

AGENDA June 23, 2016 10:00 a.m.
Moyer Judicial Center, Room 101

- I. Call to Order & Roll Call of Commission Members, Advisory Committee
Vice-Chair Selvaggio
- II. Approval of Minutes from March 17, 2016
Vice-Chair Selvaggio
- III. Membership update
Vice-Chair Selvaggio
- IV. Items for Commission Vote:
 - A. Rights Restoration – Record Sealing – Professor Berman and Marta Mudria
Summary: The Ad Hoc Committee expanded its membership, is gathering data and working from a draft background and analysis paper. In the meantime, the group proposes to seek clarity and reorganization to the current statutory framework while a more ambitious, robust effort is forthcoming regarding the longer term policy issues. After discussion the Commission will be asked accept the Ad Hoc Committee's recommendations to pursue the reorganization of current provisions while a comprehensive approach for reform, to include executive branch functions such as clemency and the certificate of qualification for employment, is developed. Attachment: 2953 reorganized DRAFT & 'Mega-Memo'
- V. Items for Commission Discussion/Information:
 - A. Bail and Pre-Trial Services Reform – Jo Ellen
Summary: The Ad Hoc Committee is considering movement toward a risk based system and is reviewing bail consideration factors and processes and jail crowding issues such as the cost of pretrial detention and demands on local detention centers. We received technical assistance from the National Institute of Corrections with the site visit at the meeting of the Ad Hoc Committee on April 28, 2016. The Ad Hoc group has revamped its membership, organized the issues and created multiple workgroups that include a comparison of statutes, the Constitution, court rules and American Bar Association standards; developing definitions of bail and related terms, significant data collection efforts – services, availability, jail population, response to violations; evaluating workflow for the Clerk of Court processes; defendant representation and funding; collaboration with bondsmen; education, training and implementation science. Attachment – Ad Hoc Committee time line and work chart
 - B. Fines, Fees and Costs – Sara
The Commission applied for a Bureau of Justice Assistance grant in May 2016, The Price of Justice: Rethinking the Consequences of Justice Fines and Fees. The overall goal of the project is to identify and test promising practices for coordinated and appropriate justice system responses to justice-involved individuals' inability to pay fines, fees, and related charges. Attachment – grant narrative

Items for Commission Discussion/Information (continued)

C. Data project – Sara

Summary: The Commission is proposing a project, Using Data to Improve Public Safety and Criminal Justice Outcomes, that recognizes criminal justice indicators are wide-ranging and complex. Determining if, where and to what extent, criminal justice data indicators are available, accessible and consumable in our state and then seeking viable ways to catalog and analyze that information will provide a platform to recommend legislative and policy strategies to improve outcomes for Ohio's citizens by creating safer, fairer, and a more cost-efficient use of resources in our criminal justice system. The University of Cincinnati, Institute of Crime Science (ICS) data analytics demonstration was June 7, 2016.

D. Request for Research – Sara

The Commission will be releasing a request for research to gather, compile data and identify trends regarding criminal sentence reform and other legislation impacting criminal sentencing enacted since HB86 in September 2011. These services are to be provided to the Commission from August 1, 2016 through March 1, 2017, with the possibility of extensions when adequately justified.

E. Recodification Update – Kari Bloom, OPD

F. Sentencing & Criminal Justice Committee Work Chart Item – DRC Sorting of Commitments and Implementation of 'Treatment Transfer'. Brian Martin, DRC

VI. General Committee Updates

A. Sentencing & Criminal Justice, Chair Judge Spanagel & Chair Yates

1. OVI Redo – remains pending introduction
2. SB204 – discretionary driver's license suspension bill – The bill allows currently mandatory driving suspensions for drug charges to be discretionary and provides a procedure by which a person can petition to lift a mandatory suspension applied before the passage of the bill. The bill was enacted on May 24, 2016 and awaits the Governor's signature.
3. Adult Extended Sentence Review – The full commission voted in favor of language at the March 17, 2016 meeting that applies only to offenders whose highest offense was an F5, an F4, or a low-level (sentence 36 months or less) F3 and excludes those sentences agreed to on the record.
4. Foster – remains pending and will reconsider upon Recodification Committee work product
5. Transitional Control – subcommittee collected data and due to report to Committee on 07-21-16

General Committee Updates (continued)

B. Juvenile Justice, Chair Dobson

1. JLWOP [2967.13(B)] legislative update – SB272, a bill co-sponsored by Senator Thomas and Senator Eklund, is based upon the work and recommendations of the Commission and was introduced 02-04-16. The bill was referred to the Government Oversight and Reform Committee and has had two hearings. HB521 sponsored by Representative Manning was amended in the House Judiciary Committee and passed the floor on May 25, 2016.
2. Other Commission recommended proposals that remain pending for introduction include ORC 2152.18 [confinement credit] to clarify the application of the statute and, in addition, reduce/eliminate DYS facilities confinement credit entries brought by the Office of the Ohio Public Defender and 2152.20 [court costs, fees and restitution].
3. The Committee is currently working on mandatory bindover.

C. Data Collection & Sharing, Chair Judge Dumm

1. Data Primer Repository – The Committee continues its work on an Ohio specific data primer report identifying statewide data collection, its use and accessibility. This is still in draft form and not yet available.
2. Sex Offender Registration Ad Hoc Report – published April 2016 and delivered the Recodification Committee.

VII. Member Updates/New Business

VIII. Adjourn

2016 Full Commission Meeting Dates

Thursday, Sept. 15, 2016 10:00a

Thursday, Dec. 15, 2016 10:00a

RECORD SEALING & EXPUNGEMENT R.C. 2953

I
DEFS: § 2953.31

II
PROCESS: § 2953.32, 51, 52 a. INDEX § 2953.53

III
EXPUNGEMENTS
§ 2953.37 & 38

CURRENT 2953.31

2953.31 Sealing of record of conviction definitions.

DEF OF "ELIGIBLE OFFENDER" MAY NEED TO EXCEPTIONS TO SEALING

PARTS OF OTHERS

CURRENT 2953.51

2953.321 Divulging confidential investigatory work product.

2953.31 Sealing of records after not guilty or dismissal definitions.

WHERE SHOULD THIS GO? 2953.32? OR 2953.33?

PROCESS TO SEAL CONVICTIONS

EXCEPTIONS (@ THE BEGINNING)

MULTI-CHARGES

ADD PROCESS TO SEAL DISMISSALS

b. ACCESS TO SEALED RECORDS: 321, 33, 35, 54, 55, 56

ACCESS TO SEALED CONVICTIONS

ACCESS TO SEALED DISMISSALS

2953.32 Sealing of conviction record or bail forfeiture record.

2953.36 Sealing of record of conviction exceptions.

2953.53 Order of seal records - index.

2953.37 Expungement of certain convictions relating to firearms.

2953.38 Expungement of certain crimes for victims of human trafficking.

2953.33 Divulging confidential investigatory work product.

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

2953.55 Inquiries re records sealed under not guilty finding.

2953.33 Restoration of rights and privileges.

2953.35 Divulging confidential information.

2953.321 Divulging confidential investigatory work product.

2953.31 Sealing of records after not guilty or dismissal definitions.

2953.51 Sealing of records after not guilty finding, dismissal of proceedings or no bill by grand jury.

Record-Sealing & Expungement Chapter 2953 Proposed Reorganization

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

Section I: Definitions

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

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

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

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

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

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

Section III: Indices and Other Access to Sealed Records

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

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

Section IV: Expungements

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

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

Section I: Definitions

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 of conviction definitions.

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

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

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

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

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

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

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

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

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

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

¹ Currently 2953.31(A)

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

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

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

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

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

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² Currently 2953.35(A)

³ Currently 2953.37(A)(1)

⁴ Currently 2953.37(A)(4)

⁵ Currently 2953.38(A)(4)

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

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

2953.32 Sealing of conviction record or bail forfeiture record.

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

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

⁶ Currently 2953.36

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

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

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

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

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

(C)¹⁰(1) Except as provided in section 2953.61 of the Revised Code, an eligible offender may apply to the sentencing court if convicted in this state, or to a court of common pleas if convicted in another state or in a federal court, for the sealing of the record of the case that pertains to the conviction. Application may be made at the expiration of three years after the offender's final discharge if convicted of a felony, or at the expiration of one year after the offender's final discharge if convicted of a misdemeanor.¹¹

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

⁹ Currently 2953.31(A)

¹⁰ Currently 2953.32(A)

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

(2) Any person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture for the offense charged may apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of the record of the case that pertains to the charge. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the expiration of one year from the date on which the bail forfeiture was entered upon the minutes of the court or the journal, whichever entry occurs first.¹²

(D)¹³ Upon the filing of an application under this section, the court shall set a date for a hearing and shall notify the prosecutor for the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant. If the applicant was convicted of or pleaded guilty to a violation of division (A)(2) or (B) of section 2919.21 of the Revised Code, the probation officer or county department of probation that the court directed to make inquiries concerning the applicant shall contact the child support enforcement agency enforcing the applicant's obligations under the child support order to inquire about the offender's compliance with the child support order.

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

(a) Determine whether the applicant is an eligible offender or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case. If the applicant applies as an eligible offender pursuant to division (A)(1) of this section and has two or three convictions that result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, in making its determination under this division, the court initially shall determine whether it is not in the public interest for the two or three convictions to be counted as one conviction. If the court determines that it is not in the public interest for the two or three convictions to be counted as one conviction, the court shall determine that the applicant is not an eligible offender; if the court does not make that determination, the court shall determine that the offender is an eligible offender.

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

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

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

¹³ Currently 2953.32(B)

¹⁴ Currently 2953.32(C)

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

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

(2) If the court determines, after complying with division (C)(1) of this section, that the eligible offender or the subject of a bail forfeiture, that no criminal proceeding is pending against the applicant, and that the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed are not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of an applicant who is an eligible offender applying pursuant to division (A)(1) of this section has been attained to the satisfaction of the court, the court, except as provided in divisions (G), (H), or (I) of this section, shall order all official records of the case that pertain to the conviction or bail forfeiture sealed and, except as provided in division (F) of this section, all index references to the case that pertain to the conviction or bail forfeiture deleted and, in the case of bail forfeitures, shall dismiss the charges in the case. The proceedings in the case that pertain to the conviction or bail forfeiture shall be considered not to have occurred and the conviction or bail forfeiture of the person who is the subject of the proceedings shall be sealed, except that upon conviction of a subsequent offense, the sealed record of prior conviction or bail forfeiture may be considered by the court in determining the sentence or other appropriate disposition, including the relief provided for in sections 2953.31 to 2953.33 of the Revised Code.

(3) An applicant may request the sealing of the records of more than one case in a single application under this section. Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars, regardless of the number of records the application requests to have sealed. The court shall pay thirty dollars of the fee into the state treasury. It shall pay twenty dollars of the fee into the county general revenue fund if the sealed conviction or bail forfeiture was pursuant to a state statute, or into the general revenue fund of the municipal corporation involved if the sealed conviction or bail forfeiture was pursuant to a municipal ordinance¹⁵.

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

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

¹⁶ Currently 2953.61

¹⁷ Currently 2953.61 (B)(1)

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

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

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

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

(A)(1) Any person, who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information, may apply to the court for an order to seal the person's official records in the case. Except as provided in section [2953.61](#) of the Revised Code, the application may be filed at any time after the finding of not guilty or the dismissal of the complaint, indictment, or information is entered upon the minutes of the court or the journal, whichever entry occurs first.

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

(B)(1) Upon the filing of an application pursuant to division (A) of this section, the court shall set a date for a hearing and shall notify the prosecutor²² in the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court

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

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

²⁰ Currently 2953.61(B)(1)

²¹ Currently 2953.52

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

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

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

(a)(i) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed, or a no bill was returned in the case and a period of two years or a longer period as required by section 2953.61 of the Revised Code has expired from the date of the report to the court of that no bill by the foreperson or deputy foreperson of the grand jury;

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

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

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

(d) Weigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records.

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

(4) The determinations described in this division are separate from the determination described in division (B)(3) of this section. If the court determines, after complying with division (B)(2) of this section, that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed, or that a no bill was returned in the case and that the appropriate period of time has expired from the date of the report to the court of the no bill by the foreperson or deputy foreperson of the grand jury; that no criminal proceedings are pending against the person; and the interests of the person in having the records pertaining to the case

sealed are not outweighed by any legitimate governmental needs to maintain such records, or if division (E)(2)(b) of section 4301.69 of the Revised Code applies, in addition to the order required under division (B)(3) of this section, the court shall issue an order directing that all official records ²³pertaining to the case be sealed and that, except as provided in section 2953.53 of the Revised Code, the proceedings in the case be deemed not to have occurred.

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

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

Section III: Indices and Other Access to Sealed Records

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 Records²⁴

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

- (1) By a law enforcement officer or prosecutor, or the assistants of either, to determine whether the nature and character of the offense with which a person is to be charged would be affected by virtue of the person's previously having been convicted of a crime;
- (2) By the parole or probation officer of the person who is the subject of the records, for the exclusive use of the officer in supervising the person while on parole or under a community control sanction or a post-release control sanction, and in making inquiries and written reports as requested by the court or adult parole authority;
- (3) Upon application by the person who is the subject of the records, by the persons named in the application;
- (4) By a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;
- (5) By a prosecuting attorney or the prosecuting attorney's assistants, to determine a defendant's eligibility to enter a pre-trial diversion program established pursuant to section 2935.36 of the Revised Code;
- (6) By any law enforcement agency or any authorized employee of a law enforcement agency or by the department of rehabilitation and correction as part of a background investigation of a person who applies for employment with the agency as a law enforcement officer or with the department as a corrections officer;
- (7) By any law enforcement agency or any authorized employee of a law enforcement agency, for the purposes set forth in, and in the manner provided in, section 2953.321 of the Revised Code;
- (8) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of providing information to a board or person pursuant to division (F) or (G) of section 109.57 of the Revised Code;

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

²⁵ Currently 2953.32(D)

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

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

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

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

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

When the nature and character of the offense with which a person is to be charged would be affected by the information, it may be used for the purpose of charging the person with an offense.

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

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

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

²⁶ Currently 2953.32(E)

²⁷ Currently 2953.32(F)

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

²⁹ Currently 2953.53

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

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

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

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

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

(a) To the person who is the subject of the records upon written application, and to any other person named in the application, for any purpose;

(b) To a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;

(c) To a prosecuting attorney or the prosecuting attorney's assistants to determine a defendant's eligibility to enter a pre-trial diversion program established pursuant to section 2935.36 of the Revised Code;

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

³⁰ See footnote 27

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

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

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

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

(c) A law enforcement agency that possesses investigatory work product may permit another law enforcement agency to use that work product in the investigation of another offense if the facts incident to the offense being investigated by the other law enforcement agency and the facts incident to an offense that is the subject of the case are reasonably similar. The agency that permits the use of investigatory work product may provide the other agency with the name of the person who is the subject of the case if it believes that the name of the person is necessary to the conduct of the investigation by the other agency.

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

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

³¹ Currently section 2953.321

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

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

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

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

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

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

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

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

³² Currently 2953.35

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

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

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

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

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

(1) Every law enforcement officer possessing records or reports pertaining to the case that are the officer's specific investigatory work product and that are excepted from the definition of "official records" contained in section 2953.51 of the Revised Code shall immediately deliver the records and reports to the officer's employing law enforcement agency. Except as provided in division (A)(3) of this section, no such officer shall knowingly release, disseminate, or otherwise make the records and reports or any information contained in them available to, or discuss any information contained in them with, any person not employed by the officer's employing law enforcement agency.

(2) Every law enforcement agency that possesses records or reports pertaining to the case that are its specific investigatory work product and that are excepted from the definition of "official records" contained in section 2953.51 of the Revised Code, or that are the specific investigatory work product of a law enforcement officer it employs and that were delivered to it under division (A)(1) of this section shall, except as provided in division (A)(3) of this section, close the records and reports to all persons who are not directly employed by the law enforcement agency and shall, except as provided in division (A)(3) of this section, treat the records and reports, in relation to all persons other than those who are directly employed by the law enforcement agency, as if they did not exist

³³ Currently 2953.54

and had never existed. Except as provided in division (A)(3) of this section, no person who is employed by the law enforcement agency shall knowingly release, disseminate, or otherwise make the records and reports in the possession of the employing law enforcement agency or any information contained in them available to, or discuss any information contained in them with, any person not employed by the employing law enforcement agency.

(3) A law enforcement agency that possesses records or reports pertaining to the case that are its specific investigatory work product and that are excepted from the definition of "official records" contained in division (D) of section 2953.51 of the Revised Code, or that are the specific investigatory work product of a law enforcement officer it employs and that were delivered to it under division (A)(1) of this section may permit another law enforcement agency to use the records or reports in the investigation of another offense, if the facts incident to the offense being investigated by the other law enforcement agency and the facts incident to an offense that is the subject of the case are reasonably similar. The agency that provides the records and reports may provide the other agency with the name of the person who is the subject of the case, if it believes that the name of the person is necessary to the conduct of the investigation by the other agency.

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

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

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

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

³⁴ Currently 2953.55

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

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

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

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

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

(J)³⁶ Nothing in sections 2953.31 to 2953.33³⁷ of the Revised Code precludes an eligible offender from taking an appeal or seeking any relief from the eligible offender's conviction or from relying on it in lieu of any subsequent prosecution for the same offense.

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

³⁵ Currently 2953.33

³⁶ Currently 2953.34

³⁷ Could be re-written as Chapter 2953

³⁸ Currently 2953.56

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

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Section IV: Expungements

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

2953.35 Expungement of certain convictions - firearms.ⁱⁱ

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

(1) Identify the applicant, the offense for which the expungement is sought, the date of the conviction of or plea of guilty to that offense, and the court in which the conviction occurred or the plea of guilty was entered;

(2) Include evidence that the offense was a violation of division (B), (C), or (E) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and that the applicant is authorized by division (H)(2)(a) of that section to file an application under this section;

(3) Include a request for expungement of the record of conviction of that offense under this section.

(B) Upon the filing of an application under division (B) of this section and the payment of the fee described in division (D)(3) of this section if applicable, the court shall set a date for a hearing and shall notify the prosecutor for the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant. The court shall hold the hearing scheduled under this division.

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

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

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

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

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

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

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

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

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

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

(D) Relief from weapons disability³⁹.

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

(2) The application shall recite the following:

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

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

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

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

(a) One of the following applies:

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

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

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

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

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

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

³⁹ Currently Sec. 2923.14

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

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

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

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

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

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

⁴⁰ Renumbered in this draft; currently 2953.38

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

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

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

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

(E) If after a hearing the court finds that the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense that is the subject of the application

was the result of the applicant having been a victim of human trafficking, the court shall grant the application and order that the record of conviction be expunged.

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

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

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

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

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

ⁱ Relabeled in this draft as 2953.33

ⁱⁱ Renumbered in this draft. Currently 2953.37

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



CRIMINAL SENTENCING COMMISSION

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Report of the Rights Restoration/Record Sealing Ad Hoc Sub-Committee

Members:

Chaired by Professor Doug Berman – OSU Moritz College of Law

Kort Gatterdam, criminal defense lawyers

Greg Trout, Chief Counsel – BCI

Judge Spanagel, Parma Municipal Court

Kari Bloom, OPD legislative office

Lara Baker-Morrish, Chief – Columbus City Attorney's Office

Matt Kanai, AG's office

Judge Selvaggio, Champaign County Court of Common Pleas

Paula Brown, OSBA representative

Paul Dobson, Wood County Prosecutor

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

Steven Longworth, Clerk of Court, Middletown Municipal Court

Doug Cubberley, Bowling Green Municipal Court

Cordelia Glenn, Cleveland Municipal Court/Housing Division

Judge Charles Schneider, Franklin County Court of Common Pleas

Marta Mudri, Ohio Judicial Conference

John Ryan, Ohio Judicial Conference

Joanna Saul, _____

OTHERS _____

I. Background on Sub-Committee's Creation, Work and Findings

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 **Rights Restoration/Record Sealing Ad Hoc Sub-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. The process of data collection and identification of priority reform issues suggested to members of the Sub-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 Sub-Committee (and is attached to this memorandum as Appendix A). The rest of this report provides an overview of the issues and concerns identified through the work of the Ad Hoc Sub-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 Sub-Committee** is committed to continuing to explore and draft reform proposals that would 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 Sub-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 II** of this Report below (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 Sub-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, ¶15, 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 Sub-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 to this memorandum as Appendix A.

Problems understanding and assessing existing statutory schemes extend beyond basic concerns of “code confusion.” At the outset of the Sub-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 Sub-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:

Total FCMC sealing cases in 2014: 3,272 – total cases where a sealing was granted: 2,831 (87%)
Total FCMC sealing cases in 2013: 3,460 – total cases where a sealing was granted: 3,136 (91%)
Total FCMC sealing cases in 2012: 3,102 – total cases where a sealing was granted: 2,819 (91%)
Total FCMC sealing cases in 2011: 2,965 – total cases where a sealing was granted: 2,611 (88%)
Total FCMC sealing cases in 2010: 2,685 – total cases where a sealing was granted: 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 phones 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 Sub-Committee, one recommendation from the Sub-Committee 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 II below.

(2) Substantive Eligibility for Statutory Relief

During conference calls and meetings, Sub-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, M4s and possibly M3s ought to be treated the same as MMs 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, 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 non-support 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 specific concerns with particular eligibility limitations, there was a collective broader concern about eligibility expressed not only by all the Sub-Committee members, but also by many other who spoke with the Sub-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 Sub-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). Sub-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 Sub-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 Sub-Committee, existing statutes should be replaced with a new statutory scheme which gives primary consideration instead given 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 II** of this Report below (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, Sub-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 Sub-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 A.

Critically, Sub-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). 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 Sub-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: HB 172 and HB 427]. Sub-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, Sub-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. Some of these ideas and concerns are discussed further in **Part II.B.** of this Report below (Long-Term Reform Recommendations).

(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 Sub-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.

II. Reform Recommendations

The main and fundamental recommendation emerging from the Sub-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 provides 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 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 Sub-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, Sub-Committee members recognize and are quick to concede that soup-to-nuts reform of existing rights restoration statutes would be an ambitious project and one that implicates an array of substantive, procedural and practical issues that extended far beyond the basic concerns



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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 Sub-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 A.

In addition to recommending that the full Commission endorse this proposed redraft for publication and promulgation, the Sub-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.

MORE ON CREATING A NEW ENTITY???

Appendix A: Summary of Statutory Rewrite drafted by Action Group

Record-Sealing & Expungement Chapter 2953 Proposed Reorganization

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

Section I: Definitions

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

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

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

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



- II. The Process of Sealing Convictions, Dismissals, No Bills & Not Guilty Findings [§§ 2953.32, 2953.34, 2953.36, 2953.51, 2953.52, 2953.61]
 - a. Records Eligible for Sealing
 - b. Exceptions to Conviction Sealing
 - c. Multiple Charges
 - d. Process by Petitioner
 - e. Objection by Prosecutor
 - f. Determination of Court
 - g. Costs, Fines, Fees

Section III: Indices and Other Access to Sealed Records

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

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

Section IV: Expungements

Because expungements have a different result than sealing a record and because eligibility for expungements is much more limited than for sealing a record, they are

in a section separate from record-sealing. Alternately, expungements could be incorporated into the other three sections, as relevant.

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

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CRIMINAL SENTENCING COMMISSION

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Ad Hoc Committee on Bail and Pretrial Release

Timeline

May 2016:	Work Groups formed and begin work (initial telephone conferences as needed)
June 2016:	Work Group Telephone Conferences (as needed)
July 22, 2016:	In Person Ad Hoc Committee Meeting
August 2016:	Work Group Telephone Conferences (as needed)
September 16, 2016:	In Person Ad Hoc Committee Meeting (subsequent to the Ohio Judicial Conference Annual Meeting)
October 2016:	Work Group Telephone Conferences (as needed)
November 18, 2016:	In Person Ad Hoc Committee Meeting (if needed)
December 15, 2016:	Presentation of Ad Hoc Committee Final Report and Recommendations at the meeting of the full Ohio Criminal Sentencing Commission



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Ad Hoc Committee on Bail and Pretrial Release

<u>Issue</u>	<u>Last Action</u>	<u>Subcommittee</u>	<u>Next Action, Person Responsible and Date Due</u>
Evaluation and comparison of statutes, Constitution, court rules & ABA standards	Telephone Conference held on 6/8/16	Judge Beth Root* Susan Sweeney Diana Feitl Sara Andrews Marta Mudri Tim Schnake Jo Ellen Cline	<ul style="list-style-type: none">• Thoughts on Ohio's Constitutional provision due by 6/15/16• Comparison of Ohio statutes, rules and ABA standards (Allana Smith, OCSC)• Examples of other state Constitutional provisions on bail and bail reforms in those states (Allana Smith, OCSC)
Development of definition of bail and related terms	Provide PJI glossary of terms to work group (Jo Ellen)	Jo Ellen Cline* Sara Andrews Tim Schnacke Lori Eville Judge Nick Selvaggio	<ul style="list-style-type: none">• Feedback on glossary due by 6/17/16

* Denotes work group lead contact



OHIO CRIMINAL SENTENCING COMMISSION

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<u>Issue</u>	<u>Last Action</u>	<u>Subcommittee</u>	<u>Next Action, Person Responsible and Date Due</u>
DATA Collection 1. Utilization of pretrial services & screening tools	Telephone conference held on 6/6/16	Dan Peterca* Lori Eville Brenda Willis Tim Schnacke Jim Lawrence Diana Feitl Mike Kochera Judge Ron Adrine	<ul style="list-style-type: none"> Potential survey questions due by 6/13/16
2. Prosecutorial diversion availability, use	Telephone conference held on 6/14/16	Lara Baker-Morrish* Dave Phillips Judge Ken Spanagel Anne Gatti	<ul style="list-style-type: none"> Survey sent to municipal prosecutors Send to municipal judges (J. Spanagel) Look at specialized docket list from SC commission (Cline)
3. Responses to release violations & identification of alternative release options	Telephone conference 6/15/16	Josh Williams* Julie Doepke Judge Cynthia Rice Dan Peterca Judge Nadine Allen Lori Eville Judge Beth Root Paul Dobson	<ul style="list-style-type: none"> Experience and examples from other states (Lori Eville)



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<u>Issue</u>	<u>Last Action</u>	<u>Subcommittee</u>	<u>Next Action, Person Responsible and Date Due</u>
DATA Collection 4. jail data and money map	Telephone conference held on 6/10/16	John Leutz* Sheriff Michael Heldman Ryan Kidwell Kari Bloom Sara Andrews	<ul style="list-style-type: none">• Potential survey questions due by 6/17/16
Identification & evaluation of the Clerk of Court processes & process of release	Telephone conference held 6/20/16	Penny Underwood* Marta Mudri John Leutz Judge Fritz Hany Branden Meyer Michele Mumford	<ul style="list-style-type: none">• Rework flow chart on the processes in Clerks' offices regarding bail to reflect offense level• Survey on current practices – questions due to Jo Ellen by 6/27/16



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<u>Issue</u>	<u>Last Action</u>	<u>Subcommittee</u>	<u>Next Action, Person Responsible and Date Due</u>
Representation for the defendant and funding for the public defender	Telephone conference held 6/16/16	Kari Bloom* John Leutz Paul Dobson Chrystal Alexander Judge Selvaggio	<ul style="list-style-type: none"> Gathering information on funding (Kari) Add question to survey regarding provision of counsel (when in process it is happening)
Identification of Bondsmen processes, concerns and opportunities for collaboration	Telephone conference held 6/17/16	Judge Allen Diana Feitl Tom Sauer Jim Lawrence Mike Kochera Dan Peterca Michelle Mumford	<ul style="list-style-type: none"> Determination of current practices (All) Other states' experiences with bondsmen (Jo Ellen)
Education/Training & Implementation Science		Sara Andrews* All	

Project Abstract



Part 1: Please identify the applicant point of contact (POC)

Applicant POC	
Organization Name	
POC Name	
Phone Number	
Email Address	
Mailing Address	

Part 2: Please identify the application

Application Information	
Solicitation Name	
Project Title	
Proposed Start Date	
Proposed End Date	
Funding Amount Requested	

Part 3: Please identify the project location and applicant type

Project Location and Applicant Type	
Project Location (City, State)	
Applicant Type (Tribal Nation, State, County, City, Nonprofit, Other)	



Part 4: Please provide a project abstract

Enter additional project abstract information. Unless otherwise specified in the solicitation, this information includes:

- Brief description of the problem to be addressed and target area and population
- Project goals and objectives
- Brief statement of project strategy or overall program
- Description of any significant partnerships
- Anticipated outcomes and major deliverables

Text should be single spaced; do not exceed 400 words.

Project Abstract




Part 5: Please indicate whether OJP has permission to share the project abstract

If the applicant is willing for the Office of Justice Programs (OJP), in its discretion, to make the information in the project abstract above publicly available, please complete the consent section below. Please note, the applicant's decision whether to grant OJP permission to publicly release this information will not affect OJP's funding decisions. Also, if the application is not funded, granting permission will not guarantee that information will be shared, nor will it guarantee funding from any other source.

Permission not granted

Permission granted (Fill in authorized official consent below.)

On behalf of the applicant named above, I consent to the information in the project abstract above (including contact information) being made public, at the discretion of OJP consistent with applicable policies. I understand that this consent is only necessary to the extent that my application is unfunded; information submitted in an application that is funded (including this abstract) is always releasable to the public consistent with FOIA rules. I certify that I have the authority to provide this consent.

Authorized Official (AO) Consent	
Signature 	Date 5/11/2016
AO Name	
Title	
Organization Name	
Phone Number	
Email Address	

Note: This document is to be submitted as a separate attachment with a file name that contains the words "**Project Abstract.**"



Using Data to Improve Public Safety and Criminal Justice Outcomes Proposal Addendum

The General Assembly created the Ohio Criminal Sentencing Commission and its Advisory Committee in Ohio Revised Code §181.21 through 181.26 to, among other things, study Ohio's criminal laws, sentencing patterns, and juvenile offender dispositions and recommend comprehensive plans to the General Assembly that encourage public safety, proportionality, uniformity, certainty, judicial discretion, deterrence, fairness, simplification, more sentencing options, victims' rights, and other reasonable goals.

The Commission began meeting in 1991 and is the only long-standing state agency designed, by statute, to bring judges, prosecutors, and defense attorneys together with members of the General Assembly, state and local officials, victims, and law enforcement officers. The Chief Justice of the Supreme Court of Ohio chairs the 31 member Commission and appoints 10 members: one appellate judge; 3 municipal or county judges; 3 juvenile court judges; and 3 other common pleas judges. The Governor appoints 12 members: a county, juvenile, and municipal prosecutor; 2 defense attorneys; a Bar Association representative; a sheriff; 2 police chiefs; a crime victim; a county commissioner; and a mayor. Four members of the General Assembly serve on the Commission, one from each caucus. The State Public Defender, the Director of Rehabilitation and Correction, the Director of Youth Services, and the Superintendent of the Highway Patrol are also members of the Commission.

Recently, the Criminal Sentencing Commission established its vision statement to enhance justice and its mission statement to ensure fair sentencing in the State of Ohio. To fulfill its vision, the Criminal Sentencing Commission will develop and recommend sentencing policy to the General Assembly that is designed to:

- Advance public safety
- Realize fairness in sentencing
- Preserve meaningful judicial discretion
- Distinguish the most efficient and effective use of correctional resources
- Provide a meaningful array of sentencing options

The Criminal Sentencing Commission will achieve its mission by:

- Analyzing current adult and juvenile criminal statutes and law in Ohio and other states
- Studying sentencing patterns and outcomes and balancing the needs of criminal sentencing and available correctional resources
- Researching and recommending evidence based approaches to reducing recidivism
- Recommending reasonable and specific criminal justice reforms

Consistent with those core values and because the Criminal Sentencing Commission is the only state agency that routinely brings together judges, prosecuting and defense attorneys, corrections officials, law enforcement, victims' advocates, behavioral health professionals, academics, community corrections experts, and others with a direct interest in criminal sentencing, the Criminal Sentencing Commission is uniquely positioned to bridge the information gap among criminal justice system partners, provide an ongoing forum to debate policy initiatives

and suggest comprehensive changes that affect prison and jail populations and serve the citizens of the great State of Ohio.

The proposal, *Using Data to Improve Public Safety and Criminal Justice Outcomes*, recognizes that criminal justice indicators are wide-ranging and complex. Determining if, where and to what extent, criminal justice data indicators are available, accessible and consumable in our state and then seeking viable ways to catalog and analyze that information will provide a platform to recommend legislative and policy strategies to improve outcomes for Ohio's citizens by creating safer, fairer, and a more cost-efficient use of resources in our criminal justice system.

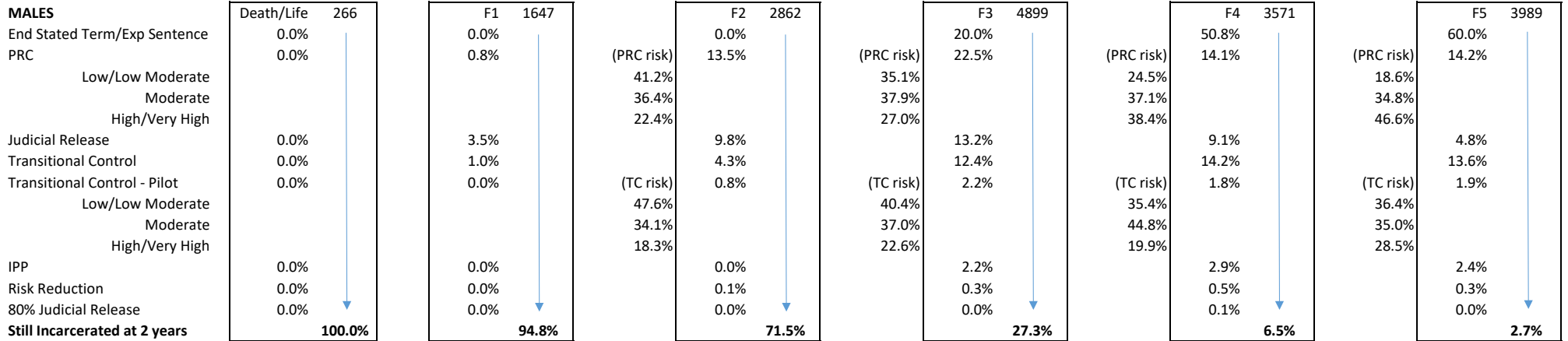
Therefore, the University of Cincinnati will create a comprehensive new system to capture information beyond traditional criminal justice indicators, now housed in siloes, that has statewide application and will advance evidence based practices across the entire criminal justice system. In addition, the project will create benchmarks for both existing and new practices, that is not otherwise available through existing research, and provide data for researchers to develop additional best practices in a variety of criminal justice subject areas.

States that have made successful strides toward implementing criminal justice and public safety reform, including robust information sharing, have commonality in that they bring together criminal justice leaders into a group with statewide representation and influence to begin analysis. The process of creating such a group follows well-known criminal justice research and literature practice which consistently illustrates the best way to make criminal justice reforms, is to follow a systems approach. A systems approach appreciates the varied, diverse criminal justice professional landscape and the interplay of the branches of government, while autonomous, nonetheless come together with one another in indisputable ways such that initiatives of one agency or group can affect others within criminal justice system. The Commission by its very nature spans all three branches of government and is inclusive of criminal justice, public safety professionals which allows unprecedented access to data, information and the opportunity to develop data sets and propose meaningful, creative, real-world, reason-based and person-centered criminal justice reform recommendations.

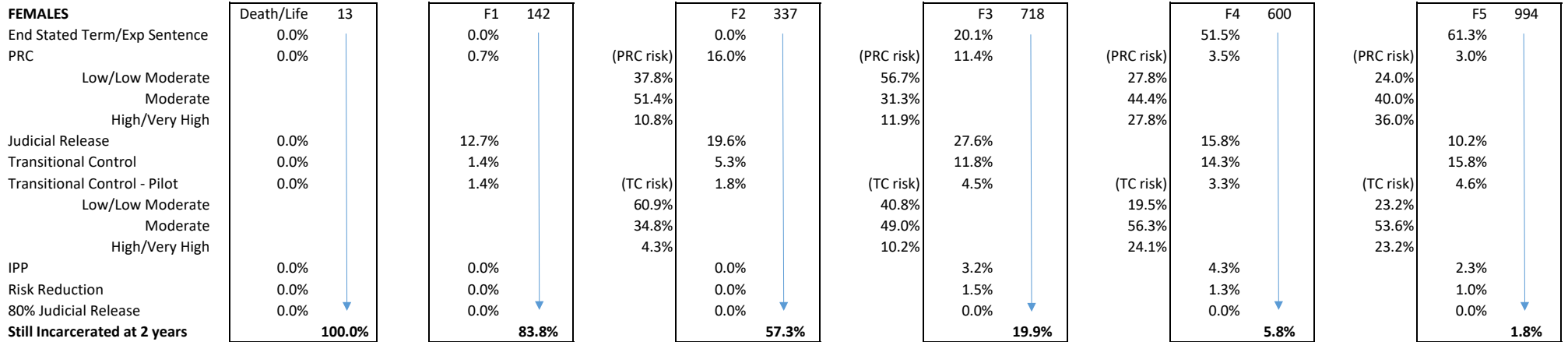
To do this, the Sentencing Commission will work with three pilot counties to align resources, facilitate data collection efforts by the University of Cincinnati and ultimately use the findings to generate comprehensive recommendations for statewide application/data sharing, changes to (or maintaining current) policies, practices and statutes and to provide a qualitative look at how best to advance data driven, evidence based criminal justice decision making in Ohio. The Ohio Criminal Sentencing Commission is well positioned to lead and advance this effort because since its inception, it has provided an impartial and consensus-driven platform for the analysis and development of policies and practices that maximize public safety, reduce recidivism and equalize justice.

FY 2014 Commitments, sorted by Release Status after 2 Years from Admission Date, by Gender

MALES



FEMALES



FY 2014 Court Commitments to DRC (Key Measures)

Prior Commitments		
	Frequency	Percent
1st Commitment	10391	51.7
2nd	4243	21.1
3rd	2299	11.4
4th or more	3147	15.7
Total	20080	100.0

PRC Felony Violator		
	Frequency	Percent
No	18463	91.9
Yes	1617	8.1
Total	20080	100.0

Expected Time to Serve (excluding jail credits)		
	Frequency	Percent
Over 1 Year	11797	58.8
1 Year or Less	8283	41.3
Total	20080	100.0

Risk Reduction		
	Frequency	Percent
No	19826	98.7
Yes	254	1.3
Total	20080	100.0

Community Control Violator		
	Frequency	Percent
No	15321	76.3
Yes	4759	23.7
Total	20080	100.0

Risk Category at Intake (ORAS/PST)					
	Low		Mod/High		Total
Death/Life	54	21.1%	207	80.9%	256
F1	461	27.6%	1209	72.4%	1670
F2	799	27.2%	2137	72.8%	2936
F3	1588	31.4%	3466	68.6%	5054
F4	1179	31.3%	2586	68.7%	3765
F5	1414	31.9%	3019	68.1%	4433
Total	5495	30.3%	12624	69.7%	18119