Lisa Sandberg *Legislative Service Commission*

H.B. 716

123rd General Assembly
(As Introduced)

Reps. DePiero, Ford, Willamowski, Trakas, Pringle, Goodman, Allen, Barrett, Aslanides, Flannery, Stevens, Sullivan, Jerse, Taylor, Roman

BILL SUMMARY

- Requires notification of the victim of the act or offense or that victim's family if a person who has been adjudicated a delinquent child or a juvenile traffic offender, who has been arrested and charged with being a delinquent child or a juvenile traffic offender and is adjudicated not guilty of the charges or the charges in the case are dismissed, who has been convicted of a criminal offense and is a first offender, who has been convicted of a misdemeanor offense in a bail forfeiture case, or who has been found not guilty in a criminal case or has had criminal charges dismissed applies for the sealing of the person's record regarding the adjudication, the conviction or the bail forfeiture or applies for the expungement of the person's record in the juvenile case in which the person is adjudicated not guilty or the charges are dismissed.

- Permits the victim of the offense or that victim's family to object to the granting of the application for the sealing of the criminal offender's record of conviction or bail forfeiture or of the person's record in the case in which the person was found not guilty or the charges were dismissed, by filing an objection with the court prior to the date of the hearing, and requires the court to consider any objection so filed in making its decision on the application.

CONTENT AND OPERATION

Sealing or expunging of juvenile record after adjudication

Existing law

R.C. 2151.358 requires the Department of Youth Services and any other institution or facility that unconditionally discharges a person who has been adjudicated a delinquent child, an unruly child, or a juvenile traffic offender to immediately give notice of the discharge to the court that committed the person. Two years after the termination of any order made by the court or two years after the unconditional discharge of a person from the Department of Youth Services or another institution or facility to which the person may have been committed, the court that issued the order or committed the person must do one of the following: (1) if the person was adjudicated an unruly child, order the record of the person sealed, (2) if the person was adjudicated a delinquent child or a juvenile traffic offender, either order the record of the person sealed or send the person notice of the person's right to have that record sealed. (R.C. 2151.358(B) and (C).)

At any time after the two-year period described above has elapsed, any person who has been adjudicated a delinquent child or a juvenile traffic offender may apply to the juvenile court for an order to seal the person's record. The court must hold a hearing on each application within 60 days after the court receives the application. Notice of the hearing on the application must be given to the prosecuting attorney and to any other public office or agency known to have a record of the prior adjudication. If the court finds that the rehabilitation of the person who was adjudicated a delinquent child or a juvenile traffic offender has been attained to a satisfactory degree, the court may order the record of the person sealed. If a court orders the sealing of a person's record, all proceedings in the case resulting in the adjudication are deemed never to have occurred, all index references to the case and the person must be deleted, the person and the court may reply upon any inquiry that no record exists with respect to the person, and the sealed records may be inspected only with court permission upon application of the subject person. (R.C. 2151.358(D) and (E).)

Operation of the bill

The bill requires that a juvenile court give notice of a hearing on an application for an order to seal the record of a person adjudicated a delinquent child or a juvenile traffic offender to the victim of the act that is the basis of the adjudication or, if the victim is deceased, to that victim's family. This notice is in addition to existing law's required notice to the prosecuting attorney and other

public offices and agencies known to have a record of that adjudication. (R.C. 2151.328(D).)

Expungement of record for person charged with being a delinquent child or a juvenile traffic offender who is adjudicated not guilty or has the charges dismissed

Existing law

Any person who has been arrested and charged with being a delinquent child or a juvenile traffic offender and who is adjudicated not guilty of the charges in the case or has the charges in the case dismissed may apply to the juvenile court for an expungement of the record in the case. The application may be filed at any time after the person is adjudicated not guilty or the charges against the person are dismissed. The court must give notice to the prosecuting attorney of any hearing on the application. The court also may initiate the expungement proceedings on its own motion.

If the court determines that the charges against the person were dismissed or that the person was adjudicated not guilty in the case, it must order that the records of the case be expunged and that the proceedings in the case be deemed never to have occurred. The law provides rules for the destruction of references to and records of the case and specifies that, after an expungement order is issued, the court must and the person may reply that no record of the case with respect to the person exists. (R.C. 2151.358(F).)

Operation of the bill

The bill expands the existing notification requirement to also require a juvenile court to give notice of any hearing on an application to expunge such a record to the victim of the act that is the basis of the "adjudication" (this probably should refer to "charges") or, if the victim is deceased, to that victim's family (R.C. 2151.358(F)).

Sealing of record of first offense or regarding bail forfeiture

Application and notice

Existing law. Under R.C. 2953.32, at the expiration of a specified period of time after final discharge, a "first offender" (see below) may apply to the sentencing court if convicted in this state, or to a court of common pleas if convicted in another state or in a federal court, for the sealing of the offender's conviction record. Upon the filing of an application for the sealing of a conviction record or the record in a bail forfeiture case, the court must set a date for a hearing

and must 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. The prosecutor must specify in the objection the reasons for believing a denial of the application is justified. (R.C. 2953.32(A)(1) and (B).)

As used in this provision, "first offender" means anyone who has been convicted of an offense in this state or any other jurisdiction and who previously or subsequently has not been convicted of the same or a different offense in this state 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. When two or three convictions result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, they are counted as one conviction, provided that a court may decide that it is not in the public interest for the two or three convictions to be counted as one conviction. (R.C. 2953.31(A).)

Existing law also provides that 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. 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. The hearing and prosecutor objection provisions described above regarding application for the sealing of conviction records also apply regarding this type of application. (R.C. 2953.32(A)(2) and (B).)

Operation of the bill. The bill adds a requirement that the court, upon the filing of an application for the sealing of a conviction record or the record in a bail forfeiture case and in addition to the existing notification it must give to the prosecutor, also must notify the victim of the offense that is the basis of the conviction or, if the victim is deceased, the family of the victim of that offense of the hearing on the application. The bill also permits the victim of the offense or the family of the victim of the offense to object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The victim or the victim's family must specify in the application the reasons for believing a denial of the application is justified. (R.C. 2953.32(B)(2).)

Duties of the court when considering an application for the sealing of a first offender's record or the record in a bail forfeiture case

Existing law. When an application for the sealing of a conviction record or the record in a bail forfeiture case is filed, the court must do each of the following (R.C. 2953.32(C)):

(1) Determine whether the applicant is a first offender or whether the bail forfeiture 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 applied as a first offender, determine whether the applicant has been rehabilitated to the satisfaction of the court;

(4) If the prosecutor has filed an objection, 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.

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 not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of an applicant who is a first offender 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 and, in the case of bail forfeitures, must dismiss the charges in the case. Once sealed, the records may be inspected or used only in very limited circumstances, as specified by law. (R.C. 2953.32(C)(2) and (D).)

Operation of the bill. The bill expands the court's duties specified under existing law to also require the court, if the victim of the offense or the family of the victim of the offense has filed an objection to the sealing of a conviction record, to consider the reasons against granting the application specified by the victim or the victim's family in the objection (R.C. 2953.32(C)(1)(e)).

Sealing of record of person found not guilty of a crime, named in a dismissed complaint, or against whom a no bill is entered

Application and notice

Existing law. R.C. 2953.52 allows a person who is found not guilty of an offense by a jury or a court, who is the defendant named in a dismissed complaint, indictment, or information, or against whom a no bill is entered by a grand jury, upon the expiration of a specified period of time, to apply to the court for an order to seal the person's official records in the case. Upon the filing of an application the court must set a date for a hearing and must 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 date set for the hearing. The prosecutor must specify in the objection the reasons the prosecutor believes justify a denial of the application. (R.C. 2953.52(A) and (B)(1).)

Operation of the bill. The bill adds a requirement that the court, upon the filing of an application for the sealing of a person's official records in a case described under "***Existing law***," above, and in addition to the existing notification it must give to the prosecutor, also must notify the victim of the offense that is the basis of the involved records or, if the victim is deceased, the family of the victim of the offense of the hearing on the application. The victim or the victim's family may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The victim or the victim's family must specify in the objection the reasons for believing a denial of the application is justified. (R.C. 2953.52(B)(2).)

Duties of the court when considering application for sealing a person's record who is found not guilty, is the defendant named in a dismissed complaint, or against whom a no bill is entered

Existing law. When an application for the sealing of a person's record is filed as described above in "***Existing law***," the court must do each of the following (R.C. 2953.52(B)(2)):

(1) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed, or a no bill was returned in the case and a period of two years or a longer period has expired from the date of the report to the court of that no bill by the foreman or deputy foreman of the grand jury;

(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 specified by the prosecutor in the objection;

(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.

If the court determines that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed, or that a no bill was returned in the case and that the appropriate period of time has expired from the date of the report to the court of the no bill by the foreman or deputy foreman of the grand jury; 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 such records, the court must issue an order directing that all official records pertaining to the case be sealed and that, in general, the proceedings in the case be deemed not to have occurred. Once sealed, the records are available only in very limited circumstances, as specified by law (R.C. 2953.52(B)(3) and R.C. 2953.53--not in the bill).

Operation of the bill. The bill expands the court's duties specified under existing law to also require the court, if the victim of the offense or the family of the victim of the offense has filed an objection to the sealing of the records to consider the reasons against granting the application specified by the victim or the victim's family in the objection (R.C. 2953.52(B)(3)(d)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-22-00	p. 2015

H0716-I.123/nlr