



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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S.B. 159

132nd General Assembly
(As Introduced)

Sens. Williams, Sykes, Brown, Tavares

BILL SUMMARY

- Expands the Not Guilty/Dismissed Charge/No Bill Record Sealing Law so that it also applies with respect to a person who is granted a pardon by the Governor and provides in specified circumstances for the sealing of the official records pertaining to the case in which the person was granted the pardon.
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CONTENT AND OPERATION

Introduction

The bill expands the Not Guilty/Dismissed Charge/No Bill Record Sealing Law so that a person who is granted a pardon by the Governor may apply for and, if specified criteria are satisfied, be granted an order under that Law to seal the official records in the case in which the person was convicted of the pardoned offense. The bill does not change that Law as it applies with respect to a not guilty finding, a dismissed charge, or a grand jury no bill, and applies the current procedures of that Law, modified to fit the bill's provisions, to a pardoned person who applies for sealing under those provisions. Existing statutory record sealing and expungement provisions do not address the sealing or expungement of records that relate to a conviction that has been pardoned, and the Ohio Supreme Court has held that a pardon does not automatically entitle the recipient to have the record of the pardoned conviction sealed and that a court lacks the authority to seal the criminal record of a pardoned offender who does not satisfy applicable statutory requirements for such a sealing.¹

¹ *State v. Radcliff* (2015), 142 Ohio St.3d 78; *State v. Boykin* (2013), 138 Ohio St.3d 97.

Application by pardoned person

Under the bill, any person who is granted by the Governor an absolute and entire pardon, a partial pardon, or a pardon upon conditions precedent or subsequent may apply to a specified court for an order to seal the person's "official records" (see "**Official records definition**," below) in the case in which the person was convicted of the offense for which any of those types of pardon is granted. The application may be filed at any time after an absolute and entire pardon or a partial pardon is granted or at any time after all of the conditions precedent or subsequent of a pardon are met, and must be filed in the court that rendered a judgment of conviction of the offense for the violation of which the convict was convicted and incarcerated and for which the Governor grants the pardon.²

For purposes of the bill's provisions, an absolute and entire pardon, a partial pardon, and a pardon upon conditions precedent or subsequent mean the types of pardons that the Governor may grant after conviction under existing law.³

Court procedures and determinations after application

Under the bill, upon the filing of an application as described above, the court must set a date for a hearing and notify the prosecutor in the case of the hearing. The prosecutor may object to the granting of the application by filing with the court prior to the date set for the hearing an objection that specifies the reasons the prosecutor believes justify a denial of the application. The court must determine whether the applicant was granted an absolute and entire pardon, a partial pardon, or a pardon upon conditions precedent or subsequent for the offense of which the applicant was convicted and, if the applicant's pardon was granted upon conditions precedent or subsequent, whether all of those conditions are met. In addition, the court must determine whether criminal proceedings are pending against the applicant, must consider the reasons against granting the application that the prosecutor specified in any objection the prosecutor filed, and must weigh the applicant's interests in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records.⁴

Under the bill, if the court determines, after complying with the requirements described above, that the applicant was granted an absolute and entire pardon or a partial pardon or was granted a pardon upon conditions precedent or subsequent and

² R.C. 2953.51(C)(3) and 2953.52(A)(3).

³ R.C. 2953.51(G).

⁴ R.C. 2953.52(B)(1) and (2).



that all of those conditions are met, that no criminal proceedings are pending against the applicant, and that the applicant's interests in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs 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 the limited exceptions described below, the proceedings in the case be deemed not to have occurred.⁵ Any DNA specimens, DNA records, and DNA profiles ordered to be sealed under this provision may not be sealed if the person with respect to whom the order applies is otherwise eligible to have DNA records or a DNA profile in the national DNA index system.⁶

Two existing provisions applicable to, but not amended by, the bill provide for disbursement of an order to seal official records issued under the bill's provisions described above. One of those provisions requires the court that issues the order to send notice of the order to any public office or agency that the court knows or has reason to believe may have any record of the case, whether or not it is an official record, that is the subject of the order. The other specifies that the person whose official records have been sealed under the order may present a copy of it and a written request to comply with it to any public office or agency with a record of the case that is the subject of the order.⁷

Effect of sealing order

On a public office or agency

Several existing provisions, unchanged by the bill, specify the effect on public offices and agencies of an order to seal official records issued under the Not Guilty/Dismissed Charge/No Bill Record Sealing Law. The provisions will apply with respect to an order issued under the bill's provisions described above. The order applies to every public office or agency that has a record of the case that is the subject of the order, regardless of whether it receives notice of the hearing on the application for the order to seal the official records or receives a copy of the order to seal the official records from the court or the person whose records were sealed. Upon receiving a copy of the order from the court or the person whose records were sealed or upon otherwise becoming aware of the order, subject to two exceptions, a public office or agency must

⁵ R.C. 2953.52(B)(4).

⁶ R.C. 2953.52(B)(5).

⁷ R.C. 2953.53(A) and (B), not in the bill.



comply with the order and, if applicable, with existing provisions regarding specific law enforcement investigatory work product described below.⁸ Under the exceptions:⁹

(1) The public office or agency may maintain a record of the subject case if the record is maintained for the purpose of compiling statistical data only and does not contain any reference to the person who is the subject of the case and the order.

(2) The public office or agency may maintain an index of sealed official records, in a specified form, access to which may not be afforded to any person other than the person with custody of the sealed official records. The indexed sealed official records may not be available to any person, except that they may be made available to the following persons for the following purposes: (a) the person who is the subject of the records upon written application, and any other person named in the application, for any purpose, (b) a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of that involvement, or (c) a prosecuting attorney or prosecuting attorney's assistants to determine a defendant's eligibility to enter either of two types of specified pretrial diversion programs.

Regarding an inquiry to the person whose record was sealed

An existing provision, unchanged by the bill, specifies that, in any application for employment, license, or any other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to a record sealed under the Not Guilty/Dismissed Charge/No Bill Record Sealing Law. The provision will apply with respect to an order issued under the bill's provisions described above.

If an inquiry is made in violation of this restriction with respect to any official record sealed under the existing Not Guilty/Dismissed Charge/No Bill Record Sealing Law or official records sealed under the bill's provisions described above, the person whose official record was sealed may respond as if the arrest underlying the case to which the sealed official records pertain and all other proceedings in that case did not occur, or as if the conviction in the criminal case to which the sealed official records pertain and all proceedings in that criminal case did not occur. The person is not to be subject to any adverse action because of the arrest, the conviction, the proceedings, or the person's response.¹⁰

⁸ R.C. 2953.53(C) and (D), not in the bill.

⁹ R.C. 2953.53(D), not in the bill.

¹⁰ R.C. 2953.55(A).



Offense of "divulging confidential information"

The bill expands an existing provision that establishes the offense of "divulging confidential information" with respect to information sealed under the Not Guilty/Dismissed Charge/No Bill Record Sealing Law so that the offense also applies with respect to an order to seal official records sealed under the bill's provisions described above and to convictions addressed in a sealed order. Under the bill, an officer or employee of the state or any political subdivision who knowingly releases, disseminates, or makes available for any purpose involving employment, bonding, licensing, or education to any person or to any state department, agency, or other instrumentality, or of any political subdivision, any information or other data concerning any arrest, complaint, indictment, information, trial, adjudication, conviction, or correctional supervision, the records of which have been sealed under the existing Not Guilty/Dismissed Charge/No Bill Record Sealing Law or under the bill's provisions described above, is guilty of "divulging confidential information," a fourth degree misdemeanor.¹¹

Under existing law, unchanged by the bill, it is not a violation of the prohibition described above for the Bureau of Criminal Identification and Investigation (BCII) or any of its authorized employees 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 Bureau's Superintendent.¹²

Specific law enforcement investigatory work product

Delivery, closing, and use

Existing provisions, unchanged by the bill, govern the disposition and use of specific law enforcement investigatory work product that is not an official record, but that relates to a sealing order issued under the Not Guilty/Dismissed Charge/No Bill Record Sealing Law. The provisions will apply with respect to an order issued under the bill's provisions described above. Under the provisions, upon a court's issuance of a sealing order under that Law regarding official records pertaining to a case:¹³

(1) Every law enforcement officer possessing records pertaining to the case that are the officer's specific investigatory work product and that are not official records

¹¹ R.C. 2953.55(B).

¹² R.C. 2953.55(C).

¹³ R.C. 2953.54(A), not in the bill.



must immediately deliver the records to the officer's employing law enforcement agency.

(2) Every law enforcement agency possessing records pertaining to the case that are its specific investigatory work product and that are not official records, or that were delivered to the agency by an officer as described above in (1), must, except as described below in (3), close the records to all persons not directly employed by the agency and treat the records, in relation to all persons not employed by the agency, as if they never existed.

(3) Except as otherwise described in this paragraph, an officer described above in (1) and employees of a law enforcement agency described above in (2) are prohibited from knowingly making the records in the officer's or agency's possession or any information contained in them available to, or discussing any information contained in them with, any person not employed by the agency or, regarding an officer described above in (1), the officer's employing agency. An agency possessing records related to the case as described above in (2) may permit another law enforcement agency to use the records in investigating another offense, the facts of which are reasonably similar to the facts of the offense that is the subject of the case. The providing agency may give the other agency the name of the person who is the subject of the case, if it believes that the person's name is necessary for the other agency's investigation. Law enforcement agencies, and their employees, that receive from another agency records relating to a case that have been ordered sealed are prohibited from using the records for any purpose other than investigating the offense for which they were obtained from the providing agency, or disclosing the name of the subject person except when necessary in investigating or prosecuting that offense.

Violation of prohibition

A violation of a prohibition described above in (3) regarding investigatory work product is the offense of "divulging confidential information," a fourth degree misdemeanor. It is not a violation of the prohibitions for BCII or an authorized BCII employee to use or share in a specified manner DNA records or fingerprints.¹⁴

Official records definition

Under existing law, and as used in the bill, "official records" means all records possessed by any public office or agency that relate to a criminal case, including, but not limited to: the case notation in the criminal docket; all subpoenas issued, papers and documents filed, and records of testimony and evidence presented in the case; all court

¹⁴ R.C. 2953.54(B) and (C), not in the bill.

files, records, etc., and index references pertaining to the case; all computer, microfilm, etc., records, indices, or references to the case; all fingerprints and photographs; all DNA material; all records and investigative reports pertaining to the case that are possessed by any law enforcement officer or agency (except for certain specific investigatory work product of a law enforcement officer or agency); and all investigative records and reports other than those possessed by a law enforcement officer or agency pertaining to the case. "Official records" does not include certain records or reports maintained by a public children services agency or the Department of Job and Family Services, or certain reports of an investigation maintained by the Inspector General.¹⁵

HISTORY

ACTION	DATE
Introduced	06-01-17

S0159-I-132.docx/ts

¹⁵ R.C. 2953.51.

