Britton Hicks *Legislative Service Commission*

Am. Sub. H.B. 137

126th General Assembly
(As Passed by the General Assembly)

Reps. Gilb, Willamowski, Latta, Wagoner, J. McGregor, Fessler, Aslanides, Book, Combs, DeGeeter, Domenick, C. Evans, Gibbs, Key, T. Patton, Reidelbach, Seitz

Effective date: Emergency, July 11, 2006; certain provisions effective August 3, 2006; certain other provisions effective October 9, 2006

ACT SUMMARY

- Specifies that the failure of a court to notify certain felony offenders who are subject to post-release control that the offender will be supervised under post-release control after the offender leaves prison does not negate, limit, or otherwise affect the period of post-release control.

- Authorizes a court to prepare and issue a correction to certain felony offenders' judgment of conviction to notify the offender that the offender will be supervised under a post-release control sanction once the offender leaves prison.

- Specifies that the failure of a court to notify certain offenders that the Parole Board may impose a prison term for a violation of supervision under a post-release control sanction does not negate, limit, or otherwise affect the Parole Board's authority to so impose a prison term for that violation, if the Board so notifies the offender prior to the offender's release.

- Requires the Parole Board, prior to the felon's release from prison, to notify each felon who is sentenced to prison and who will be under post-release control that the felon may be sent back to prison for violating the post-release control.

- Revises the procedure by which a Juvenile Court may seal and expunge juvenile records.

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CONTENT AND OPERATION

POST-RELEASE CONTROL SANCTIONS

Prior law

Mandatory and discretionary post-release control; imposition of post-release control sanctions

Prior law provided that, for each convicted criminal offender sentenced to a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense (any violation of R.C. Chapter 2907. that is a felony), or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person, that the sentence include a requirement that the offender be subject to a period of post-release control imposed by the Parole Board after the offender's release from imprisonment (hereafter, referred to as "mandatory post-release control"). Unless reduced by the Parole Board pursuant to a specified procedure, a period of mandatory post-release control is for one of the following periods: (1) for a felony of the first degree or for a felony sex offense, five years, (2) for a felony of the second degree that is not a felony sex offense, three years, and (3) for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened physical harm to a person, three years.

Any sentence to a prison term for a felony of the third, fourth, or fifth degree that is not subject to the mandatory post-release control provision described in the preceding paragraph includes a requirement that the offender be subject to a period of post-release control of up to three years after the offender's release from imprisonment if the Parole Board, in accordance with specified provisions, determines that a period of post-release control is necessary for that offender (hereafter, referred to as "discretionary post-release control").

Before the prisoner is released from imprisonment, the Parole Board must impose upon a prisoner who is subject to mandatory post-release control, may impose upon a prisoner who is subject to discretionary post-release control, and must impose upon a prisoner being released from a shock incarceration program or from an intensive program prison, one or more post-release control sanctions to apply during the prisoner's period of post-release control. The conditions of release may include any community residential sanction, community nonresidential sanction, or financial sanction that the sentencing court was authorized to impose on the offender. A post-release control sanction imposed under this provision takes effect upon the prisoner's release from imprisonment.

At any time after a prisoner is released from imprisonment and during the period of post-release control applicable to the prisoner, the Adult Parole Authority (APA) of the Department of Rehabilitation and Correction (DRC) may review the prisoner's behavior under the post-release control sanctions imposed upon the prisoner. The APA may determine, based upon the review and in accordance with standards established by DRC, that a more restrictive or a less restrictive sanction is appropriate and may impose a different sanction. The APA also may recommend that the Parole Board reduce the duration of a discretionary period of post-release control imposed by the court. (R.C. 2967.28(A) to (D).)

Supervision while under post-release control; violation of post-release control sanction or release conditions

If a post-release control sanction is imposed upon an offender, under the provisions described above, the offender, upon release from imprisonment, is under the general jurisdiction of the APA and generally is supervised by the APA's Field Services Section through its staff of parole and field officers as if the offender had been placed on parole. If the offender upon release from imprisonment violates the post-release control sanction or any conditions that are imposed on the offender, the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction is required to report the violation directly to the APA or to the APA's officer who supervises the offender. The APA's officers may treat the offender as if the offender were on parole and in violation of the parole.

If the APA determines that an offender released under post-release control has violated a post-release control sanction or any conditions imposed upon the offender and that a more restrictive sanction is appropriate, it may impose a more restrictive sanction upon the offender, in accordance with standards established by DRC, or may report the violation to the Parole Board for a hearing as described in the next paragraph. The APA may not, pursuant to this provision, increase the duration of the offender's post-release control or impose as a post-release control sanction a residential sanction that includes a prison term, but the APA may impose on the offender any other residential sanction, nonresidential sanction, or financial sanction that the sentencing court was authorized to impose on the offender.

The Parole Board may hold a hearing on any alleged violation by a prisoner of a post-release control sanction or any conditions that are imposed upon the offender. If after the hearing the Board finds that the offender violated the sanction or condition, it may increase the duration of the offender's post-release control up to the maximum duration authorized by law or impose a more restrictive post-release control sanction. *When appropriate, the Board may impose as a post-release control sanction a residential sanction that includes a prison*

term. The Board must consider a prison term as a post-release control sanction imposed for a violation of post-release control when the violation involves a deadly weapon or dangerous ordnance, physical harm or attempted serious physical harm to a person, or sexual misconduct, or when the offender committed repeated violations of post-release control sanctions. The period of a prison term imposed as a post-release control sanction cannot exceed nine months, and the maximum cumulative prison term for all violations cannot exceed one-half of the stated prison term originally imposed upon the offender as part of this sentence. The period of a prison term that is imposed as a post-release control sanction does not count as, or be credited toward, the remaining period of post-release control.

If an offender is imprisoned for a felony committed while under post-release control supervision and is again released on post-release control, the maximum cumulative prison term for all violations cannot exceed one-half of the total stated prison terms of the earlier felony, reduced by any prison term administratively imposed by the Parole Board, plus one-half of the total stated prison term of the new felony. (R.C. 2967.28(F)(1) to (3).)

Sentencing court--provision of notice to offender and inclusion in sentence

The existing Felony Sentencing Law grants a court that is sentencing a person for a felony much discretion in imposing the sentence, but contains a series of rules and guidelines that the court must follow in exercising its discretion and imposing the sentence. In certain specified circumstances, the Law requires the sentencing court to impose a prison term on a convicted felon, but, in most cases, a prison term is not required. A sentencing court is required to conduct a sentencing hearing before imposing sentence on a convicted felon.

The Felony Sentencing Law provides that, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court must do all of the following: (1) impose a stated prison term, (2) notify the offender that, as part of the sentence, the Parole Board may extend the stated prison term for certain violations of prison rules for up to one-half of the stated prison term (this mechanism is named "bad time" and has been determined by the Supreme Court to be unconstitutional), (3) *notify the offender that the offender will be supervised under the Felony Sentencing Law's post-release control provisions after the offender leaves prison if the offender is being sentenced for a felony subject to mandatory post-release control*, (4) *notify the offender that the offender may be supervised under the post-release control provisions after the offender leaves prison if the offender is subject to discretionary post-release control*, (5) *notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in clause (3) or (4), and if the offender violates that supervision or a condition of post-release control, the Parole Board*

may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender, and (6) require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing, and require that the results of the drug test indicate that the offender did not ingest or was not injected with a drug of abuse (R.C. 2929.19(B)(3)).

The Felony Sentencing Law also provides that, if a court imposes a prison term on an offender for a felony that makes the offender subject to mandatory post-release control, it must include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment in accordance with R.C. 2967.28(B), which provides for mandatory post-release control. If a court imposes a prison term on an offender for a felony that makes the offender subject to discretionary post-release control, it must include in the sentence a requirement that the offender be subject to a period of post-release control under R.C. 2967.28(C), which provides for discretionary post-release control, if the Parole Board determines that a period of post-release control is necessary. (R.C. 2929.14(F).)

The act

Failure to provide notice of post-release control

The act specifies that if a court imposes a prison term on a person who commits a first or second degree felony, a felony sex offense, or a third degree felony that is not a felony sex offense and in the commission of which the person caused or threatened to cause physical harm to a person, and the court fails to include a post-release control requirement in the sentence, that failure does not negate, limit, or otherwise affect the mandatory period of post-release control. This provision applies to sentences imposed on or after the effective date of the act. (R.C. 2929.14(F), 2929.19(B)(3), and 2967.28, and Section 3.)

However, for both an offender subject to mandatory post-release control and an offender subject to discretionary post-release control, for a sentence imposed before the effective date of the act that did not include a post-release control requirement, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender will be subject to post-release control sanction after the offender leaves prison. The court may so correct the judgment at any time before the offender is released from imprisonment under that term and must do so at a hearing held to prepare and issue a correction to a judgment of conviction. (R.C. 2929.14(F), 2929.191(A) and Section 3.) The court must provide notice of the date, time, place, and purpose of the hearing to the offender, the prosecuting attorney of the county, and to the DRC. The offender generally has the right to be physically present at the hearing unless, upon the court's, the offender's, or the prosecutor's

motion, the court permits the offender to appear at the hearing by video conferencing equipment. At the hearing, the offender and the prosecutor may make a statement as to whether the court should issue a correction to the judgment of conviction. (R.C. 2929.191(C).)

Failure to provide notice of the possibility of a prison sanction for a post-release control violation

Continuing law also requires a sentencing court to notify an offender that if the offender violates the offender's supervision or a condition of post-release control, the Parole Board may impose a prison term, as part of the sentence, of up to one-half of the state prison term originally imposed on the offender.

The act specifies that the failure of a court to notify the offender, on or before the effective date of the act, that a prison term as described above may be imposed does not negate, limit, or otherwise affect the authority of the Parole Board to so impose a prison term for a violation if the Parole Board notifies the offender of the Board's authority to impose a prison term for this reason before the offender is released (R.C. 2929.19(B)(3)(e) and 2967.28). Again, however, for a failure to notify the offender before the effective date of the act, the court may use the procedure discussed above to issue a correction to the judgment of conviction relative to the failure to notify the offender of the penalty for violating a post-release control condition (R.C. 2929.191(B) and (C)).

Declaration by the General Assembly as to the act's purpose

The act declares the General Assembly's purpose in amending and enacting the above post-release control provisions is (1) to reaffirm that, prior to the act's effective date, an offender subject to post-release control sanctions was always subject to the post-release control sanctions after the offender's release from imprisonment without the need for any prior notification or warning, (2) to reaffirm that an offender subject to supervision under a period of post-release control was always subject to having the Parole Board impose a prison term if the offender violates the offender's post-release control sanctions, (3) to declare the General Assembly's belief that the amendments made in the act concerning post-release control are non-substantive and merely clarify the prior law and thus are remedial in nature, and (4) to declare that the General Assembly intends that the amendments made to the act regarding post-release control apply to all convicted offenders, regardless of whether they were sentenced prior to, or are sentenced on or after, the act's effective date (R.C. 2967.28 and Section 5).

SEALING AND EXPUNGEMENT OF JUVENILE COURT RECORDS

Overview

Under prior law, records of persons not adjudicated to be delinquent, unruly, or a juvenile traffic offender could be expunged upon application of the person who is the subject of the records; the court was required to initiate expungement proceedings on its own if no expungement application was filed. If the person had been adjudicated delinquent, unruly, or a juvenile traffic offender, the court could, but was not required to, seal the records, but these sealed records were not expunged. The records of certain delinquency adjudications were never sealed or expunged.

The act revises the juvenile sealing and expungement provisions to automatically require the sealing of juvenile records if there is no adjudication, to permit the sealing if there is an adjudication, and to authorize the expungement of all sealed records after a specified period of time. The act continues the current limitation prohibiting the sealing or expungement of certain delinquency adjudications.

Sealing

Definition

Under prior law, "seal a record" meant "to remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records and that is accessible only to the juvenile court. A record that was sealed was required to be destroyed by all persons and governmental bodies except the juvenile court." (Prior R.C. 2151.358(A).)

The act relocates the second sentence into operative law; see '***Effect of sealing, The act***," below, for details (R.C. 2151.355(B) and 2151.357(A)).

Records subject to sealing

Records never sealed.[1] Under law retained by the act, the court must never seal the records of a person who is found delinquent for committing aggravated murder, murder, rape, sexual battery, or gross sexual imposition (prior R.C. 2151.358(C)(1)(b) and (D)(2), renumbered R.C. 2151.356(A) by the act).

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[1] *For purposes of this analysis, references to the records of delinquent children excludes records of delinquent acts that never may be sealed.*

Arrest or custody records. While prior law had no provision regarding arrest or custody records, the act requires the court to immediately seal a person's record if that person was arrested or taken into custody for allegedly committing a delinquent or unruly act but no complaint was filed against the person and the person was not brought before or referred to the court for committing the delinquent or unruly act (R.C. 2151.356(B)(1)(a)).

The act also requires the appropriate public office or agency to forward the original arrest or custody records to the court; these records do not include fingerprints held by a law enforcement agency or DNA specimens or DNA records related to the Bureau of Criminal Identification and Investigation's (BCII's) DNA database (R.C. 2151.356(B)(2)).

No complaint filed. While prior law had no provision regarding situations in which no complaint was filed, the act requires the court to immediately seal a person's record if that person was brought before or referred to the court for allegedly committing a delinquent or unruly act, no complaint was filed, and the case was resolved (R.C. 2151.356(B)(1)(b)).

Dismissed complaint. Prior law also had no provision regarding situations in which the complaint was dismissed. The act, however, requires the court to immediately seal a person's record if a complaint was filed against the person alleging delinquency or unruliness, or alleging the person to be a juvenile traffic offender, and the court dismissed the complaint after a trial on the merits of the case (R.C. 2151.356(B)(1)(d)).

Alcohol offenses--completes court ordered diversion. Under law generally retained by the act, when a juvenile was charged with knowingly possessing, consuming, or being under the influence of beer or intoxicating liquor and successfully completed a court-ordered diversion program, the court was required to order the person's record sealed. The act retains this provision, but specifies that the records must be *immediately* sealed. (Prior R.C. 2151.358(D)(3), renumbered R.C. 2151.356(B)(1)(c) by the act.)

Found not to be delinquent, unruly, or a juvenile traffic offender. Prior law required that the records of those found not to be delinquent, unruly, or a juvenile traffic offender be expunged. The act requires the court to immediately seal a person's record if a complaint was filed against the person alleging delinquency or unruliness, or alleging the person to be a juvenile traffic offender, and the court finds the person not delinquent, unruly, or a juvenile traffic offender. (Prior R.C. 2151.358(F) and R.C. 2151.356(B)(1)(d).)

Adjudicated to be unruly, delinquent, or a juvenile traffic offender. Under prior law, when a person had been adjudicated an unruly child, the court

was required to order the person's record to be sealed two years after either (1) the termination of any court order resulting from the case, or (2) the person was unconditionally discharged from an institution to which the person may have been committed as a result of the unruliness (prior R.C. 2151.358(C)(1)(a)(i)). The act requires the court to immediately seal a person's record when that person has been adjudicated an unruly child if that person also is *over 18 years old* and not under the jurisdiction of the court for a delinquency complaint. (R.C. 2151.356(B)(1)(e) and (C)(1).)

When a person was adjudicated delinquent or a juvenile traffic offender, prior law permitted the court to order a person's record sealed, or send notice to the person of that person's right to have his or her record sealed, two years after (1) the termination of any court order resulting from the case, or (2) the person was unconditionally discharged from an institution to which the person may have been committed as a result of the delinquency or juvenile traffic offense (prior R.C. 2151.358(C)(1)(a)(ii)). The act generally retains this provision, but additionally (1) applies it to children who have been adjudicated unruly but have not yet reached 18 years of age, and (2) requires that the person must not be under the jurisdiction of the court for a delinquency complaint for the court to consider sealing that person's record (R.C. 2151.356(C)(1) and (D)(2)).

Notification of sealing

Under prior law, if (1) a person was adjudicated delinquent or a juvenile traffic offender, (2) that person was unconditionally discharged from an institution to which the person could have been committed in relation to the sealed records case or any court order relating to the sealed records case had terminated, and (3) the court did not automatically seal that person's records, the court was required to give notice, within 90 days after the two year anniversary of the child's discharge or the order's termination, to the person subject of the sealed records. The notice was required to explain (1) the person could apply to have those records sealed, (2) what sealing a record meant, and (3) the possible consequences of not having the records sealed. The notification was required to be sent by certified mail, return receipt requested, to the person's last known address. (R.C. 2151.358(C)(2).)

The act revises the current notification requirement by modifying the notification procedures based upon the type of case involved in the sealing order.

If a person's records are immediately sealed, and that person is present in court at the time the court issues the sealing order, the court must provide verbal notice that explains (1) what sealing a record means, (2) that the person may apply to have the records expunged, and (3) what expunging a record means. If the person is *not* present in court at the time the court issues the sealing order and if

the court does not seal the person's record upon the court's own motion, the court must provide written notice to the person, by regular mail to the person's last known address, that provides the same information. (R.C. 2151.356(D)(1).)

Upon final disposition of a case in which a person is adjudicated delinquent, unruly (and is under 18 or under the jurisdiction of the court), or as a juvenile traffic offender, the court must provide written notice to the person that explains (1) that the person may apply for sealing, (2) what sealing a record means, (3) that the person may apply to have the records expunged, and (4) what expunging a record means (R.C. 2151.356(D)(2)).

Application or motion for sealing, notice to prosecutor, and hearing for sealing

Under law generally preserved by the act, the court must hold a hearing within 60 days of application for sealing and notify the prosecutor, or any other relevant public office or agency, of the hearing. If the court finds that the delinquent or juvenile traffic offender has been rehabilitated to a satisfactory degree, the court may order the person's record sealed. (R.C. 2151.358(D)(1).)

The act further clarifies this provision. If the court must determine whether to seal the records upon its own motion or upon application of the person subject of the case, the court must notify the prosecutor of a sealing proceeding. The act provides the prosecutor the opportunity to file a response within 30 days of receiving the notice. If the prosecuting attorney does not file a response or files a response but indicates that the prosecuting attorney does not object to the sealing of the records, the court may order the records sealed without a hearing. (R.C. 2151.356(C)(2)(c) and (d).)

If the court decides to hold a hearing or the prosecuting attorney files a response that indicates that the prosecuting attorney objects to the sealing of the records, the court must hold the hearing within 30 days after making the decision or receiving the objection and send notice, by regular mail, to both the prosecutor and the person who is the subject of the records noting the date, time, and location of the hearing. (R.C. 2151.356(C)(2)(c) and (d).)

The act also allows the court, when making a sealing determination, to investigate whether the person who is subject of the proceeding is rehabilitated to a satisfactory degree and to require the person subject of the records to submit any relevant documentation to support the application (R.C. 2151.356(C)(2)(a) and (b)).

Standard for sealing a record. The act does not change the standard for determining whether a person's records may be sealed: the Juvenile Court may

seal the records if it determines that the person has been rehabilitated to a satisfactory degree. But the act does provide some guidance as to how to make this determination. Under the act, in determining whether the person has been rehabilitated to a satisfactory degree, the court may consider all of the following: (1) the age of the person, (2) the nature of the case, (3) the cessation or continuation of delinquent, unruly, or criminal behavior, (4) the education and employment history of the person, and (5) any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration. (R.C. 2151.358(D)(1) under prior law and R.C. 2151.356(C)(2)(e) under the act.)

Effect of sealing

Generally, when a record is sealed, it is removed from the main file where similar records are kept and put in a separate file that holds only sealed records and is only accessible by the Juvenile Court. The court must send notice of the order to seal to any public office or agency that the court believes may have record of the sealed record and generally all persons and governmental bodies must destroy any record the court orders sealed, regardless of whether it receives notice of the sealing hearing or sealing order. If the court orders the records of a person sealed, it means that the proceedings are deemed never to have occurred and the court's index references to the person or the case must be deleted. Additionally, the person and the court may properly respond that no record exists with respect to the person if anyone inquires about the case. (Prior R.C. 2151.358(A), (E)(1), (F), and (G)(1).)

The act generally retains these provisions (R.C. 2151.357(A) and (B)) but additionally requires the court to do all of the following:

- Delete all index references *so that the references are permanently irretrievable* (R.C. 2151.357(A)(2));

- Order all original records of the case maintained by any public office or agency be delivered to the court; fingerprints and certain DNA specimens and records are excluded from the application of this provision (R.C. 2151.357(A)(3));[2]

- After delivering the records to the court, order each public office or agency to expunge all remaining records of the case subject of the

[2] *An analogous exception under prior expungement law excepted only fingerprints (prior R.C. 2151.358(F)).*

sealing order (except certain fingerprints and DNA specimens and records) (R.C. 2151.357(A)(4));

- Reply that no record exists with respect to the person if anyone inquires about the case (prior law was phrased in a permissive format; the act specifies that it is mandatory) (R.C. 2151.357(A)).

Similar to the provision relating to expunged records as it existed under prior law, the act also specifies that a person whose record is sealed may present a copy of the sealing order to any public office or agency and that public office or agency, after copying the records and delivering the copies to the court, must expunge its records[3] (R.C. 2151.357(B)).

Index of sealed records

Under continuing law, the person, or public office or agency, that maintains sealed records regarding a delinquency adjudication, may maintain a manual or computerized index to the sealed records. The index may only contain (1) the name of the person subject of the sealed record, (2) an alphanumeric identifier relating to the person, (3) the word "sealed," and (4) the name of the person or public office or agency that has custody of the sealed records. The index must not contain the name of the delinquent act committed. The person with custody of the sealed records may only make the index available to certain persons (see "***Inspection of records***," below). (Prior R.C. 2151.358(G)(2).)

The act generally retains this provision but additionally prohibits the index from containing the social security number of the person subject of the sealed record (R.C. 2151.357(C)(2)(a)).

Inspection of records

Once records have been sealed, only a police officer, prosecutor, assistant to the police or prosecutor, or the person who is the subject of the records may inspect them. Police, prosecutors, or assistants to the police or prosecutors may only inspect the records for a valid law enforcement or prosecutorial purpose and only if the records either pertain to (1) an act that would be a felony if committed by an adult, or (2) an alleged alcohol offense for purposes of determining eligibility for court ordered diversion. (Prior R.C. 2151.358(E)(2).)

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[3] As under prior law, a public office or agency may maintain a record of adjudication, arrest, or taking into custody that is used for statistical purposes, however this data may not contain any reference to the person who is subject to the sealing order (R.C. 2151.357(B)).

The act additionally permits the court to inspect the sealed records and permits a party in a civil action based on the case subject of the sealed record to inspect sealed records. In the latter case, the party in the civil action may also copy records as needed for the action; the copied records may be used only in the civil action and are otherwise confidential. (R.C. 2151.357(E)(1) and (5).)

Expungement

Definition

Under the act, "expunge" means to destroy, delete, and erase a record, as appropriate for the record's physical or electronic form or characteristic, so that the record is permanently irretrievable (R.C. 2151.355(A)).

Records subject to expungement

Under the act, the court must generally expunge all sealed records the earlier of either (1) five years after the court issues the sealing order, or (2) upon the 23rd birthday of the person subject of the sealing order (R.C. 2151.358(A)).

However, the person subject of the sealed record may apply to the court to have that person's record expunged at any time (R.C. 2151.358(B)).

Application or motion for expungement

Prior law. Under prior law, if a person was arrested and charged with delinquency, unruliness, or as a juvenile traffic offender, but was adjudicated not guilty, or the charges were dismissed, that person could have applied to have his or her records expunged. If the person applied for expungement the court was required to notify the prosecutor of any hearing on the matter. If the court determined that the charges against the person were dismissed or the person was adjudicated not guilty, the court was required to order the records expunged. (Prior R.C. 2151.358(F).)

The act. Under the act, if the person subject of sealed records applies to have his or her records expunged prior to the automatic expungement date, the court must still notify the prosecutor of any proceeding to expunge records; however the act also allows the court to require the person filing the application for expungement to submit any relevant documentation to support the application and to cause an investigation to be made to determine if the person is satisfactorily rehabilitated.

Additionally, the act provides the prosecutor the opportunity to file a response within 30 days of receiving the expungement hearing notice. If the prosecuting attorney does not file a response or files a response but indicates that

the prosecuting attorney does not object to the sealing of the records, the court may order the records expunged without a hearing.

If the court decides to hold a hearing or the prosecuting attorney files a response that indicates that the prosecuting attorney objects to the expungement of the records, the court must hold the hearing within 30 days after making the decision or receiving the objection and send notice, by regular mail, to both the prosecutor and the person who is the subject of the records noting the date, time, and location of the hearing. (R.C. 2151.358(B)(1) to (4).)

Standard to expunge a record. Similar to the sealing provisions, the act also provides the standard for determining whether a person's records may be expunged upon application: the Juvenile Court may expunge the record if it determines that the person has been rehabilitated to a satisfactory degree. The act also provides guidance to the court when determining whether the person has been rehabilitated to a satisfactory degree. The court may consider all of the following (R.C. 2151.358(B)(5)): (1) the age of the person, (2) the nature of the case, (3) the cessation or continuation of delinquent, unruly, or criminal behavior, (4) the education and employment history of the person, and (5) any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.

Effect of expungement

Prior law. Generally, under prior law when a record was expunged it meant that the proceedings were deemed never to have occurred, and the court was required to, and the person subject of the expungement order could, properly respond that no record exists with respect to the person if anyone inquires about the case.

The court was required to send notice of the order to expunge to any public office or agency that the court believed might have a record of the case, and all persons and governmental bodies were required to destroy a prior adjudication or arrest record, regardless of whether it received notice of the sealing hearing or sealing order. A person whose record was expunged could present a copy of the expungement order to any public office or agency and that public office or agency had to expunge its records of the prior adjudication or arrest.

Additionally, prior law had different requirements for what happened to the physical records based upon whether the person waived the right to bring a civil action based on the arrest involved in the expungement order.

If a person waived the right to bring a civil action, the court was required to: order the appropriate persons and governmental agencies to delete all index

references to the case; destroy or delete all court records of the case; destroy all copies of pictures and fingerprints taken of the person during the expunged arrest; and destroy, erase, or delete any reference to the arrest except a record of the arrest that is maintained for compiling statistical data and that does not contain any reference to the person.

If a person did not waive their right to bring a civil action based on the arrest, the court was required to: order the deletion, destruction, or erasure of all index references and court records of the case and of all references to the arrest that are maintained by the state or any political subdivision of the state; order that a copy of all records of the case, except fingerprints held by the court or a law enforcement agency, be delivered to the court; and seal all of the records delivered to the court in a separate file in which only sealed records are maintained. Prior law required the sealed records to be kept by the court until the statute of limitations expired for any civil action based on the arrest, any pending litigation based on the arrest was terminated, or the applicant filed a written waiver of the right to bring a civil action based on the arrest. After the statute of limitations expired, the pending litigation was terminated, or the applicant filed a waiver, the court was required to destroy the sealed records. (Prior R.C. 2151.358(F) and (G)(1).)

The act. Under the act, once the court issues an expungement order, the sealed records generally must be destroyed, deleted, and erased, as appropriate for the record's physical or electronic form or characteristic, so that the record is permanently irretrievable (R.C. 2151.355(A)(1)). *However*, if any party in a civil action, based on a case the records for which are sealed, notifies the court of the civil action, the court must not expunge the record until the civil action is resolved and not subject to further appellate review (R.C. 2151.358(C)). Once the records are expunged, the court must, and the person subject of the expungement order may, properly respond that no record exists with respect to the person if anyone inquires about the case, as under prior law (R.C. 2151.358(D)).

Miscellaneous

Recodification

In the act, several provisions of the juvenile record sealing and expungement law (prior R.C. 2151.358) have been recodified, with only conforming changes being made. The following chart describes the provision's subject, prior section, and new section.

SUBJECT	PRIOR §	NEW §
Institutional discharge	R.C. 2151.358(B)	R.C. 2151.356(D)(3)
Civil disability	R.C. 2151.358(H)	R.C. 2151.357(H)
Questioning regarding sealed/expunged records	R.C. 2151.358(I)	R.C. 2151.357(G)
Divulging confidential information	R.C. 2151.358(J)	R.C. 2151.357(F)
School expulsion records regarding confidential information	R.C. 2151.358(K)	R.C. 2151.357(D)

Conforming changes

The act conforms a number of sections to the amendments made by the act (R.C. 2151.313, 2151.357 (2151.362), 2152.72, 2930.13, 3301.0714, 3313.64, 3313.662, 3314.03, 3323.01, and 4301.69).

HISTORY

ACTION	DATE
Introduced	03-15-05
Reported, H. Juvenile & Family Law	01-19-06
Passed House (91-5)	01-31-06
Reported, S. Judiciary – Civil Justice	05-17-06
Passed Senate (32-1)	05-24-06
House concurred in Senate amendments (91-4)	05-25-06

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