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**H.B. 1**  
**133rd General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Plummer and Hicks-Hudson

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### SUMMARY

- Broadens the scope of continuing law intervention in lieu of conviction by requiring an eligibility hearing on an application for intervention in any case where the offender alleges that drug or alcohol usage was a factor leading to the underlying offense.
- Broadens the application of continuing law record sealing by removing the cap on eligibility for fourth or fifth degree felony offenses and raising the caps on restricted felony and misdemeanor offenses.
- Modifies the time at which an offender may apply to have a record sealed.

### DETAILED ANALYSIS

#### **Intervention in lieu of conviction – drug or alcohol usage a factor**

The bill broadens the scope of the continuing law “intervention in lieu of conviction” (ILC) program to require the court, at a minimum, to hold an eligibility hearing for each application for ILC that alleges that drug or alcohol usage by the offender was a factor leading to the underlying criminal offense.<sup>1</sup> The bill also requires the court to presume that ILC is appropriate and to grant a request for ILC unless the court finds specific reasons to believe that the candidate’s participation in ILC would be inappropriate. If the court denies an eligible offender’s request for ILC, the court must state the reasons for denial, with particularity, in a written entry.<sup>2</sup> For applications that are approved, the bill caps the mandatory terms of the

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<sup>1</sup> R.C. 2951.041(A)(1).

<sup>2</sup> R.C. 2951.041(C).

plan at no more than five years. Continuing law requires every plan to require the offender to do at least all of the following for at least one year from the date the court grants ILC:<sup>3</sup>

- Abstain from the use of illegal drugs and alcohol;
- Participate in treatment and recovery support services;
- Submit to regular random drug and alcohol testing.

The bill also narrows the scope of ILC by making an offender charged with a felony sex offense ineligible for ILC. Continuing law already prohibits an offender charged with a first, second, or third degree felony or an offense of violence from being eligible.<sup>4</sup>

### **Background – Intervention in lieu of conviction**

Under continuing law, if an offender is charged with a criminal offense, and the court has reason to believe that drug or alcohol usage by the offender was a factor leading to the offense, the court may accept, prior to the entry of a guilty plea, the offender's request for intervention in lieu of conviction. If a request is approved by the court, the court must accept the offender's plea of guilty and waiver of rights to a speedy trial and preliminary hearing, and other procedural rights. The court then may stay all criminal proceedings and order the offender to comply with the terms and conditions of a court-ordered intervention plan. If the court finds that the offender has successfully completed the intervention plan, the court must dismiss the proceedings against the offender with no adjudication of guilty or criminal conviction. The court may order that records related to the offense in question be sealed.<sup>5</sup>

### **Sealing a record of conviction**

#### **Expansion of eligible offenders**

The bill expands the law that allows an offender to have conviction records sealed so that more offenders are eligible to have their records sealed.

First, the bill eliminates a cap on the number of fourth and fifth degree felonies that an offender is eligible to seal. Under current law, an offender convicted of more than five felonies of any degree is not eligible to have the offender's record sealed. Under the bill, there is no cap on the number of fourth and fifth degree felonies and misdemeanors that may be sealed so long as those offenses are not offenses of violence or felony sex offenses.<sup>6</sup>

The bill also expands the alternative sealing provision that currently allows an offender to whom the above sealing provision does not apply, to seal one felony conviction, up to two misdemeanor convictions, or one felony conviction and one misdemeanor conviction. Under

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<sup>3</sup> R.C. 2951.041(D).

<sup>4</sup> R.C. 2951.041(B)(2).

<sup>5</sup> R.C. 2951.041.

<sup>6</sup> R.C. 2953.31(A)(1)(a).

the bill, a person who cannot utilize the above sealing provision may have not more than two felony convictions, not more than four misdemeanor convictions, or not more than two felony convictions and two misdemeanor convictions sealed.<sup>7</sup>

The following criminal records may not be sealed under continuing law:<sup>8</sup>

- Convictions when the offender is subject to a mandatory prison term;
- Convictions for rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, pandering obscenity involving a minor, pandering sexually oriented material involving a minor, illegal use of a minor in a nudity-oriented material or performance, or various traffic laws;
- Convictions of an offense of violence when the offense is a first degree misdemeanor or felony and is not a first degree misdemeanor riot, assault, or inciting to violence, or inducing panic offense;
- Convictions on or after October 10, 2007, of importuning or a municipal ordinance similar to that offense;
- Convictions on or after October 10, 2007, 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 was a person under 18 years old;
- Convictions of a first degree misdemeanor or felony offense against a victim who was 16 years old or younger, other than convictions for nonsupport or contributing to nonsupport of dependents;
- Convictions for first degree felonies or second degree felonies;
- Bail forfeitures in traffic cases.

### **Timing of application**

The bill modifies the time at which an offender may apply to have a record sealed, such that an offender convicted of a third degree felony may apply at the expiration of three years after the offender's final discharge, and an offender convicted of a fourth or fifth degree felony or a misdemeanor may apply at the expiration of one year after final discharge.<sup>9</sup>

Under current law, application may be made at the one of the following times:<sup>10</sup>

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<sup>7</sup> R.C. 2953.31(A)(1)(b).

<sup>8</sup> R.C. 2953.36, not in the bill.

<sup>9</sup> R.C. 2953.32(A)(1)(a) and (b).

<sup>10</sup> R.C. 2953.32(A)(1)(a), (b), and (c).

- At the expiration of three years after the offender’s final discharge if convicted of one felony;
- If the offender has been convicted of one or more offenses, but not more than five felonies, that are fourth or fifth degree felonies or misdemeanors and are not offenses of violence or a felony sex offense, at the expiration of four years after the offender’s final discharge if convicted of two felonies, or at the expiration of five years after final discharge if convicted of three, four, or five felonies;
- At the expiration of one year after the offender’s final discharge if convicted of a misdemeanor.

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## HISTORY

Action	Date
Introduced	05-21-19

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