

The ALERT



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The Importance of Sealing an Arrest Record

By Jennifer Kinsley, Esq.



Any time a person is arrested, a record of that arrest is created. This record could be a police report, a booking report, or other data about the arrest entered into police computer systems. In some cases, arrests result in court cases being filed against the arrested person. This creates even more records which could include court records and records of criminal convictions.

Some records can be sealed so that most people, including employers or landlords, cannot see them. For example, when a person is charged with a crime but is found not guilty or their case is dismissed, those court records and the related arrests can be sealed. And when a person is found guilty of a crime, eligible offenders can apply to have that conviction and related arrest records sealed.

But what about when a person is arrested and released from jail but no charges are ever filed against them? Is there still a record of that arrest that employers or landlords can access? Yes!

A person's arrest record can be a frustrating barrier to housing or employment, even when the arrest does not result in that person being charged with a crime. In Ohio, there is no right to seal an arrest record, and there are no laws to guide people who are trying to seal their record. This makes figuring out how to seal arrests difficult for people who would like to move forward with a clean slate.

If you have been arrested and no charges resulted from the arrest, you should call the police department that arrested you and ask what steps you need to take to seal your record. Each police department or city may have a different policy on how they seal arrest records. It's a good idea to wait at least six months after an arrest to apply to have the arrest record sealed. In some places, you may need to file paperwork in a court to ask for an order from a judge. In other places, the police may be able to seal your record without a court process. If you need assistance with sealing any criminal or arrest records, contact The Legal Aid Society of Cleveland at 888.817.3777.

Sealing a Criminal Record in the Digital Age

By Chloé Sudduth



One in three adults in the United States has a criminal record. Many people face collateral consequences for crimes they committed many years ago. Collateral consequences are other penalties outside the criminal system that come from criminal justice involvement. In Ohio, people with convictions face nearly 900 collateral consequences¹. These collateral consequences limit someone's ability to get a job, find housing, or pursue an education. Today, nearly 9 in 10 employers², 4 in 5 landlords³, and 3 in 5 colleges⁴ use background checks to screen applicants.

Most states, including Ohio, have a process for sealing criminal records to avoid collateral consequences. After a record is sealed, it won't show up when looking at a court database. Unfortunately, most employers, landlords and colleges do not use current court databases when screening applicants. Instead, they use data from private companies like CoreLogic and Experian to complete background checks.

Court records, arrest records, and mug shots are considered public information in most states. This means that companies can gather then share the information. The companies do not have to check that the information they share is currently accurate. As a result, if a company shares information about a person's conviction, and later that person seals the record of the conviction, the company can still share that old information. This leaves people afraid that a future employer or landlord might find outdated information about their criminal history on the internet.

To protect against this problem, always keep a copy of the court order sealing your criminal record. If you were arrested, but never charged or convicted, ask the police department where the arrest happened how to seal your arrest record. It may also be helpful to apply for a Certificate of Qualification for Employment (CQE) in addition to sealing your record. Applicants should ask a potential employer, landlord, or school to conduct an individualized assessment of their application and not rely only on background checks or other publicly available data.

¹<http://www.ohioipc.org/ohios-wasted-assets-a-new-report-on-unemployment-and-underemployment-due-to-criminal-convictions/>

²<http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>

³David Thacher, "The Rise of Criminal Background Screening in Rental Housing," *Law and Social Inquiry* 33 (1) (2008): 5, 12.

⁴<http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf>

Record Sealing and Certificates of Qualification for Employment (CQEs)

By Lauren Gilbride, Esq

Criminal records can prevent people from doing many things: getting a new job, being promoted and finding quality housing are just a few. In Ohio, there are two legal tools to help with these issues.

Record sealing:

Record sealing is also commonly called "expungement." If you seal your record it is hidden from most employers and landlords. In 2018 the law changed in Ohio and now more people can seal their records. You can now have up to 5 felonies and an unlimited number of misdemeanors and be eligible. But none of your convictions can be for violent crimes or 1st, 2nd or 3rd degree felonies. You cannot seal your record until you complete your sentence, including paying any fines and completing any probation or required classes. Once you finish your sentence you must wait between 1-5 years to seal your record. How long you must wait depends on the type of case and how many other convictions you have. You can also seal cases that were dismissed or in which you were found not guilty. To seal your record, you must file in court and the court must grant your request.

Certificate of Qualification for Employment (CQE):

A CQE is a different tool to assist people in getting a job, obtaining some

state licenses, and finding quality housing. A CQE is a certificate signed by a judge that encourages employers to consider your job application even if you have a criminal record. An employer may be more likely to hire you if you have a CQE, even if you cannot seal a criminal record. The CQE protects your potential employer from lawsuits related to hiring you. Many people that are not eligible to seal records may still be eligible for a CQE. Some people that seal their records may also want a CQE. You must wait a year after you complete your sentence from a felony conviction (including all fines and community service) before you can apply for a CQE. The waiting period is six months for a misdemeanor conviction. To apply for a CQE, you must first file your CQE application with the Ohio Department of Rehabilitation and Correction (ODRC). If ODRC approves the application, you then file the CQE application in the county court where you live. The court can charge a filing fee of \$50, but you may be able to ask the court to file the application without paying a fee by filing a poverty affidavit along with your application. The court will then look at your application and decide whether to grant you a CQE.

Please contact Legal Aid at 888.817.3777
if you would like help with record sealing or a CQE.

Entrepreneurship as a Reentry Strategy

By Julie Cortes, Esq.

A criminal record is a huge barrier to finding a job. But having a job is vital for successful reentry. Many companies do not want to hire people with criminal records. Many jobs are not open to people with criminal records because of state laws. The jobs open to people with criminal records pay lower wages. These jobs also do not offer chances to move up in the company. Some people can find jobs after they seal their criminal record. Some people can find jobs after getting a certificate of qualification for employment. Others are choosing to start their own businesses.

People with a criminal record can start a business. Business ownership can provide steady work and income. Starting a business requires an idea, and the drive and grit to persevere. It is hard work and is not for everyone. But for some people with a criminal record, entrepreneurship is a way to get around barriers to employment. For example, as a business owner, you don't have to worry about losing a job offer after a

background check. Business ownership is also good for the community. Successful business owners are less likely to return to prison. Business owners with criminal records are more likely to hire other workers with criminal records. Small business development spurs economic growth in the community and builds wealth that can be left to future generations.

The Legal Aid Society of Cleveland created the Legal Center for Low-Income Entrepreneurs to help people develop businesses. Partner organizations refer clients to Legal Aid. These clients undergo two "legal check-ups." The first check-up reviews the client's business for important preliminary legal matters. The second check-up screens for personal legal problems that can make it harder to successfully develop and manage a business. For more information about the Legal Center for Low-Income Entrepreneurs, visit <https://lasclv.org/get-help/community-initiatives/lowincomeentrepreneurs/>.

A Never-Ending Sentence: The Impact of a Criminal Record on Housing Access

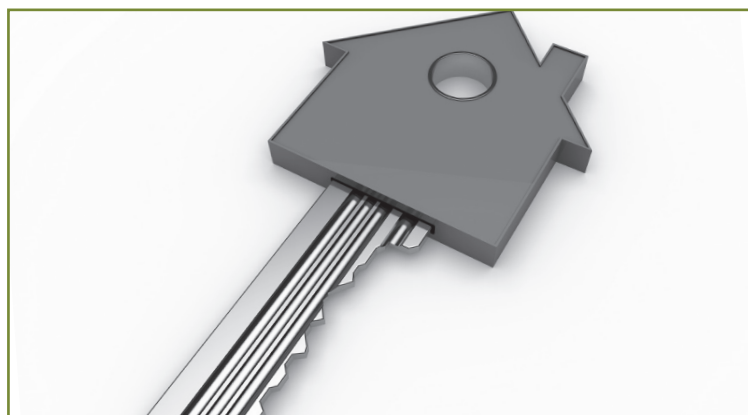
By Chloé Sudduth

You may think of federally subsidized housing as some of the most affordable and accessible housing available. But for people with a criminal record, it can be hard to access. In 2015, the Shriver Center released a report titled *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*. This report looked at policies that stop people with criminal records from getting subsidized housing. These policies make it harder for a person with a criminal record to return from incarceration. They can also violate civil rights laws and increase a person's chance of being homeless.

A group of advocates did similar research on a type of subsidized housing called "project-based Section 8 housing" in Cuyahoga County. The group looked at 108 Tenant Selection Plans (TSPs). TSPs are the rules that project-based Section 8 housing providers use to decide who can live in a property. They were shocked to learn that many TSPs allowed housing providers to reject applications from tenants with minor misdemeanor offenses on their record, even if the offenses happened many years ago. This restriction applied to all applicants including the elderly and people with disabilities.

The U.S. Department of Housing and Urban Development (HUD) regulates subsidized housing. HUD rules require housing providers to describe their applicant screening criteria in their TSPs. HUD also requires housing providers to apply that screening criteria equally to all applicants in a non-discriminatory way.

Because people of color are overrepresented in the criminal justice system, TSPs that prevent anyone with a criminal record from accessing housing may violate civil rights laws. Because of this, in 2016, HUD



started telling housing providers to consider the specific circumstances of an applicant's criminal record when evaluating their housing application. This is called an "individualized assessment." HUD suggests housing providers should consider these factors in the individualized assessment:

- The facts or circumstances surrounding the criminal conduct;
- The age of the individual at the time of the conduct;
- Evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct;
- Evidence of rehabilitation efforts.

Individualized assessments work like "Ban the Box" laws. "Ban the Box" laws have allowed many qualified people to get jobs, even though they may have a criminal record. Individualized assessments allow subsidized housing providers to get to know a housing applicant beyond their criminal record and make subsidized housing more accessible.

Mental illness and substance use: What you and your loved ones need to know about getting support

By Colleen Damerell



Coming back to the community after being in jail or prison can be hard for anyone. It can be even harder for people who live with mental health conditions or substance use. Many people find that the system on the outside isn't set up to help them live, work, cope with stress, and heal. Does this sound like you or someone you care about?

SNAP) programs can also be a big help. You can apply for Medicaid or food stamps by visiting ohiobenefits.gov or calling 844.640.6446. Your local library or the Greater Cleveland Food Bank may be able to help you with applications. Depending on your circumstances, you may not have to meet "work requirements" to be eligible for these benefits.

If you are applying for benefits because you live with a disability, you will probably need a doctor or another care provider to help prove that you qualify. That's why it's important to keep your medical appointments. Talk to your provider about any problems you're having. Many people find it helpful to save their doctor's office number in their phone. And remember, you deserve a doctor who treats you fairly and doesn't judge you. Many of our clients get help from MetroHealth. To make an appointment, call (216) 778-7800.

If you live with mental illness or addiction, it's important that you have stable income, healthcare, and food so you can focus on your mental health care or addiction treatment. If your condition makes it difficult for you to work, you might qualify for benefits like Social Security Disability or Supplemental Security Income (SSDI and SSI). These benefits provide a small but stable income to those who qualify. To apply for Social Security benefits, you can go online to <https://www.ssa.gov/benefits/disability/> or visit your local Social Security office (find it here: <https://www.ssa.gov/locator/>).

If you have a friend or family member who is returning from incarceration, you can help them by making sure they have:

- copies of important documents
- an address and phone number to use for applications
- rides to medical appointments

If you live with mental illness or addiction, the ADAMHS Board of Cuyahoga County (216.241.3400 or adamhsc.org) can help you find housing or a care provider. They can also answer questions about your legal rights.

When it comes to healthcare and food, Medicaid and food stamps (or

Tenant Information Line *for Rental Housing Questions*

In Ashtabula, Lake, Geauga and Lorain Counties:
440-210-4533

In Cuyahoga County:
216-861-5955



Child Support for Returning Individuals

By Jennifer Kinsley, Esq.

Individuals returning from a period of incarceration often identify high child support orders as a major source of stress. There are two factors that need to be considered when reviewing a child support amount. One factor is the monthly payment that the parent is required to pay until the order terminates, usually when the child reaches age 18 and completes high school. The second factor is called an arrearage, which means an amount added on to the monthly obligation to make up for previously missed payments. Parents may have to pay child support arrearages for decades after their children turn eighteen because of a history of missed payments. When payments are made in full and on time, the amount due will be much lower each month because arrearages are not owed.

A person who owes child support is called an obligor. In order to avoid returning from jail with arrearages on their child support record, obligors should contact their child support enforcement agency immediately when they get to prison. When they contact the agency, they should ask for a modification of their payment amount. When an obligor requests this modification, the obligor's income will be reevaluated, and the amount owed each month will be decreased.

When an obligor returns home following a jail sentence, the obligor needs to contact the agency that oversees the child support order right away. The returning obligor should make sure that the agency has up to date contact information including the phone number and address where the returning obligor can be reached. Working with the agency to become enrolled in available programs and to modify orders as necessary is the best way to resolve issues that may have been created by missed payments during the jail term. Returning obligors should be prepared to discuss their plans for employment, training, and/or education with the agency. They should also ask about available training programs such as the Fatherhood Initiative.

It is important to remember that child support orders may be reviewed every three years to determine whether a modification is necessary. If it has been more than three years since your order was reviewed, regardless of how long ago you served a jail sentence, you should ask the child support enforcement agency to review your order and make sure that you are paying the correct amount. It is very important that you are honest with your enforcement agency about your ability to pay the amount you are currently ordered to pay.

**Questions about
employment issues
or unemployment
benefits?**

*Call Legal Aid's
Worker Info Line*

In Cuyahoga County:
216-861-5899

***In Ashtabula, Geauga, Lake, and
Lorain Counties:***
440-210-4532



**Have
Questions?**

**Legal Aid has answers!
Stay updated on our COVID
response, and learn about your rights
during the pandemic**
www.lasclev.org/coronavirus



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Since 1905

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RETURN SERVICE REQUESTED



Legal Aid has improved its intake system to better serve the Northeast Ohio community.
Please share this information with your constituents:

**If you need legal assistance,
you can contact Legal Aid any weekday for help.**

New intakes are processed via phone:
888-817-3777 (toll-free)
Monday, Wednesday, Friday: 9 a.m. – 4 p.m.
Tuesday, Thursday: 9 a.m. – 2 p.m.

Online intake is available 24/7 at our website: www.lasclev.org/contact
During the COVID-19 pandemic, in-person applications at our office locations will not occur.

Visit www.lasclev.org for more information!

follow us on   for updates and “know your rights” info!

This newsletter is meant to give you general information and not to give you specific legal advice. This information cannot take the place of advice from a lawyer. Each case is different and needs individual legal advice. You should contact a lawyer if you need representation or if you have questions.



If you have a communications limitation, contact us through the Ohio Relay Service. Interpretation services are available so everyone can communicate with us in their dominant and/or preferable language.

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