



DRUG ENFORCEMENT AND POLICY CENTER

# Re-Imagining “Second Chances”: Improving Ohio’s Re-Entry Provisions

Law School/Recent Graduate Drafting Contest

in collaboration with



COLLATERAL  
CONSEQUENCES  
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CENTER

## INTRODUCTION

Approximately 77 million Americans—roughly 1 in 3 adults—has some form of criminal record.<sup>1</sup> It is estimated that nearly a million Ohio residents have a felony conviction, and that 1 in 3 adult Ohioans has a criminal record of some kind.<sup>2</sup> Such records can impose significant barriers to employment, housing, and other means of community reintegration. One recent study identified over 850 Ohio laws and regulations limiting job opportunities for people with criminal records.<sup>3</sup> Moreover, like much else in our system of criminal law, these “collateral sanctions” impose disparate impacts across racial groups, exacerbating racial inequities.<sup>4</sup>

These kinds of barriers often continue to impact people long after their sentences have resolved—that is, long after all debts owed to society have been fulfilled. Especially as unemployment worsens in light of COVID-19, these barriers can often be the difference between economic stability and downfall.

Ohio makes a few tools available to individuals constrained by past criminal convictions, but the tools are complicated and can be hard to access. One tool is record sealing,<sup>5</sup> which is currently available only to those who can satisfy one of two “pathways” to eligibility,<sup>6</sup> have no pending criminal cases,<sup>7</sup> and have waited a sufficient time after the full conclusion of the relevant sentence.<sup>8</sup> Even then, however, record sealing is available only for certain types of convictions.<sup>9</sup>

<sup>1</sup> See NAT’L CONF. OF STATE LEGISLATORS, BARRIERS TO WORK: PEOPLE WITH CRIMINAL RECORDS, <https://www.ncsl.org/research/labor-and-employment/barriers-to-work-individuals-with-criminal-records.aspx> (July 2018).

<sup>2</sup> See Michael Shields & Pamela Thurston, WASTED ASSETS: THE COST OF EXCLUDING OHIOANS WITH A RECORD FROM WORK (Dec. 18, 2018), <http://www.ohiojpc.org/wp-content/uploads/2019/10/Collateral-Sanctions-12-18-2018-1.pdf>

<sup>3</sup> See *id.*

<sup>4</sup> See J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2462 (2020).

<sup>5</sup> See Ohio Rev. Code § 2953.31–2953.33, 2953.36.

<sup>6</sup> *Id.* § 2953.31(A)(1)(a)–(b).

<sup>7</sup> *Id.* § 2953.32(C)(1)(b).

<sup>8</sup> *Id.* § 2953.32(A).

<sup>9</sup> See *id.* § 2953.36.

While record sealing makes a criminal record invisible to most people for most purposes,<sup>10</sup> expungement in Ohio makes a record permanently irretrievable.<sup>11</sup> Although the terms “record sealing” and “expungement” are often used interchangeably, Ohio law makes true expungement of convictions available in only a very small number of specific situations.<sup>12</sup> In addition, while non-convictions such as dismissals or acquittals can be sealed more readily under Ohio law<sup>13</sup>, Ohio lacks an automatic, expedited, or administrative process for sealing or expunging such non-conviction records.<sup>14</sup>

Ohio law also allows individuals to apply for a Certificate of Qualification of Employment, or “CQE.”<sup>15</sup> A CQE eliminates most mandatory legal barriers to employment imposed by criminal convictions and provides immunity from negligent hiring liability for employers, so long as they know that the employee has a CQE.<sup>16</sup>

Ohio’s record sealing, expungement, and CQE remedies all require a court proceeding. Individuals seeking relief from collateral sanctions in Ohio can also petition the Governor for a pardon through a process overseen by the Adult Parole Authority.<sup>17</sup> While pardons (like other forms of executive clemency) remain rare, the Governor recently announced the creation of the Expedited Pardon Project, which seeks to speed the pardon process for qualifying individuals.<sup>18</sup>

Many states have recently enacted laws to provide greater access to criminal record- sealing or relief from collateral sanctions.<sup>19</sup> Indiana, for example, a few years ago passed a comprehensive bill making it easier for many more people to access relief.<sup>20</sup> In California, beginning in 2022, record sealing will be largely automated for many people.<sup>21</sup> And in Pennsylvania, under a recent law, roughly 30 million existing records will be sealed automatically.<sup>22</sup> Last, please run the “Check Accessibility” tool under the “Review” menu to see how you can make the document more inclusive. Each of these states outpaced Ohio—which ranked 22<sup>nd</sup>—in the Collateral Consequences Resource Center’s recent ranking of state (and D.C.) rights-restoration mechanisms.<sup>23</sup>

## CONTEST OBJECTIVE AND DELIVERABLE

With the goal of furthering the ongoing debate of how such “second chance” mechanisms can be improved in Ohio, the [Drug Enforcement and Policy Center](#) (DEPC) at the Moritz College of Law at The Ohio State University, the [Ohio Justice & Policy Center](#) (OJPC), and the [Collateral Consequences Resource Center](#) are sponsoring a contest for law students and recent law-school graduates. Specifically, entrants are encouraged to submit a proposal and accompanying commentary suggesting changes to Ohio’s existing statutory provisions that would

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<sup>10</sup> See *id.* § 2953.32(D) (exceptions).

<sup>11</sup> See *id.* § 2953.37–.38.

<sup>12</sup> See, e.g., *id.* (expungement for certain firearm convictions and for victims of human trafficking).

<sup>13</sup> See *id.* § 2953.51–.52.

<sup>14</sup> See Restoration of Rights Project [https://ccresourcecenter.org/state-restoration-profiles/ohio-restoration-of-rights-pardon-expungement-sealing/#III\\_Expungement\\_sealing\\_and\\_other\\_record\\_relief](https://ccresourcecenter.org/state-restoration-profiles/ohio-restoration-of-rights-pardon-expungement-sealing/#III_Expungement_sealing_and_other_record_relief)

<sup>15</sup> *Id.* § 2953.25.

<sup>16</sup> *Id.* § 2953.25(D), (G).

<sup>17</sup> See *id.* § 2967.03.

<sup>18</sup> See DRUG ENFORCEMENT & POLICY CENTER, *Ohio Governor’s Expedited Pardon Project*, <https://www.ohioexpeditedpardon.org>

<sup>19</sup> See generally Collateral Consequences Resource Center, *The Many Roads to Reintegration: A 50-State Guide to Restoration of Rights and Opportunities after Arrest or Conviction* (2020).

<sup>20</sup> See Joseph C. Dugan, *I Did My Time: The Transformation of Indiana’s Expungement Law*, 90 *Ind. L.J.* 1321, 1337–43 (2015).

<sup>21</sup> Nicj Cahill, *California Governor Signs Bevy of Criminal Justice Bills*, Courthouse News Service, October 8, 2019, <https://www.courthousenews.com/california-governor-signs-bevy-of-criminal-justice-bills/>

<sup>22</sup> See, e.g., Faith Karimi, *Pennsylvania Is Sealing 30 Million Criminal Records as Part of Clean Slate Law*, CNN.COM (June 28, 2019), <https://www.cnn.com/2019/06/28/us/pennsylvania-clean-slate-law-tmd/index.html>.

<sup>23</sup> Love & Schluskel, *supra* note 20, at 103–04.

help people obtain relief from collateral consequences.

The proposal should address both substance (e.g., when and to whom would it apply) and procedure (e.g., how would it function). The proposal can, but need not be, drafted as proposed legislative text; a “policy paper” or other like submission is acceptable, though any submission must include an actionable proposal for reform of Ohio laws. The proposal might include concrete suggestions for making existing tools more broadly and easily accessible, but it could also advocate for wholesale changes to the mechanism and means for relief in Ohio.

## CONTEST TIMELINE AND AWARDS

**Submissions are due January 11, 2021.** The winning submission will receive a prize of **\$1,500**, and one runner-up prize of **\$500** will also be awarded. If a group submission is awarded prize money, it will be divided equally among the group’s members. All winning submissions will be published via DEPC and OJPC’s websites. The full winning proposals may be used in DEPC and OJPC’s ongoing efforts to advocate for improvements in Ohio law.

To submit your entry, go to [go.osu.edu/second-chance-submit](https://go.osu.edu/second-chance-submit).

## CONTACT

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