

Sub. S. B. No. 66  
As Passed by the Senate

**Topic:** Eligibility to seal felony convictions

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\_\_\_\_\_ moved to amend as follows:

In line 2 of the title, after "2953.31," insert "2953.32,"

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In line 29, after "2953.31," insert "2953.32,"

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In line 1458, delete "Regardless of the number of convictions, anyone" and insert "Anyone"

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In line 1459, after "more" insert ", but not more than five,"

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After line 1526, insert:

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"**Sec. 2953.32.** (A) (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 one of the following times:

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(a) At the expiration of three years after the offender's final discharge if convicted of ~~a one felony, or at ;~~

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(b) When division (A)(1)(a) of section 2953.31 of the Revised Code applies to the offender, at the expiration of four years after the offender's final discharge if convicted of two felonies, or at the expiration of five years after final discharge if convicted of three, four, or five felonies;

(c) At the expiration of one year after the offender's final discharge if convicted of a misdemeanor.

(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.

(B) 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. The probation officer or county department of probation that the court directs to make inquiries concerning the applicant shall

determine whether or not the applicant was fingerprinted at the 47  
time of arrest or under section 109.60 of the Revised Code. If 48  
the applicant was so fingerprinted, the probation officer or 49  
county department of probation shall include with the written 50  
report a record of the applicant's fingerprints. If the 51  
applicant was convicted of or pleaded guilty to a violation of 52  
division (A) (2) or (B) of section 2919.21 of the Revised Code, 53  
the probation officer or county department of probation that the 54  
court directed to make inquiries concerning the applicant shall 55  
contact the child support enforcement agency enforcing the 56  
applicant's obligations under the child support order to inquire 57  
about the offender's compliance with the child support order. 58

(C) (1) The court shall do each of the following: 59

(a) Determine whether the applicant is an eligible 60  
offender or whether the forfeiture of bail was agreed to by the 61  
applicant and the prosecutor in the case. If the applicant 62  
applies as an eligible offender pursuant to division (A) (1) of 63  
this section and has two or three convictions that result from 64  
the same indictment, information, or complaint, from the same 65  
plea of guilty, or from the same official proceeding, and result 66  
from related criminal acts that were committed within a three- 67  
month period but do not result from the same act or from 68  
offenses committed at the same time, in making its determination 69  
under this division, the court initially shall determine whether 70  
it is not in the public interest for the two or three 71  
convictions to be counted as one conviction. If the court 72  
determines that it is not in the public interest for the two or 73  
three convictions to be counted as one conviction, the court 74  
shall determine that the applicant is not an eligible offender; 75  
if the court does not make that determination, the court shall 76

determine that the offender is an eligible offender.	77
(b) Determine whether criminal proceedings are pending against the applicant;	78 79
(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;	80 81 82 83
(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;	84 85 86 87
(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.	88 89 90 91
(2) If the court determines, after complying with division (C) (1) of this section, that the applicant is an eligible offender or the subject of a bail forfeiture, that no criminal proceeding is pending against the applicant, 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 division (C) (4), (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	92 93 94 95 96 97 98 99 100 101 102 103 104 105

index references to the case that pertain to the conviction or 106  
bail forfeiture deleted and, in the case of bail forfeitures, 107  
shall dismiss the charges in the case. The proceedings in the 108  
case that pertain to the conviction or bail forfeiture shall be 109  
considered not to have occurred and the conviction or bail 110  
forfeiture of the person who is the subject of the proceedings 111  
shall be sealed, except that upon conviction of a subsequent 112  
offense, the sealed record of prior conviction or bail 113  
forfeiture may be considered by the court in determining the 114  
sentence or other appropriate disposition, including the relief 115  
provided for in sections 2953.31 to 2953.33 of the Revised Code. 116

(3) An applicant may request the sealing of the records of 117  
more than one case in a single application under this section. 118  
Upon the filing of an application under this section, the 119  
applicant, unless indigent, shall pay a fee of fifty dollars, 120  
regardless of the number of records the application requests to 121  
have sealed. The court shall pay thirty dollars of the fee into 122  
the state treasury. It shall pay twenty dollars of the fee into 123  
the county general revenue fund if the sealed conviction or bail 124  
forfeiture was pursuant to a state statute, or into the general 125  
revenue fund of the municipal corporation involved if the sealed 126  
conviction or bail forfeiture was pursuant to a municipal 127  
ordinance. 128

(4) If the court orders the official records pertaining to 129  
the case sealed, the court shall do one of the following: 130

(a) If the applicant was fingerprinted at the time of 131  
arrest or under section 109.60 of the Revised Code and the 132  
record of the applicant's fingerprints was provided to the court 133  
under division (B) of this section, forward a copy of the 134  
sealing order and the record of the applicant's fingerprints to 135

the bureau of criminal identification and investigation. 136

(b) If the applicant was not fingerprinted at the time of 137  
arrest or under section 109.60 of the Revised Code, or the 138  
record of the applicant's fingerprints was not provided to the 139  
court under division (B) of this section, but fingerprinting was 140  
required for the offense, order the applicant to appear before a 141  
sheriff to have the applicant's fingerprints taken according to 142  
the fingerprint system of identification on the forms furnished 143  
by the superintendent of the bureau of criminal identification 144  
and investigation. The sheriff shall forward the applicant's 145  
fingerprints to the court. The court shall forward the 146  
applicant's fingerprints and a copy of the sealing order to the 147  
bureau of criminal identification and investigation. 148

Failure of the court to order fingerprints at the time of 149  
sealing does not constitute a reversible error. 150

(5) At the time an applicant files an application under 151  
division (A) of this section, the following shall apply: 152

(a) The clerk of court shall notify the applicant in 153  
writing that the court will send notice of any order under 154  
division (C) (2) of this section to the qualified third party 155  
selected by the attorney general under section 109.38 of the 156  
Revised Code and shall inform the applicant of the procedures 157  
under section 109.381 of the Revised Code. 158

(b) The applicant shall then notify the clerk if the 159  
applicant wishes to opt out of receiving the benefits of having 160  
the court send notice of its order under division (C) (2) of this 161  
section to the qualified third party and having the procedures 162  
under section 109.381 of the Revised Code apply to the records 163  
that are subject to the order. 164

(c) If the applicant does not opt out under division (C) 165  
(5) (b) of this section, the applicant shall pay to the clerk of 166  
court the fee provided in the contract between the attorney 167  
general and the qualified third party under division (D) (2) (b) 168  
of section 109.38 of the Revised Code. 169

(6) (a) Upon the issuance of an order under division (C) (2) 170  
of this section, and unless the applicant opts out under 171  
division (C) (5) (b) of this section, the clerk shall remit the 172  
fee paid by the applicant under division (C) (5) (c) of this 173  
section to the qualified third party. The court shall send 174  
notice of the order under division (C) (2) of this section to the 175  
qualified third party. 176

(b) If the applicant's application under division (A) of 177  
this section is denied for any reason or if the applicant 178  
informs the clerk of court in writing, before the issuance of 179  
the order under division (C) (2) of this section, that the 180  
applicant wishes to opt out of having the court send notice of 181  
its order under division (C) (2) of this section to the qualified 182  
third party, the clerk shall remit the fee paid by the applicant 183  
under division (C) (5) (c) of this section that is intended for 184  
the qualified third party back to the applicant. 185

(D) Inspection of the sealed records included in the order 186  
may be made only by the following persons or for the following 187  
purposes: 188

(1) By a law enforcement officer or prosecutor, or the 189  
assistants of either, to determine whether the nature and 190  
character of the offense with which a person is to be charged 191  
would be affected by virtue of the person's previously having 192  
been convicted of a crime; 193

(2) By the parole or probation officer of the person who	194
is the subject of the records, for the exclusive use of the	195
officer in supervising the person while on parole or under a	196
community control sanction or a post-release control sanction,	197
and in making inquiries and written reports as requested by the	198
court or adult parole authority;	199
(3) Upon application by the person who is the subject of	200
the records, by the persons named in the application;	201
(4) By a law enforcement officer who was involved in the	202
case, for use in the officer's defense of a civil action arising	203
out of the officer's involvement in that case;	204
(5) By a prosecuting attorney or the prosecuting	205
attorney's assistants, to determine a defendant's eligibility to	206
enter a pre-trial diversion program established pursuant to	207
section 2935.36 of the Revised Code;	208
(6) By any law enforcement agency or any authorized	209
employee of a law enforcement agency or by the department of	210
rehabilitation and correction or department of youth services as	211
part of a background investigation of a person who applies for	212
employment with the agency or with the department;	213
(7) By any law enforcement agency or any authorized	214
employee of a law enforcement agency, for the purposes set forth	215
in, and in the manner provided in, section 2953.321 of the	216
Revised Code;	217
(8) By the bureau of criminal identification and	218
investigation or any authorized employee of the bureau for the	219
purpose of providing information to a board or person pursuant	220
to division (F) or (G) of section 109.57 of the Revised Code;	221



(9) By the bureau of criminal identification and	222
investigation or any authorized employee of the bureau for the	223
purpose of performing a criminal history records check on a	224
person to whom a certificate as prescribed in section 109.77 of	225
the Revised Code is to be awarded;	226
(10) By the bureau of criminal identification and	227
investigation or any authorized employee of the bureau for the	228
purpose of conducting a criminal records check of an individual	229
pursuant to division (B) of section 109.572 of the Revised Code	230
that was requested pursuant to any of the sections identified in	231
division (B) (1) of that section;	232
(11) By the bureau of criminal identification and	233
investigation, an authorized employee of the bureau, a sheriff,	234
or an authorized employee of a sheriff in connection with a	235
criminal records check described in section 311.41 of the	236
Revised Code;	237
(12) By the attorney general or an authorized employee of	238
the attorney general or a court for purposes of determining a	239
person's classification pursuant to Chapter 2950. of the Revised	240
Code;	241
(13) By a court, the registrar of motor vehicles, a	242
prosecuting attorney or the prosecuting attorney's assistants,	243
or a law enforcement officer for the purpose of assessing points	244
against a person under section 4510.036 of the Revised Code or	245
for taking action with regard to points assessed.	246
When the nature and character of the offense with which a	247
person is to be charged would be affected by the information, it	248
may be used for the purpose of charging the person with an	249
offense.	250

(E) In any criminal proceeding, proof of any otherwise 251  
admissible prior conviction may be introduced and proved, 252  
notwithstanding the fact that for any such prior conviction an 253  
order of sealing previously was issued pursuant to sections 254  
2953.31 to 2953.36 of the Revised Code. 255

(F) The person or governmental agency, office, or 256  
department that maintains sealed records pertaining to 257  
convictions or bail forfeitures that have been sealed pursuant 258  
to this section may maintain a manual or computerized index to 259  
the sealed records. The index shall contain only the name of, 260  
and alphanumeric identifiers that relate to, the persons who are 261  
the subject of the sealed records, the word "sealed," and the 262  
name of the person, agency, office, or department that has 263  
custody of the sealed records, and shall not contain the name of 264  
the crime committed. The index shall be made available by the 265  
person who has custody of the sealed records only for the 266  
purposes set forth in divisions (C), (D), and (E) of this 267  
section. 268

(G) Notwithstanding any provision of this section or 269  
section 2953.33 of the Revised Code that requires otherwise, a 270  
board of education of a city, local, exempted village, or joint 271  
vocational school district that maintains records of an 272  
individual who has been permanently excluded under sections 273  
3301.121 and 3313.662 of the Revised Code is permitted to 274  
maintain records regarding a conviction that was used as the 275  
basis for the individual's permanent exclusion, regardless of a 276  
court order to seal the record. An order issued under this 277  
section to seal the record of a conviction does not revoke the 278  
adjudication order of the superintendent of public instruction 279  
to permanently exclude the individual who is the subject of the 280

sealing order. An order issued under this section to seal the record of a conviction of an individual may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who is the subject of the sealing order be revoked. Except as otherwise authorized by this division and sections 3301.121 and 3313.662 of the Revised Code, any school employee in possession of or having access to the sealed conviction records of an individual that were the basis of a permanent exclusion of the individual is subject to section 2953.35 of the Revised Code.

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

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

In line 2313, after "2953.31," insert "2953.32,"

The motion was \_\_\_\_\_ agreed to.