



**Sub. H.B. 137**

126th General Assembly

(As Reported by H. Juvenile and Family Law)

**Reps. Gilb, Willamowski, Latta, Wagoner, McGregor, Fessler**

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**BILL SUMMARY**

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

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## CONTENT AND OPERATION

### Overview

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

The bill 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 bill continues the current limitation prohibiting the sealing or expungement of certain delinquency adjudications.

## SEALING

### Definition

#### Current law

Under current law, "seal a record" means "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 is sealed shall be destroyed by all persons and governmental bodies except the juvenile court." (R.C. 2151.358(A).)

#### The bill

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

### Records subject to sealing

#### 1. Records never sealed<sup>1</sup>

CURRENT LAW	THE BILL
Under current law, 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 (R.C. 2151.358(C)(1)(b) and (D)(2)).	The bill retains this provision (R.C. 2151.356(A)).

#### 2. Arrest or custody records

CURRENT LAW	THE BILL
No provision.	The bill 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)).

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<sup>1</sup> For purposes of this analysis, references to the records of delinquent children excludes records of delinquent acts that never may be sealed.

	<p>The bill 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 (<i>R.C. 2151.356(B)(2)</i>).</p>
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### **3. No complaint filed**

CURRENT LAW	THE BILL
No provision.	<p>The bill 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 (<i>R.C. 2151.356(B)(1)(b)</i>).</p>

### **4. Dismissed complaint**

CURRENT LAW	THE BILL
No provision.	<p>The bill 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 dismisses the complaint after a trial on the merits of the case (<i>R.C. 2151.356(B)(1)(d)</i>).</p>

### **5. Alcohol offenses--completes court ordered diversion**

CURRENT LAW	THE BILL
<p>Currently, when a juvenile is charged with knowingly possessing, consuming, or being under the influence of beer or intoxicating liquor and successfully completes a court-ordered diversion program, the court must order the person's record sealed (<i>R.C. 2151.358(D)(3)</i>).</p>	<p>The bill retains this provision but specifies that the records must be <i>immediately sealed</i> (<i>R.C. 2151.356(B)(1)(c)</i>).</p>

**6. Found not to be delinquent, unruly, or a juvenile traffic offender**

CURRENT LAW	THE BILL
Under current law, these records are expunged. See ' <b>EXPUNGEMENT, <u>Records subject to expungement,</u></b> ' below.	The bill 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 ( <i>R.C. 2151.356(B)(1)(d)</i> ).

**7. Adjudicated to be unruly, delinquent, or a juvenile traffic offender**

**a. Unruly**

CURRENT LAW	THE BILL
Under current law, when a person has been adjudicated an unruly child, the court must 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 is unconditionally discharged from an institution to which the person may have been committed as a result of the unruliness ( <i>R.C. 2151.358(C)(1)(a)(i)</i> ).	<p>The bill requires the court to immediately seal a person's record when that person has been adjudicated an unruly child, however that person must also be <i>over 18 years old</i> and not under the jurisdiction of the court for a delinquency complaint (<i>R.C. 2151.356(B)(1)(e)</i>).</p> <p>However, if the person is adjudicated unruly and is <i>under 18 years old</i>, or under the jurisdiction of the court for a delinquency complaint, the bill retains the current law provision (<i>R.C. 2151.356(C)(1) and (D)(2)</i>).</p>

**b. Delinquent or juvenile traffic offender**

CURRENT LAW	THE BILL
Under current law, when a person is adjudicated delinquent or a juvenile traffic offender, the court may order a person's record sealed, or send notice to the person of that person's right to have his or her records sealed, two years after (1) the termination of any court order resulting from the case, or (2) the person is unconditionally discharged from an institution to which the person may have been committed as a result of the delinquency or juvenile traffic offense (R.C. 2151.358(C)(1)(a)(ii)).	The bill generally retains this provision, but adds 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**

**Current law**

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

**The bill**

The bill 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, as discussed in #2 to 6 and #7a (adjudicated unruly but under 18 or under the jurisdiction of the court) of "**Records subject to sealing**," above, 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, the court must provide written notice to the person, by certified 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, as discussed in #7a and #7b of "**Records subject to sealing**," above, the court must provide verbal and written notice to the person that explains (1) that the person may apply for sealing, (2) what sealing a record means, (3) the possible consequences of not having the records sealed, (4) that the person may apply to have the records expunged, and (5) what expunging a record means (R.C. 2151.356(D)(2)(a)).

Additionally, if the court orders records discussed in #7a and #7b to be sealed, the court must send written notice to the person, by certified mail to the person's last known address, within 90 days of (1) unconditional discharge from an institution to which the person may have been committed in relation to the sealed records case, or (2) the termination of any court order relating to the sealed records case. The notice must explain that the person's records have been sealed, what sealing a record means, that the person may apply to have the records expunged, and what expunging a record means. However, if the court does not automatically seal records discussed in #7a, and the court does not seal the records on its own motion, the court must send similar written notice, but must include that the person may apply to have the records sealed, what sealing is, the possible consequences of not having the records sealed, that the person may apply for expungement, and what expunging a record means. (R.C. 2151.358(D)(2)(b).)

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

#### **Current law**

Under current law, 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 bill**

The bill 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, as discussed in #7a and #7b of "**Records subject to sealing**," above, the court must notify the prosecutor of a sealing proceeding. The bill 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.

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 bill 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.** The bill 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 bill does provide some guidance as to how to make this determination. Under the bill, 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 current law, 2151.356(C)(2)(e) under the bill.)

### **Effect of sealing**

#### **Current law**

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. (R.C. 2151.358(A), (E)(1), and (G)(1).)

### **The bill**

The bill 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));<sup>2</sup>
- After delivering the records to the court, order each public office or agency to expunge all remaining records of the case subject of the 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 (current law is phrased in a permissive format although it probably is a requirement; the bill clarifies that it is mandatory) (R.C. 2151.357(A)).

Similar to a current provision relating to expunged records, the bill 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<sup>3</sup> (R.C. 2151.357(B)).

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<sup>2</sup> *An analogous exception under current expungement law excepts only fingerprints.*

<sup>3</sup> *As under current 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)).*

## **Index of sealed records**

### **Current law**

Currently, 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). (R.C. 2151.358(G)(2).)

### **The bill**

The bill 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**

### **Current law**

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. (R.C. 2151.358(E)(2).)

### **The bill**

The bill 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**

The bill defines "expunge" as "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**

#### **Found not to be delinquent, unruly, or a juvenile traffic offender or complaint dismissed**

CURRENT LAW	THE BILL
Under current law, if a person is arrested and charged with delinquency, unruliness, or as a juvenile traffic offender, but is adjudicated not guilty, or the charges are dismissed, the court may order a person's record expunged, or the person may apply to have the record expunged (R.C. 2151.358(F)).	Under the bill, these records are sealed and subject to expungement (see following for details).  See also ' <b><u>SEALING, Found not to be delinquent, unruly, or a juvenile traffic offender,</u></b> ' above.

### **Sealed records**

Under the bill, 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**

#### **Current law**

Under current law, if a person is arrested and charged with delinquency, unruliness, or as a juvenile traffic offender, but is adjudicated not guilty, or the charges are dismissed, that person may apply to have his or her records expunged, if the person applies the court must notify the prosecutor of any hearing on the matter. Otherwise, if the court determines that the charges against the person were dismissed or the person was adjudicated not guilty, the court must order the records expunged. (R.C. 2151.358(F).)

### **The bill**

Under the bill, 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 bill 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 bill 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.** Similar to the sealing provisions, the bill 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 bill 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: (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(B)(5).)

### **Effect of expungement**

#### **Current law**

Generally, under current law when a record is expunged it means that the proceedings are deemed never to have occurred, and 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.

The court must send notice of the order to expunge to any public office or agency that the court believes may have record of the case and all persons and governmental bodies must destroy a prior adjudication or arrest record, regardless of whether it receives notice of the sealing hearing or sealing order. A person whose record is expunged may present a copy of the expungement order to any public office or agency and that public office or agency must expunge its records of the prior adjudication or arrest.

Additionally, current law has different requirements for what happens to the physical records based upon whether the person waives the right to bring a civil action based on the arrest involved in the expungement order.

If a person waives the right to bring a civil action, the court must: 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 does not waive their right to bring a civil action based on the arrest, the court must: 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. Current law requires the sealed records to be kept by the court until the statute of limitations expires for any civil action based on the arrest, any pending litigation based on the arrest is terminated, or the applicant files a written waiver of the right to bring a civil action based on the arrest. After the statute of limitations expires, the pending litigation is terminated, or the applicant files a waiver, the court must destroy the sealed records. (R.C. 2151.358(F) and (G)(1).)

### **The bill**

Under the bill, 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 current law (R.C. 2151.358(D)).

## MISCELLANEOUS

### Recodification

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

SUBJECT	EXISTING §	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 bill conforms a number of sections to the amendments made by the bill (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).

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## HISTORY

ACTION	DATE
Introduced	03-15-05
Reported, H. Juvenile & Family Law	01-19-06

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