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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Rogers

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### SUMMARY

- Modifies the conviction records that cannot be sealed.
- Modifies the time frame for when certain conviction records can be sealed.
- Allows for the sealing of the official records in a case in which the person was granted an absolute and entire pardon, a partial pardon, or a pardon upon conditions precedent or subsequent.
- Requires a court that holds a hearing on an application for sealing of a conviction record or the official records related to a not guilty verdict, dismissal, no bill, or pardon to hold that hearing not less than 45 days and not more than 90 days from the date of the filing of the application.
- Requires the prosecutor, if the prosecutor objects to the application, to file the objection in writing with the court not later than 30 days prior to the date set for the hearing.
- Requires the prosecutor, with regards to the sealing of a conviction record, to provide notice of the application and the date and time of the hearing to the victim of the offense in the case.
- Modifies existing law by providing that when a person was convicted of or pleaded guilty to two or more offenses as a result of or in connection with the same act and any of those offenses are ineligible for sealing, the court may order the sealing of any other offenses that are eligible if the person meets the sealing requirements.
- Relocates numerous provisions of the Sealing Law and makes technical changes as a result of those relocations.

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## DETAILED ANALYSIS

### Conviction records that cannot be sealed

The bill modifies existing law regarding conviction records that cannot be sealed. Convictions of a first or second degree felony and convictions under the Driver's License Law, the law regarding driver's license suspension, cancellation, and revocation, the Traffic Law-Operation of a Motor Vehicle (including OVI), and the Motor Vehicle Crimes Law, or a conviction for a municipal ordinance violation that is substantially similar to any of those laws still cannot be sealed under the bill. The bill also prohibits the following convictions from being sealed:<sup>1</sup>

1. Convictions under the Commercial Driver's License Law or convictions of a municipal ordinance violation that is substantially similar to that law;
2. Convictions of a felony offense of violence that is not a sexually oriented offense;
3. Convictions of a sexually oriented offense and the offender is subject to the requirements of R.C. Chapter 2950 or R.C. Chapter 2950 as it existed prior to January 1, 2008 (SORN Law);
4. Convictions of an offense in circumstances in which the victim of the offense was less than age 13, except for convictions for nonsupport of dependents for contributing to the nonsupport of dependents (under existing law, the victim of the offense is under age 16 and the offense is a first degree misdemeanor or a felony).

The bill relocates this provision from R.C. 2953.36 to R.C. 2953.32(A).

As a result of the bill's modifications the following can be sealed:<sup>2</sup>

1. Convictions that subject the offender to a mandatory prison term;
2. Bail forfeitures in a traffic case as defined in Traffic Rule 2;
3. Convictions of an offense of violence when the offense is a misdemeanor;
4. Public indecency when the victim of the offense was under age 18, unless the offender knowingly exposed the offender's private parts with the purpose of sexual arousal or gratification or to lure the minor into sexual activity, where the offender's conduct was likely to be viewed by and affront another person who was in the offender's physical proximity, is a minor, and is not the spouse of the offender;
5. Procuring, disseminating matter harmful to juveniles, and displaying matter harmful to juveniles when the victim of the offense was under age 18.

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<sup>1</sup> R.C. 2953.32(A).

<sup>2</sup> Former R.C. 2953.36, repealed by the bill.

## Application times for sealing of conviction record

Under the bill, application to the sentencing court or the court of common pleas, when applicable, for the sealing of a conviction record may be made at one of the following times:<sup>3</sup>

- At the expiration of three years after the offender's final discharge if convicted of one or more third degree felonies;
- At the expiration of five years after final discharge if the offender is convicted of one or more misdemeanors that are offenses of violence;
- At the expiration of one year after the offender's final discharge if convicted of one or more fourth or fifth degree felonies or one or more misdemeanors that are not offenses of violence;
- If the offender was subject to the requirements of the SORN Law or the SORN Law as it existed prior to January 1, 2008, at the expiration of five years after the requirements have ended under the law regarding the commencement date for the duty to register or that law as it existed prior to January 1, 2008, or are terminated under the law regarding the termination of the duty to comply with SORN Law;
- At the expiration of six months after the offender's final discharge if convicted of a minor misdemeanor.

Existing law allows for the sealing of a conviction record to be made at the following times:<sup>4</sup>

- At the expiration of three years after the offender's discharge if convicted of one felony;
- If the offender was convicted of one or more offenses, but not more than five felonies, if all of the offenses are fourth or fifth degree felonies or misdemeanors and none of those offenses are an offense 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.

The bill continues existing law by allowing any person who has been arrested for any misdemeanor offense and has effected a bail forfeiture for the offense to apply to the court in which the misdemeanor criminal case was pending when the bail was forfeited for the sealing of the record of the case that pertains to the charge. Under the bill, the application may be filed at any time after the date on which the bail forfeiture was entered upon the minutes of the

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<sup>3</sup> R.C. 2953.32(B).

<sup>4</sup> Current R.C. 2953.32(A).

court or the journal, whichever entry occurs first. Existing law allows for the filing of the application at any time after the expiration of one year from that date.<sup>5</sup>

## **Hearing on the application**

The bill requires the court to hold the hearing on the application for the sealing of a conviction record not less than 45 days and not more than 90 days from the date of the filing of the application. The bill continues to allow the prosecutor to object to the application by filing an objection with the court but requires the objection to be in writing and filed with the court not later than 30 days prior to the date set for the hearing. The prosecutor must also provide notice of the application and the date and time of the hearing to the victim of the offense in the case pursuant to the Ohio Constitution.<sup>6</sup>

## **Determinations made by the court regarding the application**

The bill removes the definition of “eligible offender” and as a result, removes all references to “eligible offender” in this provision as well as in the other Revised Code sections of the Sealing Law. As a result, the bill requires the court to determine whether the applicant seeks to seal a conviction record that is prohibited from being sealed as described under “**Conviction records that cannot be sealed,**” above. Also, if the victim objects, pursuant to the Ohio Constitution, the bill requires the court to consider the reasons against granting the application specified by the victim in the objection.<sup>7</sup>

## **Sealing multiple records**

The bill provides that when a person was convicted of or pleaded guilty to two or more offenses as a result of or in connection with the same act and any of these offenses are ineligible for sealing, the court may order the sealing of any other offenses that are eligible for sealing if the person otherwise satisfies the requirements to have the records sealed. The bill repeals R.C. 2953.61, which generally prohibits a person charged with two or more offenses as a result of or in connection with the same act from applying to the court for the sealing of the person’s record in relation to any of the charges when at least one of the charges has a final disposition that is different from the final disposition of the other charges until such time as the person would be able to apply to the court and have all of the records pertaining to all of those charges sealed. Under existing law, repealed by the bill, when a person is charged with two or more offenses as a result of or in connection with the same act and the final disposition of one, and only one, of the charges is a conviction under any section of the Driver’s License Law, the law regarding driver’s license suspension, cancellation, and revocation, the Traffic Law-Operation of a Motor Vehicle (except OVI and physical control violations), and the Motor Vehicle Crimes Law, or a conviction for a municipal ordinance violation that is substantially similar to any of those laws, and if the records pertaining to all the other charges would be

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<sup>5</sup> R.C. 2953.32(B)(2).

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

<sup>7</sup> R.C. 2953.32(D).

eligible for sealing in the absence of that conviction, the court may order that the records pertaining to all the charges be sealed. In such a case, the court cannot order that only a portion of the records be sealed. This provision does not apply if the person convicted of the offenses currently holds a commercial driver's license or commercial driver's license temporary instruction permit.<sup>8</sup>

### **Sealing of records after not guilty finding, dismissal of proceedings, no bill by grand jury, or pardon**

The bill continues to allow the sealing of a person's official records related to a finding of not guilty of an offense by a jury or court or in a dismissed complaint, indictment, or information and also allows the sealing of a person's official records in a case in which the person was convicted of an offense and received an absolute and entire pardon, a partial pardon, or a pardon upon conditions precedent or subsequent. The bill continues the requirement that upon the filing of the application for sealing, the court must set a date for the hearing and notify the prosecutor in the case of the hearing. The bill requires the court to hold the hearing not less than 45 days and not more than 90 days from the date of the filing of the application and, if the prosecutor objects to the granting of the application by filing an objection with the court, requires that objection to be in writing and filed with the court not later than 30 days prior to the date set for the hearing.<sup>9</sup>

If a person was granted a pardon upon conditions precedent or subsequent for the offenses for which the person was convicted, the bill requires the court to determine whether all of those conditions have been met, along with the other determinations the court must make under existing law. If the court determines that the individual was granted by the governor an absolute and entire pardon, a partial pardon, or a pardon upon conditions precedent or subsequent that have been met, the court must issue an order to the Superintendent of the Bureau of Criminal Identification and Investigation (BCI) directing the Superintendent to seal or cause to be sealed the official records in the case consisting of DNA specimens that are in the possession of BCI and all DNA records and DNA profiles. In addition, the bill also requires the court, if the court makes that determination and determines that the interests of the person in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain such records, to issue an order directing that all official records pertaining to the case be sealed and that, generally speaking, the proceedings in the case be deemed not to have occurred.<sup>10</sup>

The bill relocates the provisions described above from R.C. 2953.52 to R.C. 2953.33.

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<sup>8</sup> R.C. 2953.32(E) and R.C. 2953.61(B), repealed by the bill.

<sup>9</sup> R.C. 2953.33(A) and (B).

<sup>10</sup> R.C. 2953.33(B).

## Relocation of sealing provisions

The bill relocates numerous provisions of the Sealing Law without making substantive changes. These provisions will be discussed in more detail below.

### Definitions

The bill consolidates the definitions that are in various sections of the Sealing Law into one definitional section in R.C. 2953.31, but does not make any changes to these terms. This includes the definitions of “official records,” “investigatory work product,” “law enforcement or justice system matter,” “expunge,” “record of conviction,” “victim of human trafficking,” “no bill,” and “court.” The table below shows their current locations and their locations under the bill.

Term	Former R.C. Section	New R.C. Section
Official records	R.C. 2953.51(D)	R.C. 2953.31(C)
Investigatory work product	R.C. 2953.321(A)	R.C. 2953.31(I)
Law enforcement or justice system matter	R.C. 2953.35(A)(1)	R.C. 2953.31(J)
Expunge	R.C. 2953.37(A)(1) and 2953.38(A)(1)	R.C. 2953.31(K)
Record of conviction	R.C. 2953.37(A)(4) and 2953.38(A)(3).	R.C. 2953.31(L)
Victim of human trafficking	R.C. 2953.38(A)(4)	R.C. 2953.31(M)
No bill	R.C. 2953.51(A)	R.C. 2953.31(N)
Court	R.C. 2953.51(C)	R.C. 2953.31(O)

### Inspection of sealed records

The bill relocates the list of who may inspect sealed records and the purpose for inspecting those sealed records from R.C. 2953.32(D) to R.C. 2953.34(A).

### Proof of admissible prior conviction

The bill relocates the provision that allows proof of any otherwise admissible prior conviction to be introduced and proved, notwithstanding the fact that for any such prior conviction an order of sealing was issued from R.C. 2953.32(E) to R.C. 2953.34(B).

### Index of sealed records

The bill relocates the provision that permits the person or governmental agency, office, or department that maintains sealed records pertaining to convictions or bail forfeitures that

have been sealed to maintain a manual or computerized index to sealed records from R.C. 2953.32(F) to R.C. 2953.34(C).

### **Boards of education permitted to maintain sealed records**

The bill maintains the provision that permits a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under R.C. 3301.121 (adjudication procedure to determine whether to permanently exclude pupil) and 3313.662 (adjudication order permanently excluding pupil from public schools) to maintain records regarding a conviction that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record and relocates this provision from R.C. 2953.32(G) to R.C. 2953.34(D).

### **DNA records**

The bill maintains the prohibition against sealing DNA records collected in the DNA database and fingerprints filed for record by the Superintendent of BCI unless the Superintendent receives a certified copy of a final court order establishing that the offender's conviction has been overturned and relocates this prohibition from R.C. 2953.32(H) to R.C. 2953.34(E).

### **Sealing of record does not affect points assessment**

The bill relocates the provision that states that the sealing of a record does not affect the assessment of points for various violations regarding the operation of a motor vehicle and does not erase points assessed as a result of the sealed record from R.C. 2953.32(I) to R.C. 2953.34(F).

### **Order to seal records of not guilty finding, dismissal of proceedings, no bill by grand jury, or pardon**

The bill relocates the provisions regarding the orders to seal the official records of a not guilty finding, dismissal of proceedings, no bill by grand jury, or pardon from R.C. 2953.53 to R.C. 2953.34(G).

Subject matter	Former R.C. Section	New R.C. Section
Notice of order to seal	R.C. 2953.53(A)	R.C. 2953.34(G)(1)
Person may present copy of order to seal	R.C. 2953.53(B)	R.C. 2953.34(G)(2)
Order to seal applies to every public office or agency	R.C. 2953.53(C)	R.C. 2953.34(G)(3)
Public office or agency complying with sealing order	R.C. 2953.53(D)	R.C. 2953.34(G)(4)
Public office or agency may maintain index of sealed records	R.C. 2953.53(D)	R.C. 2953.34(G)(5)

## Investigatory work product and divulging confidential information

The bill relocates the provisions regarding investigatory work product and divulging confidential information related to sealed records from R.C. 2953.321, 2953.35, and 2953.54 to 2953.34(H), (I), and (J).

Subject matter	Former R.C. Section	New R.C. Section
Delivery of investigatory work product	R.C. 2953.321(B)(1)	R.C. 2953.34(H)(1)(a)
Closing of work product	R.C. 2953.321(B)(2)	R.C. 2953.34(H)(1)(b)
Permitting other law enforcement agency to use work product	R.C. 2953.321(B)(2)	R.C. 2953.34(H)(1)(c)
Prohibition against knowingly releasing investigatory work product	R.C. 2953.321(C)(1)	R.C. 2953.34(H)(2)(a)
Prohibition against using work product for any other purpose	R.C. 2953.321(C)(2)	R.C. 2953.34(H)(2)(b)
Not a violation for BCI to release DNA to person employed by law enforcement	R.C. 2953.321(C)(3)	R.C. 2953.34(H)(2)(c)
Penalty	R.C. 2953.321(D)	R.C. 2953.34(H)(3)
Divulging confidential information	R.C. 2953.35	R.C. 2953.34(I)
Investigatory work product re: not guilty verdict, dismissal, no bill, or pardon	R.C. 2953.54	R.C. 2953.34(J)

## Inquiries after a not guilty verdict, dismissal, no bill, or pardon and BCI releasing DNA evidence

The bill retains the prohibition against a person, in an application for employment, license, or any other right or privilege, any appearance as a witness, or any other inquiry, being questioned with respect to any record related to a not guilty verdict, dismissal, no bill, or pardon that has been sealed and relocates this provision from R.C. 2953.55(A) and (B) to R.C. 2953.34(K). The bill also retains the provision that states that it is not a violation for BCI or any authorized employee of BCI participating in the investigation of criminal activity to release, disseminate, or otherwise make available to, or discuss with, a person directly employed by a

law enforcement agency DNA records collected in the DNA database or fingerprints filed for record by the Superintendent of BCI. The bill relocates this provision from R.C. 2953.55(C) to R.C. 2953.34(L).

### **Restoration of rights and privileges**

The bill retains the provision that restores a person who had a conviction record related to certain firearms convictions (discussed below in “**Expungement of certain convictions relating to firearms**”) expunged or a conviction record sealed to all rights and privileges not otherwise restored by termination of the sentence or community control or by final release on parole or post-release control. The bill relocates this provision from R.C. 2953.33(A) to R.C. 2953.34(M)(1). The bill also retains the general prohibition against questioning a person, in any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry with respect to convictions that are sealed, bail forfeitures that have been expunged, and bail forfeitures that are sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered and a person cannot be questioned about any conviction related to “**Expungement of certain convictions relating to firearms**” below that has been expunged. This provision is relocated from R.C. 2953.33(B) to R.C. 2953.34(M)(2).

### **Expungement of certain convictions relating to firearms**

The bill maintains the provision that allows for the expungement of conviction records related to certain firearms offenses and relocates this provision from R.C. 2953.37 to R.C. 2953.35.

### **Expungement of certain crimes for victims of human trafficking**

The bill relocates the provision that allows for the expungement of certain conviction records of a victim of human trafficking from R.C. 2953.38 to R.C. 2953.36.

### **Violations of Sealing Law not basis to exclude or suppress certain evidence**

The bill relocates the provision that states that violations of the Sealing Law do not provide the basis to exclude or suppress the following evidence that is otherwise admissible: (1) DNA records collected in the DNA database, (2) fingerprints filed for record by the Superintendent of BCI, or (3) other evidence that was obtained or discovered as the direct or indirect result of divulging or otherwise using those records from R.C. 2953.56 to R.C. 2953.37.

## Technical changes

As a result of the relocation of numerous sections of the Sealing Law, the bill makes cross reference changes<sup>11</sup> and outright repeals existing R.C. 2953.321, 2953.33, 2953.35, 2953.36, 2953.51, 2953.53, 2953.54, 2953.55, and 2953.61.

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## HISTORY

Action	Date
Introduced	04-10-20

H0604-I-133/ar

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<sup>11</sup> R.C. 2151.358, 2923.125, 2923.128, 2923.1213, 2923.16, 2951.041, 2953.31, 2953.32, 2953.33, 2953.34, 2953.35, 2953.36, 2953.37, 2953.521, 2953.56, 2953.57, 2953.58, 2953.59, 4301.69, 4723.28, 4729.16, 4729.56, 4729.57, 4729.96, and 4752.09.