



Ohio Legislative Service Commission

Final Analysis

Greg Schwab

Am. Sub. H.B. 164 131st General Assembly (As Passed by the General Assembly)

Reps. Pelanda and Rogers, Becker, Fedor, Rezabek, K. Smith, Lepore-Hagan, Sykes, Antonio, Ashford, Baker, Boyce, Boyd, Brenner, Buchy, Cera, Clyde, Craig, Grossman, Howse, G. Johnson, T. Johnson, Kuhns, Leland, Manning, McClain, M. O'Brien, S. O'Brien, Patterson, Perales, Phillips, Ramos, Reece, Retherford, Sheehy, Slesnick, Sprague, Stinziano, Sweeney, Young

Sens. Eklund, Hackett, LaRose, Lehner, Seitz, Tavares

Effective date: September 14, 2016

ACT SUMMARY

- Allows a person who is convicted of an offense that was previously unable to be sealed to apply to have the conviction sealed if, after the date of that conviction, the penalty for or classification of the offense is changed so that convictions for the offense can be sealed.
- Specifies that investigation reports the Inspector General maintains are not "official records" sealable or expungable under various record sealing laws, expungement laws, and related laws, to the extent that the report contains information that pertains to an individual who was convicted of or pleaded guilty to an offense discovered in or related to the investigation.

CONTENT AND OPERATION

Conviction Record Sealing Law

Generally

The Conviction Record Sealing Law¹ provides the procedures for making and hearing an application by an eligible offender, as defined, for the sealing of the

¹ R.C. 2953.31 to 2953.36, not in the act except for R.C. 2953.36.

offender's record of conviction. If the court makes specified findings, it orders that all "official records" (see below) pertaining to the case be sealed and that, subject to limited exceptions, the proceedings in the case be deemed not to have occurred. The Law provides for exclusions of certain types of convictions so that an offender who is convicted of any of the listed offenses is not eligible to apply to have the official records sealed.²

Under the act, the operation of the Conviction Record Sealing Law applies to any of the listed excluded convictions (see below) if, on the date of the conviction, that Law did not apply to the conviction, but after the date of the conviction, the penalty for or classification of the offense was changed so that convictions for the offense may be sealed.³

Exclusions from Conviction Record Sealing Law

Under continuing law, not changed by the act except for division numbers, the Conviction Record Sealing Law does not apply to any of the following:⁴

(1) Convictions when the offender is subject to a mandatory prison term;

(2) Subject to an exception under specified circumstances involving persons charged with multiple offenses related to the same act,⁵ convictions for the following offenses:

(a) Rape;

(b) Sexual battery;

(c) Unlawful sexual conduct with a minor;

(d) Gross sexual imposition;

(e) Sexual imposition;

(f) Pandering obscenity involving a minor;

(g) Pandering sexually oriented material involving a minor;

² R.C. 2953.36.

³ R.C. 2953.36(B).

⁴ R.C. 2953.36(A).

⁵ R.C. 2953.61.



(h) Illegal use of a minor in a nudity-oriented material or performance;

(i) The former offense of felonious sexual penetration;

(j) Violations of the Commercial Driver's License Law, Driver's License Law, Driver's License Suspension, Cancellation, or Revocation Law, Operation of Motor Vehicles Law, or Motor Vehicle Crimes Law or a municipal ordinance that is substantially similar to any violation contained in those laws.

(3) Convictions of an offense of violence when the offense is a first degree misdemeanor or a felony and when the offense is not riot, assault, inciting to violence, or inducing panic that is a first degree misdemeanor;

(4) Convictions on or after October 10, 2007, for importuning or for a violation of a municipal ordinance that is substantially similar to importuning;

(5) Convictions on or after October 10, 2007, for 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 under 18 years of age;

(6) Convictions of an offense in circumstances in which the victim of the offense was under 18 years of age when the offense is a first degree misdemeanor or a felony, except for convictions for contributing to the nonsupport of dependents;

(7) Convictions of a first or second degree felony; and

(8) Bail forfeitures in a traffic case as defined in Traffic Rule 2.

"Official records" – exclusion of Inspector General reports

Not Guilty/Dismissed Charges/No Bill Record Sealing Law

Continuing law, unchanged by the act, provides a mechanism pursuant to which a person who is found not guilty of an offense, a person who is the defendant named in a dismissed complaint, indictment, or information, or a person against whom a no bill is entered by a grand jury may apply to the court for an order to seal the person's "official records" in the case. If the court makes specified findings, it must order that all official records pertaining to the case be sealed and that, subject to limited exceptions, the proceedings in the case be deemed not to have occurred.⁶

⁶ R.C. 2953.51 to 2953.56, not in the act except for R.C. 2953.51.



Under continuing law, "official records" means all records possessed by any public office or agency that relate to a criminal case, including, but not limited to: the case notation in the criminal docket; all subpoenas issued in the case; all papers and documents filed in the case; all records of all testimony and evidence presented in all proceedings in the case; all court files, papers, documents, folders, entries, affidavits, or writs that pertain to the case; all computer, microfilm, microfiche, or microdot records, indices, or references to the case; all index references to the case; all fingerprints and photographs; all DNA specimens, DNA records, and DNA profiles; all records and investigative reports pertaining to the case possessed by any law enforcement officer or agency, except for those that are an officer's or agency's specific investigatory work product and are in the possession of that officer or agency; and all investigative records and reports other than those possessed by a law enforcement officer or agency pertaining to the case.

Under continuing law, "official records" does not include records or reports of child abuse maintained by a public children services agency.⁷ The act expands the exclusion from the definition of "official records" to also exclude reports of investigations maintained by the Inspector General (the IG) pursuant to R.C. 121.42 (see "**Background – Inspector General investigations and investigation reports,**" below), to the extent that the report contains information that pertains to an individual who was convicted of or pleaded guilty to an offense discovered in or related to the investigation and whose conviction or guilty plea was not overturned on appeal.⁸

Other affected sealing, expungement, and related laws

The definition of "official records" described above applies to several provisions in addition to the Not Guilty/Dismissed Charges/No Bill Record Sealing Law. As a result, the act's change to the definition of that term, described above, with respect to that Law also applies to the other provisions. The other provisions to which the act's change applies are:

(1) The Conviction Record Sealing Law, as described above, so that the IG reports excluded by the act are not sealable under that Law;⁹

(2) A law that requires in specified circumstances the expungement of "official records" of a prior conviction of improperly handling firearms in a motor vehicle that is

⁷ R.C. 2953.51(D)

⁸ R.C. 2953.51(D)(2).

⁹ Definition in R.C. 2953.31(D); R.C. 2953.31 to 2953.36, not in the act except for R.C. 2953.36.



no longer a crime, so that the IG reports excluded by the act are not expungable under that law;¹⁰

(3) A law that requires the sealing of "official records" pertaining to a conviction in a case, if a court enters a judgment that vacates and sets aside the conviction because of DNA testing performed under the state's mechanism for DNA testing of certain offenders, so that the IG reports excluded by the act are not sealable under that law;¹¹ and

(4) Laws that provide for the disposition and use of law enforcement "investigatory work product," which means records or reports of a law enforcement officer or agency that are excepted from the definition of "official records," in certain circumstances.¹²

Background – Inspector General investigations and investigation reports

In relevant part, R.C. 121.42 requires the IG to prepare a detailed report of each investigation that states the basis for the investigation, the action taken in furtherance of the investigation, and whether the investigation revealed that there was reasonable cause to believe that a wrongful act or omission had occurred. If a wrongful act or omission was identified during the investigation, the report must identify the person who committed the wrongful act or omission, describe the wrongful act or omission, explain how it was detected, indicate to whom it was reported, and describe what the state agency in which the wrongful act or omission was being committed is doing to change its policies or procedures to prevent recurrences of similar wrongful acts or omissions.¹³

Except as otherwise described in this paragraph, the report of any investigation conducted by the IG or any Deputy IG is a public record, open to public inspection. The IG, or a Deputy IG, with the written approval of the IG, may designate all or part of a report as confidential if doing so preserves the confidentiality of matters made confidential by law or appears reasonably necessary to protect the safety of a witness or to avoid disclosure of investigative techniques that, if disclosed, would enable persons

¹⁰ R.C. 2953.37, not in the act.

¹¹ Definition in R.C. 2953.57(B); R.C. 2953.57 and 2953.58, not in the act.

¹² R.C. 2953.321, 2953.54, and 2953.59, not in the act.

¹³ R.C. 121.42(E), not in the act.



who have been or are committing wrongful acts or omissions to avoid detection. Confidential material must be marked clearly as being confidential.¹⁴

Regarding the nature of the investigations, the IG:¹⁵ (1) investigates the management and operation of state agencies on his or her own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees, and (2) receives complaints from any person alleging that a state officer or employee has committed, or is in the process of committing, a wrongful act or omission, determines whether the information contained in the complaints allege facts that give reasonable cause to investigate, and, if so, investigates to determine if there is reasonable cause to believe that the alleged wrongful act or omission has been committed or is being committed by a state officer or state employee.

HISTORY

ACTION	DATE
Introduced	04-22-15
Reported, H. Judiciary	06-10-15
Passed House (97-1)	10-07-15
Reported, S. Criminal Justice	05-02-16
Passed Senate (33-0)	05-24-16
House concurred in Senate amendments (92-1)	05-24-16

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¹⁴ R.C. 121.44, not in the act.

¹⁵ R.C. 121.42(A) and (B), not in the act.

