, whichever happens first
  - Youth should follow up to ensure this has occurred

# Juvenile Record Expungement

- Youth can apply for sealed juvenile records to be expunged before the 5 years/23 years old timeline
- The process is the same as applying to have a juvenile record sealed:
  - Contact Clerk of Courts for the application
  - Complete the application and include supporting documents
  - Attend hearing if one is scheduled by the court
    - Usually based on prosecutor's agreement or objection, but every court is unique
- Once a juvenile record is expunged, the record is permanently destroyed and no one will ever be able to view it

# Contact Information

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