Ohio House Bill 1 (133rd General Assembly) Biennial Impact Study

December 2023

Acknowledgements

This report is built upon the foundation of the first report on the impact of House Bill 1,[1] which was guided by input of the HB1 Workgroup. The Ohio Criminal Sentencing Commission would like to acknowledge the continuing contributions of this workgroup to this and future impact studies of HB1. Of course, participation in the 2021 HB1 workgroup or in the work is not an unqualified endorsement of the final recommendations in the current or previous HB1 Impact Study Report.

The commission would like to extend its gratitude the following individuals and organizations for their assistance in providing information or otherwise contributing to this report:

- *Shawn Welch, Ohio Judicial College*
- *Angie Lloyd, Ohio Access to Justice Foundation*
- *Doug Dumolt, Office of the Ohio Attorney General*
- *Ohio court staff and judges who responded to the request for information*

The commission would also like to give thanks to the following interns who contributed to this report:

- *Nandita Gaddam, Ohio State University*
- *Connor Tooman, Northwestern University*

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[1] Ohio Criminal Sentencing Commission, *HB1 Impact Study Report*, (January 2022), available at https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/HB1/impactStudyReport.pdf.

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Introduction

Governor DeWine signed House Bill 1 ("HB1") into law on January 7, 2021. [2] The law modified the following statutes:

- R.C. 109.11: Attorney General Reimbursement Fund.
- R.C. 2929.15: Community Control Sanctions; felony.
- R.C. 2951.041: Intervention in Lieu of Conviction.
- R.C. 2953.31 & 2953.32: Sealing of record of conviction or bail forfeiture; definitions and exceptions.
- R.C. 5119.93 & 5119.94: Initiation of proceedings and Examination of petitioner; hearing; notification of respondent; dispositions [Involuntary commitment to treatment in probate courts]

Additionally, the bill required the Ohio Criminal Sentencing Commission ("commission") to biennially "study the impact" of these statutory changes and submit "a report that contains the results of the study and recommendations."[3]

In January 2021, the commission assembled a workgroup ("2021 HB1 Workgroup") composed of judges, prosecutors, defense attorneys, court administrators, probation officers, academicians, and state agency officials to design a study of the impact of HB1.[4] The initial HB1 Impact Study Report, submitted in early 2022, was designed to serve as the foundational report to establish the continuity of evaluation for future reports, such as this one.

Report Structure

This impact analysis of HB1 is organized into five parts, based on the topics of the statutes addressed in the bill: (1) attorney general reimbursement fund,[5] (2) community control sanctions and technical violations,[6] (3) intervention in lieu of conviction ("ILC"),[7] (4) sealing of a record of conviction,[8] and (5) involuntary commitment to treatment for alcohol or drug abuse in probate courts.[9] Preceding these sections is a summary of recommendations and a discussion of the limitations of this study.

This report utilizes the framework set out by the original workgroup to approach the study of impact as consistent and standardized as possible in order to allow for the most direct comparison across study years that is practically achievable with the information available. As such, each of the five sections begin with a brief review of the how HB1 changed each of the statutes. Following this information is a discussion of how the 2021 HB1 Workgroup defined the impact of these changes. The source(s) of information used to evaluate that impact is then discussed, followed by analysis of the available information and recommendations to improve upon the impact.

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[2] Am.Sub.H.B. No.1, 133 Ohio Laws.
[3] R.C. 181.27(B)
[4] See page 4 of *HB1 Impact Study Report* (January 2022) for a list of individuals on the workgroup and involved in the work of the report.
[5] R.C. 109.11
[6] R.C. 2929.15
[7] R.C. 2951.041
[8] R.C. 2953.31 and 2953.32
[9] R.C. 5119.93 and 5119.94

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Study Limitations

Among policymakers and stakeholders, there is increasing acknowledgement that policy changes based upon empirical evidence helps to create programs and laws that are efficient and effective for their intended purposes.[10] Requiring the Ohio Criminal Sentencing Commission to regularly study the impact of statutory changes made in HB1 is a move towards evidence-informed criminal justice policy in Ohio; the ambition and intention of the 133rd General Assembly should be commended. However, the current state of available and sharable criminal justice information in Ohio significantly limits the rigor of the impact study.

Ohio is a "home rule" state and as such, local governments are expected to establish their own data collection methods and reporting systems based on their financial situations and preferences. As there are limited sources of statewide information, local courts are utilized as primary sources of information for this impact evaluation. However, the use of local court information creates concerns about comparability and the access of information, as discussed below, which contributes to limitations of this study.

Comparability

In HB1, the inclusion of R.C. 181.27(B)(1) charges the commission with studying the impact of the specified code sections and to "continue studying that impact on an on-going basis," defined in R.C. 181.27(B)(2) as a biennial report. In the inaugural HB1 report, data was collected to develop a baseline that existed before HB1 went into effect. The plan is that subsequent reports, such as this one, will use that pre-HB1 baseline as a comparison for post-HB1 levels of a measure.

When making comparisons, whether it be over time or across various courts, it is important that the items that are measured are standardized. Colloquially, this what is meant by "comparing apples to apples."

Local courts were contacted to get information about the sealing of a record of conviction, intervention in lieu of conviction, and involuntary commitment to treatment. The specific information received from courts varied widely, which made attempts to standardize and compare information and across courts difficult. Further, as these impact evaluations continue every two years, it is difficult to guarantee the standardization of information over time even in the same courts. One staff member may unknowingly gather the information differently than another did in a previous year, resulting in misleading conclusions.

Access to Information

Data requests have been made since 2021 to local courts to regularly provide the commission information on intervention in lieu of conviction cases and sealing of criminal records. It is acknowledged that these data requests are a burden to local courts, however the information does not exist in another source. In conversations with court staff, many must employ staff or intern time to hand-gather numbers on ILC and record sealing cases because no reporting exists within their case management system. This manual collection of cases can be a months-long process. Several courts have reached out to say that their system

[10] See, for example, The PEW Charitable Trust and MacArthur Foundation, *Evidence Based Policymaking: A guide for effective government,* (November 2014). Available at: https://www.pewtrusts.org/~/media/assets/2014/11/evidencebasedpolicymakingaguideforeffectivegovernment.pdf

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does not allow for the collection of such information and/or that they do not have the staff resources to commit to the collection of the information.

Further, as identified throughout the report, some of the intended outcomes identified by the 2021 HB1 workgroup cannot be evaluated because the information is not available. For example, the workgroup discussed that a purpose of expanding the eligibility of those that can seal a record of conviction is to decrease the "collateral consequences" individuals face after completing their sanction.[11] Evaluating if expanding the opportunities for the sealing of a record of criminal conviction decreases the negative consequences for individuals regarding accessing employment opportunities—for example—necessitates information collected, shared, and connected at the level of the individual that is not currently available.[12]

Developing a method to share and connect information across the criminal justice system in Ohio could also create the ability to address concerns of the impact of these statutory changes on public safety. For example, long term outcomes such as recidivism or criminal desistance could be examined to see the impact of those that sealed a record of conviction or participated in ILC on future criminal behavior.

Addressing limitations

Despite these difficulties in assessing the impact of HB1, every effort has been made to provide reliable, valid comparisons across courts and overtime with the information available. The effectiveness of this, and future impact evaluations, can be improved with more available, and standardized, information. Many of the recommendations in the separate sections of this report suggest a standardized reporting or sharing of information so that there will be more evidence on which to base the conclusions and recommendations. It is important to note that reporting requirements are also not always easy to meet, particularly for local agencies with limited resources. For example, a revision of the case statistics reporting to expand to include record sealing, ILC, and involuntary commitment to treatment involves a change to the capabilities of courts' case management systems at a cost to local court. This then becomes an unfunded mandate for courts to alter their systems. In order to adequately evaluate changes to the criminal justice system, including the impact of changes examined here, adequate funding should be provided to local entities to enable the collection of necessary information.

[11] For more information on collateral consequences, see the National Inventory of Collateral Consequences of Conviction: https://niccc.nationalreentryresourcecenter.org/.

[12] For an example of an empirical examination of the expungement of a criminal record on employment, see Prescott, J.J. and Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study,* Harv. L. Rev 2460 (2020). Available at: https://harvardlawreview.org/print/vol-133/expungement-of-criminal-convictions-an-empirical-study/.

Summary of Recommendations

For reader ease, recommendations are summarized here. The recommendations of this report are based upon the recommendations in the inaugural House Bill 1 Impact Study,[13] and modified as necessary based on recent statutory changes and the analysis provided here. The recommendations are explained in each of the individual subject sections that follow.

INTERVENTION IN LIEU OF CONVICTION (ILC): R.C. 2951.041

1. **Create avenues for regular and standardized reporting of ILC cases.**
   - Include in case statistics reports for general division and municipal courts, specifically:
     - Number of cases that enter into ILC in a reporting period.
     - Additional disposition categories for ILC Cases: post-ILC guilty plea and post-ILC dismissal.
2. **Establish reporting from probation departments to evaluate long term effectiveness of ILC.**
   - Include measures of recidivism or desistance for ILC participants.
3. **Better communicate statutory changes regarding ILC:**
   - Create materials that explain changes to ILC in 2018 in SB66 of the 132nd General Assembly, specifically that offenders could go through ILC programs more than once and for different offenses.
   - Focus especially to the Association of Municipal/County Judges of Ohio, the defense bar, and treatment providers.
4. **Clarify the benefits of ILC in the statute:**
   - Who is a good candidate for ILC.
   - Formalize ILC so that courts see it as a program rather than an option.
5. **Standardize ILC assessment reports from treatment providers.**
6. **Address the barrier of the ILC cost for courts and participants:**
   - Provide guidance about billing for treatment providers.
   - Better funding of ILC programs.

RECORD SEALING: R.C. 2953.31 & 2953.32

1. **Create avenues for regular and standardized reporting of record sealing motions.**
   - Include in case statistics reports for general division and municipal courts, specifically:
     - Number of record-sealing applications/petitions received
     - Number granted
     - Number ineligible
     - Number denied (for reason other than ineligibility)
2. **Allow access, only with certain permissions, to anonymized sealed records in order to allow for the evaluation of the impact of record sealing over time.**
3. **Use standardized sealing forms in Rule 96 of the Rules of Superintendence for Ohio Courts**
4. **Simplify the process:**
   - Clarify the definition of "final discharge."

[13] *HB1 Impact Study Report*, (January 2022).

- Centralize the process for those with convictions in multiple courts (e.g., common pleas and municipal courts).
- Clarify eligibility for those with OVIs and companion felonies in the same case.

5. **Consider automatic expungement or record sealing for certain convictions after a certain time period.**
6. **Allow for automatic sealing of non-convictions.**
7. **Increase education:**
    - Clarify the differences between sealing and expungement for public and courts.
    - Clarify eligibility for sealing and expungement.

INVOLUNTARY COMMITMENT TO TREATMENT, PROBATE COURTS: R.C. 5119.93, 5119.94

1. **Expand education to judges to make them aware of changes to this law and encourage them regarding its potential**.
2. **Create avenues for regular and standardized reporting of Involuntary Commitment to Treatment cases:**
    - Include in case statistics reports for probate courts.
3. **Simplify forms for commitment, including:**
    - Developing strategies to work more effectively with the medical community (e.g., pilot program that partners a treatment facility and probate court or pilot program with Medicaid and regional facilities).
4. **Strategize with justice partners how to make families aware of this option.**
    - Discuss funding options to make treatment available, regardless of financial or insurance status.

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R.C. 109.11 Attorney General Reimbursement Fund

Modifications to Ohio Revised Code Sections 109.11 from Ohio House Bill 1 (133rd General Assembly)

R.C. 109.11: Creates an attorney general reimbursement fund within the state treasury to be used to for the expenses of the Attorney General (AG) to provide legal services and other services to the state. Also specifies that a portion of funds, as specified in R.C. 2953.32 go to the Bureau of Criminal Investigation for expenses related to sealing or expungement of records.

What changed?

$15 for every $50 record sealing application fee is earmarked to BCI for expenses related to the sealing or expungement of records. This represents a decrease in the amount of money that is routed to BCI (previously it was $20 of every application fee), however this statute clarifies that the $15 goes directly to BCI. Previously, the money was allocated to the GRF and then funded back to BCI, so it was not possible to track. This fund should help to offset expenses for the labor-intensive record sealing process.

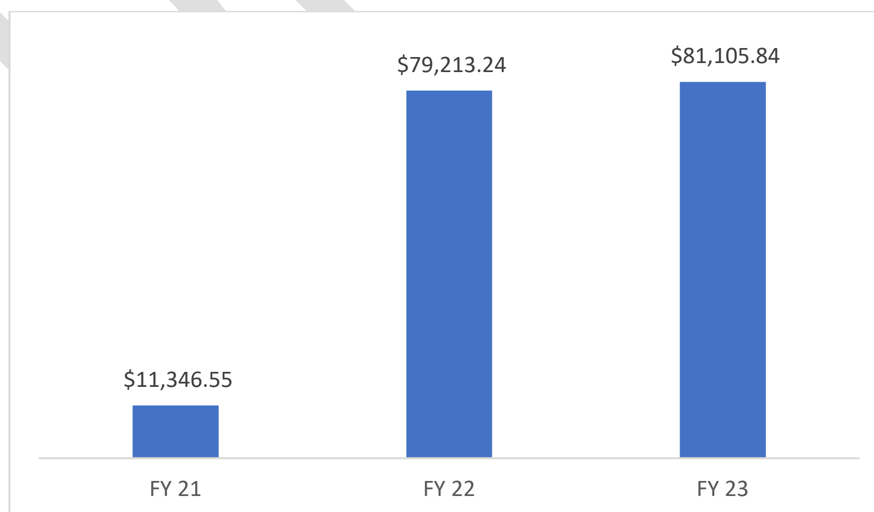
Impact

The intended impact of this statutory change is evident, as a separate fund to the Bureau of Criminal Investigation (BCI) to help in the record-sealing process did not exist prior to HB1. Therefore, after HB1 we would expect to see a **stable, independent fund at BCI exist year after year**.

Data & Analysis

The Bureau of Criminal Investigation provided numbers on funds received related to the sealing of records. It is important to note that the finance report follows the fiscal year, rather than the calendar year. Beginning in late 2021, BCI started using a separate agency code to track record sealing funds. Fiscal Year 2021 represents two months of collected data while 2022 and 2023 contain all 12 months of data. Figure 1 displays the BCI funds received from the record sealing application fee by fiscal year.

Figure 1. Record Sealing Funds Received by BCI by Fiscal Year.



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It should be noted that while the $15 sealing fee is relatively new, the funds generated do not match the number record sealing orders BCI receives each year.[14] At this point, the source of the discrepancy is unclear, but there are multiple possible explanations. For example, fees waived for indigency status may contribute to the fees collected being lower than expected.

Conclusions

Given that, prior to HB1, the portion of the record sealing fee that BCI received went directly into the General Revenue Fund (GRF), these statutory changes did have the intended impact. Beginning in fiscal year 2021, there is a separate, stable fund within BCI to assist with the process of sealing and expungement of criminal convictions. Regarding this determination of impact, there are no further recommendations.

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[14] See Figure 5 of this report.

R.C. 2929.15 Community Control Sanctions and Technical Violations

Modifications to Ohio Revised Code Section 2929.15 from Ohio House Bill 1 (133rd General Assembly)

R.C. 2929.15: House Bill 1 modified provisions of law that capped the maximum prison sentence available for "technical violations" of community control for felonies of the fourth[15] and fifth degree at 180/90 days respectively. The bill mandates that a prison term imposed for a technical violation may not exceed the time the offender has left to serve on community control or the "suspended"[16] prison sentence. Further, the time spent in prison must be credited against the offender's remaining time under the community control and against the "suspended" prison term in the case.

HB 1 also specifies that the court is not limited in the number of times it may sentence an offender to a prison term as a penalty for violation of a community control sanction or condition, violating a law, or leaving the state without permission. This provision applies to all levels of felonies and for both technical and non-technical violations, allowing for community control violators to be returned to community control after imposition of a prison term at the sentencing court's discretion. Offenders sentenced for a technical violation of community control for a fourth-degree felony, or fifth degree felony must remain under community control supervision upon the defendant's release from prison, if any time remains on the supervision period.[17]

The budget bill passed June 30, 2021,[18] included amendments to clarify parts of HB 1. The suspended sentence language was amended to reserved sentence to be consistent with existing statutes. The bill also clarified the manner in crediting time served, for example the length of time in prison was limited to the length of community control remaining if it was less than 90/180 days respectively.

Lastly, HB 1 defined "technical violation" as a violation of the condition of community control sanction imposed for a felony of the fifth degree, or for a felony of the fourth degree that is not an offense of violence and is not a sexually oriented offense, and to which neither of the following apply:

(1) The violation consists of a new criminal offense that is a felony or that is a misdemeanor other than a minor misdemeanor, and the violation is committed while under a community control sanction.

(2) The violation consists of or includes the offender's articulated or demonstrated refusal to participate in the community control sanction imposed on the offender or any of its conditions, and the refusal

[15] Fourth degree felony offenses of violence and sexually oriented offenses are not subject to the technical violator caps under the bill.

[16] When an offender is placed on community control the trial court must select a "reserved" prison term from the range available for the offense; the term "suspended" has no meaning under the post-SB2 sentencing scheme. As passed by the Senate, the budget bill replaced "suspended" with "reserved" prison term.

[17] HB1 also created RC 2929.15(B)(2)(c)(ii), which references an offender serving a community-control sanction as part of a "suspended prison sentence." As current law does not provide for any type of "suspended" prison sentence, that provision is amended in Am.Sub. HB 110 as passed by the Senate to instead reference "residential community control" sanctions – which include terms in jail, CBCF, alternative residential facilities, or halfway houses.

[18] Am.Sub.H.B. No. 110, 134 Ohio Laws 627.

demonstrates to the court that the offender has abandoned the objects of the community control sanction or condition.

What changed?

2929.15:

Provided a definition of "technical violations," the absence of which led to a number of appeals and two Supreme Court of Ohio[19] decisions attempting to define the term.

Mandated a return to community control for those technical violators released from prison and provided courts the option to do the same for both technical and non-technical community control violators at all other felony levels. Historically, case law interpretations have held that prison sentences and community control are mutually exclusive options at the time of sentencing.

Impact

As identified by the 2021 workgroup, the changes to ORC §2929.15 in HB1 (and subsequently in the 2021 budget bill) were intended to:

- Define and clarify what constitutes a technical violation of community control.
- Increase discretion regarding sanctions for community control violators by giving judges the ability to return an offender to community control.

Therefore, if these statutory changes had the intended impact, we would expect **a decrease in the number of appeals that address the classification of a community control violation as technical or non-technical** because the definition is clarified in the statute. Regarding the intention to increase discretion, that is difficult to measure, however it can be assumed that if the statute gave judges more choices in what to do with a community control violator that it had the intended impact.

Data & Analysis

In order to determine the impact of these legislative changes, we tracked appellate cases in each of Ohio's twelve appellate courts. Original tracking terms asked for cases involving "technical violations," "technical violator" or considerations of divisions of R.C. 2929.15(B). These cases were further examined to determine if they involved distinguishing between technical and nontechnical violations as relevant for this statute.

[19] *State v. Castner*, 163 Ohio St. 3d 19, 2020-Ohio-4590, 167 N.E.3d 939; *State v. Nelson* 162 Ohio St. 3d 338, 2020-Ohio-3690, 165 N.E.3d 1110.

Figure 2. Ohio Appellate Decisions Involving the Definition of "Technical Violations," by year.

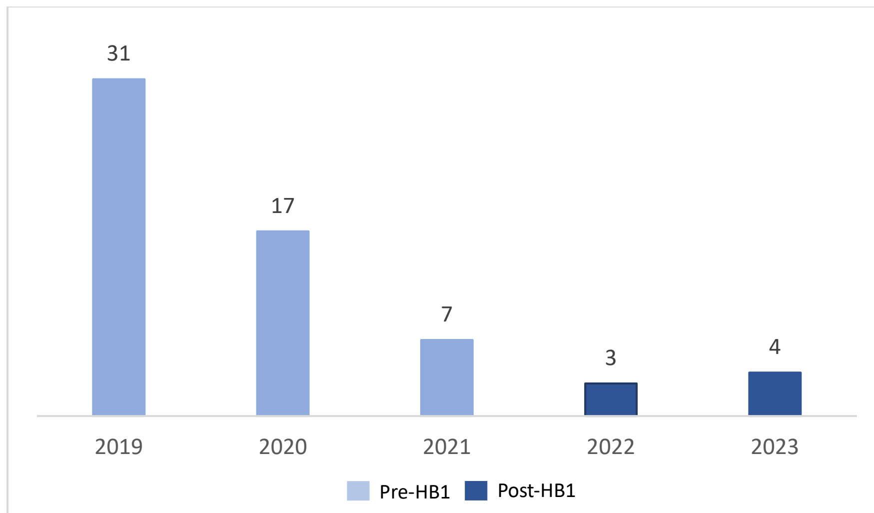

Figure 2 reflects the number of cases that fit these criteria each year, with cases from 2019 to 2021 reflecting the statute prior to HB1 and 2022 and 2023 cases reflecting post-HB1 decisions.[20] As shown, there have been few cases appealed since the enactment of HB1 that have argued the violations of community control have been technical violations. In those cases, the appellate courts have used the statutory definition and, in most cases, have found that the defendants' violations were non-technical violations. [21]

Conclusion & Recommendations

Based on the low number of appeals after the statutory changes, it appears that the codification of the definition of "technical violation" has had the intended impact of providing clarification for what constitutes a technical violation.

There are no further recommendations regarding these changes or evaluating the impact of this statute.

[20] For this report, 2023 appellate decisions were not tracked beyond September 30, 2023.

[21] For details on the post-HB1 appellate cases summarized by appellate district, please see Appendix A.

R.C. 2951.041 Intervention in Lieu of Conviction

Modifications to Ohio Revised Code Section 2951.041 from Ohio House Bill 1 (133rd General Assembly)

2951.041: If the court has reason to believe that a person charged with a crime had: drug or alcohol usage, mental illness, intellectual disability, victim of trafficking or compelling prostitution, the court may accept request for ILC before a guilty plea. The bill grants a presumption of eligibility for intervention in lieu of conviction (ILC) to offenders alleging that drug or alcohol abuse was a factor in the commission of a crime. If an offender alleges that drug or alcohol usage was a factor leading to the offense, then the court must hold a hearing to determine if the offender is eligible for ILC. The bill requires the court to grant the request for ILC unless the court finds specific reasons why it would be inappropriate, and, if the court denies the request, the court is required to state the reasons in a written entry. If granted, the offender is placed under control of local probation, APA, other appropriate agency, or CCS. The offender must, abstain from illegal drugs and alcohol, participate in treatment and recovery, submit to drug/alcohol testing, and other conditions imposed by the court.

What changed and why?

The bill broadens the scope of ILC, requiring that the court must, at a minimum, hold eligibility hearing for each applicant that alleges drug or alcohol usage as a leading factor to the underlying criminal offense. Along with the presumption of ILC eligibility, the court must state the reasons for denial in a written entry. The bill also caps mandatory terms of an ILC plan at 5 years. The bill narrows ILC eligibility in one new way, making an offender charged with a felony sex offense ineligible for ILC (a violation of a section contained in Chapter 2907 of the ORC that is a felony). The court can continue to reject an ILC hearing if the offender does not allege alcohol or substance abuse was a leading factor to the criminal offense. F1-F3 offenses and offenses of violence remain ineligible for ILC.

SB 288, enacted in 2023, made a further change to R.C. 2951.041. This change allows for courts to use community-based correctional facilities for ILC.[22] Research conducted for the initial HB1 Impact Study Report suggests this is a codification of current practice, though respondents indicated it rarely used—only used as a sanction of last resort or based on a high risk assessment score.[23] This bill also incorporated expungement of records for those successfully completing ILC as an option for courts.

Impact

As identified by the 2021 workgroup, the changes to R.C. 2951.041 in HB1 were intended to broaden the scope of ILC by presuming eligibility if drug or alcohol abuse was a factor in the offense and by requiring a written reason for denial. Therefore, if these statutory changes had the intended impact, after HB1 went into effect, we would expect **an increase in ILC placements and a decrease in ILC denials**.

Data Sources

Currently, there is no central source in the state for tracking the number of applications for intervention in lieu of conviction (ILC) or, consequently, the number of applications that were granted or denied each year.

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[22] Am.Sub.S.B. No. 288, 134 Ohio Laws 267.

[23] See p. 58 of the *HB1 Impact Study Report,* (January 2022).

To establish a baseline number of ILC applications for comparison against requests received after the post-HB1 changes, we gathered available information from individual courts.[24] We reached out to all court administrators with a valid email address on file at each municipal, county, and court of common pleas in Ohio to request a range of information from them about applications for ILC for the calendar year of 2022.[25] Many courts were unable to provide all pieces of information requested, but provided what they could. Table 1 displays the number of courts contacted, as well as the number that supplied data.

Table 1. Number of Courts Contacted and Providing ILC Data

	Successfully contacted	Responded with Data	Responded to Say They Could Not Provide Data
Common Pleas	75	14	5
Municipal and County Courts	62	1	2
Total	**134**	**15**	**7**

Notably, this year, one county court reported using ILC. Although it is difficult to confirm with the current data, ILC appears to be rarely used in county and municipal courts. As noted in the 2021 HB1 Impact Study Report,[26] county and municipal courts often use different pretrial diversion programs, and some are unaware of changes that made ILC is a more viable option at the misdemeanor level.[27]

Table 2 shows the number of courts who provided data for both reports and can be compared across time, both pre- and post- HB1. Note that only a few courts provided updated data for the time period between April 12, 2021, and December 31, 2021, the immediate post-HB1 time period. For the courts who did not provide the post-HB1 2021 data, their 2022 records can be compared from 2018 to 2020, omitting 2021.

Table 2. Courts Providing ILC Data Continuous Data Pre- and Post- HB1

	Provided Pre-HB1 Data	Provided Post HB1 2021 Data	Provided 2022 and Pre-HB1 2021 Data	Provided 2022 Data and All 2021 Data
Common Pleas	9	2	5	2
Municipal and County Courts	0	0	0	0
Total	**9**	**2**	**5**	**2**

As displayed, five courts can be compared pre- and post- HB1, excluding the incomplete 2021 data. Two courts provided continuous data which can be compared fully pre- and post- HB1, which includes full 2021 data. Note also that not every court provided complete data on ILC applications filed, granted, and denied. In this report, the denominator of courts included in each analysis is always indicated with (n=x). For the

[24] The 2021 HB1 Impact Study Report illustrated data from the APA Counties that the Ohio Department of Rehabilitation and Corrections oversees. A conversation with the Bureau of Research and Evaluation revealed that ODRC is supervising just 12 small APA counties currently. Data on these counties was not provided.
[25] See Appendix B: Letter to Court Administrators Requesting Data.
[26] https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/HB1/impactStudyReport.pdf
[27] Am.Sub.H.B. No. 66, 132 Ohio Laws. Prior to this change in 2018, ILC could only be used once by any offender. Therefore, municipal courts rarely offered such programs and attorneys rarely recommended application in order to “save” the opportunity for a more serious offense.

sake of continuity and fair comparison across years, analyses focus on the courts who have provided some level of pre- and post- HB1 data. The court data provided starting in 2022 will provide a useful post-HB1 measure for this report moving forward.[28]

A Note on Court ILC Data

The 2021 HB1 Impact Study Report noted several issues concerning ILC data that must be addressed in order to fully understand the impact of ILC in the future. From qualitative interviews with common pleas judges, the 2021 report stated:

> *Only one common pleas court judge interviewed indicated their court has robust data on ILC, because the grants they receive for the program have rigorous reporting requirements. The rest of the judges interviewed stated that they do not formally track data on ILC. In most common pleas courts, some data exists in the court case management system, but it is not aggregated. Therefore, it is time intensive to mine the data for useful analytical purposes. As a result, most courts are not using data to evaluate ILC at a programmatic level.*
>
> *Others also pointed out that the data they do have does adequately capture the ILC process. As one judge summarized, ILC is not being denied in their jurisdiction. The prosecution does a background check to determine eligibility and defense counsel will withdraw their motion if someone is statutorily ineligible. So, no denials are reflected in the court's records. For this reason, the data will not reflect why defendants do not get into ILC. The data also does not reflect those who are eligible for ILC and do not apply, for any reason. Further, there is a severe lack of data on what happens to a defendant participating in ILC. Although some jurisdictions maintain data on successful ILC completion rates, it is difficult to track what happens to a defendant after leaving the program. This presents a major challenge for studying the ultimate impact of HB1 beyond the courtroom.*[29]

Analysis of the following court ILC data must take these considerations into mind as limitations for any conclusions drawn. Standardized definitions and reporting of ILC data could address these limitations.

Analysis

Figure 3 shows average ILC applications submitted and the number of ILC placements made pre- and post-HB1, excluding 2021.[30]

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[28] The descriptive statistics of the 2022 court data on ILC are presented in Appendix C. Analysis of the two courts providing continuous data is also included in Appendix D.

[29] See *HB1 Impact Study Report,* (January 2022) p. 56.

[30] Note that the total applications include applications that were later withdrawn by the defendant. Further note that applications filed in a given calendar year may not always be disposed of in that year. Similarly, applications granted in a calendar year, may have been initiated in a preceding year.

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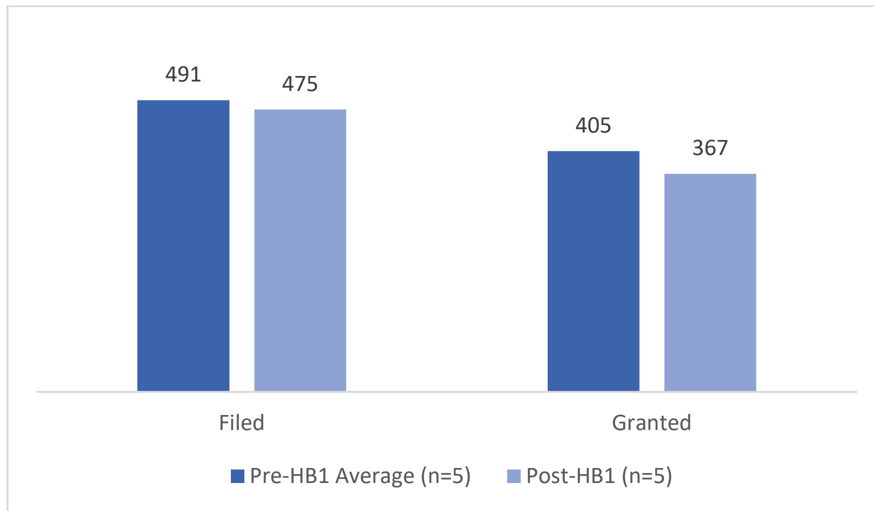
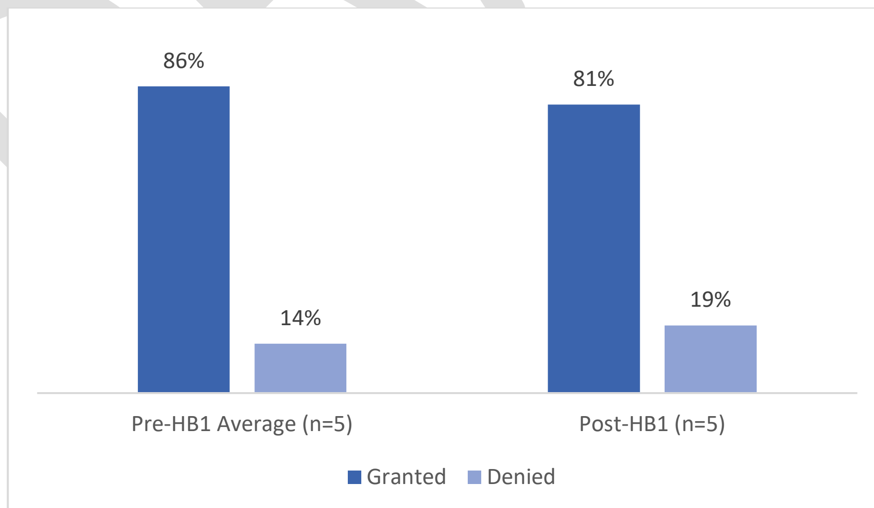
Figure 3. ILC Cases Filed and Granted Pre- and Post-HB1 Among Five Reporting Courts



Overall, the number of ILC cases filed and granted experienced a slight decline pre- and post-HB1. Due to the small sample size, this could be a normal fluctuation that can occur at the individual court level. In the 2021 iteration of this report, qualitative analysis suggested that the changes made to ILC by HB1 either codified existing practice or may not be substantive enough to impact the functioning of ILC at their respective courts. Among these five courts, a change to assuming eligibility for ILC has not resulted in an influx of ILC placements and applications.

Figure 4 displays the percentage of ILC applications granted and denied pre- and post-HB1. For this analysis, withdrawn and pending applications were removed from the totals.

Figure 4. Percentage of ILC Applications Granted and Denied Pre- and Post-HB1 Among Five Reporting Courts



As noted, it is difficult to draw generalizations of impact of HB1 changes based on the sample size. There has been a slight decline in percentage of cases accepted pre- and post-HB1. This could be a normal

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fluctuation and it is to monitor in the future. It is worth considering, that among the 10 courts who reported data on those granted and denied ILC in 2022, the acceptance rate was also 81%.[31]

Conclusions and Recommendations

While the statute reflects efforts to expand the opportunities for ILC among certain offenders, the data that is available indicates that these changes are not having the intended impact. In the limited data presented here, there is a decrease in applications for ILC and a slight increase in denials.

Many of the 2021 HB1 Impact Study Report recommendations are still relevant two years later. Qualitative research conducted for the 2021 report suggested the removal of certain barriers for courts to use ILC, clarification of the benefits of ILC for courts and offenders, and to educate certain populations about expanded ILC options. Additionally, with systems and requirements in place to acquire reliable information, future impact studies will have more valid conclusions on the impact of these statutory changes. Specific recommendations follow.

Multiple respondents indicated that they did not believe changes to the ILC eligibility due to HB1 would increase participation because ILC is often seen as a less-desirable option by offenders, courts, and attorneys for a variety of reasons. If the goal is to increase participation in ILC, it will be helpful to **clarify the benefits of ILC.** Specifically, it may be helpful to illustrate what offenders may be a good candidate for ILC and how it may be more beneficial to some than community control supervision, to formalize ILC as a program, and to standardize assessment reports from treatment providers so that courts have enough information to select an appropriate treatment provider.

Additionally, respondents identified the relatively high cost of ILC as a barrier. In order to increase participation, **costs of ILC for courts and participants need to be addressed**. There is a large variability in the ability to fund participation. Some courts have grant funded ILC programs that pay for the resource-heavy programming and assessment while others struggle with the defendant's ability to pay for the initial assessment. Some insurers will cover the cost of assessment and treatment and others will not.

In order to maximize participation by eligible offenders in ILC, it is useful that the opportunity is offered when it is available. In 2021, it was found that many defense attorneys and treatment providers were not aware that ILC could be an option in municipal courts. Further, as information was sought from courts this year, several municipal courts reached out to say that ILC does not apply to municipal courts. Prior to legislative changes in 2018,[32] ILC was a "one and done" opportunity. As such, ILC was not often discussed with misdemeanor defendants as it was thought that this opportunity should be saved in case there was a more serious charge in the future. However, there are no longer any limits to the number of times an offender can participate in ILC. Therefore, it is recommended to **better communicate statutory changes regarding ILC**, particularly among those working in the municipal courts. Educational efforts could be focused on the Association of Municipal/County Judges of Ohio, the defense bar, and treatment provider.

Reliable information is necessary to make valid conclusions about the impact of statutory changes for the effectiveness of ILC. One way to do this is to require **regular and standardized reporting of ILC cases.** Collection of this information could come from additions to the case statistics reports of the general

[31] The full descriptive statistics on the 2022 reporting courts are listed in Appendix C.
[32] Am.Sub.H.B. No. 66, 132 Ohio Laws.

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division and municipal courts and include additional disposition categories for ILC cases: post-ILC guilty plea and post-ILC dismissal.

In order to determine the long-term effectiveness of ILC for offenders and for public safety, research should be conducted on outcomes such as recidivism or criminal desistance. One way to assist in this effort may be to **establish reporting from probation departments to evaluate long term effectiveness of ILC**.

While certainly fewer than in the past, some barriers to record sealing identified in the 2021 report still exist, such as the lack of standardized methods for filing records-sealing cases. The different approaches by courts may lead to unintentional misinformation given to those seeking record sealing. While the lack of a unified court system in Ohio prevents mandating a singular approach, it may be helpful to **encourage courts to use standardized record sealing forms**, as the ones that exist in Rule 96 of the Rules of Superintendence for Ohio Courts to make the process easier for attorneys serving clients in multiple counties to advise.

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R.C. 2953.31 & 2953.32 Sealing of a Record of Conviction

Modifications to Ohio Revised Code Sections 2953.31 and 2953.32 from Ohio House Bill 1 (133rd General Assembly)

2953.31: Outlines definitions for terms found in ORC 2953.31 through 2953.36, on the topic of the sealing of records of conviction, including specifying "eligible offender" for the purposes of record sealing. Eligible offenders may only seal eligible offenses, as listed in 2953.36.

2953.32: Identifies the timeline for offender eligibility, the considerations of courts and prosecutors, and the process of the courts for sealing a conviction or bail forfeiture record.

What changed and why?

2953.31:

Record Sealing offender eligibility expanded to include:
- Unlimited sealing of convictions if all are F4, F5, or misdemeanors if none are offenses of violence or sex offenses.
- Up to two felony convictions, up to four misdemeanor convictions, or exactly two felonies and two misdemeanors

2953.32:

Application for record sealing can now be made at following times:
- The expiration of three years after final discharge of an F3
- The expiration of one year after final discharge for an eligible F4, F5 or misdemeanor

In late 2022, the General Assembly passed the "Revise the Criminal Law" Bill (SB288),[33] which modified Revised Code sections 2953.31 and 2953.32. These sections were further modified in the and the Biennial Budget Bill (HB33).[34] Given that these changes were not effective until April (for SB288) or October (for HB33) of 2023, they are not evaluated for this report. This report focuses on the impact of HB1 changes in 2022, as statutory changes enacted in 2023 prevent comparison to previous years.[35]

Impact

In the 2021 HB1 Impact Study Report, the work group identified the following as intended outcomes from the legislative changes to R.C. 2953.31 and 2952.32:

- Increase the number of individuals eligible for record sealing and to decrease the amount of time between the conclusion of their sanctions and eligibility in order to decrease barriers to employment.
- Reduce harm done by the "collateral consequences" of conviction, specifically regarding the access to employment, housing, public assistance, and education.

[33] Am. Sub.S.B. No. 288, 134 Ohio Laws 278.
[34] Am.Sub.H.B. No. 33, 135 Ohio Laws 876.
[35] The impact of changes to the statutes due to SB 288 and HB 33 will be included in the report submitted December 31, 2025.

Therefore, if the changes in statute made by HB1 had the intended impact, we would expect **an increase in record sealing motions after the enactment of HB1.** Likewise, an increase in eligibility should also result in an **increase in record sealing motions granted by the court**. At this time there is no way to evaluate if these changes resulted in a reduction in harm of collateral consequences.

Data Sources

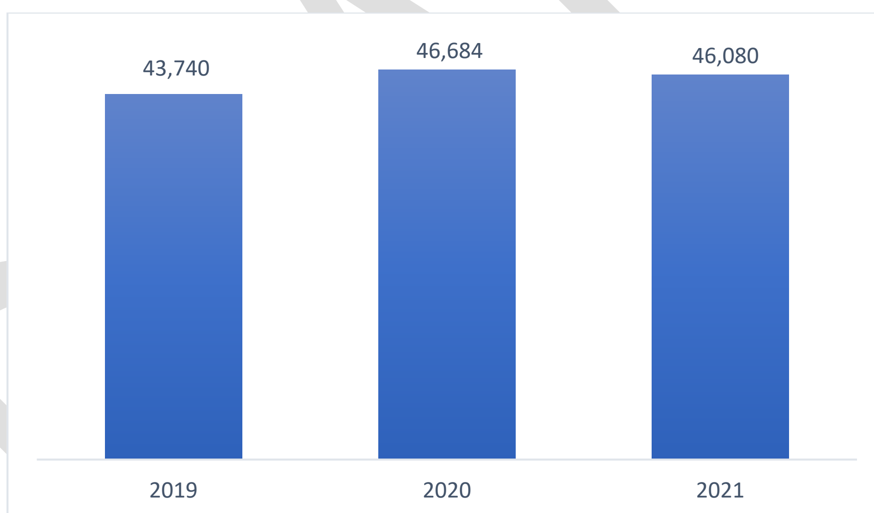
Currently, there is no central source in the state for tracking the number of requests for record sealing or, consequently, the number of motions filed for sealing that were granted or denied each year. To ensure we have as complete of a picture as possible, we gathered multiple sources of information, including from the Bureau of Criminal Investigation (BCI), the Ohio Access to Justice Foundation, and individual courts. The methodologies for each source of information are expounded upon in the Analysis section below.

Analysis

BCI Yearly Record Sealing Orders

The Ohio Attorney General's Bureau of Criminal Investigation serves as Ohio's crime lab and criminal-records keeper. Their office provided calendar year totals for record sealing orders it received from 2019-2021. Figure 5 reflects the number of requests received by BCI from local courts to seal records. These requests are submitted with a sealing order signed by a judge.

Figure 5. Number of orders to seal records received by BCI each year.



The number of record sealing orders remained consistent from 2020 to 2021. Although HB1 took effect in April of 2021, there may be a policy lag in seeing an expansion of record sealing orders on the ground. 2020 and 2021 provide a good baseline for assessing how record sealing orders have changed in 2022 and beyond.

Ohio Access to Justice Foundation

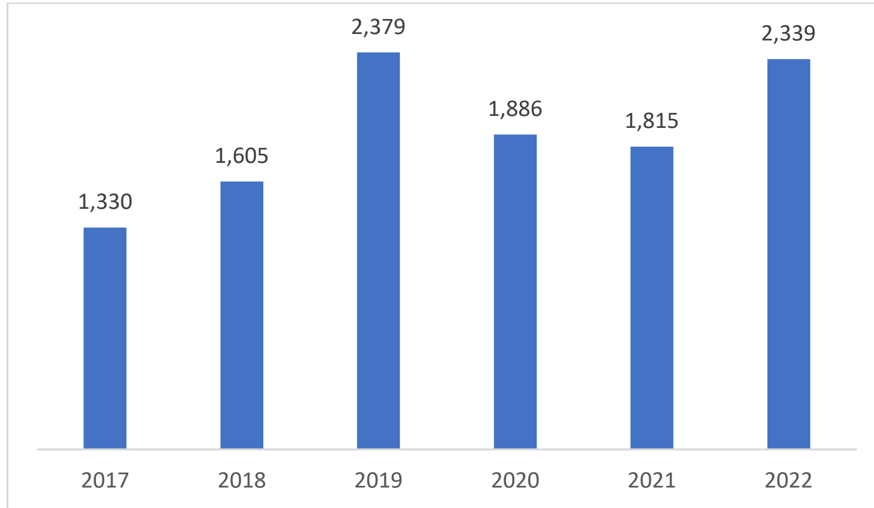
The Ohio Access to Justice Foundation produces numbers on the number of statewide records sealing cases they assist with each year. Per their office, legal aid most commonly connects with Ohioans who need help sealing a criminal record in one of three ways:

1. Dedicated clean slate clinics held throughout the state;
2. Representation on other issues; and,

3. Direct requests for assistance with record sealing through the intake process.

Figure 6 displays the number of record-sealing cases that legal aid handled per year in the state of Ohio.

Figure 6. Number of record sealing cases statewide handled by Legal Aid of Ohio, per year.



The number of record sealing cases dipped in 2020 and 2021, perhaps owing to COVID challenges, and rebounded to 2019 levels in 2022. It should be noted that based on the focus group conducted for the 2021 report, legal aid offices rely on a mix of paid staff and volunteer pro-bono attorneys who donate their time to help clients with record sealing. The numbers above may be constrained by the volunteer time contributed to legal aid offices and may not reflect the total need of those approaching legal aid for help.

Individual Courts

Commission staff reached out to all court administrators with a valid email address on file at each municipal, county, and court of common pleas in Ohio to request a range of information[36] about all motions and orders to seal records for the calendar year of 2022. Note that as part of the 2021 iteration of this impact report, courts were requested to provide full 2021 data when available. Many courts were unable to provide all the pieces of information requested but provided what they could.

A Note on the Court Record Sealing Data

For this report moving forward the burden on courts to collect and report this data must be considered along with the task of manual data entry of record sealing numbers. While a handful of courts submit aggregate annual numbers, many courts provide information at the individual case level, sometimes in the form of a spreadsheet, but often in the form of a PDF or Word listing. These cases must be manually tallied, for the reporting year, along with any historical data provided. As this report continues in future iterations, it needs to be considered the level of continuous pre- and post- HB1 data that can be compiled, as well as the burden on the courts to produce recent data along with historical numbers. In conversations with court staff, many must employ staff or intern time to hand-gather numbers, which often can be a months-long

[36] See Appendix B: Letter to Court Administrators Requesting Data. Commission staff followed up with individual court administrators on an ongoing basis who had not provided data and with those with any questions or concerns with the data request.

process. Future reports must consider the value of this data with the additional work it puts on court staff to gather this information.

Analysis on Responding Courts

Table 3 displays the number of courts contacted, as well as the number that supplied data.[37] Additionally, there were a few courts that contacted us to say that it was not possible to provide any of the data we requested. The reasons cited for not being able to provide data was unanimously that their court's case management systems could not produce such reports and that they could not dedicate the staff time to manually compile these reports.

Table 3. Number of Courts Contacted and Providing Record Sealing Data

	Successfully contacted	Responded with Data	Responded to Say They Could Not Provide Data
Common Pleas	75	14	5
Municipal and County Courts	62	13	2
Total	**134**	**27**	**7**

Table 4 shows the number of courts who provided data for both reports and can be compared across time, both pre- and post- HB1. Note that only a few courts provided updated data for the time period between April 12, 2021 and December 31, 2021, or the immediate post-HB1 time period. For the courts who did not provide the post-HB1 2021 data, their 2022 records can be compared from 2018 to 2020, omitting 2021.

Table 4. Courts Providing Record Sealing Data Continuous Data Pre- and Post- HB1

	Provided Pre-HB1 Data	Provided Post HB1 2021 Data	Provided 2022 and Pre-HB1 2021 Data	Provided 2022 Data and All 2021 Data
Common Pleas	12	4	7	3
Municipal and County Courts	10	9	4	3
Total	**22**	**13**	**11**	**6**

As displayed, 11 courts can be compared pre- and post- HB1, excluding the incomplete 2021 data. Six courts provided continuous data which can be compared fully pre- and post- HB1, which includes full 2021 data. Note also that not every court provided complete data on record sealing motions filed, granted, and denied. In this report, the denominator of courts included in each analysis is always indicated with (n=x). For the sake of continuity and fair comparison across years, analyses focus on the courts who have

[37] A 2023 study by the Drug Enforcement and Policy Center found a similar response rate, with 36 courts providing information on the total number of record sealing applications, and 17 courts providing information on records filed, granted, and denied. See Hrdinova, Jana, *Is Expanding Eligibility Enough?: Improving Record Sealing Access and Transparency in Ohio Courts* (April 7, 2023). Ohio State Legal Studies Research Paper No. 764, Drug Enforcement and Policy Center, April 2023, Available at SSRN: https://ssrn.com/abstract=4412551 or http://dx.doi.org/10.2139/ssrn.4412551

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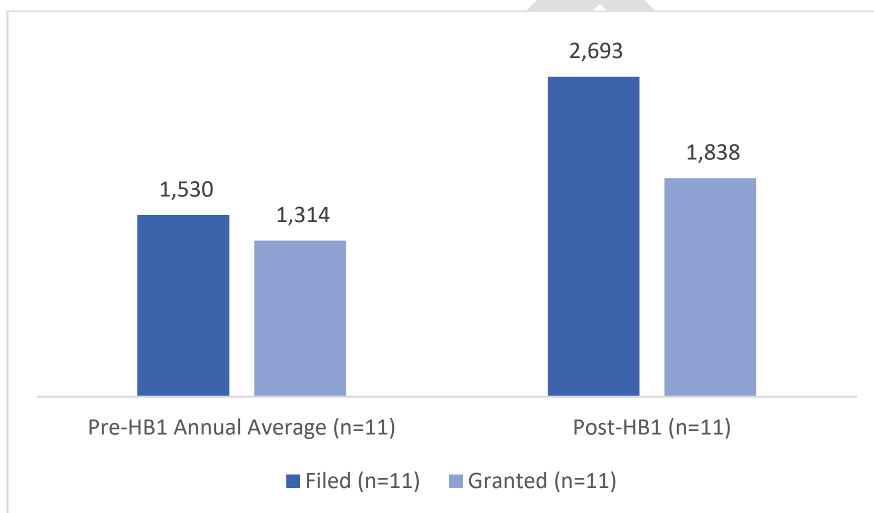
provided some level of pre- and post- HB1 data. The court data provided starting in 2022 will provide a useful baseline for this report moving forward.[38] It should be noted that there are 250 Common Pleas, Municipal, and County courts in Ohio. The 27 courts who provided 2022 data represent nearly 11% of all courts in the state. The 11 courts with pre- and post- HB1 data represent just 4.4% of all courts in the state.

Figure 7 displays the number of record sealing applications received and granted per year, pre- and post- HB1. Note that not all record sealing applications received in a calendar year are resolved in that same year. Similarly, an application that has been granted in a calendar year may have been filed in the preceding year.

Figure 7. Record Sealing Applications Filed and Granted Pre- and Post- HB1 among 11 Reporting Courts

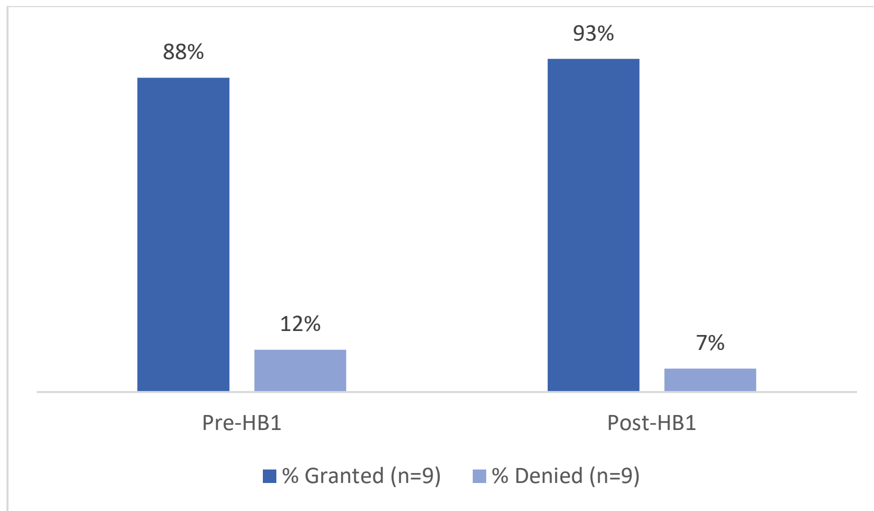


As demonstrated in the graph, the number of record sealing applications nearly doubled after the changes to eligibility in HB1 and the applications granted also noticeably increased in the 11 reporting courts from the pre-HB1 average to 2022. While 10 of the courts in this sample remained relatively steady, one large Common Pleas court nearly doubled its total applications received from its pre-HB1 average to 2022. Although the small sample size limits the conclusions that can be drawn, it is possible that changes from HB1 led to a significant increase in record sealing applications in the state's largest courts. Similarly, the number of applications granted increased from the pre-HB1 average to 2022. This is not all due to the large Common Pleas court. While the large court experienced a 26 percent increase in applications granted from its pre-HB1 average to 2022, the remaining 10 courts experienced a 17 percent increase in the number of record sealing applications granted.

Eight of the 11 courts provided the complete record of orders to seal a record that were denied. Figure 8 displays the percent of record sealings granted and denied per year pre- and post- HB1.

[38] The descriptive statistics of the 2022 court data on record sealing are presented in Appendix E. Analysis of the six courts providing continuous data is included in Appendix F.

Figure 8. Percentage of Record Sealing Cases Granted and Denied, Pre- and Post-HB, Among Eight Reporting Courts.



Overall, the percentage of record sealing applications granted increased pre- to post-HB1, while the total number of record sealing applications increased by 18% from the pre-HB1 average to post-HB1. This suggests that the expansion of record sealing eligibility since the enactment of HB1 has led to an increase in both applications and the rate at which record sealing motions are granted.

Conclusions & Recommendations

Information provided by legal aid and local courts suggest that the expansion of eligibility for record sealing has had the intended impact, with an overall increase in record sealing motions. Furthermore, the percent of applications denied decreased following the statutory changes, among reporting courts.

With changes to the eligibility for record sealing in HB1, and more recently with increase eligibility and the introduction of expungement in SB 88, the General Assembly has made further efforts to clarify eligibility and decrease the barriers to record sealing—and expungement—in order to attempt to decrease the collateral consequences of a criminal conviction.[39]

However, there are still improvements that can be made to advance these efforts. Many of the recommendations from the 2021 HB1 Impact Study Report are still relevant for this report and tend to fall into two categories: making information more available, reliable, and easy to share and simplifying the process to access sealing.

As illustrated by the multiple qualifications of the information presented here, in order to continue to evaluate the impact of these changes to record sealing—and, in the next report, expungement—reliable information is necessary. One way to do this is to require **regular and standardized reporting of record sealing motions.** At the same time, it is important to not add to the workload of courts. To this end, it is suggested that collection of this information could come from additions to the case statistics reports of the general division and municipal courts. Existing research that suggests that increased access to record sealing and expungement assists in decreasing the "collateral consequences" of a criminal conviction, but

[39] For a summary of changes to R.C. 2953.31 and 2953.32 from SB288 and HB33, please see Appendix G.

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there is no way to evaluate if that is true for Ohio.[40] Therefore, it is recommended that there is **protected access to anonymized sealed records to evaluate the impact of record sealing and expungement over time**.

While certainly fewer than in the past, some barriers to record sealing identified in the 2021 report still exist, such as the lack of standardized methods for filing records-sealing cases. The different approaches by courts may lead to unintentional misinformation given to those seeking record sealing. While the lack of a unified court system in Ohio prevents mandating a singular approach, it may be helpful to **encourage courts to use standardized record sealing forms**, as the ones that exist in Rule 96 of the Rules of Superintendence for Ohio Courts to make the process easier for attorneys serving clients in multiple counties to advise.

Even with the recent changes to clarify sealing and expungement in SB288, there remain some issues within the statutes that could be clarified to **simplify the process** and increase consistency across the state. For example, clarify the definition of "final discharge," centralize the process for those with convictions in multiple courts, and clarify the eligibility for those with OVI and companion felonies in the same case. If record sealing and expungement is effective, automatic expungement or record sealing is the best way to simplify the process and increase the benefits. This could be applied first for the **automatic sealing of non-convictions** and second to consider **automatic expungement or record sealing for certain convictions after a certain time period.**[41]

Finally, given the significant expansion in eligibility and the introduction of expungement in Ohio, it is still recommended to **increase education** for offenders, attorneys, and court personnel.

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[40] See Appendix H for a review of research on the impact of record sealing on collateral consequences.
[41] See Appendix H for a discussion of automatic expungement laws in Michigan and Pennsylvania.

R.C. 5119.93 & 5119.94 Involuntary Commitment to Treatment in Probate Courts

Modifications to Ohio Revised Code Sections 5119.93 and 5119.94 from Ohio House Bill 1 (133rd General Assembly)

5119.93: The process by which a spouse, relative, or guardian may file a petition in probate court to initiate proceedings for treatment of an individual suffering from alcohol and other drug abuse.

5119.94: Outlines the initiation of proceedings by the court after receiving a petition for involuntary commitment to treatment, including the respondent's right to a hearing and the requirement for the court to make an evidentiary finding on the necessity of treatment. Includes consequences if a respondent fails to comply with court orders.

What changed?

5119.93:

The new legislation included more funding options for petitioners, including documentation that insurance would cover these costs, or other documentation that the petitioner or respondent will be able to cover some of the costs rather than the original requirement to pay the court 50 percent of treatment and exam costs. The legislation also removed the requirement of the petitioner to pay a filing fee under Sec. 5122.11.

The bill included the requirement that the petition be kept confidential. If petition includes belief that respondent is suffering from opioid/opiate abuse, petition shall include evidence of overdose and revival by opioid antagonist, overdose in a vehicle, or overdosing in presence of minor.[42] A physician who is responsible for admitting persons to treatment may complete the certificate, if they examine the respondent.

5119.94:

If evidence of an opioid use disorder is presented at the hearing in the form of overdose and revival by opioid antagonist, overdose in a vehicle, or overdosing in presence of minor, this satisfies the court's evidentiary requirement of clear and convincing evidence that the respondent may reasonably benefit from treatment. If treatment is ordered, the court must specify type of treatment, type of aftercare required, and the duration of aftercare (between three and six months). The court may order periodic mental health examinations to determine if treatment is necessary. HB1 removed the requirement that the respondent be given a physical examination by a physician within 24 hours of the hearing date. If a respondent does not complete treatment, they are in contempt of court and a summons may be issued. If the respondent fails to appear as directed in the summons, they may be transported to the previously ordered treatment facility or hospital for treatment. Costs of this transport are to be added to the costs of treatment.

Impact

As identified by the 2021 workgroup, the changes to R.C. 5119.93 and 5119.94 in HB1 were intended to enable family members to get help for those with substance-use disorders when a respondent is in

[42] R.C. 5119.93(B)(7).

imminent danger. Largely, the changes hoped to accomplish this by making the options more financially accessible. The changes also gave courts enforcement power if the respondent did not complete ordered treatment.

Therefore, if these statutory changes had the intended impact, we would **expect an increase in the number of individuals involuntarily committed for treatment**.

Data & Analysis

The original statute allowing for involuntary commitment to treatment went into effect September 29, 2013.[43] In 2021, discussions with those in probate courts and members of the treatment community estimated that the total number of cases from this original statute were extremely low, ranging from five to fifteen total cases statewide in the preceding eight years.

The original report identified several barriers contributing to the limited use of involuntary commitment to treatment statutes. In sum, from the report, "the three most-discussed barriers were lack of available facilities, the effectiveness of involuntary treatment, and the cost of treatment.[44]" While statutory changes in HB1 improved accessibility to involuntary commitment to treatment in several ways, notably: (1) allowing proof of insurance as payment for treatment and (2) the ability for judges to issue a warrant for those who leave treatment were identified as improvements by respondents, most of practitioners interviewed "saw the barriers to utilizing the statute as still too large to make an impact in substance use."[45]

To assess any changes among probate courts as a result of HB1, an email correspondence was sent out to all probate judges soliciting feedback on their experience with the statute.[46] In total, seven probate judges responded to the inquiry. Of those that responded, two judges stated that they had used the statute a combined total of three times since the passage of House Bill 1. The remaining five judges responded that the statute had not been used at all. Two of those judges had indicated that they had seen no filings before HB1. A summary of the responses as to why the statue has not been used more widely is compiled below:[47]

> *"The statute is not known about locally."*
>
> *"While several individuals have asked about it and been directed to the forms, no one has completed it. The response we've received from everyone was that they cannot or will not agree to be financially responsible for the cost of treatment."*
>
> *"The statute lacks any "teeth", and the system we have for treatment of mental health and addiction does not allow for "locked facilities." Therefore, anyone a judge orders to get involuntary treatment can easily leave the facilities that are not locked down. The patient knows that there is really no consequence to them not staying. That is not a fault of the facilities, it is just the nature of the treatment. I really don't see anything that can help this situation until a new system is put into place that allows for individuals to be kept involuntarily. And that is going*

[43] See R.C. 5119.93 and 5119.94

[44] *HB1 Impact Study Report,* (January 2022) p. 86.

[45] *HB1 Impact Study Report,* (January 2022) p. 89.

[46] See Appendix I.

[47] The responses were edited for length and clarity.

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to take a monumental shift in the medical/treatment field, a whole lot of money, and a different way to treating folks with drug and alcohol problems."

Conclusions and Recommendations

While the seven judges replying to the inquiry about involuntary commitment to treatment only reported the statute being used three times since the effective date of HB1 in April 2021, this is more than what was anecdotally reported in 2021. It could be argued, then, that these changes have had their intended impact.

Numbers are simply one way to indicate impact. Though the volume of those impacted by these changes may not be large, it is important to note that the true impact to each of these families may be immeasurable. As mentioned in the 2021 report,[48]

> *While no respondents saw this statute as helping a large amount of people with substance-use disorders before they become criminal-justice involved, nearly all agreed that it could be used to help some individuals and families affected by substance use. Respondents emphasized that these statutes could give some hope to families and parents who "feel like they've tried everything."*

However, as the responses to the recent email inquiry indicate, there are significant barriers remaining to greater utilization of these statutes. In order to inform those that could benefit from theses statutes, it is necessary to **strategize with justice partners how to make families aware of involuntary commitment to treatment options** and it is recommended to **expand education to judges to make them aware of changes to this law and encourage them regarding its potential**.

Further, respondents this year and in 2021 highlight the difficulties in implementation. Therefore, it is suggested to **simplify forms for commitment**, by developing strategies to create more effective partnerships with probate courts and treatment facilities or Medicaid and regional facilities. Additionally, cost remains an issue, and while changes to the statute allowed proof of insurance as a substitute for prepayment, nearly all respondents replied that this does not go far enough in addressing the cost barrier.

Finally, as with the evaluation of impact of the other statutory changes in this report, accurately understanding the impact relies on the collection of reliable information. It is recommended that there be avenues for **regular and standardized reporting of Involuntary Commitment to Treatment cases by probate courts.** This could involve adding Involuntary Commitment to Treatment as it is own unique case type on the quarterly probate court case statistics report.

[48] *HB1 Impact Study Report*, (January 2022), p. 89.

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Overall Conclusions and Recommendations

Requiring the Commission to "commence a study of the impact of sections relevant to the actin in which this section is enacted, including but not limited to changes to sections 109.11, 2929.15, 2951.041, 2953.31, 2953.32, 5119.93, and 5119.94 of the Revised Code, and continue studying that impact on an ongoing basis" is an excellent example of continuous evaluation of changes to criminal justice policy. It is important to not only make changes that are believed to enhance public safety and access to justice, but to monitor those changes to understand their true impact. Then, if there are unintended consequences or if the impact is not what was envisioned, future policy changes can be based on this information.

As an example, in the inaugural HB1 report, one of the recommendations to "simplify the process" was to standardize fees for record sealing. While there was a $50 record sealing application fee across the state, courts were able to add their own fees which were reported to us as often ranging from $150 to $400, making sealing cost prohibitive to some. Senate Bill 288, effective April of 2023, addressed this barrier by capping court fees to $50 for record sealing.

The effectiveness of this, and future impact evaluations, relies upon the availability of reliable information. Many of the recommendations in the separate sections of this report suggest a required reporting or sharing of information so that there will be more evidence on which to base the conclusions. It is important to note that reporting requirements are also not always easy to meet, particularly for local agencies with limited resources. For example, a revision of the case statistics reporting to expand to include record sealing, ILC, and involuntary commitment to treatment involves a change to the capabilities of courts' case management systems. The cost per court will vary, but it will likely be several thousand dollars per court to make these changes. **In order to adequately evaluate changes to the criminal justice system, including the impact of changes examined here, there needs to be adequate funding to local entities to enable the collection of necessary information.**

The Commission should work with the General Assembly to clarify and provide guidance to the nature and structure of this report moving forward. Currently, legislation mandates that the Commission continue to issue a report on the impact of House Bill 1 every two years, without a sunset provision.

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Appendix A. Summary of Appellate Cases for the definition of "Technical Violations," 2022-2023

First District Court of Appeals

State v. Elliot, 2023-Ohio-1459. Decided May 3, 2023. Defendant was found guilty of nontechnical violations for failing to comply with court-ordered treatment and failing to pay restitution. The conditions were found to be nontechnical as they were tailored to address the defendant's misconduct. Therefore, the court was not limited by R.C. 2929.15(B)(1)(c)(ii) that it imposes a sentence of not more than 180 days.

Second District Court of Appeals

State v. Parker, 2022-Ohio-1115. Decided April 1, 2022. Defendant was placed on community control for F4 Trespass in a Habitation and a misdemeanor count of criminal damaging and given conditions that included assessments and counseling for substance abuse, anger management, and mental health, as well as a requirement they adhere to state and federal law. The defendant was revoked and sent to prison after violations were filed for a domestic violence incident, failing to pay court costs, and failing to complete the required assessments. The Court found the violations were not technical in nature, finding the defendant's refusal to participate and new criminal offenses.

Third District Court of Appeals

State v. Everett, 2023-Ohio-1243. Decided April 17, 2023. Defendant was placed on community control for F5 Aggravated Possession of Drugs. Defendant absconded after only two weeks on community control. Defendant also refused to complete requested drug screen and had previous drug convictions in Michigan, where he absconded. Defendant's overall pattern of behavior and the cumulative effect of the violations demonstrated a failure to participate in his community control sanction as a whole.

State v. Wallace, 2023-Ohio-676. Decided March 6, 2023. Defendant was placed on community control for F4 Corrupting Another With Drugs. Defendant was found to have violated his Community Control by absconding and was revoked and sentenced to prison for 9 months. The Court of Appeals held that absconding was proven and that it was a nontechnical violation. The Court sustained the imposition of 9 months in prison.

Fourth District Court of Appeals

State v. Mehl, 2022-Ohio-1154. Decided March 29, 2022. Defendant was placed on community control for F2 burglary and was violated from community control several times, each with additional treatment conditions placed on the defendant. The defendant had community control revoked and a four-year prison term imposed, and while the defendant admitted the violations were not technical in nature, the Court engaged in a thorough analysis of the issue in the decision. Ultimately the sentence was upheld as not contrary to law.

Sixth District Court of Appeals

State v. Wodarski, 2022-Ohio-1428. Decided April 29, 2022. Defendant was place on community control for 3 F5s – Unauthorized Use of Motor Vehicle, Identity Fraud and Receiving Stolen Property. Defendant's community control was revoked for technical violations and the court sentenced defendant to 90 days on each felony and that the time was to run concurrent for a total of 270 days. Appellate

court held that nothing in the statute precluded consecutive sentences and that the 90-day cap applies to each underlying felony conviction.

Twelfth District Court of Appeals

State v. Demangone, 2023-Ohio-2522. Decided July 24, 2023. Defendant pled guilty to F4 Trespass in a Habitation. Defendant's community control was revoked, and he was sentenced to 18 months in prison. Defendant's actions demonstrated his refusal to participate in a community control condition that had been specifically tailored to his misconduct. Defendant's conduct demonstrated his refusal to participate in the imposed community control condition and this refusal demonstrated the defendant had abandoned the objective of his community control.

Appendix B. Data Request Letter to Court Administrators

Dear Court Administrator,

As you may know, the 133rd General Assembly passed House Bill 1, and Governor DeWine signed it into law in January 2021. HB1 made a number of adjustments to criminal justice policy, including obligating the Ohio Criminal Sentencing Commission to evaluate the impact of the legislation, per ORC 181.27.

Our first report on the impact of the changes to House Bill 1 was released in January 2022, and is available on the Commission's website. The legislation mandates the Commission to study the impact of the bill on an ongoing basis, producing a report of the findings every two years.

Among these provisions of HB1 are changes to record sealing eligibility and the use of intervention in lieu of conviction (ILC). In order to best understand the impact of the changes to local jurisdictions, we will need information from courts.

To this end, we are requesting anonymized information from you on motions for record sealing and ILC for the entire calendar year of 2022. The list below is a list of data points we would like to collect, but we are aware the this may not be possible for many courts to provide. Please provide information for any of these data points that are accessible to you. Likewise, if you are able to supply information only in the form of aggregate reports (e.g. total number of motions filed, number of motions granted, etc.), that information will still be helpful for the evaluation.

Motions to seal:

- Date the motion was filed
- If the motion was granted
- If the motion was denied, reason (eligibility or on merit)
- Felony offense and/or offense level attempting to be sealed
- Demographics of offender (e.g. dob, race, gender, etc.)
- Date of conviction for sealed offense
- Date motion granted or denied
- Any new convictions after sealing

ILC:

- Date ILC requested
- Date ILC granted
- If denied, why
- Offense and/or offense level
- Reason for ILC (substance use, mental illness, intellectual disability, victim of human trafficking)
- Type of ILC supervision/program ordered
- Conditions of ILC
- Length of ILC imposed
- Dates of ILC entry and exit
- ILC placement (facility)
- ILC program exit type (e.g. successful, unsuccessful, other sanction, etc.)
- Demographics
- Defendant risk assessment score
- ILC record ordered sealed
- New convictions during ILC including offense
- New convictions after successful ILC completion

We appreciate the time it may take to compile the information and understand that for some courts it may be difficult or impossible to obtain. If it is not possible for you to generate the information, please let us know – again, that scenario is important for the overall evaluation of impact.

Please send the information in a format easiest for you – whether that be a word document, pdf, response to this email or excel spreadsheet to the Ohio Criminal Sentencing Commission. We kindly ask that you include contact information for any follow up that may be necessary in your response. **We are asking that the information be provided by October 31, 2023, if possible**. We appreciate your help and hope to hear from you soon.

If you have any questions, please do not hesitate to contact me at todd.ives@sc.ohio.gov, or reach out to the Commission's office email: ocsc@sc.ohio.gov, or reply to this email. You may also reach me via phone at 614.387.9306.

Sincerely,

Todd Ives

Todd Ives | Research Specialist, Criminal Sentencing Commission | Supreme Court of Ohio
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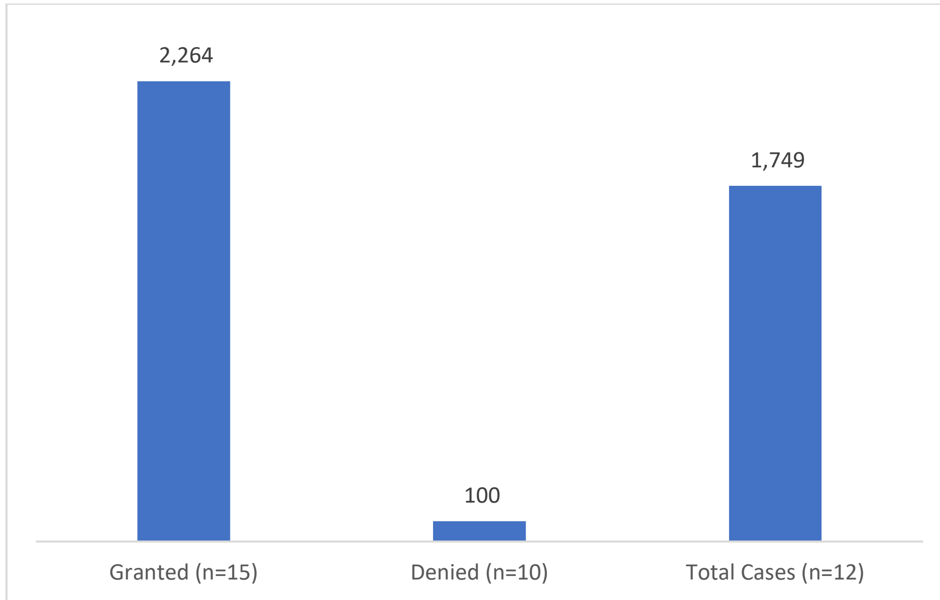
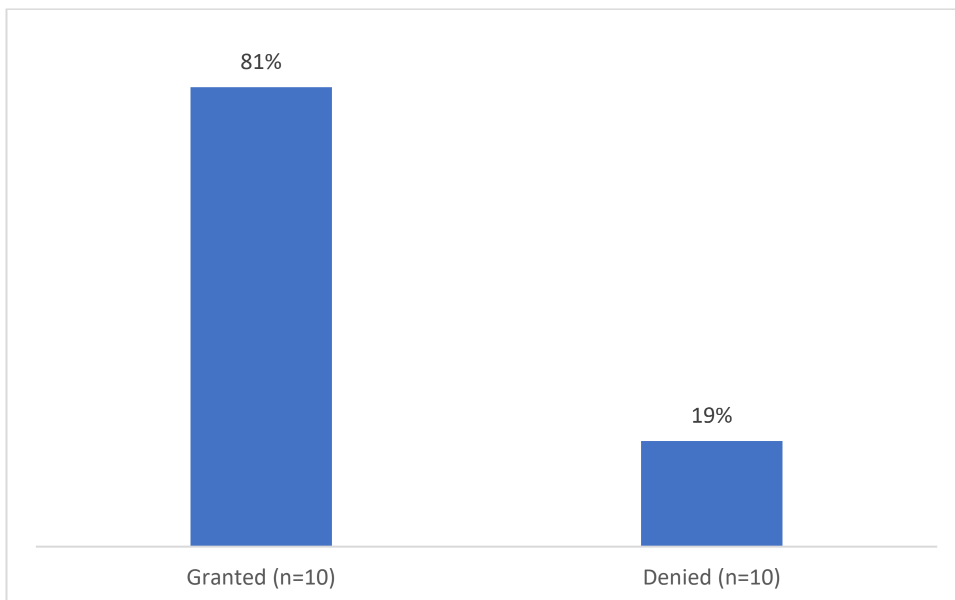
614.961.0694 (mobile)
todd.ives@sc.ohio.gov
www.supremecourt.ohio.gov

Appendix C. 2022 ILC Court Data

ILC Cases Granted, Denied, and Filed Among 15 Reporting Courts

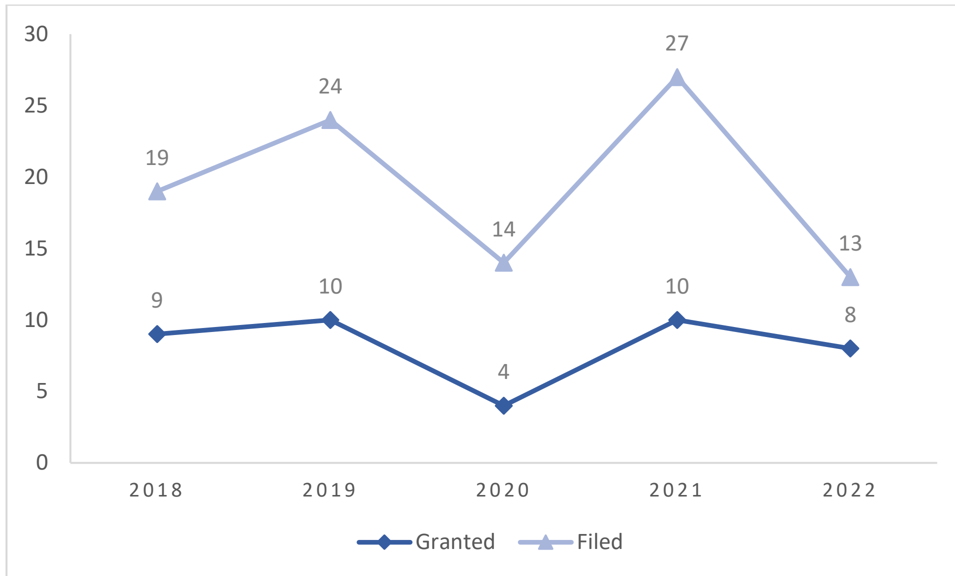


Percentage of ILC Cases Granted and Denied Among 10 Reporting Courts

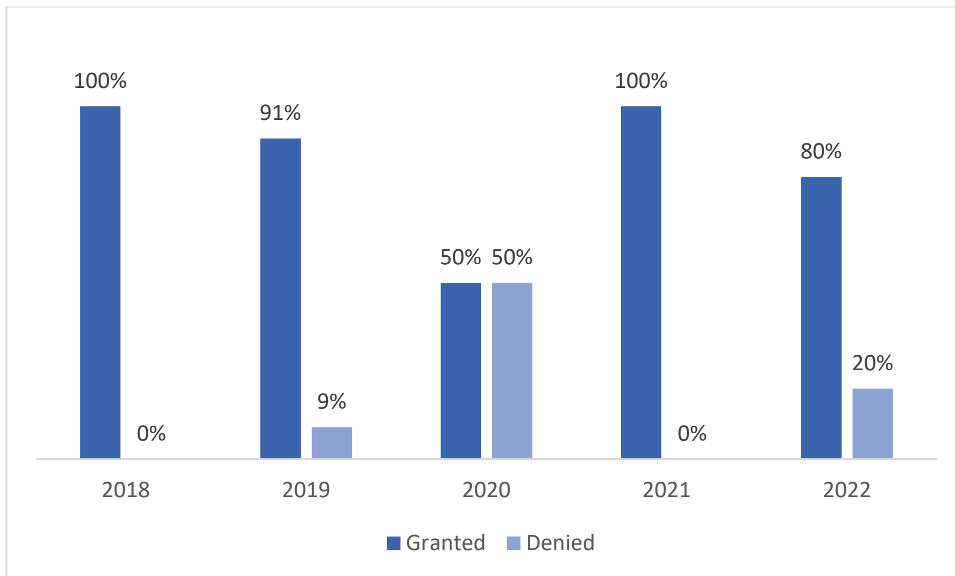


Appendix D. ILC Data from Continuously Reporting Courts

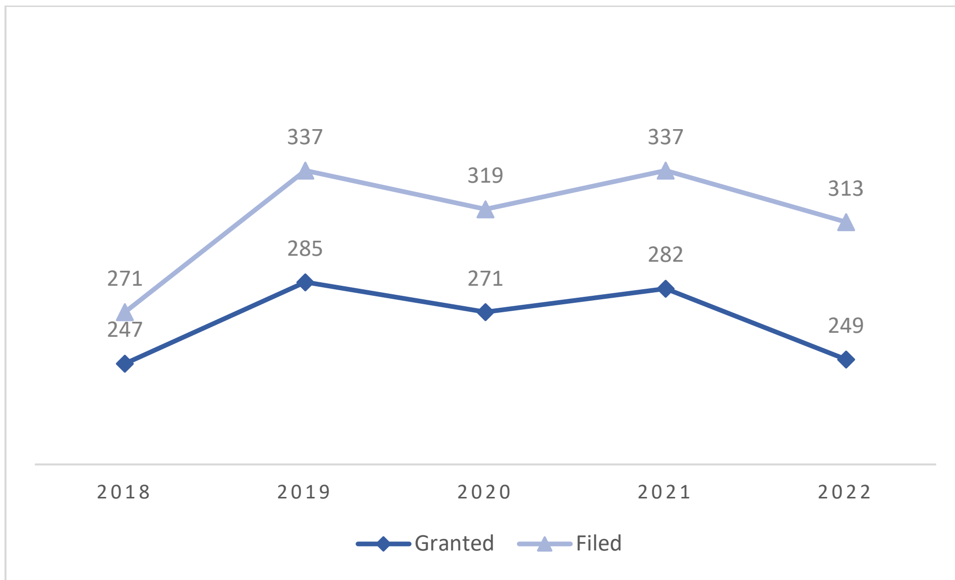
ILC Applications Filed and Granted, Court with 10-30 Annual Cases (n=1)



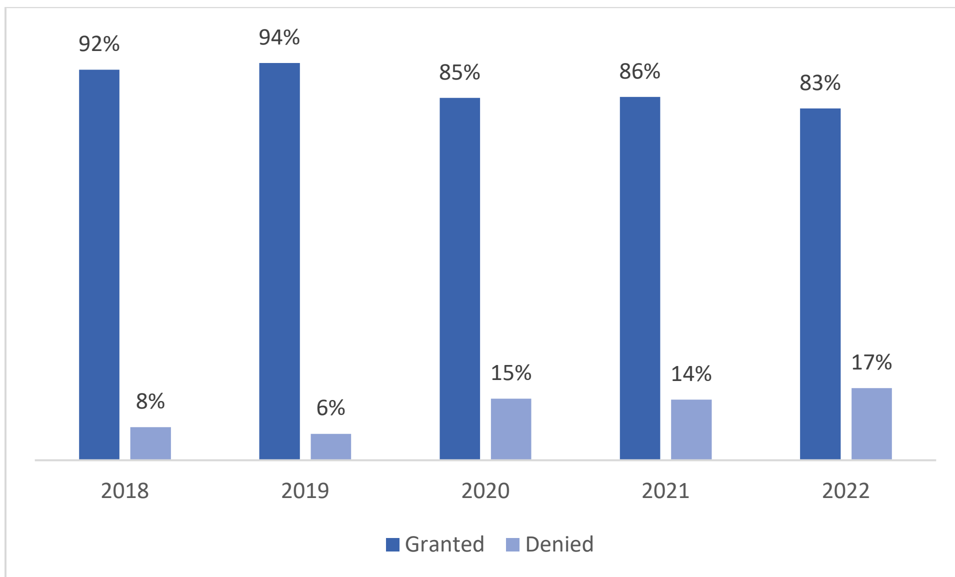
Percentage of ILC Cases Granted and Denied, Court with 10-30 Cases (n=1)



ILC Applications Filed and Granted, Court with 200-400 Annual Cases (n=1)

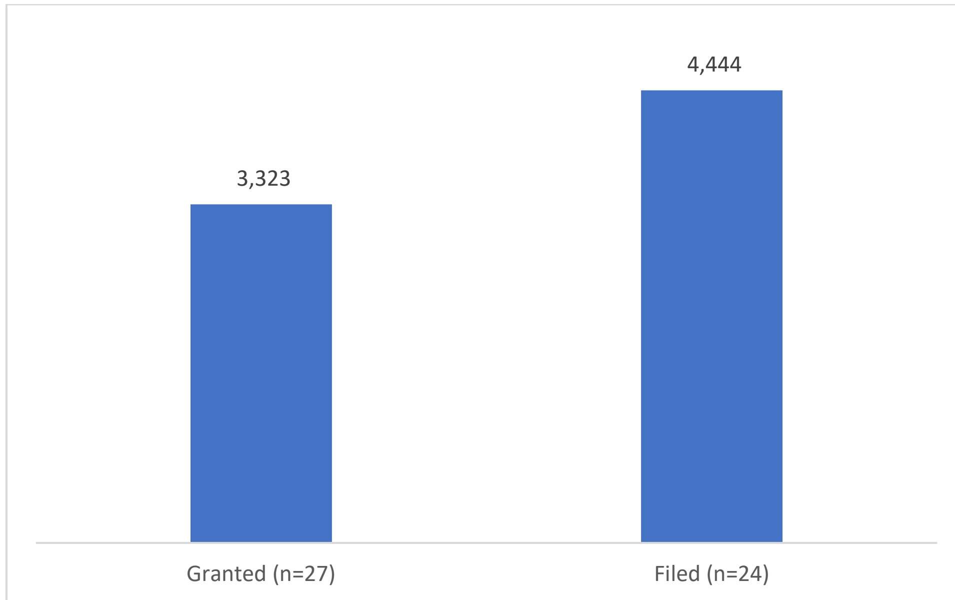


Percentage of ILC Cases Granted and Denied, Court with 200-400 Cases (n=1)

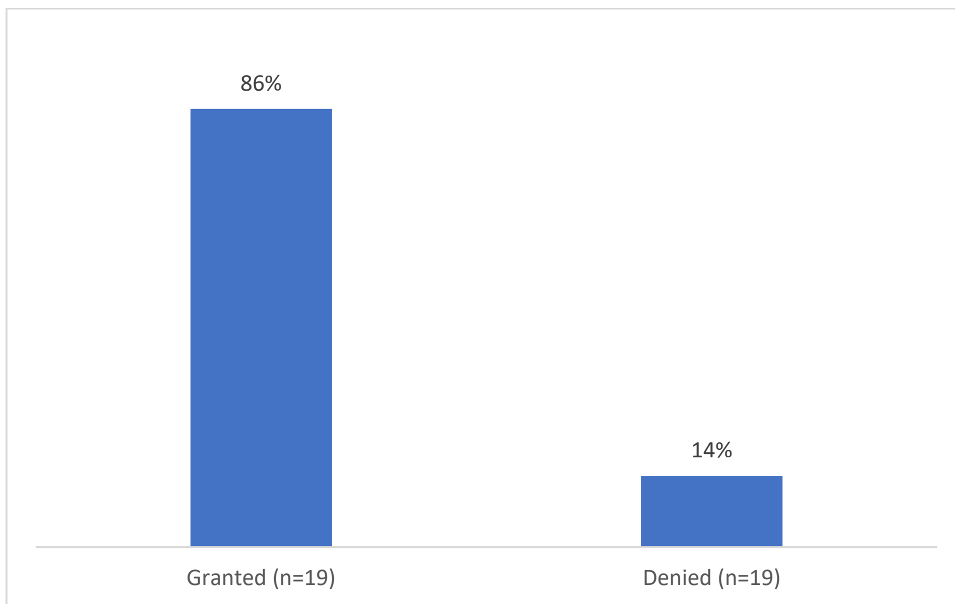


Appendix E. 2022 Court Record Sealing Data

Record Sealing Cases Granted and Filed Among 27 Reporting Courts

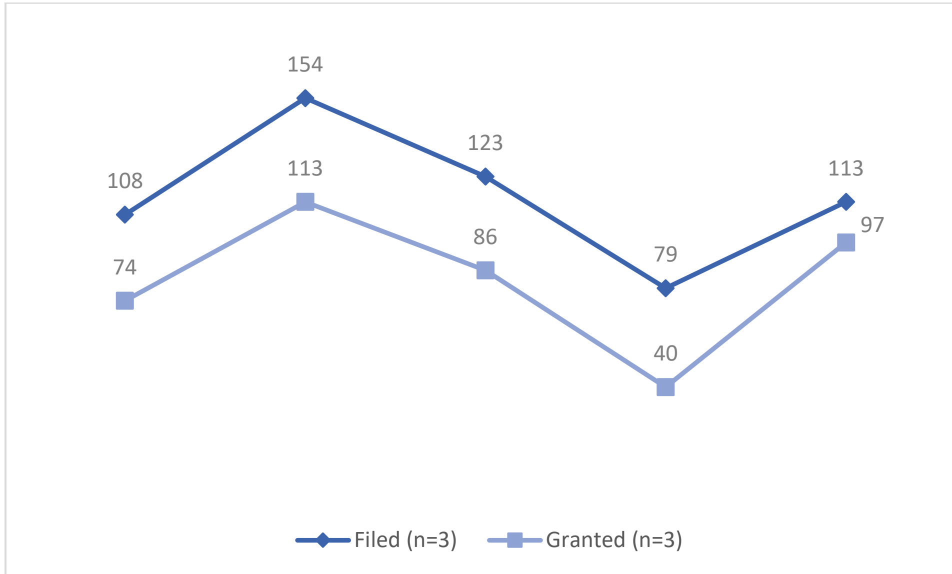


Percentage of Record Sealing Cases Granted and Denied Among 19 Reporting Courts

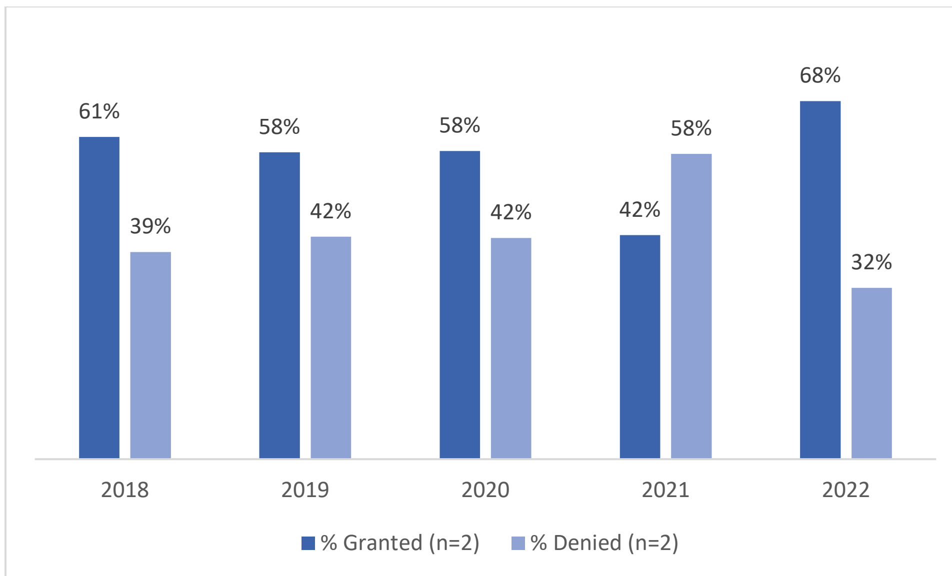


Appendix F. Record Sealing Among Courts with Continuous Data

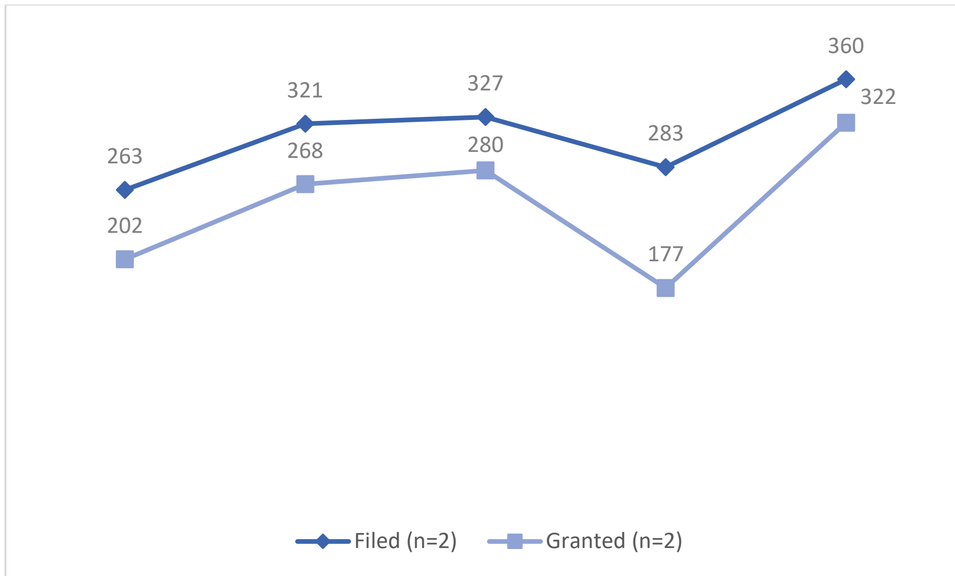
Record Sealing Motions Filed and Granted Among Courts with 0-100 Annual Cases (n=3)



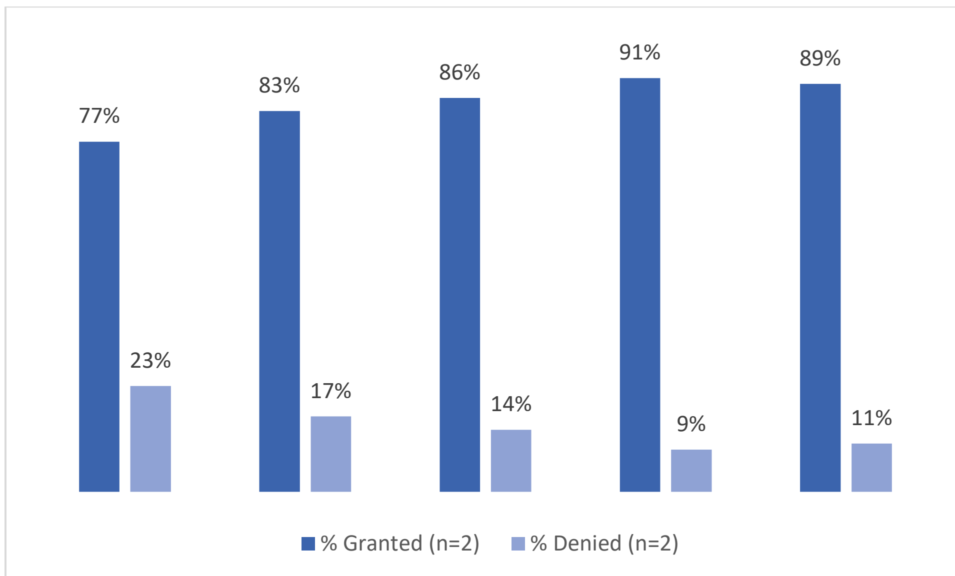
Percentage of Motions Granted and Denied Among Courts with 0-100 Cases (n=2)



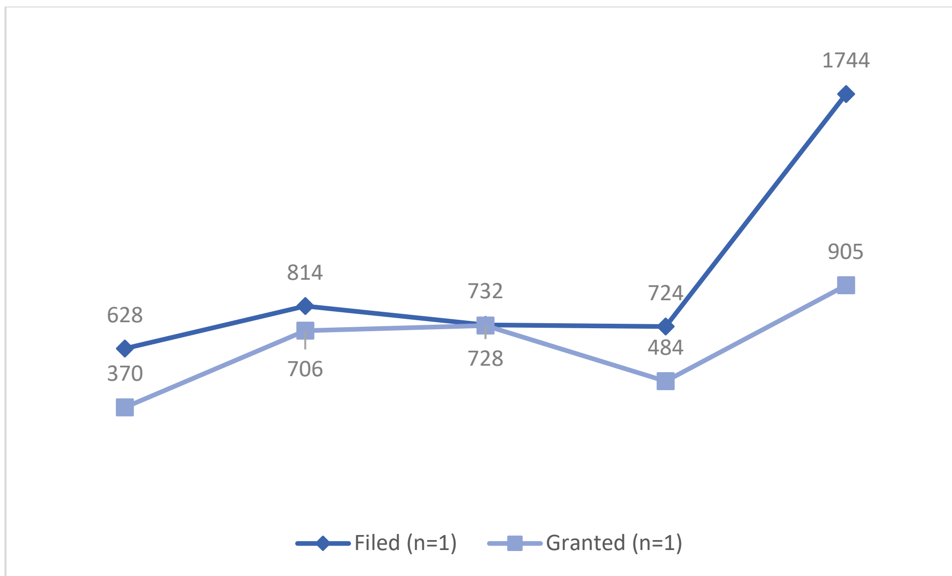
Record Sealing Motions Filed and Granted Among Courts with 100-250 Annual Cases (n=2)



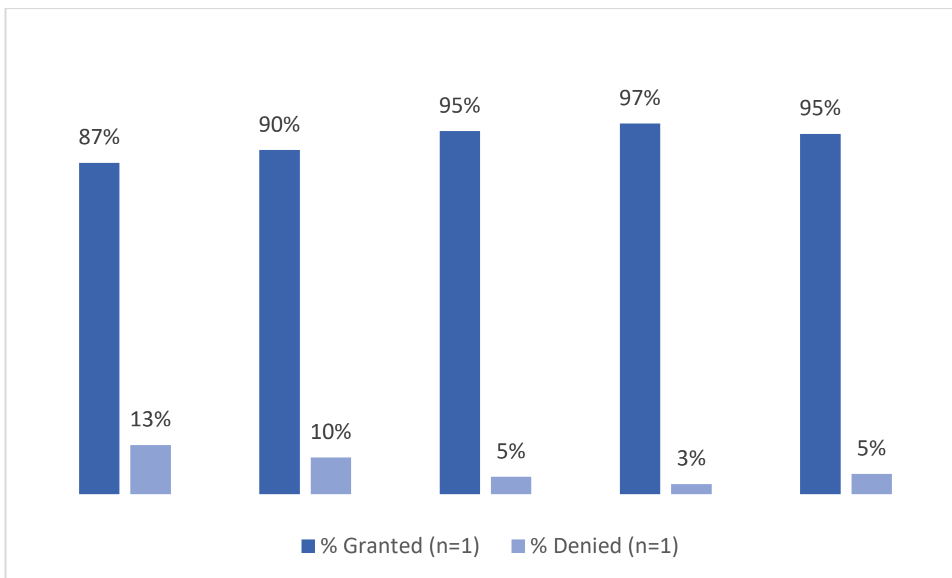
Percentage of Motions Granted and Denied Among Courts with 100-250 Cases (n=2)



Record Sealing Motions Filed and Granted Among Courts with 500+ Annual Cases (n=1)



Percentage of Motions Granted and Denied Among Courts with 500+ Cases (n=1)



Appendix G. Statutory Changes in R.C. 2953.31 and 2953.32 Since HB1[49]

The most notable statutory changes since the inaugural HB1 report have been made to record sealing and record expungement. The bulk of these modifications were included in Senate Bill 288 (SB288),[50] which was signed at the end of 2022 and made effective in early 2023. However, further clarifications were made in House Bill 33, effective October 2023.[51] The sections below summarize the changes and specify the section or division of the revised code in which they are located.

For a more in-depth analysis of the current record sealing and expungement process, please see the Adult Rights Restoration Guide.[52]

Definitions

"Sealing" a record means that the record is kept in a separate file, but not permanently deleted. All index records are, however, to be deleted. The proceedings are deemed not to have occurred.

To "expunge" a record means that the record should be destroyed, deleted, and erased so that the record is permanently irretrievable. This definition is located in 2953.31(B).

Fees

Filing fees for record sealing and expungement requests are capped at $50, regardless of the number of offenses the application seeks to seal or expunge. Local courts may collect an additional fee for sealing and expungement, but these costs are limited to $50.

There is also a change in how the funds are to be distributed: three-fifths of the fee collected are to be paid into the state treasury, with half of that amount going to the attorney general reimbursement fund. Two-fifths of the fee collected are to be paid into the general revenue fund of either the county or municipal corporation. These changes are found in R.C. 2953.32(D)(3).

Expanded Eligibility

Eligibility for record sealing and expungement was expanded under these pieces of legislation. While the definition of "eligible offender" is removed,[53] there are still lists of offenses that are excluded from sealing and expungement (see "Prohibited Offenses" below).

Regardless of how many convictions an offender has and the makeup of those convictions, all offenders are eligible to have records sealed, as long as the offense is eligible. Offenders are now eligible to have up

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[49] Am.Sub.H.B. No. 1, 133 Ohio Laws. Effective April 12, 2021.
[50] Am.Sub.S.B. No. 288, 134 Ohio Laws.
[51] Am.Sub.H.B. No. 33, 135 Ohio Laws.
[52] Ohio Criminal Sentencing Commission and the Ohio Judicial Conference, *Adult Rights Restoration and Record Sealing,* (October 2023). Available at: https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/judPractitioner/adultRightsRestoration.pdf.
[53] Prior to the passage of SB288, this definition was located in R.C. 2953.31(A)(1).

to two felonies of the third degree sealed. The specific change with regard to the felonies of the third degree is found in R.C. 2953.32(A)(1)(g).

This legislation allows for any offender to request expungement of their sealed records. Minor misdemeanors are eligible to be expunged six months after final discharge. Misdemeanors are eligible to be expunged one year after final discharge. Felonies are eligible to be expunged ten years after the offense was eligible to be sealed. These changes are specified in R.C. 2953.32(B)(1).

Prohibited Offenses

These laws modified the list of offenses that are ineligible to be sealed or expunged. Most notably, these changes are: lowering the threshold for ineligible offenses based on victim age (from 16 years old to 13 years old), removing misdemeanor offenses of violence from a list of ineligible offenses, and adding domestic violence and violating a protection order as ineligible offenses. The changes also streamline the list of sexually oriented offenses that are ineligible by removing specific crimes and now states that offenders who committed sexually oriented offenses and were subject to R.C. Chapter 2950 are ineligible. This list of ineligible offenses is now found in R.C. 2953.32(A)(1)(a) through (f).

Timing of Hearing

After a request for sealing or expungement is made, courts are now required to set a hearing not less than forty-five days and not more than ninety days from the date the application was filed. This change is located in R.C. 2953.32(C).

When the request involves an offense with a victim, courts are now required to notify the prosecutor no less than 60 days prior to the hearing, as stated in R.C. 2930.171(A).

Prosecutor Requirements

Under the changes made by SB288, prosecutors are required to file a written objection with the court no later than thirty days prior to the sealing or expungement hearing date. Prosecutors are also required to provide a notice of the application and the date of the hearing to the victim of the offense. These changes are found in 2953.32(C).

Hearing Changes

Courts are now required to consider whether or not the victim objected and to consider the reasons against granting the application as specified by the victim in their objection. These are specified in R.C. 2953.32(D)(1)(3).

Governor's Pardons

Though not a change to R.C. 2953.31 or 2953.31, SB288 added R.C. 2953.33(C), which allows for the sealing and expunging of governor pardons. An offender granted an absolute and entire pardon, a partial pardon, or a pardon upon conditions precedent or subsequent can now apply for an order to seal. The application may be filed at any time after the absolute and entire pardon or partial pardon, and at any time after the conditions of a pardon upon conditions precedent or subsequent have been met.

Prosecutor Initiated Sealing

An additional change related to R.C. 2953.31 and R.C. 2953.32 now allows prosecutors to request sealing or expungement of a record. The prosecutor's request only applies to cases that pertain to a conviction of a low-level controlled substance offense (a fourth-degree or minor misdemeanor violation of Chapter

2925.). The procedures for this type of request, which are nearly identical to the procedures of an offender-initiated request (examples of differences include: addition of the option for an offender to object, allowing the court the discretion to waive the fee, and requirements for the prosecutor to notify the offender at their last known address or by any other means of contact) is found in R.C. 2953.39.

Appendix H. Opportunities and Benefits for Expanded Record Sealing

Efforts to expand eligibility for the sealing of criminal records are not unique to Ohio. Several states such as Michigan, Pennsylvania, Connecticut, Louisiana, Vermont have made efforts to expand eligibility as well as facilitate the automatic sealing or expungement of certain records. A technical report by the SEARCH Group offers an in-depth review of 11 states efforts to implement record sealing legislation.[54] Below is an overview of recent legislative changes in Pennsylvania and Michigan as well as research addressing potential benefits and concerns of expanded criminal record sealing. This report has been updated with additional research since 2021.

Expanding Eligibility for Sealed Records: Michigan and Pennsylvania

Michigan Clean Slate

A 2017 study conducted in Michigan attempted to identify the contributing factors in the uptake rate.[55] The study estimated that only approximately "6.5% of all eligible individuals receive expungement within five years of the date they qualify for one."[56] While 74% of applications for expungement were successfully granted between 2016 and 2017 alone, records showed that over 91% of eligible applicants do not even attempt the process.[57] This reveals the largest barrier to expungement participation and a product of the study, "When criminal justice relief mechanisms require individuals to go through application procedures, many people who might benefit from them will not do so."[58] On April 11, 2023, as part of Michigan's clean slate legislation, the process to automatically expunge certain convictions without an application was rolled out.[59]

In Michigan, the passage of a "Clean Slate" legislation expanded those eligible for record sealing and outlined a process for automatic record sealing. The new legislation allows up to two felonies and four misdemeanors[60] to be automatically sealed following a waiting period. Misdemeanors which result in a sentence less than 93 days, however, may be sealed without limit. In a similar vein, misdemeanors which result in a sentence greater than 1 year are managed identically to felony convictions and contribute to the number of felonies which may be sealed.[61] Otherwise, the waiting period is seven years for misdemeanors and ten years for felonies. The waiting period begins either after the imposition of the sentence, or the completion of any term of imprisonment, whichever occurs later. Some offenses are excluded from eligibility, such as life offenses, some traffic offenses, and sexual offenses. [62]

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[54] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf

[55] Uptake rate is defined as the rate at which those who are legally eligible for expungements actually receive them. Prescott, JJ and Sonja Starr. 2020. "*Expungement of Criminal Convictions: An Empirical Study*." Harvard Law Review 133:2461-2555.

[56] Prescott and Starr, 2020, pg. 2466

[57] Prescott and Starr, 2020, pg. 2489

[58] Prescott and Starr, 2020, pg. 2478

[59] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf

[60] The limit of four misdemeanors are those offenses punishable by 93 days or more, there "appears to be no limit on the automatic expungement of misdemeanors punishable by less than 93 days." Kamau Sandiford, Clean Slate Program Manager, Safe & Just Michigan. Personal Communication, November 30, 2021.

[61] Ibid.

[62] MCL 780.621g(5).

Similarly, Michiganders are now eligible to apply for up to three eligible felonies sealed and expands the opportunity for an unlimited number of misdemeanors to be set aside. It also incorporated into its expungement package, a provision titled “One Bad Night,” which allows for numerous convictions, felony, and misdemeanor, to be treated as one conviction for the purposes of applications for expungement. [63] The package maintained a narrower encompassment based on stakeholders and push-back from legislators and excluded crimes of the violent nature, sexual offenses, offenses committed with a dangerous weapon, and offenses with maximum imprisonment sentences of 10 years or more. Recently, many traffic offenses have been made eligible for expungement, except a 2nd DUI, violations by a Commercial Driver License endorsed operator, and an offense that causes injury or death. However, the applicant's driving record will still display the infraction. Michiganders are also eligible to apply for marijuana-related convictions before December 6, 2016 to be expunged if the alleged offense would not have been a crime following the day that marijuana laws were amended.[64,65]

Michigan Implementation

Michigan counties were allotted a 2-year gap to formulate a tangible plan for implementation. The Clean Slate Pilot Program was granted a $4 million dollar buffer to be used as “stop gap” for expungements until the law goes into effect in 2023.[66] It reallocated this grant utilizing its Michigan Works! Agencies (MWA’s) located around the state. Currently, 16 MWA’s are utilizing $125,000 per location to cover additional staff time, documentation, and court fees associated with the expungement process until its automated aspect is fully functioning. The remaining $2,000,000 is divided up per agency on a formula promulgated by the state, to determine “potential participation” per agency, to maximize the available services.

Governor Whitmer’s proposed 2022 budget allotted $20.1 million towards developing criminal record expungement infrastructure throughout various administrations in Michigan.[67] On April 11, 2023, Michigan’s Clean Slate program of automatic record expungement was officially activated. The state estimated over 1 million residents would have convictions sealed under the program, and 400,000 residents would subsequently have records which were conviction-free.[68]

Michigan identifies potential activities and positions that assist in implementing the program in each of the MWA successfully. The state gives specific recommendations that can be used at the discretion of each MWA to individualize how each will function most efficiently.

Included in the recommendations is the establishment of, “… an MWA staff position to act as an Expungement Navigator.”[69] The duties of such a position would include, but are not limited to, “evaluating criminal records for eligibility, making contact and referrals to local prosecuting attorneys and public

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[63] Norman, Michael *Automatic Expungement: Expectations vs. Reality,* 2021.
[64] Staff of Site 9&10 News, *Michigan House Passes New DUI Expungement Bill,* 9&10 News, 2021.
[65] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf
[66] McClallen, Scott, *$4 million to help Michiganders expunge records via Clean Slate Pilot program,* The Center Square, 2021.
[67] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf
[68] LeBlanc, Beth. *The Detroit News*. 2023. https://www.detroitnews.com/story/news/politics/michigan/2023/04/10/1-million-residents-to-see-convictions-automatically-expunged-under-michigan-law/70100953007/
[69] Department of Labor and Economic Opportunity, *Clean Slate Pilot Program,* 2020.

defenders' offices, participant program registration, referral to other MWA program or legal staff, preparation of required documents, and obtaining required certifications."

Other suggestions include reaching out and contracting a relationship with an attorney or law office that has experience with expungements and criminal law, or "…establishing an attorney position within the MWA or the additional support for an attorney already employed by the MWA or the local government entity."[70]

Further suggestions come in the form of outreach for the MWA programs which can include activities, events, and means of circulating information.[71] Each MWA is required to submit a plan of action that details what programs it plans to implement, as well as new positions that will be created, and an overall plan of action describing the two-year transition.

Automatic expungement in Pennsylvania

Pennsylvania's automatic system allows for the expungement of, nonviolent misdemeanors after 10 years if the former offender doesn't have a subsequent conviction.[72] The state also implemented the program to seal a backlog of cases that had already passed their eligibility to be expunged. Since June 2019, the automated sealing has sealed more than 40 million cases and aided over 1.2 million Pennsylvanians.[73]

Under Pennsylvania's initial 2018 Clean Slate Act, an individual was sometimes ineligible to have a record sealed if they had outstanding court costs and fees. Philadelphia's District Attorney's Office "found that 50% (or 9.2 million) of otherwise eligible misdemeanor convictions" were disqualified from automatic record sealing due to such debts, with inability to pay being one of the chief causes.[74] As such, in October 2020, Pennsylvania passed a bill that eliminated the requirement that fines and court costs must be paid to courts before a case could be sealed, though unpaid restitution remains an exception to this legislation.[75]

In Ohio, application for sealing or expungement is only available after an allotted amount of time has passed since the conclusion of the sentence. Moreover, currently there is no clear standard for what that "conclusion" is. Outstanding fines and court fees may lengthen this period, thus prolonging the beginning of the eligibility period.

Pennsylvania Implementation

In 2018 Pennsylvania's stunning breakthrough was described by former legal aid attorney, Rebecca Vallas, as "…a coalition… that really paved the way for that national bipartisan support that we've seen following Pennsylvania's wake."[76] Pennsylvania saw unannounced support from both, "Democrats and Republicans, as well as… communities, business, law enforcement, and even professional football players— [All of whom] joined Community Legal Services and CAP in advancing the first ever clean slate bill in the

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[70] Department of Labor and Economic Opportunity, 2020.
[71] Department of Labor and Economic Opportunity, 2020.
[72] Jackson, Angie, *It May Become Easier to Clear Criminal History in Michigan,* Detroit Free Press, 2019.
[73] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023.
https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf
[74] Ibid.
[75] Courtney, R. *You Can Clear Your Record Even If You Owe Court Fines and Costs Starting Next Year,* Community Legal Services of Pennsylvania, 2020
[76] Jackson, 2019.

country."[77] The Justice Action Network, Pennsylvania Chamber of Business of Industry, and the Pennsylvania District Attorneys Association were also among the bill's supporters.[78]

Data collected between 2018 and 2021 is indicative of the impact of Pennsylvania's Clean Slate legislation. Throughout this period, 106,444 Pennsylvania records were sealed under Clean Slate's automated process while 1,995 records were sealed by petition. Further, petitions accounted for only 2% of the approximately 108,000 misdemeanor records sealed in Pennsylvania during this time frame.[79]

In 2021, the total cost of Pennsylvania's Clean Slate Act was given to be in excess of $4 million. Implementation was estimated to have cost $3.8 million despite the Pennsylvania Supreme Court's having previously initiated efforts "to automate and modernize its court records systems."[80] Though Pennsylvania utilized a 1-year timeline in operationalizing its Clean Slate Act, Pennsylvania recommends other states establish a 2- to 3-year timeline when implementing similar legislation to allow time to manage unforeseen obstacles. Pennsylvania's future plans for Clean Slate include the potential expansion of those eligible for automatic record sealing and the shortening of waiting periods before individuals are eligible to have their records sealed.

Economic Impacts of Sealing a Criminal Record

There are numerous potential positive impacts to increasing the number of people eligible for record sealing. Most notably, the sealing of a criminal record can expand employment opportunities for former offenders and consequently add more individuals to the labor market, something that is particularly necessary following the COVID-19 pandemic.

Employment

Employers are often unlikely to hire those with criminal records, even if they are minor criminal offenses. The University of Michigan published that the probability of employment alone rose by 6.5% within the first year of obtaining a clean record, with wages increasing by almost 22%.[81] Similarly, studies in California demonstrated annual incomes rising by $6,190.[82] Increased employment rates and wages, more than nonfactors, are significant in preventing recidivism. A study conducted in Illinois, Texas, and Ohio found that incarcerated individuals employed two months after release were less likely to recidivate than those who were unemployed, with the probability of recidivism further decreasing as individuals' wages increased.[83]

Additionally, the relief provided by record sealing has been shown to directly affect historically disadvantaged groups. Studies advise that, "Because of disproportionate policing and criminalization of certain groups, including people of color, youth, LGBTQ+ individuals, and people with disabilities, those

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[77] Amaning, Akua, *Advancing Clean Slate: The Need for Automatic Record Clearance During the Coronavirus Pandemic,* Center for American Progress, 2020.
[78] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf.
[79] Ibid.
[80] Ibid.
[81] Gullen, Jamie, *Why Clear a Record? The Life-Changing Impact of Expungement,* Community Legal Services of Philadelphia, 2018, pg. 4.
[82] Gullen, Jamie, 2018, pg. 4.
[83] Visher, C. Debus, S. & Yahner, J. The Urban Institute Justice Policy Center. *Employment after Prison. A longitudinal Study of Releases in Three States*. 2008.

who are already most likely to face discrimination and poverty are also most likely to have arrest records."[84] As a result, there is also a general increase in quality of life among those with sealed records.

The general knowledge regarding expungements from an employer's perspective is a difficult statistic to measure, however new studies reveal a range of attitudes taken on by employers towards knowingly hiring individuals with criminal records.

Some argue that employers have a right to know the detailed extent of a potential hire's criminal history. Retired police officer, John Cluster, who recently opposed Maryland's expungement legislation, claims that expungement "Could give business owners the wrong impression about a job seeker, a view he had based on looking at the records of people who had been arrested multiple times…"[85] One individual Cluster elaborated on had 26 convictions, and Maryland law would allow him to seal 23 of them.[86] Cluster claims this is unfair to those hiring, because they are under the assumption that the criminal history of individuals is minimal, due to the majority of convictions that qualify to be sealed. In an effort to address such concerns, states like Pennsylvania offer liability protection to employers who hire individuals with a partially sealed record as a result of their Clean Slate bill.[87]

Conversely, a study conducted by the Society for Human Resource Management and the Charles Koch Institute found that, "…employees, managers, and Human Resources professionals, are open to working with and hiring people with criminal histories."[88] A consensus regarding the high rates of unemployment is causing businesses to discover labor and untapped skill in alternative sources, including those individuals that may hold some sort of a criminal history. In fact, according to the study conducted, "Within organizations that have hired those with a criminal record, employers rate the value workers with a criminal record bring to the organization as similar to or greater than that of those without a record."[89] Further research also supports the employability of those with prior convictions. One study found that, in the first year following the sealing of their criminal records, individuals experienced a 13 percent increase in their probability of being employed and a 23 percent increase in their average quarterly wages.[90]

A breakthrough example of this statistic in-action is demonstrated in the restaurant industry by Hot Chicken Takeover, founded in Columbus, OH. Individuals that are hired often have a criminal record, have been previously incarcerated, or face some other barrier to obtaining steady work. Customers willingly and eagerly support this business with the understanding it is run by previous offenders. In 2013, the company profited $6 million in sales between its three locations. Hot Chicken Takeover maintained an employee turnover rate of approximately 40%, a statistic that is well below industry averages in retail and food service. [91] The expansion of expungements would only prove further that the rate and quality of work is not determined by a record, but those skills and talents showcased when given an equal chance at employment.

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[84] Gullen, Jamie, 2018, pg. 7.
[85] Beitsch, 2016.
[86] Beitsch, 2016.
[87] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf
[88] SHRM, *Workers with Criminal Records,* Society for Human Resource Management, 2018.
[89] SHRM, 2018.
[90] Prescott, J.J. and Starr, Sonja B., *Expungement of Criminal Convictions: An Empirical Study* Harvard Law Review, Vol. 133, No. 8, pp.2460-555 (June 2020), http://dx.doi.org/10.2139/ssrn.3353620.
[91] Eaton, Dan *Hot Chicken Takeover staffing up for regional expansion,* Columbus Business First, 2019.

Economic Recovery Post-COVID-19

The U.S. Bureau of Labor Statistics reported as of April 2023 the total number of job openings were estimated at 10.1 million.[92] Specifically in job arenas such as educational services, and other services,[93] numbers in these industries skyrocketed coming out of the year of hardships caused by the 2020 pandemic. Sociologists and other researchers discovered that people had new approaches to job searching and work expectations due to the new realities caused by the unprecedented year. They explain that more people are making family and at-home or virtual work a priority, leaving an abundance of open positions in industries such as restaurant and food service, education, and even health care.[94] For over 70 million Americans who have a criminal or arrest record, but cannot land certain types of employment due to these records, it creates a large and detrimental gap in job openings and potential hires. This gap exists during a time when their labor contribution is so desperately needed.

Many states are uniting new expungement legislation with plans of action to tackle economy recoupment. A group of economists found that "…the cost of barring these individuals [with criminal records] from the workforce is roughly $78 to $87 billion in lost gross domestic product annually."[95]A further study conducted in Pennsylvania found that, "By putting to work just 100 [currently unemployed former inmates] in Philadelphia, it would increase their lifetime earnings by approximately $55 million, income contributions by $1.9 million, and sales tax contributions by $770,000."[96] These numbers demonstrate the abundant impact the previously incarcerated can have economically, and also the impacts a record can have on obtaining certain employment.

New York has agreed with the case made for expungements as a route to economic relief. New York state senator, Zellnor Myrie, was quoted, "We cannot have true economic recovery in the state if we're telling 2.3 million New Yorkers 'Sorry, we don't want your services…I view this much as an economic boon and recovery tool, especially in the age of Covid-19."[97]

Can a Criminal Record Ever Truly be Sealed?

While the economic benefits of a sealed criminal record are well documented at an individual and societal level, there are challenges to truly removing a criminal record from the public. The internet creates a unique challenge to confronting the legislative expansion of record sealing. A simple Google search can help potential employers locate criminal history information from news websites, mugshot photos, and even private companies that house records. James Jacobs, New York University law professor claims, "It's impossible to expunge information in this cyber age."[98] The issue is that the government is publishing criminal records and previous convictions, and since it is public record, there is currently no repercussions

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[92] U.S. Bureau of Labor Statistics, *Job Openings and Labor Turnover Summary,* United States Department of Labor, 2023.

[93] "Establishments in this sector are primarily engaged in activities, such as equipment and machinery repairing, promoting or administering religious activities, grantmaking, advocacy, providing dry cleaning and laundry services, personal care services, death care services, pet care services, photofinishing services, temporary parking services, and dating services" https://www.bls.gov/iag/tgs/iag81.htm.

[94] Long, Heather, *It's not a 'labor shortage.' It's a great reassessment of work in America.* The Washington Post, 2021 .

[95] Lo, Kenny, *Expunging and Sealing Criminal Records,* Center for American Progress, 2020.

[96] Office of the Deputy Mayor for Public Safety, *Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia,* Economy League Greater Philadelphia, 2011.

[97] Weisstuch, Liza, *To Boost Hiring, New York Makes Case for 'Clean Slate,'* Bloomberg CityLab, 2021.

[98] Thompson, Christie, *Five Things You Didn't Know About Clearing Your Record,* The Marshall Project, 2015.

for sites that continue to hold that information forever, even when an expungement has occurred. The problem with legislation to expand record sealing rests on, "The idea that there only exists one single criminal record, when, dozens of pieces of digital information relaly an arrest or conviction across public and private sources."[99]

The issue is complex. The public has a right, and it is "essential to democracy" to have access to public records. However, when the public records are no longer accurate and their status is voided, the common good is not being protected by the government any longer, but rather harming those who are affected by its consequences. Several solutions proposed by researchers include: reclassification of some pre-convictions as private,[100] or regulating some aspects of criminal data "from its point of origin" that would reduce the need for down-the-road remedies, such as expungements, and demonstrate that sealing records is worth the time and undertaking. [101]

Public Safety Concerns

A common source of concern over expanded criminal record sealing is public safety. A common critique is that by expunging records automatically, people who pose a substantial risk to society will "slip through the cracks." The argument usually includes the potential threat those with criminal records pose to, "…public safety, employers, landlords, colleges, and the general public…"[102] Furthermore, some maintain that the public has a right to know about a person's criminal history.[103] Researchers have determined that the recidivism rates for individuals with criminal records do not reflect this type of threat to the general welfare of society. In fact, Michigan found that of those people who get their records sealed, a little more than 4% of them are convicted of new crimes within 5 years of expungement,[104] leaving 96% of those who had their record expunged, crime-free.[105] Moreover, one study found that only 0.6% of individuals with sealed records were convicted of a violent crime – with the majority of reconvictions consisting of nonviolent misdemeanors.[106]

Researchers hypothesized a few reasons why the recidivism rates are so low among those with sealed records such as: the group qualifying for sealing are generally low-risk offenders to begin with, the individuals that successfully navigate the expungement process have, "resources, motivation and persistence"[107] that allow them to succeed, and at the point many people are eligible for expungement, their likelihood of reoffending has passed the highest point. [108] Additionally, reoffending is more likely to

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[99] Lageson, Sarah Esther, *There's No Such Thing as Expunging a Criminal Record Anymore,* Future Tense, 2019.
[100] Lageson, 2019.
[101] Lageson, 2019.
[102] Lo, 2020.
[103] Lo, 2020.
[104] Jackson, 2019.
[105] Lo, 2020.
[106] Prescott, J.J. "Expungement of Criminal Convictions: An Empirical Study." Sonja B. Starr, co-author. Harv. L. Rev. 133, no. 8 (2020): 2460-555.
[107] Starr, 2020.
[108] "The relationship between aging and criminal activity has been noted since the beginnings of criminology…the proportion of the population involved with crime tends to peak in adolescence or early adulthood and then decline with age." Jeffery T. Ulmer and Darrell Steffensmeier, *The Age and Crime Relationship,* The Pennsylvania State University, 2014.

happen within the first year or two after conviction or release from incarceration, therefore if someone is eligible for sealing due to a lack of subsequent conviction, they are much less likely to recidivate. [109]

Conclusion

Since the enactment of HB1, Ohio has continued to take steps to expand record sealing opportunities. The state, however, has an opportunity to follow states such as Michigan and Pennsylvania in further reforming and expanding the opportunities to seal criminal records. Other states such as New Jersey have followed the actions taken by these leading states and opened the door to an automatic expansion. Ohio would be taking a reformative step in criminal justice reform and furthering their goals of rehabilitation, while also making a proactive decision to help boost the economy in giving these individuals a fair chance at better employment. Based on the studies that have been conducted, the risk is relatively low, yet the potential gain is high.

[109] Starr, Sonja B. *Expungement Reform in Arizona: The Empirical Case for a Clean Slate,* Arizona State Law Journal, 2020.

Appendix I. Email Correspondence with Probate Judges

Dear Probate Judges,

In 2021 Ohio House Bill 1 (133rd GA) was enacted into law. Among other changes, the bill revised O.R.C. 5119.93 and 5119.94 to remove some barriers for the use of involuntary commitment to treatment in probate courts.

This bill also requires the Ohio Criminal Sentencing Commission to study and report on its impacts. To that end, we would like to know if you have seen any changes in the numbers of petitions for treatment, or if you have noticed barriers that have prevented the use of this statute.

Please send any information that you would like to share about your experience with these changes to:
Todd Ives, Research Specialist
Ohio Criminal Sentencing Commission
Todd.Ives@sc.ohio.gov
614.387.9306

We can set up a call to receive feedback over phone or virtually at your convenience. Or, if written feedback on your experience is more efficient, please feel free to send it via email. I appreciate your time and attention on this matter.

If you are interested in the original report of the impact of HB1, you can find the report here.

Thank you,

Todd Ives

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