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## Substitute Bill Comparative Synopsis

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### Sub. H.B. 5 136<sup>th</sup> General Assembly

House Judiciary

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Sub. H.B. 5 (I-136-0260-1) makes the following changes to H.B. 5, As Introduced:

#### **Targeted community alternatives to prison (T-CAP) program**

- Provides that if a person is convicted of “having weapons while under disability” and the penalty for the offense is a fourth degree felony, the person is ineligible for the T-CAP program (R.C. 2929.34(B)(3)(d)(v)).

#### **Firearm specifications**

- Creates a ten-year mandatory prison term for a firearm specification relating to an automatic firearm or muffler or suppressor when the offender displayed or brandished the firearm (R.C. 2941.1429(A) and (B)).
- Creates a 15-year mandatory prison term for a firearm specification relating to an automatic firearm or muffler or suppressor when the offender displayed or brandished the firearm if the offender previously has been convicted of or pleaded guilty to a specified firearm specification (R.C. 2941.1429(D) and (E)).
- Restores the current law firearm specification relating to an automatic firearm or muffler or suppressor to a six-year mandatory prison and a nine-year mandatory prison term for a subsequent offense (R.C. 2941.144(A) and (D)).

#### **Relief from firearms disability**

- Adds the new firearm specification relating to an automatic firearm or muffler or suppressor when the offender displayed or brandished the firearm to the list of firearm specifications that disqualify a person from relief from weapons disability if the person has been convicted of or pleaded guilty to the firearms specification two or more times (R.C. 2923.14(A)(2)).

## Sealing

- Retains the general Sealing Law provisions in R.C. 2953.32 and relocates the list of convictions that cannot be sealed to R.C. 2953.311.

## New sealing mechanism

- Creates a new sealing mechanism for a record of conviction or dismissed complaint, indictment, or information (R.C. 2953.321).
- At the expiration of five years after the initial time at which a person may file an application to seal a record of conviction under the general Sealing Law or at the expiration of five years after a person's complaint has been dismissed, allows an eligible record of conviction or dismissed complaint to be sealed (R.C. 2953.321(A)(1)).
- Provides that a record of conviction is eligible to be sealed under the new mechanism unless it is a conviction that cannot be sealed under the general Sealing Law or the conviction was committed prior to the effective date of the bill (R.C. 2953.321(A)(1)).
- Provides that a dismissed complaint is eligible to be sealed unless the complaint was dismissed prior to the effective date of the bill (R.C. 2953.321(A)(1)).
- Requires a probation officer to determine whether a record of conviction or dismissed complaint is eligible for sealing (R.C. 2953.321(A)(2)(a)).
- If a probation officer determines a record of conviction or dismissed complaint is eligible for sealing, provides that the person's record of conviction or dismissed complaint is presumed to be eligible for sealing (R.C. 2953.321(A)(2)(a)).
- If a probation officer determines a record of conviction or dismissed complaint is eligible for sealing, requires the sentencing court to send a letter to the prosecutor, the subject of the proceedings and victim or the victim's representative, not more than two weeks after the determination (R.C. 2953.321(A)(2)(b)).
- Requires the letter to state that the subject of the proceeding's record of conviction or dismissed complaint, indictment, or information is presumed to be eligible for sealing (R.C. 2953.321(A)(2)(b)).
- Requires that the letter sent to the subject of the proceedings be accompanied by an application form to seal a record of conviction or dismissed complaint and a poverty affidavit (R.C. 2953.321(A)(2)(b) and (F)).
- Specifies that the sentencing court does not have to send the letter or accompanying documents if either of the following apply (R.C. 2953.321(A)(2)(c)):
  - After the applicant was convicted of the subject offense or after the complaint was dismissed, the applicant has been convicted of any other felony.
  - At any time, the applicant has been convicted of any felony that cannot be sealed.

- Regardless of whether the person receives the letter and accompanying documents, still allows a person to apply to the sentencing court to seal an eligible record of conviction or dismissed complaint (R.C. 2953.321(A)(3)).
- Requires the applicant to pay a \$50 application fee, unless the applicant presents a poverty affidavit showing that the applicant is indigent (R.C. 2953.321(E)).
- Requires the court to notify the prosecutor and the subject of the proceedings of the hearing on the application for the sealing of the record of conviction or the dismissed complaint not less than 60 days before the hearing (R.C. 2953.321(B)(1)).
- Requires the prosecutor to notify the victim and victim's representative of the hearing on the application for the sealing of the record of conviction or the dismissed complaint not less than 60 days before the hearing (R.C. 2953.321(B)(1)).
- 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 (R.C. 2953.321(B)(2)).
- Allows the prosecutor, victim, or victim's representative to object to the sealing of the record of conviction or dismissed complaint (R.C. 2953.321(B)(3)).
- If the court makes certain findings, including that the interests of the applicant in having the record of conviction or dismissed complaint sealed are not substantially outweighed by any legitimate governmental needs to maintain those records, requires the court to order all official records of the case sealed (R.C. 2953.321(D)(1)).
- Subject to certain exceptions, if the court seals the official records, requires that the proceedings in the case that pertain to the record of conviction or dismissed complaint are considered not to have occurred (R.C. 2953.321(D)(2)).

## **Expungement**

- Relocates the general Expungement Law provisions in R.C. 2953.32 to R.C. 2953.322 and relocates the list of convictions that cannot be expunged to R.C. 2953.311.
- Modifies when an offender may file an application to expunge a record of conviction or bail forfeiture under the general Expungement Law to seven years after the offender's final discharge (R.C. 2953.322(A)(1)).
- Eliminates a requirement that the Bureau of Criminal Identification and Investigation must maintain a record of the expunged record of conviction for the limited purpose of determining an individual's qualification or disqualification for employment in law enforcement (R.C. 2953.32(D)(5)).

## **New expungement mechanism**

- Creates a new expungement mechanism for a record of conviction or dismissed complaint, indictment, or information (R.C. 2953.323).
- At the expiration of ten years after the initial time at which a person may file an application to expunge a record of conviction under the general Expungement Law or at

the expiration of ten years after a person's complaint has been dismissed, allows an eligible record of conviction or dismissed complaint to be expunged under the new mechanism (R.C. 2953.323(A)(1)).

- Provides that a record of conviction is eligible to be expunged under the new mechanism unless it is a conviction that cannot be expunged under the general Expungement Law or the conviction was committed prior to the effective date of the bill (R.C. 2953.323(A)(1)).
- Provides that a dismissed complaint is eligible to be expunged under the new mechanism unless it is an offense that cannot be expunged or the complaint was dismissed prior to the effective date of the bill (R.C. 2953.323(A)(1)).
- Requires a probation officer to determine whether a record of conviction or dismissed complaint is eligible for expungement (R.C. 2953.323(A)(2)(a)).
- If a probation officer determines a record of conviction or dismissed complaint is eligible for expungement, provides that the person's record of conviction or dismissed complaint is presumed to be eligible for expungement (R.C. 2953.323(A)(2)(a)).
- If a probation officer determines a record of conviction or dismissed complaint is eligible for expungement, requires the sentencing court to send a letter to the prosecutor, the subject of the proceedings, and the victim or the victim's representative, not more than two weeks after the determination (R.C. 2953.323(A)(2)(b)).
- Requires the letter to state that the subject of the proceeding's record of conviction or dismissed complaint, indictment, or information is presumed to be eligible for expungement (R.C. 2953.323(A)(2)(b)).
- Requires that the letter sent to the subject of the proceedings be accompanied by an application form to expunge a record of conviction or dismissed complaint and a poverty affidavit (R.C. 2953.323(A)(2)(b) and (F)).
- Specifies that the sentencing court does not have to send the letter or accompanying documents if either of the following apply (R.C. 2953.323(A)(2)(c)):
  - After the applicant was convicted of the subject offense or after the complaint was dismissed, the applicant has been convicted of any other felony.
  - At any time, the applicant has been convicted of any felony that cannot be sealed.
- Regardless of whether the person receives the letter and accompanying documents, still allows a person to apply to the sentencing court to expunge an eligible record of conviction or dismissed complaint (R.C. 2953.323(A)(3)).
- Requires the applicant to pay a \$50 application fee, unless the applicant presents a poverty affidavit showing that that applicant is indigent (R.C. 2953.323(E)).
- Requires the court to notify the prosecutor and the subject of the proceedings of the hearing on the application for the expungement of the record of conviction or the dismissed complaint not less than 60 days before the hearing (R.C. 2953.321(B)(1)).

- Requires the prosecutor to notify the victim and victim's representative of the hearing on the application for the expungement of the record of conviction or the dismissed complaint not less than 60 days before the hearing (R.C. 2953.321(B)(1)).
- 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 (R.C. 2953.321(B)(2)).
- Allows the prosecutor, victim, or victim's representative to object to the expungement of the record of conviction or dismissed complaint (R.C. 2953.321(B)(3)).
- If the court makes certain findings, including that the interests of the applicant in having the record of conviction or dismissed complaint expunged are not substantially outweighed by any legitimate governmental needs to maintain those records, requires the court to order all official records of the case expunged (R.C. 2953.321(D)(1)).
- Subject to certain exceptions, if the court expunges the official records, requires that the proceedings in the case that pertain to the record of conviction or dismissed complaint are considered not to have occurred (R.C. 2953.321(D)(2)).

### **Sealing mechanism for misdemeanors and fourth and fifth degree felonies**

- Removes the bill's sealing mechanism for misdemeanors and fourth and fifth degree felonies (R.C. 2953.321).

### **Conforming changes**

- Makes conforming changes in Firearm Specification Law (R.C. 2923.14, 2929.14, 2941.141, 2941.144, 2941.145, 2941.146, and 2941.1428).
- Makes conforming changes in Sealing and Expungement Law (R.C. 109.11, 109.57, 109.572, 2746.02, 2930.171, 2951.041, 2953.25, 2953.31, 2953.34, 2953.39, 2953.61, 4723.28, 4729.16, 4729.56, 4729.57, 4729.96, 4752.09, and 5120.035).