

Record-Sealing & Expungement Chapter 2953 Proposed Reorganization

The draft does not address topics outside of 2953 such as (1) changing the Criminal Rules to address investigatory work product in a case with co-defendants, (2) changing public records law, (3) changing how pardons affect sealing, (4) changing how indigency is determined in civil cases, and (5) a ‘super seal’ specific to licensing boards. Subsequent work will also focus on executive branch functions like clemency and Certificate for Qualification for Employment (CQE) and a more long range approach to some of the national trends. In the meantime, we thought clarity of current provisions is an important goal.

Section I: Definitions

This section will contain all the definitions from the various sections, including expungement, some of which repeat (duplicative definitions have been removed). Importantly, the definition of “eligible offender” will be removed because it is really a set of eligibility criteria which belongs in Section II: Process.

- I. Definitions [§§ 2953.31, 2953.321 (A), 2953.35 (A), 2953.37 (A)(1)-(4), 2953.38 (A)(1)-(4)]

Section II: The Process for Sealing Convictions, Dismissals, No Bills, and Not Guilty Findings

This section will lay out records eligible for sealing and exceptions to eligibility. Importantly, convictions, dismissals, no bills, and not guilty findings will all be in this section, unlike the current Code organization which separates convictions from all other records but treats them similarly in terms of process. The current definition of “eligible offender” (2953.31) is placed at the beginning of 2953.32 to immediately establish what records are eligible for sealing – this creates some repetition that can be deleted later. Currently, exceptions are located at 2953.36, but by putting them at the beginning of 2953.32, the entire section is easier to comprehend. Lastly, the sealing of multiple charges is currently located at 2953.61, but really should be incorporated in the process of Section II.

- II. The Process of Sealing Convictions, Dismissals, No Bills & Not Guilty Findings [§§ 2953.32, 2953.34, 2953.36, 2953.51, 2953.52, 2953.61]
 - a. Records Eligible for Sealing
 - b. Exceptions to Conviction Sealing
 - c. Multiple Charges
 - d. Process by Petitioner

- e. Objection by Prosecutor
- f. Determination of Court
- g. Costs, Fines, Fees

Section III: Indices and Other Access to Sealed Records

This section will lay out the impact of sealing a criminal record: who no longer has access to that record, who does have access to that record, and how information from the record can or cannot be used. This section also contains what rights and privileges are restored through record-sealing.

- III. Impact of Sealing and Access to Sealed Records [§§ 2953.53, 2953.321, 2953.33, 2953.35, 2953.54, 2953.55, 2953.56]
 - a. Prosecutors' Index
 - b. Other Access to Sealed Records
 - c. Restoration of Rights and Privileges

Section IV: Expungements

Because expungements have a different result than sealing a record and because eligibility for expungements is much more limited than for sealing a record, they are in a section separate from record-sealing. Alternately, expungements could be incorporated into the other three sections, as relevant.

- IV. Expungements [§§ 2953.37, 2953.38, 2923.14]
 - a. For Certain Firearms Convictions
 - b. For Victims of Human Trafficking
 - c. Impact of Expungement

Section I: Definitions

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2953.31 Sealing of record of conviction definitions.

As used in sections 2953.31 to 2953.36 of the Revised Code:

(A) "Prosecutor" means the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer, who has the authority to prosecute a criminal case in the court in which the case is filed.

(B) "Bail forfeiture" means the forfeiture of bail by a defendant who is arrested for the commission of a misdemeanor, other than a defendant in a traffic case as defined in Traffic Rule 2, if the forfeiture is pursuant to an agreement with the court and prosecutor in the case.

(C) "Official records" has the same meaning as in division (D) of section 2953.51 of the Revised Code.

(D) "Official proceeding" has the same meaning as in section 2921.01 of the Revised Code.

(E) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(F) "Post-release control" and "post-release control sanction" have the same meanings as in section 2967.01 of the Revised Code.

(G) "DNA database," "DNA record," and "law enforcement agency" have the same meanings as in section 109.573 of the Revised Code.

(H) "Fingerprints filed for record" means any fingerprints obtained by the superintendent of the bureau of criminal identification and investigation pursuant to sections 109.57 and 109.571 of the Revised Code.

(I)¹ As used in this section, "investigatory work product" means any records or reports of a law enforcement officer or agency that are excepted from the definition of "official records" contained in section 2953.51 of the Revised Code and that pertain to a conviction or bail forfeiture the records of which have been ordered sealed pursuant to division (C)(2) of section 2953.32 of the Revised Code or that pertain to a conviction or delinquent child adjudication the records of which have

¹ Currently 2953.31(A)

been ordered expunged pursuant to division (E) of section 2151.358, division (D)(2) of section 2953.37, or division (G) of section 2953.38 of the Revised Code.

(J)² As used in ... this section, "law enforcement or justice system matter" means an arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision.

(K)³ "Expunge" means to destroy, delete, and erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.

(L)⁴ "Record of conviction" means the record related to a conviction of or plea of guilty to an offense.

(M)⁵ "Victim of human trafficking" means a person who is or was a victim of a violation of section [2905.32](#) of the Revised Code, regardless of whether anyone has been convicted of a violation of that section or of any other section for victimizing the person.

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² Currently 2953.35(A)

³ Currently 2953.37(A)(1)

⁴ Currently 2953.37(A)(4)

⁵ Currently 2953.38(A)(4)

Section II: The Process for Sealing Convictions, Dismissals, No Bills, and Not Guilty Findings

This section will lay out records eligible for sealing and exceptions to eligibility. Importantly, convictions, dismissals, no bills, and not guilty findings will all be in this section, unlike the current Code organization which separates convictions from all other records but treats them similarly in terms of process. The current definition of “eligible offender” (2953.31) is placed at the beginning of 2953.32 to immediately establish what records are eligible for sealing – this creates some repetition that can be deleted later. Currently, exceptions are located at 2953.36, but by putting them at the beginning of 2953.32, the entire section is easier to comprehend. Lastly, the sealing of multiple charges is currently located at 2953.61, but really should be incorporated in the process of Section II.

2953.32 Sealing of conviction record or bail forfeiture record.

(A)⁶ Sections [2953.31](#) to [2953.35](#)⁷ of the Revised Code do not apply to any of the following:

- (1) Convictions when the offender is subject to a mandatory prison term;
- (2) Convictions under section [2907.02](#), [2907.03](#), [2907.04](#), [2907.05](#), [2907.06](#), [2907.321](#), [2907.322](#), or [2907.323](#), former section [2907.12](#), or Chapter 4506., 4507., 4510., 4511., or 4549. of the Revised Code, or a conviction for a violation of a municipal ordinance that is substantially similar to any section contained in any of those chapters, except as otherwise provided in section [2953.61](#) of the Revised Code;
- (3) Convictions of an offense of violence when the offense is a misdemeanor of the first degree or a felony and when the offense is not a violation of section [2917.03](#) of the Revised Code and is not a violation of section [2903.13](#), [2917.01](#), or [2917.31](#) of the Revised Code that is a misdemeanor of the first degree;
- (4) Convictions on or after October 10, 2007, under section [2907.07](#) of the Revised Code or a conviction on or after October 10, 2007, for a violation of a municipal ordinance that is substantially similar to that section;
- (5) Convictions on or after October 10, 2007, under section [2907.08](#), [2907.09](#), [2907.21](#), [2907.22](#), [2907.23](#), [2907.31](#), [2907.311](#), [2907.32](#), or [2907.33](#) of the Revised Code when the victim of the offense was under eighteen years of age;

⁶ Currently 2953.36

⁷ Will not need to be re-numbered to reflect changes in the draft

(6) Convictions of an offense in circumstances in which the victim of the offense was less than sixteen years of age when the offense is a misdemeanor of the first degree or a felony, except for convictions under section 2919.21 of the Revised Code;⁸

(7) Convictions of a felony of the first or second degree

(B)⁹ ... anyone who has been convicted of an offense in this state or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions, or not more than one felony conviction and one misdemeanor conviction in this state or any other jurisdiction can apply to seal the record of the conviction. When two or more convictions result from or are connected with the same act or result from offenses committed at the same time, they shall be 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 shall be counted as one conviction, provided that a court may decide as provided in division (C)(1)(a) of section 2953.32 of the Revised Code that it is not in the public interest for the two or three convictions to be counted as one conviction.

For purposes of, and except as otherwise provided in, this division, a conviction for a minor misdemeanor, for a violation of any section in Chapter 4507., 4510., 4511., 4513., or 4549. of the Revised Code, or for a violation of a municipal ordinance that is substantially similar to any section in those chapters is not a conviction. However, a conviction for a violation of section 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, or 4549.62 or sections 4549.41 to 4549.46 of the Revised Code, for a violation of section 4510.11 or 4510.14 of the Revised Code that is based upon the offender's operation of a vehicle during a suspension imposed under section 4511.191 or 4511.196 of the Revised Code, for a violation of a substantially equivalent municipal ordinance, for a felony violation of Title XLV of the Revised Code, or for a violation of a substantially equivalent former law of this state or former municipal ordinance shall be considered a conviction.

(C)¹⁰(1) Except as provided in section 2953.61 of the Revised Code, an eligible offender 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 record of the case that pertains to the conviction. Application may be made 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.¹¹

⁸ In the past, appellate courts have held that a non-support charge is not eligible for sealing because the victim is a child. 2012 SB 337 changed this through statute, making crimes not eligible for sealing if the victim was younger than 18 unless the charge was 2919.21 – non-support. 2016 HB 56 lowered the age in that section to younger than 16.

⁹ Currently 2953.31(A)

¹⁰ Currently 2953.32(A)

¹¹ Offenses that are currently excluded from sealing could be eligible for sealing after a longer period of time. That period could be stated in statute or determined by a judge on a case-by-case basis. This is especially relevant for convictions, regardless of charge, that occurred more than a decade in the past.

(2) Any person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture for the offense charged 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 that pertains to the charge. Except as provided in section 2953.61 of the Revised Code, 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.¹²

(D)¹³ Upon the filing of an application under this section, the court shall set a date for a hearing and shall 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 shall specify in the objection the reasons for believing a denial of the application is justified. The court shall 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. If the applicant was convicted of or pleaded guilty to a violation of division (A)(2) or (B) of section 2919.21 of the Revised Code, the probation officer or county department of probation that the court directed to make inquiries concerning the applicant shall contact the child support enforcement agency enforcing the applicant's obligations under the child support order to inquire about the offender's compliance with the child support order.

(E)¹⁴(1) The court shall do each of the following:

(a) Determine whether the applicant is an eligible offender or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case. If the applicant applies as an eligible offender pursuant to division (A)(1) of this section 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 under this division, the court initially shall 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 shall determine that the applicant is not an eligible offender; if the court does not make that determination, the court shall determine that the offender is an eligible offender.

(b) Determine whether criminal proceedings are pending against the applicant;

(c) If the applicant is an eligible offender who applies pursuant to division (A)(1) of this section, determine whether the applicant has been rehabilitated to the satisfaction of the court;

¹² Minor misdemeanors and all other misdemeanors could be treated the same for purposes of record-sealing.

¹³ Currently 2953.32(B)

¹⁴ Currently 2953.32(C)

(d) If the prosecutor has filed an objection in accordance with division (B) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

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

(2) If the court determines, after complying with division (C)(1) of this section, that the eligible 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 an eligible offender applying pursuant to division (A)(1) of this section has been attained to the satisfaction of the court, the court, except as provided in divisions (G), (H), or (I) of this section, shall order all official records of the case that pertain to the conviction or bail forfeiture sealed and, except as provided in division (F) of this section, all index references to the case that pertain to the conviction or bail forfeiture deleted and, in the case of bail forfeitures, shall dismiss the charges in the case. The proceedings in the case that pertain to the conviction or bail forfeiture shall be considered not to have occurred and the conviction or bail forfeiture of the person who is the subject of the proceedings shall be sealed, except that upon conviction 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 in sections 2953.31 to 2953.33 of the Revised Code.

(3) An applicant may request the sealing of the records of more than one case in a single application under this section. Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars, regardless of the number of records the application requests to have sealed. The court shall pay thirty dollars of the fee into the state treasury. It shall pay twenty dollars 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 ordinance¹⁵.

(F)¹⁶ Except as provided in division (G)(1)¹⁷ of this section, a person charged with two or more offenses as a result of or in connection with the same act may not apply to the court pursuant to section [2953.32](#) or [2953.52](#) of the Revised Code for the sealing of the person's record in relation to any of the charges when at least one of the charges has a final disposition that is different from the final disposition of the other charges until such time as the person would be able to apply to

¹⁵ It is not clear how the fee is divided when the cases to be sealed are charged under different city or state codes.

¹⁶ Currently 2953.61

¹⁷ Currently 2953.61 (B)(1)

the court and have all of the records pertaining to all of those charges sealed pursuant to section [2953.32](#) or [2953.52](#) of the Revised Code.¹⁸

(G)(1) When a person is charged with two or more offenses as a result of or in connection with the same act and the final disposition of one, and only one, of the charges is a conviction under any section of Chapter 4507., 4510., 4511., or 4549., other than section [4511.19](#) or [4511.194](#) of the Revised Code, or under a municipal ordinance that is substantially similar to any section other than section [4511.19](#) or [4511.194](#) of the Revised Code contained in any of those chapters, and if the records pertaining to all the other charges would be eligible for sealing under section [2953.52](#) of the Revised Code in the absence of that conviction, the court may order that the records pertaining to all the charges be sealed. In such a case, the court shall not order that only a portion of the records be sealed.¹⁹

(2) Division (G)(1)²⁰ of this section does not apply if the person convicted of the offenses currently holds a commercial driver's license or commercial driver's license temporary instruction permit.

2953.33 Sealing of records after not guilty finding, dismissal of proceedings or no bill by grand jury. ²¹

(A)(1) Any person, who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information, may apply to the court for an order to seal the person's official records in the case. Except as provided in section [2953.61](#) of the Revised Code, the application may be filed 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.

(2) Any person, against whom a no bill is entered by a grand jury, may apply to the court for an order to seal his official records in the case. Except as provided in section [2953.61](#) of the Revised Code, the application may be filed at any time after the expiration of two years after the date on which the foreperson or deputy foreperson of the grand jury reports to the court that the grand jury has reported a no bill.

(B)(1) Upon the filing of an application pursuant to division (A) of this section, the court shall set a date for a hearing and shall notify the prosecutor²² 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

¹⁸ For various reasons, this is extremely difficult to execute in practice. This could be more workable if redaction of official records is allowed instead of sealing. Alternately, if all charges are made eventually eligible for sealing, after a given time or after review by a judge, this provision would no longer be necessary and the petitioner would simply have to wait until all charges could be sealed.

¹⁹ One of the recommendations touches on not allowing a single OVI charge to prevent sealing

²⁰ Currently [2953.61\(B\)\(1\)](#)

²¹ Currently [2953.52](#)

²² The process of notification could be expanded so that review by the appropriate prosecutor's office occurs. The county prosecutor may need to be notified of any petitions to seal amendments, bind-overs, or dismissals filed in municipal court.

prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons the prosecutor believes justify a denial of the application.

(2) The court shall do each of the following, except as provided in division (B)(3) of this section:

(a)(i) 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 as required by section [2953.61](#) of the Revised Code has expired from the date of the report to the court of that no bill by the foreperson or deputy foreperson of the grand jury;

(ii) If the complaint, indictment, or information in the case was dismissed, determine whether it was dismissed with prejudice or without prejudice and, if it was dismissed without prejudice, determine whether the relevant statute of limitations has expired;

(b) Determine whether criminal proceedings are pending against the person;

(c) If the prosecutor has filed an objection in accordance with division (B)(1) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(d) 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.

(3) If the court determines after complying with division (B)(2)(a) of this section that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed with prejudice, or that the complaint, indictment, or information in the case was dismissed without prejudice and that the relevant statute of limitations has expired, the court shall issue an order to the superintendent of the bureau of criminal identification and investigation directing that the superintendent seal or cause to be sealed the official records in the case consisting of DNA specimens that are in the possession of the bureau and all DNA records and DNA profiles. The determinations and considerations described in divisions (B)(2)(b), (c), and (d) of this section do not apply with respect to a determination of the court described in this division.

(4) The determinations described in this division are separate from the determination described in division (B)(3) of this section. If the court determines, after complying with division (B)(2) of this section, 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 foreperson or deputy foreperson 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, or if division (E)(2)(b) of section [4301.69](#) of the Revised Code applies, in addition to the order required under division (B)(3) of this section, the court shall issue an order directing that all official records ²³pertaining to the case be sealed and that, except as provided in section [2953.53](#) of the Revised Code, the proceedings in the case be deemed not to have occurred.

(5) Any DNA specimens, DNA records, and DNA profiles ordered to be sealed under this section shall not be sealed if the person with respect to whom the order applies is otherwise eligible to have DNA records or a DNA profile in the national DNA index system.

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²³ A CRA case may be dismissed in municipal court because there is a felony indictment. Ordering the CRA sealed also seals the records associated with that filing, which includes the entire felony packet on the indicted offense.

Section III: Indices and Other Access to Sealed Records

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2953.34: Index and Other Access to Sealed Records²⁴

(A)²⁵ Inspection of the sealed records included in the order may be made only by the following persons or for the following purposes:

- (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 under a community control sanction or a post-release control sanction, 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 established pursuant to section 2935.36 of the Revised Code;
- (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 the purposes set forth in, and in the manner provided in, section 2953.321 of the Revised Code;
- (8) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of providing information to a board or person pursuant to division (F) or (G) of section 109.57 of the Revised Code;

²⁴ Currently 2953.32(D), 2953.53, 2953.321, 2953.33, 2953.34, 2953.35, 2953.54, 2953.55, 2953.56

²⁵ Currently 2953.32(D)

(9) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of performing a criminal history records check on a person to whom a certificate as prescribed in section 109.77 of the Revised Code is to be awarded;

(10) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of conducting a criminal records check of an individual pursuant to division (B) of section 109.572 of the Revised Code that was requested pursuant to any of the sections identified in division (B)(1) of that section;

(11) By the bureau of criminal identification and investigation, an authorized employee of the bureau, a sheriff, or an authorized employee of a sheriff in connection with a criminal records check described in section 311.41 of the Revised Code;

(12) By the attorney general or an authorized employee of the attorney general or a court for purposes of determining a person's classification pursuant to Chapter 2950. of the Revised Code;

(13) By a court, the registrar of motor vehicles, a prosecuting attorney or the prosecuting attorney's assistants, or a law enforcement officer for the purpose of assessing points against a person under section 4510.036 of the Revised Code or for taking action with regard to points assessed.

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.

(B)²⁶ In any criminal proceeding, proof of any otherwise admissible prior conviction may be introduced and proved, notwithstanding the fact that for any such prior conviction an order of sealing previously was issued pursuant to sections 2953.31 to 2953.36 of the Revised Code.

(C)²⁷ The person or governmental agency, office, or department that maintains sealed records pertaining to convictions or bail forfeitures that have been sealed pursuant to this section may maintain a manual or computerized index²⁸ to the sealed records. The index shall 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, and shall not contain the name of the crime committed. The index shall be made available by the person who has custody of the sealed records only for the purposes set forth in divisions (C), (D), and (E) of this section.

(D)²⁹ The court shall send notice of any order to seal official records issued pursuant to division (B)(3) of section 2953.52 of the Revised Code to the bureau of criminal identification and investigation and shall send notice of any order issued pursuant to division (B)(4) of that section

²⁶ Currently 2953.32(E)

²⁷ Currently 2953.32(F)

²⁸ Prohibiting all index references while allowing for the indexing of a case is confusing.

²⁹ Currently 2953.53

to any public office or agency that the court knows or has reason to believe may have any record of the case, whether or not it is an official record, that is the subject of the order.

(1) A person whose official records have been sealed pursuant to an order issued pursuant to section 2953.52ⁱ of the Revised Code may present a copy of that order and a written request to comply with it, to a public office or agency that has a record of the case that is the subject of the order.

(2) An order to seal official records issued pursuant to section 2953.52 of the Revised Code applies to every public office or agency that has a record of the case that is the subject of the order, regardless of whether it receives notice of the hearing on the application for the order to seal the official records or receives a copy of the order to seal the official records pursuant to division (A) or (B) of this section.

(3) Upon receiving a copy of an order to seal official records pursuant to division (A) or (B) of this section or upon otherwise becoming aware of an applicable order to seal official records issued pursuant to section 2953.52 of the Revised Code, a public office or agency shall comply with the order and, if applicable, with the provisions of section 2953.54 of the Revised Code, except that it may maintain a record of the case that is the subject of the order if the record is maintained for the purpose of compiling statistical data only and does not contain any reference to the person who is the subject of the case and the order.

A public office or agency also may maintain an index³⁰ of sealed official records, in a form similar to that for sealed records of conviction as set forth in division (F) of section 2953.32 of the Revised Code, access to which may not be afforded to any person other than the person who has custody of the sealed official records. The sealed official records to which such an index pertains shall not be available to any person, except that the official records of a case that have been sealed may be made available to the following persons for the following purposes:

- (a) 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;
- (b) 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;
- (c) 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 section 2935.36 of the Revised Code;
- (d) To a prosecuting attorney or the prosecuting attorney's assistants to determine a defendant's eligibility to enter a pre-trial diversion program under division (E)(2)(b) of section 4301.69 of the Revised Code.

³⁰ See footnote 27

(E)³¹ As used in this section, "investigatory work product" means any records or reports of a law enforcement officer or agency that are excepted from the definition of "official records" contained in section 2953.51 of the Revised Code and that pertain to a conviction or bail forfeiture the records of which have been ordered sealed pursuant to division (C)(2) of section 2953.32 of the Revised Code or that pertain to a conviction or delinquent child adjudication the records of which have been ordered expunged pursuant to division (E) of section 2151.358, division (D)(2) of section 2953.37, or division (G) of section 2953.38 of the Revised Code.

(1) Upon the issuance of an order by a court pursuant to division (C)(2) of section 2953.32 of the Revised Code directing that all official records of a case pertaining to a conviction or bail forfeiture be sealed or an order by a court pursuant to division (E) of section 2151.358, division (D)(2) of section 2953.37, or division (G) of section 2953.38 of the Revised Code directing that all official records of a case pertaining to a conviction or delinquent child adjudication be expunged:

(a) Every law enforcement officer who possesses investigatory work product immediately shall deliver that work product to the law enforcement officer's employing law enforcement agency.

(b) Except as provided in division (B)(3) of this section, every law enforcement agency that possesses investigatory work product shall close that work product to all persons who are not directly employed by the law enforcement agency and shall treat that work product, in relation to all persons other than those who are directly employed by the law enforcement agency, as if it did not exist and never had existed.

(c) A law enforcement agency that possesses investigatory work product may permit another law enforcement agency to use that work product 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 permits the use of investigatory work product 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.

(2)(a) Except as provided in division (B)(3) of this section, no law enforcement officer or other person employed by a law enforcement agency shall knowingly release, disseminate, or otherwise make the investigatory work product or any information contained in that work product available to, or discuss any information contained in it with, any person not employed by the employing law enforcement agency.

(b) No law enforcement agency, or person employed by a law enforcement agency, that receives investigatory work product pursuant to division (B)(3) of this section shall use that work product for any purpose other than the investigation of the offense for which it was obtained from the other law enforcement agency, or disclose the name of the person who is the subject of the work product except when necessary for the conduct of the investigation of the offense, or the prosecution of the

³¹ Currently section 2953.321

person for committing the offense, for which it was obtained from the other law enforcement agency.

(c) It is not a violation of division (C)(1) or (2) of this section for the bureau of criminal identification and investigation or any authorized employee of the bureau participating in the investigation of criminal activity to release, disseminate, or otherwise make available to, or discuss with, a person directly employed by a law enforcement agency DNA records collected in the DNA database or fingerprints filed for record by the superintendent of the bureau of criminal identification and investigation.

(3) Whoever violates division (C)(1) or (2) of this section is guilty of divulging confidential investigatory work product, a misdemeanor of the fourth degree.

(F)³² (1) As used in divisions (A)(2) and (3) of this section, "law enforcement or justice system matter" means an arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision.

(2) Except as authorized by divisions (D), (E), and (F) of section 2953.32 of the Revised Code or by Chapter 2950. of the Revised Code and subject to division (A)(3) of this section, any officer or employee of the state, or a political subdivision of the state, 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 department, agency, or other instrumentality of the state, or any political subdivision of the state, any information or other data concerning any law enforcement or justice system matter the records with respect to which the officer or employee had knowledge of were sealed by an existing order issued pursuant to sections 2953.31 to 2953.36 of the Revised Code, were expunged by an order issued pursuant to division (E) of section 2151.358, section 2953.37, or section 2953.38 of the Revised Code, or were expunged by an order issued pursuant to section 2953.42 of the Revised Code as it existed prior to June 29, 1988, is guilty of divulging confidential information, a misdemeanor of the fourth degree.

(3) Division (A)(2) of this section does not apply to an officer or employee of the state, or a political subdivision of the state, who releases or otherwise disseminates or makes available for any purpose specified in that division any information or other data concerning a law enforcement or justice system matter the records of which the officer had knowledge were sealed or expunged by an order of a type described in that division, if all of the following apply:

(a) The officer or employee released, disseminated, or made available the information or data from the sealed or expunged records together with information or data concerning another law enforcement or justice system matter.

(b) The records of the other law enforcement or justice matter were not sealed or expunged by any order of a type described in division (A)(2) of this section.

³² Currently 2953.35

(c) The law enforcement or justice matter covered by the information or data from the sealed or expunged records and the other law enforcement or justice matter covered by the information or data from the records that were not sealed or expunged resulted from or were connected to the same act.

(d) The officer or employee made a good faith effort to not release, disseminate, or make available any information or other data concerning any law enforcement or justice matter from the sealed or expunged records, and the officer or employee did not release, disseminate, or make available the information or other data from the sealed or expunged records with malicious purpose, in bad faith, or in a wanton or reckless manner.

(2) Any person who, in violation of section 2953.32 of the Revised Code, uses, disseminates, or otherwise makes available any index prepared pursuant to division (F) of section 2953.32 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(3) It is not a violation of this section for the bureau of criminal identification and investigation or any authorized employee of the bureau participating in the investigation of criminal activity to release, disseminate, or otherwise make available to, or discuss with, a person directly employed by a law enforcement agency DNA records collected in the DNA database or fingerprints filed for record by the superintendent of the bureau of criminal identification and investigation.

(G)³³ Except as otherwise provided in Chapter 2950. of the Revised Code, upon the issuance of an order by a court under division (B) of section [2953.52](#) of the Revised Code directing that all official records pertaining to a case be sealed and that the proceedings in the case be deemed not to have occurred:

(1) Every law enforcement officer possessing 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" contained in section [2953.51](#) of the Revised Code shall immediately deliver the records and reports to the officer's employing law enforcement agency. Except as provided in division (A)(3) of this section, no such officer shall 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.

(2) 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" contained in section [2953.51](#) of the Revised Code, or that are the specific investigatory work product of a law enforcement officer it employs and that were delivered to it under division (A)(1) of this section shall, except as provided in division (A)(3) of this section, close the records and reports to all persons who are not directly employed by the law enforcement agency and shall, except as provided in division (A)(3) of this section, 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

³³ Currently 2953.54

and had never existed. Except as provided in division (A)(3) of this section, no person who is employed by the law enforcement agency shall 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.

(3) 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" contained in division (D) of section [2953.51](#) of the Revised Code, or that are the specific investigatory work product of a law enforcement officer it employs and that were delivered to it under division (A)(1) of this section 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 division (B) of section [2953.52](#) of the Revised Code shall 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.

(4) Whoever violates division (A)(1), (2), or (3) of this section is guilty of divulging confidential information, a misdemeanor of the fourth degree.

(5) It is not a violation of this section for the bureau of criminal identification and investigation or any authorized employee of the bureau participating in the investigation of criminal activity to release, disseminate, or otherwise make available to, or discuss with, a person directly employed by a law enforcement agency DNA records collected in the DNA database or fingerprints filed for record by the superintendent of the bureau of criminal identification and investigation.

(H)³⁴ (1) In any application for employment, license, or any other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any record that has been sealed pursuant to section [2953.52](#) of the Revised Code. If an inquiry is made in violation of this section, the person whose official record was sealed may respond as if the arrest underlying the case to which the sealed official records pertain and all other proceedings in that case did not occur, and the person whose official record was sealed shall not be subject to any adverse action because of the arrest, the proceedings, or the person's response.

³⁴ Currently 2953.55

(2) An officer or employee of the state or any of its political subdivisions who knowingly releases, disseminates, or makes available for any purpose involving employment, bonding, licensing, or education to any person or to any department, agency, or other instrumentality of the state, or of any of its political subdivisions, any information or other data concerning any arrest, complaint, indictment, information, trial, adjudication, or correctional supervision, the records of which have been sealed pursuant to section [2953.52](#) of the Revised Code, is guilty of divulging confidential information, a misdemeanor of the fourth degree.

(3) It is not a violation of this section for the bureau of criminal identification and investigation or any authorized employee of the bureau participating in the investigation of criminal activity to release, disseminate, or otherwise make available to, or discuss with, a person directly employed by a law enforcement agency DNA records collected in the DNA database or fingerprints filed for record by the superintendent of the bureau of criminal identification and investigation.

(I)³⁵ (1) An order issued under section [2953.37](#) of the Revised Code to expunge the record of a person's conviction or, except as provided in division (G) of section [2953.32](#) of the Revised Code, an order issued under that section to seal the record of a person's conviction restores the person who is the subject of the order to all rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release on parole or post-release control.

(2)(a) In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, except as provided in division (E) of section [2953.32](#) and in section [3319.292](#) of the Revised Code and subject to division (B)(2) of this section, a person may be questioned only with respect to convictions not sealed, bail forfeitures not expunged under section 2953.42 of the Revised Code as it existed prior to June 29, 1988, and bail forfeitures not sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered.

(b) A person may not be questioned in any application, appearance, or inquiry of a type described in division (B)(1) of this section with respect to any conviction expunged under section [2953.37](#) of the Revised Code.

(J)³⁶ Nothing in sections [2953.31](#) to [2953.33](#)³⁷ of the Revised Code precludes an eligible offender from taking an appeal or seeking any relief from the eligible offender's conviction or from relying on it in lieu of any subsequent prosecution for the same offense.

(K)³⁸ Violations of sections [2953.31](#) to [2953.61](#) of the Revised Code shall not provide the basis to exclude or suppress any of the following evidence that is otherwise admissible in a criminal proceeding, delinquent child proceeding, or other legal proceeding:

³⁵ Currently 2953.33

³⁶ Currently 2953.34

³⁷ Could be re-written as Chapter 2953

³⁸ Currently 2953.56

- (1) DNA records collected in the DNA database;
- (2) Fingerprints filed for record by the superintendent of the bureau of criminal identification and investigation;
- (3) Other evidence that was obtained or discovered as the direct or indirect result of divulging or otherwise using the records described in divisions (A) and (B) of this section.

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Section IV: Expungements

Because expungements have a different result than sealing a record and because eligibility for expungements is much more limited than for sealing a record, they are in a section separate from record-sealing. Alternately, expungements could be incorporated into the other three sections, as relevant.

2953.35 Expungement of certain convictions - firearms.ⁱⁱ

(A) Any person who is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (B), (C), or (E) of section [2923.16](#) of the Revised Code as the division existed prior to September 30, 2011, and who is authorized by division (H)(2)(a) of that section to file an application under this section for the expungement of the conviction record may apply to the sentencing court for the expungement of the record of conviction. The person may file the application at any time on or after September 30, 2011. The application shall do all of the following:

- (1) Identify the applicant, the offense for which the expungement is sought, the date of the conviction of or plea of guilty to that offense, and the court in which the conviction occurred or the plea of guilty was entered;
- (2) Include evidence that the offense was a violation of division (B), (C), or (E) of section [2923.16](#) of the Revised Code as the division existed prior to September 30, 2011, and that the applicant is authorized by division (H)(2)(a) of that section to file an application under this section;
- (3) Include a request for expungement of the record of conviction of that offense under this section.

(B) Upon the filing of an application under division (B) of this section and the payment of the fee described in division (D)(3) of this section if applicable, the court shall set a date for a hearing and shall 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 shall specify in the objection the reasons for believing a denial of the application is justified. The court shall 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. The court shall hold the hearing scheduled under this division.

(C)(1) At the hearing held under division (C) of this section, the court shall do each of the following:

(a) Determine whether the applicant has been convicted of or pleaded guilty to a violation of division (E) of section [2923.16](#) of the Revised Code as the division existed prior to September 30, 2011, and whether the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011;

(b) Determine whether the applicant has been convicted of or pleaded guilty to a violation of division (B) or (C) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and whether the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011, due to the application of division (F)(5) of that section as it exists on and after September 30, 2011;

(c) If the prosecutor has filed an objection in accordance with division (C) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(d) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction or guilty plea expunged against the legitimate needs, if any, of the government to maintain those records.

(2)(a) The court may order the expungement of all official records pertaining to the case and the deletion of all index references to the case and, if it does order the expungement, shall send notice of the order to each public office or agency that the court has reason to believe may have an official record pertaining to the case if the court, after complying with division (D)(1) of this section, determines both of the following:

(i) That the applicant has been convicted of or pleaded guilty to a violation of division (E) of section 2923.16 of the Revised Code as it existed prior to September 30, 2011, and the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011, or that the applicant has been convicted of or pleaded guilty to a violation of division (B) or (C) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011, due to the application of division (F)(5) of that section as it exists on and after September 30, 2011;

(ii) That the interests of the applicant in having the records pertaining to the applicant's conviction or guilty plea expunged are not outweighed by any legitimate needs of the government to maintain those records.

(b) The proceedings in the case that is the subject of an order issued under division (D)(2)(a) of this section shall be considered not to have occurred and the conviction or guilty plea of the person who is the subject of the proceedings shall be expunged. The record of the conviction shall not be used for any purpose, including, but not limited to, a criminal records check under section 109.572 of the Revised Code or a determination under section 2923.125 or 2923.1212 of the Revised Code of eligibility for a concealed handgun license. The applicant may, and the court shall, reply that no record exists with respect to the applicant upon any inquiry into the matter.

(3) Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars. The court shall pay thirty dollars of the fee into the state treasury and shall pay twenty dollars of the fee into the county general revenue fund.

(D) Relief from weapons disability³⁹.

(1) Any person who is prohibited from acquiring, having, carrying, or using firearms may apply to the court of common pleas in the county in which the person resides for relief from such prohibition.

(2) The application shall recite the following:

(a) All indictments, convictions, or adjudications upon which the applicant's disability is based, the sentence imposed and served, and any release granted under a community control sanction, post-release control sanction, or parole, any partial or conditional pardon granted, or other disposition of each case, or, if the disability is based upon a factor other than an indictment, a conviction, or an adjudication, the factor upon which the disability is based and all details related to that factor;

(b) Facts showing the applicant to be a fit subject for relief under this section.

(3) A copy of the application shall be served on the county prosecutor. The county prosecutor shall cause the matter to be investigated and shall raise before the court any objections to granting relief that the investigation reveals.

(4) Upon hearing, the court may grant the applicant relief pursuant to this section, if all of the following apply:

(a) One of the following applies:

(i) If the disability is based upon an indictment, a conviction, or an adjudication, the applicant has been fully discharged from imprisonment, community control, post-release control, and parole, or, if the applicant is under indictment, has been released on bail or recognizance.

(ii) If the disability is based upon a factor other than an indictment, a conviction, or an adjudication, that factor no longer is applicable to the applicant.

(b) The applicant has led a law-abiding life since discharge or release, and appears likely to continue to do so.

(c) The applicant is not otherwise prohibited by law from acquiring, having, or using firearms.

(5) Costs of the proceeding shall be charged as in other civil cases, and taxed to the applicant.

(6) Relief from disability granted pursuant to this section restores the applicant to all civil firearm rights to the full extent enjoyed by any citizen, and is subject to the following conditions:

³⁹ Currently Sec. 2923.14

- (a) Applies only with respect to indictments, convictions, or adjudications, or to the other factor, recited in the application as the basis for the applicant's disability;
- (b) Applies only with respect to firearms lawfully acquired, possessed, carried, or used by the applicant;
- (c) May be revoked by the court at any time for good cause shown and upon notice to the applicant;
- (d) Is automatically void upon commission by the applicant of any offense set forth in division (A)(2) or (3) of section 2923.13 of the Revised Code, or upon the applicant's becoming one of the class of persons named in division (A)(1), (4), or (5) of that section.

2953.36 Expungement of certain crimes for victims of human trafficking.⁴⁰

(A) Any person who is or was convicted of a violation of section [2907.24](#), [2907.241](#), or [2907.25](#) of the Revised Code may apply to the sentencing court for the expungement of the record of conviction if the person's participation in the offense was a result of the person having been a victim of human trafficking. The person may file the application at any time. The application shall do all of the following:

- (1) Identify the applicant, the offense for which the expungement is sought, the date of the conviction of that offense, and the court in which the conviction occurred;
- (2) Describe the evidence and provide copies of any documentation showing that the person is entitled to relief under this section;
- (3) Include a request for expungement of the record of conviction of that offense under this section.

(B) The court may deny an application made under division (B) of this section if it finds that the application fails to assert grounds on which relief may be granted.

(C) If the court does not deny an application under division (C) of this section, it shall set a date for a hearing and shall notify the prosecutor for the case from which the record of conviction resulted 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 shall specify in the objection the reasons for believing a denial of the application is justified. The court may direct its regular probation officer, a state probation officer, or the department of

⁴⁰ Renumbered in this draft; currently 2953.38

probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant.

(D) At the hearing held under division (D) of this section, the court shall do both of the following:

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

(2) Determine whether the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense was a result of having been a victim of human trafficking.

(E) If after a hearing the court finds that the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense that is the subject of the application was the result of the applicant having been a victim of human trafficking, the court shall grant the application and order that the record of conviction be expunged.

(F)(1) The court shall send notice of the order of expungement to each public office or agency that the court has reason to believe may have an official record pertaining to the case if the court, after complying with division (E) of this section, determines both of the following:

(a) That the applicant has been convicted of a violation of section [2907.24](#), [2907.241](#), or [2907.25](#) of the Revised Code;⁴¹

(b) That the interests of the applicant in having the records pertaining to the applicant's conviction expunged are not outweighed by any legitimate needs of the government to maintain those records.

(2) The proceedings in the case that is the subject of an order issued under division (F) of this section shall be considered not to have occurred and the conviction of the person who is the subject of the proceedings shall be expunged. The record of the conviction shall not be used for any purpose, including, but not limited to, a criminal records check under section [109.572](#) of the Revised Code. The applicant may, and the court shall, reply that no record exists with respect to the applicant upon any inquiry into the matter.

(G) Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars. The court shall pay thirty dollars of the fee into the state treasury and shall pay twenty dollars of the fee into the county general revenue fund.

ⁱ Relabeled in this draft as 2953.33

ⁱⁱ Renumbered in this draft. Currently 2953.37

⁴¹ The statute currently limits eligibility for sealing to only charges of loitering, soliciting, and prostitution. There are two (companion) bills currently in the legislature that aim to expand the list of eligible charges in this section.