



H.B. 137

126th General Assembly
(As Introduced)

Reps. Gilb, Willamowski, Latta, Wagoner, McGregor, Fessler

BILL SUMMARY

- Eliminates a Juvenile Court's authority to expunge the records of alleged unruly or delinquent acts or juvenile traffic offenses.
 - Revises the procedure by which a Juvenile Court may seal the records of alleged and adjudicated unruly and delinquent children and adjudicated juvenile traffic offenders.
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CONTENT AND OPERATION

Records which a person may seek to have sealed or expunged

Current law

Under current law, the Juvenile Court must seal the record of a person adjudicated to be an unruly child. If a person has been adjudicated to be a delinquent child or a juvenile traffic offender, the Juvenile Court may generally seal those records. Persons who have been found delinquent for committing aggravated murder, murder, rape, sexual battery, or gross sexual imposition may not have those records sealed. Current law also permits a court to expunge the records of a person who was arrested or taken into custody but was found not guilty of the charges by the Juvenile Court or who had the charges against them dismissed by the Juvenile Court. (R.C. 2151.358(C), (D), and (F).)

The bill

The bill eliminates the Juvenile Court's ability to "expunge" those Juvenile Court records (but the sealed records are destroyed after a specified period of time, see below). Instead, most juvenile records may now be sealed by the Juvenile Court if certain procedures are followed. The bill does not change the current restrictions on sealing records for delinquency cases.

In addition to the situations in which a person may seek sealing or expungement of records under current law, the bill permits a court to seal a person's record in two other circumstances. First, a person may seek to have the person's record sealed if the person was arrested or taken into custody for an alleged delinquent or unruly act but not charged by a formal complaint and did not appear in front of the court. Second, a person who did appear in court for an alleged delinquent or unruly act, but whose case was informally resolved without the filing of a formal complaint, may also seek to have the person's records sealed under the bill. Current law makes no provisions for the sealing or expunging of records in these situations. (R.C. 2151.358(B) and (D).)

Procedures for sealing or expunging records

Current law

Current law has different procedures depending on whether the record is in an unruly, delinquent, or juvenile traffic offense case. Additionally, the procedures for sealing are different than those for expungement.

Under existing law, when a person has been adjudicated an unruly child, the court must order the record of the person to be sealed two years after the termination of any court order resulting from the case or two years after the person is unconditionally discharged from an institution to which the person may have been committed. (R.C. 2151.358(C)(1)(a)(i).)

If a person is adjudicated a delinquent child (subject to the restrictions noted above) or a juvenile traffic offender, the court may either order the record sealed or may send notice to the person of their right to have the record sealed. The person may then apply to have the record sealed. These proceedings may take place any time after two years after the termination of any court order resulting from the case or two years after the person is unconditionally discharged from an institution to which the person may have been committed. If the court chooses to send notice to the person, the notice must be sent via certified mail, return receipt requested. (R.C. 2151.358(C)(1)(a)(ii) and (2) and (D).)

If the person was arrested or taken into custody and charged with being a delinquent child or a juvenile traffic offender, but is adjudicated not guilty or the charges are dismissed, the person may apply to have the record expunged. The person may apply any time after the adjudication of not guilty or the charges being dismissed. The court is required to give notice to the prosecuting attorney if there will be a hearing on the application. The court may also initiate expungement proceedings on its own motion.

If the person was arrested or taken into custody and charged with being an unruly child and is either adjudicated not guilty or has the charges dismissed, the person may apply to the court for an expungement. If the person does not file for an expungement, the court must initiate expungement proceedings on its own motion. (R.C. 2151.358(F).)

The bill

Initiating the proceeding. If a person was charged and a complaint was filed alleging the person to be an unruly or delinquent child (but not a juvenile traffic offender), if the court dismisses the case or finds the person not to be an unruly or delinquent child, the court may move and the person may apply to have the records sealed immediately. If a person was arrested or taken into custody for committing an alleged delinquent or unruly act (but not a juvenile traffic offense) but not brought before the court and no complaint was filed, the court may move and the person may apply for an order to seal if: at least two years have passed since final resolution of the matter and if, at the time of the application or motion, the person is not under the jurisdiction of the Juvenile Court for a delinquency charge.

If a person was brought before or referred to the Juvenile Court for allegedly committing an unruly or delinquent act (but not a juvenile traffic offense) and the case is informally resolved, the court may move and the person may apply for an order to seal if: at least two years have passed since final resolution of the matter and if, at the time of the motion or application, the person is not under the jurisdiction of the Juvenile Court for a delinquency charge.

Finally, if a person is adjudicated an unruly or delinquent child or a juvenile traffic offender, the court may move and the person may apply for an order to seal in the same way that current law allows a person to apply for the sealing of records in a delinquency case. A person may not have their records sealed if, at the time of the motion or application, the person is still under the jurisdiction of the Juvenile Court for a delinquency matter. The bill maintains the existing prohibition on sealing records of delinquency matters that involve aggravated murder, murder, rape, sexual battery, or gross sexual imposition. (R.C. 2151.358(D) and (E)(7).)

Gathering information. The bill authorizes the Juvenile Court to require the applicant to submit any relevant information to support the application and to cause an investigation to be made to determine if the applicant has been rehabilitated to a satisfactory degree (R.C. 2151.358(E)(1) and (2).)

Notice to the prosecutor

Current law

Current law does not require the court to give notice of all sealing or expungement proceedings to the prosecuting attorney. The prosecutor is only notified of: hearings for sealing the record of a juvenile traffic offense case or a delinquency case or hearings in expungement cases regarding juvenile traffic offenses or charges of delinquency. (R.C. 2151.358(D)(1) and (F).)

The bill

The bill requires a court to give notice to the prosecutor any time there will be a sealing proceeding. The bill provides the prosecutor the opportunity to file a response within 30 days of receiving the notice. If the prosecuting attorney does not file a response or files a response but indicates that the prosecuting attorney does not object to the sealing of the records, the court may order the records sealed without a hearing. If the court decides to hold a hearing, the court must send notice by regular mail to both the prosecuting attorney and the person who is the subject of the records of the date, time, and location of the hearing.

If the prosecuting attorney files a response that indicates that the prosecuting attorney objects to the sealing of the records, the court must conduct a hearing on the motion or application within 30 days after the court receives the response. The court must give notice by regular mail of the date, time, and location of the hearing to the prosecuting attorney and to the person who is the subject of the records. (R.C. 2151.358(E)(3) and (4).)

Standard

The bill does not change the standard for determining whether a person's records may be sealed: the Juvenile Court may seal the records if it determines that the person has been rehabilitated to a satisfactory degree. But the bill does provide some guidance as to how to make this determination. Under the bill, in determining whether the person has been rehabilitated to a satisfactory degree, the court may consider all of the following: (1) the age of the person, (2) the nature of the case, (3) the cessation or continuation of delinquent, unruly, or criminal behavior, (4) the education and employment history of the person, and (5) any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration. (R.C. 2151.358(E)(5).)

Effect of an order to seal or expunge records

Current law

Sealed records. When a record is sealed, it is removed from the main file where similar records are kept and put in a separate file that holds only sealed records and is only accessible by the Juvenile Court. A record that is sealed must be destroyed by all other persons and governmental bodies. If the court orders the records of a person sealed, it means that the proceedings be deemed never to have occurred. Generally, index references to the person or the case must be deleted. Additionally, the person and the court may properly respond that no record exists with respect to the person if anyone inquires about the case. Once records have been sealed, only a police officer, a prosecuting attorney, or the person who is the subject of the records may inspect them. Police and prosecutors may only inspect the records for a valid law enforcement or prosecutorial purpose. (R.C. 2151.358(A) and (E).)

Expunged records. When a record has been expunged, the court deems that the proceedings never occurred. Current law has different requirements for what happens to the physical records based upon whether the person waives the right to bring a civil action based on the arrest involved in the expungement order.

- If a person waives the right to bring a civil action, the court must: order the appropriate persons and governmental agencies to delete all index references to the case; destroy or delete all court records of the case; destroy all copies of pictures and fingerprints taken of the person during the expunged arrest; and destroy, erase, or delete any reference to the arrest except a record of the arrest that is maintained for compiling statistical data and that does not contain any reference to the person.
- If a person does not waive their right to bring a civil action based on the arrest, the court must: order the deletion, destruction, or erasure of all index references and court records of the case and of all references to the arrest that are maintained by the state or any political subdivision of the state; order that a copy of all records of the case, except fingerprints held by the court or a law enforcement agency, be delivered to the court; and seal all of the records delivered to the court in a separate file in which only sealed records are maintained. Current law requires the sealed records to be kept by the court until the statute of limitations expires for any civil action based on the arrest, any pending litigation based on the arrest is terminated, or the applicant files a written waiver of the right to bring a civil action based on the arrest. After the statute of limitations expires, the pending litigation is terminated, or the applicant files a waiver, the court must destroy the sealed records.

In both cases, the court must, and the person may, reply that no record of the case exists with respect to the person. (R.C. 2151.358(F).)

Current law prohibits a person from being asked about an expunged arrest in any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry. If a person is improperly asked about the expunged records, the person may respond as though the arrest did not occur, and not be subject to adverse action because of the response or the arrest. (R.C. 2151.358(I).)

The bill

The bill retains the effects of sealing a person's records. It also adds that the sealed records may be inspected as required by federal law. The bill also permits a defendant in a civil action based on the arrest or taking into custody that is the subject of the sealing order to inspect and copy records to defend that civil action. The records are only to be used for the purpose of the civil action and remain confidential for all other purposes.

The bill does not carry over the requirement that a person choose to waive their right to a civil action based upon the arrest that was the subject of an expunged record. Once a sealing order has been issued, the bill requires the court to: (1) order the deletion, destruction, or erasure of all index references and court records of the case and of all references to the arrest that are maintained by the state or any political subdivision of the state, (2) order that a copy of all records of the case, except fingerprints held by the court or a law enforcement agency, be delivered to the court, and (3) seal all of the records delivered to the court in a separate file in which only sealed records are maintained. Sealed records are not maintained forever: the court must keep the sealed records for a period of time determined by Rule 26.03 of Superintendence for the Courts of Ohio or any applicable rule or statute. The bill eliminates the requirement for the Juvenile Court to keep expunged records when the person does not waive the right to a civil action for a period of time dependent upon the statute of limitations applicable to the civil action. (R.C. 2151.358(F) and (G)(1).)

HISTORY

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