

As Reported by the House Criminal Justice Committee

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Sub. S. B. No. 10

Senator Wilson

Cosponsors: Senators Peterson, Uecker, Coley, Hoagland, Gavarone, Antonio, Craig, Dolan, Eklund, Hackett, Hill, Hottinger, Huffman, M., Huffman, S., Kunze, Lehner, Maharath, McColley, Obhof, O'Brien, Roegner, Rulli, Sykes, Thomas, Williams Representatives Plummer, Leland, Crossman, Cupp, Galonski, Rogers, Smith, T., West, Lang, Grendell, Seitz

A BILL

To amend sections 319.16, 2921.41, 2953.32, 1
2953.321, 2953.36, 2953.51, 2953.54, and 5747.12 2
and to enact section 117.116 of the Revised Code 3
to expand the penalties for theft in office 4
based on the amount stolen, to include as 5
restitution audit costs of the entity that 6
suffered the loss, to modify various aspects of 7
the laws regarding criminal and delinquency 8
record sealing and expungement, to expand the 9
list of debts toward satisfaction of which the 10
Tax Commissioner may apply a tax refund due to a 11
taxpayer, and to specify a separate standard for 12
the issuance of warrants upon presentation of a 13
court order. 14

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 319.16, 2921.41, 2953.32, 15
2953.321, 2953.36, 2953.51, 2953.54, and 5747.12 be amended and 16

section 117.116 of the Revised Code be enacted to read as 17
follows: 18

Sec. 117.116. The auditor of state, upon receiving 19
notification that a county auditor has filed a warrant under 20
protest as specified in section 319.16 of the Revised Code, may 21
review that warrant as part of the auditor of state's next 22
regularly scheduled audit of the public office that presented 23
documents under that section that led to issuance of the warrant 24
under protest. 25

Sec. 319.16. (A) The county auditor shall issue warrants, 26
including electronic warrants authorizing direct deposit for 27
payment of county obligations in accordance with division (F) of 28
section 9.37 of the Revised Code, on the county treasurer for 29
all moneys payable from the county treasury, upon presentation 30
of either of the following: 31

(1) Any proper order or voucher and evidentiary matter~~for~~ 32
~~the moneys, and;~~ 33

(2) Any proper court order for expenses of any court 34
funded through the county treasury and, upon request of the 35
county auditor, legible copies of any court-approved invoice, 36
bill, receipt, check, or contract related to the order, redacted 37
as required by law, to the extent those documents exist. 38

(B) When a court order described in division (A) (2) of 39
this section is presented, the auditor shall have no liability 40
for that expenditure. The county auditor shall keep a record of 41
all such warrants showing the number, date of issue, amount for 42
which drawn, in whose favor, for what purpose, and on what 43
fund. ~~The~~ 44

(C) The auditor shall not issue a warrant for the payment 45

of any claim against the county, unless it is allowed by the 46
board of county commissioners, except where the amount due is 47
fixed by law or is allowed by an officer or tribunal, including 48
a county board of mental health or county board of developmental 49
disabilities, so authorized by law. ~~ff-~~ 50

(D) If the auditor questions the validity of an 51
expenditure under division (A) (2) of this section that is within 52
available appropriations and for which a proper order or voucher 53
and evidentiary matter is presented, the auditor shall notify 54
the court that presented the documents, issue the warrant under 55
protest, and notify the auditor of state of the protest. When a 56
warrant is issued under division (D) of this section, the 57
auditor has no liability for that expenditure. If the auditor 58
refuses to issue the warrant, a writ of mandamus may be sought. 59
The court shall issue a writ of mandamus for issuance of the 60
warrant if the court determines that the claim is valid. 61

(E) If the auditor questions the validity of an 62
expenditure presented under division (A) (1) of this section that 63
is within available appropriations, the auditor shall -notify 64
the board, officer, or tribunal who presented the 65
~~voucher~~documents. -If the board, officer, or tribunal determines 66
that the expenditure ~~-is valid and the auditor continues to-~~ 67
~~refuse~~refuses to issue the appropriate warrant on the county 68
treasury, a writ of mandamus may be sought. The court shall 69
issue a writ of mandamus for issuance ~~-of the warrant if the 70~~
court determines that the claim is valid. 71

Evidentiary matter includes original invoices, receipts, 72
bills and checks, and legible copies of contracts. 73

Sec. 2921.41. (A) No public official or party official 74
shall commit any theft offense, as defined in division (K) of 75

section 2913.01 of the Revised Code, when either of the 76
following applies: 77

(1) The offender uses the offender's office in aid of 78
committing the offense or permits or assents to its use in aid 79
of committing the offense; 80

(2) The property or service involved is owned by this 81
state, any other state, the United States, a county, a municipal 82
corporation, a township, or any political subdivision, 83
department, or agency of any of them, is owned by a political 84
party, or is part of a political campaign fund. 85

(B) Whoever violates this section is guilty of theft in 86
office. Except as otherwise provided in this division, theft in 87
office is a felony of the fifth degree. If the value of property 88
or services stolen is one thousand dollars or more and is less 89
than seven thousand five hundred dollars, theft in office is a 90
felony of the fourth degree. If the value of property or 91
services stolen is seven thousand five hundred dollars or more 92
and is less than one hundred fifty thousand dollars, theft in 93
office is a felony of the third degree. If the value of property 94
or services stolen is one hundred fifty thousand dollars or more 95
and is less than seven hundred fifty thousand dollars, theft in 96
office is a felony of the second degree. If the value of 97
property or services stolen is seven hundred fifty thousand 98
dollars or more, theft in office is a felony of the first 99
degree. 100

(C) (1) A public official or party official who pleads 101
guilty to theft in office and whose plea is accepted by the 102
court or a public official or party official against whom a 103
verdict or finding of guilt for committing theft in office is 104
returned is forever disqualified from holding any public office, 105

employment, or position of trust in this state. 106

(2) (a) (i) A court that imposes sentence for a violation of 107
this section based on conduct described in division (A) (2) of 108
this section shall require the public official or party official 109
who is convicted of or pleads guilty to the offense to make 110
restitution for all of the property or the service that is the 111
subject of the offense, in addition to the term of imprisonment 112
and any fine imposed. The total amount of restitution imposed 113
under this division shall include costs of auditing the public 114
entities specified in division (A) (2) of this section that own 115
the property or service involved in the conduct described in 116
that division that is a violation of this section, but, except 117
as otherwise provided in a negotiated plea agreement, shall not 118
exceed the amount of the restitution imposed for all of the 119
property or the service that is the subject of the offense. 120

(ii) A court that imposes sentence for a violation of this 121
section based on conduct described in division (A) (1) of this 122
section and that determines at trial that this state or a 123
political subdivision of this state if the offender is a public 124
official, or a political party in the United States or this 125
state if the offender is a party official, suffered actual loss 126
as a result of the offense shall require the offender to make 127
restitution to the state, political subdivision, or political 128
party for all of the actual loss experienced, in addition to the 129
term of imprisonment and any fine imposed. The total amount of 130
restitution imposed under this division shall include costs of 131
auditing the state, political subdivision, or political party 132
that suffered the actual loss based on conduct described in that 133
division that is a violation of this section, but, except as 134
otherwise provided in a negotiated plea agreement, shall not 135
exceed the amount of the restitution imposed for all of the 136

actual loss suffered. 137

(b) (i) In any case in which a sentencing court is required 138
to order restitution under division (C) (2) (a) of this section 139
and in which the offender, at the time of the commission of the 140
offense or at any other time, was a member of the public 141
employees retirement system, the Ohio police and fire pension 142
fund, the state teachers retirement system, the school employees 143
retirement system, or the state highway patrol retirement 144
system; was an electing employee, as defined in section 3305.01 145
of the Revised Code, participating in an alternative retirement 146
plan provided pursuant to Chapter 3305. of the Revised Code; was 147
a participating employee or continuing member, as defined in 148
section 148.01 of the Revised Code, in a deferred compensation 149
program offered by the Ohio public employees deferred 150
compensation board; was an officer or employee of a municipal 151
corporation who was a participant in a deferred compensation 152
program offered by that municipal corporation; was an officer or 153
employee of a government unit, as defined in section 148.06 of 154
the Revised Code, who was a participant in a deferred 155
compensation program offered by that government unit, or was a 156
participating employee, continuing member, or participant in any 157
deferred compensation program described in this division and a 158
member of a retirement system specified in this division or a 159
retirement system of a municipal corporation, the entity to 160
which restitution is to be made may file a motion with the 161
sentencing court specifying any retirement system, any provider 162
as defined in section 3305.01 of the Revised Code, and any 163
deferred compensation program of which the offender was a 164
member, electing employee, participating employee, continuing 165
member, or participant and requesting the court to issue an 166
order requiring the specified retirement system, the specified 167

provider under the alternative retirement plan, or the specified 168
deferred compensation program, or, if more than one is specified 169
in the motion, the applicable combination of these, to withhold 170
the amount required as restitution from any payment that is to 171
be made under a pension, annuity, or allowance, under an option 172
in the alternative retirement plan, under a participant account, 173
as defined in section 148.01 of the Revised Code, or under any 174
other type of benefit, other than a survivorship benefit, that 175
has been or is in the future granted to the offender, from any 176
payment of accumulated employee contributions standing to the 177
offender's credit with that retirement system, that provider of 178
the option under the alternative retirement plan, or that 179
deferred compensation program, or, if more than one is specified 180
in the motion, the applicable combination of these, and from any 181
payment of any other amounts to be paid to the offender upon the 182
offender's withdrawal of the offender's contributions pursuant 183
to Chapter 145., 148., 742., 3307., 3309., or 5505. of the 184
Revised Code. A motion described in this division may be filed 185
at any time subsequent to the conviction of the offender or 186
entry of a guilty plea. Upon the filing of the motion, the clerk 187
of the court in which the motion is filed shall notify the 188
offender, the specified retirement system, the specified 189
provider under the alternative retirement plan, or the specified 190
deferred compensation program, or, if more than one is specified 191
in the motion, the applicable combination of these, in writing, 192
of all of the following: that the motion was filed; that the 193
offender will be granted a hearing on the issuance of the 194
requested order if the offender files a written request for a 195
hearing with the clerk prior to the expiration of thirty days 196
after the offender receives the notice; that, if a hearing is 197
requested, the court will schedule a hearing as soon as possible 198
and notify the offender, any specified retirement system, any 199

specified provider under an alternative retirement plan, and any 200
specified deferred compensation program of the date, time, and 201
place of the hearing; that, if a hearing is conducted, it will 202
be limited only to a consideration of whether the offender can 203
show good cause why the requested order should not be issued; 204
that, if a hearing is conducted, the court will not issue the 205
requested order if the court determines, based on evidence 206
presented at the hearing by the offender, that there is good 207
cause for the requested order not to be issued; that the court 208
will issue the requested order if a hearing is not requested or 209
if a hearing is conducted but the court does not determine, 210
based on evidence presented at the hearing by the offender, that 211
there is good cause for the requested order not to be issued; 212
and that, if the requested order is issued, any retirement 213
system, any provider under an alternative retirement plan, and 214
any deferred compensation program specified in the motion will 215
be required to withhold the amount required as restitution from 216
payments to the offender. 217

(ii) In any case in which a sentencing court is required 218
to order restitution under division (C) (2) (a) of this section 219
and in which a motion requesting the issuance of a withholding 220
order as described in division (C) (2) (b) (i) of this section is 221
filed, the offender may receive a hearing on the motion by 222
delivering a written request for a hearing to the court prior to 223
the expiration of thirty days after the offender's receipt of 224
the notice provided pursuant to division (C) (2) (b) (i) of this 225
section. If a request for a hearing is made by the offender 226
within the prescribed time, the court shall schedule a hearing 227
as soon as possible after the request is made and shall notify 228
the offender, the specified retirement system, the specified 229
provider under the alternative retirement plan, or the specified 230

deferred compensation program, or, if more than one is specified 231
in the motion, the applicable combination of these, of the date, 232
time, and place of the hearing. A hearing scheduled under this 233
division shall be limited to a consideration of whether there is 234
good cause, based on evidence presented by the offender, for the 235
requested order not to be issued. If the court determines, based 236
on evidence presented by the offender, that there is good cause 237
for the order not to be issued, the court shall deny the motion 238
and shall not issue the requested order. If the offender does 239
not request a hearing within the prescribed time or if the court 240
conducts a hearing but does not determine, based on evidence 241
presented by the offender, that there is good cause for the 242
order not to be issued, the court shall order the specified 243
retirement system, the specified provider under the alternative 244
retirement plan, or the specified deferred compensation program, 245
or, if more than one is specified in the motion, the applicable 246
combination of these, to withhold the amount required as 247
restitution under division (C) (2) (a) of this section from any 248
payments to be made under a pension, annuity, or allowance, 249
under a participant account, as defined in section 148.01 of the 250
Revised Code, under an option in the alternative retirement 251
plan, or under any other type of benefit, other than a 252
survivorship benefit, that has been or is in the future granted 253
to the offender, from any payment of accumulated employee 254
contributions standing to the offender's credit with that 255
retirement system, that provider under the alternative 256
retirement plan, or that deferred compensation program, or, if 257
more than one is specified in the motion, the applicable 258
combination of these, and from any payment of any other amounts 259
to be paid to the offender upon the offender's withdrawal of the 260
offender's contributions pursuant to Chapter 145., 148., 742., 261
3307., 3309., or 5505. of the Revised Code, and to continue the 262

withholding for that purpose, in accordance with the order, out 263
of each payment to be made on or after the date of issuance of 264
the order, until further order of the court. Upon receipt of an 265
order issued under this division, the public employees 266
retirement system, the Ohio police and fire pension fund, the 267
state teachers retirement system, the school employees 268
retirement system, the state highway patrol retirement system, a 269
municipal corporation retirement system, the provider under the 270
alternative retirement plan, and the deferred compensation 271
program offered by the Ohio public employees deferred 272
compensation board, a municipal corporation, or a government 273
unit, as defined in section 148.06 of the Revised Code, 274
whichever are applicable, shall withhold the amount required as 275
restitution, in accordance with the order, from any such 276
payments and immediately shall forward the amount withheld to 277
the clerk of the court in which the order was issued for payment 278
to the entity to which restitution is to be made. 279

(iii) Service of a notice required by division (C) (2) (b) 280
(i) or (ii) of this section shall be effected in the same manner 281
as provided in the Rules of Civil Procedure for the service of 282
process. 283

(c) Consistent with the ruling of the supreme court of the 284
United States in Kelly v. Robinson, 479 U.S. 36 (1986), 285
restitution imposed under division (C) (2) (a) of this section is 286
not dischargeable under Chapter 7 of the United States 287
Bankruptcy Code pursuant to 11 U.S.C. 523, as amended. 288

(D) Upon the filing of charges against a person under this 289
section, the prosecutor, as defined in section 2935.01 of the 290
Revised Code, who is assigned the case shall send written notice 291
that charges have been filed against that person to the public 292

employees retirement system, the Ohio police and fire pension 293
fund, the state teachers retirement system, the school employees 294
retirement system, the state highway patrol retirement system, 295
the provider under an alternative retirement plan, any municipal 296
corporation retirement system in this state, and the deferred 297
compensation program offered by the Ohio public employees 298
deferred compensation board, a municipal corporation, or a 299
government unit, as defined in section 148.06 of the Revised 300
Code. The written notice shall specifically identify the person 301
charged. 302

Sec. 2953.32. (A) (1) Except as provided in section 2953.61 303
of the Revised Code or as otherwise provided in division (A) (1) 304
(d) of this section, an eligible offender may apply to the 305
sentencing court if convicted in this state, or to a court of 306
common pleas if convicted in another state or in a federal 307
court, for the sealing of the record of the case that pertains 308
to the conviction. Application may be made at one of the 309
following times: 310

(a) At the expiration of three years after the offender's 311
final discharge if convicted of one felony, so long as none of 312
the offenses is a violation of section 2921.43 of the Revised 313
Code; 314

(b) When division (A) (1) (a) of section 2953.31 of the 315
Revised Code applies to the offender, at the expiration of four 316
years after the offender's final discharge if convicted of two 317
felonies, or at the expiration of five years after final 318
discharge if convicted of three, four, or five felonies, so long 319
as none of the offenses is a violation of section 2921.43 of the 320
Revised Code; 321

(c) At the expiration of one year after the offender's 322

final discharge if convicted of a misdemeanor, so long as none 323
of the offenses is a violation of section 2921.43 of the Revised 324
Code; 325

(d) At the expiration of seven years after the offender's 326
final discharge if the record includes a conviction of 327
soliciting improper compensation in violation of section 2921.43 328
of the Revised Code. 329

(2) Any person who has been arrested for any misdemeanor 330
offense and who has effected a bail forfeiture for the offense 331
charged may apply to the court in which the misdemeanor criminal 332
case was pending when bail was forfeited for the sealing of the 333
record of the case that pertains to the charge. Except as 334
provided in section 2953.61 of the Revised Code, the application 335
may be filed at any time after the expiration of one year from 336
the date on which the bail forfeiture was entered upon the 337
minutes of the court or the journal, whichever entry occurs 338
first. 339

(B) Upon the filing of an application under this section, 340
the court shall set a date for a hearing and shall notify the 341
prosecutor for the case of the hearing on the application. The 342
prosecutor may object to the granting of the application by 343
filing an objection with the court prior to the date set for the 344
hearing. The prosecutor shall specify in the objection the 345
reasons for believing a denial of the application is justified. 346
The court shall direct its regular probation officer, a state 347
probation officer, or the department of probation of the county 348
in which the applicant resides to make inquiries and written 349
reports as the court requires concerning the applicant. The 350
probation officer or county department of probation that the 351
court directs to make inquiries concerning the applicant shall 352

determine whether or not the applicant was fingerprinted at the 353
time of arrest or under section 109.60 of the Revised Code. If 354
the applicant was so fingerprinted, the probation officer or 355
county department of probation shall include with the written 356
report a record of the applicant's fingerprints. If the 357
applicant was convicted of or pleaded guilty to a violation of 358
division (A) (2) or (B) of section 2919.21 of the Revised Code, 359
the probation officer or county department of probation that the 360
court directed to make inquiries concerning the applicant shall 361
contact the child support enforcement agency enforcing the 362
applicant's obligations under the child support order to inquire 363
about the offender's compliance with the child support order. 364

(C) (1) The court shall do each of the following: 365

(a) Determine whether the applicant is an eligible 366
offender or whether the forfeiture of bail was agreed to by the 367
applicant and the prosecutor in the case. If the applicant 368
applies as an eligible offender pursuant to division (A) (1) of 369
this section and has two or three convictions that result from 370
the same indictment, information, or complaint, from the same 371
plea of guilty, or from the same official proceeding, and result 372
from related criminal acts that were committed within a three- 373
month period but do not result from the same act or from 374
offenses committed at the same time, in making its determination 375
under this division, the court initially shall determine whether 376
it is not in the public interest for the two or three 377
convictions to be counted as one conviction. If the court 378
determines that it is not in the public interest for the two or 379
three convictions to be counted as one conviction, the court 380
shall determine that the applicant is not an eligible offender; 381
if the court does not make that determination, the court shall 382
determine that the offender is an eligible offender. 383

(b) Determine whether criminal proceedings are pending	384
against the applicant;	385
(c) If the applicant is an eligible offender who applies	386
pursuant to division (A)(1) of this section, determine whether	387
the applicant has been rehabilitated to the satisfaction of the	388
court;	389
(d) If the prosecutor has filed an objection in accordance	390
with division (B) of this section, consider the reasons against	391
granting the application specified by the prosecutor in the	392
objection;	393
(e) Weigh the interests of the applicant in having the	394
records pertaining to the applicant's conviction or bail	395
forfeiture sealed against the legitimate needs, if any, of the	396
government to maintain those records.	397
(2) If the court determines, after complying with division	398
(C)(1) of this section, that the applicant is an eligible	399
offender or the subject of a bail forfeiture, that no criminal	400
proceeding is pending against the applicant, that the interests	401
of the applicant in having the records pertaining to the	402
applicant's conviction or bail forfeiture sealed are not	403
outweighed by any legitimate governmental needs to maintain	404
those records, and that the rehabilitation of an applicant who	405
is an eligible offender applying pursuant to division (A)(1) of	406
this section has been attained to the satisfaction of the court,	407
the court, except as provided in division (C)(4), (G), (H), or	408
(I) of this section, shall order all official records of the	409
case that pertain to the conviction or bail forfeiture sealed	410
and, except as provided in division (F) of this section, all	411
index references to the case that pertain to the conviction or	412
bail forfeiture deleted and, in the case of bail forfeitures,	413

shall dismiss the charges in the case. The proceedings in the 414
case that pertain to the conviction or bail forfeiture shall be 415
considered not to have occurred and the conviction or bail 416
forfeiture of the person who is the subject of the proceedings 417
shall be sealed, except that upon conviction of a subsequent 418
offense, the sealed record of prior conviction or bail 419
forfeiture may be considered by the court in determining the 420
sentence or other appropriate disposition, including the relief 421
provided for in sections 2953.31 to 2953.33 of the Revised Code. 422

(3) An applicant may request the sealing of the records of 423
more than one case in a single application under this section. 424
Upon the filing of an application under this section, the 425
applicant, unless indigent, shall pay a fee of fifty dollars, 426
regardless of the number of records the application requests to 427
have sealed. The court shall pay thirty dollars of the fee into 428
the state treasury. It shall pay twenty dollars of the fee into 429
the county general revenue fund if the sealed conviction or bail 430
forfeiture was pursuant to a state statute, or into the general 431
revenue fund of the municipal corporation involved if the sealed 432
conviction or bail forfeiture was pursuant to a municipal 433
ordinance. 434

(4) If the court orders the official records pertaining to 435
the case sealed, the court shall do one of the following: 436

(a) If the applicant was fingerprinted at the time of 437
arrest or under section 109.60 of the Revised Code and the 438
record of the applicant's fingerprints was provided to the court 439
under division (B) of this section, forward a copy of the 440
sealing order and the record of the applicant's fingerprints to 441
the bureau of criminal identification and investigation. 442

(b) If the applicant was not fingerprinted at the time of 443

arrest or under section 109.60 of the Revised Code, or the 444
record of the applicant's fingerprints was not provided to the 445
court under division (B) of this section, but fingerprinting was 446
required for the offense, order the applicant to appear before a 447
sheriff to have the applicant's fingerprints taken according to 448
the fingerprint system of identification on the forms furnished 449
by the superintendent of the bureau of criminal identification 450
and investigation. The sheriff shall forward the applicant's 451
fingerprints to the court. The court shall forward the 452
applicant's fingerprints and a copy of the sealing order to the 453
bureau of criminal identification and investigation. 454

Failure of the court to order fingerprints at the time of 455
sealing does not constitute a reversible error. 456

(D) Inspection of the sealed records included in the order 457
may be made only by the following persons or for the following 458
purposes: 459

(1) By a law enforcement officer or prosecutor, or the 460
assistants of either, to determine whether the nature and 461
character of the offense with which a person is to be charged 462
would be affected by virtue of the person's previously having 463
been convicted of a crime; 464

(2) By the parole or probation officer of the person who 465
is the subject of the records, for the exclusive use of the 466
officer in supervising the person while on parole or under a 467
community control sanction or a post-release control sanction, 468
and in making inquiries and written reports as requested by the 469
court or adult parole authority; 470

(3) Upon application by the person who is the subject of 471
the records, by the persons named in the application; 472

(4) By a law enforcement officer who was involved in the 473
case, for use in the officer's defense of a civil action arising 474
out of the officer's involvement in that case; 475

(5) By a prosecuting attorney or the prosecuting 476
attorney's assistants, to determine a defendant's eligibility to 477
enter a pre-trial diversion program established pursuant to 478
section 2935.36 of the Revised Code; 479

(6) By any law enforcement agency or any authorized 480
employee of a law enforcement agency or by the department of 481
rehabilitation and correction or department of youth services as 482
part of a background investigation of a person who applies for 483
employment with the agency or with the department; 484

(7) By any law enforcement agency or any authorized 485
employee of a law enforcement agency, for the purposes set forth 486
in, and in the manner provided in, section 2953.321 of the 487
Revised Code; 488

(8) By the bureau of criminal identification and 489
investigation or any authorized employee of the bureau for the 490
purpose of providing information to a board or person pursuant 491
to division (F) or (G) of section 109.57 of the Revised Code; 492

(9) By the bureau of criminal identification and 493
investigation or any authorized employee of the bureau for the 494
purpose of performing a criminal history records check on a 495
person to whom a certificate as prescribed in section 109.77 of 496
the Revised Code is to be awarded; 497

(10) By the bureau of criminal identification and 498
investigation or any authorized employee of the bureau for the 499
purpose of conducting a criminal records check of an individual 500
pursuant to division (B) of section 109.572 of the Revised Code 501

that was requested pursuant to any of the sections identified in 502
division (B) (1) of that section; 503

(11) By the bureau of criminal identification and 504
investigation, an authorized employee of the bureau, a sheriff, 505
or an authorized employee of a sheriff in connection with a 506
criminal records check described in section 311.41 of the 507
Revised Code; 508

(12) By the attorney general or an authorized employee of 509
the attorney general or a court for purposes of determining a 510
person's classification pursuant to Chapter 2950. of the Revised 511
Code; 512

(13) By a court, the registrar of motor vehicles, a 513
prosecuting attorney or the prosecuting attorney's assistants, 514
or a law enforcement officer for the purpose of assessing points 515
against a person under section 4510.036 of the Revised Code or 516
for taking action with regard to points assessed. 517

When the nature and character of the offense with which a 518
person is to be charged would be affected by the information, it 519
may be used for the purpose of charging the person with an 520
offense. 521

(E) In any criminal proceeding, proof of any otherwise 522
admissible prior conviction may be introduced and proved, 523
notwithstanding the fact that for any such prior conviction an 524
order of sealing previously was issued pursuant to sections 525
2953.31 to 2953.36 of the Revised Code. 526

(F) The person or governmental agency, office, or 527
department that maintains sealed records pertaining to 528
convictions or bail forfeitures that have been sealed pursuant 529
to this section may maintain a manual or computerized index to 530

the sealed records. The index shall contain only the name of, 531
and alphanumeric identifiers that relate to, the persons who are 532
the subject of the sealed records, the word "sealed," and the 533
name of the person, agency, office, or department that has 534
custody of the sealed records, and shall not contain the name of 535
the crime committed. The index shall be made available by the 536
person who has custody of the sealed records only for the 537
purposes set forth in divisions (C), (D), and (E) of this 538
section. 539

(G) Notwithstanding any provision of this section or 540
section 2953.33 of the Revised Code that requires otherwise, a 541
board of education of a city, local, exempted village, or joint 542
vocational school district that maintains records of an 543
individual who has been permanently excluded under sections 544
3301.121 and 3313.662 of the Revised Code is permitted to 545
maintain records regarding a conviction that was used as the 546
basis for the individual's permanent exclusion, regardless of a 547
court order to seal the record. An order issued under this 548
section to seal the record of a conviction does not revoke the 549
adjudication order of the superintendent of public instruction 550
to permanently exclude the individual who is the subject of the 551
sealing order. An order issued under this section to seal the 552
record of a conviction of an individual may be presented to a 553
district superintendent as evidence to support the contention 554
that the superintendent should recommend that the permanent 555
exclusion of the individual who is the subject of the sealing 556
order be revoked. Except as otherwise authorized by this 557
division and sections 3301.121 and 3313.662 of the Revised Code, 558
any school employee in possession of or having access to the 559
sealed conviction records of an individual that were the basis 560
of a permanent exclusion of the individual is subject to section 561

2953.35 of the Revised Code. 562

(H) Notwithstanding any provision of this section or 563
section 2953.33 of the Revised Code that requires otherwise, if 564
the auditor of state or a prosecutor maintains records, reports, 565
or audits of an individual who has been forever disqualified 566
from holding public office, employment, or position of trust in 567
this state under sections 2921.41 and 2921.43 of the Revised 568
Code, or has otherwise been convicted of an offense based upon 569
the records, reports, or audits of the auditor of state, the 570
auditor of state or prosecutor is permitted to maintain those 571
records to the extent they were used as the basis for the 572
individual's disqualification or conviction, and shall not be 573
compelled by court order to seal those records. 574

(I) For purposes of sections 2953.31 to 2953.36 of the 575
Revised Code, DNA records collected in the DNA database and 576
fingerprints filed for record by the superintendent of the 577
bureau of criminal identification and investigation shall not be 578
sealed unless the superintendent receives a certified copy of a 579
final court order establishing that the offender's conviction 580
has been overturned. For purposes of this section, a court order 581
is not "final" if time remains for an appeal or application for 582
discretionary review with respect to the order. 583

~~(I)~~ (J) The sealing of a record under this section does 584
not affect the assessment of points under section 4510.036 of 585
the Revised Code and does not erase points assessed against a 586
person as a result of the sealed record. 587

Sec. 2953.321. (A) As used in this section, "investigatory 588
work product" means any records or reports of a law enforcement 589
officer or agency that are excepted from the definition of 590
"official records" contained in section 2953.51 of the Revised 591

Code and that pertain to a conviction or bail forfeiture the 592
records of which have been ordered sealed pursuant to division 593
(C) (2) of section 2953.32 of the Revised Code or that pertain to 594
a conviction or delinquent child adjudication the records of 595
which have been ordered expunged pursuant to division (E) of 596
section 2151.358, division (D) (2) of section 2953.37, or 597
division (G) of section 2953.38 of the Revised Code. 598

(B) Upon the issuance of an order by a court pursuant to 599
division (C) (2) of section 2953.32 of the Revised Code directing 600
that all official records of a case pertaining to a conviction 601
or bail forfeiture be sealed or an order by a court pursuant to 602
division (E) of section 2151.358, division (D) (2) of section 603
2953.37, or division (G) of section 2953.38 of the Revised Code 604
directing that all official records of a case pertaining to a 605
conviction or delinquent child adjudication be expunged: 606

(1) Every law enforcement officer who possesses 607
investigatory work product immediately shall deliver that work 608
product to the law enforcement officer's employing law 609
enforcement agency. 610

(2) Except as provided in division (B) (3) or (4) of this 611
section, every law enforcement agency that possesses 612
investigatory work product shall close that work product to all 613
persons who are not directly employed by the law enforcement 614
agency and shall treat that work product, in relation to all 615
persons other than those who are directly employed by the law 616
enforcement agency, as if it did not exist and never had 617
existed. 618

(3) A law enforcement agency that possesses investigatory 619
work product may permit another law enforcement agency to use 620
that work product in the investigation of another offense if the 621

facts incident to the offense being investigated by the other 622
law enforcement agency and the facts incident to an offense that 623
is the subject of the case are reasonably similar. The agency 624
that permits the use of investigatory work product may provide 625
the other agency with the name of the person who is the subject 626
of the case if it believes that the name of the person is 627
necessary to the conduct of the investigation by the other 628
agency. 629

(4) The auditor of state may provide to or discuss with 630
other parties investigatory work product maintained pursuant to 631
Chapter 117. of the Revised Code by the auditor of state. 632

(C) (1) Except as provided in division (B) (3) or (4) of 633
this section, no law enforcement officer or other person 634
employed by a law enforcement agency shall knowingly release, 635
disseminate, or otherwise make the investigatory work product or 636
any information contained in that work product available to, or 637
discuss any information contained in it with, any person not 638
employed by the employing law enforcement agency. 639

(2) No law enforcement agency, or person employed by a law 640
enforcement agency, that receives investigatory work product 641
pursuant to division (B) (3) or (4) of this section shall use 642
that work product for any purpose other than the investigation 643
of the offense for which it was obtained from the other law 644
enforcement agency, or disclose the name of the person who is 645
the subject of the work product except when necessary for the 646
conduct of the investigation of the offense, or the prosecution 647
of the person for committing the offense, for which it was 648
obtained from the other law enforcement agency. 649

(3) It is not a violation of division (C) (1) or (2) of 650
this section for the bureau of criminal identification and 651

investigation or any authorized employee of the bureau 652
participating in the investigation of criminal activity to 653
release, disseminate, or otherwise make available to, or discuss 654
with, a person directly employed by a law enforcement agency DNA 655
records collected in the DNA database or fingerprints filed for 656
record by the superintendent of the bureau of criminal 657
identification and investigation. 658

(D) Whoever violates division (C) (1) or (2) of this 659
section is guilty of divulging confidential investigatory work 660
product, a misdemeanor of the fourth degree. 661

Sec. 2953.36. (A) Except as otherwise provided in division 662
(B) of this section, sections 2953.31 to 2953.35 of the Revised 663
Code do not apply to any of the following: 664

(1) Convictions when the offender is subject to a 665
mandatory prison term; 666

(2) Convictions under section 2907.02, 2907.03, 2907.04, 667
2907.05, 2907.06, 2907.321, 2907.322, or 2907.323, former 668
section 2907.12, or Chapter 4506., 4507., 4510., 4511., or 4549. 669
of the Revised Code, or a conviction for a violation of a 670
municipal ordinance that is substantially similar to any section 671
contained in any of those chapters, except as otherwise provided 672
in section 2953.61 of the Revised Code; 673

(3) Convictions of an offense of violence when the offense 674
is a misdemeanor of the first degree or a felony and when the 675
offense is not a violation of section 2917.03 of the Revised 676
Code and is not a violation of section 2903.13, 2917.01, or 677
2917.31 of the Revised Code that is a misdemeanor of the first 678
degree; 679

(4) Convictions on or after October 10, 2007, under 680

section 2907.07 of the Revised Code or a conviction on or after 681
October 10, 2007, for a violation of a municipal ordinance that 682
is substantially similar to that section; 683

(5) Convictions on or after October 10, 2007, under 684
section 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.31, 685
2907.311, 2907.32, or 2907.33 of the Revised Code when the 686
victim of the offense was under eighteen years of age; 687

(6) Convictions of an offense in circumstances in which 688
the victim of the offense was less than sixteen years of age 689
when the offense is a misdemeanor of the first degree or a 690
felony, except for convictions under section 2919.21 of the 691
Revised Code; 692

(7) Convictions of a felony of the first or second degree; 693

(8) Bail forfeitures in a traffic case as defined in 694
Traffic Rule 2; 695

(9) Convictions of theft in office in violation of section 696
2921.41 of the Revised Code. 697

(B) Sections 2953.31 to 2953.35 of the Revised Code apply 698
to a conviction listed in this section if, on the date of the 699
conviction, those sections did not apply to the conviction, but 700
after the date of the conviction, the penalty for or 701
classification of the offense was changed so that those sections 702
apply to the conviction. 703

Sec. 2953.51. As used in sections 2953.51 to 2953.56 of 704
the Revised Code: 705

(A) "No bill" means a report by the foreperson or deputy 706
foreperson of a grand jury that an indictment is not found by 707
the grand jury against a person who has been held to answer 708

before the grand jury for the commission of an offense. 709

(B) "Prosecutor" has the same meaning as in section 710
2953.31 of the Revised Code. 711

(C) "Court" means the court in which a case is pending at 712
the time a finding of not guilty in the case or a dismissal of 713
the complaint, indictment, or information in the case is entered 714
on the minutes or journal of the court, or the court to which 715
the foreperson or deputy foreperson of a grand jury reports, 716
pursuant to section 2939.23 of the Revised Code, that the grand 717
jury has returned a no bill. 718

(D) "Official records" means all records that are 719
possessed by any public office or agency that relate to a 720
criminal case, including, but not limited to: the notation to 721
the case in the criminal docket; all subpoenas issued in the 722
case; all papers and documents filed by the defendant or the 723
prosecutor in the case; all records of all testimony and 724
evidence presented in all proceedings in the case; all court 725
files, papers, documents, folders, entries, affidavits, or writs 726
that pertain to the case; all computer, microfilm, microfiche, 727
or microdot records, indices, or references to the case; all 728
index references to the case; all fingerprints and photographs; 729
all DNA specimens, DNA records, and DNA profiles; all records 730
and investigative reports pertaining to the case that are 731
possessed by any law enforcement officer or agency, except that 732
any records or reports that are the specific investigatory work 733
product of a law enforcement officer or agency are not and shall 734
not be considered to be official records when they are in the 735
possession of that officer or agency; and all investigative 736
records and reports other than those possessed by a law 737
enforcement officer or agency pertaining to the case. "Official 738

records" does not include any of the following: 739

(1) Records or reports maintained pursuant to section 740
2151.421 of the Revised Code by a public children services 741
agency or the department of job and family services; 742

(2) Any report of an investigation maintained by the 743
inspector general pursuant to section 121.42 of the Revised 744
Code, to the extent that the report contains information that 745
pertains to an individual who was convicted of or pleaded guilty 746
to an offense discovered in or related to the investigation and 747
whose conviction or guilty plea was not overturned on appeal; 748

(3) Records, reports, or audits maintained by the auditor 749
of state pursuant to Chapter 117. of the Revised Code. 750

(E) "DNA database," "DNA record," "DNA specimen," and "law 751
enforcement agency" have the same meanings as in section 109.573 752
of the Revised Code. 753

(F) "Fingerprints filed for record" has the same meaning 754
as in section 2953.31 of the Revised Code. 755

Sec. 2953.54. (A) Except as otherwise provided in Chapter 756
2950. of the Revised Code, upon the issuance of an order by a 757
court under division (B) of section 2953.52 of the Revised Code 758
directing that all official records pertaining to a case be 759
sealed and that the proceedings in the case be deemed not to 760
have occurred: 761

(1) Every law enforcement officer possessing records or 762
reports pertaining to the case that are the officer's specific 763
investigatory work product and that are excepted from the 764
definition of "official records" contained in section 2953.51 of 765
the Revised Code shall immediately deliver the records and 766
reports to the officer's employing law enforcement agency. 767

Except as provided in division (A) (3) or (4) of this section, no 768
such officer shall knowingly release, disseminate, or otherwise 769
make the records and reports or any information contained in 770
them available to, or discuss any information contained in them 771
with, any person not employed by the officer's employing law 772
enforcement agency. 773

(2) Every law enforcement agency that possesses records or 774
reports pertaining to the case that are its specific 775
investigatory work product and that are excepted from the 776
definition of "official records" contained in section 2953.51 of 777
the Revised Code, or that are the specific investigatory work 778
product of a law enforcement officer it employs and that were 779
delivered to it under division (A) (1) of this section shall, 780
except as provided in division (A) (3) or (4) of this section, 781
close the records and reports to all persons who are not 782
directly employed by the law enforcement agency and shall, 783
except as provided in division (A) (3) or (4) of this section, 784
treat the records and reports, in relation to all persons other 785
than those who are directly employed by the law enforcement 786
agency, as if they did not exist and had never existed. Except 787
as provided in division (A) (3) or (4) of this section, no person 788
who is employed by the law enforcement agency shall knowingly 789
release, disseminate, or otherwise make the records and reports 790
in the possession of the employing law enforcement agency or any 791
information contained in them available to, or discuss any 792
information contained in them with, any person not employed by 793
the employing law enforcement agency. 794

(3) A law enforcement agency that possesses records or 795
reports pertaining to the case that are its specific 796
investigatory work product and that are excepted from the 797
definition of "official records" contained in division (D) of 798

section 2953.51 of the Revised Code, or that are the specific 799
investigatory work product of a law enforcement officer it 800
employs and that were delivered to it under division (A) (1) of 801
this section may permit another law enforcement agency to use 802
the records or reports in the investigation of another offense, 803
if the facts incident to the offense being investigated by the 804
other law enforcement agency and the facts incident to an 805
offense that is the subject of the case are reasonably similar. 806
The agency that provides the records and reports may provide the 807
other agency with the name of the person who is the subject of 808
the case, if it believes that the name of the person is 809
necessary to the conduct of the investigation by the other 810
agency. 811

No law enforcement agency, or person employed by a law 812
enforcement agency, that receives from another law enforcement 813
agency records or reports pertaining to a case the records of 814
which have been ordered sealed pursuant to division (B) of 815
section 2953.52 of the Revised Code shall use the records and 816
reports for any purpose other than the investigation of the 817
offense for which they were obtained from the other law 818
enforcement agency, or disclose the name of the person who is 819
the subject of the records or reports except when necessary for 820
the conduct of the investigation of the offense, or the 821
prosecution of the person for committing the offense, for which 822
they were obtained from the other law enforcement agency. 823

(4) The auditor of state may provide to or discuss with 824
other parties records, reports, or audits maintained by the 825
auditor of state pursuant to Chapter 117. of the Revised Code 826
pertaining to the case that are the auditor of state's specific 827
investigatory work product and that are excepted from the 828
definition of "official records" contained in division (D) of 829

section 2953.51 of the Revised Code, or that are the specific 830
investigatory work product of a law enforcement officer the 831
auditor of state employs and that were delivered to the auditor 832
of state under division (A)(1) of this section. 833

(B) Whoever violates division (A)(1), (2), or (3) of this 834
section is guilty of divulging confidential information, a 835
misdemeanor of the fourth degree. 836

(C) It is not a violation of this section for the bureau 837
of criminal identification and investigation or any authorized 838
employee of the bureau participating in the investigation of 839
criminal activity to release, disseminate, or otherwise make 840
available to, or discuss with, a person directly employed by a 841
law enforcement agency DNA records collected in the DNA database 842
or fingerprints filed for record by the superintendent of the 843
bureau of criminal identification and investigation. 844

Sec. 5747.12. (A) If a person entitled to a refund under 845
section 5747.11 or 5747.13 of the Revised Code is indebted to 846
this state for any of the following, the amount refundable may 847
be applied in satisfaction of the debt: 848

(1) To this state for any tax, workers' compensation 849
premium due under section 4123.35 of the Revised Code, or 850
unemployment compensation contribution due under section 4141.25 851
of the Revised Code; 852

(2) To the state or a political subdivision for a 853
certified claim under section 131.02 or 131.021 of the Revised 854
Code; or a finding for recovery included in a certified report 855
that has been filed with the attorney general pursuant to 856
sections 117.28 and 117.30 of the Revised Code; 857

(3) For a fee that is paid to the state or to the clerk of 858

courts pursuant to section 4505.06 of the Revised Code, ~~or;~~ 859

(4) For any charge, penalty, collection cost, or interest 860
arising from ~~such a tax, workers' compensation premium,~~ 861
~~unemployment compensation contribution, certified claim, or fee,~~ 862
~~the amount refundable may be applied in satisfaction of the~~ 863
~~debt~~ a debt listed in divisions (A)(1) to (3) of this section. If 864

(B) If the amount refundable is less than the amount of 865
the debt owed under division (A) of this section, it may be 866
applied in partial satisfaction of the debt. If the amount 867
refundable is greater than the amount of ~~the~~ that debt, the 868
amount remaining after satisfaction of the debt shall be 869
refunded. If the person has more than one ~~such~~ debt listed in 870
division (A) of this section, any debt subject to section 871
5739.33 or division (G) of section 5747.07 of the Revised Code 872
or arising under section 5747.063 or 5747.064 of the Revised 873
Code shall be satisfied first. ~~Except~~ 874

(C) Except as provided in section 131.021 of the Revised 875
Code, this section applies only to debts that have become final. 876

(D) The tax commissioner may charge each respective agency 877
of the state for the commissioner's cost in applying refunds to 878
debts due to the state and may charge the attorney general for 879
the commissioner's cost in applying refunds to certified claims. 880
~~The~~ 881

(E) The commissioner may promulgate rules to implement 882
this section. The rules may address, among other things, 883
situations such as those where persons may jointly be entitled 884
to a refund but do not jointly owe a debt or certified claim. 885

(F) The commissioner may, with the consent of the 886
taxpayer, provide for the crediting, against tax imposed under 887

this chapter or Chapter 5748. of the Revised Code and due for 888
any taxable year, of the amount of any refund due the taxpayer 889
under this chapter or Chapter 5748. of the Revised Code, as 890
appropriate, for a preceding taxable year. 891

Section 2. That existing sections 319.16, 2921.41, 892
2953.32, 2953.321, 2953.36, 2953.51, 2953.54, and 5747.12 of the 893
Revised Code are hereby repealed. 894

Section 3. Section 2953.36 of the Revised Code is 895
presented in this act as a composite of the section as amended 896
by H.B. 53, H.B. 56, and H.B. 164, all of the 131st General 897
Assembly. The General Assembly, applying the principle stated in 898
division (B) of section 1.52 of the Revised Code that amendments 899
are to be harmonized if reasonably capable of simultaneous 900
operation, finds that the composite is the resulting version of 901
the section in effect prior to the effective date of the section 902
as presented in this act. 903