

MARCH 7, 2007

OHIO

I. Automatic Restoration of Rights:

A felony conviction results in the loss of civil rights, except that a person may vote during a period of probation (“non-jail community control sanction”) or parole. Ohio Rev. Code Ann. § 2961.01(A). Other civil rights are restored upon a final release from parole or post-release control. § 2967.16(C). A final release is not available earlier than one year after release on parole or post-release control, and in the case of a person serving a minimum sentence of life, not earlier than five years after release on parole or post-release control. § 2967.16(A). A person sentenced to a “community control sanction” (including probation or a fine) regains the right to hold office and sit on a jury upon completion of the sanction. §§ 2961.01, 2967.16(C)(3).

The disqualification from office or employment for persons convicted of soliciting or receiving improper compensation terminates seven years after the date of conviction. Ohio Rev. Code Ann. § 2921.43(E).

The general restoration of rights includes only civil rights and not firearms privileges, which may be restored either by a pardon or by a court (see below).

A general survey of the collateral consequences of conviction in Ohio can be found in Kimberly R. Mossoney and Cara A. Roecker, “Ohio Collateral Sanctions Project,” 36 U. Toledo L. Rev. 611 (2005).

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority*: Ohio Const. art. III, § 11: The pardon power, except for treason and cases of impeachment, is vested in the Governor, “subject ... to such regulations as to the manner of applying for commutations and pardon, as may be prescribed by law.” Ohio Rev. Code Ann. § 2967.07 requires that all applications for clemency be made in writing to the Adult Parole Authority (part of Parole and Community Services Division of Department of Corrections), which is required by law to investigate and make a recommendation to the Governor on every application, but whose recommendation is advisory only. The constitution requires that the Governor must report to the legislature at every session. Ohio Const. art. III, § 11.
- *Administration*: “The Ohio Parole Board is the bureau of the Adult Parole Authority assigned to process clemency applications. The Governor may also direct the Parole Board to investigate and examine any case for the

propriety of clemency. Upon completion of its examination, the Parole Board sends a report to the governor providing a summary of the facts in the case, a recommendation for or against the granting of clemency, and the reasoning behind the recommendation.”

<http://www.drc.state.oh.us/web/ExecClemency.htm>.

- *Eligibility:* A person may apply for a pardon at any time, though ordinarily clemency is granted after a person has shown “an ability to live a crime-free lifestyle.” See Ohio Parole Board Application for Executive Clemency Instructions and Guidelines at <http://www.cjpf.org/clemency/OhioApp2.pdf>. Also, a person who is denied clemency must wait two years to re-apply unless they Parole Board determines otherwise. Only Ohio convictions eligible. *Id.*
- *Effect:* An unconditional pardon “relieves the person to whom it is granted of all disabilities arising out of the conviction or convictions from which it is granted.” Ohio Rev. Code Ann. § 2967.04(B). It “purges away all guilt and leaves the recipient from a legal standpoint in the same condition as if the crime had never been committed.” See *State v. Cope*, 676 N.E.2d 141, 142 (Ohio Ct. App. 1996), *appeal denied*, 673 N.E.2d 135 (Ohio 1996), quoting from *State ex rel. Gordon v. Zangerle*, 26 N.E. 2d 190, 194 (Ohio 1940). Since a pardon “erases” the conviction, the recipient is “entitled” to have the court seal its records. *Id.* at 143. A person who has been pardoned may deny that he has a criminal record.
- *Process:* Application to Parole Board, which conducts investigation. Ohio Rev. Code Ann. §§ 2967.03, 29.67.07. Parole Board Instructions and Guidelines, *supra*. Thirty days prior to making a recommendation, Board must give notice to court, prosecutor, victim and/or victim’s family. § 2967.12. Victim invited to submit written comments, and make recommendation. *Id.* Meritorious cases may or may not be granted a hearing, and a recommendation is then sent to the Governor. See Ohio Admin. Code 5120:1-1-15. The Governor reviews all clemency applications- even the Parole Board denials. He considers all factors (individuals are free to submit whatever information they believe is relevant). Obviously, factors like nature of the crime, time served, institutional adjustment/programming, recommendations of judge/prosecutor, letters of support, community service all factor into his decision, but everything is considered. He may grant full pardon, or include reservations. The entire process takes between 6-8 months. See <http://www.cjpf.org/clemency/OhioApp2.pdf>.
- *Frequency of Grants:* Very few of those who apply are granted (though most of those recommended favorably by Parole Board are granted). Voinovich (1991-1998) considered 4621 clemency applications, granted 69 pardons and 50 commutations. In 6 years (through the end of 2004) Taft has considered 1153 clemency applications, 225 for pardon. He has granted 48 pardons, slightly over 21% of those considered. (He has also granted eight commutations and 6 “imminent danger of death” compassionate releases.)

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B. Judicial sealing or expungement of adult felony convictions:

1. First Offender Sealing

- *Authority:* Ohio Rev. Code Ann. §§ 2953.31-2953.36. Upon application, court may order all records relating to certain minor non-violent convictions sealed if it determines that: (1) the applicant has no other criminal record; (2) the applicant has no charges pending against him or her; (3) “the interest of the applicant in having the records pertaining to his conviction ... sealed are not outweighed by any legitimate governmental needs to maintain those records”; and (4) “the rehabilitation of an applicant ... has been attained to the satisfaction of the court.” § 2353.32(C)(2).
- *Eligibility I:* The “first offender” requirement is a jurisdictional requirement for eligibility. *State v. Coleman*, 691 N.E.2d 369 (Ohio Ct. App. 1997) (Judge Bettman’s concurring opinion points out the concerns associated with such a limiting definition). The original definition of “first offender” was enlarged by several amendments to address problems apparently perceived by the General Assembly. *See State v. Patterson*, 714 N.E. 2d 409 (Ohio Ct. App. 1998); *Anderson’s Ohio Criminal Practice and Procedure* ch. 43 (9th ed, 2003). Section 2953.31(A) now provides that “two or more” convictions may be counted as one if they are “connected with the same act, or result from offenses committed at the same time;” or, if occurring within three months, “two or three” offenses are contained in the same indictment. *See State v. Broadnax*, ___ N.E. ___, 2005 WL 1413235 (Ohio App. 1 Dist., 2005) (physician convicted of six counts of distributing drugs illegally on four different occasions held ineligible for sealing).
- *Eligibility II:* Persons convicted of a felony must wait three years after final discharge, misdemeanants one year. The sealing statute, by its terms, applies to federal and out-of-state convictions as well as Ohio convictions. Ohio Rev. Code Ann. § 2953.32(A)(1). Misdemeanor arrest records may also be sealed. § § 2953.32(A)(2).
- *Eligibility III:* Any crime carrying a mandatory prison term is ineligible; also, more specifically, first and second degree felonies, crimes of violence (including robbery and domestic violence), sex offenses, offenses against minors, certain traffic offenses. Ohio Rev. Code Ann. § 2953.36.

- *Procedure and Standards*: Spelled out in § 2953.32(B). Court must notify prosecutor, who is permitted to object. Information gathers information relevant to rehabilitation through probation office. In performing the balancing test set out in § 2353.32(C), courts must liberally construe the statute in favor of the individual’s right to privacy, and should deny only when that right is outweighed by a legitimate government interest. See Pierre H. Bergeron and Kimberley A. Eberwine, *One Step in the Right Direction: Ohio’s Framework for Sealing Criminal Records*, 36 U. Tol. L. Rev. 595, 600 (2005)(citing cases).
- *Effect*: Sealing “restores the person . . . to all rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release on parole or post-release control.” Ohio Rev. Code Ann. § 2953.33(A). Private and public employers, including occupational licensing authorities, may not question a person about a sealed adult conviction, unless the question “bears a direct and substantial relationship to the position for which the person is being considered.” § 2953.33(B). In addition, any public employee who discloses sealed conviction in connection with application for employment or license is guilty of a misdemeanor. §§ 2953.35; 2953.54. Sealing does not restore the right to hold public office to a public servant convicted of bribery in office. *State v. Bissantz*, 532 N.E.2d 126 (Ohio 1988). Sealed records may be used in sentencing for another offense, in determining whether to seal records of a subsequent conviction, and in charging a person with a new offense when the nature and character of that offense would be affected by the sealed information. Ohio Rev. Code Ann. §§ 2953.32(D), 2953.32(E). Sealed records may also be accessed by state agencies in connection with applications for state employment. § 2953.32(D).

Disclosure: It appears that first offender sealing statute does not give recipient option of denying existence of record, even if questioned improperly about it. *Cf.* § 2953.55(A)(sealing upon finding of not guilty specifically permits a person to deny record).

- *Comments I*: Courts have expressed concern over sealing provision in suits brought by media to gain access to sealed records. See *State ex rel. Cincinnati Enquirer v. Winkler*, 782 N.E.2d 1247 (Ohio Ct. App. 2002) (*Enquirer II*); *State ex rel. Cincinnati Enquirer v. Winkler*, 777 N.E.2d 320 (Ohio Ct. App. 2002) (*Enquirer I*). Legislative efforts to expand scope of statute to help returning offenders with employment opportunities have met with resistance. See Lisa Rab, “Forgive and Forget? The Push to Keep Criminal Records from Employers,” *CleveScene*, <http://www.clevescene.com/Issues/2005-09-21/news/news2.html>
- *Comments II*: The record of sealing and expungement filings from Hamilton County suggests that felony offenders are aware of the availability of this remedy and do file applications to seal their records:

Year	Number of Filings
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Margaret Colgate Love, Relief from the Collateral Consequences of a Criminal Conviction, March 2007

2004	635
2003	513
2002	583

No data on the frequency of grants could be obtained by the time of publication. Also, it is not clear whether the number of filings reflects only applications for relief from convicted persons or whether it also includes applications from people seeking the seal arrest records that did not result in conviction.*

- *Sealing of Arrest Records*: Sealing also available for records that did not lead to a conviction, or in which conviction was overturned, Ohio Rev. Code Ann. § 2953.52, and no inquiry may be made about such a sealed record. § 2953.55.
- *Sealing of Pardoned Offenses*: Trial court may exercise its common law jurisdiction to seal record of a conviction that has been erased by a pardon, regardless of whether petitioner has other offenses on his record. *See State v. Cope*, 676 N.E.2d 141 (Ohio Ct. App. 1996).
- *Firearms restoration*: Firearms disabilities, imposed for a conviction of a crime of violence or certain drug offenses, *see* Ohio Rev. Code. Ann. § 2923.13(A), may be removed by petitioning a state court for restoration of firearm privileges. The applicant must be “fully discharged from imprisonment, probation, or parole” have “led a law abiding life since his discharge or release” and “appear likely to continue to do so” and not be “otherwise prohibited by law from acquiring, having, or using firearms.” § 2923.14(D).
- *Proposed Expansion of First Offender Expungement Authority*: Pending proposal has been introduced in Ohio legislature to expand expungement authority in Ohio Rev. Code Ann. §§ 2953.31-2953.36 to apply to people with prior offenses, after an eligibility period of seven years. H.B. 317. *See* www.restorationmovement.citymax.com.

* According to an e-mail from Judge Robert Gorman dated October 29, 2004, “the original reason for creating this remedy was to seal the records of people convicted of possession of marijuana and certain traffic offenses in the 1960’s and 1970’s. The intent was that those convictions, often the product of the culture of the day, would not interfere with current or future employment opportunities of young people. Gradually, as they became more comfortable with the concept, judges expanded expungement to all situations based on potential hardship. Judicial applications prompted the General Assembly to start tweaking the procedure by a series of amendments. For example, because of the Ohio Supreme Court’s decision in *Pepper Pike v. Doe* [421 N.E.2d 1303 (Ohio 1981)], the General Assembly added a new section covering the sealing of *arrest* records where the charge was dismissed or the defendant was acquitted. The General Assembly later precluded the sealing of records for mandatory prison terms and certain specific felonies (R.C. 2953.36).”

C. Administrative certificate: N/A

III. Nondiscrimination in Licensing and Employment:

No nondiscrimination law per se. However, if conviction has been sealed pursuant to first offender sealing statute, Ohio Rev. Code Ann. § 2953.31 et seq., a person may not be questioned by an employer or licensing board about it “unless the question bears a direct and substantial relationship to the position for which the person is being considered.” § 2953.33(B). If an arrest record not leading to conviction has been sealed pursuant to § 2953.52, an employer or licensing agency may not question the person about it at all, § 2953.55(A), and anyone who discloses the information is guilty of a misdemeanor in the fourth degree. § 2953.55(B).