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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 460  
135<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Hillyer and Seitz

Sarah A. Maki, Attorney

### SUMMARY

#### Automatic sealing

- Allows certain criminal records to be automatically sealed.
- Requires each court to establish procedures to automatically seal criminal records.
- Requires Bureau of Criminal Identification and Investigation (BCII) to identify criminal records that are eligible for automatic sealing.
- Allows a prosecutor or BCII to object to the automatic sealing of criminal records.
- If both the prosecutor and BCII do not object, requires that a criminal record be automatically sealed.
- If both the prosecutor and BCII do object, requires that a criminal record must not be automatically sealed.
- Requires BCII to submit a report to the General Assembly identifying each criminal record that was not automatically sealed because of an objection by the prosecutor or BCII.
- Allows the Attorney General to adopt rules governing procedures to be followed by the Superintendent of BCII in carrying out the Superintendent's duties under the bill.

#### Liability for negligent hiring and supervision

- Provides that no criminal record that has been sealed or expunged can be considered as evidence against an employer in a negligent hiring or negligent supervision case.
- Specifies that the sealing or expungement of a criminal record provides immunity for the employer to the extent that a sealed or expunged record is the basis of a claim against the employer for negligent hiring or negligent supervision.

## Name of the act

- Names the act the “Getting Rehabilitated Ohioans Working Act.”

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## DETAILED ANALYSIS

### Automatic sealing

#### Eligible criminal records

The bill allows certain criminal records to be automatically sealed. Beginning three years after the effective date of the bill, an individual is eligible to have criminal records automatically sealed if the individual is eligible to have those criminal records sealed or expunged under one of the following:<sup>1</sup>

- The general Sealing and Expungement Law;<sup>2</sup>
- The law allowing the expungement of a not guilty or dismissed complaint, indictment, or information if the person is a victim of human trafficking;<sup>3</sup>
- The law allowing the sealing or expungement of multiple charges.<sup>4</sup>

The bill requires each court to establish procedures to automatically seal criminal records.<sup>5</sup>

#### BCII identification of eligible criminal records

The bill requires Bureau of Criminal Identification and Investigation (BCII) to identify criminal records that are eligible for automatic sealing. At least once every calendar month, beginning three years after the effective date of the bill, BCII must identify criminal records that are eligible for automatic sealing and provide to each prosecuting attorney and to each court a list of those cases over which the prosecutor or court has jurisdiction.<sup>6</sup>

#### Objections to sealing

The bill allows a prosecutor or BCII to object to the automatic sealing of a criminal record for any of the following reasons:<sup>7</sup>

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<sup>1</sup> R.C. 2953.321(A).

<sup>2</sup> R.C. 2953.32.

<sup>3</sup> R.C. 2953.521, not in the bill.

<sup>4</sup> R.C. 2953.61, not in the bill.

<sup>5</sup> R.C. 2953.321(B).

<sup>6</sup> R.C. 2953.321(C).

<sup>7</sup> R.C. 2953.321(D).

- After reviewing the records of the case, the prosecutor or BCII determines that the records are not eligible for sealing or expungement, including automatic sealing (see, “**Eligible criminal records**,” above).
- BCII determines that the subject of the criminal records has not paid court-ordered restitution to the victim.
- The prosecutor or BCII has a reasonable belief, grounded in supporting facts, that the subject of the criminal record is continuing to engage in criminal activity, whether or not the individual has been charged with an offense, and whether or not the activity in question takes place within or outside Ohio.

## Sealing

If, after 45 days after a criminal record has been identified on a list provided to the court and prosecutor, the court has not received an objection to the automatic sealing of the criminal record from both BCII and the prosecutor, the court with jurisdiction over the record must order the record to be sealed, and ensure the record is sealed as it would be if the court were to order a record sealed under the general Sealing and Expungement Law.<sup>8</sup>

If, after 45 days after a criminal record has been identified on a list provided to the court and prosecutor, the prosecutor and BCII object to the automatic sealing of a record in the list, the record must not be automatically sealed.<sup>9</sup>

## Report

The bill requires BCII, at least once each calendar year, beginning the year that is three years after the effective date of the bill, to submit a report to the General Assembly identifying every case for which a criminal record included on a list for automatic sealing was not sealed because of an objection by the prosecutor or BCII.<sup>10</sup>

## Rules

The bill allows the Attorney General to adopt rules governing the procedures to be followed by the Superintendent of BCII in carrying out the Superintendent’s duties under the bill.<sup>11</sup>

## Application of automatic sealing provisions

The bill specifies that the automatic sealing provisions must not be construed to do either of the following:<sup>12</sup>

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<sup>8</sup> R.C. 2953.321(E).

<sup>9</sup> R.C. 2953.321(F).

<sup>10</sup> R.C. 2953.321(G).

<sup>11</sup> R.C. 2953.321(H).

<sup>12</sup> R.C. 2953.321(I).

- Prohibit an individual from applying for sealing or expungement under the general Sealing and Expungement Law;
- Create an individual cause of action for BCII for failing to identify records that are eligible for automatic sealing.

### **Liability for negligent hiring or supervision**

The bill limits liability in negligent hiring or supervision cases if a criminal record has been sealed or expunged. In a civil action or administrative proceeding alleging negligence or other fault, two of the bill's provisions apply to the general Sealing and Expungement Law. First, no criminal record that has been sealed or expunged can be considered as evidence against an employer for negligent hiring or negligent supervision. Second, the sealing or expungement provides immunity for the employer to the extent that a sealed or expunged record is the basis of a claim against the employer for negligent hiring or negligent supervision.<sup>13</sup>

### **Getting Rehabilitated Ohioans Working Act**

The bill names the act the "Getting Rehabilitated Ohioans Working Act."<sup>14</sup>

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## **HISTORY**

Action	Date
Introduced	03-27-24

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ANHB0460IN-135/ar

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<sup>13</sup> R.C. 2953.32(D)(6).

<sup>14</sup> Section 3.