



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 522  
135<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Willis and Williams

Sarah A. Maki, Attorney

### SUMMARY

#### Having weapons under disability

- Except as provided in the below dot point, modifies the penalties for “having weapons while under disability” from a third degree felony to a fourth degree felony or a third degree felony if the offender has previously been convicted of or pleaded guilty to the offense.
- Modifies the penalties for “having weapons while under disability” relating to an indictment for or conviction of a felony offense of violence from a third degree felony to a third degree felony with a presumption of a prison term or a second degree felony if the offender has previously been convicted of or pleaded guilty to the offense.

#### Relief from disability

- Expands who may receive relief from weapons disability to include persons under a federal weapons disability, persons prohibited from obtaining a concealed handgun license, and persons prohibited from carrying a concealed handgun as a qualifying adult.
- Allows a non-Ohio resident whose disability is based on an indictment, conviction or guilty plea, or delinquent child adjudication to file for relief from disability in the county in which the indictment was entered or in which the conviction, guilty plea, or adjudication occurred.
- Expands who may not receive relief from disability to include persons who, two or more times, have been convicted of or pleaded guilty to a felony and a repeat offender specification.

#### Firearm specifications

- Increases the mandatory prison term for a firearm specification relating to an automatic firearm or muffler or suppressor from a 6-year mandatory prison term to a 10-year mandatory prison term.

- Increases the mandatory prison term for a firearm specification relating to an automatic firearm or muffler or suppressor from a 9-year mandatory prison term to a 15-year mandatory prison term if the offender previously has been convicted of or pleaded guilty to a specified firearm specification.
- Increases the mandatory prison term for a firearm specification relating to displaying or brandishing a firearm from a 54-month mandatory prison term to a 5-year mandatory prison term if the offender previously has been convicted of or pleaded guilty to a specified firearm specification.
- Creates a 5-year mandatory prison term for a firearm specification relating to improper discharge of a firearm while committing an offense.
- Increases the mandatory prison term for a firearm specification relating to improper discharge of a firearm from a motor vehicle from a 5-year mandatory prison term to a 7-year mandatory prison term.

### **Repeat offender**

- Creates a repeat offender classification based on a person's current commission of or complicity in committing a specified offense involving a firearm and a repeated commission or complicity in committing a specified offense involving a firearm.
- Requires a mandatory 3-, 4-, or 5-year prison term for a repeat offender specification.
- Allows the court to consider sealed juvenile records for purposes of determining whether a child, for a future criminal conviction or guilty plea, is a repeat offender.
- Prohibits a court from considering a previous adjudication of a person as a delinquent child or juvenile traffic offender for purposes of determining whether the person is a repeat offender.

### **Automatic sealing of conviction records for fourth and fifth degree felonies**

- If a person is convicted of or pleads guilty to a fourth or fifth degree felony on or after the effective date of the bill, requires a sentencing court to automatically seal conviction records for fourth or fifth degree felonies in specified circumstances.
- Requires the sentencing court to notify the offender, prosecutor, victim, and victim's representative that the offender is eligible to have the offender's record of conviction sealed.
- Allows the prosecutor or victim to object to the sealing of the record of conviction not later than 14 days prior to the date that the offender is eligible to have the offender's record sealed.
- If the prosecutor or victim does not object to the sealing of the record of conviction, requires the sentencing court to automatically seal the offender's record of conviction

for the fourth or fifth degree felony if the sentencing court determines that specified requirements are met.

- If the prosecutor or victim does object to the sealing of the record of conviction, requires the sentencing court to automatically seal the offender’s record of conviction for the fourth or fifth degree felony if the following apply:
  - The sentencing court determines that specified requirements are met;
  - The interest of the offender in having the records pertaining to the offender’s record of conviction sealed is not substantially outweighed by any legitimate governmental needs to maintain those records.
- Requires a sentencing court to notify the offender and prosecutor of its decision to issue a sealing order or not to issue a sealing order.

### **Name of the act**

- Names the act the Repeat Offender Act.

## **TABLE OF CONTENTS**

Having weapons while under disability .....	4
Offense .....	4
Penalty .....	5
Relief from disability .....	5
Relief eligibility .....	5
Exception to eligibility .....	6
Concealed handgun license .....	6
Firearm specifications .....	7
Firearm on or about the offender’s person .....	7
First conviction .....	7
Prior conviction .....	7
Automatic firearm or muffler or suppressor .....	7
First conviction .....	8
Prior conviction .....	8
Displayed or brandished the firearm .....	8
First conviction .....	8
Prior conviction .....	9
Improperly discharging a firearm .....	9
Specified firearm specifications .....	10
Repeat offender .....	11
Classification .....	11
Definitions .....	11

Firearm specification – repeat offender .....	12
Sealed juvenile records .....	13
Prior adjudication not a conviction .....	13
Automatic sealing of conviction records for fourth or fifth degree felonies .....	13
Eligibility .....	13
Notification of eligibility .....	13
Objection .....	14
Requirements for sealing .....	15
Criteria for sealing .....	15
Sealing order .....	15
Notification of decision .....	16
Cross references .....	16
Name of the act .....	16

---

## DETAILED ANALYSIS

### Having weapons while under disability

#### Offense

Under current law, the offense of “having weapons while under disability” prohibits a person, unless relieved from disability under operation of law or legal process, from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance, if any of the following apply:<sup>1</sup>

1. The person is a fugitive from justice.
2. The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.
3. The person is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.
4. The person has a drug dependency, is in danger of drug dependence, or has chronic alcoholism.
5. The person is under adjudication of mental incompetence, has been committed to a mental institution, has been found by a court to be a person with a mental illness

---

<sup>1</sup> R.C. 2923.13(A).

subject to court order, or is an involuntary patient, other than one who is a patient only for purposes of observation.

## **Penalty**

The bill modifies the penalties for a violation of having weapons while under disability. Under the bill, a violation of (1), (3), (4), or (5) above is a fourth degree felony.<sup>2</sup> If the offender has previously been convicted of or pleaded guilty to having weapons while under disability, the penalty is a third degree felony.<sup>3</sup>

Under the bill, for a violation of (2) above, the penalty is a third degree felony and there is a presumption that a prison term will be imposed on the offender.<sup>4</sup> If the offender has previously been convicted of or pleaded guilty to having weapons while under disability, the penalty is a second degree felony.<sup>5</sup>

Under current law, the penalty for a violation of having weapons while under disability is a third degree felony.<sup>6</sup>

## **Relief from disability**

### **Relief eligibility**

The bill expands who may receive relief from weapons disability. Under the bill, any of the following persons who are prohibited from carrying firearms, openly or concealed, may apply to the court of common pleas (see below) for relief from such prohibition:<sup>7</sup>

- Any person who is prohibited from acquiring, having, carrying, or using firearms under the offense of “having weapons while under disability.”
- Any person who is prohibited from shipping, transporting, receiving, or possessing firearms in interstate or foreign commerce under federal law.
- Any person who is prohibited from obtaining a concealed handgun license or a concealed handgun license on a temporary emergency basis.
- Any person who is prohibited from carrying a concealed handgun as a qualifying adult.

The bill requires an application for relief from the prohibition be filed in the court of common pleas of the county in which the person resides or, if the person is not a resident of Ohio and the prohibition is based on an indictment, a conviction of or plea of guilty to an

---

<sup>2</sup> R.C. 2923.13(B)(2).

<sup>3</sup> R.C. 2923.13(B)(4).

<sup>4</sup> R.C. 2923.13(B)(3) and 2929.13(D)(1).

<sup>5</sup> R.C. 2923.13(B)(5).

<sup>6</sup> R.C. 2923.13(B).

<sup>7</sup> R.C. 2923.14(A)(1)(a), by reference to R.C. 2923.13 and 2923.125(D)(1)(e), (f), or (h) and 18 United States Code 922(g), not in the bill.

offense, or a delinquent child adjudication, in the county in which the indictment was entered or in which the conviction, guilty plea, or adjudication occurred.<sup>8</sup> The bill makes conforming changes by adding the term “guilty plea” throughout the relief from disability section.<sup>9</sup>

Under current law, any person who is prohibited from acquiring, having, carrying, or using firearms may apply to the court of common pleas in the county in which the person resides for relief from such prohibition.<sup>10</sup>

### **Exception to eligibility**

The bill expands who may not receive relief from weapons disability to include a person who, two or more times, has been convicted of or pleaded guilty to a felony and a repeat offender specification (see, “**Repeat offender specification**,” below). Under current law, a person is ineligible for relief from disability if either of the following apply:<sup>11</sup>

- The person has been convicted of or pleaded guilty to a violation of “unlawful use of a weapon by a violent career criminal.”
- The person has, two or more times, been convicted of or pleaded guilty to a felony and a specification of the type described below:<sup>12</sup>
  - Firearm on or about the offender’s person;
  - Automatic firearm or muffler or suppressor;
  - Displayed or brandished a firearm;
  - Improperly discharging a firearm;
  - Discharge of a firearm at a peace officer or corrections officer;
  - Violent career criminal.

### **Concealed handgun license**

The bill also provides that if an applicant for a concealed handgun license has been relieved under operation of law or legal process as described above, the sheriff with whom the application has been submitted must not consider the conviction, guilty plea, or adjudication for which relief has been granted in determining whether the person is eligible to receive or renew the person’s concealed handgun license.<sup>13</sup>

---

<sup>8</sup> R.C. 2923.14(A)(1)(b).

<sup>9</sup> R.C. 2923.14.

<sup>10</sup> R.C. 2923.14(A)(1).

<sup>11</sup> R.C. 2923.14(A)(2).

<sup>12</sup> R.C. 2941.141, 2941.144, 2941.145, and 2941.146 and R.C. 2941.1412 and 2941.1424, not in the bill.

<sup>13</sup> R.C. 2923.125(D)(4).

## Firearm specifications

### Firearm on or about the offender's person

Firearm specification – firearm on or about the offender's person: The indictment, count in the indictment, or information charging the offense specifies that the offender had a firearm on or about the offender's person or under the offender's control while committing the offense.<sup>14</sup>

#### First conviction

The bill retains the mandatory prison term for an offender who is convicted of or pleads guilty to a felony and who also is convicted of or pleads guilty to the above firearm specification as a 1-year prison term. The court must impose a 1-year prison term on the offender unless the court imposes an 18-month, 3-year, 5-year, 10-year, or 15-year prison term upon the offender for a different firearm specification relative to the same felony. Under current law, the court must impose a 1-year prison term on the offender unless the court imposes an 18-month, 3-year, 54-month, 6-year, or 9-year prison term upon the offender for a different firearm specification relative to the same felony.<sup>15</sup>

#### Prior conviction

The bill retains the mandatory prison term for an offender who is convicted of or pleads guilty to a felony and who also is convicted of or pleads guilty to the above firearm specification as an 18-month prison term if the offender previously has been convicted of or pleaded guilty to a specified firearm specification (see "**Specified firearm specifications**," below). The court must impose an 18-month prison term on the offender unless the court imposes a 1-year, 3-year, 5-year, 10-year, or 15-year prison term upon the offender for a different firearm specification relative to the same felony. Under current law, the court must impose an 18-month prison term on the offender unless the court imposes a 1-year, 3-year, 54-month, or 6-year prison term upon the offender for a different firearm specification relative to the same felony.<sup>16</sup>

### Automatic firearm or muffler or suppressor

Firearm specification – automatic firearm or muffler or suppressor: The indictment, count in the indictment, or information charging the offense specifies that the offender had a firearm that is an automatic firearm or that was equipped with a firearm muffler or suppressor on or about the offender's person or under the offender's control while committing the offense.<sup>17</sup>

---

<sup>14</sup> R.C. 2941.141(A).

<sup>15</sup> R.C. 2929.14(B)(1)(a)(iii) and 2941.141(A) and (B).

<sup>16</sup> R.C. 2929.14(B)(1)(a)(vi) and 2941.141(D) and (E).

<sup>17</sup> R.C. 2941.144(A).

### **First conviction**

The bill increases the mandatory prison term for an offender who is convicted of or pleads guilty to a felony and who also is convicted of or pleads guilty to the above firearm specification from a 6-year prison term to a 10-year prison term. The court must impose a 10-year prison term on the offender unless the court imposes a 1-year, 18-month, 3-year, 5 year, or 15-year prison term upon the offender for a different firearm specification relative to the same felony. Under current law, the court must impose a 6-year prison term on the offender unless the court imposes a 1-year, 18-month, 3-year, 54-month, or 9-year prison term upon the offender for a different firearm specification relative to the same felony.<sup>18</sup>

### **Prior conviction**

The bill increases the mandatory prison term for an offender who is convicted of or pleads guilty to a felony and who also is convicted of or pleads guilty to the above firearm specification from a 9-year prison term to a 15-year prison term if the offender previously has been convicted of or pleaded guilty to a specified firearm specification (see “**Specified firearm specifications**,” below). The court must impose a 15-year prison term on the offender unless the court imposes a 1-year, 18-month, 3-year, 5-year, or 10-year prison term upon the offender for a different firearm specification relative to the same felony. Under current law, the court must impose a 9-year prison term on the offender unless the court imposes a 1-year, 18-month, 3-year, 54-month, or 6-year prison term upon the offender for a different firearm specification relative to the same felony.<sup>19</sup>

### **Displayed or brandished the firearm**

Firearm specification – displayed or brandished a firearm: The indictment, count in the indictment, or information charging the offense specifies that the offender had a firearm on or about the offender’s person or under the offender’s control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense.<sup>20</sup>

### **First conviction**

The bill retains the mandatory prison term for an offender who is convicted of or pleads guilty to a felony and who also is convicted of or pleads guilty to the above firearm specification as a 3-year prison term. The court must impose a 3-year prison term on the offender unless the court imposes a 1-year, 18-month, 5-year, 10-year, or 15-year prison term upon the offender for a different firearm specification relative to the same felony. Under current law, the court must impose a 3-year prison term on the offender unless the court imposes a 1-year, 18-month,

---

<sup>18</sup> R.C. 2929.14(B)(1)(a)(i) and 2941.144(A) and (B).

<sup>19</sup> R.C. 2929.14(B)(1)(a)(iv) and 2941.144(D) and (E).

<sup>20</sup> R.C. 2941.145(A).



6-year, 54-month, or 9-year prison term upon the offender for a different firearm specification relative to the same felony.<sup>21</sup>

### **Prior conviction**

The bill increases the mandatory prison term for an offender who is convicted of or pleads guilty to a felony and who also is convicted of or pleads guilty to the above firearm specification from a 54-month prison term to a 5-year prison term if the offender previously has been convicted of or pleaded guilty to a specified firearm specification (see “**Specified firearm specifications**,” below). The court must impose a 5-year prison term on the offender unless the court imposes a 1-year, 18-month, 3-year, 5-year, 10-year, or 15-year prison term upon the offender for a different firearm specification relative to the same felony. Under current law, the court must impose a 54-month prison term on the offender unless the court imposes a 1-year, 18-month, 3-year, or 9-year prison term upon the offender for a different firearm specification relative to the same felony.<sup>22</sup>

### **Improperly discharging a firearm**

Firearm specification – improperly discharging a firearm while committing the offense: The indictment, count in the indictment, or information charging the offense specifies that the offender discharged a firearm while committing the offense.<sup>23</sup>

The bill creates the above firearm specification and designates that it must be stated in substantially the following form:<sup>24</sup>

SPECIFICATION (or SPECIFICATION TO THE FIRST COUNT).

The Grand Jurors (or insert the person’s or prosecuting attorney’s name when appropriate) further find and specify that (set forth that the offender discharged a firearm while committing the offense).

The bill creates a 5-year mandatory prison term for an offender who is convicted of or pleads guilty to a felony and who also is convicted of or pleads guilty to the above firearm specification. The court must impose a 5-year prison term on the offender unless the court imposes a 1-year, 18-month, 3-year, 5-year, 10-year, or 15-year prison term upon the offender for a different firearm specification relative to the same felony.<sup>25</sup>

---

<sup>21</sup> R.C. 2929.14(B)(1)(a)(ii) and 2941.145(A) and (B).

<sup>22</sup> R.C. 2929.14(B)(1)(a)(v) and 2941.145(D) and (E).

<sup>23</sup> R.C. 2941.1428(A).

<sup>24</sup> R.C. 2941.1428(A).

<sup>25</sup> R.C. 2929.14(B)(1)(a)(vii) and 2941.1428(B).

The bill provides that the above specification may be used in a delinquent child proceeding.<sup>26</sup>

Firearm specification – improperly discharging a firearm from a motor vehicle: The indictment, count in the indictment, or information charging the offense specifies that the offender committed one of the following offenses by discharging a firearm from a motor vehicle other than a manufactured home:<sup>27</sup>

1. A violation of “improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function.”
2. A felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another.

The bill increases the mandatory prison term for an offender who is convicted of or pleads guilty to one of the offenses specified the preceding paragraph and who also is convicted of or pleads guilty to the above firearm specification from a 5-year prison term to a 7-year prison term.<sup>28</sup>

### **Specified firearm specifications**

As used above, “specified firearm specification” includes the following firearm specifications:<sup>29</sup>

- Firearm on or about the offender’s person (see above);
- Automatic firearm or muffler or suppressor (see above);
- Displayed or brandished a firearm (see above);
- Improperly discharging a firearm (see above);
- Peace officer or corrections officer: The indictment, count in the indictment, or information charging the offense specifies that the offender discharged a firearm at a peace officer or a corrections officer while committing the offense.

---

<sup>26</sup> R.C. 2941.1428(C).

<sup>27</sup> R.C. 2941.146(A), by reference to R.C. 2923.161, not in the bill.

<sup>28</sup> R.C. 2929.14(B)(1)(c)(i) and 2941.146(A).

<sup>29</sup> R.C. 2941.141, 2941.144, 2941.145, and 2941.146 and R.C. 2941.1412, not in the bill.

## Repeat offender

### Classification

The bill creates a “repeat offender” classification that refers to a person about whom both of following apply:<sup>30</sup>

1. The person is being sentenced for committing or for complicity in committing a violation of “having weapons while under disability” or a felony “offense of violence.”
2. The person previously was convicted of or pleaded guilty to one or more offenses in (1) above and the violation involved a firearm.

### Definitions

The bill defines “involved a firearm” to mean either of the following:<sup>31</sup>

- The offender had a firearm on or about the offender’s person while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used the firearm to facilitate the offense.
- The offender had a firearm under the offender’s control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used the firearm to facilitate the offense.

The bill uses the term felony “offense of violence” which means any of the following:<sup>32</sup>

- A felony violation of any of the following offenses: aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, strangulation, aggravated menacing, menacing by stalking, menacing, patient abuse or neglect, kidnapping, abduction, extortion, trafficking in persons, rape, sexual battery, gross sexual imposition, aggravated arson, arson, terrorism, aggravated robbery, robbery, aggravated burglary, burglary, inciting to violence, aggravated riot, inducing panic, swatting, endangering children, domestic violence, intimidation, intimidation of an attorney, victim or witness in a criminal case, escape, or improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function.<sup>33</sup>

---

<sup>30</sup> R.C. 2929.01(CC)(1) and 2941.1427(E).

<sup>31</sup> R.C. 2929.01(CC)(2).

<sup>32</sup> R.C. 2901.01(A)(9), not in the bill.

<sup>33</sup> R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.18, 2903.21, 2903.211, 2903.22, 2903.34(A)(1), 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.04, 2911.01, 2911.02, 2911.11, 2911.12(A)(1) to (3), 2917.01, 2917.02, 2917.31, 2917.321, 2919.22(B)(1) to (4), 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, not in the bill.

- A violation of an existing or former municipal ordinance or law of Ohio, another state, or the United States, substantially equivalent to any offense listed above.
- An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio, another state, or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons.
- A conspiracy or attempt to commit, or complicity in committing any of the above offenses.

### **Firearm specification – repeat offender**

Firearm specification – repeat offender: The indictment, count in the indictment, or information charging the offender specifies that the offender is a repeat offender.<sup>34</sup>

The bill creates the above firearm specification and designates that it must be stated in substantially the following form:<sup>35</sup>

SPECIFICATION (or SPECIFICATION TO THE FIRST COUNT).

The Grand Jurors (or insert the person's or prosecuting attorney's name when appropriate) further find and specify that (set forth that the offender is a repeat offender).

The bill requires the court to determine the issue of whether an offender is a repeat offender.<sup>36</sup> The bill provides that at the arraignment of the defendant or as soon thereafter as practicable, the prosecuting attorney may give notice to the defendant of the prosecuting attorney's intention to use a certified copy of the entry of judgment of a prior conviction as proof of that prior conviction. The defendant must then give notice to the prosecuting attorney of the defendant's intention to object to the use of the entry of judgment. If the defendant pursuant to Criminal Rule 12 does not give notice of that intention to the prosecuting attorney before trial, the defendant waives the objection to the use of an entry of judgment as proof of the defendant's prior conviction, as shown on the entry of judgment.<sup>37</sup>

The bill creates a 3-, 4-, or 5-year mandatory prison term for an offender who is convicted of or pleads guilty to a felony and who also is convicted of or pleads guilty to the above firearm specification. The court must impose a 3-, 4-, or 5-year prison term on the offender unless the court imposes an 1-year, 2-year, 3-year, 4-year, 5-year, 6-year, 7-year, 8-year, 9-year, 10-year, or 11-year prison term upon the offender for a repeat violent offender, major drug offender, or violent career criminal specification relative to the same felony.<sup>38</sup>

---

<sup>34</sup> R.C. 2941.1427(A).

<sup>35</sup> R.C. 2941.1427(A).

<sup>36</sup> R.C. 2941.1427(B).

<sup>37</sup> R.C. 2941.1427(C).

<sup>38</sup> R.C. 2929.14(B)(12) and 2941.1427(A) and (D).

## **Sealed juvenile records**

The bill adds that a court may consider a sealed record and the disposition of a child under the sealed record for purposes of determining whether the child, for a future criminal conviction or guilty plea, is a repeat offender. Under current law, subject to certain exceptions, the disposition of a child under the judgment rendered or any evidence given in a court is admissible as evidence for or against the child in any action or proceeding in any court in accordance with the Rules of Evidence and also may be considered by any court as to the matter of sentence or to the granting of probation, and a court may consider the judgment rendered and the disposition of a child under that judgment for purposes of determining whether the child, for a future criminal conviction or guilty plea, is a repeat violent offender.<sup>39</sup>

## **Prior adjudication not a conviction**

The bill provides that a previous adjudication of a person as a delinquent child or juvenile traffic offender for a violation of the law or ordinance is not a conviction for a violation of the law or ordinance for purposes of determining whether a person is a repeat offender or whether the person should be sentenced as a repeat offender.<sup>40</sup> Under current law, subject to certain exceptions (including those for a repeat violent offender and a violent career criminal), if a person is alleged to have committed an offense and if the person previously has been adjudicated a delinquent child or juvenile traffic offender for a violation of a law or ordinance, the adjudication as a delinquent child or as a juvenile traffic offender is a conviction for a violation of the law or ordinance for purposes of determining the offense with which the person should be charged and, if the person is convicted of or pleads guilty to an offense, the sentence to be imposed upon the person relative to the conviction or guilty plea.<sup>41</sup>

## **Automatic sealing of conviction records for fourth or fifth degree felonies**

### **Eligibility**

If a person is convicted of pleads guilty to a fourth or fifth degree felony on or after the effective date of the bill, at the expiration of five years after the offender's final discharge, the bill provides that the offender is eligible to have the offender's record of conviction for the fourth or fifth degree felony sealed.<sup>42</sup>

### **Notification of eligibility**

Ninety days prior to the date that the offender is eligible to have the offender's record of conviction sealed, the bill requires the sentencing court to notify the offender, prosecutor,

---

<sup>39</sup> R.C. 2151.357(H).

<sup>40</sup> R.C. 2901.08(B)(3).

<sup>41</sup> R.C. 2901.08(A).

<sup>42</sup> R.C. 2953.321(A)(1).

victim, and victim's representative, if applicable, that the offender is eligible to have the offender's record of conviction sealed.<sup>43</sup>

## Objection

The bill allows the prosecutor or victim to object to the sealing of the record of conviction by filing a written objection with the sentencing court not later than 14 days prior to the date that the offender is eligible to have the offender's record of conviction sealed. The prosecutor or the victim must specify in the objection the reasons for believing a denial of the sealing of the record of conviction is justified.<sup>44</sup>

If the prosecutor or victim does not object to the sealing of the record of conviction, the bill requires the sentencing court to determine whether specified requirements have been met (see, "**Requirements for sealing**," below). If the sentencing court finds that all of the specified requirements have been met, the sentencing court must automatically seal the offender's record of conviction for the fourth or fifth degree felony. A hearing or application requesting a sealing order is not required or needed.<sup>45</sup>

If the prosecutor or victim does object to the sealing of the record of conviction, the bill requires the sentencing court to set a date for a hearing and to notify the prosecutor for the case of the hearing. The prosecutor must provide timely notice of the hearing to the victim and the victim's representative, if applicable. The sentencing court must hold the hearing not less than 45 days and not more than 90 days after the date that the offender is eligible to have the offender's record of conviction sealed.<sup>46</sup>

At the hearing, the bill requires the sentencing court to determine whether specified requirements have been met (see, "**Requirements for sealing**," below) and to consider the specified criteria (see, "**Criteria for sealing**," below). If the sentencing court determines that all of the specified requirements have been met, and that the interest of the offender in having the records pertaining to the offender's record of conviction sealed are not substantially outweighed by any legitimate governmental needs to maintain those records, the sentencing court must seal the offender's record of conviction for the fourth or fifth degree felony.<sup>47</sup>

---

<sup>43</sup> R.C. 2953.321(A)(2).

<sup>44</sup> R.C. 2953.321(A)(3).

<sup>45</sup> R.C. 2953.321(B).

<sup>46</sup> R.C. 2953.321(C)(1).

<sup>47</sup> R.C. 2953.321(C)(2).

## Requirements for sealing

Regardless of whether the prosecutor or the victim objects to the sealing of the record of conviction, the bill requires the sentencing court to determine whether the following requirements have been met:<sup>48</sup>

- The record of conviction for sealing is a fourth or fifth degree felony.
- The record of conviction for sealing is eligible for sealing under the Sealing Law.
- The offender has not been convicted of a felony offense of violence that is not a sexually oriented offense.
- The offender has not been convicted of a sexually oriented offense when the offender is subject to the SORN Law as it existed prior to January 1, 2008.
- The offender has not been convicted of any felony other than a fourth or fifth degree felony.

## Criteria for sealing

If the prosecutor or victim objects to the sealing of the record of conviction, the bill requires the court to consider the following criteria:<sup>49</sup>

- If prosecutor has filed an objection, consider the reasons against sealing the record of conviction specified by the prosecutor in the objection;
- If victim has filed an objection, consider the reasons against sealing the record of conviction specified by the victim in the objection;
- Determine whether the interests of the offender in having the record sealed are not substantially outweighed by the legitimate needs, if any, of the government to maintain those records.

## Sealing order

If the sentencing court makes the above findings, the bill requires the sentencing court to issue the sealing order automatically. The sentencing court must order all official records of that case that pertain to the conviction sealed and all index references to the case that pertain to the record of conviction deleted. The proceedings in the case that pertain to the conviction are considered not to have occurred, and the conviction of the person who is subject to the proceedings must be sealed.<sup>50</sup>

---

<sup>48</sup> R.C. 2953.321(D).

<sup>49</sup> R.C. 2953.321(E).

<sup>50</sup> R.C. 2953.321(F)(1).

If the sentencing court does not make the above findings, the bill prohibits the sentencing court from issuing the sealing order.<sup>51</sup>

### **Notification of decision**

Regardless of whether the sentencing court issues a sealing order, the bill requires the court to notify the offender and prosecutor for the case of the court's decision. The prosecutor must provide timely notice to a victim and the victim's representative, if applicable.

### **Cross references**

The bill adds cross references pertaining to the bill's automatic sealing provisions to existing law sealing provisions in the Revised Code.<sup>52</sup>

### **Name of the act**

The bill's provisions name the act the Repeat Offender Act.<sup>53</sup>

---



---

## **HISTORY**

Action	Date
Introduced	05-08-24

---

ANHB0522IN-135/ts

<sup>51</sup> R.C. 2953.321(F)(2).

<sup>52</sup> R.C. 109.57, 109.572, 109.578, and 109.579 (criminal records checks); R.C. 2953.25(C)(1) and (F)(6) (certificate of qualification for employment); R.C. 2953.34(C) (manual or computerized index); R.C. 2953.34(D) (school records for permanent exclusion); R.C. 2953.34(E) (State Auditor records); R.C. 2953.34(G)(1) (notice of sealing); R.C. 2953.34(G)(2) (motor vehicle points assessment); R.C. 2953.34(I) (investigatory work product); R.C. 2953.34(J) (divulging confidential information); R.C. 2953.34(O) (appeals); R.C. 2953.61 (sealing multiple offenses); R.C. 4723.28 (nursing licenses); and R.C. 4729.16, 4729.56, 4729.57, 4729.96, and 4752.09 (pharmacy licenses and registrations).

<sup>53</sup> Section 3.