OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

S.B. 223
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Antani

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SUMMARY

- Allows for the sealing of criminal records pertaining to charges that were dismissed due to successful completion of an intervention plan under the "intervention in lieu of conviction" statute, when all of the following apply:
  - The person is charged with multiple offenses as a result of or in connection with the same act;
  - One, and only one, of the charges is a conviction for operating a vehicle while under the influence of alcohol, a drug of abuse, or both (OVI) or having physical control of a vehicle while under the influence of illicit drugs or alcohol; and
  - At least one year has elapsed since the charge or charges were dismissed due to successful completion of the intervention plan.
- Allows a clerk of court, upon request and in specified circumstances, to spend certain fees the court charged to provide for computerization of the court or clerk's office or computerized legal research services, or, with respect to a declared surplus of those funds, for other appropriate court technological expenses.

DETAILED ANALYSIS

Sealing criminal records – multiple charges arising from one act

New sealing authorization

The bill allows for the sealing of criminal records pertaining to charges dismissed due to successful completion of an intervention plan when: (1) a person is charged with multiple offenses as a result of or in connection with the same act, (2) the final disposition of one, and only one, of the charges is a conviction for operating a vehicle while under the influence of alcohol, a drug of abuse, or both (R.C. 4511.19 – hereafter, "OVI") or having physical control of a vehicle while under the influence (R.C. 4511.194 – hereafter, "the physical control offense"), (3) one of more of the charged offenses were dismissed due to the successful completion of an

intervention plan under the "intervention in lieu of conviction" (ILC) statute described below in "**Background: intervention in lieu of conviction**," and (4) at least one year has elapsed since the charge or charges were dismissed due to the successful completion of the plan. Consistent with current law, the bill does not allow the court to seal the record of conviction for OVI or the physical control offense. The bill specifies that the sealing is to be under the new sealing mechanism the bill enacts, described below in "**New sealing mechanism**" (that new sealing mechanism sets forth similar, but not identical language authorizing such a sealing).[1]

The provision described above creates an exception to the general rule under existing law that a record involving multiple charges as a result of or in connection with the same act may not be sealed under the Conviction Record Sealing Law[2] or the Not Guilty/Dismissed Charges/No Bill Record Sealing Law[3] 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 all the charges are eligible for sealing. The only existing exception to the rule is when the following conditions apply:[4]

- The final disposition of one, and only one, of the charges is an otherwise unsealable conviction for a motor vehicle offense, other than OVI or the physical control offense; and
- The records pertaining to all the other charges would be eligible for sealing under the Not Guilty/Dismissed Charge/No Bill Record Sealing Law in the absence of that conviction.

Under the existing exception, the court may seal the records pertaining to all the charges. The court may not seal only a portion of the records. However, a person who holds a commercial driver's license (CDL) or CDL temporary instruction permit may not have such records sealed.[5]

New sealing mechanism

Application for sealing

Separate from, but related to, the bill's new sealing authorization described above, the bill specifies that any person who is the defendant named in a complaint, indictment, or information containing multiple charges may apply to the court for an order to seal the person's official records in the case if the final disposition of one, and only one of the charges is an OVI or physical control offense conviction, and the remainder of the charged offenses were

[1] R.C. 2953.61(B)(2) and R.C. 2953.36(A)(2), which is not in the bill.

[2] R.C. 2953.32, not in the bill.

[3] R.C. 2953.52.

[4] R.C. 2953.61(A) and (B)(1).

[5] R.C. 2953.61(B)(1) and (C).

dismissed at least one year prior to the date of the application due to the successful completion of an intervention plan under the ILC statute. If this new authorization applies to a person, the person may apply to the court for the sealing order if the remainder of the charged offenses were dismissed at least one year prior to the date of the application due to the successful completion of the intervention plan.[6]

Court procedures after filing of application

Upon the filing of the application under the new mechanism, the court must set a date for a hearing and notify the prosecutor in the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the hearing date; any such objection must specify the reasons the prosecutor believes justify a denial of the application.[7]

The court must do each of the following regarding the application: (1) determine whether the complaint, indictment, or information in the case consists of several charges, one of which resulted in an OVI or physical control offense conviction, and whether the remainder of the charges were dismissed at least one year prior to the date of the application due to the defendant's successful completion of an intervention plan under the ILC statute, (2) determine whether criminal proceedings are pending against the person, (3) if the prosecutor has filed an objection as described above, consider the reasons against granting the application specified by the prosecutor in the objection, and (4) weigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records.[8]

If the court determines after complying with the duties described above that the complaint, indictment, or information in the case consists of several charges, one of which resulted in an OVI or physical control offense conviction, and the remainder of which were dismissed at least one year prior to the date of the application due to the successful completion of an intervention plan under the ILC statute; that no criminal proceedings are pending against the person; and that the interests of the person in having the records pertaining to the dismissed charges sealed are not outweighed by any legitimate governmental needs to maintain such records, the court must do all of the following:[9]

1. Order the clerk to create a subfile under the existing case number that contains only documents related to the case that are a record of the OVI or physical control offense conviction, with no reference to other charges that may be sealed or to an ILC, any record of the defendant's decision to waive counsel, and the incident tracking number associated with a corresponding set of fingerprint impressions;

[6] R.C. 2953.522(A).

[7] R.C. 2953.522(B)(1).

[8] R.C. 2953.522(B)(2).

[9] R.C. 2953.522(B)(3).

2. Issue an order directing that all official records pertaining to the case, other than those contained in the subfile, be sealed and that, except as described below in "**Court procedures upon issuance of sealing order, and duties of recipient public entities**" and to the extent of records contained in the subfile, the proceedings in the case be deemed not to have occurred; and

3. Order the clerk to remove the original case number from the searchable index and replace the original index reference with the new index reference of the subfile.

Current sealing mechanism

Application for sealing

Existing law provides that a person who is the defendant named in a dismissed complaint, indictment, or information may apply to the court for an order to seal the person's official records in the case, and provides procedures regarding the application.[10] The bill adds a provision specifying that an application permitted under the bill's new sealing authorization described above in "**New sealing authorization**" must include a proposed redacted version of all files associated with the case that are to be sealed under that provision.[11]

Court procedures after filing of application

Currently, upon the filing of the application, the court must set a date for a hearing and notify the prosecutor in the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the hearing date; any such objection must specify the reasons the prosecutor believes justify a denial of the application. The bill modifies this by specifying that the prosecutor also may object to the proposed redaction of the files associated with the case by filing such an objection, and that any such objection must specify any reason why the proposed redacted version of the files associated with the case does not accurately reflect the materials that may be sealed under the bill's new sealing authorization described above in "**New sealing authorization**."[12]

Currently, the court must do all of the following regarding the application (unchanged by the bill, except as indicated in (3)): (1) determine whether the complaint, indictment, or information in the case was dismissed and, if it was, whether it was dismissed with or without prejudice and, if dismissed without prejudice, whether the relevant statute of limitations has expired, (2) determine whether criminal proceedings are pending against the person, (3) if the prosecutor has filed an objection, consider the reasons against granting the application (and added by the bill, the reasons against any proposed redaction) specified by the prosecutor in the objection, and (4) weigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records.

[10] R.C. 2953.52.

[11] R.C. 2953.52(A)(1).

[12] R.C. 2953.52(B)(1).

Currently, if the court determines after complying with the provisions described above that the complaint, indictment, or information in the case was dismissed; that no criminal proceedings are pending against the person; and the interests of the person in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain the records, the court must issue an order directing that all official records pertaining to the case be sealed and that, subject to the exceptions described below in "**Court procedures upon issuance of sealing order, and duties of recipient public entities**," the proceedings in the case be deemed not to have occurred (a separate order must be issued to the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) regarding DNA records). The bill expands the currently required content of the sealing order so that an order entered with respect to records permitted to be sealed under the bill's new sealing authorization described above in "**New sealing authorization**" also must include redacted versions of all records associated with the case to be sealed or detailed instructions specifying how those records are to be redacted in a manner that preserves records of the case related to an OVI or physical control offense conviction that is not eligible to be sealed.[13]

Court procedures upon issuance of sealing order, and duties of recipient public entities

The bill modifies existing provisions that specify the duties of a court that issues a sealing order under the existing mechanism described above in "**Current sealing mechanism**," and the duties of public agencies that receive such an order, so that the provisions apply with respect to an order issued under that mechanism as modified by the bill and also apply with respect to an order issued under the new sealing mechanism described above in "**New sealing mechanism**." Under the bill (the provisions described in (1) to (3) are existing provisions expanded by the bill, the provision described in (4) is a new provision enacted by the bill, and the provision described in (5) is an existing provision that seemingly will cover orders issued under the new mechanism):[14]

1. The court must send notice of any order to seal official records issued under either such mechanism 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 separate DNA-related order must be sent to BCII's Superintendent).

2. A person whose official records have been sealed pursuant to an order issued under either such mechanism may present a copy of that order, and a written request to comply with it, to a public office or agency that has a record of the case that is the subject of the order. An order to seal official records issued under either such mechanism applies to every public office or agency that has a record of the subject case,

[13] R.C. 2953.52(B)(4) and (5).

[14] R.C. 2953.53.

regardless of whether it receives notice of the hearing on the application for the order to seal the records or receives a copy of the order to seal the records.

3. Upon receiving a copy of an order to seal official records issued under either such mechanism, or upon otherwise becoming aware of such an order that is applicable, a public office or agency must comply with the order and, if applicable, with the provisions described below in "**Specific law enforcement investigatory work product**," except that it 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.

4. A public office or agency that receives an order to seal records pursuant to the bill's new sealing authorization described above in "**New sealing authorization**" must comply with the order and seal those records as specified by the order, independent of a record of an OVI or physical control offense conviction that occurred in connection with the charges to be sealed. The office or agency must remove from online publication any document affected by the order. The office or agency must maintain unsealed records of the case related to the OVI or physical control offense conviction and must redact all references to the sealed charges from those records, in a manner consistent with the order.

5. A public office or agency also may maintain an index of sealed official records, access to which may not be afforded to any person other than the person with custody of the records. The sealed official records to which the index pertains may not be available to any person, except that they may be made available to: (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 involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement, or (c) a prosecuting attorney or assistant prosecuting attorney to determine a defendant's eligibility to enter a pre-trial diversion program.

Specific law enforcement investigatory work product

Existing law sets forth a mechanism under which, after the issuance of an order under the sealing mechanism described above in "**Current sealing mechanism**," law enforcement agencies, in specified limited circumstances, may share information contained in the records that is determined to be the agency's "specific investigatory work product" with other law enforcement agencies for a specified, authorized purpose. Release of information contained in the records in an unauthorized manner is a fourth degree misdemeanor. The bill makes these provisions apply with respect to sealing orders issued under the sealing mechanism described above in "**Current sealing mechanism**" as modified by the bill and the new sealing mechanism described above in "**New sealing mechanism**."[15]

[15] R.C. 2953.54.

Effects of a sealing order

The bill modifies existing provisions that specify the effects of a sealing order issued under the existing mechanism described above in "**Current sealing mechanism**" so that the provisions apply with respect to an order issued under that mechanism as modified by the bill and also apply with respect to an order issued under the new sealing mechanism described above in "**New sealing mechanism**." As modified under the bill to also cover orders issued under the modified current mechanism or the new mechanism:[16]

1. 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 any record that has been sealed under either such mechanism. If an inquiry is made in violation of this provision, the person whose official record was sealed may respond as if the arrest underlying the case to which the sealed records pertain and all other proceedings in that case did not occur, and the person whose record was sealed is not subject to any adverse action because of the arrest, the proceedings, or the person's response.
2. 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 department, agency, or other instrumentality of the state, or of any political subdivision, any information or other data concerning any arrest, complaint, indictment, information, trial, adjudication, or correctional supervision, the records of which have been sealed under either such mechanism is guilty of "divulging confidential information," a fourth degree misdemeanor. But the law provides an exception to this prohibition with respect to BCII and DNA information, in specified circumstances.

Application to previously dismissed charges

The bill specifies that the General Assembly intends that the Revised Code sections described above in "**New sealing authorization**," "**Current sealing mechanism**," and "**Court procedures upon issuance of sealing order, and duties of recipient public entities**," as amended by the bill's provisions, apply to any application for the sealing of a person's record on or after the bill's effective date, regardless of whether the charges subject to the application were dismissed prior to the bill's effective date.[17]

Clerk of court spending computerization fees

The bill allows a clerk of court, upon request and in specified circumstances, to spend certain fees the court charged for computerization of the court or clerk's office or computerized legal research services, or, with respect to a surplus of those funds, for other appropriate court technological expenses.

[16] R.C. 2953.55.

[17] Section 3.

Computerization of court or provision of computerized legal research services

Charging of fees

Currently, unchanged by the bill, a municipal court, county court, probate court judge, juvenile court judge (or the judges of the Cuyahoga County Juvenile Court), judge of a common pleas court domestic relations division, or common pleas court may determine that for the efficient operation of the court or division, additional funds are required to computerize the court or division, to make available computerized legal research services, or to do both. Upon making such a determination, the court, judge, or judges require the charging of one additional fee not to exceed $3 ($6, with respect to the common pleas court) on the filing of each cause of action or appeal of a specified nature, or other specified matter, and direct the clerk of the court to charge the fee.[18]

Disbursal of the funds collected

Currently, all fees collected as described above are paid to the county or city treasurer, depending upon the court. The treasurer places the money collected from the fees in a separate fund to be disbursed upon an order of the court, subject to an appropriation by the legislative authority responsible for operation of the court, or upon an order of the court, judge, or judges, subject to the court making an annual report available to the public listing the use of all such funds, in an amount not greater than the actual cost to the court of computerizing the court, procuring and maintaining computerized legal research services, or both (the probate court provision and the Cuyahoga Juvenile Court provision do not include the appropriation or report requirements).

The bill expands the authorized uses of the fees so that, in addition to the currently authorized use, the fees in the separate fund also may be disbursed upon a request from the clerk of the court, subject to an appropriation by the legislative authority responsible for operation of the court or subject to the clerk making an annual report available to the public listing the use of all such funds, in an amount not greater than the actual cost to the court of computerizing the court, procuring and maintaining computerized legal research services, or both (the probate court provision and the Cuyahoga County Juvenile Court provision do not include the appropriation or report requirements).[19]

Surplus funds

If the municipal court, county court, probate court, juvenile court, common pleas court with respect to a domestic relations division, or common pleas court determines that the funds in the fund described above are more than sufficient to satisfy the purpose for which the

[18] R.C. 1901.261(A)(1), 1907.261(A)(1), 2101.162(A)(1), 2151.541(A)(1), 2153.081(A)(1), 2301.031(A)(1), and 2303.201(A)(1).

[19] R.C. 1901.261(A)(2), 1907.261(A)(2), 2101.162(A)(2), 2151.541(A)(2), 2153.081(A)(2), 2301.031(A)(2), and 2303.201(A)(2).

additional fee was imposed (i.e., the computerization of the court or provision of computerized legal research services), the court may declare a surplus in the fund and, subject to an appropriation by the legislative authority responsible for operation of the court or to the court making an annual report available to the public listing the use of all such funds, the court may expend those surplus funds for other appropriate technological expenses of the court (the probate court provision and the Cuyahoga County Juvenile Court provision do not include the appropriation or report requirements).

The bill expands the authorized uses of the surplus funds so that, in addition to the currently authorized use, the clerk of the court (or with respect to a domestic relations division, the clerk of the division) may expend those surplus funds subject to an appropriation by the legislative authority, or upon a request from the clerk of the court, subject to the clerk making an annual report available to the public listing the use of all such funds, the court may expend those surplus funds, for other appropriate technological expenses of the court (the probate court provision and the Cuyahoga County Juvenile Court provision do not include the appropriation or report requirements).[20]

Computerization of clerk's office

Charging and disbursal of fees

Currently, unchanged by the bill, a municipal court, county court, probate court, juvenile court judge if serving as the clerk of the court (or the judges of the Cuyahoga County Juvenile Court), juvenile or domestic relations judges if the clerk of the common pleas court is not serving as the clerk of the division, or common pleas court may determine that, for the efficient operation of the court or division, additional funds are required to computerize the office of the clerk of the court or division. Upon making such a determination, the court may charge an additional fee not to exceed $10 ($20, with respect to the common pleas court) on the filing of each cause of action or appeal, on the filing, docketing, and endorsing of each certificate of judgment, or on the docketing and indexing of each aid in execution or petition to vacate, revive, or modify of a specified nature, or other specified matter. Subject to a limited exception regarding the issuance of general obligation bonds, all money collected under the fee is paid to the county or city treasurer, depending upon the court. The treasurer places the funds from the fees in a separate fund to be disbursed, upon an order of the court or the judges of the juvenile or domestic division and subject to an appropriation by the legislative authority responsible for operation of the court, in an amount no greater than the actual cost of the computer systems for the office of the clerk of the court.

Except with respect to juvenile courts other than the Cuyahoga County Juvenile Court, the bill expands the authorized disbursal of the funds so that, in addition to the currently authorized disbursal, the treasurer is to disburse them upon a request from the clerk of the court or division and subject to an appropriation by the legislative authority responsible for

[20] R.C. 1901.261(A)(3), 1907.261(A)(3), 2101.162(A)(3), 2151.541(A)(3), 2153.081(A)(3), 2301.031(A)(3), and 2303.201(A)(3).

operation of the court, in an amount no greater than the actual cost of the computer systems for the office of the clerk of the court. The bill does not expand the authorized disbursal with respect to juvenile courts other than the Cuyahoga County Juvenile Court.[21]

Background: intervention in lieu of conviction

As a condition of record sealing, the bill requires that the person had one or more charges dismissed due to successful completion of an intervention plan under the ILC statute. Under that statute, subject to numerous specified exceptions, a person who is charged with a criminal offense may apply for ILC. Upon the request, the court generally may reject the request without a hearing, but if the court elects to consider the request, it conducts a hearing to determine the person's eligibility and stays all criminal proceedings. When a court grants a defendant's request for ILC, it places the person under the control and supervision of an appropriate local or state probation, parole, or court services agency, as if the person was subject to a community control sanction, and establishes an intervention plan for the person. The intervention plan, at a minimum, must require the offender to abstain from illegal drugs and alcohol for at least one year, but not more than five years, to participate in treatment and recovery support services, and to submit to random testing for drug and alcohol use, and it may include other terms and conditions set by the court. If the person successfully completes the intervention plan, the court must dismiss the charges against the person, the successful completion is without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime, and the court may order the sealing of records related to the offense in question, as a dismissal of the charges, in the manner provided in the Not Guilty/Dismissed Charges/No Bill Record Sealing Law.[22]

HISTORY

Action	Date
Introduced	09-02-21

S0223-I-134/ks

[21] R.C. 1901.261(B)(1), 1907.261(B)(1), 2101.162(B)(1), 2151.541(B)(1), 2153.081(B)(1), 2301.031(B)(1), and 2303.201(B)(1).

[22] R.C. 2951.041(A), (D), and (E), not in the bill.