

## Expunging & Sealing of Juvenile Records

Sealing and Expunging Juvenile Records has historically been an area of confusion among juvenile court clerks. House Bill 137 was introduced into the 126<sup>th</sup> General Assembly in an attempt to reduce that confusion and streamline the process of sealing and/or expunging a juvenile record. The Bill was signed by the governor on July 11, 2006, with an emergency clause and became effective on October 12, 2006. The following is a summary of the law pertaining to Juvenile Court Clerks.

### *Seal*

"Seal a record" means to remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records accessible only to the juvenile court (O.R.C. § 2151.355 (B)).

The records of a case in which a person was adjudicated a delinquent child for committing a violation of section 2903.01, 2903.02, 2907.02, 2907.03, or 2907.05 of the Revised Code shall not be sealed (O.R.C. § 2151.356 (A)).

### *"Automatic" sealing*

The Juvenile Court shall promptly order the immediate sealing of records pertaining to a juvenile in any of the following circumstances (O.R.C. § 2151.356 (B)(1)):

1. If the court receives a record from a public office or agency pertaining to a juvenile who was arrested or taken into custody for allegedly committing a delinquent or unruly act, no complaint was filed against the person, and the person was not brought before or referred to the court for the commission of the act;
2. If a person was brought before or referred to the court for allegedly committing a delinquent or unruly act and the case was resolved without the filing of a complaint against the person;
3. If a person was charged with violating division (E)(1) of section 4301.69 of the Revised Code and the person has successfully completed a diversion program under division (E)(2)(a) of section 4301.69 of the Revised Code with respect to that charge;
4. If a complaint was filed against a person alleging that the person was a delinquent child, an unruly child, or a juvenile traffic offender and the court dismisses the complaint after a trial on the merits of the case or finds the person not to be a delinquent child, an unruly child, or a juvenile traffic offender;
5. If a person has been adjudicated an unruly child, that person has attained eighteen years of age, and the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child.

### ***"Discretionary" sealing***

The juvenile court shall consider the sealing of records pertaining to a juvenile upon the court's own motion or upon the application of a person if the person has been adjudicated a delinquent child for committing an act other than a violation of section 2903.01, 2903.02, 2907.02, 2907.03, or 2907.05 of the Revised Code, an unruly child, or a juvenile traffic offender and if, at the time of the motion or application, the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child. The motion or application may be made at any time after two years after the later of the following (O.R.C. § 2151.356(C)(1)):

1. The termination of any order made by the court in relation to the adjudication;
2. The unconditional discharge of the person from the department of youth services with respect to a dispositional order made in relation to the adjudication or from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication.

The court shall promptly notify the prosecuting attorney of any proceedings to seal records initiated pursuant to an application. The prosecuting attorney may file a response with the court within thirty days of receiving notice of the sealing proceedings. If the prosecuting attorney does not file a response with the court or if the prosecuting attorney files a response but indicates that the prosecuting attorney does not object to the sealing of the records, the court may order the records of the person that are under consideration to be sealed without conducting a hearing on the motion or application. If the court decides in its discretion to conduct a hearing on the motion or application, the court shall conduct the hearing within thirty days after making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration. If the prosecuting attorney files a response with the court that indicates that the prosecuting attorney objects to the sealing of the records, the court shall conduct a hearing on the motion or application within thirty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration (O.R.C. § 2151.356(C)(2)).

The juvenile court shall provide verbal notice to a person whose records are sealed if that person is present in the court at the time the court issues a sealing order, that explains what sealing a record means, states that the person may apply to have those records expunged, and explains what expunging a record means. The juvenile court shall provide written notice to a person whose records are sealed by regular mail to the person's last known address, if that person is not present in the court at the time the court issues a sealing order and if the court does not seal the person's record upon the court's own motion, that explains what sealing a record means, states that the person may apply to have those records expunged, and explains what expunging a record means (O.R.C. § 2151.356(D)(1)).

Upon final disposition of a case in which a person has been adjudicated a delinquent child for committing an act other than a violation of section 2903.01, 2903.02, 2907.02, 2907.03, or 2907.05 of the Revised Code, an unruly child, or a juvenile traffic offender, the juvenile

court shall provide written notice to the person that does all of the following (O.R.C. § 2151.356(D)(2)):

1. States that the person may apply to the court for an order to seal the record;
2. Explains what sealing a record means;
3. States that the person may apply to the court for an order to expunge the record;
4. Explains what expunging a record means.

If the court orders the records of a person sealed, the person who is subject of the order properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter, and the court, except as provided in O.R.C. 2151.357(D), shall do all of the following (O.R.C. § 2151.357 (A)):

1. Order that the proceedings in a case described in divisions (B) and (C) of section of the Revised Code be deemed never to have occurred;
2. Except as provided in division (C) of section 2151.357, delete all index references to the case and the person so that the references are permanently irretrievable;
3. Order that all original records of the case maintained by any public office or agency, except fingerprints held by a law enforcement agency, DNA specimens collected, and DNA records derived from DNA specimens, be delivered to the court;
4. Order each public office or agency, upon the delivering of records to the court, to expunge remaining records of the case that are the subject of the sealing order that are maintained by that public office or agency, except fingerprints, DNA specimens, and DNA records;
5. Send notice of the order to seal to any public office or agency that the court has reason to believe may have a record of the sealed record;
6. Seal all of the records delivered to the court under division (A)(3) of section 2151.357, in a separate file in which only sealed records are maintained.

Each entry regarding a sealed record in the index of sealed records shall contain all of the following (O.R.C. § 2151.357 (C)):

1. The name of the person who is the subject of the sealed record;
2. An alphanumeric identifier relating to the person who is the subject of the sealed record ;
3. The word "sealed";
4. The name of the court that has custody of the sealed record.

Any entry regarding a sealed record in the index of sealed records shall not contain either of the following:

1. The social security number of the person who is subject of the sealed record;

2. The name or a description of the act committed.

The court may maintain a manual or computerized index of sealed records (O.R.C. § (C)). Inspection of records that have been ordered sealed may be made only by the following persons or for the following purposes (O.R.C. § 2151.357 (E)):

1. By the court;
2. If the records in question pertain to an act that would be an offense of violence that would be a felony if committed by an adult, by any law enforcement officer or any prosecutor, or the assistants of a law enforcement officer or prosecutor, for any valid law enforcement or prosecutorial purpose;
3. Upon application by the person who is the subject of the sealed records, by the person that is named in that application;
4. If the records in question pertain to an alleged violation of division (E)(1) of section 4301.69 of the Revised Code, by any law enforcement officer or any prosecutor, or the assistants of a law enforcement officer or prosecutor, for the purpose of determining whether the person is eligible for diversion under division (E)(2) of section 4301.69 of the Revised Code;
5. At the request of a party in a civil action that is based on a case the records for which are the subject of a sealing order, as needed for the civil action. The party also may copy the records as needed for the civil action. The sealed records shall be used solely in the civil action and are otherwise confidential and subject to the provisions of this section.

### ***Expunge***

"Expunge" means to destroy, delete, and erase a record, as appropriate for the record's physical or electronic form or characteristic, so that the record is permanently irretrievable (O.R.C. § 2151.355 (A)).

### ***"Automatic" expungement***

The juvenile court shall expunge all sealed records five years after the court issues a sealing order or upon the twenty-third birthday of the person who is the subject of the sealing order, whichever date is earlier (O.R.C. § 2151.358 (A)).

### ***"Discretionary" expungement***

Upon application by the person who has had a record sealed, the juvenile court may expunge a sealed record (O.R.C. § 2151.358 (B)).

The court shall promptly notify the prosecuting attorney of any proceedings to expunge records. The prosecuting attorney may file a response with the court within thirty days of receiving notice of the expungement proceedings. If the prosecuting attorney does not file a response with the court or if the prosecuting attorney files a response but indicates that the prosecuting attorney does not object to the expungement of the records, the court may order the records of the person that are under consideration to be expunged without conducting a hearing on the application. If the court decides in its discretion to conduct a hearing on the application, the court shall conduct the hearing within thirty days after

making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration. If the prosecuting attorney files a response with the court that indicates that the prosecuting attorney objects to the expungement of the records, the court shall conduct a hearing on the application within thirty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records under consideration (O.R.C. § 2151.358 (B)(3)&(4)).

If the juvenile court is notified by any party in a civil action that a civil action has been filed based on a case the records for which are the subject of a sealing order, the juvenile court shall not expunge a sealed record until the civil action has been resolved and is not subject to further appellate review, at which time the records shall be expunged (O.R.C. § 2151.358 (C)).

After the records have been expunged, the person who is the subject of the expunged records properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter (O.R.C. § 2151.358 (D)).