



# ENACTMENT NEWS

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## HOUSE BILL 137 Juvenile Expungement Effective October 9, 2006

House Bill 137 revises the process of juvenile expungement. The bill repeals current Revised Code Section 2151.358 and enacts new sections 2151.355, 2151.356, 2151.357, and 2151.358. The bill reorganizes expungement law, making major revisions to the Revised Code.

### The Bill Creates a Two-Part Process for Expungement - R.C. § 2151.355

The bill distinguishes sealing from expungement. **Sealing** means to remove a record from the main file and to secure it in a file only accessible by the juvenile court. **Expungement** means to destroy, delete, or erase so that it is “permanently irretrievable.” All records are sealed first and then expunged automatically upon a set period of time (after five years or upon age 23) or earlier upon application.

### The Bill Also Creates Different Categories of Records - R.C. § 2151.356

The bill divides records into those which must be **sealed immediately** by the court, those records which the court **shall consider sealing**, and those records which are **ineligible** for expungement as they were under previous law. The notice requirements and other procedures differ based on category of record. *Please see the chart on the next page for an explanation of the categories.*

### The Bill Establishes Procedures for Sealing and Expungement - R.C. § 2151.356 and 2151.357

Prosecutorial Notification - The court must notify the prosecutor before sealing a record and wait thirty days for their response. If the prosecutor objects, the court must hold a hearing. The court may hold a hearing in other cases at its discretion.

Court Orders - When ordering a record sealed, the court shall (1) reply that no record exists, (2) order that the proceedings be deemed never to have occurred, (3) delete all extraneous index references, (4) order the original records delivered to the court and the rest destroyed, (5) send notice of order to seal to public offices or agencies, and (6) seal the record in a separate file where only sealed records are maintained. R.C. § 2151.357(A)

Storage - The court that stores the records may maintain an index that (1) has limited accessibility, (2) contains the name, alphanumeric identifier, the word “sealed,” and the name of the court that has custody, and (3) *does not* contain the social security number or crime. R.C. § 2151.357(C).

Inspection - Sealed records can only be inspected by (1) the court, (2) law enforcement if would be a violent felony, (3) a juvenile whose records it is, (4) law enforcement to see eligibility for diversion, and (5) by a party to a civil action based on case records are sealed for. R.C. § 2151.357(E).

Protection - Sealed records are protected by the following provisions, similar to previous law. No officer/employee of the state shall knowingly release the sealed records. If they do it is a 4<sup>th</sup> degree misdemeanor. R.C. § 2151.357(F). The juvenile may not be questioned in any application for employment, license or other right or privilege – if they are, they shall reply that no record exists. R.C. § 2151.357(G). Judgment of court shall not impose civil disabilities. R.C. § 2151.357(H).

# Juvenile Court Procedure for Sealing and Expungement of Records

## Sealing

R.C. § 2151.356

### Type of Record -

- Juvenile arrested, juvenile *not* brought before court, no complaint filed
- Juvenile brought before the court but resolved without the filing of a complaint (delinquent or unruly)
- Juvenile successfully completes a diversion program after underage alcohol possession.
- Juvenile was charged as a delinquent, unruly, or juvenile traffic offender and court dismisses complaint after trial on the merits
- Juvenile is adjudicated unruly, and upon turning eighteen and not under jurisdiction of the court for delinquency

→ **Sealing** - The Court must seal

→ **Timing** - Immediately

→ **Notice** -

*Verbal* notice at time of sealing explaining sealing, defining expungement, and stating that the juvenile may apply for expungement before their records are automatically expunged

*AND*

*Written* notice sent by *regular* mail to last known address to juvenile *not present* in court for sealing (if the court does not seal the record upon its own motion) explaining sealing, defining expungement, and stating that the juvenile may apply for expungement before their records are automatically expunged

- Juvenile is adjudicated unruly, and not under jurisdiction of the court for delinquency
- Juvenile is adjudicated delinquent, and not under jurisdiction of the court
- Juvenile adjudicated juvenile traffic offender, and not under jurisdiction of the court

→ **Sealing** - The Court shall consider sealing

- (1) Upon its own motion or
- (2) Upon juvenile's application

→ **Timing** - Motion or application may be made two years after the later of the termination of the Court's order or unconditional discharge from DYS

→ **Notice** - *Written* notice at final disposition of case explaining sealing, defining expungement, and stating that the juvenile may apply for expungement before their records are automatically expunged

→ **Procedures** - The court may require documentation, may investigate and determine rehabilitation based on factors such as: age, nature of case, cessation or continuation of behavior, education and employment history, any other relevant circumstances

The court shall promptly *notify prosecutor* of the proceedings. The court may seal on its own motion without a hearing if the prosecutor does not file a response within 30 days or doesn't object in the response. The court may hold a hearing at its discretion and must hold a hearing if the prosecutor objects (within 30 days)

- Juvenile adjudicated for aggravated murder, murder, rape, sexual battery, and gross sexual imposition

→ **Sealing** - The Court cannot seal

## Expungement

R.C. § 2151.358

**Automatic** - The Court must expunge all sealed records either 5 years from sealing or at age 23, whichever comes first **OR** **By application of juvenile** - The juvenile may apply for earlier expungement

(If notified that civil action has been filed, court shall not expunge until resolved)