



Sub. S.B. 13

123rd General Assembly
(As Reported by H. Criminal Justice)

Sen. **Blessing**

Reps. **Logan, Myers, Taylor, Callender, Jones**

BILL SUMMARY

- Modifies the definition of "first offender" that designates who is eligible to have criminal conviction records sealed under the Criminal Conviction Records Sealing Law to also include, in certain circumstances, offenders who have two or three convictions resulting from the same charges, guilty plea, or official proceeding and resulting from related criminal acts that were committed within a three-month period.
- Permits a court in which an application is filed requesting the sealing of criminal conviction records based on the modification described in the preceding paragraph to determine that it is not in the public interest for the two or three convictions to be counted as one conviction and, as a result, to deny the application.
- Excludes from the Criminal Conviction Records Sealing Law all convictions of an offense of violence when the offense is a misdemeanor of the first degree or a felony, an offense of which the victim was under 18 years of age when the offense is a misdemeanor of the first degree or a felony, or a felony of the first or second degree.

CONTENT AND OPERATION

Offenders who are authorized to request sealing of criminal conviction records and bail forfeitures

Existing law

Existing law generally permits any person who has been convicted of an offense in Ohio or in 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 (defined as a "first offender"), to apply, in accordance with specified procedures described below, for the sealing of the person's criminal conviction record. For purposes of the conviction record sealing provisions: (1) 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 offense, and (2) a conviction of a minor misdemeanor, or a conviction of a state or local traffic offense under a provision of R.C. Chapter 4511., 4513., or 4549. or under a substantially similar municipal ordinance, other than a violation of R.C. 4511.19, 4511.192, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, or 4549.07, a violation of R.C. 4549.41 to 4549.46, or a violation of a municipal ordinance substantially similar to any of those sections, is not considered a "previous or subsequent conviction." (R.C. 2953.31.)

The conviction record sealing provisions do not apply to a conviction that subjects the offender to a mandatory prison term, specified sex offense convictions, or specified state or local traffic offense convictions and bail forfeitures in traffic cases (R.C. 2953.36).

Operation of the bill

The bill modifies the existing definition of "first offender" that designates who is eligible to have criminal conviction records sealed, as described above, to specify that, 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" (see below), 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 to be counted as one conviction, provided that a court may decide as described below in "**Procedures to obtain the sealing of criminal conviction records and bail forfeitures**" that *it is not in the public interest for the two or three convictions to be counted as one conviction*. If a court so determines, the offender in question is not a first offender and is not eligible to have his or her criminal conviction records sealed. (R.C. 2953.31(A).) An "official proceeding" is any proceeding before a legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, and includes any proceeding before a referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with an official proceeding (R.C. 2953.31(E) by reference to R.C. 2921.01, which is not in the bill).

The bill expands the existing provision that specifies certain categories and types of convictions to which the conviction records sealing provisions never apply. Under the bill, in addition to the categories and types of offenses specified

under existing law, the conviction record sealing provisions also do not apply to convictions of an offense of violence when the offense is a misdemeanor of the first degree or a felony, convictions of an offense in circumstances in which the victim of the offense was under 18 years of age when the offense is a misdemeanor of the first degree or a felony, or convictions of a felony of the first or second degree. (R.C. 2953.36.)

Procedures to obtain sealing of criminal conviction records and bail forfeitures

Existing law

Generally, a first offender may apply to the sentencing court or, if the conviction was in a court of another state or a federal court, to any court of common pleas for the sealing of the conviction record *upon the expiration of three years after final discharge if convicted of a felony or upon the expiration of one year after final discharge if convicted of a misdemeanor*. A person who was arrested for a misdemeanor offense and who effected a bail forfeiture may apply to the court in which the case was pending when bail was forfeited for the sealing of the record of the case, *at any time after the expiration of one year from the date on which the bail forfeiture was entered*. Unless indigent, the applicant must pay a \$50 fee.

Upon the filing of the application, the court must conduct a hearing in accordance with specified procedures. One of the things the court must determine is whether the applicant is a first offender or whether the applicant and the prosecutor agreed to the bail forfeiture. The prosecutor for the case must be notified of, and may participate in, the hearing. 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, that the applicant's interests in having the conviction or bail forfeiture records sealed are not outweighed by any legitimate governmental needs to maintain the records, and that the rehabilitation of a first offender applicant has been attained to its satisfaction, the court *generally 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. The proceedings in the case are considered not to have occurred, and the person's conviction or bail forfeiture must be sealed. (R.C. 2953.32(A) to (C).)

Operation of the bill

The bill modifies the procedures that apply regarding the determination of whether an application requesting the sealing of criminal conviction records should be granted. Under the bill, if an applicant applies as a first offender and has two or three convictions that 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, in making its determination as to whether the offender is a first offender, the court *initially must determine whether it is not in the public interest for the two or three convictions to be counted as one conviction*. If the court determines that it is not in the public interest for the two or three convictions to be counted as one conviction, the court must determine that the applicant is not a first offender. If the court does not make that determination, the court must determine that the offender is a first offender. If the court determines that the offender is a first offender, the existing procedures described above under "Existing law" apply regarding the determination as to whether the application for sealing should be granted. (R.C. 2953.32(C)(1).)

Protections afforded when records are sealed

Existing law, unchanged by the bill, provides certain protections when criminal conviction records are sealed.

When the records are sealed, inspection of the sealed records included in the order may be made only by specified persons for limited, specified purposes. Among the permitted persons and uses are inspection by (R.C. 2953.32(D)): (1) any law enforcement officer or prosecutor, or their assistants, to determine the nature and character of any subsequent charges to be filed against the person, (2) the person's parole or probation officer for use in supervising the person or in making authorized inquiries and reports, (3) any persons named in an application made by the person who is the subject of the records, (4) a law enforcement officer involved in the case, for use in the defense of a civil action arising out of that involvement, (5) a prosecuting attorney or an assistant, to determine the person's eligibility for a pre-trial diversion program under R.C. 2935.36, (6) any law enforcement agency or employee 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 authorized employee to determine the disposition and use of investigatory work product under R.C. 2953.321, and (8) by the Bureau of Criminal Identification and Investigation or an authorized employee for the purpose of providing information to a board or person pursuant to the criminal records check provisions contained in R.C. 109.57(F) and (G) or in R.C. 109.77.

Additionally, when the nature and character of the offense with which a person is to be charged would be affected by the sealed information, it may be used for charging the person, and, in any criminal proceeding, proof of any

otherwise admissible prior conviction may be introduced and proved even if a sealing order was issued for the prior conviction. Upon conviction of a subsequent offense, the sealed records may be considered by the court in determining the sentence or other disposition to impose. (R.C. 2953.32(C)(2), last paragraph of (D), and (E).)

A person or governmental entity that maintains sealed conviction or bail forfeiture records may maintain an index to the sealed records, to be used only by authorized persons and for authorized purposes. (R.C. 2953.32(F).)

Except in certain specified education-related contexts, an order to seal a person's conviction record restores the subject person to all rights and privileges not otherwise restored by termination of sentence or probation or by final release on parole. Except in relation to use in evidence in a subsequent criminal proceeding, in any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, a person may be questioned only with respect to convictions or bail forfeitures not sealed under the above-described provisions, unless the question bears a direct and substantial relationship to the position for which the person is being considered. (R.C. 2953.33--not in the bill.)

Except when the release or dissemination is authorized under law, as described above, any state or local government officer or employee who releases or otherwise disseminates or makes available for any purpose involving employment, bonding, or licensing in connection with any business, trade, or profession to any person, or to any state or local government entity, any information or other data concerning any arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision the records with respect to which the officer or employee had knowledge of were sealed by an order issued under the above-described provisions, is guilty of divulging confidential information, a misdemeanor of the fourth degree. Any person who uses, disseminates, or otherwise makes available any index prepared pursuant to R.C. 2953.32(F), other than as permitted by law, is guilty of a misdemeanor of the fourth degree. (R.C. 2953.35--not in the bill.)

COMMENT

Separate provisions contained in R.C. 2953.51 to 2953.55 pertain to the sealing of records after a person is found not guilty of a crime, criminal charges against a person are dismissed, or a grand jury enters a no bill against a person. In addition, separate provisions contained in R.C. 2151.358 pertain to the sealing or expungement of records related to "juvenile offenders." These provisions are not discussed in this analysis and are not affected by the bill.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 27
Reported, S. Judiciary	05-11-99	p. 405
Passed Senate (33-0)	05-12-99	p. 421
Reported, H. Criminal Justice	10-13-99	p. 1267

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