

# **COURT SEALINGS (aka Expungements)**

**STATUTORY AND COMMON LAW**

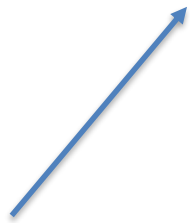


The University of Akron  
**School of Law**

# SUMMIT COURT STRUCTURE

SUMMIT COUNTY COURT OF COMMON PLEAS

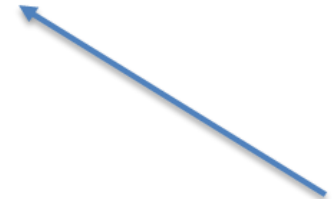
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# FELONY PROCESS – SUMMIT COUNTY

## Step 1

- Arrest or Summons
- Initial appearance
- Direct Indictment

## Step 2

- Preliminary hearing (waive or run)
- Grand Jury (Indictment, Remand or No Bill)

## Step 3

- Arraignment
- Pretrial
- Plea or Trial

**STATUTORY SEALINGS**  
**R.C. 2953.31-2953.36**

**THIS IS WHY WE ARE HERE**

# Roadmap

- 1.) Is the client an eligible offender?
- 2.) Is the offense eligible to be sealed?
- 3.) Are all other statutory requirements met?

# Eligible Offender (R.C. 2953.31)

- Two paths
  - Old Rubric – Two offenses but not two felonies (R.C. 2953.31(A)(1)(b))
  - New Rubric – Up to 5 felonies and unlimited misdemeanors (R.C. 2953.31(A)(1)(a))
- Convictions – All acts arising from the same series of events (or related criminal acts within a 3-month window)

# **MULTIPLE OFFENSES- COUNT AS 1**

- 2 Or 3 Convictions Within 3 Months
- Result from Same...
  - Indictment or Information
  - Guilty Plea
  - Official Proceeding
- COURT'S DISCRETION TO DETERMINE
- Applies to Old Rubric

# LEVEL OF OFFENSE

- R.C. 2953.36(B) - *“Sections [2953.31](#) to [2953.35](#) of the Revised Code apply to a conviction listed in this section if, on the date of the conviction, those sections did not apply to the conviction, but after the date of the conviction, the penalty for or classification of the offense was changed so that those sections apply to the conviction.”*
- **Red Flags** – Drug Paraphernalia (now MM under state code), Old Theft/RSP etc. cases (\$1,000 v. \$500 limits)



# Eligible Offender (Old Rubric)

- No more than 2 total convictions
- Only 1 can be a felony
- NOT counted

Minor misdemeanors

Traffic offenses (Except OVIs/DUIs, Hit Skip)

# Eligible Offender (New Law)

- Up to 5 felony and unlimited misdemeanor convictions
- Only 4<sup>th</sup> and 5<sup>th</sup> degree felonies
- No “offenses of violence or felony sex offenses”

# New Law Issues

- Does one ineligible offense prohibit sealing of all other offenses? **Maybe**
  - Violent or sex offenses prohibit sealing of any other convictions?
    - Importance of defining violent/sex offenses
  - F3 makes applicant ineligible for all other offenses

# New Law Issues

- No “offenses of violence or felony sex offenses”
  - What constitutes a sex offense?
    - Chapter 2907?
  - What constitutes an offense of violence?
    - R.C. 2953.36, R.C. 2901.01(A)(9)(a)? Different rules under “new” and “old” laws?

# LIMIT ON SEALING MULTIPLE OFFENSES

- Applicant with multiple convictions in one case may not seal any of the offenses if one is ineligible for sealing

*State v. Futrall*

(OSCT)

I.E. – Felonious Assault/Assault indictment

- Dismissed drug charge not eligible for sealing because it arose as a result of or in connection with a traffic conviction (driving under suspension)

*State v. Pariag*  
(OSCT)

- Legislature amended R.C.2953.61 post-*Pariag*
  - New R.C. 2953.61
    - May now seal dismissal even if part of traffic case – unless traffic case is OVI/Physical Control

# Roadmap

- 1.) Is the person an eligible offender? **YES**
- 2.) Is the offense eligible to be sealed?
- 3.) Are all other statutory requirements met?



# OFFENSES NEVER ELIGIBLE(R.C. 2953.36)

- 1<sup>st</sup> and 2<sup>nd</sup> degree felonies
- Carries mandatory prison term
- Many sex-based offenses (go to the code)
- Offense where the victim is under the age of 16 (Think Endangering Children)
- Most violent offenses (felony or 1<sup>st</sup> degree misdemeanor)
  - Big exceptions: M1 Assault, M4 DV/Menace (R.C. 2953.36(A)(3))

# Roadmap

- 1.) Is the person an eligible offender? **YES**
- 2.) Is the offense eligible to be sealed? **YES**
- 3.) Are all other statutory requirements met?

# OTHER REQUIREMENTS

## – Time Requirements

- Old Law/Rubric

- Felony: 3 years from completion of sentence
- Misdemeanor: 1 year from completion of sentence

- New Law/Rubric

- Misdemeanor: still 1 year
- Felony:
  - » 1 felony conviction – 3 years
  - » 2 felony convictions – 4 years
  - » 3+ felony convictions – 5 years

# OTHER REQUIREMENTS

## – Fines/Court Costs/Restitution:

- Must be paid in full
  - Wait time does not begin until fines and restitution are paid
    - court costs are at court's discretion
- No pending criminal (and probably traffic)

**DISMISSAL/NOT GUILTY/NO BILL**  
**R.C. 2953.52**

## Dismissals and Not Guilty Findings:

- Dismissal – need not wait until statute of limitations has expired (*State v. Dye*, 2017-Ohio-7823)
- Not Guilty – no waiting period
- No other eligibility requirements

## No Bill:

- Must wait 2 years to be eligible

The rest of the record is irrelevant.

Worth considering, even for clients with lengthy records.

# **COURT PROCESS**

- Court shall set a date for the hearing
- Court shall notify the prosecuting attorney
- Prosecutor may file written objections
- Court shall order written probation report
  - Must include fingerprints if taken at arrest
  - Must include status of child support if convicted of failure to pay child support



- Determine if eligible offender
- Are any criminal proceedings pending
- Has applicant been rehabilitated
- Consider any prosecutorial objections
- Weigh interests of applicant in sealing v. legitimate needs of government to keep records

**SEALING DOES NOT REALLY MEAN  
SEALING...**

# SEALING DEFINED

- The proceedings in the underlying case shall be considered not to have occurred
- Order restores the offender to all rights and privileges not otherwise restored by termination of the sentence or community-control sanction or final release on parole or post-release control

*Gyugo v. Franklin Cty. Bd. of Developmental Disabilities*, 151 Ohio St. 3d 1, 2017-Ohio-6953, 84 N.E.3d 1021, 2017 Ohio LEXIS 1581

# THOSE WHO CAN VIEW SEALED CONVICTION BY STATUTE

- Prosecutors, judges, and police if there are future criminal investigations;
- Employers in law enforcement, jobs working with children or the elderly, and some jobs in real-estate and financial institutions; and
- Most state professional-licensing boards

# WHAT SEALING MEANS FOR EMPLOYMENT/LICENSING

- R.C. 2953.33(B)(1)
    - “In any application for employment, license... a person may be questioned only with respect to convictions not sealed...unless the question bears a direct and substantial relationship to the position for which the person is being considered.”
- BUT – R.C 9.7(B) – Public employers may not ask about convictions on employment application

- No requirement that board/agency (employer) affirmatively demonstrate required relationship on application.

*Gyugo v. Franklin Cty. Bd.  
of Dev. Disabilities*  
(OSCT)

# Problem of Private Background Checks

The screenshot shows a Google search for "background check". The search bar contains the text "background check". Below the search bar, the results are categorized by "All", "News", "Images", "Shopping", "Maps", "More", "Settings", and "Tools". The "All" category is selected, and the results show "About 2,110,000,000 results (0.65 seconds)". A red circle highlights this result count. The search results include several links to websites offering background check services, such as "Instant Background Checks | Just Type in a Name & State" from www.truthfinder.com, "BACKGROUND CHECK—SEARCH FREELY | JUST ENTER A NAME &..." from www.beenverified.com, "GoodHire Background Checks | Official Website | GoodHire.com", "Top 10 Background check sites | The Best of The Best of 2019" from www.top10bestbackgroundcheck.com, and "Online Background Checks and Criminal Reports | backgroundchecks.com". At the bottom of the search results, there is a section titled "People also ask" with several questions related to background checks, such as "How do I do a background check on myself?", "What information is included in a background check?", and "What makes you fail a background check?".

# Problem of Private Background Checks

- Most commonly used by employers
- Fast, easy, cheap
- Must remove records if notified
  - How do you find them all?



# Problem of Private Background Checks

## –Other Options

- Triage – Contact companies as it appears
- Foundation for Continuing Justice
- Tell employers

# Questions



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