



OHIO

CRIMINAL SENTENCING COMMISSION

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# Ad Hoc Committee on Rights Restoration and Record Sealing

Report & Recommendations  
November 2016



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## I. Executive Summary

In the midst of discussions of various sentencing reform topics, members of the Ohio Criminal Sentencing Commission decided that whether and how prior convictions are sealed and/or civil rights restored is a critical topic that merited study by a special committee. The controlling Ohio statute for adult cases (2953.31 et. seq.) titles the process as the Sealing of Records rather than Expungement. There is a technical difference between Sealing a Record and Expungement of Record. “Sealing” a court record means that the criminal record is removed from all public records and the public no longer has access to the records of the criminal case, including employers. (There are a few exceptions for certain types of employers.) “Expungement” usually means that the criminal record is completely destroyed, erased, or obliterated from all records<sup>1</sup>.

The **Rights Restoration/Record Sealing Ad Hoc Committee** was created and began its work by seeking to (1) collect data on current practices under Ohio’s existing statutes, and (2) identify and prioritize aspects of Ohio’s existing statutory scheme that most needed reform.

Specific issues identified by the Ad Hoc Committee include that the sealing statutes presently do not account for the passage of time in determining eligibility, but instead focus solely upon either the number of convictions or the type of conviction; do not adequately address eligibility determination of other violations; do not provide a process eliminating the offense record for licensing boards; judicial discretion is curtailed by a strict, bright-line structure; technology and web based information is not regulated and there is no statewide data collection.

The process of data collection and identification of issues reinforced that it might not be efficient or effective to consider mere potential improvements to existing statutory structure, but instead illustrated an explicit need to adopt a bold approach to effectuate meaningful, realistic change, as depicted in **Appendix A**. After several deliberative meetings fraught with the realities of the political calendar and members overly extended with the competing priorities of their respective professions, the Ad Hoc Committee agreed the most prudent action is to proceed with a more intelligible re-draft and re-organization of the current statutory framework while more sweeping, substantive policy changes may be developed in the future.

At the meeting of the full Commission on June 23, 2016, Commission Members unanimously voted to accept the Ad Hoc Committee’s recommendations and report.

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## II. Ad Hoc Committee Members\*:

*Professor Doug Berman* – OSU Moritz College of Law, Advisory Committee Member - Chair

*Lara Baker-Morrish*, Chief – Columbus City Attorney’s Office, Commission Member

*Kari Bloom*, Ohio Public Defender – Legislative Office, Advisory Committee Member

*Paula Brown*, OSBA representative, Commission Member

*Sarah Brown-Clark*, Clerk of Court, Youngstown Municipal Court

*Doug Cubberley*, Bowling Green Municipal Court

*Paul Dobson*, Wood County Prosecutor, Commission Member

*Kort Gatterdam*, Criminal Defense Lawyers Association, Commission Member

*Cordelia Glenn*, Cleveland Municipal Court/Housing Division

*Matt Kanai*, Ohio Attorney General’s Office

*Steven Longworth*, Clerk of Court, Middletown Municipal Court

*Marta Mudri*, Ohio Judicial Conference, Advisory Committee Member

*John Ryan*, Ohio Judicial Conference

*Joanna Saul*, Correctional Institution Inspection Committee, Advisory Committee Member

*Judge Charles Schneider*, Franklin County Court of Common Pleas

*Judge Selvaggio*, Champaign County Court of Common Pleas, Commission Member

*Judge Spanagel*, Parma Municipal Court, Commission Member

*Greg Trout*, Chief Counsel – Ohio Attorney General’s Office, Bureau of Criminal Identification

*Sara Andrews*, Sentencing Commission – Director

*\*Member participation is not unqualified endorsement of the Ad Hoc Committee final recommendations.*

### III. Background

The Ad Hoc Committee on Rights Restoration and Record Sealing was established in June 2015. The Ad Hoc Committee immediately began by gathering available data and identifying issues surrounding the current administration of, process and eligibility for record sealing and expungement and the executive branch functions of clemency and the certificate of qualification of employment. The complete list of issues and Ohio Revised Code sections are noted in **Appendix B**.

The process of data collection and identification of priority reform issues suggested to members of the Ad Hoc Committee that it might not be efficient or effective to consider only modifications to the existing statutory structure. Nevertheless, in an effort to provide a needed start to more ambitious reform suggestions and plans, a partial clarifying redraft of existing statutes was developed by members of the Ad Hoc Committee, **Appendix E**. The rest of this report provides an overview of the issues and concerns identified through the work of the Ad Hoc Committee to date.

#### A. Policy Justifications for Bold Reform Efforts

Ohio and other states have long provided various means for former offenders to seal or expunge criminal records, and in recent years states have created new mechanisms for ex-offenders to obtain special certificates of merit or rehabilitation. But policy advocates and public officials all recognize a new urgency for strengthening and expanding such laws because: (1) expanded criminalization at the local, state and federal levels has dramatically increased the number of citizens saddled with criminal records, (2) expanded formal and informal application of collateral sanctions at the local, state and federal levels has dramatically increased the impact and consequences of having even a minor criminal record, (3) technological advances have made it far easier and more common for official and non-official entities to store criminal records and make them readily accessible to various parties, and (4) empirical research and anecdotal evidence suggests that the burdens of even minor criminal history can be detrimental to former offenders obtaining employment and other services that are proven to reduce the likelihood of recidivism.

National leaders have long discussed the importance of reform efforts focused on the “back-end” of the criminal justice system: calling America “the land of second chance,” President George W. Bush in his 2004 State of the Union Address spotlighted prisoner reentry and proposed a major “prisoner reentry initiative to expand job training and placement services, to provide transitional housing, and to help newly released prisoners get mentoring.” More recently, in November 2015, President Barack Obama issued an executive order announcing a series of steps to encourage reentry and rehabilitation of individuals who have recently been released from prison. *See* Press

Release, *President Obama Announces New Actions to Promote Rehabilitation and Reintegration for the Formerly-Incarcerated* (Nov. 2, 2015). Among various initiatives, this new executive order called for the U.S. Departments of Labor and Justice to help develop and implement a National Clean Slate Clearinghouse (NCSC) to provide information and resources to reentry, legal services and advocacy organizations.

The NCSC, which is still in development, is tasked with **(a)** gathering on a national website state-by-state information on sealing, expungement, and other related legal services that lessen the negative impact of having a criminal record, and **(b)** developing tools and providing technical assistance to reentry service providers and legal aid organizations on how to use and expand access to sealing, expungement, and other legal services. Materials released in conjunction with the development of this new NCSC provided this explanation of the importance of sustained criminal justice reform work in this arena:

*Each year, more than 630,000 individuals are released from state and federal prisons and almost 12 million cycle through local jails with close to 450,000 people in pretrial detention. Nationally, some 1 in 3 U.S. adults has an arrest record, often for relatively minor, non-violent offenses, sometimes decades in the past. The sometimes lifetime-impact of a criminal record will keep many people from obtaining employment, access to housing, higher education, student loans and other forms of credit, even after they've paid their debt to society, have turned their lives around, and are unlikely to reoffend. It is known that having a record of even a single arrest without a conviction can profoundly reduce a person's earning capacity. However, research shows that people who stay out of trouble for just a few years are no more likely to be arrested than the general population. Information and assistance regarding record mitigation, sealing, expungement, pardons, certificates of rehabilitation and the correcting of inaccurate juvenile and criminal records can play a critical role in giving people a second chance. Such actions can translate into reduced recidivism and increased chances for employment, housing, education and reintegration into the community.*

Significantly, as detailed in a recent report from the Vera Institute of Justice, many states around the nation are recognizing and responding to these modern realities: from “2009 through 2014, forty-one states and the District of Columbia enacted 155 pieces of legislation to mitigate the burden of collateral consequences for people with certain criminal convictions.” Ram Subramanian, Rebecka Moreno & Sophia Gebreselassie, *Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014*, at 4 (Dec. 2014). While states nationwide, including

Ohio and neighboring states, have been pursuing various legal reforms in this arena in recent years, many public officials and policy advocates continue to express concern that recent legislative activity is still too often too narrowly tailored with respect to which offenders and offenses are impacted by recent reforms.

With these realities and concerns in mind, the **Rights Restoration/Record Sealing Ad Hoc Committee** is committed to continuing to explore and draft reform proposals that build and expand on recent reform efforts in order to now “flip the norm” with respect to criminal records in Ohio — i.e., to propose new laws and procedures that could provide, subject only to a few narrowly tailored exceptions, for presumptive or automatic sealing of nearly all criminal records after a certain period of law-abiding behavior. Various members of the Ad Hoc Committee along with various members of the Sentencing Commission have expressed firm support for a bold and ambitious statutory and administrative reform in this arena. An institutional structure and the substantive outlines of bold and ambitious long-term reforms are outlined in **Part IV** of this Report, Reform Recommendations.

## **B. Practical Problems Justifying Short- and Long-Term Reform Proposals**

In addition to identifying broad reasons for strengthening and expanding various means for former offenders to seal criminal records and/or have civil rights restored, members of **Rights Restoration/Record Sealing Ad Hoc Committee** have identified an array of practical problems with Ohio’s existing statutory scheme and its administration. These practical problems, which are briefly discussed in subsections below, can be roughly divided into four categories: **(1)** Code Confusion and Data Fog, **(2)** Substantive Eligibility for Statutory Relief, **(3)** Procedural Issues Related to Fair and Effective Statutory Relief, and **(4)** Relief after Executive Action and Other Remedies.

### **(1) Code Confusion and Data Fog**

Since the mid-1970s, Ohio has had statutory sections providing for the sealing of records of a conviction. But until quite recently Ohio's sealing statutes applied only to “first offenders” and statutory provisions further limited what types of convictions were eligible for record sealing. Through recent statutory changes, though, Ohio has **(a)** expanded the nature of offenders and offenses eligible for record sealing, **(b)** provided distinctly for full expungement of a certain limited number of offenses, and **(c)** created mechanisms for ex-offenders to petition for a Certificate of Qualification for Employment (CQE).

The result of this recent legislative activity is an array of complicated and cumbersome statutory provisions now appearing in Ohio Revised Code §§ 2953.27—2953.61. Collectively, these statutes are difficult for even experienced lawyers and judges — let alone lay individuals potentially eager to utilize these provisions without the benefit of counsel — to fully understand and apply consistently. Indeed, the Ohio Supreme Court in recent cases has noted that some Ohio courts refer inaccurately to the record sealing process as “expungement,” even though now under Ohio statutes “expungement is a separate process from sealing a conviction record. Expungement results in deletion, making all case records ‘permanently irretrievable,’ R.C. 2953.37(A) (1), while sealing simply provides a shield from the public’s gaze. R.C. 2953.32(D).” *State v. Aguirre*, 2014-Ohio-4603, ¶5, n.2. Problematically, the array of statutory provisions now covering record sealing and related mechanisms contribute to an unwieldy process fraught with confusion, inefficiency and frustration for all involved. These realities prompted members of the Ad Hoc Committee to develop a clarifying redraft of existing statutes intended initially to seek an immediate remedy to this “Code Confusion.” This proposed redraft, with explanatory notes within, is attached – **Appendix E.**

Problems understanding and assessing existing statutory schemes extend beyond basic concerns of “code confusion.” At the outset of the Ad Hoc Committee’s work, members sought to gather and analyze statewide and regional information on basic matters such how often applicable statutes were invoked and how they were being applied. Through various research efforts, the Ad Hoc Committee sought basic data on how many individuals have applied to have their records sealed and/or expunged in recent years, as well as how these applications have been processed and how many have been granted.

Initial data provided by the Bureau of Criminal Investigation (BCI) reported annual total sealing orders of around 36,000 from 2013 to 2015. (To be precise, BCI reported 38,530 such orders in 2013; 36,083 in 2014, and 35,739 in calendar year 2015.) The following basic data was also secured for the years 2010 to 2014 from the Franklin County Municipal Court (FCMC), which jurisdictionally would handle only non-felony offenses:

**Franklin County Municipal Court (FCMC) Sealing Order Data**

	<b>Total FCMC Sealing Cases</b>	<b>Total FCMC Cases Sealing Granted</b>	<b>Percentage Granted</b>
<b>2014</b>	3,272	2,831	87%
<b>2013</b>	3,460	3,136	91%
<b>2012</b>	3,102	2,819	91%
<b>2011</b>	2,965	2,611	88%
<b>2010</b>	2,685	2,211	82%

Subsequently, with the aid of summer staff interns, a systematic effort was made to communicate directly with all relevant courts throughout the state to understand expungement and record sealing services provided, internal court procedures, and annual rates of applications. The data collection efforts of the research staff included reaching out via hundreds of emails and phone calls to Common Pleas and Municipal Court Clerks or Administrators. These inquiries revealed, perhaps unsurprisingly, that nearly every court seemed to catalog, process and retain records on these matters very differently, and that many courts count and handled both sealed and expunged records the same way.

Staff researchers reported that they confronted major research problems because there is no standardized system for record keeping. In addition, as a memo from the staff reported, many courts “differ both in application/hearing process itself, and how the records are retained (or not).” In their words, due to the “sporadic and inconsistent nature of the data [collected], the wide variety of sizes of courts, and the different systems in place, the (limited) amount of data collected is difficult, if not impossible, to compare against one another [and] no individual set of data is sufficiently large enough to draw conclusions” about the basic application or efficacy of the existing statutory mechanisms for expungement and record sealing.

Due to the data collection challenges encountered by the Ad Hoc Committee, one recommendation is for the Ohio Criminal Sentencing Commission and/or another body to consider instituting and promulgating standard data-recording and data-transmission processes for all courts statewide that receive and act on sealing and expungement applications. This recommendation is discussed more fully in Part IV.

## **(2) Substantive Eligibility for Statutory Relief**

During conference calls and meetings, Ad Hoc Committee members identified a number of concerns with the substantive eligibility provisions of the sealing and expungement statutes. Some concerns were focused on specific types of offenses or substantive limitations that seemed to problematically preclude eligibility for statutory relief. For example, some members suggested that, with the exclusion of offenses of violence and sexually oriented offenses, Misdemeanor 4 (M4) and possibly Misdemeanor 3 (M3) ought to be treated the same as Minor Misdemeanors (MM) under the statute to reflect the reality that often that there is no inherent substantive difference between, say, an MM disorderly conduct conviction and an M4 disorderly. It was also noted that the new statute providing for expungement of offenses resulting from human trafficking only allows for sealing of loitering, soliciting, and prostitution convictions and does not provide for automatic sealing of dismissed offenses (this may be addressed in a pending set of bills of the 131<sup>st</sup> General

Assembly – HB 286 and SB 284). Prior to 2012, only first-time offenders could apply to seal a single conviction – any past conviction barred the sealing of a subsequent one and OVI was specifically enumerated as a conviction that would bar sealing. Effective as of 2012, 129 SB 337 changed that by allowing offenders with a single past conviction (including one, and only one, OVI with no other convictions) to be eligible to seal a criminal record. That bill also addresses appellate court decisions that did not allow sealing of a non-support conviction because the victim of the crime is a minor (the current statute still prohibits sealing the record of a crime that victimizes a minor, but specifically excludes non-support from that prohibition).

In addition to specific concerns with particular eligibility limitations, there was a collective broader concern about eligibility expressed not only by all the Ad Hoc Committee members, but also by many other who spoke with the Ad Hoc Committee. Stated simply, the concern was that, even despite recent statutory expansions, the existing limitations on who can have their records sealed or expunged are still too restrictive — primarily because existing rules and limits are focused upon the number or type of convictions rather than taking into account in any way the passage of significant time during which a former offender has been law-abiding. Many Ad Hoc Committee members believe that the statutes are still far too limiting in the number and type of offenses that an offender may seek to have sealed. (Somewhat relatedly, as discussed in the procedural section below, there was also a view that minor offenses might be wisely subject to automatic sealing and that there are still too many means for third-parties to access a sealed conviction). Ad Hoc Committee members generally believe that Ohio's policy-makers need to rethink the current statutory structure that forever prohibits judicial sealing for most offenses — including any first or second-degree felony, any conviction involving a mandatory prison term, any first-degree misdemeanor or a felony conviction involving an offense of violence, or a conviction where the victim is under the age of eighteen — even if those offenses were committed decades earlier and the applicant has subsequently been a model citizen.

In short, members of the Ad Hoc Committee urge review of the current, strictly bright-line, structure which allows for the sealing of the convictions of only certain offenses on a single timeline. In the view of the Ad Hoc Committee, existing statutes should be replaced with a new statutory scheme which gives primary consideration instead to a classification-specific timeline structure that also allows for increasing judicial discretion over time to seal distant offenses. Members believe the sealing statutes need to account for the passage of time in determining eligibility, rather than focusing solely upon either the number of convictions or the type of conviction. (For example, an individual who is convicted of 3 counts of theft when the person is 20 years old should be able to petition for a record sealing by the time

that person is, say, 50 years old assuming a clean history since that time.) While the specifics of any proposal to broadly expand eligibility for sealing and expungement would need to be hammered out, members consistently expressed the view that having no mechanisms or accommodation for the passage of time was a fundamental flaw in the way the existing statutes are written. An institutional structure and the substantive outlines of bold and ambitious long-term reforms are outlined in **Part IV** of this Report – Reform Recommendations.

### **(3) Procedural Issues Related to Fair and Effective Statutory Relief**

In addition to concerns with the substantive eligibility provisions of the sealing and expungement statutes, Ad Hoc Committee members expressed concern about the procedures that can attend the sealing/expungement process. Some procedural problems stem from the code confusion concerns highlighted above: i.e., because it is difficult for many to understand fully who is eligible for relief, there are concerns about some wasteful applications being filed, and some possibly meritorious applications not being filed, due to unwieldy statutory provisions. As just one “code confusion” example, some members noted it is difficult under the existing statutes to effectively differentiate between the payment of court costs and applicable fines in order to determine eligibility for statutory relief. Another example concerns the statutory disconnect between the requirements of the public records’ statute to provide an explanation, in writing, of the reason for non-disclosure of a record and the sealing statutes’ requirement that no reference to the sealed cases be made. The public records statute needs to make clear that “sealing” means records are no longer public records. Yet another example concerns confusing statutory provisions which appear to both prohibit all index references to a case and allow for indexing of a case. The Ad Hoc Committee’s clarifying redraft of existing statutes is intended to seek an immediate remedy to many of these problems, and the proposed redraft, with explanatory notes within, is attached to this memorandum as **Appendix E**.

Critically, Ad Hoc Committee members also expressed concerns about existing procedures that are not merely the result of “code confusion.” For example, it was noted that relevant prosecutors are not always getting notice concerning applications to seal or expunge convictions even though the statutes evince the General Assembly’s intent to ensure prosecutors have an opportunity to be involved in the process. Thus, formal or informal mechanisms are needed to enhance the process of notification and review by the appropriate prosecutor’s office of all petitions to seal/expunge (and the appropriate prosecutor’s office includes notice to the **county** prosecutor’s office of applications to seal amendments, bind-overs or dismissals of felony complaints filed in **municipal** courts). The Ad Hoc Committee developed a list of agencies/entities to notify, **Appendix C**. Also, members noted the need to address procedural issues related to “partial sealing” in

situations in which one offense may be sealed by statute but another offense may not — for instance, a traffic offense (no sealing) and an accompanying drug possession charge: e.g., there perhaps ought to be a means to allow for the redaction of the official records possessed by law enforcement and prosecutors’ offices rather than an order to seal in order to address the dilemma of how agencies satisfy their requirement to both maintain the unsealed records and seal the sealed records out of the same arrest/stop.

Two of the most fundamental procedural concerns often raised by Ad Hoc Committee members and others concerned (1) the basic burdens (and/or lack of awareness) surrounding the entire sealing/expungement process for former offenders, and (2) the difficulty of ensuring that records that a court orders to be sealed or expunged actually are shielded from review and access by third parties [note that there are several pending bills that aim to address this problem, albeit in a piecemeal approach: 131<sup>st</sup> General Assembly – HB 172 and HB 427]. As one may expect, procedures and forms vary among jurisdictions, examples are noted in **Appendix C**. Ad Hoc Committee members suggested various ideas for how these fundamental procedural concerns might be addressed through statutory reforms. For example, it was suggested that some minor offenses might be subject to automatic sealing or expungement after a certain period of time. And it was suggested that kinds of liability for third-parties (or even government officials) who refuse to respect or implement sealing or expungement orders could help reduce possible access and use of such conviction by third-parties. In the course of these discussions, however, Ad Hoc Committee members recognized that statutory proposals for automatic sealing and/or third-party liability could raise both normative and administrative issues that would impact a number of potential stakeholders.

#### **(4) Relief after Executive Action and Other Remedies.**

In *State v. Boykin*, 138 Ohio St. 3d 97, 2013-Ohio-4582, the Ohio Supreme Court ruled that “a gubernatorial pardon does not automatically entitle the recipient to have the record of the pardoned conviction sealed.” Members of the General Assembly and others have, in the wake of this opinion, expressed interest in statutory reform to address the fact that there is currently no provision in the sealing statute for addressing the issue of pardons. The Chair of the Ad Hoc Committee was contacted by a few persons who were involved in an informal working group working toward a possible draft legislative response to this problem. Though these efforts did not produce any tangible results, there seems to be continued wide-spread interest in some form of new legislation or amendments to existing statutes to facilitate the (perhaps automatic) sealing by court order of official records related to any and all convictions subject to a gubernatorial pardon.

In addition, another substantive matter briefly discussed by some members was the operation of the new statutory remedy allowing offenders to petition for a Certificate of Qualification for Employment (CQE). If issued, a CQE “lifts the automatic bar of a collateral sanction, and a decision-maker shall consider on a case-by-case basis whether it is appropriate to grant or deny the issuance or restoration of an occupational license or an employment opportunity.” Many have suggested that the CQE mechanism has potential to aid ex-offenders, but it is unclear whether and how this potential is now being realized and effectuated. Some have reported that the application process is burdensome and should be changed to remove the onus from the applicant to make a sophisticated statement about collateral consequences (in other words, it should be evident that a petitioner is hoping to gain employment and hoping that a CQE will help him do so; requiring a “legalese” explanation in an application creates an unnecessary pitfall). It has also been reported that newly-created background check requirements can help to create a counterintuitive loop: the background checks reveal long-past criminal histories that jeopardize jobs and create the need for a CQE. The CQE is arguably the weakest tool in the rights restoration scheme; if the rest of the scheme were improved, it may not be necessary to implement the CQE at all.

#### IV. Reform Recommendations

The main and fundamental recommendation emerging from the Ad Hoc Committee’s work is that the existing record sealing/expungement statutory framework should be repealed and replaced with a simplified, intelligible and purposeful statute grounded in evidence based policy and decision making. Helpfully, a number of organizations have proposed “Model Statutes” which could provide a useful framework and template for a whole new statutory approach to record sealing and/or expungement. In substance, many of these models provide mechanisms for automatic sealing of certain minor offenses after a certain period; they also provide broad discretion to judges to seal a wide array of offenses (with different timelines based on the seriousness of the offense) if and whenever a former offender has “earned” a clean record through years of law abiding behavior and through positive contributions to his community. For example, one model statute, **Appendix F**, proposes that any person convicted of a criminal offense may petition for sealing: **a)** for drug offenses arising out of drug addiction, upon completion of the sentence imposed and successful completion of a drug treatment program, **b)** for non-violent crimes, after 5 years have elapsed from the completion of sentence for a felony conviction; after 2 years have elapsed for a misdemeanor conviction, **c)** for violent crimes, after 10 or more years have elapsed from the completion of the sentence for a felony conviction; after 5 years have elapsed from the completion of the sentence for a misdemeanor conviction.

Many members of the Ad Hoc Committee, as well as members of the Sentencing Commission and other interested Ohio stakeholders, have expressed firm support for a bold and ambitious statutory and administrative reform in this arena. Other than expressions of concern about the particulars, there seems to be broad support for reform efforts that would “flip the norm” with respect to criminal records in Ohio — i.e., to have Ohio embrace laws and procedures that could provide, subject only to a few narrowly tailored exceptions, for presumptive or automatic sealing of nearly all criminal records after a certain period of law-abiding behavior. At the same time, Ad Hoc Committee members recognize and are quick to concede that soup-to-nuts reform of existing rights restoration statutes is an ambitious project and one that implicates an array of substantive, procedural and practical issues that extended far beyond the basic concerns of criminal sentencing and necessarily implicate the work and responsibilities of many state official and private third-parties.

In light of these realities, a working group of the Ad Hoc Committee took the initiative to develop, as a first immediate step forward, a clarifying redraft of existing statutes intended initially to seek an immediate remedy to the “code confusion” that impacts negatively the operation of existing statutes. As noted before, this proposed redraft, with explanatory notes within, is attached to this memorandum as **Appendix E**.

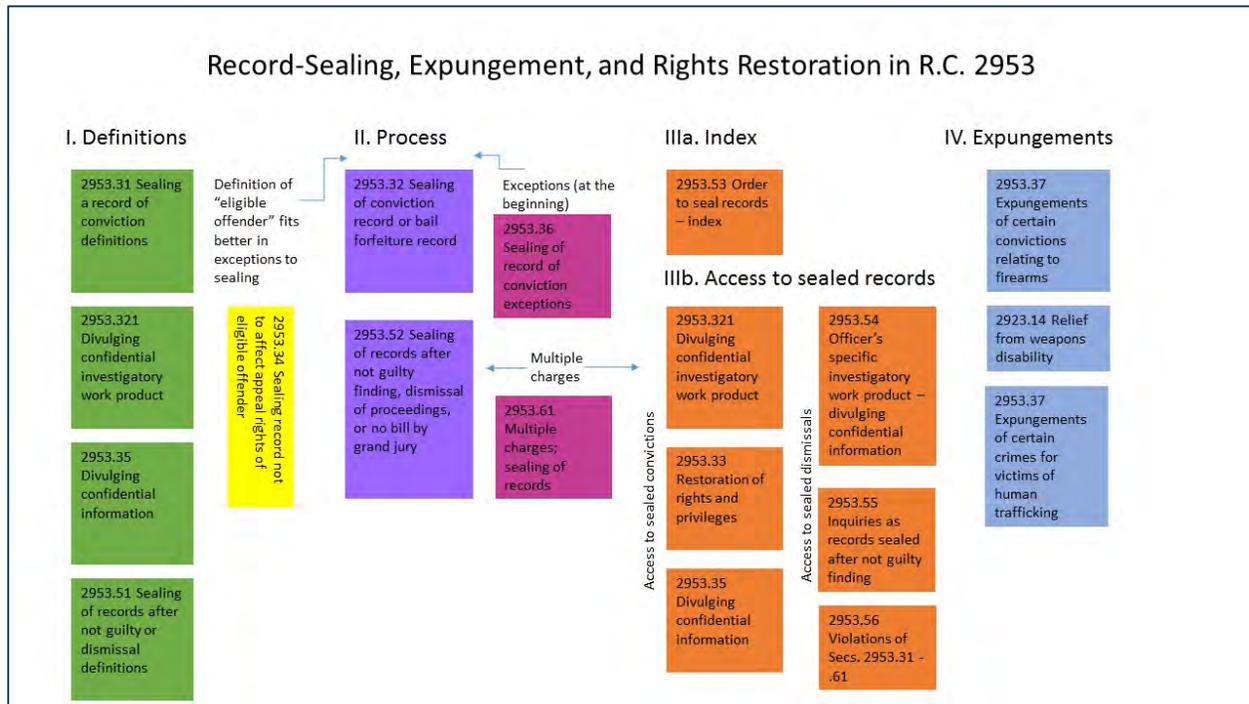
In addition to recommending that the full Commission endorse this proposed redraft for publication and promulgation, the Ad Hoc Committee recommends that the Ohio Criminal Sentencing Commission, or perhaps another separate body within the Ohio court system seek to institute and promulgate standard data-recording and data-transmission processes for all courts statewide that receive and act on sealing and expungement applications. As noted above, there is currently no statewide data on the operation of existing statutes and no entities committed to seeking to collect and assess how these statutes are functioning.

As the Ad Hoc Committee’s work concluded, the conversation continues, to include the production of a [Supreme Court of Ohio Bench card](#), the Association of Municipal and County Judges of Ohio (AMCJO) actively working on a BenchBook, the development of a Quick Reference Guide, **Appendix D** and the Commission exploring recently enacted legislation in several states, known as ‘auto-erase’, codifying that a person mistakenly arrested should not have a criminal record. Stay tuned!

# APPENDICES



## Record Sealing & Expungement Graphic





## List of Identified Issues & Statutes

### **Process and clarification:**

**#1:** Fix/clarify the process of notification and review by the appropriate prosecutor's office of all petitions to seal/expunge. By appropriate prosecutor's office, this includes the notice to the county prosecutor's office to seal amendments, bind-overs or dismissals of felony complaints filed in municipal courts.

**#6:** In the case of a partial sealing (where one offense may be sealed by statute but another offense may not – for instance, a traffic offense (no sealing) and an accompanying drug possession charge) allow for the redaction of the official records possessed by law enforcement and prosecutors' offices rather than an order to seal. This would address the ongoing dilemma of how these agencies are required to both maintain the unsealed records and seal the sealed records out of the same arrest/stop.

**#7:** Some appellate districts view non-support as ineligible for sealing because the child is deemed a victim of the offense. The conviction keeps the offender from obtaining employment to pay the support – the definition of what it means to be the victim of a crime needs to be clarified.

**#8:** There is a lack of clarity between the requirements of the public records' statute to provide an explanation, in writing, of the reason for non-disclosure of a record and the order of the sealing statutes that no reference to the sealed cases be made. The public records statute needs to make clear that a sealing means that the records are no longer public records.

**#9:** The provisions in the sealing statutes which both prohibit all index references to a case and allow for indexing of a case are confusing – they need to be clarified.

**#10:** There is currently no provision in the sealing statute for addressing the issue of pardons.

**#11:** 2953.321 addressing the use of investigation work product fails to adequately address issues relating to co-defendants (where one has plead and had the case sealed while the other case continues) and the provision does not allow the investigators to share with prosecutors once a record sealing has been ordered.

**#12:** 2953.32 allows for more than one case to be sealed under one sealing filing but indicates that the fee is to be sent to either the state or city – does not account for division of the fee when the cases to be sealed are charged under different city/state codes.

**#13:** 2953.38 - Human trafficking – the definitions section is broad but the statutes themselves only allow for sealing of loitering, soliciting, and prostitution convictions and no others. It also, interestingly, does not provide for automatic sealing of dismissed offenses.

**#14:** 2953.51 – sealing all records of a dismissed case – does not address the CRA case dismissed in municipal court because there is a felony indictment – ordering the CRA sealed ALSO seals the records associated with that filing which would include the entire felony packet on the indicted offense.

**#16:** Differentiate payment of court costs/fines from expungement eligibility, using existing caselaw standards

### **Eligibility:**

**#2:** Review the current, strictly bright-line, structure which allows for the sealing of the convictions of only certain offenses on a single timeline, with consideration instead given to a classification-specific timeline structure that also allows for increasing judicial discretion over time to seal distant offenses.

**#3:** The sealing statutes need to account for the passage of time in determining eligibility rather than focusing solely upon either the number of convictions or the type of conviction. For example, an individual who is convicted of 3 counts of misdemeanor theft when the person is 20 years old should be able to petition for a record sealing by the time that person is, say, 50 years old assuming a clean history since that time. While the specifics of this would certainly need to be hammered out (misdemeanors? Felonies too? Degree of offense? How many priors? How much time?) it was felt that having no accommodation for the passage of time was a fundamental flaw in the way the statute is written.

**#4:** For purposes of determining the eligibility to seal other violations, treat 1<sup>st</sup> offense OVI's like a traffic offense – while the OVI itself would not be subject to sealing, having one (and only one) on your record would not prohibit an individual from seeking to have another offense sealed.

**#5:** With the exclusion of offenses of violence and sexually oriented offenses, allowing M4s and possibly M3s to be treated the same as MMs under the statute. This is to reflect that there is no inherent difference between an MM disorderly conduct conviction and an M4 disorderly, etc.

**#15:** Evidence based policy regarding automatic expungement for certain charges to alleviate procedural issues.

**Other:**

**#17:** Create a required statewide procedure for expunging all crimes that are not automatically sealed/expunged, with training for courts.

**2953.31 Sealing of record of conviction definitions.**

Amended by 130th General Assembly File No. TBD, SB 143, §1, eff. 9/19/2014.

Amended by 129th General Assembly File No.131, SB 337, §1, eff. 9/28/2012.

Amended by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

*Effective Date: 01-01-2004*

**2953.32 Sealing of conviction record or bail forfeiture record.**

Amended by 130th General Assembly File No. TBD, SB 143, §1, eff. 9/19/2014.

Amended by 129th General Assembly File No.131, SB 337, §1, eff. 9/28/2012.

Amended by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

*Effective Date: 04-08-2004; 2007 SB10 07-01-2007; 2007 HB104 03-24-2008; 2008 HB195 09-30-2008*

**2953.321 Divulging confidential investigatory work product.**

Amended by 130th General Assembly File No. TBD, SB 143, §1, eff. 9/19/2014.

Amended by 129th General Assembly File No.142, HB 262, §1, eff. 6/27/2012.

Amended by 129th General Assembly File No.34, SB 17, §1, eff. 9/30/2011.

Amended by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

*Effective Date: 06-29-1988*

**2953.33 Restoration of rights and privileges.**

Amended by 129th General Assembly File No.34, SB 17, §1, eff. 9/30/2011.

*Effective Date: 01-01-2004; 2008 HB428 09-12-2008*

**2953.34 Sealing record not to affect appeal rights of eligible offender.**

Amended by 129th General Assembly File No.131, SB 337, §1, eff. 9/28/2012.

*Effective Date: 01-01-1974*

**2953.35 Divulging confidential information.**

Amended by 130th General Assembly File No. TBD, SB 143, §1, eff. 9/19/2014.

Amended by 129th General Assembly File No.142, HB 262, §1, eff. 6/27/2012.

Amended by 129th General Assembly File No.34, SB 17, §1, eff. 9/30/2011.

Amended by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

*Effective Date: 07-01-1997*

**2953.36 [Effective 3/23/2016] Sealing of record of conviction exceptions.**

Amended by 131st General Assembly File No. TBD, HB 56, §1, eff. 3/23/2016.

Amended by 131st General Assembly File No. TBD, HB 53, §101.01, eff. 7/1/2015.

Amended by 130th General Assembly File No. TBD, SB 143, §1, eff. 9/19/2014.

Amended by 129th General Assembly File No.131, SB 337, §1, eff. 9/28/2012.

*Effective Date: 01-01-2004; 2007 SB18 10-10-2007*

**2953.37 Expungement of certain convictions relating to firearms.**

Amended by 129th General Assembly File No.190, HB 495, §1, eff. 3/27/2013.

Added by 129th General Assembly File No.34, SB 17, §1, eff. 9/30/2011.

**2953.38 Expungement of certain crimes for victims of human trafficking.**

Added by 129th General Assembly File No.142, HB 262, §1, eff. 6/27/2012.

**2953.41 to 2953.43 [Repealed].** *Effective Date: 06-29-1988***2953.51 Sealing of records after not guilty or dismissal definitions.**

Amended by 129th General Assembly File No.99, SB 268, §1, eff. 8/6/2012.

Amended by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

*Effective Date: 07-01-2000*

**2953.52 Sealing of records after not guilty finding, dismissal of proceedings or no bill by grand jury.**

Amended by 129th General Assembly File No.99, SB 268, §1, eff. 8/6/2012.

*Effective Date: 10-11-2002*

**2953.53 Order to seal records - index.**

Amended by 130th General Assembly File No. TBD, SB 143, §1, eff. 9/19/2014.

Amended by 129th General Assembly File No.99, SB 268, §1, eff. 8/6/2012.

*Effective Date: 10-11-2002*

**2953.54 Officer's specific investigatory work product - divulging confidential information.**

Amended by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

*Effective Date: 07-01-1997*

**2953.55 Inquiries as records sealed after not guilty finding - divulging confidential information.**

Amended by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

*Effective Date: 09-26-1984*

**2953.56 Violations of secs. 2953.31-2953.61 not basis to exclude or suppress certain evidence.**

Added by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

**2953.57 Timing of judgment vacating and setting aside conviction because of DNA testing.**

Added by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

**2953.58 Orders to seal official records.**

Added by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

**2953.59 Dissemination of confidential information from sealed records by law enforcement officers or agencies.**

Added by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

**2953.60 Questioning with respect to sealed records; release or dissemination of information from sealed records by state officer or employee.**

Added by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

**2953.61 Multiple charges; sealing of records.**

Amended by 131st General Assembly File No. TBD, HB 53, §101.01, eff. 7/1/2015.

Amended by 130th General Assembly File No. TBD, SB 143, §1, eff. 9/19/2014.

*Effective Date: 06-29-198*

## Appendix C: Agencies to Notify & Record Sealing Forms - Examples

The Ad Hoc Committee identified the following agencies for notification:

- I. County Sheriff
- II. Arresting Agency
- III. Prosecuting Attorney
- IV. Office of Adult Court Services – Probation
- V. Ohio Adult Parole Authority
- VI. Ohio Bureau of Criminal Identification (BCI)
- VII. National Crime Information Center (NCIC)

Additionally and for instance, in Champaign County Court of Common Pleas, in record sealing of conviction entries, Judge Selvaggio, includes a portion that reads:

*The Ohio Bureau of Criminal Identification and Investigation requires the Clerk of Courts to provide to them detailed information regarding the record that is being sealed or expunged. The Clerk of Courts shall confer with Counsel for the State and complete the necessary form for processing. **Appendix C-1***

We've also included other examples of record sealing forms:

- Butler County Court of Common Pleas – **Appendix C-2**
- Licking County Court of Common Pleas – **Appendix C-3**
- Delaware County Court of Common Pleas  
<http://www.co.delaware.oh.us/clerk/Forms/APPLICATION%20TO%20SEAL%20RECORD.pdf>
- Application for DNA testing – **Appendix C-4**



## C-1: Ohio BCI Record Sealing Form



**TO ALL POLICE DEPARTMENTS, SHERIFF'S OFFICES & CLERKS OF COURTS**

**RE: SEALING AND/OR EXPUNGEMENTS**

When submitting court orders for Sealing or Expungement of an arrest, B.C.I. & I. requests this form be completed and attached to the court order to assure complete accuracy of our records.

Defendant's Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Arresting Agency: \_\_\_\_\_ Arrest No.: \_\_\_\_\_

Arrest Charge: \_\_\_\_\_ Date of Arrest: \_\_\_\_\_

Felony: \_\_\_\_\_ Misdemeanor: \_\_\_\_\_ ITN: \_\_\_\_\_

DNA Collected: Yes  OR No

Ohio BCI&I No.: \_\_\_\_\_ FBI No.: \_\_\_\_\_

Common Pleas Court Case No.: \_\_\_\_\_ Control No.: \_\_\_\_\_

Municipal Court Case No.: \_\_\_\_\_

Conviction  OR Dismissal

Conviction Charge: \_\_\_\_\_

Final Disposition of Conviction: \_\_\_\_\_

Send to the Attention of: **Identification Section**



Ohio Bureau of Criminal Identification and Investigation

P.O. Box 365  
London, OH 43140  
Telephone: (740) 845-2000  
Facsimile: (740) 845-2020



An Internationally Certified Law Enforcement Agency

[www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov)

1560 State Route 56 SW  
London, OH 43140  
Telephone: (740) 845-2000  
Facsimile: (740) 845-2020



## C-2: Butler County Example

### 9.11 MOTIONS FOR EXPUNGEMENT AND SEALING OF RECORDS

All motions for expungement (R.C. 2953.31), and for sealing of records of conviction (R.C. 2953.31-37) and of not guilty findings, dismissals or no bills (R.C. 2953.51 -.60), shall be filed with the Clerk of Courts on a fully-completed, Court-approved expungement packet. See [Appendix O](#).

Following the necessary investigation of the movant's record by the Butler County Adult Probation Department, the Court shall, if necessary, set the matter down for hearing.

## C-2: Butler County Example

### APPENDIX O

**PLEASE FOLLOW THE BELOW SEQUENCE WHEN FILING FOR SEALING OF RECORD. A \$50.00 FILING FEE IS DUE UPON COMPLETION OF THIS APPLICATION. MAKE PAYABLE TO THE BUTLER COUNTY CLERK OF COURTS. FILE APPLICATION WITH THE CLERK OF COURTS OFFICE.**

Page 1: **Motion for Expungement of Record**

FILL IN BLANKS WITH APPROPRIATE INFORMATION.

- A. Court Name (top of Page)
- B. Case Number
- C. State of Ohio vs. Applicant's name
- D. First paragraph – Case Number \_\_\_\_\_, Date \_\_\_\_\_
- E. Second paragraph – I. Applicant's name
- F. Time (second paragraph)
- G. Respectfully submitted, Applicant's name
- H. Proof of Service – Fill in Court's name and date and take to Prosecuting Office  
(Done by Applicant).

Page 2: **Entry** – Orders investigation of applicant by the Adult Probation Department

FILL IN BLANKS WITH APPROPRIATE INFORMATION

- A. Court Name (Top of Page)
- B. Case Number
- C. State of Ohio vs. Applicant's name
- D. First paragraph – Applicant's name. Court name
- E. Second paragraph – Court name
- F. Bottom of Page – Attorney's name or applicant's name, address, phone number

Page 3: **Questionnaire** (two pages)

FILL IN BLANKS WITH APPROPRIATE INFORMATION

- A. Completely fill out questionnaire, where applicable, on first page
- B. Page 2 – Complete all personal data, recent work experience, and military service
- C. Page 3 – Complete as necessary.

Page 4: **Jails**

FILL IN BLANKS WITH APPROPRIATE INFORMATION

- A. Fill in all jails that you were held in.

Page 5: **Authorization to Release Confidential Information**

(Two pages for a total of six authorizations)

- A. Sign full name in section marked signature.

### C-2: Butler County Example

STATE OF OHIO

IN THE BUTLER COUNTY

PLAINTIFF

\_\_\_\_\_  
(COURT)

-vs-

STATE OF OHIO, BUTLER CO.

CASE NO. \_\_\_\_\_

MOTION FOR SEALING OF  
RECORD OF CONVICTION

\_\_\_\_\_  
APPLICANT

Now comes \_\_\_\_\_ and petitions this Honorable Court for an Order to  
(Applicant's name)  
Seal the Record of conviction in case No. \_\_\_\_\_ which case was dated  
\_\_\_\_\_.

I, \_\_\_\_\_, make this petition on the basis that I am a first time  
(Applicant's name)  
Offender, and that more than \_\_\_\_\_ has passed since my conviction and discharge  
(Time)  
date. There are no criminal charges pending against me, and I am rehabilitated, and the sealing  
of my convictions is consistent with the public interest.

Respectfully submitted,

\_\_\_\_\_  
(Applicant's Signature)

**PROOF OF SERVICE**

A copy of my request was delivered to the Prosecuting Attorney of \_\_\_\_\_  
(Court)  
on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

C-2: Butler County Example

IN THE BUTLER COUNTY

(COURT)  
STATE OF OHIO, BUTLER COUNTY

STATE OF OHIO : CASE NO. \_\_\_\_\_  
PLAINTIFF :  
-vs- :  
APPLICANT : ENTRY

.....

1. This matter came before the Court upon this Application of the Applicant herein,  
\_\_\_\_\_, for sealing of his/her record in \_\_\_\_\_.  
Applicants Name Court Name

2. The court orders that said Application shall be set for hearing eight weeks after the filing of said packet on \_\_\_\_\_ at \_\_\_\_\_ a.m. The Court further finds that the Butler County Adult Probation Department shall investigate the background of the Applicant herein, be notified of said proceedings, and that the Prosecuting Attorney of said Court shall be notified of said proceedings by the Clerk of said Court.

3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Butler County Adult Probation Department be, and they are hereby ordered, to investigate the background of the said Applicant to determine whether or not he/she has been convicted of any violations of any local, state or federal statute, other than his conviction in above mentioned case, and employment status, and in any other areas thought by the Butler County Adult Probation Department to be helpful in assisting the Court to determine whether or not said Applicant's record should be sealed under the law of the State of Ohio, as specified in Section 2953.31 Et Seq. Ohio Revised Code.

APPROVED

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
JUDGE

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone No.)

## C-2: Butler County Example

**PLEASE ANSWER EVERY QUESTION  
PERSONAL DATA**

NAME \_\_\_\_\_ ANY OTHER LAST NAME USED \_\_\_\_\_

CURRENT ADDRESS \_\_\_\_\_

LENGTH OF TIME AT THIS ADDRESS \_\_\_\_\_ PREVIOUS ADDRESS IF LESS THAN 3 YEARS \_\_\_\_\_

SOCIAL SECURITY NUMBER \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_

AGE \_\_\_\_\_ RACE \_\_\_\_\_ HEIGHT \_\_\_\_\_ WEIGHT \_\_\_\_\_ HAIR \_\_\_\_\_ EYES \_\_\_\_\_

SEX \_\_\_\_\_ PLACE OF BIRTH \_\_\_\_\_ LIST ALL CITIES AND STATES THAT YOU  
HAVE LIVED IN \_\_\_\_\_

MARITAL STATUS \_\_\_\_\_ NUMBER OF YEARS \_\_\_\_\_ #OF PRIOR MARRIAGES AND WHO YOU  
WERE MARRIED TO \_\_\_\_\_

CHILDREN \_\_\_\_\_ AGES \_\_\_\_\_

HIGHEST GRADE COMPLETED & NAME OF SCHOOL \_\_\_\_\_

EMPLOYED BY \_\_\_\_\_ TITLE \_\_\_\_\_

DATE EMPLOYED \_\_\_\_\_ WAGE OR SALARY \_\_\_\_\_

PREVIOUS EMPLOYMENT PAST 3 YEARS \_\_\_\_\_

HAVE YOU EVER BEEN IN THE MILITARY \_\_\_\_\_ DATE ENTERED \_\_\_\_\_

DATE DISCHARGE \_\_\_\_\_ BRANCH OF SERVICE \_\_\_\_\_

TYPE OF DISCHARGE \_\_\_\_\_ HIGHEST RANK HELD \_\_\_\_\_

SERVICE NUMBER \_\_\_\_\_ WHERE WERE YOU STATIONED \_\_\_\_\_

## C-2: Butler County Example

ANY DISCIPLINARY ACTIONS OR COURT MARTIAL'S \_\_\_\_\_  
\_\_\_\_\_

OFFENSE DATA

WHICH COURT/JUDGE DECIDED YOUR CASE \_\_\_\_\_ CASE # \_\_\_\_\_

CHARGES YOU WERE ARRESTED ON \_\_\_\_\_  
\_\_\_\_\_

DATE OF ARREST \_\_\_\_\_ WHICH POLICE DEPARTMENT MADE THE ARREST \_\_\_\_\_

DATE OF PLEA/COURT DECISION \_\_\_\_\_

WHAT CHARGES DID YOU PLEA TO OR FOUND GUILTY OF \_\_\_\_\_  
\_\_\_\_\_

DATE OF SENTENCE \_\_\_\_\_ WHAT SENTENCE WAS IMPOSED \_\_\_\_\_  
\_\_\_\_\_

SUMMARY OF OFFENSE \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

HAVE ALL COURT COSTS, FINES, RESTITUTION BEEN PAID \_\_\_\_\_

HAVE YOU EVER BEEN ARRESTED/CONVICTED OF ANY OTHER OFFENSE BEFORE THIS OR AFTER  
THIS \_\_\_\_\_ IF YES, WHERE AND WHEN \_\_\_\_\_  
\_\_\_\_\_

DO YOU HAVE A CRIMINAL HISTORY IN ANY JUVENILE COURT SYSTEM \_\_\_\_\_

IF YES WHERE AND WHEN \_\_\_\_\_  
\_\_\_\_\_



## C-2: Butler County Example

---

**AUTHORIZATION TO RELEASE CONFIDENTIAL INFORMATION**

---

NAME (LAST, FIRST, MIDDLE)	DATE OF BIRTH	DATE SIGNED
----------------------------	---------------	-------------

Authorization release to the Adult Probation Department all confidential records and information concerning me.

\_\_\_\_\_  
(Signature)

NAME (LAST, FIRST, MIDDLE)	DATE OF BIRTH	DATE SIGNED
----------------------------	---------------	-------------

Authorization release to the Adult Probation Department all confidential records and information concerning me.

\_\_\_\_\_  
(Signature)

NAME (LAST, FIRST, MIDDLE)	DATE OF BIRTH	DATE SIGNED
----------------------------	---------------	-------------

Authorization release to the Adult Probation Department all confidential records and information concerning me.

\_\_\_\_\_  
(Signature)

## C-3: Licking County – Sealing Record of Conviction

### COMMON PLEAS COURT OF LICKING COUNTY

#### INFORMATION ON SEALING RECORD OF CONVICTION 2953.32

JUDGE W. DAVID BRANSTOOL

JUDGE THOMAS MARCELAIN



ADULT COURT SERVICES DEPARTMENT  
CONTACT PERSON: LISA BATES  
740-670-5738

Information about your case can be found at [WWW.lcounty.com](http://WWW.lcounty.com) Click on  
The Amicus Group to find your Court case.

REMEMBER: The Court cannot seal Private Databases.

## C-3: Licking County – Sealing Record of Conviction

### COMMON PLEAS COURT OF LICKING COUNTY SEALING A RECORD OF CONVICTION

#### WHO IS ELIGIBLE TO SEAL A RECORD?

- ♦ Pursuant to Ohio Revised Code 2953.31, to qualify for a sealing of conviction for a felony, you must be an **eligible offender**.

#### WHO IS ELIGIBLE TO SEAL A RECORD?

- An applicant is eligible to seal a record for a felony if:
  - The offense is not an F-1 or F-2.
  - The offense is not an offense of violence. (See ORC 2901.01 and 2953.36(C))
  - The applicant has no other felony conviction and the sentence did not include a mandatory prison term.
  - The applicant has not been convicted of more than one misdemeanor that wasn't related to the felony conviction that the applicant wishes to seal.
  - The application does not have more than one prior misdemeanor offense.
  - The victim is not under the age of 18 unless the conviction was for a violation of 2919.21 (Felony Non-support).
  - The conviction was not for one of the following: 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.12, 2907.321, 2907.322, or 2907.323. (Sex offenses)
  - The conviction was not for a violation of 2907.07 that occurred on or after October 10, 2007.
  - The conviction was not for a violation of the following that occurred on or after October 10, 2007 if the victim was under the age 18: 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.31, 2907.311, 2907.32, or 2907.33.
  - The applicant does not have a previous or subsequent conviction for more than one of the following: OMVI: 4511.19, OMVI suspension, DUS: 4511.192, Drag Racing: 4511.251, Hit & Skip: 4549.02, Hit & Skip w/injury to persons: 4549.021, Hit & Skip w/property damage: 4549.03, Illegal Sale/Possession Master Key: 4549.042, Motor Vehicle Concealed Identity: 4549.61, Violations of the Odometer Rollback and Disclosure Act: 4549.41 – 4549.46, Stopping After Accident: 4549.02, 4549.021, 4549.03.

#### WHEN CAN THE APPLICATION BE FILED?

- An eligible offender may apply to seal the official records three years after final discharge from probation, community control, or a prison term (2953.32 A1).

### C-3: Licking County – Sealing Record of Conviction

- Restitution must have been paid in full before final discharge. If not, a three year waiting period after it was paid in full is required.

#### **IS THERE A COST INVOLVED?**

- A \$50 filing fee is required when filing the application.
- This is payable by cash or money order made payable to the Clerk of Courts.
- Paying the \$50 fee does not guarantee that the case will be sealed.
- The filing fee is non-refundable.

#### **WHAT NEEDS TO BE DONE TO SEAL A RECORD?**

- Use the form as provided or contact an attorney. Court personnel cannot complete the forms for you.
- Fill in the personal information and all applicable data required. If any lines are left blank, your case may not be sealed.
- Sign the application where indicated.
- Complete the attached form explaining why you want your record sealed. List what you have accomplished; changes that have been made in your life, employment, marriage, or anything that suggests you have been rehabilitated.
- Proceed to the Judges Office with the application and request a non-oral hearing date. Once a Court date has been assigned and recorded at the bottom of the application, file it in the Clerk's Office along with the attached questionnaire. Request three copies from the clerk. The \$50 fee is due at this time. There cannot be any outstanding court costs on this case. If there are, the case will not be sealed. Deliver copies of the application to the Probation Department (2 North First Street, Newark, OH) and the Prosecutor's Office (Administration building, fourth floor). Keep the third copy for your records.
- **You do not need to attend the non-oral hearing.**
- Once a decision is made, you will receive notice in the mail.

#### **WHAT HAPPENS AFTER THE APPLICATION IS FILED?**

- The Court will order an investigation:
  - This includes any objections filed by the Prosecutor's Office.
  - A record check will be completed to determine if the applicant has any outstanding warrants, pending charges, or ineligibilities.
  - An inquiry on court cost and restitution will be made to ensure that it was paid in full.

### C-3: Licking County – Sealing Record of Conviction

IN THE COURT OF COMMON PLEAS OF LICKING COUNTY, OHIO

State of Ohio,  
Plaintiff,  
vs.

Case No. :

\_\_\_\_\_  
Defendant.

APPLICATION FOR SEALING RECORDS OF CONVICTION

Now comes the defendant, pursuant to Ohio Revised Code, Section 2953.32, and makes application to this Court for an Order sealing the official records in this case.

MEMORANDUM IN SUPPORT

1. The defendant is an eligible offender and three years have expired since final discharge.
2. There are no criminal proceedings pending against the defendant.
3. The interests of the defendant in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain such records.

Municipal Court Case #: \_\_\_\_\_  
You can find this case number on the Licking County Municipal Court's website @ [lcmunicipalcourt.com](http://lcmunicipalcourt.com)  
 Arrest charge: \_\_\_\_\_ Conviction charge: \_\_\_\_\_  
 Date of conviction: \_\_\_\_\_ Date of release: \_\_\_\_\_  
 DOB: \_\_\_\_\_ SSN: (last 4 digits) \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Application for Sealing of Records and Memorandum in Support of Application for Sealing Records was served, by hand delivering or certified mail, to Kenneth Oswald, Prosecuting Attorney, 20 South Second Street, Newark, Ohio 43055, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Applicant

NOTICE OF HEARING

The foregoing motion shall come on for a non-oral hearing before the Honorable \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.

### C-3: Licking County – Sealing Record of Conviction

**In addition to the application, please provide the following information:**

NAME: \_\_\_\_\_ DATE \_\_\_\_\_

1. Have you been arrested since this offense? Yes No If yes, please list the offense, the date of arrest, and the county/state where you were arrested \_\_\_\_\_

\_\_\_\_\_

2. Were you convicted of the above offense? Yes No NA

3. Are you employed? Yes No If yes, where \_\_\_\_\_

\_\_\_\_\_

4. If employed, how long have you been working? \_\_\_\_\_

5. If unemployed, for how long and how do you support yourself? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Why do you want your record sealed? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. What positive changes have been made in your life since this offense occurred? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## C-3: Licking County – Expunging/Sealing Record of Intervention in Lieu of Conviction

### COMMON PLEAS COURT OF LICKING COUNTY

#### INFORMATION ON EXPUNGING/SEALING RECORD OF INTERVENTION IN LIEU OF CONVICTION DISMISSAL: ORC 2953.52

JUDGE W. DAVID BRANSTOOL

JUDGE THOMAS MARCELAIN



ADULT COURT SERVICES DEPARTMENT  
CONTACT PERSON: LISA BATES  
740-670-5738

Information about your case can be found at [WWW.lcounty.com](http://WWW.lcounty.com) Click on The Amicus Group to find your Court case.

**REMEMBER: The Court cannot expunge or seal private databases.**

## C-3: Licking County – Expunging/Sealing Record of Intervention in Lieu of Conviction

### COMMON PLEAS COURT OF LICKING COUNTY EXPUNGING/SEALING RECORD OF DISMISSAL (ILC)

#### WHO IS ELIGIBLE TO EXPUNGE/SEAL A RECORD?

- Pursuant to applicable sections of the Ohio Revised Code, to qualify for an expunging/sealing of an ILC case, you must have had a felony charge dismissed by the prosecutor's office.

#### WHEN CAN THE APPLICATION BE FILED?

- The application can be filed at any time after dismissal.

#### IS THERE A COST INVOLVED?

- There is no cost involved.

#### WHAT NEEDS TO BE DONE TO SEAL A RECORD?

- Use the sample form as provided or contact an attorney.
- Fill in the personal information and all applicable data required. If any lines are left blank, you will be called to complete the form.
- Sign the application where indicated.
- Complete the attached form explaining why you want the record sealed. List what you have accomplished, changes that have been made in your life, employment, marriage, or anything that suggests you have been rehabilitated.
- Proceed to the Judges Office with the application and request a non-oral hearing date.
- Once a Court date has been assigned and recorded at the bottom of the application, file it in the Clerk's Office along with the attached questionnaire. Request three copies. There cannot be any outstanding court costs on this case. If there are, the case may not be sealed.
- Deliver copies of the application to the Probation Department (2 North First Street, Newark) and to the Prosecutor's Office, (Administration building, fourth floor). Keep the third copy for your records.
- **You do not need to attend the non-oral hearing.**
- If the record is sealed, you will receive notice in the mail.

## C-3: Licking County – Expunging/Sealing Record of Intervention in Lieu of Conviction

### **WHAT HAPPENS AFTER THE APPLICATION IS FILED?**

#### **The Court will order an investigation:**

- A record check will be completed to determine if the applicant has any outstanding warrants, pending charges, or ineligibilities.
- An inquiry on court cost and restitution will be made to ensure that it was paid in full.
- The case will be reviewed to determine that the charges were dismissed and the ILC Program was completed.

### C-3: Licking County – Expunging/Sealing Record of Intervention in Lieu of Conviction

IN THE COURT OF COMMON PLEAS OF LICKING COUNTY, OHIO

State of Ohio,  
Plaintiff,  
vs.

Case No.:

\_\_\_\_\_  
Defendant.

APPLICATION FOR EXPUNGING/SEALING RECORDS OF ILC

Now comes the defendant, pursuant to Ohio Revised Code, Section 2953.52, and makes application to this Court for an Order expunging/sealing the official records in this case.

MEMORANDUM IN SUPPORT

1. The defendant is an eligible offender, as defined in ORC 2953.31(A).
2. There are no criminal proceedings against the defendant.
3. Any objections filed by the prosecutor have been considered.
4. The interest of the defendant in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain such records.
5. The defendant has been rehabilitated to the satisfaction of the Court.
6. The defendant successfully completed the Intervention In Lieu of Conviction Plan.

Municipal Court Case #: \_\_\_\_\_  
You can find this case number on Licking County Municipal Court's website @ [lcmunicipalcourt.com](http://lcmunicipalcourt.com)

Arrest charge: \_\_\_\_\_ Dismissed charge: \_\_\_\_\_  
Date indicted: \_\_\_\_\_ Indictment dismissed: \_\_\_\_\_  
DOB: \_\_\_\_\_ SSN: (last 4 digits) \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Application for Expunging/Sealing of Records was served, by hand delivering or certified mail, to Kenneth Oswalt, Prosecuting Attorney, 22 South Second Street, Newark, Ohio 43055, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Applicant

NOTICE OF HEARING

The foregoing motion shall come on for a non-oral hearing before the Honorable Thomas Marcelain or W. David Branstool on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_. (Circle one)

### C-3: Licking County – Expunging/Sealing Record of Intervention in Lieu of Conviction

In addition to the application, please provide the following information:

NAME: \_\_\_\_\_ DATE \_\_\_\_\_

1. Have you been arrested since this offense?  Yes  No If yes, please list the offense, the date of arrest, and the county/state where you were arrested \_\_\_\_\_

\_\_\_\_\_

2. Were you convicted of the above offense?  Yes  No  NA

3. Are you employed?  Yes  No If yes, where \_\_\_\_\_

\_\_\_\_\_

4. If employed, how long have you been working? \_\_\_\_\_

5. If unemployed, for how long and how do you support yourself? \_\_\_\_\_

\_\_\_\_\_

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6. Why do you want your record sealed? \_\_\_\_\_

\_\_\_\_\_

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7. What positive changes have been made in your life since this offense occurred? \_\_\_\_\_

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C-3: Licking County – Expunging/Sealing Record of Not Guilty Finding, Dismissal of Proceedings, or No Bill

**COMMON PLEAS COURT OF LICKING COUNTY**

**INFORMATION ON  
EXPUNGING/SEALING RECORD OF NOT GUILTY  
FINDING, DISMISSAL OF PROCEEDINGS, OR NO BILL  
2953.52**

JUDGE W. DAVID BRANSTOOL      JUDGE THOMAS MARCELAIN



ADULT COURT SERVICES DEPARTMENT  
CONTACT PERSON: LISA BATES  
740-670-5738

Information about your case can be found at [WWW.lccounty.com](http://WWW.lccounty.com) Click on The Amicus Group to find your Court case.

**Remember: The Court cannot seal Private Databases.**

## C-3: Licking County – Expunging/Sealing Record of Not Guilty Finding, Dismissal of Proceedings, or No Bill

### COMMON PLEAS COURT OF LICKING COUNTY EXPUNGING/SEALING RECORD OF DISMISSAL

#### WHO IS ELIGIBLE TO EXPUNGE/SEAL A RECORD?

- Pursuant to applicable sections of the Ohio Revised Code, to qualify for an expunging/sealing of non-conviction, you must have had a felony indictment, charge, or proceedings dismissed by the prosecutor's office, the Court, or the Grand Jury or have been found not guilty at trial.

#### WHEN CAN THE APPLICATION BE FILED?

- The application can be filed any time after the dismissal.
- If NO Bill, the applicant must wait two years from the filing of the No Bill by the Grand Jury.

#### IS THERE A COST INVOLVED?

- There is no fee involved to expunge/seal a record of non-conviction.

#### WHAT NEEDS TO BE DONE TO EXPUNGE/SEAL A RECORD?

- Use the sample form as provided or contact an attorney.
- Fill in the personal information and all applicable data required. If any lines are left blank, your case will not be sealed.
- Sign the application where indicated.
- Completed the attached form explaining why you want the record sealed. List what you have accomplished; changes that have been made in your life, employment, marriage, or anything that shows you have been rehabilitated.
- Proceed to the Judges Office with the application and request a non-oral hearing date.
- Once a Court date has been assigned and recorded at the bottom of the application, file it in the Clerk's Office. Request three copies. There cannot be outstanding court cost on this case. If there are, it will not be sealed.
- Deliver one copy of the application to the Probation Department (Courthouse, ground floor), and one copy to the Prosecutor's Office, (Administration building, fourth floor). Keep the third copy for your records.
- **You do not need to attend the non-oral hearing.** Once a decision is made, you will receive notice in the mail.

### C-3: Licking County – Expunging/Sealing Record of Not Guilty Finding, Dismissal of Proceedings, or No Bill

#### **WHAT HAPPENS AFTER THE APPLICATION IS FILED?**

##### **The Court will order an investigation:**

- A record check will be completed to determine if the applicant has any outstanding warrants, pending charges, or ineligibilities.
- An inquiry on court cost and restitution will be made to ensure that it was paid in full.
- The case will be reviewed to determine that the charges were dismissed or the applicant was found Not Guilty.

### C-3: Licking County – Expunging/Sealing Record of Not Guilty Finding, Dismissal of Proceedings, or No Bill

IN THE COURT OF COMMON PLEAS OF LICKING COUNTY, OHIO

State of Ohio,  
Plaintiff,  
vs.

Case No. :

\_\_\_\_\_  
Defendant.

APPLICATION FOR EXPUNGING/SEALING RECORDS OF NON-CONVICTION

Now comes the defendant, pursuant to Ohio Revised Code, Section 2953.52, and makes application to this Court for an Order expunging/sealing the official records in this case.

MEMORANDUM IN SUPPORT

1. The indictment or proceedings were dismissed or I was found not guilty at trial.
2. There are no criminal proceedings pending against the defendant.
3. The interests of the defendant in having the records pertaining to the case sealed are not out weighed by any legitimate governmental needs to maintain such records.

Municipal Court Case #: \_\_\_\_\_ Date of arrest: \_\_\_\_\_  
You can find this case number on the Licking County Municipal Court's website.  
 Arrest charge: \_\_\_\_\_ Dismissed charge: \_\_\_\_\_  
 Date indicted: \_\_\_\_\_ Indictment dismissed: \_\_\_\_\_  
 DOB: \_\_\_\_\_ SSN: (last 4 digits) \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Application for Expunging/Sealing of Records and Memorandum in Support of Application for Expunging/Sealing Records was served, by hand delivering or certified mail, to Kenneth Oswald, Prosecuting Attorney, 22 South Second Street, Newark, Ohio 43055, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Applicant

NOTICE OF HEARING

The foregoing motion shall come on for a non-oral hearing before the Honorable \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_.

### C-3: Licking County – Expunging/Sealing Record of Not Guilty Finding, Dismissal of Proceedings, or No Bill

**In addition to the application, please provide the following information:**

NAME: \_\_\_\_\_ DATE \_\_\_\_\_

1. Have you been arrested since this offense?  Yes  No If yes, please list the offense, the date of arrest, and the county/state where you were arrested \_\_\_\_\_

\_\_\_\_\_

2. Were you convicted of the above offense?  Yes  No  NA

3. Are you employed?  Yes  No If yes, where \_\_\_\_\_

\_\_\_\_\_

4. If employed, how long have you been working? \_\_\_\_\_

5. If unemployed, for how long and how do you support yourself? \_\_\_\_\_

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6. Why do you want your record sealed? \_\_\_\_\_

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7. What positive changes have been made in your life since this offense occurred? \_\_\_\_\_

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### C-4: Application for DNA Testing



IN THE COURT OF COMMON PLEAS OF \_\_\_\_\_ COUNTY, OHIO

State of Ohio,

Plaintiff,

Case No. \_\_\_\_\_

v.

\_\_\_\_\_  
(Name)

Defendant.

**APPLICATION FOR DNA TESTING**

Inmate Number \_\_\_\_\_

Address where currently incarcerated \_\_\_\_\_

\_\_\_\_\_

For what offense or aggravating circumstance are you requesting a DNA test? \_\_\_\_\_

\_\_\_\_\_

Date of Conviction \_\_\_\_\_

Sentence \_\_\_\_\_

If you are serving a sentence of incarceration, how much time is remaining on your sentence? \_\_\_\_\_

Were you convicted as a result of a: Jury Trial? \_\_\_\_\_ Judge Trial? \_\_\_\_\_ Plea of Guilty or No Contest? \_\_\_\_\_

What defense was presented in your case at the time of your plea or trial? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## C-4: Application for DNA Testing

What evidence should be tested for DNA? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Was this DNA evidence collected? \_\_\_\_\_

Where was this DNA evidence found? \_\_\_\_\_

Was this DNA evidence used by the prosecution in your case? \_\_\_\_\_

Did the prosecution claim it was your DNA? \_\_\_\_\_

Would testing prove that it was not your DNA? \_\_\_\_\_

Explain why a DNA test would have changed the outcome of your case. (Be specific) \_\_\_\_\_

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## C-4: Application for DNA Testing

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(Use Additional Sheets if Necessary. Pursuant to Section 2953.73 of the Revised Code, you may attach supporting affidavits and/or documents.)

\_\_\_\_\_

Date

\_\_\_\_\_

Inmate Signature

### **ACKNOWLEDGEMENT**

In order for your application to be considered, you must sign this acknowledgement. By signing the acknowledgement, you acknowledge and agree to all of the following:

- (1) That sections 2953.71 to 2953.81 of the Revised Code contemplate applications for DNA testing of eligible inmates at a stage of a prosecution or case after the inmate has been sentenced to a prison term or a sentence of death, that any exclusion or inclusion result of DNA testing rendered pursuant to those sections may be used by a party in any proceeding as described in section 2953.81 of the Revised Code, and that all requests for any DNA testing made at trial will continue to be handled by the prosecuting attorney in the case;
- (2) That the process of conducting postconviction DNA testing for an eligible inmate under sections 2953.71 to 2953.81 of the Revised Code begins when the inmate submits an application under section 2953.73 of the Revised Code and the acknowledgment described in this section;
- (3) That the eligible inmate must submit the application and acknowledgment to the court of common pleas that heard the case in which the inmate was convicted of

## C-4: Application for DNA Testing

the offense for which the inmate is an eligible offender and is requesting the DNA testing;

- (4) That the state has established a set of criteria set forth in section 2953.74 of the Revised Code by which eligible inmate applications for DNA testing will be screened and that a judge of a court of common pleas upon receipt of a properly filed application and accompanying acknowledgment will apply those criteria to determine whether to accept or reject the application;
- (5) That the results of DNA testing conducted under sections 2953.71 to 2953.81 of the Revised Code will be provided as described in section 2953.81 of the Revised Code to all parties in the postconviction proceedings and will be reported to various courts;
- (6) That, if DNA testing is conducted with respect to an inmate under sections 2953.71 to 2953.81 of the Revised Code, the state will not offer the inmate a retest if an inclusion result is achieved relative to the testing and that, if the state were to offer a retest after an inclusion result, the policy would create an atmosphere in which endless testing could occur and in which postconviction proceedings could be stalled for many years;
- (7) That, if the court rejects an eligible inmate's application for DNA testing because the inmate does not satisfy the acceptance criteria described in paragraph (4) above, the court will not accept or consider subsequent applications;
- (8) That the acknowledgment memorializes the provisions of sections 2953.71 to 2953.81 of the Revised Code with respect to the application of postconviction DNA testing to inmates, that those provisions do not give any inmate any additional constitutional right that the inmate did not have prior to the effective date of those provisions, that the court has no duty or obligation to provide postconviction DNA testing to inmates, that the court of common pleas has the sole discretion subject to an appeal as described in this division to determine whether an inmate is an eligible inmate and whether an eligible inmate's application for DNA testing satisfies the acceptance criteria described in paragraph (4) above and whether the application should be accepted or rejected, that if the court of common pleas rejects an eligible inmate's application, the inmate may seek leave of the supreme court to appeal the rejection to that court if the inmate was sentenced to death for the offense for which the inmate is requesting the DNA testing and, if the inmate was not sentenced to death for that offense, may appeal the rejection to the court of appeals, and that no determination otherwise made by the court of common pleas in the exercise of its discretion regarding the eligibility of an inmate or regarding postconviction DNA testing under those provisions is reviewable by or appealable to any court;
- (9) That the manner in which sections 2953.71 to 2953.81 of the Revised Code with respect to the offering of postconviction DNA testing to inmates are carried out does not confer any constitutional right upon any inmate, that the state has established guidelines and procedures relative to those provisions to ensure that

## C-4: Application for DNA Testing

they are carried out with both justice and efficiency in mind, and that an inmate who participates in any phase of the mechanism contained in those provisions, including, but not limited to, applying for DNA testing and being rejected, having an application for DNA testing accepted and not receiving the test, or having DNA testing conducted and receiving unfavorable results, does not gain as a result of the participation any constitutional right to challenge, or, except as provided in paragraph (8) above, any right to any review or appeal of, the manner in which those provisions are carried out;

- (10) That the most basic aspect of sections 2953.71 to 2953.81 of the Revised Code is that, in order for DNA testing to occur, there must be an inmate sample against which other evidence may be compared, that, if an eligible inmate's application is accepted but the inmate subsequently refuses to submit to the collection of the sample of biological material from the inmate or hinders the state from obtaining a sample of biological material from the inmate, the goal of those provisions will be frustrated, and that an inmate's refusal or hindrance shall cause the court to rescind its prior acceptance of the application for DNA testing for the inmate and deny the application;
- (11) That, if the inmate is an inmate who pleaded guilty or no contest to a felony offense and who is using the application and acknowledgment to request DNA testing under section 2953.82 of the Revised Code, all references in the acknowledgment to an "eligible inmate" are considered to be references to, and apply to, the inmate and all references in the acknowledgment to "sections 2953.71 to 2953.81 of the Revised Code" are considered to be references to "section 2953.82 of the Revised Code".

\_\_\_\_\_  
Date

\_\_\_\_\_  
Inmate Signature

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Application for DNA Testing including Acknowledgement was mailed by regular United States mail, postage prepaid, to the Prosecutor of \_\_\_\_\_ County, at the following address: \_\_\_\_\_

\_\_\_\_\_  
and to Ohio Attorney General, Criminal Justice Section, 150 East Gay Street, 16<sup>th</sup> Floor, Columbus, Ohio 43215, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Inmate Signature





CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

ADULT RIGHTS RESTORATION<sup>1</sup>

	A. Sealing Convictions <sup>2</sup> [R.C. 2953.32]	B. Sealing Dismissals/ Findings of Not Guilty/No Bills [R.C. 2953.52]	C. Relief from Weapons Disability [R.C. 2923.14]	D. Expungement for Certain Firearms Convictions [R.C. 2953.37]	E. Expungement for Human Trafficking Victims [R.C. 2953.38]	F. Post-Conviction DNA Testing [R.C. 2953.71-81]
<b>1. Who is Eligible?</b>	Anyone with no more than: 2 misdemeanors, 1 felony, or 1 felony + 1 misdemeanor [R.C. 2953.31(A)]; 2+ convictions arising out of the same act are counted as 1, 2+ convictions within a 3-month period, but not arising from the same act MAY be counted as one [R.C. 2953.32 (C)(1)(a)]	Anyone found not guilty of an offense or any defendant named in a dismissed complaint, indictment, or information	Full discharge from prison or community-control or release on bail; no other prohibition from owning a firearm; and law-abidance with likelihood of continued law-abidance. If disability resulted from a factor other than a conviction or indictment, that factor must have been resolved	A conviction under R.C. 2923.16 (Improper Handling of Firearm in Motor Vehicle), if it predates 9.30.2011 and if a 2-part exception applies: (1) the person had a concealed carry permit; and (2) was not knowingly in a place where guns are not allowed even with a permit [R.C. 2953.37(B)]	A person with a conviction under R.C. 2907.24, 2907.241, or 2907.25 (Soliciting, Luring to Solicit, Soliciting with HIV) if the person's participation in the offense was a result of having been a victim of human trafficking	An offender sentenced to death, to a prison term, to a community-control sanction, or to SORN registration for a felony and is currently in prison, on parole, on probation, on PRC, on community control, or on the SORN registry regarding that felony [R.C. 2953.72(C)]
<b>2. Exceptions</b>	F1s and F2s [R.C. 2953.36(C)]; any crime with a mandatory prison sentence [R.C. 2953.36(A)]; certain listed offenses of violence [R.C. 2953.36(C)]; certain listed sex offenses [R.C. 2953.36(B)]; certain listed traffic offenses, including OWI [R.C. 2953.36(B)]; certain listed offenses involving a victim under 18 [R.C. 2953.36(E)]	If a charge connected with a dismissal or finding of not guilty ended in a conviction, that conviction must also be eligible for sealing (see A1 and A2) UNLESS the conviction is a single traffic offense, the traffic offense will not be sealable, but the other offense may be	May be revoked at any time for good cause shown and with notice; is automatically void if an offense of violence or drug trafficking is committed by applicant	No exceptions	No exceptions; in fact, there is case law that shows an inclination to broadly apply R.C. 2953.38 to various convictions linked to human trafficking	The application cannot be in regard to any offense for which the offender pleaded guilty or no contest
<b>3. Timing for Eligibility</b>	• Felony: 3 years after final discharge • Misdemeanor: 1 year after final discharge [R.C. 2953.32(A)(1)]	• Findings of not guilty and dismissals with prejudice: at any time; • Dismissals without prejudice: when the statute of limitations has expired; • No bills: after 2 years	At any time after full discharge from imprisonment, community control, PRC, or parole, or being released on bail or recognizance; or at any time after the factor that led to the disability no longer applies	Any time on or after 9.30.2011 [R.C. 2953.37(B)]	At any time	At any time after conviction

See Notes on page 3.

ADULT RIGHTS RESTORATION - CONTINUED

	A. Sealing Convictions <sup>2</sup> [R.C. 2953.32]	B. Sealing Dismissals/ Findings of Not Guilty/No Bills [R.C. 2953.52]	C. Relief from Weapons Disability [R.C. 2923.14]	D. Expungement for Certain Firearms Convictions [R.C. 2953.37]	E. Expungement for Human Trafficking Victims [R.C. 2953.38]	F. Post-Conviction DNA Testing [R.C. 2953.71-81]
<b>4. What Else Can Prevent Relief Sought?</b>	Pending criminal charges [R.C. 2953.32(C)(1)(b)]	Pending criminal charges [R.C. 2953.52(B)(2)(b)]	Firearms that are illegally acquired, possessed, or used	Nothing	Failure to assert grounds on which relief can be granted [R.C. 2953.38(C)]	An offender is not eligible if dead [R.C. 2953.72(C)(3)]
<b>5. Considerations the Court Must Make</b>	<ul style="list-style-type: none"> <li>Rehabilitation of the applicant [R.C. 2925.32(C)(1)(c)];</li> <li>Do the needs of the government to maintain the record outweigh the interests of the applicant to seal the record? [R.C. 2953.32(C)(1)(e)];</li> <li>Objections of the prosecutor [R.C. 2953.32(C)(1)(d)].</li> </ul>	<ul style="list-style-type: none"> <li>Do the needs of the government to maintain the record outweigh the interests of the applicant to seal the record? [R.C. 2953.52(B)(2)(d) and (B)(4)];</li> <li>Objections of the prosecutor [R.C. 2953.52(B)(2)(c)].</li> </ul>	<ul style="list-style-type: none"> <li>The applicant meets the criteria described in C)</li> </ul>	<ul style="list-style-type: none"> <li>Conviction for R.C. 2923.16(B), (C), or (E) before 9.30.11 and would no longer be a crime under R.C. 2923.16 (See E1);</li> <li>Do the interests of the applicant to seal the record outweigh the need to maintain the record? [R.C. 2953.37(D)(1)(d)];</li> <li>Objections of the prosecutor [R.C. 2953.37(C)].</li> </ul>	<ul style="list-style-type: none"> <li>Applicant must show by a preponderance of the evidence that the offense was a result of being a victim of human trafficking [R.C. 2953.38(E)(2)].</li> <li>Objections of the prosecutor [R.C. 2953.38(E)(1)].</li> </ul>	<ul style="list-style-type: none"> <li>Specific considerations at R.C. 2953.74<sup>3</sup>; generally, the offender could not have had a prior "definitive" DNA test and must show that a DNA test, which results in an exclusion, would have been outcome determinative at trial; review is expedited [R.C. 2953.75(D)].</li> </ul>
<b>6. What Happens to the Record?</b>	Kept in a separate file but not permanently deleted. Law enforcement and government officials have access to the record for new criminal investigations; employers in law enforcement, schools, health care, etc. can see sealed records	Kept in a separate file, but not permanently deleted. Law enforcement and government officials have access to the record for new criminal investigations; employers in law enforcement, schools, health care, etc. can see sealed records	No change to records	The record cannot be used for any purpose, including a criminal background check; all index references are to be deleted; proceedings shall be considered not to have occurred	The record cannot be used for any purpose, including a criminal background check; all index references are to be deleted; proceedings shall be considered not to have occurred	The state must maintain the results of the testing and the samples used; the result of the testing remain state's evidence [R.C. 2953.81(A)]

See Notes on page 3.

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## NOTES to ADULT RIGHTS RESTORATION

- 1 This chart depicts rights restoration under Ohio Revised Code Chapter 2953 and includes a relief from weapons disability in ORC 2923.14. An additional restoration of a right should be mentioned. 2016 SB 204 recently made mandatory license suspensions for drug charges discretionary and allows drivers who had their license suspended before the enactment of the law to petition to lift the suspensions (see R.C. 2925.02(D)(2) and (F); 2925.03(G); 2925.04(D)(2) and (H); 2925.04(I)(2) and (E); 2925.05(D)(2) and (F); 2925.06(D); 2925.11(I); 2925.12(D)(2); 2925.13(D)(2); 2925.14(G)(2); 2925.141(G)(2); 2925.22(C)(2); 2925.23(G)(2); 2925.31(C)(2); 2925.32(D)(1)(b); 2925.36(D)(2); and 2925.37(L)(2).
- 2 The Supreme Court of Ohio has a bench card outlining what records can be sealed and how to consider indigency in filings to seal records.
- 3 Under RC 2953.74(A), there can have been no prior definitive DNA test. Under RC 2953.74(B), either (1) no DNA test was taken at the trial stage, the offender shows that a DNA exclusion would have been outcome determinative, and the DNA test was not taken because DNA testing was unavailable, the DNA was inadmissible, or DNA evidence was not generally accepted at the time or (2) a DNA test was done at the trial stage, but the offender can show that in context of all available admissible evidence, the test would have been outcome determinative. Under RC 2953.74(C), all of the following must apply: biological material must have been collected and a parent sample must still exist, a testing authority must determine that testing can still take place, the identity of the person who committed the crime must have been at issue at trial, the defense must have asserted a theory at trial that would have made a DNA exclusion outcome determinative, the court must decide that a DNA exclusion would have been outcome determinative, and the court must validate the chain of custody of the DNA parent and extracted sample.
- 4 "Definitive DNA test" means a DNA test that clearly establishes that biological material from the perpetrator of the crime was recovered from the crime scene and also clearly establishes whether or not the biological material is that of the eligible offender. A prior DNA test is not definitive if the eligible offender proves by a preponderance of the evidence that because of advances in DNA technology, there is a possibility of discovering new biological material from the perpetrator that the prior DNA test may have failed to discover. Prior testing may have been a prior "definitive DNA test" as to some biological evidence, but may not have been a prior "definitive DNA test" as to other biological evidence. RC 2953.71(U)



**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]
  - a. For Certain Firearms Convictions
  - b. For Victims of Human Trafficking
  - c. Impact of Expungement

**Record-Sealing & Expungement Chapter 2953**

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

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

## 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.**

### 2953.31 Sealing of record 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" 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 DNA specimens, DNA records, and DNA profiles; 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

maintained pursuant to section 2151.421 of the Revised Code by a public children services agency or the department of job and family services.

(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)<sup>2</sup> 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.

(J)<sup>3</sup> As used in ... this section, "law enforcement or justice system matter" means an arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision.

(K)<sup>4</sup> "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)<sup>5</sup> "Record of conviction" means the record related to a conviction of or plea of guilty to an offense.

(M)<sup>6</sup> "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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<sup>2</sup> Currently 2953.31(A)

<sup>3</sup> Currently 2953.35(A)

<sup>4</sup> Currently 2953.37(A)(1)

<sup>5</sup> Currently 2953.37(A)(4)

<sup>6</sup> 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)<sup>7</sup> Sections 2953.32 (sealing of convictions or bail forfeitures) does 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) 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;<sup>8</sup>
- (7) Convictions of a felony of the first or second degree

<sup>7</sup> Currently 2953.36

<sup>8</sup> 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.

(B)<sup>9</sup> An “eligible offender” is 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 (E)(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)<sup>10</sup> (1) Except as provided in section 2953.32(F) 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.<sup>11</sup>

(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 2953.32(F) 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.<sup>12</sup>

(D)<sup>13</sup> 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

<sup>9</sup> Currently 2953.31(A)

<sup>10</sup> Currently 2953.32(A)

<sup>11</sup> 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.

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

<sup>13</sup> Currently 2953.32(B)

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)<sup>14</sup> (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 (C)(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 (C)(1) of this section, determine whether the applicant has been rehabilitated to the satisfaction of the court;

(d) If the prosecutor has filed an objection in accordance with division (D) 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 (E)(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 (C)(1) of this section has been attained to the satisfaction of the court, the court, except as provided in divisions (D) , (E), or (F) of section 2953.34, shall order all official records of the case that pertain to the conviction or bail forfeiture sealed and, except as provided in division (C) of section 2953.34, 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

<sup>14</sup> Currently 2953.32(C)

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 2953.32 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 ordinance<sup>15</sup>.

(F)<sup>16</sup> Except as provided in division (G)(1)<sup>17</sup> 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 [2953.33](#) 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 the court and have all of the records pertaining to all of those charges sealed pursuant to section [2953.32](#) or [2953.33](#) of the Revised Code.<sup>18</sup>

(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.<sup>19</sup>

(2) Division (G)(1)<sup>20</sup> 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.

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

<sup>16</sup> Currently 2953.61

<sup>17</sup> Currently 2953.61 (B)(1)

<sup>18</sup> 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.

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

<sup>20</sup> Currently 2953.61(B)(1)

**2953.33 Sealing of records after not guilty finding, dismissal of proceedings or no bill by grand jury.**<sup>21</sup>

(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 2953.32(G)(1) 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 2953.32(G)(1) 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 prosecutor<sup>22</sup> in the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor 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 2953.32(G)(1) 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

<sup>21</sup> Currently 2953.52

<sup>22</sup> 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.

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 <sup>23</sup>pertaining to the case be sealed and that, except as provided in section [2953.34](#) 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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<sup>23</sup> 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**

**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.**

**2953.34: Index and Other Access to Sealed Records<sup>24</sup>**

(A)<sup>25</sup> 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 this section 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;

<sup>24</sup> Currently 2953.32(D), 2953.53, 2953.321, 2953.33, 2953.34, 2953.35, 2953.54, 2953.55, 2953.56

<sup>25</sup> 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)<sup>26</sup> 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 2953.33 of the Revised Code.

(C) 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 index 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 (A) and (B) of this section and division (E) of Section 2953.32.

(D) Notwithstanding any provision of this section or sections 2953.32 or 2953.33 of the Revised Code that requires otherwise, a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under sections 3301.121 and 3313.662 of the Revised Code is permitted to maintain records regarding a conviction that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record. An order issued under this section to seal the record of a conviction does not revoke the adjudication order of the superintendent of public instruction to permanently exclude the individual who is the subject of the sealing order. An order issued under this section to seal the record of a conviction of an individual may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who

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<sup>26</sup> Currently 2953.32(E)

is the subject of the sealing order be revoked. Except as otherwise authorized by this division and sections 3301.121 and 3313.662 of the Revised Code, any school employee in possession of or having access to the sealed conviction records of an individual that were the basis of a permanent exclusion of the individual is subject to section 2953.34(J) of the Revised Code.

(E) For purposes of sections 2953.31 to 2953.36 of the Revised Code, DNA records collected in the DNA database and fingerprints filed for record by the superintendent of the bureau of criminal identification and investigation shall not be sealed unless the superintendent receives a certified copy of a final court order establishing that the offender's conviction has been overturned. For purposes of this section, a court order is not "final" if time remains for an appeal or application for discretionary review with respect to the order.

(F) The sealing of a record under this section does not affect the assessment of points under section 4510.036 of the Revised Code and does not erase points assessed against a person as a result of the sealed record.

(G)<sup>27</sup> 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 index<sup>28</sup> 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.

(H)<sup>29</sup> The court shall send notice of any order to seal official records issued pursuant to division (B)(3) of section 2953.33 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 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 2953.33<sup>i</sup> 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 2953.33 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 (H)(1) or (2) of this section.

(3) Upon receiving a copy of an order to seal official records pursuant to division (H)(1) or (2) of this section or upon otherwise becoming aware of an applicable order to seal official records issued pursuant to section 2953.33 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

<sup>27</sup> Currently 2953.32(F)

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

<sup>29</sup> Currently 2953.53

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 index<sup>30</sup> of sealed official records, in a form similar to that for sealed records of conviction as set forth in division (C) of this section (2953.34) 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 2935.34 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.

(I)<sup>31</sup> 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 2953.31 of the Revised Code and that pertain to a conviction or bail forfeiture the records of which have been ordered sealed pursuant to division (E)(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 2953.35, or division (G) of section 2953.36 of the Revised Code.

(1) Upon the issuance of an order by a court pursuant to division (E)(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 2953.35, or division (G) of section 2953.36 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 (I)(1)(c) 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

<sup>30</sup> See footnote 27

<sup>31</sup> Currently section 2953.321

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 (I)(1)(c) 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 (I)(1)(c) 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 person for committing the offense, for which it was obtained from the other law enforcement agency.

(c) It is not a violation of division (I)(2)(a) or (b) 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 (I)(2)(a) or (b) of this section is guilty of divulging confidential investigatory work product, a misdemeanor of the fourth degree.

(J)<sup>32</sup> (1) As used in divisions (J)(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 (A), (B), and (C) of section 2953.34 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

<sup>32</sup> Currently 2953.35

an existing order issued pursuant to section 2953.32 of the Revised Code, were expunged by an order issued pursuant to division (E) of section 2151.358, section 2953.35, or section 2953.36 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 (J)(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 (J)(2) of this section.

(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.

(4) Any person who, in violation of section 2953.34 of the Revised Code, uses, disseminates, or otherwise makes available any index prepared pursuant to division (C) of section 2953.34 of the Revised Code is guilty of 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.

(K)<sup>33</sup> 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 [2953.33](#) 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:

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<sup>33</sup> Currently 2953.54

(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 [2953.31](#) of the Revised Code shall immediately deliver the records and reports to the officer's employing law enforcement agency. Except as provided in division (K)(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 [2953.31](#) 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 (K)(1) of this section shall, except as provided in division (K)(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 (K)(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 and had never existed. Except as provided in division (K)(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 [2953.31](#) 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 (K)(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 [2953.33](#) 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 (K)(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.

(L)<sup>34</sup> (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 [2953.33](#) 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.

(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 [2953.33](#) 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.

(M)<sup>35</sup> (1) An order issued under section [2953.35](#) of the Revised Code to expunge the record of a person's conviction or, except as provided in division (D) of section [2953.34](#) 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 (B) of section [2953.34](#) and in section [3319.292](#) of the Revised Code and subject to division (2)(b) 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 (M)(2)(a) of this section with respect to any conviction expunged under section [2953.35](#) of the Revised Code.

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<sup>34</sup> Currently 2953.55

<sup>35</sup> Currently 2953.33

(N)<sup>36</sup> Nothing in section 2953.32<sup>37</sup> 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.

(O)<sup>38</sup> Violations of sections 2953.31 to 2953.36 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:

- (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 (O)(1) and (2) of this section.

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<sup>36</sup> Currently 2953.34

<sup>37</sup> Could be re-written as Chapter 2953

<sup>38</sup> Currently 2953.56

**SECTION IV: EXPUNGEMENTS & WAIVER OF FIREARM DISABILITY**

**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.<sup>ii</sup>**

(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 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 (A) of this section and the payment of the fee described in division (C)(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 (B) 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 (B) 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 (C)(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 (C)(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 disability<sup>39</sup>.

<sup>39</sup> Currently Sec. 2923.14

(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:

(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.<sup>40</sup>**

(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 (A) 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 (B) 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 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 (C) 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

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<sup>40</sup> Renumbered in this draft; currently 2953.38

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;<sup>41</sup>

(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 (E) 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.

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<sup>41</sup> 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.

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<sup>i</sup> Relabeled in this draft as 2953.33

<sup>ii</sup> Renumbered in this draft. Currently 2953.37



**MODEL LEGISLATION FOR THE SEALING OF CONVICTION RECORDS**

Following is a model law drafted by the Legal Action Center<sup>42</sup> that states can use as they draft their own legislation to seal or expunge criminal records.

1. Except as otherwise provided in subsection 2, any person convicted of a criminal offense may petition the court of conviction for the sealing of the record of arrest, conviction, and sentence when the petitioner has completed all the terms and conditions of the sentence and has been convicted of no more than 2 misdemeanors and 1 felony, after a period of time as follows:
  - a. For drug offenses arising out of drug addiction, upon completion of the sentence imposed and successful completion of a drug treatment program, whichever is later.
  - b. For non-violent crimes, after 5 years have elapsed from the completion of sentence for a felony conviction; after 2 years have elapsed for a misdemeanor conviction.
  - c. For violent crimes, after 10 or more years have elapsed from the completion of the sentence for a felony conviction (time period will vary according to the grade of felony committed); after 5 years have elapsed from the completion of the sentence for a misdemeanor conviction.
  - d. If petitioner has more than one conviction to be sealed, the time period petitioner must wait before filing the petition is based on the time period of the most serious conviction to be sealed. This time period starts from the last crime committed and must start over if petitioner is convicted for a new offense.
  - e. Nothing in this section shall prevent a record which is sealed from being used in the prosecution or sentencing of future offenses committed by petitioner.
2. No petition shall be brought and no order sealing records shall be granted to a person convicted of a criminal offense:
  - a. Which would subject the individual to a lifetime registration requirement under a state sex offender registration program.
  - b. Which is a crime against a minor. [Minor (under fifteen years of age [AZ]); offense committed against a child [KY]; crime against a child (victim under 18, crimes include kidnapping, false imprisonment, pandering or prostitution) [NV]; lists violent crimes that are excluded, including felonious child pornography, incest or

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<sup>42</sup> <https://lac.org/>; [https://lac.org/toolkits/sealing/model\\_law\\_sealing.htm](https://lac.org/toolkits/sealing/model_law_sealing.htm);  
<https://lac.org/toolkits/sealing/Model%20Expungement%20Statute.pdf>

endangering the welfare of a child [NH]; lists a series of crimes against children, including endangering the welfare, kidnapping, sex crimes committed against children [NJ]; offenses in circumstances in which the victim of the offense was under eighteen years of age when the offense is a misdemeanor of the first degree or a felony [OH]; criminal mistreatment in the first degree when it would constitute child abuse and endangering the welfare of a minor [OR]; conviction involving a sexual act against a minor [UT]]

3. A petition, in order to be valid, must be signed under oath by the person whose conviction is to be sealed and contain the following:
  - a. The full name and current address of the petitioner;
  - b. A certified record of the conviction that is to be sealed;
  - c. A statement as to whether the petitioner has previously filed a petition to seal this or any other conviction and, if so, the disposition of the petition;
  - d. A statement as to whether the petitioner has any other criminal charge pending against him or her in any court in the United States or in any other country;
  - e. A list of any other public or private agency, company, official or other custodian of records that is reasonably known to the petitioner to have possession of records of the conviction and to whom the order to seal records, if issued, will be directed;
  - f. Information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed;
  - g. If the petition is to seal a drug offense arising out of a drug addiction, petitioner must include documentation showing successful completion of a drug treatment program.
  - h. A fee [to be determined by each state]. If a fee is imposed, such fee will be waived upon proof of indigency by petitioner.
  
4. Upon the filing of a petition, the court shall notify the prosecutor; the victim of the crime, if there was an identified victim; and any other person whom the person filing the petition has reason to believe may have relevant information related to the sealing of the record and provide them with an opportunity to object to the petition. If an objection is filed within thirty days, the court shall set a date for a hearing on the petition. In deciding whether or not to grant the sealing order, the court shall weigh the interest of the petitioner in having the records pertaining to conviction sealed against the legitimate needs, if any, of the government to maintain those records. The burden shall be on the government to show that the balance tips in its favor and the records should not be

sealed. Inability to locate the victim shall not delay the proceedings in the case or preclude the holding of a hearing or the issuance of a sealing order. If there is no timely objection, the court shall not set a date for a hearing and shall order the records sealed if the conditions for filing a petition are met. If the court denies the petition, the petitioner retains the right to appeal this decision.

5. Upon the entry of an order to seal the records, these records are deemed to be sealed on every level. The order shall specify that the court, the repository and the police shall seal the records in their possession pursuant to this section. (a) Nothing in this section shall affect any right of law enforcement officers to maintain arrest and conviction records and to communicate information regarding the sealed record of arrest or conviction to other law enforcement officers for legitimate investigative purposes or in defense of any civil suit arising out of the facts of the arrest, or for the purposes of determining the fitness of an individual to serve as a law enforcement officer, in any of which cases such information shall not be disclosed to any other person.
6. Once sealed, person may deny the existence of the record at all times, except those outlined in subsection 5(a).
  - a. The persons and the court may properly reply that no record exists with respect to the persons upon any inquiry in the matter; and the person whose record is sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, housing, credit or other type of application.
  - b. An application for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include the following statement: "An applicant for employment with a sealed record on file with the court may answer 'no record' with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. In addition, any applicant for employment may answer 'no record' with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution." The attorney general may enforce the provisions of this paragraph by a suit in equity commenced in the superior court.
7. A person is guilty of a misdemeanor if, during the life of another who has had a record of arrest or conviction sealed pursuant to this section, he or she discloses or communicates the existence of such record except for law enforcement purposes as provided in subsection 5(a). Any agency and/or person who willfully refuses to carry out the sealing of the records of conviction or willfully releases or willfully allows access to records of conviction, knowing them to have been sealed, also shall be civilly liable.
8. This section shall be deemed to be retroactive.



# OHIO

## CRIMINAL SENTENCING COMMISSION

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