

Restoring Humanity by Forgetting the Past

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I. INTRODUCTION

Criminal records stigmatize¹ convicted persons,² which encourages society to treat them as less than human—as “other.”³ Once “otherized,” “criminals” are often denied the opportunity to live their best lives and reach their full potential.⁴ Indeed, a criminal record can limit one’s ability to work,⁵ obtain an

¹ See ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* 1 (Simon & Schuster, Inc. 1986) (1963) (defining “stigma” as “signs designed to expose something unusual and bad about the moral status of the signifier”).

² Murat C. Mungan, *Gateway Crimes*, 68 ALA. L. REV. 671, 672 (2017) (“Broadening the reach of criminal law means stigmatizing more people by branding them as criminals.”); Jemima Galan, Note, *Banning the Box, Building a Future; How Expansion of California’s Legislation Would Mend the Threaded Strands Between Recidivism and Employment in Criminally Convicted Offenders*, 37 U. LA VERNE L. REV. 343, 351 (2016) (“Criminally convicted persons are often subjected to stereotyping, and are ostracized given the stigma associated with a criminal conviction.”); see Juan Alberto Arteaga, Note, *Juvenile (In)Justice: Congressional Attempts to Abrogate the Procedural Rights of Juvenile Defendants*, 102 COLUM. L. REV. 1051, 1056 (2002) (asserting that “the stigma of a permanent criminal record impede[s] [juveniles’] ability to become productive, law abiding citizens”).

³ Sharon Dolovich, *Exclusion and Control in the Carceral State*, 16 BERKELEY J. CRIM. L. 259, 265 (2011) (discussing how “people judged as criminals come to be regarded as less than human”); Tracey L. Meares, Neal Katyal, & Dan M. Kahan, *Updating the Study of Punishment*, 56 STAN. L. REV. 1171, 1184 (2004) (“For the criminal, outside contact becomes problematic because of the risk that normal people will disapprove or define a criminal only in terms of his stigma. Outsiders, for their part, will avoid a criminal because of the possibility that being seen with one will contaminate them both socially and legally.”) (citation omitted); Nora V. Demleitner, *Is There a Future for Leniency in the U.S. Criminal Justice System?*, 103 MICH. L. REV. 1231, 1255 (2005) (book review) (hypothesizing that “TV shows such as ‘Cops’ have contributed to the view of criminal offenders as less than human, as deserving of any degradation that would befall them”); Joseph C. Dugan, Note, *I Did My Time: The Transformation of Indiana’s Expungement Law*, 90 IND. L.J. 1321, 1323 (2015) (describing Goffman’s theory that most members of society view “stigmatized persons” as “not quite human”).

⁴ Margaret Colgate Love, *Starting Over with a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 FORDHAM URB. L.J. 1705, 1705 (2003) [hereinafter Love, *Starting Over with a Clean Slate*] (“The collateral consequences of a criminal conviction linger long after the sentence imposed by the court has been served, depriving ex-offenders of the tools necessary to reestablish themselves as law-abiding and productive members of the free community.”); Fruqan Mouzon, *Forgive Us Our Trespasses: The Need for Federal Expungement Legislation*, 39 U. MEM. L. REV. 1, 2 (2008) (discussing the obstacles that a person faces as a result of a criminal record). See generally Simone Ispalanda & Charles E. Loeffler, *Indefinite Punishment and the Criminal Record: Stigma Reports Among Expungement-Seekers in Illinois*, 54 CRIMINOLOGY 387 (2016) (discussing findings of interviews of people seeking expungement of their criminal records); James L. Wagner, Comment, *Expungement in Ohio: Assimilation into Society for the Former Criminal*, 8 AKRON L. REV. 480 (1975) (explaining the role of expungement in alleviating the consequences that result from arrest and conviction).

⁵ This results from state laws that forbid people from working in certain occupations or obtaining professional licenses, see *Occupational Licensing: Vague “Moral Character”*

education,⁶ find housing,⁷ or receive public benefits.⁸ As former Chief Justice Earl Warren explained, “Conviction of a felony imposes a *status* upon a person which . . . seriously affects his reputation and economic opportunities.”⁹ But the consequences do not end there. A criminal record can also impact one’s mental

Requirements Leave Workers with Records on Uncertain Ground, NAT’L INVENTORY COLLATERAL CONSEQUENCES CONVICTION (Apr. 22, 2019), <https://niccc.csgjusticecenter.org/2019/04/22/occupational-licensing-vague-moral-character-requirements-leave-workers-with-records-on-uncertain-ground/> [<https://perma.cc/HJY8-PR4Z>], as well as employer preferences, see Harry J. Holzer, Steven Raphael, & Michael A. Stoll, *The Effect of an Applicant’s Criminal History on Employer Hiring Decisions and Screening Practices: Evidence from Los Angeles*, in BARRIERS TO REENTRY?: THE LABOR MARKET FOR RELEASED PRISONERS IN POST-INDUSTRIAL AMERICA, 117, 118, 123–25 (Shawn Bushway, Michael A. Stoll, & David F. Weiman eds., 2007); Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 937, 960 (2003) (concluding that people with criminal records are one-half to one-third as likely as those without records to be considered by employers).

⁶ See 20 U.S.C. § 1091(r) (2012) (detailing ineligibility for student loans as a result of being convicted of certain drug crimes while receiving student loans); Margaret Colgate Love, *Managing Collateral Consequences in the Sentencing Process: The Revised Sentencing Articles of the Model Penal Code*, 2015 WIS. L. REV. 247, 249 (“Collateral consequences now reach into every corner of modern life, making it hard to . . . get an education . . .”); Anna Roberts, *Conviction by Prior Impeachment*, 96 B.U. L. REV. 1977, 2005 n.212 (2016) (mentioning restrictions on education as a collateral consequence of a criminal conviction).

⁷ See Ann Cammett, *Confronting Race and Collateral Consequences in Public Housing*, 39 SEATTLE U. L. REV. 1123, 1138–41 (2016) (discussing federal statutes allowing public housing tenants and applicants to be evicted or denied housing based on criminal records, particularly for drug offenses); Michael Pinard, *Reflections and Perspectives on Reentry and Collateral Consequences*, 100 J. CRIM. L. & CRIMINOLOGY 1213, 1218 (2010) (noting that a criminal record can restrict public housing).

⁸ Paul T. Crane, *Incorporating Collateral Consequences into Criminal Procedure*, 54 WAKE FOREST L. REV. 1, 16 (2019) (noting that “[c]riminal convictions can preclude a defendant from accessing a wide range of public benefits”).

⁹ *Parker v. Ellis*, 362 U.S. 574, 593–94 (1960) (Warren, C.J., dissenting), overruled in part by *Carafas v. LaVallee*, 391 U.S. 234 (1968).

health and overall sense of well-being,¹⁰ and these burdens are often shouldered by families as well.¹¹

Expungement and record sealing provide a measure of relief for those seeking to escape the stigma.¹² Expungement, in its literal sense, means the permanent destruction of the official conviction record,¹³ while record sealing “is a process where a criminal record is sequestered and prevented from being accessed by the public.”¹⁴ Although expungement and record sealing are distinct concepts, many jurisdictions use the term “expungement” to describe their record-sealing provisions.¹⁵

Currently, thirty-nine U.S jurisdictions provide some form of expungement or record sealing (“criminal record relief”), with another four states allowing certain convictions to be set aside but not sealed.¹⁶ Most of these jurisdictions limit criminal record relief to lower-level, non-violent offenses, or to “first

¹⁰ April D. Fernandes, *How Far Up the River? Criminal Justice Contact and Health Outcomes*, 7 SOC. CURRENTS 29, 40 (2020) (“The findings for mental health suggest an even more pervasive and pernicious impact. From an arrest to a conviction to a jail sentence, results show an impact on self-reported mental health across all points of contact. These findings suggest that there may be multiple mechanisms at play, with time engaged with the criminal justice system operating in conjunction with the stress and strain of the proceedings.”); Ispa-Landa & Loeffler, *supra* note 4, at 403–05 (discussing emotional and cognitive responses to being stigmatized by a criminal record); Kelley E. Moore, Jeffrey B. Stuewig, & June P. Tangney, *The Effect of Stigma on Criminal Offenders’ Functioning: A Longitudinal Mediation Model*, 37 DEVIANT BEHAV. 196, 197 (2016) (citing Patrick W. Corrigan, Amy C. Watson, & Leah Barr, *The Self-Stigma of Mental Illness: Implications for Self-Esteem and Self Efficacy*, 25 J. SOC. & CLINICAL PSYCHOL. 875, 881–82 (2006)) (“The belief that one’s group is devalued by the public is thought to negatively affect self-esteem and self-efficacy, which ultimately affect expectations about future interactions, coping, mental health, and behavior.”).

¹¹ Mouzon, *supra* note 4, at 7; JEREMY TRAVIS, ELIZABETH CINCOTTA MCBRIDE, & AMY L. SOLOMON, URBAN INST. FAMILIES LEFT BEHIND: THE HIDDEN COSTS OF INCARCERATION AND REENTRY 7–8 (June 2005) (observing that because of “[b]arriers to finding employment and housing,” ex-prisoners with children in foster care may have difficulty obtaining the housing and employment necessary to reunify with their children), https://www.researchgate.net/publication/305487992_Families_Left_Behind_The_Hidden_Costs_of_Incarceration_and_Reentry (on file with the *Ohio State Law Journal*).

¹² See Love, *Starting Over with a Clean Slate*, *supra* note 4, at 1723–25 (describing expungement and record sealing provisions).

¹³ Chris Skall, *Journey out of Neverland: CORI Reform*, Commonwealth v. Peter Pon, and Massachusetts’s Emergence as a National Exemplar for Criminal Record Sealing, 57 B.C. L. REV. 337, 341 (2016) (“Expungement is the process of destroying, erasing, or holistically preventing access to a criminal record such that neither the public nor governmental actors can access it.”).

¹⁴ *Id.* at 341–42.

¹⁵ Mouzon, *supra* note 4, at 5 n.15; Skall, *supra* note 13, at 342.

¹⁶ *50-State Comparison: Expungement, Sealing & Other Record Relief*, RESTORATION RTS. PROJECT (July 2020), <https://cresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside/> [<https://perma.cc/9C8S-3AWS>] [hereinafter *50-State Comparison*].

offenders.”¹⁷ The remaining jurisdictions—eight states and the federal government—provide no general criminal record relief.¹⁸

Scholars have already engaged in a robust debate about the practical benefits and shortcomings of criminal record relief.¹⁹ This Article contributes to this conversation by highlighting an oft-overlooked value of granting criminal record relief: the humanization of those who have rehabilitated themselves. This benefit alone makes such relief worthwhile even if truly keeping one’s criminal record secret is impossible in the Information Age.²⁰ Accordingly, this Article contends that criminal record relief should be broadly available and not limited only to those who have committed low-level crimes.

Part I will tell the stories of three people—Allison, Jane, and Angelo—who were convicted in Ohio of aggravated assault, sexual conduct with a minor, and murder, respectively. Each has been impoverished, in the broadest sense, because of their criminal record, and they share in common society’s dehumanization.²¹ Each wishes the state would forget their criminal pasts, but the nature of their crimes makes them ineligible for relief.²²

In the nearly five decades that Ohio has allowed record sealing, the list of eligible offenses has narrowed substantially.²³ Part II will trace the evolution of

¹⁷ See Pierre H. Bergeron & Kimberly A. Eberwine, *One Step in the Right Direction: Ohio’s Framework for Sealing Criminal Records*, 36 U. TOL. L. REV. 595, 596 (2005); Love, *Starting Over with a Clean Slate*, *supra* note 4, at 1723–24; *50-State Comparison*, *supra* note 16.

¹⁸ *50-State Comparison*, *supra* note 16.

¹⁹ Compare, e.g., Love, *Starting Over with a Clean Slate*, *supra* note 4, at 1726 (“Though expungement still finds its occasional champion in the academic literature, in theory and practice it is an unsatisfactory solution to the problem of restoring rights and status” particularly given the “technological realities of the information age” which allow the “broader public posting and private dissemination of criminal history information”), with Brian M. Murray, *Unstitching Scarlet Letters?: Prosecutorial Discretion and Expungement*, 86 FORDHAM L. REV. 2821, 2840–41 (2018) (although recognizing that “[t]echnological advancements regarding big data—in terms of its dissemination and its concealment—complicate th[e] debate” regarding the efficacy of expungement, justifying it as a remedy because “it recognizes payment of the debt by the offender and that the road to rehabilitation is either complete or the path being definitively taken by the ex-offender”).

²⁰ See Love, *Starting Over with a Clean Slate*, *supra* note 4, at 1726.

²¹ See Telephone Interview with Jane Doe (June 29, 2020) [hereinafter Doe Interview] (on file with author) (“I made a mistake, a really bad one, but I am a mother. I have goals. I am trying to prove myself. . . . Don’t just look [at my record] and decide who I am.”); Telephone Interview with Angelo Robinson (June 25, 2020) [hereinafter Robinson Interview] (on file with author) (“It’s hard to reach for the stars when you have something anchoring you down. You’re judged by your criminal record. Everything goes by what’s on paper rather than the character of the individual.”).

²² Robinson Interview, *supra* note 25; Text message from Jane Doe to David Singleton, Exec. Dir., Ohio Justice & Policy Ctr. (June 16, 2020) (on file with author) (“[Y]ou ask . . . what it would mean to me . . . to have my charges dropped . . . I don’t think . . . any words [can] describe the joy and relief I would feel.”).

²³ See Am. Sub. S.B. 18, 127th Gen. Assemb., Reg. Sess. § 2953.36(D)–(E) (Ohio 2007) (amending OHIO REV. CODE ANN. § 2953.36 to limit the number of offenses eligible

Ohio's record sealing provisions and discuss how the "otherizing" of violent and sexual offenders engendered by media coverage may have impacted the legislature's decision to scale back the offenses eligible for sealing.

In contrast, Part III examines how public sympathy led Ohio to create a process for expunging the criminal records of human trafficking victims. The moral is clear: sympathy matters, and if people like Allison, Jane, and Angelo are ever to obtain criminal record relief, stories like theirs must be used to move the public and the legislature to embrace extending criminal record relief to those who have committed serious crimes.

Part IV concludes by allowing Allison, Jane, and Angelo to explain, in their own words, what being able to leave their record behind would mean to them, and why we should care.

II. "I'M NOT THAT PERSON ANYMORE"

According to Michelle Alexander, criminal records legitimize discrimination against those convicted of crimes: "The 'whites only' signs may be gone, but new signs have gone up—notices placed in job applications, rental agreements, loan applications, forms for welfare benefits, school applications, and petitions for licenses, informing the general public that 'felons' are not wanted here."²⁴

In Ohio alone, there are nearly one thousand laws restricting people with criminal records from working, acquiring professional licenses, or obtaining government contracts.²⁵ These include both mandatory prohibitions (e.g., OHIO REV. CODE ANN. § 4765.301, which bars a person with a felony conviction from working as an emergency medical technician)²⁶ and discretionary restrictions (e.g., OHIO REV. CODE ANN. § 4709.13, which permits the state cosmetology and barber board to deny a barber's license to an applicant with a felony record).²⁷

But as the following narratives demonstrate, a criminal record also imposes intangible burdens: it kills dreams and dehumanizes.

for record sealing); Am. Sub. S.B. 123, 124th Gen. Assemb., Reg. Sess. § 2953.31 (Ohio 2004) (amending OHIO REV. CODE ANN. § 2953.36 to limit the number of offenses eligible for record sealing); Am. Sub. H.B. 335, 120th Gen. Assemb., Reg. Sess. § 2953.36 (Ohio 1994) (amending OHIO REV. CODE ANN. § 2953.36 to limit the number of offenses eligible for record sealing); Love, *Starting Over with a Clean Slate*, *supra* note 4, at 1723–24 n.74.

²⁴ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLOR BLINDNESS* 176 (The New Press 2020).

²⁵ Ohio Justice & Policy Center, *Civil Impacts of Criminal Convictions Under Ohio Law (CIVICC)*, <https://civicc.opd.ohio.gov/> (follow "get started" hyperlink; then follow "search by civil impact" hyperlink; then search by keyword using terms "license", "work", and "government contract") (last visited Oct. 12, 2020).

²⁶ OHIO REV. CODE ANN. § 4765.301(C) (West 2020).

²⁷ OHIO REV. CODE ANN. § 4709.13(B)(1) (West 2020).

A. Allison Nelson

In 1992, Allison Nelson²⁸ argued with her boyfriend.²⁹ When the argument turned violent, she stabbed him in what she believed was self-defense.³⁰ The state disagreed and charged her with felonious assault.³¹ She pleaded guilty to aggravated assault, a lesser offense.³²

Although the court sentenced Allison to one year in prison,³³ she was furloughed after serving approximately seven months.³⁴ While she spent several months renovating houses as part of a vocational program, she dreamed of pursuing more education.³⁵

Eighteen months after her release, Allison received her Bachelor of Arts in English and Political Science.³⁶ And in June 1998, she obtained a master's degree in African and African American Studies with a concentration in African Studies.³⁷

A year before earning her master's, in anticipation of applying to law school,³⁸ Allison tried to put her criminal conviction behind her and applied to have her record sealed under OHIO REV. CODE § 2953.32.³⁹ The court granted

²⁸“Allison” is a pseudonym used to protect her identity.

²⁹Telephone Interview with Allison Nelson (Feb. 11, 2020) [hereinafter Nelson Interview] (on file with author).

³⁰*See id.*

³¹Indictment for: Felonious Assault at 2, State v. [redacted], Hamilton C.P. No. [redacted] (May 27, 1992) (on file with author).

³²Judgment of Allison Nelson of Oct. 2, 1992 (on file with author).

³³*Id.*

³⁴Nelson Interview, *supra* note 29.

³⁵*See id.*

³⁶*Id.*

³⁷*Id.*

³⁸Allison's aggravated assault conviction would not necessarily have resulted in her being denied admission to law school. *See* OHIO SUPREME COURT, SUMMARY OF CHARACTER AND FITNESS PROCESS IN OHIO 4, <http://www.supremecourt.ohio.gov/Boards/character/Fit/CFProcess.pdf> [<https://perma.cc/9A59-BEQV>] (“There is no *per se* bar to admission for applicants with felony records. However, an applicant who has a felony record must prove full and complete rehabilitation and satisfy special temporal and substantive conditions. The applicant is also subject to additional scrutiny, including a mandatory review by the Board, even if a local Admissions Committee has recommended an unqualified approval of the applicant. Applicants who have been convicted of the most serious kinds of felonies—aggravated murder, murder, or any first or second degree felony under Ohio law—must undergo yet another review by, and receive approval from, the Supreme Court itself.”).

³⁹*See* Entry Granting Application for Expungement of Conviction at 1, State v. [redacted], Hamilton C.P. No. [redacted] (July 28, 1998) [hereinafter Expungement Grant] (on file with author). Though the legislature denominated OHIO REV. CODE ANN. § 2953.52 as an “expungement” statute, the relief it provided was record sealing. OHIO REV. CODE ANN. § 2953.52 (West 2020).

her request⁴⁰ but later vacated its order⁴¹ after discovering that an earlier petty theft conviction made Allison ineligible for relief.⁴²

That setback did not deter her from pursuing other dreams. Ten years after completing her master's degree, she earned a Ph.D. in Educational Studies, then left Ohio for Washington, D.C.⁴³ She soon landed a job as an adjunct faculty member at a local university's community college division where she taught English.⁴⁴ She eventually moved to the main campus where she taught a variety of courses.⁴⁵

Allison did not get rich teaching. The university paid her only \$4,500 per class, and with other part-time work, Allison estimates she earned \$40,000 to \$45,000 yearly, which she had to stretch to live in an expensive city.⁴⁶ "I was hustling," she says.⁴⁷

Allison believes that her criminal record did not hold her back professionally in D.C.⁴⁸ To her knowledge, employers there only performed a local police check and did not look to see whether she had convictions in other jurisdictions.⁴⁹ But her record began to impact her when she moved back to Ohio in August 2019.⁵⁰

Believing that she could be "profoundly impactful" to secondary-school-aged students, Allison sought work as an "educational interventionist" who could redirect troubled students onto the right path.⁵¹ The message she wanted to give them was simple: "You can do this, too. And I've made a mistake."⁵² But schools could not hire her because her aggravated assault conviction disqualified her from obtaining a license.⁵³ Allison does not believe that she should be considered a danger to children simply because of an offense she committed almost thirty years ago.⁵⁴

⁴⁰ Expungement Grant, *supra* note 39, at 1.

⁴¹ Entry Vacating Expungement Order, at 1, State v. [redacted], Hamilton C.P. No. [redacted] (Jan. 8, 1999) (on file with author).

⁴² See Motion to Vacate Expungement Order at 2, State v. [redacted], Hamilton C.P. No. [redacted] (Dec. 4, 1998) (on file with author).

⁴³ Nelson Interview, *supra* note 29.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Nelson Interview, *supra* note 29.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ OHIO REV. CODE ANN. § 3319.31(C) (West 2020) ("Upon learning of . . . a conviction of any of the offenses listed in this division [which include aggravated assault, OHIO REV. CODE ANN. § 2903.12 (West 2020),] by a person who . . . is an applicant for a license . . . the state board or the superintendent of public instruction . . . shall by a written order . . . deny issuance . . . of the license to the person.").

⁵⁴ Nelson Interview, *supra* note 29.

With \$80,000 in student loan debt, Allison has abandoned her dream of teaching, and the only job she has been able to find is delivering packages for Amazon.⁵⁵ “Not my lane, not my wheelhouse,” she says of her job.⁵⁶ “I want to do what I was trained to do. Being an educator. That’s my calling.”⁵⁷

B. *Jane Doe*

On a September morning in 2006, Jane⁵⁸ stood before an Ohio judge at a sexual offender classification hearing.⁵⁹ Three months earlier she pleaded guilty to one count of unlawful sexual conduct with a minor.⁶⁰ The state alleged that then-twenty-four-year-old Jane had sex with a boy she “knew was 13 years of age or older, but was less than 16 years of age,” or that she “was reckless” with regard to the boy’s age, and that she was “ten or more years older” than the boy.⁶¹ Until her guilty plea, Jane had no criminal record (though she had been cited for minor misdemeanor possession of marijuana, the equivalent of a traffic ticket).⁶²

At the time of her hearing, Ohio had three sexual offenders classifications.⁶³ “Sexually oriented offender” was the lowest level, requiring designated individuals to register once a year for ten years.⁶⁴ “Habitual sexual offender” was the intermediate category, requiring annual registration for twenty years,

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Jane is a pseudonym used to protect her identity. It is also the name she used in the litigation. *See Doe v. DeWine*, 99 F. Supp. 3d 809, 812 (S.D. Ohio 2015), *rev’d on other grounds*, 910 F.3d 842 (6th Cir. 2018).

⁵⁹ *See* Entry of Classification and Notice of Duties to Register as an Offender of a Sexually Oriented or Child-Victim Oriented Offense at 1, *State v. [redacted]*, Hamilton C.P. No. [redacted] (Sept. 21, 2006) [hereinafter Entry of Classification and Notice of Duties to Register] (on file with author). Unless otherwise indicated, the facts of Jane’s circumstances, as presented here, were provided by her to the author. The notes of conversations with Jane are on file with the author.

⁶⁰ *See* Entry Withdrawing Plea of Not Guilty and Entering a Plea of Guilty at 1, *State v. [redacted]*, Hamilton C.P. No. [redacted] (June 13, 2006) (on file with author).

⁶¹ Indictment at 2, *State v. [redacted]*, Hamilton C.P. No. [redacted] (Mar. 24, 2005) (on file with author). The indictment did not list Jane’s age. The author has determined her age at the time of the offense through other means related to his representation of her.

⁶² The author ascertained this information from the Hamilton County Clerk of Courts website using Jane’s real name. *Search Name in Criminal & Traffic Records*, HAMILTON CTY. CLERK OF COURTS, <https://www.courtclerk.org/records-search/search-by-name/> [<https://perma.cc/UG4D-8ZKX>] (enter last name, enter first name, enter date of birth, press “search”).

⁶³ *State v. Bodyke*, 126 Ohio St. 3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶¶ 24–28 (describing Ohio’s three-tiered classification system). Community notification refers to the requirement that the sheriff mail notification to the neighbors of a certain people required to register as sexual offenders. *See* OHIO REV. CODE ANN. § 2950.11 (West 2005) (amended 2006 and 2012).

⁶⁴ *Bodyke* ¶ 24.

with possible community notification.⁶⁵ And “sexual predator,” the most serious classification, required registration every ninety days for the rest of the individual’s life, with community notification required.⁶⁶ In order to be labeled a predator, the court had to find clear and convincing evidence that the person was likely to commit one or more sexual offenses in the future.⁶⁷

The judge labeled Jane a sexual predator, citing “evidence of sexual relationship with underage girl (16),”—even though sixteen is the age of consent in Ohio—and Jane’s own “history of emotional problems[,] and sexual abuse,” as well as “substance abuse that [Jane] minimized.”⁶⁸ The court also noted that a “diagnosis of pedophilia [could] not be ruled out,”⁶⁹ even though there was no evidence that Jane was sexually attracted to prepubescent children.⁷⁰ Finally, the court used Jane’s juvenile record to suggest that she had “antisocial attitudes.”⁷¹

Under an earlier version of Ohio law, a sexual predator classification could be reviewed every five years.⁷² But in 2003, the legislature eliminated this opportunity.⁷³

Jane’s conviction and classification has had a devastating impact on her life. She already had two young children when she was convicted.⁷⁴ In the years since, Jane, a single mother, has had four additional children.⁷⁵ Finding a suitable home has proven particularly challenging.⁷⁶ Because she has a lifetime registration requirement, Jane is ineligible to live in public housing,⁷⁷ and she

⁶⁵ *Id.* ¶ 25.

⁶⁶ *Id.* ¶ 26.

⁶⁷ *See* State v. Eppinger, 91 Ohio St. 3d 158, 163, 743 N.E.2d 881, 886–87 (2001) (citing OHIO REV. CODE §§ 2950.01(E), .09(B)(3)).

⁶⁸ Entry of Classification and Notice of Duties to Register as an Offender of a Sexually Oriented or Child-Victim Oriented Offense, *supra* note 59, at 2.

⁶⁹ *Id.*

⁷⁰ *See* AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 697–700 (5th ed. 2013) (describing the diagnostic criteria and features of pedophilic disorder).

⁷¹ Entry of Classification & Notice of Duties to Register, *supra* note 59, at 2.

⁷² *See* Doe v. DeWine, 99 F. Supp. 3d 809, 813–14 (S.D. Ohio 2015) (describing former OHIO REV. CODE § 2950.09(D)(1), which allowed a person labeled a sexual predator to challenge her designation one year after conviction and every five years thereafter, and how the legislature amended the statute to eliminate the opportunity to petition for reclassification), *rev’d on other grounds*, 910 F.3d 842 (6th Cir. 2018).

⁷³ *Id.* at 814.

⁷⁴ Doe Interview, *supra* note 21.

⁷⁵ *See* Defendant’s Unopposed Motion to Withdraw Guilty Plea at 2, State v. [redacted], Hamilton C.P. No. [redacted] (Aug. 16, 2020) (on file with author).

⁷⁶ Complaint at 6, Doe v. DeWine, 99 F. Supp. 3d 809 (S.D. Ohio 2015) (No. 1:12-cv-846) [hereinafter Doe Complaint].

⁷⁷ 24 C.F.R. § 960.204(a)(4) (2019); 24 C.F.R. § 982.553(a)(2)(i) (2019).

and her children have at times been homeless.⁷⁸ They currently live in a vermin-infested rental house rife with code violations.⁷⁹ Jane wants to find better housing for her family, but her predator label makes it all but impossible.⁸⁰

Her criminal record and childcare responsibilities have also made finding work difficult. She has worked odd jobs where she can find them but has mostly been unemployed and dependent on public assistance.⁸¹ Still, she has managed to find ways to make ends meet for her family and to attend the local community college on and off as she works towards a business degree.⁸² When she completes her education, she hopes to work in a non-profit so she can give back.⁸³

Perhaps the most difficult aspect of her classification is the impact on her children. In the past, when she has moved, the sheriff sent postcards to her new neighbors informing them of her presence, resulting in her children being teased by other children.⁸⁴ Jane believes that “[her] children [should] no longer have to pay for [her] mistakes.”⁸⁵

Jane has committed no additional sex offenses.⁸⁶ Her only other conviction was for failure to register as a sexual predator, an offense that occurred when she simply forgot to show for one of her quarterly registration appointments.⁸⁷ She pleaded guilty to that crime and received probation.⁸⁸

In 2012, she filed a federal lawsuit alleging that the classification statute violated her right to due process by labeling her as currently dangerous without allowing her an opportunity to prove otherwise.⁸⁹ After many years of litigation, the district court agreed and declared the statute’s classification provisions unconstitutional.⁹⁰ Jane’s victory was short-lived, however: a unanimous panel of the Sixth Circuit reversed the district court’s decision,⁹¹ and Jane’s hope of one day being removed from the sex offender registry vanished.

Desperate does not begin to describe just how badly Jane wishes she could escape the burdens of her classification.

⁷⁸ See Defendant’s Unopposed Motion to Withdraw Guilty Plea, *supra* note 75, at 2. On one occasion, the author had to arrange for emergency housing for Jane and her family when they suddenly became homeless. *See id.*

⁷⁹ *Id.* at 3.

⁸⁰ *Id.* at 3–4.

⁸¹ *Id.* at 3.

⁸² Doe Interview, *supra* note 21.

⁸³ *Id.*

⁸⁴ Defendant’s Unopposed Motion to Withdraw Guilty Plea, *supra* note 75, at 4.

⁸⁵ Text message from Jane Doe to David Singleton, Exec. Dir., Ohio Justice & Policy Ctr. (June 20, 2020) (on file with author).

⁸⁶ Defendant’s Unopposed Motion to Withdraw Guilty Plea, *supra* note 75, at 2.

⁸⁷ *See id.*

⁸⁸ *Id.*

⁸⁹ Doe Complaint, *supra* note 76, at 2.

⁹⁰ Doe v. DeWine, 910 F.3d 842, 847 (6th Cir. 2018).

⁹¹ *Id.* at 854.

[I] don't think [there are] any words to describe the joy and relief I would feel in my heart[.] [I]t's been almost 15 [years.] I've struggled and lost a lot of good opportunities, and dealt with a lot of pain, because of my past[. H]aving a second [c]hance would change my life tremendously.⁹²

Yet, Jane knows she has no one to blame for her situation and accepts full responsibility. Reflecting the shame and remorse she feels, Jane states: "I feel awful about my crime. [An adult having sex with a minor] is not something I would ever want to have happen [to] my children . . . I definitely feel a lot of remorse."⁹³

C. Angelo Robinson

Angelo Robinson⁹⁴ became a free man on August 1, 2019, after spending twenty-two years in prison for murder and drug possession.⁹⁵ His case stemmed from a 1997 incident occurring in an apartment that he and several associates, including his friend Veronica, were using to sell crack cocaine.⁹⁶ Angelo had positioned himself in a back room, guarding the drugs behind a closed door.⁹⁷ All was proceeding normally until Angelo heard a commotion at the front door, then gunshots.⁹⁸ Angelo knew what this meant: he and his associates were being robbed and were about to get killed in a gunfight.⁹⁹ He then heard something hit the door he was behind.¹⁰⁰ Fearing that he was about to be shot, he fired three shots through the door.¹⁰¹ Unbeknownst to him, Veronica was the person on the other side of the door, and the noise he heard was her attempt to escape the hail of bullets that the robbers were firing.¹⁰² One of Angelo's bullets hit Veronica in the chest, killing her.¹⁰³

Believing that he had acted in self-defense, Angelo turned down the prosecution's plea bargain, gambling that he could convince the jury to find him

⁹² Text message from Jane Doe to David Singleton, Exec. Dir., Ohio Justice & Policy Ctr. (June 16, 2020) (on file with author).

⁹³ Doe Interview, *supra* note 21.

⁹⁴ Mr. Robinson consented to the use of his real name.

⁹⁵ Barbara Bradley Hagerty, *The Presence of Justice: Releasing People from Prison Is Easier Said than Done*, ATLANTIC (July 8, 2020), <https://www.theatlantic.com/ideas/archive/2020/07/releasing-people-prison/613741/> [<https://perma.cc/BGX6-UTH5>]; *see* Judgment Entry: Sentence: Incarceration, *State v. Robinson*, Hamilton C.P. No. B 971412 (Oct. 8, 1997).

⁹⁶ *State v. Robinson*, 726 N.E.2d 581, 583 (Ohio Ct. App. 1st 1999).

⁹⁷ *Id.*

⁹⁸ Hagerty, *supra* note 95.

⁹⁹ *See id.*

¹⁰⁰ *See Robinson*, 726 N.E.2d at 583.

¹⁰¹ *Id.*

¹⁰² *See id.*; Hagerty, *supra* note 95.

¹⁰³ *Robinson*, 726 N.E.2d at 583.

not guilty.¹⁰⁴ He lost.¹⁰⁵ The jury convicted him of murder,¹⁰⁶ and the court sentenced him to twenty-nine years to life in prison.¹⁰⁷ Angelo would first be eligible for parole in 2026, but release was not guaranteed.¹⁰⁸ In fact, the Parole Board's custom is to deny release no matter how well a prisoner has behaved.¹⁰⁹

Angelo did not let this uncertainty discourage him. He took every program available to him while incarcerated, and, among many accomplishments, earned his GED, became certified to drive a forklift, learned Spanish, and even taught himself to play the guitar.¹¹⁰

Angelo's legal team convinced the local prosecutor that Angelo had transformed himself and that it was unfair for him to continue to be locked up when, had he accepted the plea bargain, he would have completed his sentence eight years earlier.¹¹¹ With the blessing of Veronica's family, the prosecutor agreed not to oppose Angelo's motion for a new trial if Angelo agreed to plead guilty to manslaughter.¹¹² Although the grounds for his motion were tenuous,¹¹³ the judge approved the arrangement, vacated Angelo's murder conviction, and granted a new trial.¹¹⁴ Angelo promptly pleaded guilty to manslaughter and was released with time served.¹¹⁵

With his legal team's help, Angelo found what he considers to be a "good" job with a local tool factory.¹¹⁶ His employer pays for him to attend college so he can progress through the company.¹¹⁷ During the day, he works at the tool

¹⁰⁴ Campbell Robertson, *Would You Let the Man Who Killed Your Sister Out of Prison?*, N.Y. TIMES (July 19, 2019), <https://www.nytimes.com/2019/07/19/us/violent-crime-ohio-prison.html> [<https://perma.cc/9HVE-BTCP>].

¹⁰⁵ *Id.*

¹⁰⁶ Jury Verdict, *State v. Robinson*, Hamilton C.P. No. B-971412 (Oct. 8, 1997); *see* Entry Granting Defendant's Unopposed Motion for New Trial, *State v. Robinson*, Hamilton C.P. No. B-971412 (July 29, 2019) [hereinafter *Entry Granting New Trial*].

¹⁰⁷ Hagerty, *supra* note 95.

¹⁰⁸ Robertson, *supra* note 104.

¹⁰⁹ Complaint at 10, *Head v. Ohio Parole Board*, Franklin C.P. No. 18CV002735 (Mar. 30, 2018) (challenging Board's practice of denying parole automatically to people seeking release at their first hearing). The author has represented numerous people before the Ohio Parole Board. *E.g., id.* at 14. It is common for the Board not to release people at their initial eligibility hearing. *Id.* at 10.

¹¹⁰ Hagerty, *supra* note 95; *see* Robertson, *supra* note 104.

¹¹¹ *Id.*

¹¹² *See* Hagerty, *supra* note 95.

¹¹³ *See generally* OHIO R. CRIM. P. 33(A) (listing grounds for seeking new trial). In the author's opinion, Angelo's motion did not clearly fit the grounds set forth under the rule.

¹¹⁴ Entry Granting New Trial, *supra* note 106.

¹¹⁵ Entry Withdrawing Plea of Not Guilty and Entering Plea of Guilty to an Agreed Sentence at 1, *State v. Robinson*, Hamilton C.P. No. B-971412 (Aug. 7, 2019).

¹¹⁶ *See* Hagerty, *supra* note 95.

¹¹⁷ *Id.*

factory; at night, he works in construction.¹¹⁸ With his two jobs, Angelo has saved enough for a down payment on a home.¹¹⁹

Although he has achieved many of his goals, Angelo feels held back by his criminal record and wishes he could have it erased.¹²⁰ But this is impossible under current Ohio law,¹²¹ and Angelo believes this is unfair: “I’m not that person anymore, the young man who sold drugs and a [sic] carried a gun. I’ve changed.”¹²²

But one thing will never change: the deep remorse Angelo feels about killing Veronica. “I’m ashamed[.] I’m embarrassed[.] I’m disappointed[.] I’m disgusted in myself,” Angelo writes.¹²³ Depression over Veronica’s death “is the most horrible feeling that I’m living with and there is nothing that will ever compare.”¹²⁴ The only way for him to cope, he says, is “keep[ing] busy[.]”¹²⁵

III. CRIMINAL RECORD SEALING IN OHIO

Allison, Jane, and Angelo share several things in common. Each made serious mistakes, for which they were punished. Each has demonstrated, through their conduct, that they pose no danger to society. Each feels constrained in some way by their criminal records. And each would like to have society forget their criminal pasts. But the nature of their offenses makes each ineligible for criminal record relief.¹²⁶

This Part will discuss the evolution of Ohio’s record sealing law from its enactment in 1973 to today and offer a possible explanation for why, in that time, Ohio has gone from broadly offering relief to substantially limiting its availability.

A. *Limiting Eligibility*

1. *The 1973 Statute*

The Ohio legislature enacted the state’s first record-sealing law in 1973.¹²⁷ Although called an “expungement” statute,¹²⁸ this was a misnomer, as the

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Robinson Interview, *supra* note 21.

¹²¹ See discussion *infra* Part III.A.5.

¹²² See Text message from Angelo Robinson to David Singleton, Exec. Dir., Ohio Justice & Policy Ctr. (June 27, 2020) (on file with author).

¹²³ Text message from Angelo Robinson to David Singleton, Exec. Dir., Ohio Justice & Policy Ctr. (June 29, 2020) (on file with author).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ See OHIO REV. CODE ANN. § 2953.36 (2020).

¹²⁷ See Am. Sub. S.B. No. 5, 110th Gen. Assemb., 1st Reg. Sess. §§ 2953.31–36 (Ohio 1973) (codified as amended at OHIO REV. CODE ANN. §§ 2953.31–36 (1975)).

¹²⁸ See *id.*

statute provided not for the destruction of any case documents but for the sealing of “official” records and the deletion of all index references.¹²⁹

According to the legislature, the law’s purpose was to “restore[] the person [who is the] subject [of the order] to all rights and privileges not otherwise restored by termination of the sentence or probation or by final release on parole.”¹³⁰ The statute provided that “[i]n any application for employment . . . , a person may be questioned only with respect to convictions not expunged, unless the question bears a direct and substantial relationship to the position for which the person is being considered.”¹³¹

The original statute only permitted “first offenders” to have their convictions sealed,¹³² defining “first offender” as “anyone who has once been convicted of an offense in this state or any other jurisdiction.”¹³³ In addition to being a “first offender”, the applicant must: (1) have waited the requisite time period after final discharge;¹³⁴ (2) have no criminal proceedings pending at time of application;¹³⁵ (3) have demonstrated rehabilitation to the satisfaction of the trial judge;¹³⁶ and (4) have shown that expunging the conviction served the public interest.¹³⁷

The statute broadly permitted sealing except for offenses that were ineligible for probation,¹³⁸ so the only ineligible offenses were aggravated murder, murder, and offenses committed with a firearm or other “dangerous ordnance.”¹³⁹ Two years later, the most serious sexual offenses, rape and felonious sexual penetration,¹⁴⁰ became ineligible for probation and therefore

¹²⁹ OHIO REV. CODE ANN. § 2953.32(C) (LexisNexis 1975).

¹³⁰ *Id.* § 2953.33(A).

¹³¹ *Id.* § 2953.33(B); *see, e.g., In re Application of Davis*, 403 N.E.2d 189, 190 n.* (Ohio 1980).

¹³² *See* OHIO REV. CODE ANN. § 2953.32(A) (LexisNexis 1975).

¹³³ *Id.* § 2953.31. The definition further provided that “[w]hen two or more convictions result from or are connected with the same act, or result from offenses committed at the same time, they shall be counted as one conviction.” *Id.*

¹³⁴ *Id.* § 2953.32(A).

¹³⁵ *Id.* § 2953.32(C).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ OHIO REV. CODE ANN. § 2953.36 (LexisNexis 1975) (“Sections 2953.31 to 2953.35 of the Revised Code do not apply to convictions when the offender is not eligible for probation, or convictions under Chapter 4507, 4511, or 4549 of the Revised Code.”). Chapters 4507, 4511, and 4549 relate to various traffic laws. OHIO REV. CODE ANN. tit. XLV (West 2020).

¹³⁹ OHIO REV. CODE ANN. § 2951.02(F) (LexisNexis 1975); *see, e.g., State v. Collins*, 8th Dist. Cuyahoga No. 43168, 1981 WL 4990, at *1–2 (May 28, 1981) (holding that a conviction of attempted aggravated assault was sealable where the record did not indicate that a gun was used during the crime).

¹⁴⁰ Am. Sub. S.B. 144, 111th Gen. Assemb., Reg. Sess. §§ 2907.02(A)–(B), .12(A)–(B) (Ohio 1975) (only rape and felonious sexual penetration were first-degree felonious sexual offenses at the time).

sealing.¹⁴¹ And beginning in 1988, bail forfeitures in traffic cases could no longer be sealed.¹⁴²

2. The 1994 Amendment

In 1994, the legislature substantially narrowed the eligible offenses¹⁴³ by specifically precluding the sealing of rape,¹⁴⁴ sexual battery,¹⁴⁵ corruption of a minor,¹⁴⁶ gross sexual imposition,¹⁴⁷ sexual imposition,¹⁴⁸ felonious sexual penetration,¹⁴⁹ pandering obscenity involving a minor,¹⁵⁰ pandering sexually-

¹⁴¹ See *id.* (amending OHIO REV. CODE § 2951.02(F) to include offenses which violated Section 2907.02 (rape) and Section 2907.12 (felonious sexual penetration)).

¹⁴² Am. Sub. H.B. 175, 117th Gen. Assemb., Reg. Sess. § 2953.36 (Ohio 1988) (amending OHIO REV. CODE § 2953.36).

¹⁴³ See Am. Sub. H.B. 335, 120th Gen. Assemb., Reg. Sess. § 2953.36 (Ohio 1994) (amending OHIO REV. CODE § 2953.36 to encompass additional offenses from the original 1974 implementation of the statute). The new section read:

Sections 2953.31 to 2953.35 of the Revised Code do not apply to convictions when the offender is not eligible for probation, convictions under [Sections] 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.12, 2907.321, 2907.322, or 2907.323 or Chapter 4507., 4511., or 4549. of the Revised Code, or bail forfeitures in a traffic case as defined in Traffic Rule 2.

OHIO REV. CODE ANN. § 2953.36 (West 1994).

¹⁴⁴ OHIO REV. CODE ANN. § 2907.02 (West 1994). Specifically precluding rape was redundant because, as previously discussed, it was already not sealable as a result of being ineligible for probation under OHIO REV. CODE § 2951.02(F)(4). See *supra*, notes 140–41 and accompanying text.

¹⁴⁵ Ohio H.B. 335 § 2953.36. The enacted bill specified that §§ 2953.31–.35 do not apply to those convicted under Section 2907.03, which is the section of the Revised Code that prohibits sexual battery. OHIO REV. CODE ANN. § 2907.03 (West 1994).

¹⁴⁶ Ohio H.B. 335 § 2953.36. The enacted bill specified that §§ 2953.31–.35 do not apply to those convicted under Section 2907.04, which is the section of the Revised Code that prohibits corruption of a minor. OHIO REV. CODE ANN. § 2907.04 (West 1994).

¹⁴⁷ Ohio H.B. 335 § 2953.36. The enacted bill specified that §§ 2953.31–.35 do not apply to those convicted under Section 2907.05, which is the section of the Revised Code that prohibits gross sexual imposition. OHIO REV. CODE ANN. § 2907.05 (West 1994).

¹⁴⁸ Ohio H.B. 335 § 2953.36. The enacted bill specified that §§ 2953.31–.35 do not apply to those convicted under Section 2907.06, which is the section of the Revised Code that prohibits sexual imposition. OHIO REV. CODE ANN. § 2907.06 (West 1994).

¹⁴⁹ Ohio H.B. 335 § 2953.36. The enacted bill specified that §§ 2953.31–.35 do not apply to those convicted under Section 2907.12, which was the section of the Revised Code that prohibited felonious sexual penetration. OHIO REV. CODE ANN. § 2907.12 (West 1994) (repealed 1996). For the same reason as previously discussed, specifying felonious sexual penetration was redundant. See *supra* notes 137–38, 141 and accompanying text.

¹⁵⁰ Ohio H.B. 335 § 2953.36. The enacted bill specified that §§ 2953.31–.35 do not apply to those convicted under Section 2907.321, which is the section of the Revised Code that prohibits pandering obscenity involving a minor. OHIO REV. CODE ANN. § 2907.321 (West 1994).

oriented matter involving a minor,¹⁵¹ and illegal use of a minor in nudity-oriented material or performance.¹⁵² Therefore, the amendment made seven¹⁵³ additional sexual offenses ineligible for record sealing even though those offenses remained probation-eligible.¹⁵⁴

3. *The 2004 Amendment*

Changes effective on January 1, 2004¹⁵⁵ made the following additional offenses ineligible: violent offenses when the offense is a first-degree

¹⁵¹ Ohio H.B. 335 § 2953.36. The enacted bill specified that Sections 2953.31–.35 do not apply to those convicted under Section 2907.322, which is the section of the Revised Code that prohibits pandering sexually oriented matter involving a minor. OHIO REV. CODE ANN. § 2907.322 (West 1994).

¹⁵² Ohio H.B. 335 § 2953.36. The enacted bill specified that Sections 2953.31–.35 do not apply to those convicted under Section 2907.323, which is the section of the Revised Code that prohibits illegal use of a minor in nudity-oriented material or performance. OHIO REV. CODE ANN. § 2907.323 (West 1994).

¹⁵³ OHIO REV. CODE ANN. § 2907.02 (West 1994); OHIO REV. CODE ANN. § 2907.12 (West 1994) (repealed 1996); *see supra* notes 140–41, 144 and accompanying text (indicating that rape and felonious sexual assault were redundant inclusions in this revision). Given that nine new offenses are listed, *see supra* note 143, and two were already encompassed by § 2953.36, seven offenses were newly ineligible for sealing.

¹⁵⁴ *See* OHIO REV. CODE ANN. § 2951.02(F) (West 1994) (specifying only rape and felonious sexual penetration as sexual offenses requiring mandatory prison terms).

¹⁵⁵ Am. Sub. S.B. 123, 124th Gen. Assemb., Reg. Sess. § 2953.36 (Ohio 2004) (amending OHIO REV. CODE § 2953.36). The amended text read:

Sections 2953.31 to 2953.35 of the Revised Code do not apply to any of the following:

(A) Convictions when the offender is subject to a mandatory prison term;

(B) Convictions under section 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.321, 2907.322, or 2907.323, former section 2907.12, or Chapter 4507., 4510., 4511., or 4549. of the Revised Code, or a conviction for a violation of a municipal ordinance that is substantially similar to any section contained in any of those chapters;

(C) convictions of an offense of violence when the offense is a misdemeanor of the first degree or a felony and when the offense is not a violation of section 2917.03 of the Revised Code [riot] and is not a violation of section 2903.13 [assault], 2917.01 [inciting to violence] or 2917.31 [inducing panic] of the Revised Code that is a misdemeanor of the first degree;

(D) Convictions of an offense in circumstances in which the victim of the offense was under eighteen years of age when the offense is a misdemeanor of the first degree or a felony;

(E) Convictions of a felony of the first or second degree;

(F) Bail forfeitures in a traffic case as defined in Traffic Rule 2.

misdemeanor or a felony,¹⁵⁶ convictions where the victim is under eighteen years of age and the offense is a first-degree misdemeanor or a felony,¹⁵⁷ and convictions for first- and second-degree felonies.¹⁵⁸

4. *The 2007 Amendment*

In 2007, the legislature again broadened the list of ineligible offenses.¹⁵⁹ As a result, the following sexual offenses became ineligible when committed

Id.

¹⁵⁶ OHIO REV. CODE ANN. § 2953.36(C) (West 2004) (current version at OHIO REV. CODE ANN. § 2953.36(A)(3) (West 2016)). OHIO REV. CODE ANN. § 2901.01(A)(9) (West 2003) defined “offense of violence” as

a violation of Ohio Revised Code Sections 2903.01 [aggravated murder], 2903.02 [murder], 2903.03 [voluntary manslaughter], 2903.04 [involuntary manslaughter], 2903.11 [felonious assault], 2903.12 [aggravated assault], 2903.13 [assault], 2903.15 [permitting child abuse], 2903.21 [aggravated menacing], 2903.211 [menacing by stalking], 2903.22 [menacing], 2905.01 [kidnapping], 2905.02 [abduction], 2905.11 [extortion], 2907.02 [rape], 2907.03 [sexual battery], 2907.05 [gross sexual imposition], 2909.02 [aggravated arson], 2909.03 [arson], 2909.24 [terrorism], 2911.01 [aggravated robbery], 2911.02 [robbery], 2911.11 [aggravated burglary], 2917.01 [inciting to violence], 2917.02 [aggravated riot], 2917.03 [riot], 2917.31 [inducing panic], 2919.25 [domestic violence], 2921.03 [intimidation], 2921.04 [intimidation of an attorney, victim, or witness in criminal case], 2921.34 [escape], or 2923.161 [improperly discharging firearm at or into habitation or school zone], of division (A)(1) of section 2903.34 [patient abuse by residential care facility employees], of division (A)(1), (2), or (3) of section 2911.12 [burglary], or of division (B)(1), (2), (3), or (4) of section 2919.22 of the Revised Code [endangering children] or felonious sexual penetration in violation of former section 2907.12 of the Revised Code.

OHIO REV. CODE ANN. § 2901.01(A)(9) (West 2003). But misdemeanor assault, riot, inciting to violence, and inducing panic remain eligible for sealing. OHIO REV. CODE ANN. § 2953.36(A)(3) (West 2016) (specifically delineating that the sections of the Revised Code associated with these offenses—Sections 2917.03, 2903.13, 2917.01, and 2917.31—are exceptions to the provisions of the revised Section 2953.36(C)).

¹⁵⁷ OHIO REV. CODE ANN. § 2953.36(D) (West 2004) (amended 2012).

¹⁵⁸ OHIO REV. CODE ANN. § 2953.36(E) (West 2004) (amended 2012).

¹⁵⁹ Am. Sub. S.B. 18, 127th Gen. Assemb., Reg. Sess. § 2953.36 (Ohio 2007) (amending OHIO REV. CODE § 2953.36 to encompass additional offenses from the 2004 revision of the statute with the addition of § 2953.36(E): “Convictions on or after the effective date of this amendment under section 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.31, 2907.311, 2907.32, or 2907.33 of the Revised Code when the victim of the offense was under eighteen years of age . . .”).

against a victim under the age of eighteen: voyeurism,¹⁶⁰ public indecency,¹⁶¹ compelling prostitution,¹⁶² promoting prostitution,¹⁶³ procuring prostitution,¹⁶⁴ disseminating matter harmful to juveniles,¹⁶⁵ displaying matter harmful to juveniles,¹⁶⁶ pandering obscenity,¹⁶⁷ and deception to obtain matter harmful to juveniles.¹⁶⁸ Additionally, the amendment precluded sealing the offense of importuning,¹⁶⁹ regardless of the victim's age.¹⁷⁰

¹⁶⁰ Am. Sub. S.B. 18, 127th Gen. Assemb., Reg. Sess. § 2953.36(E) (Ohio 2007). The enacted bill broadened Section 2953.36 to include offenses under Section 2907.08, which is the section of the revised code that prohibits voyeurism. OHIO REV. CODE ANN. § 2907.08 (West 2020) (originally effective 2001).

¹⁶¹ Ohio S.B. 18 § 2953.36(E). The enacted bill broadened Section 2953.36 to include offenses under Section 2907.09, which is the section of the revised code that prohibits public indecency. OHIO REV. CODE ANN. § 2907.09 (West 2020) (originally effective 1996).

¹⁶² Ohio S.B. 18 § 2953.36(E). The enacted bill broadened Section 2953.36 to include offenses under Section 2907.21, which is the section of the revised code that prohibits compelling prostitution. OHIO REV. CODE ANN. § 2907.21 (West 2020) (originally effective 1996).

¹⁶³ Ohio S.B. 18 § 2953.36(E). The enacted bill broadened Section 2953.36 to include offenses under Section 2907.22, which is the section of the revised code that prohibits promoting prostitution. OHIO REV. CODE ANN. § 2907.22 (West 2020) (originally effective 1996).

¹⁶⁴ Ohio S.B. 18 § 2953.36(E). The enacted bill broadened Section 2953.36 to include offenses under Section 2907.23, which is the section of the revised code that prohibits procuring prostitution. OHIO REV. CODE ANN. § 2907.23 (West 2020) (originally effective 1974).

¹⁶⁵ Ohio S.B. 18 § 2953.36(E). The enacted bill broadened Section 2953.36 to include offenses under Section 2907.31, which is the section of the revised code that prohibits disseminating matter harmful to juveniles. OHIO REV. CODE ANN. § 2907.31 (West 2020) (originally effective 2004).

¹⁶⁶ Ohio S.B. 18 § 2953.36(E). The enacted bill broadened Section 2953.36 to include offenses under Section 2907.311, which is the section of the revised code that prohibits displaying matter harmful to juveniles. OHIO REV. CODE ANN. § 2907.311 (West 2020) (originally effective 1989).

¹⁶⁷ Ohio S.B. 18 § 2953.36(E). The enacted bill broadened Section 2953.36 to include offenses under Section 2907.32, which is the section of the revised code that prohibits pandering obscenity. OHIO REV. CODE ANN. § 2907.32 (West 2020) (originally effective 1996).

¹⁶⁸ Ohio S.B. 18 § 2953.36(E). The enacted bill broadened Section 2953.36 to include offenses under Section 2907.33, which is the section of the revised code that prohibits deception to obtain matter harmful to juveniles. OHIO REV. CODE ANN. § 2907.33 (West 2020) (originally effective 1974).

¹⁶⁹ OHIO REV. CODE ANN. § 2953.36(D) (West 2007) (current version at OHIO REV. CODE § 2953.36(A)(4) (2016)) (adding the offense of importuning in its entirety).

¹⁷⁰ See Ohio S.B. 18 § 2953.36(D).

5. *The Current Situation*

With the 2007 amendments, the legislature appears to have finished limiting the offenses that can be sealed.¹⁷¹ Although the legislature has since jettisoned the “first offender” requirement and expanded record sealing for people who have committed multiple sealable offenses,¹⁷² it has not broadened the list of eligible offenses. So, in contrast to the situation in 1973, today, almost no violent or sexual offenses are eligible.¹⁷³

¹⁷¹ Although there have been amendments made to OHIO REV. CODE ANN. § 2953.36 since the 2007 amendments, none have—in the way the statute is implemented today—resulted in the expansion of the list of offenses ineligible for record sealing. *See* Am. Sub. H.B. 56, 131st Gen. Assemb., Reg. Sess. § 2953.36(F) (Ohio 2016) (making offenses ineligible for sealing under Section 2953.36(F) if the victim was under sixteen, from eighteen); Am. Sub. H.B. 53, 131st Gen. Assemb., Reg. Sess. § 2953.36(B) (Ohio 2015) (adding provisions from Section 4506, but not in the current version of the statute); Am. Sub. S.B. 143, 130th Gen. Assemb., Reg. Sess. § 2953.36(B) (Ohio 2014) (limiting the offenses listed in Section 2953.36(B) to offenses not contained in Section 2953.61); Am. Sub. S.B. 337, 129th Gen. Assemb., Reg. Sess. § 2953.36(D)–(E) (Ohio 2012) (textual update to reflect date of statute applicability). *See also generally* Am. Sub. H.B. 164, 131st Gen. Assemb., Reg. Sess. (Ohio 2016) (allowing retroactive limitations on sealing).

¹⁷² In 2012, S.B. 337 (effective Sept. 28, 2012) amended OHIO REV. CODE § 2953.31 by replacing “[f]irst offender,” with “[e]ligible offender,” defined as:

anyone who has been convicted of an offense in this state or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions if the convictions are not of the same offense, or not more than one felony conviction and one misdemeanor conviction in this state or any other jurisdiction.

Am. Sub. S.B. 337, 129th Gen. Assemb., Reg. Sess. § 2953.31(A) (Ohio 2012).

In 2018, S.B. 66 (effective Oct. 29, 2018) amended OHIO REV. CODE § 2953.31’s definition of “[e]ligible offender.” Am. Sub. S.B. 66, 132d Gen. Assemb., Reg. Sess. § 2953.21(A)(1)(a) (Ohio 2018). Specifically, the amendment expanded the definition of “[e]ligible offender” to include “[a]nyone who has been convicted of one or more offenses, but not more than five felonies . . . if all of the offenses . . . are felonies of the fourth or fifth degree or misdemeanors and none of those offenses are an offense of violence or a felony sex offense.” *Id.* Under this new provision, a person can have up to five lower level felonies sealed and unlimited number of misdemeanors sealed subject to OHIO REV. CODE § 2953.36’s restrictions. *See id.*

For individuals who are not deemed eligible for expanded record sealing under OHIO REV. CODE § 2953.31’s new division (A)(1)(a), perhaps because they have a conviction for a third degree felony, the amendment preserves the alternative definition of eligibility contained in the 2012 change: “[a]nyone who has been convicted of an offense . . . who has not more than one felony conviction, not more than two misdemeanor convictions, or not more than one felony conviction and one misdemeanor conviction in this state or any other jurisdiction,” OHIO REV. CODE ANN. § 2953.31(A)(1)(b) (West 2020), subject, of course, to § 2953.36’s limitations on which offenses are sealable. *Id.* § 2953.31.

¹⁷³ *But see* OHIO REV. CODE ANN. § 2953.36(A)(3) (West 2020) (convictions for misdemeanor assault, riot, inciting to violence, and inducing panic eligible for sealing despite being offenses of violence). Additionally, convictions for the following Chapter 2907 sex offenses are eligible for sealing; i.e., they are not named as exceptions in OHIO REV. CODE

B. Explaining Ohio's Decision

What prompted this dramatic narrowing? One likely answer: the politics of crime, as shaped by media coverage in the 1980s and 1990s.

Politics play a key role in crime policy in the United States,¹⁷⁴ as Dean Erwin Chemerinsky has described: “Elected officials—both Democrat and Republican—have an incentive to vote for any bill that increases the punishment for a crime. To do otherwise, is to risk giving political opponents a powerful tool at the time of the next election.”¹⁷⁵ Although the Ohio amendments prohibiting the sealing of certain convictions did not increase punishment in the conventional sense (i.e., by increasing the sentence),¹⁷⁶ the incentive to appear “tough” on violent and sexual offenders may very well have motivated at least some Ohio legislators to restrict record sealing.

Moreover, news coverage of crime undoubtedly contributes to the passage of so-called “tough on crime” legislation.¹⁷⁷ “Every generation has its high-profile crime stories and media frenzies, which leave behind a trail of new criminal prohibitions.”¹⁷⁸ These stories motivate legislators to appear tough on crime in order to (1) “reassure the public generally that their fears have been noted and that the causes of their fears have been acted on,” and (2) “curry public favor and electoral support by pandering, by making promises that the law can

§ 2953.36: commercial sexual exploitation of a minor (OHIO REV. CODE ANN. § 2907.19 (West 2020)); soliciting / soliciting after positive HIV test (OHIO REV. CODE ANN. § 2907.24 (West 2020)); loitering to engage in solicitation / loitering to engage in solicitation after positive HIV test (OHIO REV. CODE ANN. § 2907.241 (West 2020)); prostitution / prostitution after positive HIV test (OHIO REV. CODE ANN. § 2907.25 (West 2020)); and compelling acceptance of objectionable material (OHIO REV. CODE ANN. § 2907.34 (West 2020)). See OHIO REV. CODE ANN. § 2953.36(A) (West 2020); OHIO REV. CODE ANN. § 2907 (West 2020).

¹⁷⁴ See William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 529–46 (2001) (discussing the political incentives legislators, prosecutors, police, and judges experience in shaping the criminal law).

¹⁷⁵ Erwin Chemerinsky, *The Essential but Inherently Limited Role of the Courts in Prison Reform*, 13 BERKELEY J. CRIM. L. 307, 310 (2008).

¹⁷⁶ See, e.g., *City of Maple Heights v. McCants*, 8th Dist. Cuyahoga No. 80128, 2002-Ohio-1070, ¶ 20 (finding that a statutory amendment precluding domestic violence convictions from being sealed “simply foreclosed [defendant’s] opportunity to have his record sealed, which has been found not to violate the ban against *ex post facto* application of the law”).

¹⁷⁷ See Katherine Beckett, *Setting the Public Agenda: “Street Crime” and Drug Use in American Politics*, 41 SOC. PROBS. 425, 426 (1994) (arguing that “the definitional activities of state actors and the mass media have played a crucial role in generating public concern about ‘street crime’ and drug use,” thus contributing to the setting of the public agenda and, in turn, “political debate and policy”); Mark Fishman, *Crime Waves as Ideology*, 25 SOC. PROBS. 531, 531 (1978) (contending that the media largely creates the notion of “crime waves”).

¹⁷⁸ William J. Stuntz, *Plea Bargaining and Criminal Law’s Disappearing Shadow*, 117 HARV. L. REV. 2548, 2558 (2004).

at best imperfectly and incompletely deliver.”¹⁷⁹ Thus, “in criminal law, stories, not data, drive the policy analysis,”¹⁸⁰ particularly stories that generate fear.¹⁸¹

In 1973, the War on Crime was well underway.¹⁸² But by the end of the decade, Americans were not preoccupied with crime. In May 1978, only 3% of people surveyed in a Gallup Poll said crime was the most important problem facing the United States.¹⁸³ By August 1994, however, that had grown to 52%.¹⁸⁴

The public’s perception of an increase in crime did not match reality. Between 1978 and 1994, the actual number of crimes committed increased significantly less than the population growth rate.¹⁸⁵ Thus, “the sharp jump in public perceptions of crime as the [most important problem] facing the U.S. could not have been caused by the increase in the actual total number of crimes.”¹⁸⁶

News coverage likely played a significant role in shaping public perception.¹⁸⁷ During the 1990s, media reports of violent crime dominated the

¹⁷⁹ Michael Tonry, *The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings*, in 38 CRIME & JUSTICE 65, 100–01 (Michael Tonry ed., 2009).

¹⁸⁰ Rachel E. Barkow, *Criminal Law as Regulation*, 8 N.Y.U. J.L. & LIBERTY 316, 322 (2014).

¹⁸¹ See Robert P. Mosteller, *New Dimensions in Sentencing Reform in the Twenty-First Century*, 82 OR. L. REV. 1, 7 (2003) (describing the use of convicted criminal Willie Horton in presidential campaign advertisement as “‘giving a face to the public’s worst fears, and perhaps tapping its worst instincts’”); Louis Michael Seidman, *Hyper-Incarceration and Strategies of Disruption: Is There a Way Out?*, 9 OHIO ST. J. CRIM. L. 109, 112 (2011) (“Anyone who has studied the politics of crime control knows that it is driven at least as much by anger and fear as by careful cost-benefit calculations.”); Marc Mauer *Sentencing Reform: Amid Mass Incarcerations—Guarded Optimism*, CRIM. JUST., Spring 2011, at 27, 27–28 (“[M]uch of what has been driving the politics of crime has been a ‘culture of fear,’ one in which policy makers have exploited such emotion for political gain.”).

¹⁸² John N. Mitchell, Att’y Gen., Dep’t of Justice, Address Before the Attorney General’s Conference on Crime Reduction: “The War on Crime: The End of the Beginning” 4 (Sept. 9, 1971) (transcript available at <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/09-09-1971.pdf> [<https://perma.cc/AJL4-G6J3>]) (drawing analogies of advancing fronts and enemy retreats to the state of the War on Crime).

¹⁸³ U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 178 (Michael J. Hildelang, Michael R. Gottfredson, & Timothy J. Flanagan eds., 1980).

¹⁸⁴ U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 100 (Kathleen Maguire & Ann L. Pastore eds., 1997).

¹⁸⁵ Dennis T. Lowry, Tarn Ching Josephine Nio, & Dennis W. Leitner, *Setting the Public Fear Agenda: A Longitudinal Analysis of Network TV Crime Reporting, Public Perceptions of Crime, and FBI Crime Statistics*, 53 J. COMM. 61, 62 (2003).

¹⁸⁶ *Id.*

¹⁸⁷ DAVID L. ALTHEIDE, CREATING FEAR: NEWS AND THE CONSTRUCTION OF CRISIS 21 (2002); LORI DORFMAN & VINCENT SCHIRALDI, OFF BALANCE: YOUTH, RACE & CRIME IN THE NEWS 5 (Apr. 2001), http://www.justicepolicy.org/uploads/justicepolicy/documents/off_balance.pdf [<https://perma.cc/329M-84DM>]; Lowry et al., *supra* note 185, at 64.

news.¹⁸⁸ The adage “if it bleeds it leads”¹⁸⁹ reflected the reality that crime accounted for more than 75% of local coverage in some markets.¹⁹⁰ National news outlets also covered violent crimes, especially sensational ones.¹⁹¹

In fact, while national crime rates fell 20% from 1990 to 1998, network television reporting of crime increased 83%.¹⁹² And not all crime coverage increased at the same rate. During that same period, network news coverage of homicides increased 473%, while the actual homicide rate decreased 32.9%.¹⁹³

The coverage often focused on violent crime committed by young African-American males,¹⁹⁴ and a new term emerged to describe these offenders: “super-predators.”¹⁹⁵ Warning of their threat in 1995, John Dilulio wrote, “On the horizon . . . are tens of thousands of severely morally impoverished juvenile super-predators . . . [who] are perfectly capable of committing the most heinous acts of physical violence for the most trivial reasons (for example, a perception of slight disrespect or the accident of being in their path).”¹⁹⁶ News media “pounced on these sensational predictions and ran with them like a punt returner finding daylight.”¹⁹⁷ Congress responded by passing the Violent Crime Control and Law Enforcement Act of 1994, which President Clinton signed into law.¹⁹⁸ Memorably, First Lady Hillary Clinton defended her husband’s signing of the bill as necessary to control “super-predators” who had “no conscience, no empathy,”¹⁹⁹ concluding, “We can talk about why they ended up that way. But first we have to bring them to heel.”²⁰⁰

While the nation was gripped with fear of “super-predators,” another type of “predator” emerged: convicted sex offenders. News coverage of sex crimes

¹⁸⁸ See DORFMAN & SCHIRALDI, *supra* note 187, at 9.

¹⁸⁹ See generally MATTHEW R. KERBEL, *IF IT BLEEDS, IT LEADS: AN ANATOMY OF TELEVISION NEWS* (2000).

¹⁹⁰ Franklin D. Gilliam, Jr. & Shanto Iyengar, *Prime Suspects: The Influence of Local Television News on the Viewing Public*, 44 AM. J. POL. SCI. 560, 560 (2000).

¹⁹¹ DORFMAN & SCHIRALDI, *supra* note 187, at 8–9.

¹⁹² *Id.* at 10.

¹⁹³ *Id.*

¹⁹⁴ See “Jake” James Cullen Evans, *A Criminal Justice System Without Justice: The News Media, Sports Media, & Rap’s Influence on Racial Crime Disparities*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 117, 118–19, 121 (2015) (describing African Americans as being overrepresented in news reports as perpetrators of violent crimes).

¹⁹⁵ John J. Dilulio, Jr., *The Coming of the Super--Predators*, THE WEEKLY STANDARD, Nov. 27, 1995, at 23.

¹⁹⁶ *Id.*

¹⁹⁷ Clyde Haberman, *When Youth Violence Spurred ‘Superpredator’ Fear*, N.Y. TIMES (Apr. 6, 2014), <https://www.nytimes.com/2014/04/07/us/politics/killing-on-bus-recalls-superpredator-threat-of-90s.html> [<https://perma.cc/ZF9Q-L8HB>].

¹⁹⁸ See generally Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, 108 Stat. 1796 (codified in scattered sections 12 U.S.C., 18 U.S.C., and 42 U.S.C.).

¹⁹⁹ C-SPAN, 1996: *Hillary Clinton on “Superpredators”* (C-SPAN), YOUTUBE (Feb. 25, 2016), <https://www.youtube.com/watch?v=j0uCrA7ePno> [<https://perma.cc/6SLZ-V97B>] (quoted language at 1:16 to 1:18).

²⁰⁰ *Id.* (quoted language at 1:18 to 1:22).

exploded in the mid-1990s as a result of sensational crimes²⁰¹ like the sexual assault and murder of children like Megan Kanka,²⁰² Megan's Law's namesake.²⁰³ Although child abductions and sexual assaults by strangers are rare²⁰⁴ and recidivism by sex offenders is much lower than conventional wisdom would indicate,²⁰⁵ the media's focus on these horrific crimes painted the false picture that such offenses are common and recidivism inevitable.²⁰⁶ Inevitably, sex offenders became social pariahs.²⁰⁷

²⁰¹ David A. Singleton, *Sex Offender Residency Statutes and the Culture of Fear: The Case for More Meaningful Rational Basis Review of Fear-Driven Public Safety Laws*, 3 U. ST. THOMAS L.J. 600, 604–07 (2006).

²⁰² On July 29, 1994, a neighbor lured seven-year-old Megan Kanka into his home where he raped and murdered her. *Our Mission*, MEGAN KANKA FOUND., <http://www.megannicolekankafoundation.org/mission.htm> [<https://perma.cc/9PCN-NSMN>].

²⁰³ Enacted in 1996, Megan's Law required the community notification of sex offenders. *See generally* Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996).

²⁰⁴ *See* HOWARD N. SNYDER, NAT'L CTR. FOR JUVENILE JUSTICE, SEXUAL ASSAULT OF YOUNG CHILDREN AS REPORTED TO LAW ENFORCEMENT: VICTIM, INCIDENT, AND OFFENDER CHARACTERISTICS 10 (2000), <https://www.bjs.gov/content/pub/pdf/saycrle.pdf> [<https://perma.cc/2GKU-Z34F>] (finding that 92.9% of child sexual assault victims knew their perpetrator; 34.2% were family members, 58.7% were acquaintances, and only 7% of child victims reported that they were abused by strangers).

²⁰⁵ Jill S. Levenson, Yolanda N. Brannon, Timothy Fortney, & Juanita Baker, *Public Perceptions About Sex Offenders and Community Protection Policies*, 7 ANALYSES SOC. ISSUES & PUB. POL'Y 137, 142 (2007).

²⁰⁶ Emily Horowitz, *Growing Media and Legal Attention to Sex Offenders: More Safety or More Injustice?*, 7 J. INST. JUST. & INT'L STUD. 143, 145 (2007) (“hypothetiz[ing] that there has been an increase in media coverage of sex offenders during the past decade unrelated to a corresponding increase in sex offenses.”); Levenson et al., *supra* note 205, at 153 (discussing the myth of high recidivism rates for sexual offenders).

²⁰⁷ David A. Singleton, *Kids, Cops, and Sex Offenders: Pushing the Limits of the Interest-Convergence Thesis*, 57 HOW. L.J. 353, 359 n.32 (2013); Cassie Dallas, Comment, *Not in My Backyard: The Implications of Sex Offender Residency Ordinances in Texas and Beyond*, 41 TEX. TECH. L. REV. 1235, 1237 (2009) (“[C]ommunity members have been forced out of their neighborhoods and branded as social pariahs because they are sex offenders—a reviled and vilified class.”); Meghan Silē Towers, Note, *Protectionism, Punishment and Pariahs: Sex Offenders and Residence Restrictions*, 15 J.L. & POL'Y 291, 292 (2007) (referring to laws that “make[] pariahs out of sex offenders”); Lindsay A. Wagner, Note, *Sex Offender Residency Restrictions: How Common Sense Places Children at Risk*, 1 DREXEL L. REV. 175, 175 (2009) (“Sex offenders, as a group, incite the public's fear and hatred, and politicians seeking to curry electorate favor often support increasingly harsh sanctions against these ‘political pariahs of our day.’”).

Furthermore, spurred by basketball star Len Bias's powder-cocaine-overdose death,²⁰⁸ which many falsely attributed to crack cocaine,²⁰⁹ media coverage of the crack epidemic of the late 1980s and 1990s skyrocketed.²¹⁰ The coverage often focused on the claimed link between crack and violent crime,²¹¹ which in turn moved lawmakers to impose severe punishment for crack offenses.²¹² As a result, federal law punished those convicted of selling crack

²⁰⁸ See *Powder in Bias' Car Said To Be Cocaine*, UNITED PRESS INT'L, June 22, 1986, <https://www.upi.com/Archives/1986/06/22/Powder-in-Bias-car-said-to-be-cocaine/3112519796800/?spt=su> [<https://perma.cc/VYT8-RR43>]; Tom Stuckey, *Cocaine Blamed for Death of Basketball Star Len Bias*, ASSOCIATED PRESS, June 24, 1986, Fativa, Doc. No. asp0000020011119di6o0011.

²⁰⁹ See, e.g., Jane Mayer & Andy Pasztor, *Reagan Starts Drive Against Drug Abuse, May Seek More Tests of U.S. Employees*, WALL ST. J., July 31, 1986, at 14 ("The White House effort comes as pollsters detect increasing public concern over drug abuse, precipitated partly by publicity surrounding the drug-related death of basketball star Len Bias and by numerous reports on the widespread availability of the intensely lethal form of cocaine known as 'crack.'"); Reginald Stuart, *O'Neill Proposes Congress Mount Attack on Drugs*, N.Y. TIMES, July 24, 1986, at A1 ("Congressional aides of both parties said momentum for action was coming from the home districts of many lawmakers where increased concern has been expressed: illegal drug activity in light of the recent drug-related deaths of two athletes, Len Bias of the University of Maryland and Don Rogers of the Cleveland Browns, and widespread publicity about addiction to 'crack,' a form of cocaine that is specially treated for extra potency.").

²¹⁰ Erik Luna & Paul G. Cassell, *Mandatory Minimalism*, 32 CARDOZO L. REV. 1, 25 (2010) (noting that "[a] driving force behind [mandatory minimum sentences for drug trafficking] was the cocaine overdose of basketball star Len Bias, which prompted a remarkable level of media attention and a moral panic about crack cocaine"); Adam M. Acosta, Comment, *Len Bias' Death Still Haunts Crack-Cocaine Offenders After Twenty Years: Failing to Reduce Disproportionate Crack-Cocaine Sentences Under 18 U.S.C. § 3582*, 53 HOW. L.J. 825, 826–27 (2010) (noting that Bias's death drew widespread media attention to crack cocaine).

²¹¹ See Maxwell Arlie Halpern Kosman, Note, *Falling Through the Crack: How Courts Have Struggled to Apply the Crack Amendment to "Nominal Career" and "Plea Bargain" Defendants*, 109 MICH. L. REV. 785, 796 (2011) (noting that the media portrayed crack cocaine as "the fuel behind gang violence").

²¹² Donna M. Hartman & Andrew Golub, *The Social Construction of the Crack Epidemic in the Print Media*, 31 J. PSYCHOACTIVE DRUGS 423, 424 (1999) (linking the "media's frenzied attention . . . to crack cocaine" with a sixty-one percent increase during a three-year period of the number of Americans who saw drug abuse as the nation's most serious problem and Congressional legislation creating long prison sentences for crack-related crimes); Sarah Hyser, Comment, *Two Steps Forward, One Step Back: How Federal Courts Took the "Fair" Out of the Fair Sentencing Act of 2010*, 117 PENN ST. L. REV. 503, 508 (2012) (describing how, as a result of national media coverage, "Congress reacted quickly to the public outcry by enacting the Anti-Drug Abuse Act of 1986 containing severe penalties targeting crack cocaine offenders").

(predominantly African American)²¹³ 100 times more harshly than the (predominantly Caucasian)²¹⁴ individuals who sold powder cocaine.²¹⁵

These media-induced frenzies conceivably explain why the Ohio legislature, beginning in 1994, began limiting record sealing to low-level sexual offenders.²¹⁶ Motivated by news reports depicting violent and sexual offenders as “the other,”²¹⁷ the legislature likely viewed them as unworthy of relief.

IV. EXPANDING CRIMINAL RECORD RELIEF TO HUMAN TRAFFICKING VICTIMS

Underscoring how media narratives drive political determinations of who is, and who is not, deserving of a clean slate, the Ohio legislature took a different tack for one group of offenders.

Enacted in 2012,²¹⁸ and most recently amended in 2019,²¹⁹ House Bill 262 permits any person previously convicted of a prostitution-related offense to obtain “expungement of the record . . . of any offense, other than . . . [aggravated murder], [murder], or [rape],”²²⁰ if the court finds “by a

²¹³ U.S. SENTENCING COMM’N, REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY 15–16 (May 2007), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drugtopics/200705_RtC_Cocaine_Sentencing_Policy.pdf [<https://perma.cc/68W4-N3HE>] (discussing sentencing of African-Americans for crack-cocaine offenses); Jeff Lazarus, *Making the Fair Sentencing Act Retroactive: Just Think of the Savings . . . Clause*, 61 CLEV. ST. L. REV. 713, 717 (2013).

²¹⁴ David Cole, Essay, *The Paradox of Race and Crime: A Comment on Randall Kennedy’s “Politics of Distinction”*, 83 GEO. L.J. 2547, 2553 (1995) (“In 1992, 92.6% of those convicted for crimes involving crack cocaine were black, while only 4.7% were white; at the same time, 45.2% of defendants convicted for powder cocaine crimes were white, and only 20.7% were black”); Valeria Vegh Weis, *Criminal Selectivity in the United States: A History Plagued by Class & Race Bias*, 10 DEPAUL J. FOR SOC. JUST. 1, 6 n.15 (2017) (noting “[c]rack cocaine sales mostly involve Blacks and powder cocaine mostly involves Whites”).

²¹⁵ DEBORAH J. VAGINS & JESSELYN MCCURDY, AM. CIVIL LIBERTIES UNION, CRACKS IN THE SYSTEM: TWENTY YEARS OF THE UNJUST FEDERAL CRACK COCAINE LAW i, 2 (2006), https://www.aclu.org/sites/default/files/field_document/cracksinsystem_20061025.pdf [<https://perma.cc/CZ7U-SLBW>] (describing Anti-Drug Abuse Act’s five-year mandatory minimum sentence for dealing five grams of crack compared with the same mandatory minimum for selling 500 grams of powder cocaine); Morris S. Zedeck, *Problems in Cocaine Sentencing: An Update After 25 Years*, 95 JUDICATURE 107, 108 (2011).

²¹⁶ See OHIO REV. CODE ANN. § 2953.36 (West 2020); Am. Sub. S.B. 18, 127th Gen. Assemb., Reg. Sess. § 2953.36 (Ohio 2007) (amending OHIO REV. CODE § 2953.36); Am. Sub. H.B. 335, 120th Gen. Assemb., Reg. Sess. § 2953.36 (Ohio 1994) (amending OHIO REV. CODE § 2953.36); Stuntz, *supra* note 178, at 2558.

²¹⁷ See Demleitner, *supra* note 3, at 1255.

²¹⁸ Am. Sub. H.B. 262, 129th Gen. Assemb., Reg. Sess. § 2953.38 (Ohio 2012).

²¹⁹ See Am. Sub. H.B. 425, 132d Gen. Assemb., Reg. Sess. § 2953.38 (Ohio 2019).

²²⁰ OHIO REV. CODE ANN. § 2953.38(B) (West 2020). The initial version of the statute permitted “[a]ny person who is or was convicted of [certain prostitution related offenses] may apply to the sentencing court for the expungement of the record of conviction if the person’s participation in the offense was a result of the person having been a victim of human

preponderance of the evidence that the applicant’s participation in the offense . . . was a result of . . . having been a victim of human trafficking,”²²¹ and that the applicant has satisfied any other required showings.²²²

The statute defines “[e]xpunge” as “to destroy, delete, or erase a record as appropriate for the record’s physical or electronic form or characteristic so that the record is permanently irretrievable.”²²³ Thus, unlike the record-sealing statute,²²⁴ the human trafficking expungement statute requires the record’s permanent destruction.

So what moved the legislature to create this mechanism? Simply put, stories.²²⁵ If the media frenzies described above illustrate how stories can “otherize,” then the sympathetic narratives of trafficking victims demonstrate the power of stories to humanize.

As one scholar recently observed, “human trafficking has emerged as ‘one of the great human rights causes of our time.’”²²⁶ Although the problem has existed for a long time,²²⁷ and was the subject of federal legislation in 1910,²²⁸ it has regained prominence in the past two decades.²²⁹

trafficking.” Ohio H.B. 262 § 2953.38. Some trial courts took the position that this language allowed the expungement of any offenses relating to trafficking, not just prostitution-related crimes, so the legislature eventually amended the statute to make clear all crimes could be expunged if the result of the applicant’s being trafficked, except for aggravated murder, murder, and rape. *See* Ohio H.B. 425 § 2953.38.

²²¹ OHIO REV. CODE ANN. § 2953.38(E)(1)(b) (West 2020); *see also* OHIO REV. CODE ANN. § 2953.38(A)(4) (West 2020) (defining a “[v]ictim of human trafficking” as “a person who is or was a victim of a violation of section 2905.32 of the Revised Code [trafficking in persons], regardless of whether anyone has been convicted of a violation of that section or of any other section for victimizing the person”).

²²² If an applicant seeks to expunge a felony of the first or second degree, then he or she must demonstrate that his or her interests in having the records sealed “are not outweighed by any legitimate needs of the government to maintain that record of conviction.” OHIO REV. CODE ANN. § 2953.38(F) (West 2020).

²²³ OHIO REV. CODE ANN. § 2953.38(A)(1) (West 2020).

²²⁴ *See supra* Part III.A.

²²⁵ *See* Rachel E. Barkow, *Making Connections with The Wire: Telling the Stories Behind the Statistics*, 2018 U. CHI. LEGAL F. 25, 26 (2018) (“But the reality of human nature is that facts and statistics do not move people to action—stories and personal connections do. . . . [W]hat really moves the electorate are powerful stories . . .”).

²²⁶ Jonathan Todres, *Human Trafficking and Film: How Popular Portrayals Influence Law and Public Perception*, 101 CORNELL L. REV. ONLINE 1, 1 (2015).

²²⁷ Sara Birkenthal, *Human Trafficking: A Human Rights Abuse with Global Dimensions*, 6 INTERDISC. J. HUM. RTS. L. 27, 28 (2011–2012) (noting that human trafficking has existed for “millennia”); Joyce Koo Dalrymple, Book Note, *Human Trafficking: Protecting Human Rights in the Trafficking Victims Protection Act*, 25 B.C. THIRD WORLD L.J. 451, 458 (2005) (describing human trafficking as a problem that has been around for “centuries”).

²²⁸ White Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. § 2421 (2018)).

²²⁹ President Bill Clinton thrust the issue back into the national spotlight in 1998, when he called for legislation to combat human trafficking. *See* Memorandum from William J.

The media have raised public awareness of human trafficking as a social problem,²³⁰ with films like *Human Trafficking*,²³¹ *Taken*,²³² and *The Whistleblower*²³³ being “particularly relevant because they are often highlighted by advocates and other speakers at human trafficking programs and conferences.”²³⁴ Portrayals of the problem rely on familiar tropes: “‘the innocent victim,’ ‘the evil offender,’ and ‘the good rescuer.’”²³⁵ The idealized “innocent victim” is young, white, and virginal, making her “completely deserving of public sympathy.”²³⁶ Indeed, “victimhood is attractive in the sense that it secures attention in an attention-taxed world. Victims can get on the agenda, the evening news, and the gossip circuit—victims get time. This of course is a precondition for any response, including sympathy or help.”²³⁷

The power of the victim frame—viewing trafficking survivors as “victims hidden behind a crime”²³⁸—has influenced policymakers, as a 2014 U.S. State Department report on human trafficking demonstrates:

Victims of trafficking should not be held liable for their involvement in unlawful activities that are a direct consequence of their victimization. Trafficked individuals who are forced to commit a crime are commonly mistaken for criminals—rather than being identified as victims—and therefore treated as such by law enforcement and judicial officials.²³⁹

Clinton, President, to Madeleine Albright, Sec’y of State, Janet Reno, Att’y Gen., John Brian Atwood, Adm’r of U.S. Agency for Int’l Dev., and Joseph Duffey, Dir. of U.S. Info. Agency (Mar. 11, 1998) (on file with the *Ohio State Law Journal*). Two years later, he signed the Trafficking Victims Protection Act of 2000. See H.R. 3244, 106th Cong. (2000) (codified as amended in various sections of the U.S. Code).

²³⁰ See Sabrina Balgamwalla, *Trafficking in Narratives: Conceptualizing and Recasting Victims, Offenders, and Rescuers in the War on Human Trafficking*, 94 DENV. L. REV. 1, 13 (2016) (describing how the media, including feature and documentary films, have increased public awareness of human trafficking); Todres, *supra* note 226, at 3 (“Most of the public—including many individuals now working on anti-trafficking initiatives—garners much of what they know about human trafficking from media portrayals of the issue.”); Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 606 (2009) (“The recent surge in interest in ending human trafficking has led even Hollywood to take up the cause.”).

²³¹ *Human Trafficking* (Lifetime television broadcast October 2005).

²³² *TAKEN* (20th Century Fox 2009).

²³³ *THE WHISTLEBLOWER* (Voltage Pictures 2010).

²³⁴ Todres, *supra* note 226, at 7–8.

²³⁵ Balgamwalla, *supra* note 230, at 14.

²³⁶ *Id.* at 16.

²³⁷ Martha Minow, *Surviving Victim Talk*, 40 UCLA L. REV. 1411, 1414–15 (1993).

²³⁸ Michele Boggiani, *When Is a Trafficking Victim a Trafficking Victim? Anti-Prostitution Statutes and Victim Protection*, 64 CLEV. ST. L. REV. 915, 917 (2016).

²³⁹ U.S. DEP’T OF STATE, 2014 TRAFFICKING IN PERSONS REPORT 14 (June 2014), <https://2009-2017.state.gov/documents/organization/226844.pdf> [<https://perma.cc/ERJ8-LB4W>].

The Ohio legislature apparently reached the same conclusion when it enacted H.B. 262.²⁴⁰ And when Ohio lawmakers later considered amending this statute to broaden what offenses could be expunged, the stories human trafficking victims told in support of the amendment were compelling. Rachel, a human trafficking survivor, delivered particularly stirring testimony during one of the hearings.²⁴¹ Molested by an older man at age twelve, she met her pimp when she was sixteen.²⁴² At first he was “sweet and kind,” but “things changed” when he began trafficking her for more than ten years.²⁴³ Rachel testified: “[h]e would make me dress in skimpy clothes in the cold weather and sleep on the streets. Many times, I thought I would die of cold or hunger.”²⁴⁴ She recalled an especially violent incident when he became angry and “beat [her] continually for 7 blocks until [she] was bloody and couldn’t stand.”²⁴⁵ Her Johns also beat and raped her.²⁴⁶

As a result of what she endured, Rachel has lingering physical pain and suffers from depression and post-traumatic stress disorder.²⁴⁷ She told the legislators that her criminal history imposed an additional burden on her: “My criminal record is hard for me because it affects me getting housing . . . and applying for jobs. It is also embarrassing for me to have a criminal record.”²⁴⁸ Rachel closed by urging the legislators to approve the bill so she could “continue to rebuild [her] life.”²⁴⁹ Not surprisingly, given Rachel’s and other survivors’ testimony,²⁵⁰ the amendment passed.²⁵¹

Ohio’s human trafficking expungement statute, and the stories told in support of its passage and amendment, reinforce what is possible when lawmakers recognize the humanity in offenders and decide to give them a meaningful second chance. If expungement, or even more robust record sealing,

²⁴⁰ See Am. Sub. H.B. 262, 129th Gen. Assemb., Reg. Sess. § 2953.38 (Ohio 2012).

²⁴¹ See *Hearing on S.B. 4 Before the H. Crim. Just. Comm.*, 132d Gen. Assemb., Reg. Sess. (Ohio 2017), <https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA132-SB-4> [<https://perma.cc/25WM-56WH>] (written testimony of Rachel).

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Hearing on S.B. 4 Before the H. Crim. Just. Comm.*, 132d Gen. Assemb. (Ohio 2017), <https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA132-SB-4> [<https://perma.cc/25WM-56WH>] (written testimony of Rachel).

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ One other human trafficking survivor provided written testimony. *Hearing on S.B. 4 Before the S. Judiciary Comm.*, 132d Gen. Assemb., Reg. Sess. (Ohio 2017) (written testimony of Jennifer Krempton). Several other survivors apparently gave oral remarks but provided no written testimony. See *Senate Bill 4*, OHIO LEGISLATURE, <https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA132-SB-4> [<https://perma.cc/25WM-56WH>] (showing a list of committee testimony).

²⁵¹ Am. Sub. S.B. 4, 132d Gen. Assemb., Reg. Sess. (Ohio 2018).

is to ever become more available, storytelling will be important in expanding the opportunity to be forgotten, because stories move people and inspire change.²⁵²

V. WHY EXPANDING CRIMINAL RECORD RELIEF MATTERS

Perhaps Allison, Jane, and Angelo will one day testify before a legislative committee about the importance of expanding criminal record relief for people, like them, who have been convicted of serious crimes. Their powerful stories not only show how their records have limited them but also why they are as deserving as human trafficking victims of a meaningful second chance.

A. Allison Nelson

Allison puts on a brave face and insists that her criminal conviction has not diminished her self-worth: “I am legally disenfranchised, due to my criminal record,” she writes, “which limits my ability to perform certain duties [and] obtain various certifications and licensures. In addition, my conviction can often limit gainful[] employment options. Ultimately, I know that my self-worth reflects more on accomplishments, than failures or finances.”²⁵³

Despite her feelings, it is clear that Ohio has devalued her by determining that she does not deserve the opportunity to teach.²⁵⁴ And by devaluing her, the state has hurt the very children it believes she is too dangerous for. Allison has no difficulty imagining the good she could have done as an educational interventionist, but unless Ohio law changes, Allison will never be able to deliver her message—“You can do this too”—to those struggling students that so badly need to hear it.²⁵⁵

In the nearly thirty years since her crime, Allison has had no other arrests,²⁵⁶ validating the research showing that recidivism by violent offenders is far from

²⁵² Barkow, *supra* note 225, at 26 (“But the reality of human nature is that facts and statistics do not move people to action—stories and personal connections do. . . . [W]hat really moves the electorate are powerful stories”); Ryan Kendall, *Prop 8: Advancing Civil Rights Through Cultural and Constitutional Change*, 37 N.Y.U. REV. L. & SOC. CHANGE 29, 33 (2013) (noting the power of stories to “move[] the cause of equality forward by changing hearts and minds”); Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?*, 87 MICH. L. REV. 2099, 2105 (1989) (“Telling stories can move us to care, and hence pave the way to action.”).

²⁵³ Email from Allison Nelson to David A. Singleton, Professor of Law, N. Ky. Univ. Chase Coll. of Law; Exec. Dir., Ohio Justice & Policy Ctr. (May 25, 2020) (on file with author).

²⁵⁴ See Nelson Interview, *supra* note 29 (explaining how she is unable to find employment in the educational field as a result of her record).

²⁵⁵ See *id.*

²⁵⁶ *Id.*

the norm.²⁵⁷ More compellingly, Allison has a record of achievement demonstrating that the assault she committed—arguably in self-defense—was an anomaly that should not define her forever. She earned a bachelor’s, a master’s, and a Ph.D.²⁵⁸ In D.C., she taught at the university level.²⁵⁹ But back in Ohio, she makes deliveries for Amazon.²⁶⁰

Allison’s criminal record is no longer relevant in determining who she is and whether she is fit to teach.²⁶¹ She presents an exemplary case for expunging or sealing the records of those who have demonstrated their ability to follow society’s rules.²⁶²

B. Jane Doe

Jane defies the common misperception that sex offenders are almost guaranteed to reoffend.²⁶³ Since committing her crime in 2005, she has not committed another sex offense, and aside from her one failure to register, she has led a lawful life.²⁶⁴

Jane may have less to show than Allison in terms of educational and professional accomplishments, but she makes up for it with grit and determination. She has raised six children on her own, with no help from their

²⁵⁷ See J.J. Prescott, Benjamin Pyle, & Sonja B. Starr, *Understanding Violent-Crime Recidivism*, 95 NOTRE DAME L. REV. 1643, 1645 (2020) (“[R]esearch does intimate that individuals who have committed prior serious violent offenses reoffend less frequently on the whole, but, when they do, their new offenses may be more likely to be serious.”).

²⁵⁸ Nelson Interview, *supra* note 29.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ See Mackenzie J. Yee, Note, *Expungement Law: An Extraordinary Remedy for an Extraordinary Harm*, 25 GEO. J. ON POVERTY L. & POL’Y 169, 179 (2017) (“[T]he public safety rationale for preserving criminal records diminishes as time elapses after an ex-offender’s release, and the possibility of expungement offers an incentive to stay out of crime.”).

²⁶² See Sara C. Schiavone, Comment, *Wiping the Slate Clean: A Proposal to Expand Ohio’s Expungement Statutes to Promote Effective Offender Reintegration*, 45 CAP. U. L. REV. 509, 544 (2017) (proposing a five-year waiting period after final discharge for applying to seal the conviction record for a first-degree felony under Ohio law).

²⁶³ See Heather Ellis Cucolo & Michael L. Perlin, “*The Strings in the Books Ain’t Pulled and Persuaded*”: *How the Use of Improper Statistics and Unverified Data Corrupts the Judicial Process in Sex Offender Cases*, 69 CASE W. RES. L. REV. 637, 644–47 (2019) (comparing the “common wisdom that . . . recidivism rates are near 100 percent for sex offenders” with the reality that actual recidivism rates are much lower); Joshua E. Montgomery, Comment, *Fixing a Non-Existent Problem with an Ineffective Solution: Doe v. Snyder and Michigan’s Punitive Sex Offender Registration and Notification Laws*, 51 AKRON L. REV. 537, 553 (2017) (noting that “recent studies have indicated that sex offender recidivism rates are much lower than the frighteningly high rates they have been portrayed to be”).

²⁶⁴ Complaint at 6, *Doe v. DeWine*, No. 1:12-cv-846 (S.D. Ohio Oct. 31, 2012). The author was one of two OJPC lawyers to represent Jane in her failure to register case. *Id.* at 9. Accordingly, the author is aware of the circumstances of that case, including its outcome.

fathers and only minimal assistance from family.²⁶⁵ Yet her children are doing well; her second oldest hopes to attend college on a basketball scholarship.²⁶⁶

If she could address Ohio's lawmakers, she would tell them not to forever judge her by the mistake she made:

[Every person who commits a sex offense] is not the same. . . . I think you should know someone's story and circumstances before judging them. . . . I made a mistake, a really bad one, but [I am more than that.] I am a mother. I have goals. I am trying to prove myself. . . . Don't just look at my record and decide who I am.²⁶⁷

As long as she has a criminal record, there will be a "dark cloud" over her head.²⁶⁸ Although she struggles to find work and decent housing, she will always try to put her "best foot forward. . . . If I wasn't strong, I would have had a nervous breakdown by now."²⁶⁹ Still, nothing would make her happier than having her record expunged or sealed: "It would be a fresh start for our family. . . . I [could] be more involved in [my children's] school activities. . . . [M]y children [would] no longer have to pay for my mistakes."²⁷⁰

C. Angelo Robinson

Angelo also describes his conviction as a "dark cloud over [his] head."²⁷¹ Indeed, "[i]t's hard to reach for the stars when you have something anchoring you down. . . ."²⁷² "You're judged by your criminal record. Everything goes by what's on paper rather than the character of the individual."²⁷³

In some ways, his hiring by the tool factory, which was aware of his criminal record,²⁷⁴ demonstrates precisely the opposite of what he feels. But his biggest fear is what his co-workers will think if they discover his record.²⁷⁵ "I would rather tell them about my past on my own terms when I'm ready," Angelo says, "after they have already gotten an opportunity to know my character."²⁷⁶ When he hears co-workers casually talking about prison or the criminal legal system,

²⁶⁵ Doe Interview, *supra* note 21.

²⁶⁶ *See id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ Text message from Jane Doe to David A. Singleton, Exec. Dir., Ohio Justice & Policy Ctr. (June 20, 2020) (on file with the author).

²⁷¹ Robinson Interview, *supra* note 21.

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ Text message from Angelo Robinson to David A. Singleton, Exec. Dir., Ohio Justice & Policy Ctr. (Sept. 23, 2020) (on file with author).

²⁷⁵ Robinson Interview, *supra* note 21.

²⁷⁶ *Id.*

“I just walk away because I think they are talking about me, judging me.”²⁷⁷ Although he has steady employment at a living wage, he believes that his job prospects are limited.²⁷⁸

If he had the opportunity, Angelo would tell lawmakers that, while he accepts responsibility for his crime, society also bears some responsibility for his situation.²⁷⁹ He would tell them that he, his mother, and his siblings spent his teenage years in Los Angeles, where they were often homeless.²⁸⁰ Because there was no social safety net, he would pump gas for hours to earn enough money for his family to eat, or scrape together the funds to find a place to sleep for the night.²⁸¹ He joined a gang and was exposed to drug dealing, “because that’s what everyone who looked like me did. You just see it everywhere.”²⁸² He recalls having no positive role models and having no one in his life to stress the importance of staying in school.²⁸³ “I never had a shot,” he says.²⁸⁴

Angelo wants everyone who meets or reads about him to know that he is not the same person he was the night he accidentally killed Veronica.²⁸⁵ But he quickly adds, “I never was that person. It was a role I had to play to survive my environment.”²⁸⁶ He only hopes that Ohio will eventually recognize that people who commit serious crimes and have rehabilitated themselves deserve to have their records sealed so that they can live without being defined by the past.²⁸⁷

VI. EPILOGUE

On September 2, 2020, Jane Doe, represented by the author, appeared before the same judge who had classified her as a sexual predator in 2006.²⁸⁸ Two weeks before the hearing, Jane filed a motion to withdraw her guilty plea,²⁸⁹ arguing that that withdrawal of her plea was necessary to correct manifest injustice,²⁹⁰ the standard for withdrawing a guilty plea after sentencing

²⁷⁷ *Id.*

²⁷⁸ *See id.*

²⁷⁹ *See id.*

²⁸⁰ *Id.*

²⁸¹ Robinson Interview, *supra* note 21.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *See* Text message from Angelo Robinson to David A. Singleton, Exec. Dir., Ohio Justice & Policy Ctr. (June 29, 2020) (on file with author).

²⁸⁶ Text message from Angelo Robinson to David A. Singleton, Exec. Dir., Ohio Justice & Policy Ctr. (June 27, 2020) (on file with author).

²⁸⁷ *See* Robinson Interview, *supra* note 21.

²⁸⁸ *Compare* Judgment Entry: Sentence: Incarceration, State v. [redacted], Hamilton C.P. No. [redacted] (Sept. 10, 2020) (on file with author), *with* Entry of Classification and Notice of Duties to Register, *supra* note 59, at 1.

²⁸⁹ Defendant’s Unopposed Motion to Withdraw Guilty Plea, Doe v. DeWine, No. 1:12-cv-846 (S.D. Ohio Oct. 31, 2012) (Aug. 16, 2020) (on file with author).

²⁹⁰ *Id.* at 1, 5.

in Ohio.²⁹¹ Stating that she “never imagined how her life would be destroyed by pleading guilty 14 years ago to unlawful sexual conduct with a minor,”²⁹² Jane contended that it would be “manifestly just . . . to let [her] withdraw her guilty plea to unlawful sexual conduct with a minor and plead guilty instead to misdemeanor assault in order to end the harsh and unanticipated consequences her plea and classification have visited upon her and her children.”²⁹³ Fortunately for Jane, the county prosecutor’s office supported the relief she sought,²⁹⁴ and on September 2, 2020, the court granted the motion.²⁹⁵ After pleading guilty to misdemeanor assault, the court sentenced Jane to time served and terminated her sex offender registration requirements.²⁹⁶ Today, Jane is no longer a convicted sexual offender.²⁹⁷

Shortly after she left court on September 2, Jane completed an application for public housing.²⁹⁸ “I’m crying again,” she wrote the author, “but it’s happy tears.”²⁹⁹ Jane is now free to live her best life, unburdened by the stigma of her original conviction and resulting predator classification. To a large extent, her humanity has been restored.

²⁹¹ OHIO R. CRIM. P. 32.1; *State v. Smith*, 361 N.E.2d 1324, 1326 (Ohio 1977) (stating that “a defendant seeking to withdraw a plea of guilty after sentence has the burden of establishing the existence of manifest injustice”).

²⁹² Unopposed Motion to Withdraw Guilty Plea, *supra* note 289, at 4.

²⁹³ *Id.* at 5.

²⁹⁴ *Id.* at 1, 5.

²⁹⁵ Judgment Entry, *supra* note 288.

²⁹⁶ *Id.*

²⁹⁷ *See id.*

²⁹⁸ *See* Text message from Jane Doe to David A. Singleton, Exec. Dir., Ohio Justice & Policy Ctr. (Sept. 2, 2020) (on file with the author).

²⁹⁹ *Id.*