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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 160  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. O'Brien and Rulli

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### SUMMARY

- Provides a mechanism for the expungement of records of most convictions that, depending on the category of the offense, are at least 10, 15, or 20 years old.
- Eliminates the two-year waiting period for sealing a record related to the entry of a no bill.

### DETAILED ANALYSIS

#### Expungement of conviction records after 10, 15, or 20 years

##### Introduction

The bill enacts a mechanism pursuant to which a person who has been convicted of any misdemeanor or felony that is not an “excluded offense” (see below) may obtain a court order, in specified circumstances, for the expungement of the record of conviction of the offense.<sup>1</sup> A “record of conviction” (or conviction record) is any record related to a conviction of or plea of guilty to an offense and an “expungement” is the destruction, deletion, and erasure of a record as appropriate for the record’s physical or electronic form or characteristic so that the record is permanently irretrievable.<sup>2</sup>

As used in the bill’s expungement mechanism, an “excluded offense” is any of the following:<sup>3</sup>

1. The offense of “aggravated murder,” “murder,” “voluntary manslaughter,” “permitting child abuse,” “patient abuse,” “gross patient neglect,” “patient neglect,” “kidnapping,”

<sup>1</sup> R.C. 2953.39.

<sup>2</sup> R.C. 2953.39(A), by reference to R.C. 2953.37, not in the bill, regarding expungement.

<sup>3</sup> R.C. 2953.39(A).

“abduction,” “trafficking in persons,” “aggravated arson,” “terrorism,” “domestic violence,” a drug trafficking offense (depending on the drug involved, either “aggravated trafficking in drugs,” “trafficking in drugs,” or trafficking in a named drug – marijuana, cocaine, L.S.D., heroin, hashish, a controlled substance analog, or a fentanyl-related compound), or “unlawful sexual conduct with a minor”;

2. A violation of any prohibition in R.C. Chapter 4511, which contains the Traffic Laws related to the operation of a vehicle, including OVI and OVUAC offenses, reckless operation offenses, speeding offenses, and many other offenses related to the operation of a vehicle;
3. A “sexually oriented offense” or “child-victim oriented offense,” under the bill, both as defined in the Sex Offender Registration and Notification Law,<sup>4</sup> including “rape,” “sexual battery,” “gross sexual imposition,” “sexual imposition,” most of the other offenses set forth in R.C. Chapter 2907, and several other specified offenses committed with a sexual motivation or against a child;
4. A violation of a municipal ordinance that is substantially equivalent to any violation listed above in paragraph (1), (2), or (3).

### **Applying to the sentencing court**

Under the bill’s expungement mechanism, a person who has been convicted of any misdemeanor or felony that is not an excluded offense may apply to the sentencing court for the expungement of the conviction record of the offense. The person may file the application at any time at or after the expiration of a specified period of time (see below) that is applicable with respect to the offense that is the subject of the application (the subject offense). The application may request an expungement order for more than one offense, but if it does, the court must consider the request for each offense separately, as if a separate application had been made for each offense, and all references in the mechanism to “the offense” or “that offense” mean each subject offense included in the application. There is no limit on the number of offenses for which a person may file an application or for which a court may grant an application for a person and order the expungement of a conviction record.<sup>5</sup> Unless indigent, a person who makes an application under the mechanism must pay a \$50 fee, with the court to pay \$30 of the fee into the state treasury and \$20 into the county general revenue fund.<sup>6</sup> The sealing of a record of conviction under the existing Conviction Record Sealing Law<sup>7</sup> with respect to an offense does not preclude a person’s subsequent use of the bill’s expungement mechanism to expunge the conviction record with respect to the same offense.<sup>8</sup>

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<sup>4</sup> R.C. Chapter 2950, not in the bill.

<sup>5</sup> R.C. 2953.39(B).

<sup>6</sup> R.C. 2953.39(K).

<sup>7</sup> R.C. 2953.32.

<sup>8</sup> R.C. 2953.39(L); also R.C. 2953.32(I)(2).

An application under the bill's mechanism must do all of the following:<sup>9</sup>

1. Identify the applicant, the subject offense, the date of the conviction of that offense, and the court in which the conviction occurred;
2. Describe the evidence and provide copies of any documentation showing that the person is entitled to relief under the mechanism for the subject offense;
3. Include an assertion by the offender that, during the period commencing with the offender's final discharge for the subject offense and continuing until the offender's making of the application, the offender has not been convicted of any "disqualifying offense" (a disqualifying offense is an offense that is not the subject of the application and that is: (a) a felony violation of any Revised Code prohibition, an OVI or OVUAC offense, a "sexually oriented offense," or a "child-victim oriented offense," (b) a violation of any prohibition in a municipal ordinance that is substantially equivalent to any offense listed in clause (a), or (c) a violation of any prohibition in a law of a state other than Ohio or of the United States that is substantially equivalent to any offense listed in clause (a) or (b)<sup>10</sup>);
4. Include a request for expungement under the mechanism of the conviction record of the subject offense.

### **Time for making an application**

An application may be made under the bill's mechanism at any time at or after the expiration of the following period of time:<sup>11</sup>

1. If the subject offense is a misdemeanor or a third, fourth, or fifth degree felony, the expiration of ten years after the offender's final discharge for the offense;
2. If the subject offense is a second degree felony, the expiration of 15 years after the offender's final discharge for the offense;
3. If the subject offense is a first degree felony, the expiration of 20 years after the offender's final discharge for the offense.

### **Court action when an application is filed**

#### **Denial without a hearing**

When an application for expungement is made under the bill's mechanism, the court, without conducting a hearing, may deny the application if it finds that the application fails to

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<sup>9</sup> R.C. 2953.39(B).

<sup>10</sup> R.C. 2953.39(A).

<sup>11</sup> R.C. 2953.39(C).

assert grounds on which relief may be granted and must deny the application if the application requests expungement of the conviction record of an “excluded offense.”<sup>12</sup>

### **Hearing on an application**

When an application for expungement is made under the bill’s mechanism and the court does not deny the application as described above, the court must set a date for a hearing, must notify the prosecutor for the case from which the subject conviction resulted, or that prosecutor’s successor, of the hearing on the application, and must conduct the hearing on the date set. The prosecutor (defined as the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer with authority to prosecute a criminal case filed in a particular court<sup>13</sup>) may object to the granting of the application by filing an objection with the court prior to the hearing date, which objection must specify the reasons for believing a denial of the application is justified. The court may direct its regular probation officer, a state probation officer, or the probation department of the county of the applicant’s residence to make inquiries and written reports concerning the applicant.<sup>14</sup>

At the hearing, the court must do all of the following:<sup>15</sup>

1. If the prosecutor has filed an objection, consider the reasons against granting the application specified in the objection;
2. Determine whether the applicant has demonstrated by a preponderance of the evidence that, during the period commencing with the offender’s final discharge for the subject offense and continuing until the offender’s making of the application, the offender has not been convicted of any “disqualifying offense”;
3. Consider all of the following factors:
  - a. The seriousness of the subject offense;
  - b. The relative degree of physical harm done to any person in the commission of the subject offense;
  - c. The length of time that has expired since the commission of the subject offense;
  - d. The applicant’s age at the time of the commission of the subject offense;
  - e. All criminal activity of the applicant that occurred prior to the commission of the subject offense or between the time of the commission of the subject offense and the making of the application, including criminal activity involving a law of the United States or of a state other than Ohio;

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<sup>12</sup> R.C. 2953.39(D).

<sup>13</sup> R.C. 2953.39(A).

<sup>14</sup> R.C. 2953.39(E).

<sup>15</sup> R.C. 2953.39(F).

- f. The applicant's current and past participation in the community in which the applicant resides;
  - g. The applicant's current and past employment situation;
  - h. Whether the prosecutor represents to the court that criminal proceedings are likely to still be initiated against the applicant for a felony offense for which the period of limitations has not expired;
  - i. Any information or input provided by the victim of the subject offense regarding the victim's belief as to whether the application should be granted.
4. Upon consideration of the factors listed in (3)(a) to (h) and, if the prosecutor has filed an objection, the reasons specified in the objection, determine whether the applicant represents a threat to society at the time of the hearing or will represent a threat to society subsequent to the hearing (note that this provision does not expressly refer to information or input provided by the victim of the subject offense regarding the victim's belief as to whether the application should be granted, but that the provision described above in (3) requires that information or input to be considered as a factor).

### **Decision regarding an application after the hearing**

After a court holds the hearing described above with respect to an application made under the bill's mechanism, the court must grant the application and order that the conviction record be expunged unless one or both of the findings described in (1) and (2), below, apply. The court must deny the application and not order that the conviction record be expunged only if the court makes either finding described in (1) and (2), below. The findings that govern the court's determination are:<sup>16</sup>

1. The court finds that the applicant has not demonstrated by a preponderance of the evidence that, during the period commencing with the offender's final discharge for the subject offense and continuing until the offender's making of the application, the offender has not been convicted of any "disqualifying offense";
2. After consideration of the factors and reasons described above in "**Hearing on an application**," the court finds that the applicant represents a threat to society at the time of the hearing or will represent a threat to society subsequent to the hearing.

### **Appeal of a denial**

When an application for expungement is made under the bill's mechanism and the court, as described above, denies the application without a hearing or denies the application after holding a hearing, the denial is a final appealable order and the applicant may appeal the denial to the court of appeals with jurisdiction over the territory of the court that denied the application.<sup>17</sup>

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<sup>16</sup> R.C. 2953.39(G) and (H).

<sup>17</sup> R.C. 2953.39(I).

## **Effect of an expungement order, in general**

When an application for expungement is made under the bill's mechanism and the court, as described above, issues the expungement order, all of the following apply:<sup>18</sup>

1. The court must send notice of the issuance to the Bureau of Criminal Identification and Investigation (BCII) and each other public office or agency that the court believes may have an official record pertaining to the case.
2. The proceedings in the case that is the subject of the order must be considered not to have occurred and the conviction of the applicant of the subject offense must be expunged.
3. The record of the conviction that is the subject of the order may not be used for any purpose, including, but not limited to, a criminal records check by BCII under the statute that mandates in certain contexts, and authorizes in other contexts, BCII records checks for certain professions or positions or a determination under R.C. 2923.125 or 2923.1212 of eligibility for a license or temporary emergency license to carry a concealed handgun.
4. The applicant may, and the court must, reply that no record exists with respect to the applicant upon any inquiry into the matter that is the subject of the order.
5. Upon receipt of the court's notice described above in (1), BCII must ensure that all information pertaining to the conviction that is the subject of the order, including any record of an arrest, charge, plea, conviction, or sentence pertaining to it, is removed from LEADS (the Law Enforcement Automated Data System created by R.C. 5503.10<sup>19</sup>).

## **Other effects of an expungement order**

Existing law provides for the preservation and limited use of records or reports of a law enforcement officer or agency that are excepted from the definition of "official records" that applies to the Conviction Record Sealing Law and that pertain to a case the records of which have been ordered sealed under that Law (the excepted records and reports are designated as "investigatory work product") or expunged under the law regarding expungement of certain records and reports pertaining to juvenile proceedings, to convictions under specified repealed firearms provisions, or to specified convictions related to human trafficking. The bill extends the provisions so that they also apply to records or reports of a law enforcement officer or agency that are excepted from the definition of "official records" and that pertain to a case the records of which have been ordered expunged under the bill's mechanism described above.<sup>20</sup>

Existing law specifies that an order to seal the record of a person's conviction or to expunge the record of a person's conviction under specified repealed firearms provisions

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<sup>18</sup> R.C. 2953.39(J); also R.C. 2923.125(D)(4).

<sup>19</sup> R.C. 2953.39(A).

<sup>20</sup> R.C. 2953.321.

restores the person 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. The bill extends this provision so that it also applies regarding an order to expunge the record of a person's conviction issued under the bill's mechanism described above.<sup>21</sup>

Existing law specifies that, in any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any conviction expunged under specified repealed firearms provisions. The bill extends this provision so that it also applies regarding an order to expunge the record of a person's conviction issued under the bill's mechanism described above.<sup>22</sup>

Existing law provides that, except as expressly authorized by specified provisions of law, 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 order under the Conviction Record Sealing Law or were expunged under the law regarding expungement of certain records and reports pertaining to juvenile proceedings, to convictions under specified repealed firearms provisions, or to specified convictions related to human trafficking is guilty of "divulging confidential information," a fourth degree misdemeanor. The exceptions pertain to certain specified law enforcement or justice system matters and to certain BCII investigative matters. The bill extends the prohibition under the offense so that it also applies to records with respect to which the officer or employee had knowledge of were expunged by an order issued under the bill's mechanism described above.<sup>23</sup>

## **Sealing of records regarding a finding of not guilty, a dismissal of criminal charges, or an entry of a no bill**

### **In general; application to a court and time for making an application**

Existing law provides a mechanism for any person who is found not guilty of an offense, who is the defendant named in a dismissed complaint, indictment, or information, or against whom a no bill is entered by a grand jury to apply to the court for an order to seal the person's official records in the case. If the court, upon application, makes specified findings, it orders the official records in the case sealed. An application with respect to a finding of not guilty or dismissed charges may be made at any time after the finding of not guilty or the dismissal of the complaint, indictment, or information is entered upon the minutes of the court or the

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<sup>21</sup> R.C. 2953.33(A).

<sup>22</sup> R.C. 2953.33(B).

<sup>23</sup> R.C. 2953.35.

journal, whichever entry occurs first. An application with respect to a no bill may be made at any time after the expiration of two years after the date on which the grand jury reports to the court that the grand jury has reported a no bill. If the person was faced with two or more offenses as a result of or in connection with the same act and if at least two of the charges have different outcomes, the person may not apply until the time at which the person would be able to apply for sealing of the records of all of those charges.<sup>24</sup> The bill modifies the time at which an application may be made with respect to a no bill by removing the two-year waiting period – under the bill, subject to the existing “multiple charges” exception (which the bill does not change), an application with respect to a no bill may be filed at any time after the grand jury reports to the court that the grand jury has reported a no bill.<sup>25</sup>

### **Hearing, considerations and determinations, and outcome**

Currently, upon the filing of any of the types of applications described in the preceding paragraph, the court must conduct a hearing on the application and notify the prosecutor of the hearing. The prosecutor may object to the granting of the application.<sup>26</sup>

Currently, at a hearing regarding an application with respect to a finding of not guilty or with respect to dismissed charges, the court must determine, consider, and weigh specified matters and must make specified determinations in order to issue an order directing that all official records pertaining to the case be sealed and that, subject to a limited exception, the proceedings in the case be deemed not to have occurred. The bill does not change any of these provisions regarding such an application.<sup>27</sup>

Currently, at a hearing regarding an application with respect to a no bill, the court must determine whether a no bill was returned in the case and a period of two years or longer has expired from the date of the grand jury’s report of that no bill, determine whether criminal proceedings are pending against the applicant, and consider the reasons the prosecutor specified, if any, against granting the application, and weigh the interests of the applicant in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records. The court must issue an order directing that all official records pertaining to the case be sealed and that, subject to a limited exception, the proceedings in the case be deemed not to have occurred if it determines that a no bill was returned in the case and a period of two years or longer has expired from the date of the grand jury’s report of that no bill, that no criminal proceedings are pending against the applicant, and that the interests of the applicant in having the official records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain those records. The bill modifies these provisions by eliminating the court’s consideration of whether two years or longer has expired from the date of the report and eliminating as one of the criteria for the

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<sup>24</sup> R.C. 2953.52(A); also R.C. 2953.61, not in the bill.

<sup>25</sup> R.C. 2953.52(A)(2).

<sup>26</sup> R.C. 2953.52(B)(1).

<sup>27</sup> R.C. 2953.52(B)(2) to (4).



issuance of the order that the court find that two years or longer has expired from the date of the report.<sup>28</sup>

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## HISTORY

Action	Date
Introduced	06-10-19

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S0160-I-133/ks

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<sup>28</sup> R.C. 2953.52(B)(2) and (4).