



**H.B. 249**

126th General Assembly  
(As Introduced)

**Reps. Key, S. Patton, Mason, Wagner, Miller, Carano, Chandler, D. Stewart, DeGeeter, Yates, Woodard, Harwood, Willamowski, Williams, Hood, Mitchell, Beatty, S. Smith, Barrett, Otterman, Brown, DeBose, McGregor, Reidelbach, Ujvagi, Domenick**

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**BILL SUMMARY**

- Defines "official records" as used in the law authorizing the sealing of records in a case in which a person is found not guilty of an offense, the charges in a case are dismissed, or a no bill is returned by a grand jury to specifically include the arrest record.
- With certain exceptions, provides for the automatic sealing of the official records in a case in which a person after the effective date of the bill is found not guilty of an offense by a jury or a court, is the defendant named in a dismissed complaint, indictment, or information, or against whom a no bill is entered by a grand jury.
- Provides a procedure for a person who before the effective date of the bill was found not guilty of an offense, had the charges in a case dismissed, or had a no bill returned by a grand jury to apply for the sealing of the official records in the case.
- Prohibits a prosecuting attorney from having access to an index of sealed records of cases in which a person is found not guilty of an offense, the charges are dismissed with prejudice, or a no bill is returned by a grand jury and that are maintained by a public office when determining a person's eligibility for a pre-trial diversion program.

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## CONTENT AND OPERATION

### *Sealing of records of criminal proceedings generally*

R.C. Chapter 2953. provides for the sealing of official records of two categories of criminal proceedings. One category includes proceedings in which a person was convicted of an offense or effected a bail forfeiture (R.C. 2953.31 to 2953.36). The other category includes proceedings in which a person was found not guilty of an offense by a jury or a court, was the defendant named in a dismissed complaint, indictment, or information, or against whom a no bill was entered by a grand jury (R.C. 2953.51 to 2953.61). With one exception (see "*Definition of official records,*" below), the bill deals exclusively with the sealing of records of proceedings of the second type. The bill does not change eligibility to have records of conviction or bail forfeiture sealed, the process of applying to have those records sealed, or the effect of an order sealing those records.

### *Definition of official records*

Under existing law, "official records" means all records that are possessed by any public office or agency that relate to a criminal case, including, but not limited to: the notation to the case in the criminal docket; all subpoenas issued in the case; all papers and documents filed by the defendant or the prosecutor in the case; all records of all testimony and evidence presented in all proceedings in the case; all court files, papers, documents, folders, entries, affidavits, or writs that pertain to the case; all computer, microfilm, microfiche, or microdot records, indices, or references to the case; all index references to the case; all fingerprints and photographs; all records and investigative reports pertaining to the case that are possessed by any law enforcement officer or agency, except that any records or reports that are the specific investigatory work product of a law enforcement officer or agency are not and shall not be considered to be official records when they are in the possession of that officer or agency; and all investigative records and reports other than those possessed by a law enforcement officer or agency pertaining to the case. "Official records" does not include records or reports related to child abuse or neglect and maintained pursuant to R.C. 2151.421 by a public children services agency or the Department of Job and Family Services. (R.C. 2953.51(D).)

The bill explicitly adds the arrest record to the definition of official records in a case. Because the definition of official records for purposes of an application to seal records in proceedings in which a person was convicted of an offense or effected a bail forfeiture is by reference the same as the definition set forth in R.C. 2953.51 (R.C. 2953.31(D)), the addition of "arrest record" to the latter definition of official records automatically adds "arrest record" to the former. The change

probably has no substantive effect. Under existing law, official records include "all records that are possessed by any public office or agency that relate to a criminal case." (R.C. 2953.51(D).)

### **Application for an order sealing the official records in a criminal proceeding**

#### **Existing law**

Under existing law, 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 may apply to the court for an order to seal the person's official records in the case. Ordinarily, the person may file the application at any time after the finding of not guilty or the dismissal of the complaint, indictment, or information is entered upon the minutes of the court or the journal, whichever entry occurs first, or at any time after two years have elapsed from the date on which the foreman or deputy foreman of the grand jury reports to the court that the grand jury has reported a no bill. However, if there are multiple charges against the person arising out of the same act and at least one has a final disposition that is different from the others, the person may not apply for a sealing order in any of the cases until the person is able to apply for a sealing order in all the cases. (R.C. 2953.52(A) and 2953.61.)

When a person files an application to have official records sealed, the court must set a date for a hearing and notify the prosecutor in the case of the hearing. The prosecutor may file an objection before the hearing date specifying the reasons the prosecutor believes the application should be denied.

The court must do each of the following:

- (1) Determine whether the person meets the qualifications to file the application;
- (2) Determine whether criminal proceedings are pending against the applicant;
- (3) If the prosecutor has filed an objection, consider the prosecutor's argument for not granting the application;
- (4) Weigh the interests of the applicant in having the official records sealed against the legitimate needs, if any, of the government to maintain the records.

If the court then determines that the applicant was qualified to file the application, that no criminal proceedings are pending against the person, and that the interests of the person in having the official records sealed are not outweighed by any legitimate governmental needs to maintain such records, or if R.C.

4301.69(E)(2)(b), the pre-trial diversion program for underage drinkers, applies, the court must order that all official records pertaining to the case be sealed. (See **COMMENT 1.**) (R.C. 2953.52(B).)

### **Operation of the bill**

The bill provides for the automatic sealing of the official records in a case in which a person after the effective date of the bill is found not guilty of an offense by a jury or a court, is the defendant named in a dismissed complaint, indictment, or information, or against whom a no bill is entered by a grand jury. Under the bill, the court ordinarily must issue the order upon the expiration of time to take an appeal if an appeal is not taken or upon a final determination of the appeal sustaining a finding of not guilty or a dismissal if an appeal is taken. However, if a complaint, indictment, or information is dismissed without prejudice, the court may not order the records sealed if the complaint or information is refiled or the person is reindicted before the expiration of the period of limitations for the offense that is the basis of the case. (R.C. 2953.52(A).)

The bill provides for several exceptions to the general requirement that records be sealed when the case is dismissed, a no bill is entered, or the defendant is found not guilty. If there are multiple charges against a person arising out of the same act and at least one has a final disposition that is different from the others, the person's official records may not be sealed in any of the cases until they may be or would otherwise be required to be sealed in all the cases. The sealing provisions do not apply to any record pertaining to a case in which the defendant was found not guilty by reason of insanity or in which drug or alcohol use led to the offense and the court agrees to intervention in lieu of conviction under R.C. 2951.041. (See **COMMENT 2.**) (R.C. 2953.52(B) and 2953.61.)

The automatic sealing of records applies prospectively. However, the bill allows a person who was found not guilty in a case, whose complaint, indictment, or information in a case was dismissed, or against whom a no bill was entered in a case before the bill's effective date to apply for an order sealing the official records in the case. The person must file a signed and notarized application that includes a case number or other information that allows the court to readily identify the case. Upon receipt of an application that complies with this requirement, a determination that the applicant is authorized to file the application, and a determination that the applicant would have been entitled to an order sealing the official records in the case if the case has been concluded by a not guilty verdict, dismissal, or no bill *after* the bill's effective date, the court must issue an order sealing the applicant's official records in the case. (R.C. 2953.52(D).)

### Notice of sealing order to public offices

Under existing law and the bill, the court must send notice of an order sealing official records by certified mail, return receipt requested, to any public office that it knows or has reason to believe may have an official or unofficial record of the case. In addition, a person whose records have been sealed may present a copy of the order to a public office or agency that has a record of the case with a written request to comply. However, the sealing order applies to every public office regardless of whether the office has received notice of the order or a written request to comply with the order. (R.C. 2953.53(A), (B), and (C).)

### Effect of sealing order

#### Existing law

Under existing law, the proceedings in a case in which the official records have been sealed are deemed not to have occurred. However, a public office or agency may maintain a record of the case for the purpose of compiling statistical data only; the record must not contain any reference to the person who is the subject of the case. A public office or agency also may maintain an index of sealed official records to which access may not be afforded to any person other than the person who has custody of the records. The records to which the index pertains may not be available to any person, except as follows (R.C. 2953.52(C) and 2953.53(D)):

- (1) To the person who is the subject of the records upon written application, and to any other person named in the application, for any purpose;
- (2) To 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;
- (3) To a prosecuting attorney or the prosecuting attorney's assistants to determine a defendant's eligibility to enter a pre-trial diversion program established pursuant to R.C. 2935.36;
- (4) To a prosecuting attorney or the prosecuting attorney's assistants to determine a defendant's eligibility to enter a pre-trial diversion program under R.C. 4301.69(E)(2)(b).

Except as otherwise provided in the sex offender registration law, when the official records in a case have been ordered sealed and the proceedings deemed not to have occurred, law enforcement officers and agencies may make limited use of records and reports pertaining to the case that are the specific investigatory

work product of a law enforcement officer or agency and that are excepted from the definition of official records. (See **COMMENT 3.**) (R.C. 2953.54.)

### **Operation of the bill**

Under the bill, as under existing law, the proceedings in a case in which the official records have been sealed are deemed not to have occurred, but a public office may maintain a record of the case for statistical purposes and may maintain an index the accessibility of which is limited. However, the bill does not allow a prosecuting attorney or the prosecuting attorney's assistants access to the index for determining eligibility for a pre-trial diversion program under R.C. 2935.36 or 4301.69(E)(2)(b). In cases in which the complaint, indictment, or information was dismissed without prejudice, the bill permits prosecuting attorneys, the prosecuting attorney's assistants, or the complainant to have access to the index for the purpose of refileing the complaint or information or reindicting the person. (R.C. 2953.52(C) and 2953.53(D).)

The bill does not change the substance of the provisions governing the use of records and reports that are the specific investigatory work product of a law enforcement officer or agency and that are excepted from the definition of official records (R.C. 2953.43).

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## **COMMENT**

1. R.C. 4301.69(E)(1) prohibits underage persons from knowingly ordering, paying for, sharing the cost of, attempting to purchase, possessing, or consuming any beer or intoxicating liquor in any public or private place and from knowingly being under the influence of any beer or intoxicating liquor in any public place. The prohibitions against an underage person knowingly possessing, consuming, or being under the influence of any beer or intoxicating liquor do not apply if the underage person is accompanied by a parent, spouse who is not an underage person, or legal guardian, or the beer or intoxicating liquor is given by a physician in the regular line of the physician's practice or given for established religious purposes.

Under R.C. 4301.69(E)(2)(b), if a person is charged in a criminal complaint with violating division (E)(1) of the section, the person may be eligible for a pre-trial diversion program. R.C. 2935.36 authorizes a prosecuting attorney to establish a pre-trial diversion program for adults who are accused of committing criminal offenses and whom the prosecuting attorney believes probably will not offend again. A person is ineligible for diversion if the person previously has been diverted pursuant to division (E)(2)(a) (diversion program for persons charged with violating division (E)(1) in a juvenile court complaint) or (E)(2)(b). If the

person completes the diversion program to the satisfaction of the court, the court must dismiss the complaint and order the record in the case sealed under R.C. 2953.52. If the person fails to satisfactorily complete the diversion program, the court must proceed with the complaint.

2. R.C. 2951.041 allows a court to grant an offender's request to plead guilty and be given intervention in lieu of conviction if the offender is a first-time felony offender who has committed a fourth or fifth degree felony that is not an offense of violence or one of certain other specified offenses. The offender must meet certain other eligibility requirements, and the court must have reason to believe that drug or alcohol usage by the offender was a factor leading to the offender's criminal behavior. If the offender successfully completes the intervention program and subsequent period of abstinence, the court may order the records in the case sealed under R.C. 2953.31 to 2953.36 (sealing records of conviction).

3. R.C. 2953.54 provides that when the official records in a case have been sealed, every law enforcement officer who possesses records or reports pertaining to the case that are the officer's specific investigatory work product and that are excepted from the definition of "official records" shall immediately deliver the records and reports to his employing law enforcement agency. Except as provided in the second following paragraph, no such officer may knowingly release, disseminate, or otherwise make the records and reports or any information contained in them available to, or discuss any information contained in them with, any person not employed by the officer's employing law enforcement agency.

Except as otherwise provided in the next paragraph, every law enforcement agency that possesses records or reports pertaining to the case that are its specific investigatory work product and that are excepted from the definition of "official records," or that are the specific investigatory work product of a law enforcement officer it employs and that were delivered to it under the foregoing paragraph, must close the records and reports to all persons who are not directly employed by the law enforcement agency and treat the records and reports, in relation to all persons other than those who are directly employed by the law enforcement agency, as if they did not exist and had never existed. Except as provided in the next paragraph, no person who is employed by the law enforcement agency may knowingly release, disseminate, or otherwise make the records and reports in the possession of the employing law enforcement agency or any information contained in them available to, or discuss any information contained in them with, any person not employed by the employing law enforcement agency.

A law enforcement agency that possesses records or reports pertaining to the case that are its specific investigatory work product and that are excepted from the definition of official records, or that are the specific investigatory work

product of a law enforcement officer it employs and that were delivered to it under the first paragraph above, may permit another law enforcement agency to use the records or reports in the investigation of another offense, if the facts incident to the offense being investigated by the other law enforcement agency and the facts incident to an offense that is the subject of the case are reasonably similar. The agency that provides the records and reports may provide the other agency with the name of the person who is the subject of the case, if it believes that the name of the person is necessary to the conduct of the investigation by the other agency.

No law enforcement agency, or person employed by a law enforcement agency, that receives from another law enforcement agency records or reports pertaining to a case the records of which have been ordered sealed pursuant to R.C. 2953.52 may use the records and reports for any purpose other than the investigation of the offense for which they were obtained from the other law enforcement agency, or disclose the name of the person who is the subject of the records or reports except when necessary for the conduct of the investigation of the offense, or the prosecution of the person for committing the offense, for which they were obtained from the other law enforcement agency.

Whoever violates R.C. 2953.54 is guilty of divulging confidential information, a misdemeanor of the fourth degree.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-10-05	p. 767

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