

March 17, 2016

The Honorable Bill Seitz  
Senate Building  
1 Capitol Square, 1<sup>st</sup> Floor  
Columbus, Ohio 43215

Dear Senator Seitz,

Thank you for recently sharing draft legislation to amend sections 2953.31, 2953.32, 2953.321, 2953.33, 2953.36, 2953.51, 2953.52, and 2953.61 of the Revised Code, sealing of records. As you know, the Sentencing Commission created a Rights Restoration/Record Sealing Ad Hoc Committee to (1) collect available data on current practices under Ohio's existing statutes, and (2) identify and prioritize aspects of Ohio's existing statutory scheme that most need reform. That Ad Hoc Committee has reviewed the draft legislation, and I've attached a list of initial comments from Committee members for your consideration. Notably, the comments focus on issues of practical application rather than broader policy implications.

Additionally and importantly, the process of issue identification and data collection by the Ad Hoc Committee has reinforced concerns that it may be inefficient and/or ineffective to continue with piecemeal improvements to the existing statutory structure. The Committee's work, which is on-going, has illuminated the need to consider adopting a bolder approach to statutory reform in order to effectuate meaningful, realistic change.

As you know, Ohio and other states have long provided various means for former offenders to seal or expunge their criminal records. However, there is new urgency for strengthening and reforming such laws because: (1) expanded criminalization at the local, state and federal levels has dramatically increased the number of citizens saddled with criminal records, (2) expanded use of collateral sanctions at the local, state and federal levels has dramatically increased the impact and consequences of having even a minor criminal record, (3) technological advances have made it far easier and more common for official and non-official entities to store criminal records and make them readily accessible to various parties, and (4) empirical research and anecdotal evidence suggests that the burdens of even minor criminal history can be detrimental to former offenders obtaining employment and other services that are proven to reduce the likelihood of recidivism.

With these realities and concerns in mind, the Rights Restoration/Record Sealing Ad Hoc Committee is committed to exploring and drafting reform proposals which build and expand on efforts that "flip the norm" with respect to criminal records in Ohio: we are considering the possibility of proposing new laws and procedures that would provide, subject only to a few narrowly tailored exceptions, for presumptive or automatic sealing of nearly all criminal records after a certain period of law-abiding behavior. In other words, we are working to crafting a



recommendation to the General Assembly calling for repealing and replacing the existing record sealing statutory framework with a simplified, intelligible and purposeful statute grounded in evidence based policy and decision making.

The Ad Hoc Committee has identified three distinct subject matter areas for its work: (1) the administration and process for sealing and expungement; (2) expanded eligibility for relief through sealing and expungement, and (3) concerns for reformation including the executive branch clemency function and certificates of qualification for employment. We are diligently preparing a thorough and detailed analysis of these issues and are working toward the completion of a major draft document for the full Commission's consideration at its June 23, 2016 meeting.

Given the aforementioned, we respectfully ask you consider allowing us the time to develop broader written analysis and recommendations that will draw on national trends, peer-state developments and public policy advocacy to begin the process of proposing a revised 21<sup>st</sup> century approach for Ohio to these issues before further advancing the draft legislation. We believe we can provide such a product for the General Assembly's consideration by Fall 2016.

If you have questions or desire additional information, please contact me by email at [sara.andrews@sc.ohio.gov](mailto:sara.andrews@sc.ohio.gov) or by phone at 614-387-9311. On behalf of the Sentencing Commission and the Rights Restoration/Record Sealing Ad Hoc Committee, we appreciate all you do and look forward to working with you.

Kind Regards,

Sara Andrews, Director

Comments regarding I\_131\_1927:

- 1) The meaning of this sentence in lines 45-48 is unclear: "A conviction of a person for a minor misdemeanor in this state or any other jurisdiction does not make the person an 'eligible offender' for purposes of that division."
- 2) Given that (J) defines an eligible minor misdemeanor offender, lines 55-58 could lead to unintended confusion.
- 3) Lines 169-179:
  - a) Does an Ohio court have the authority to seal a record of conviction and all the attendant paperwork associated with the case where that conviction occurred in another state or federal court?
  - b) Consider that the automatic sealing of the MM record upon time of conviction may have unintended consequence that MM cases are not prosecuted and may impact resource allocation.
- 4) Lines 201-205 indicate a prosecutor may not object to the granting of an application of sealing of a pardoned case. Since pardoning is, itself, an executive act and since the statute does not allow for the Court to not grant the sealing either, why not just amend the pardon statute to have sealing of the record be ordered upon pardoning? Is it constitutional to prohibit the prosecutor from filing an objection? Isn't the prosecutor obligated to file such an objection if, for instance, the application was fraudulent in any way?
- 5) Concern about the limitation upon the prosecutor from objecting to an application for sealing of an MM violation on all but a few procedural grounds. The prosecution is a party in interest in the case and has the right to represent the state and/or political subdivision in these matters by raising an objection to the granting of the sealing.
- 6) Lines 378-382 indicate that an order to seal official records of an MM does not affect the official records of any convictions other than the MM, but does not address the common occurrence of MM accompanying other charges at the time of filing.
- 7) Lines 375-376 allow for use of these sealed records for stated purposes but lines 351-354 require that all index references to the case that pertain to the MM be deleted - how are the records located if the index is deleted? Also, how to re-locate the non-MM offenses connected to the sealed MM case if that index is deleted??
- 8) Lines 469-492 suggest that a defendant is permitted to plead to a MM that is charged alongside other non-MM violations, and have it immediately sealed. Under current law, the person is precluded from seeking sealing due to the pending matters. This may lead to logistical problems and an opportunity to 'Judge shop' in multi-judge courts.



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- 9) Lines 764-770 Can the prosecutor be prohibited from filing an objection and, for instance, if there is a dispute regarding whether or not there was a not guilty finding, isn't the prosecutor obligated to file an objection? There may be other reasons for a prosecutor to object, such as a pending co-defendant case which might argue against an immediate granting of an order to seal.
  
- 10) Lines 864-872 issue as noted previously, how to partially seal the record.