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Bill Analysis
Legislative Service Commission

H.B. 322

123rd General Assembly
(As Introduced)

Reps. Buehrer, Allen, Barrett, Brading, Calvert, Carey, Cates, Clancy, Corbin, Coughlin, Damschroder, Evans, Flannery, Ford, Gardner, Goodman, Grendell, Haines, Harris, Hartnett, Healy, Hollister, Krebs, Krupinski, Maier, Mottley, O'Brien, Olman, Opfer, Padgett, Patton, Perry, Roman, Schuler, Sulzer, Taylor, Trakas, Van Vyven, Verich, Vesper, Williams, Willamowski, Winkler

BILL SUMMARY

- Expands the list of persons who may inspect sealed conviction and bail forfeiture records to permit the following persons to inspect the sealed records: (1) any sheriff, other administrator of a jail, or authorized employee of a jail, as part of a background investigation of a person who applies for employment with the sheriff or other administrator of the jail as an employee who works in the jail, (2) the administrator or an authorized employee of a detention home or center for delinquent children that is under the direction or supervision of the juvenile court, another public authority, or a private agency and that is approved by the juvenile court, as part of a background investigation of a person who applies for employment in the detention home or center, and (3) the administrator or an authorized employee of a school, a camp, an institution, or another facility that is operated for the care of delinquent children by the county, by a district organized under the Juvenile Laws to operate a facility of that type, or by a private agency or organization and that is authorized and qualified to provide the care, treatment, or placement required, as part of a background investigation of a person who applies for employment in the school, camp, institution, or facility.

CONTENT AND OPERATION

Inspection of the sealed records

Existing law

Existing law, unchanged by the bill, authorizes a "first offender" to apply to a court for the sealing of the offender's conviction record. Existing law, also unchanged by the bill, additionally permits certain persons who have forfeited bail to apply to a court for the sealing of the record in the case. These procedures are discussed more fully below under "Background--sealing the record of a first offense or bail forfeiture."

Under existing law, inspection of records included in an order sealing a conviction record or the record in a case in which a person has forfeited bail may be made only by the following persons or for the following purposes (sec. 2953.32(D)):

(1) By a law enforcement officer or prosecutor, or the assistants of either, to determine whether the nature and character of the offense with which a person is to be charged would be affected by virtue of the person's previously having been convicted of a crime;

(2) By the parole or probation officer of the person who is the subject of the records, for the exclusive use of the officer in supervising the person while on parole or probation and in making inquiries and written reports as requested by the court or Adult Parole Authority;

(3) Upon application by the person who is the subject of the records, by the persons named in the application;

(4) By a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;

(5) By a prosecuting attorney or the prosecuting attorney's assistants to determine a defendant's eligibility to enter a pre-trial diversion program;

(6) By any law enforcement agency or any authorized employee of a law enforcement agency or by the Department of Rehabilitation and Correction as part of a background investigation of a person who applies for employment with the agency as a law enforcement officer or with the Department as a corrections officer;

(7) By any law enforcement agency or any authorized employee of a law enforcement agency, for specified purposes, and in a specified manner;

(8) By the Bureau of Criminal Identification and Investigation (BCII) or any authorized BCII employee for the purpose of providing information to a board or person pursuant to a criminal records check of a person seeking specified contracts for or employment involving the care of children or older adults;

(9) By BCII or any authorized BCII employee for the purpose of performing a criminal records check on a person to whom a certificate under the Peace Officer Training Law is to be awarded.

Operation of the bill

The bill expands the list of persons who may inspect sealed conviction and bail forfeiture records. Under the bill, inspection of the sealed records included in an order sealing conviction or bail forfeiture records also may be made by the following persons (sec. 2953.32(D)(6), (7), and (8)):

(1) By any sheriff, other administrator of a jail, or authorized employee of a jail, as part of a background investigation of a person who applies for employment with the sheriff or other administrator of the jail as an employee who works in the jail;

(2) By the administrator or an authorized employee of a detention home or center for delinquent children that is under the direction or supervision of the juvenile court, another public authority, or a private agency and that is approved by the juvenile court, as part of a background investigation of a person who applies for employment in the detention home or center;

(3) By the administrator or an authorized employee of a school, a camp, an institution, or another facility that is operated for the care of delinquent children by the county, by district organized under the Juvenile Laws to operate such a facility, or by a private agency or organization and that is authorized and qualified to provide the care, treatment, or placement required, as part of a background investigation of a person who applies for employment in the school, camp, institution, or facility.

Background--sealing the record of a first offense or bail forfeiture

Application

Generally, a "first offender" may apply to the sentencing court if convicted in Ohio, or to a court of common pleas if convicted in another state or in a federal

court, for the sealing of the conviction record. The offender may apply at the expiration of three years after the offender's final discharge if convicted of a felony, or at the expiration of one year after the offender's final discharge if convicted of a misdemeanor. (See **COMMENT** 1 and 2.)

Any person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture may apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of the record of the case. Generally, the application may be filed at any time after the expiration of one year from the date on which the bail forfeiture was entered upon the minutes of the court or the journal, whichever entry occurs first.

Upon the filing of an application, the applicant, unless indigent, must pay a fee of \$50. The court must pay \$30 of the fee into the state treasury. It must pay \$20 of the fee into the county general revenue fund if the sealed conviction or bail forfeiture was pursuant to a state statute, or into the general revenue fund of the municipal corporation involved if the sealed conviction or bail forfeiture was pursuant to a municipal ordinance.

Upon the filing of an application, the court must set a date for a hearing and notify the prosecutor for 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 date set for the hearing. In the objection, the prosecutor must specify the reasons for believing a denial of the application is justified. The court must direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant. (Sec. 2953.32(A), (B), and (C)(3).)

Duties of the court

Upon receiving an application, the court must do each of the following (sec. 2953.32(C)(1)):

- (1) Determine whether the applicant is a first offender or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case;
- (2) Determine whether criminal proceedings are pending against the applicant;
- (3) If the applicant is a first offender who applies for the sealing of the record of a conviction (as opposed to a bail forfeiture), determine whether the applicant has been rehabilitated to the satisfaction of the court;

(4) If the prosecutor has filed an objection to the application, consider the reasons against granting the application specified by the prosecutor in the objection;

(5) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction sealed against the legitimate needs, if any, of the government to maintain those records.

Sealing the record and effect of sealing the record

After complying with the preceding requirements, if the court determines that the applicant is a first offender or the subject of a bail forfeiture, that no criminal proceeding is pending against the applicant, and that the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed are equal or greater in weight to any legitimate governmental needs to maintain those records, and, if applicable, that the rehabilitation of the applicant has been attained to the satisfaction of the court, the court must order all official records pertaining to the case sealed and all index references to the case deleted. In the case of bail forfeitures, the court must dismiss the charges in the case. The proceedings in the case are considered not to have occurred, and the conviction or bail forfeiture of the person who is the subject of the proceedings generally must be sealed. Generally, an order to seal the record of a person's conviction restores to the person who is the subject of the order all rights and privileges not otherwise restored by termination of sentence or probation or by final release on parole. In any application for employment, license, or other right or privilege, any appearance as a witness, or generally any other inquiry, a person may be questioned only with respect to convictions not sealed, bail forfeitures not expunged, and bail forfeitures not sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered. (Sec. 2953.32(C) and sec. 2953.33--not in the bill.)

If the person is convicted of a subsequent offense, the sealed record of prior conviction or bail forfeiture may be considered by the court in determining the sentence or other appropriate disposition, including the relief provided for under the Sealing of Records Laws. When the nature and character of the offense with which a person is to be charged would be affected by the information, it may be used for the purpose of charging the person with an offense. In any criminal proceeding, proof of any otherwise admissible prior conviction may be introduced and proved, notwithstanding the fact that for the conviction an order of sealing previously was issued. (Sec. 2953.32(C), (D), and (E).)

The person or governmental agency, office, or department that maintains sealed records pertaining to convictions or bail forfeitures that have been sealed

may maintain a manual or computerized index to the sealed records. The index must contain only the name of, and alphanumeric identifiers that relate to, the persons who are the subject of the sealed records, the word "sealed," and the name of the person, agency, office, or department that has custody of the sealed records. The index must not contain the name of the crime committed. The index must be made available by the person who has custody of the sealed records only for the purposes set forth in the Sealing of Records Laws. (Sec. 2953.32(F).)

Use for permanent exclusion of student

Notwithstanding any provision that requires otherwise, 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 is permitted 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. An order issued to seal the record of a conviction does not revoke the adjudication order of the Superintendent of Public Instruction to permanently exclude the individual who is the subject of the sealing order. An order to seal the record of a conviction of an individual may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who is the subject of the sealing order be revoked. Generally, any school employee in possession of or having access to the sealed conviction records of an individual that were the basis of a permanent exclusion of the individual is subject to the prohibition against divulging the sealed records. (Sec. 2953.32(G).)

COMMENT

1. "First offender" means anyone who has been convicted of an offense in Ohio or any other jurisdiction, and who previously or subsequently has not been convicted of the same or a different offense in Ohio or any other jurisdiction. When two or more convictions result from or are connected with the same act, or result from offenses committed at the same time, they are counted as one conviction. For purposes of this definition, a conviction for a minor misdemeanor or a conviction for a violation of specified traffic laws is not a previous or subsequent conviction. (Sec. 2953.31(A)--not in the bill.)

2. When a person is charged with two or more offenses as a result of or in connection with the same act and at least one of the charges has a final disposition that is different than the final disposition of the other charges, the person may not apply to the court for the sealing of the person's record in any of the cases until such time as the person would be able to apply to the court and have all of the

records in all of the cases pertaining to those charges sealed. (Sec. 2953.61--not in the bill.)

HISTORY

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