



S.B. 18*

127th General Assembly
(As Reported by S. Judiciary--Criminal Justice)

Sens. Clancy, Stivers, Cates, Schaffer, Austria

BILL SUMMARY

- Expands the list of convictions to which the existing criminal conviction and bail forfeiture record-sealing mechanism does not apply so that the mechanism also does not apply to any of the following: (1) convictions of the offense of importuning and (2) convictions of the offense of voyeurism, public indecency, compelling prostitution, promoting prostitution, procuring, disseminating matter harmful to juveniles, displaying matter harmful to juveniles, pandering obscenity, or deception to obtain matter harmful to juveniles when the victim of the offense was under 18 years of age.

CONTENT AND OPERATION

Existing law

Summary of record-sealing mechanism

Existing law contains a mechanism pursuant to which persons who are convicted of a criminal offense and who are "first offenders" (see below) may apply to a specified court, after the expiration of a specified period of time (at the expiration of three years after final discharge if the offense is a felony or at the expiration of one year after final discharge if the offense is a misdemeanor), for the sealing of the conviction record. A similar mechanism is provided for persons who have been arrested for a misdemeanor offense and have effected a bail forfeiture. Upon the filing of an application and the payment of a \$50 fee (unless the person is indigent), the court must conduct a hearing, and, if it makes specified

* This analysis was prepared before the report of the Senate Judiciary--Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

findings, it generally must order all official records pertaining to the case sealed, must order all index references to the case deleted, and, in the case of bail forfeitures, must dismiss the charges in the case. The proceedings in the case are considered not to have occurred, and the conviction or bail forfeiture of the subject person is sealed, except that upon conviction of a subsequent offense, the sealed record may be considered by the court in determining the sentence or other appropriate disposition. Sealed records also may be inspected by specified law enforcement personnel and public officials for specified law enforcement-related purposes and by the subject person or any person the subject person designates in an application.

An order to seal the record of a person's conviction generally restores the subject person to all rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release, and, in an application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, the person generally may be questioned only with respect to convictions and bail forfeitures not sealed. (R.C. 2953.32 to 2953.35, not in the bill--see **COMMENT** for a more detailed discussion of the mechanism.)

Definition of "first offenders" and "bail forfeiture"

As used in the provisions that establish and govern the record-sealing mechanism, "first offender" means anyone who has been convicted of an offense in Ohio or any other jurisdiction and who previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction. When two or more convictions result from or are connected with the same act or result from offenses committed at the same time, they are counted as one conviction. When two or three convictions result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, they are counted as one conviction, provided that a court may decide at the hearing on the application that it is not in the public interest for the two or three convictions to be counted as one conviction. For purposes of, and except as otherwise described in, this paragraph, a conviction for a minor misdemeanor, for a violation of any section in R.C. Chapter 4507., 4510., 4511., 4513., or 4549., or for a violation of a municipal ordinance that is substantially similar to any section in those chapters is not a previous or subsequent conviction. However, a conviction for a violation of R.C. 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, 4549.62, or 4549.41 to 4549.46, for a violation of R.C. 4510.11 or 4510.14 that is based upon the offender's operation of a vehicle during a suspension imposed under R.C. 4511.191 or 4511.196, for a violation of a substantially equivalent municipal ordinance, for a

felony violation of R.C. Title XLV, or for a violation of a substantially equivalent former law of Ohio or former municipal ordinance is considered a previous or subsequent conviction. Also, "bail forfeiture" means the forfeiture of bail by a defendant who is arrested for the commission of a misdemeanor, other than a defendant in a traffic case, if the forfeiture is pursuant to an agreement with the court and prosecutor in the case. (R.C. 2953.31, not in the bill.)

Convictions to which the record-sealing mechanism does not apply

Existing law specifies that the criminal conviction and bail forfeiture record-sealing mechanism set forth in R.C. 2953.31 to 2953.35 does not apply to any of the following (R.C. 2953.36):

- (1) Convictions when the offender is subject to a mandatory prison term;
- (2) Convictions under R.C. 2907.02 (the offense of "rape"), 2907.03 ("sexual battery"), 2907.04 ("unlawful sexual conduct with a minor"), 2907.05 ("gross sexual imposition"), 2907.06 ("sexual imposition"), 2907.321 ("pandering obscenity involving a minor"), 2907.322 ("pandering sexually oriented matter involving a minor"), or 2907.323 ("illegal use of a minor in a nudity-oriented material or performance"), former R.C. 2907.12 (the former offense of "felonious sexual penetration"), or R.C. Chapter 4507., 4510., 4511., or 4549. (driver's license-related and traffic-related offenses), or a conviction for a violation of a municipal ordinance that is substantially similar to any section contained in any of those chapters;
- (3) 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 R.C. 2917.03 (the offense of "riot") and is not a violation of R.C. 2903.13 ("assault"), 2917.01 ("inciting to violence"), or 2917.31 ("inducing panic") that is a misdemeanor of the first degree;
- (4) Convictions of an offense in circumstances in which the victim of the offense was under 18 years of age when the offense is a misdemeanor of the first degree or a felony;
- (5) Convictions of a felony of the first or second degree;
- (6) Bail forfeitures in a traffic case as defined in Traffic Rule 2.

Operation of the bill

The bill expands the list of convictions to which the criminal conviction and bail forfeiture record-sealing mechanism set forth in existing R.C. 2953.31 to 2953.35 does not apply. Under the bill, in addition to the convictions specified

under existing law to which the mechanism does not apply, the mechanism also does not apply to any of the following (R.C. 2953.36(B) and (D)):

(1) Convictions under R.C. 2907.07, which sets forth the offense of "importuning";

(2) Convictions under R.C. 2907.08 (the offense of "voyeurism"), 2907.09 ("public indecency"), 2907.21 ("compelling prostitution"), 2907.22 ("promoting prostitution"), 2907.23 ("procuring"), 2907.31 ("disseminating matter harmful to juveniles"), 2907.311 ("displaying matter harmful to juveniles"), 2907.32 ("pandering obscenity"), or 2907.33 ("deception to obtain matter harmful to juveniles") when the victim of the offense was under 18 years of age.

COMMENT

Existing R.C. 2953.31 to 2953.35, not in the bill, provide as follows:

(1) Existing R.C. 2953.32, not in the bill, provides that, except as provided in R.C. 2953.61 (regarding multiple charges), a first offender (see the **CONTENT AND OPERATION** portion of this analysis) may apply to the sentencing court if convicted in Ohio, or to a court of common pleas if convicted in another state or in a federal court, for the sealing of the conviction record. Application may be made at the expiration of three years after the offender's final discharge if convicted of a felony, or at the expiration of one year after the offender's final discharge if convicted of a misdemeanor. A person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture may apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of the record of the case; the application may be filed at any time after the expiration of one year from the date on which the bail forfeiture was entered upon the minutes of the court or the journal, whichever entry occurs first.

Upon the filing of an application, the court must set a date for a hearing and notify the prosecutor for the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing, which must specify the reasons for believing a denial of the application is justified. The court must direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports concerning the applicant.

The court must do each of the following: (a) determine whether the applicant is a first offender or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case (if the applicant applies as a first offender and has two or three convictions that result from the same indictment, information,

or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, in making its determination, the court initially must determine whether it is not in the public interest for the two or three convictions to be counted as one conviction; if the court determines that it is not in the public interest for the two or three convictions to be counted as one conviction, the court must determine that the applicant is not a first offender, and if the court does not make that determination, the court must determine that the offender is a first offender, (b) determine whether criminal proceedings are pending against the applicant, (c) if the applicant is a first offender who applies, determine whether the applicant has been rehabilitated to the satisfaction of the court, (d) if the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection, and (e) weigh the interests of the applicant in having the records pertaining to the applicant's conviction sealed against the legitimate needs, if any, of the government to maintain those records.

If the court determines, after complying with the provisions described in the preceding paragraph, that the applicant is a first offender or the subject of a bail forfeiture, that no criminal proceeding is pending against the applicant, and that the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed are not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of an applicant who is a first offender has been attained to the satisfaction of the court, the court, except as provided in R.C. 2953.32(G), must order all official records pertaining to the case sealed and, except as provided in R.C. 2953.32(F), all index references to the case deleted and, in the case of bail forfeitures, must dismiss the charges in the case. The proceedings in the case are considered not to have occurred and the conviction or bail forfeiture of the person who is the subject of the proceedings must be sealed, except that upon conviction of a subsequent offense, the sealed record may be considered by the court in determining the sentence or other appropriate disposition.

Upon the filing of an application, the applicant, unless indigent, must pay a fee of \$50. The court must pay \$30 of the fee into the state treasury and must pay \$20 of the fee into the county general revenue fund if the sealed conviction or bail forfeiture was pursuant to a state statute or into the general revenue fund of the municipal corporation involved if the sealed conviction or bail forfeiture was pursuant to a municipal ordinance.

The person or governmental agency, office, or department that maintains sealed records pertaining to convictions or bail forfeitures that have been sealed may maintain a manual or computerized index to the sealed records. The index

may contain only the name of, and alphanumeric identifiers that relate to, the persons who are the subject of the sealed records, the word "sealed," and the name of the person, agency, office, or department that has custody of the sealed records, and shall not contain the name of the crime committed. The index may be made available by the person who has custody of the sealed records only for the purposes described below.

Notwithstanding any provision of R.C. 2953.32 or 2953.33 that requires otherwise, a board of education that maintains records of an individual who has been permanently excluded under R.C. 3301.121 and 3313.662 is permitted to maintain records regarding a conviction that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record. An order to seal the record of a conviction does not revoke the adjudication order of the superintendent of public instruction to permanently exclude the individual who is the subject of the sealing order. An order to seal the record of a conviction of an individual may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who is the subject of the sealing order be revoked.

Inspection of sealed records included in an order issued under R.C. 2953.32 may be made only by the following persons or for the following purposes:

(a) By a law enforcement officer or prosecutor, or the assistants of either, to determine whether the nature and character of the offense with which a person is to be charged would be affected by virtue of the person's previously having been convicted of a crime;

(b) By the parole or probation officer of the person who is the subject of the records, for the exclusive use of the officer in supervising the person while on parole or under a community control sanction or a post-release control sanction, and in making inquiries and written reports as requested by the court or adult parole authority;

(c) Upon application by the person who is the subject of the records, by the persons named in the application;

(d) By a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;

(e) By a prosecuting attorney or the prosecuting attorney's assistants, to determine a defendant's eligibility to enter a pre-trial diversion program established pursuant to R.C. 2935.36;

(f) By any law enforcement agency or any authorized employee of a law enforcement agency or by the Department of Rehabilitation and Correction as part of a background investigation of a person who applies for employment with the agency as a law enforcement officer or with the Department as a corrections officer;

(g) By any law enforcement agency or any authorized employee of a law enforcement agency for the purposes set forth and in the manner provided in R.C. 2953.321;

(h) By the Bureau of Criminal Identification and Investigation or any authorized Bureau employee for the purpose of providing information to a board or person pursuant to R.C. 109.57(F) or (G);

(i) By the Bureau of Criminal Identification and Investigation or any authorized Bureau employee for the purpose of performing a criminal history records check on a person to whom a certificate as prescribed in R.C. 109.77 is to be awarded;

(j) By the Bureau of Criminal Identification and Investigation, an authorized Bureau employee, a sheriff, or an authorized employee of the sheriff in connection with a criminal records check described in R.C. 311.41;

(k) When the nature and character of the offense with which a person is to be charged would be affected by the information, it may be used for the purpose of charging the person with an offense;

(l) In any criminal proceeding, proof of any otherwise admissible prior conviction may be introduced and proved, notwithstanding the fact that for any such prior conviction an order of sealing previously was issued.

(2) Existing R.C. 2953.321, not in the bill, provides that, upon the issuance of a court order pursuant to R.C. 2953.32 directing that all official records pertaining to a case be sealed: (a) every law enforcement officer who possesses "investigatory work product" (see below) immediately must deliver that work product to his or her employing law enforcement agency, (b) except as provided in clause (c) of this paragraph, every law enforcement agency that possesses investigatory work product must close that work product to all persons not directly employed by the agency and must treat that work product, in relation to all persons other than those who are directly employed by the agency, as if it did not exist and never had existed, and (c) a law enforcement agency that possesses investigatory work product may permit another law enforcement agency to use that work product in the investigation of another offense if the facts incident to the offense being investigated by the other agency and the facts incident to an offense that is

the subject of the case are reasonably similar (the agency that permits the use of investigatory work product may provide the other agency with the name of the person who is the subject of the case if it believes that the name of the person is necessary to the conduct of the investigation by the other agency). As used in this provision, "investigatory work product" means any records or reports of a law enforcement officer or agency that are excepted from the definition of "official records" contained in R.C. 2953.51 and that pertain to a case the records of which have been ordered sealed pursuant to R.C. 2953.32.

Except as provided in clause (c) of the preceding paragraph, no law enforcement officer or other person employed by a law enforcement agency may knowingly release, disseminate, or otherwise make the investigatory work product or any information contained in that work product available to, or discuss any information contained in it with, any person not employed by the employing law enforcement agency. No law enforcement agency, or person employed by a law enforcement agency, that receives investigatory work product as provided in clause (c) of the preceding paragraph may use that work product for any purpose other than the investigation of the offense for which it was obtained from the other law enforcement agency, or disclose the name of the person who is the subject of the work product except when necessary for the conduct of the investigation of the offense, or the prosecution of the person for committing the offense, for which it was obtained from the other law enforcement agency. A violation of either prohibition is the offense of "divulging confidential investigatory work product," a misdemeanor of the fourth degree. (R.C. 2953.321.)

(3) Existing R.C. 2953.33, not in the bill, provides that, except as provided in R.C. 2953.32(G), an order to seal the record of a person's conviction restores the person who is the subject of the order to all rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release on parole or post-release control. In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, except as provided in R.C. 2953.32(E), a person may be questioned only with respect to convictions not sealed, and bail forfeitures not expunged under former law and not sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered.

(4) Existing R.C. 2953.35, not in the bill, specifies that, except as authorized by R.C. 2953.32(D), (E), and (F) or by R.C. Chapter 2950., any officer or employee of the state, or a political subdivision of the state, who releases or otherwise disseminates or makes available for any purpose involving employment, bonding, or licensing in connection with any business, trade, or profession to any person, or to any department, agency, or other instrumentality of the state, or any political subdivision of the state, any information or other data concerning any

arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision the records with respect to which the officer or employee had knowledge of were sealed by an existing order issued pursuant to R.C. 2953.31 to 2953.36, or were expunged by an order issued pursuant to former R.C. 2953.42, is guilty of "divulging confidential information," a misdemeanor of the fourth degree. It also specifies that any person who, in violation of R.C. 2953.32, uses, disseminates, or otherwise makes available any index prepared pursuant to that section is guilty of a misdemeanor of the fourth degree.

HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, S. Judiciary--Criminal Justice	---

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