

NOVEMBER 2022

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An Alternative Revised Code Approach to Reduce Housing Barriers for those with Older Evictions in Ohio



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INTRODUCTION

In Ohio Senate Bill 158 (2021-2022), an eviction expungement was proposed. While this proposed legislation is certainly a commendable effort to address an important issue, the current formulation of the bill contains shortcomings that may hinder the overall objective of reducing housing barriers for those with evictions. The first section below discusses issues with the current eviction expungement bill and proposes alternative approaches. The second section below presents statutory language seeking to effectuate one of the alternative approaches.

ISSUES WITH THE CURRENT EVICTION EXPUNGEMENT BILL AND ALTERNATIVE APPROACHES

A. Issues with the Current Eviction Bill

First, an eviction expungement likely cannot limit previous landlords from conveying evictions to prospective landlords during reference checks. This could severely limit the effectiveness of the eviction expungement. While individuals could avoid noting residences that resulted in an eviction in their rental history, doing so would leave gaps in one's rental history which, without a reasonable explanation, could lead to negative inferences. Second, unless motions for eviction expungements are predominately made by courts, this mechanism could go largely unused because of awareness and accessibility issues.¹ Third, it could take a considerable amount of time and effort to secure the information necessary for judges to determine, with any sufficient degree of certainty, that an eviction is no longer a reasonable predictor of future tenant behavior. Finally, individuals who are denied an eviction expungement could face even more housing barriers if the denial would become public record.

There are also several technical shortcomings in the eviction expungement bill that would require considerable effort to remedy (e.g., the lack of general processing timelines for courts and timelines for previous landlord feedback, the lack of a clear standard of proof, the need to address how individuals can answer questions about expunged evictions in non-housing settings, the need for clarification surrounding the application of rebuttable presumptions). Examining the detail in Ohio's criminal record sealing statutes is particularly useful to identify these shortcomings. Additionally, the value of seeking input from landlord(s) who initiated the eviction action could also be questionable. For example, it could be quite possible that individuals who handled evictions for particular properties are no longer employed by that property management company when information is solicited, meaning that the submission of substantive landlord information could be arbitrary.

¹ See Prescott, J. J., & Starr, S. B. (2020). Expungement of criminal convictions: An empirical study. *Harvard Law Review*, 133(8), 2460-555. This study found that only about 6.5% of individuals eligible for expungement of criminal convictions in Michigan applied for relief.

B. Alternative Approaches

Given the need for an eviction relief mechanism and the abovementioned issues with the eviction expungement, I propose the utilization of Ohio's fair housing laws to limit the negative impact of older evictions. Specifically, I propose a provision that limits the ability of landlords to consider evictions older than a certain number of years from the date of the judgement entry. Utilizing a targeted amendment to fair housing laws is beneficial for several reasons. First, fair housing laws are already established and contain considerable remedies for violations (including remedies at no cost for the aggrieved person).² Second, utilizing an amendment to fair housing laws means that the duty of compliance would be immediately placed upon landlords after passage. While it certainly could be argued that there is a possibility of non-compliance, it is reasonable to assume that most would comply to avoid significant penalties. And as noted above, it is possible that eviction expungements could have awareness and accessibility issues. Therefore, utilizing fair housing laws should reach more individuals impacted by older evictions. Finally, given research showing that those with evictions are more likely to be suffering from economic and other forms of disadvantage,³ a provision that limits the ability of landlords to consider older evictions fits well within the overall spirit of Ohio's fair housing laws.

Noticeably absent from this proposal to utilize fair housing laws instead of an eviction expungement is the threshold when a landlord can no longer consider an eviction. While the current eviction expungement bill includes 3-year and 7-year thresholds, I am aware of no research that identifies how many years need to pass before a previous eviction is no longer a reliable predictor of future evictions or other negative tenant behavior. To arrive at an evidence-based threshold, it may be best to conduct research that seeks to determine when a previous eviction is no longer a reasonable predictor of future negative tenant behavior. Results of this research may indicate that more than one threshold may be reasonable.

While a fair housing approach is the recommended alternative in this proposal, it is worthy of note that many of the above issues with the eviction expungement bill could be resolved with a Revised Code statute that automatically requires all Ohio courts to expunge evictions older than a particular threshold (e.g., 7 years). The costs and benefits of both approaches (fair housing approach and automatic expungement approach) should be carefully weighed. Utilizing both quantitative data (estimates of when an old eviction is no longer a reliable predictor of future evictions) and qualitative data (seeking input from affected parties such as court personnel, landlords, and tenants) would be critical for sound policy.

PROPOSED AMENDMENT TO SECTION 4112.02 | UNLAWFUL DISCRIMINATORY PRACTICES.

It shall be an unlawful discriminatory practice:

(H) Subject to section 4112.024 of the Revised Code, for any person to do any of the following:

(17) Except as otherwise provided in division (H)(17) of this section, make an inquiry to determine whether an applicant for the sale or rental of housing accommodations, a person residing in or intending to reside in the housing accommodations after they are sold, rented, or made available, or any individual associated with that person has a disability, or make an inquiry to determine the nature or severity of a disability of the applicant or such a person or individual.

The following inquiries may be made of all applicants for the sale or rental of housing accommodations, regardless of whether they have disabilities:

(a) An inquiry into an applicant's ability to meet the requirements of ownership or tenancy. *However, it shall be unlawful discriminatory practice to refuse an applicant for the sale or rental of housing accommodations solely because of any entry of eviction that is more than x years old;*

or

However, any entry of eviction that is more than x years old shall not be considered in determining an applicant's ability to meet the requirements of ownership or tenancy.

² Section 4112.05 | Filing a charge of unlawful discriminatory practice; Section 4112.055 | Housing discrimination civil action; Section 4112.056 | Refer housing discrimination claim to attorney general; Section 4112.11 | Compliance with commission orders for evidence; Section 4112.99 | Civil penalty; Section 4112.061 | Right of commission to appeal judgment by court.

³ Desmond, M., & Gershenson, C. (2017). Who gets evicted? Assessing individual, neighborhood, and network factors. Social science research, 62, 362-377.

(b) An inquiry to determine whether an applicant is qualified for housing accommodations available only to persons with disabilities or persons with a particular type of disability;

(c) An inquiry to determine whether an applicant is qualified for a priority available to persons with disabilities or persons with a particular type of disability;

(d) An inquiry to determine whether an applicant currently uses a controlled substance in violation of section 2925.11 of the Revised Code or a substantively comparable municipal ordinance;

(e) An inquiry to determine whether an applicant at any time has been convicted of or pleaded guilty to any offense, an element of which is the illegal sale, offer to sell, cultivation, manufacture, other production, shipment, transportation, delivery, or other distribution of a controlled substance.