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Sub. H. B. No. 234

Representatives Williams, Rogers

Cosponsors: Representatives Schmidt, Willis, Hillyer, Upchurch, Humphrey, Seitz, Blackshear, Brennan, Brewer, Dell'Aquila, Demetriou, Denson, Dobos, Isaacsohn, Jarrells, Miller, A., Robb Blasdel, Russo, White, Young, T.

Senator Manning

A BILL

To amend sections 3.16, 2929.12, 2929.22, and 1
2953.32 of the Revised Code to revise the law 2
relating to the suspension of a local official 3
charged with a felony, to prohibit a court 4
imposing a sentence on an offender for a felony 5
or misdemeanor from considering whether the 6
offender who entered an Alford plea shows 7
genuine remorse for the offense, and to make 8
changes to sealing and expungement eligibility. 9

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

Section 1. That sections 3.16, 2929.12, 2929.22, and 10
2953.32 of the Revised Code be amended to read as follows: 11

Sec. 3.16. (A) As used in this section: 12

(1) "Prosecuting ~~attorney~~officer" means the prosecuting 13
attorney of the county in which a public official who is charged 14
as described in division (B) of this section serves, the 15

attorney general, or a special prosecutor designated by the 16
prosecuting attorney. A federal prosecutor may serve as a 17
prosecuting officer under this section at the federal 18
prosecutor's own volition. 19

(2) "Public official" means any elected officer of a 20
political subdivision as defined in section 2744.01 of the 21
Revised Code. "Public official" does not include a judge of a 22
court of record. 23

(B)(1) In computing any period of time prescribed or 24
allowed in this section, the day of the act from which the 25
designated period of time begins to run shall not be included, 26
and the last day of the period shall be included. If the last 27
day of the period is a Saturday, Sunday, or legal holiday, the 28
period runs on the next day that is not a Saturday, Sunday, or 29
legal holiday. 30

(2) If a public official is charged with a felony in a 31
state or federal court and if the ~~attorney general, if the~~ 32
~~attorney general is prosecuting the case, or prosecuting~~ 33
~~attorney officer~~ with responsibility to prosecute the case 34
determines that the felony relates to the public official's 35
administration of, or conduct in the performance of the duties 36
of, the office of the public official, the ~~attorney general, if~~ 37
~~the attorney general is prosecuting the case, or prosecuting~~ 38
~~attorney officer~~ with responsibility to prosecute the case shall 39
transmit a copy of the charging document to the ~~chief justice~~ 40
clerk of the supreme court with a request that the chief justice 41
proceed as provided in division (C) of this section. If the 42
~~attorney general or the prosecuting attorney officer~~ transmits a 43
copy of the charging document to the ~~chief justice~~clerk, a copy 44
also shall be sent to the attorney general if the prosecuting 45

attorney of the county in which the public official serves, 46
special prosecutor, or federal prosecutor serving as a 47
prosecuting officer under this section transmits the copy to the 48
~~chief justice clerk~~ or to the prosecuting attorney of the county 49
in which the public official holds office, special prosecutor, 50
or federal prosecutor with responsibility to prosecute the case 51
if the attorney general transmits the copy to the ~~chief-~~ 52
~~justice~~clerk. 53

~~(2)-(3)~~ Upon transmitting a copy of a charging document to 54
the clerk of the supreme court and a request to the chief 55
justice of the supreme court under division ~~(B)(1)-(B)(2)~~ of 56
this section, the ~~attorney general or prosecuting attorney-~~ 57
officer shall provide the public official with a written notice 58
that, not later than fourteen days after the ~~date receipt~~ of the 59
notice transmitted to the clerk of the supreme court, the public 60
official may file with the ~~attorney general or prosecuting~~ 61
~~attorney, whichever sent the notice,~~ officer a written statement 62
either voluntarily authorizing the ~~attorney general or-~~ 63
~~prosecuting attorney officer~~ to prepare a judgment entry for the 64
judge presiding in the case to provisionally suspend the public 65
official from office or setting forth the reasons why the public 66
official should not be suspended from office. 67

If the public official voluntarily authorizes the ~~attorney-~~ 68
~~general or prosecuting attorney officer~~ to prepare a judgment 69
entry for the judge presiding in the case to provisionally 70
suspend the public official from office as described in this 71
division, the ~~attorney general or prosecuting attorney officer~~ 72
shall prepare a judgment entry for the judge presiding in the 73
case to provisionally suspend the public official from office 74
immediately upon receipt of the judgment entry and shall notify 75
the ~~chief justice clerk~~ of the supreme court of the provisional 76

suspension. Upon receipt of the judgment entry, the judge 77
presiding in the criminal case shall sign the judgment entry and 78
file the signed judgment entry in the case. The signing and 79
filing of the judgment entry provisionally suspends the public 80
official from office. The ~~attorney general's or prosecuting~~ 81
~~attorney's officer's~~ request to the chief justice that was made 82
under division ~~(B) (1)~~ (B) (2) of this section remains applicable 83
regarding the public official, and the chief justice shall 84
establish a special commission pursuant to division (C) (1) of 85
this section. A provisional suspension imposed under this 86
division shall remain in effect until the special commission 87
established by the chief justice enters its judgment under 88
division (C) (3) of this section. After the special commission so 89
enters its judgment, divisions (C) (3) and (4) of this section 90
shall govern the continuation of the suspension. Division (E) of 91
this section applies to a provisional suspension imposed under 92
this division. 93

If the public official files a written statement setting 94
forth the reasons why the public official should not be 95
suspended from office, the public official shall not be 96
provisionally suspended from office, and the ~~attorney general or~~ 97
~~prosecuting attorney, whichever sent the notice to the public~~ 98
~~official, officer~~ shall transmit a copy of the public official's 99
written statement to the ~~chief justice clerk~~ of the supreme 100
court. The ~~attorney general's or prosecuting attorney's~~ 101
~~officer's~~ request to the chief justice that was made under 102
division ~~(B) (1)~~ (B) (2) of this section remains applicable 103
regarding the public official, and the chief justice shall 104
establish a special commission pursuant to division (C) (1) of 105
this section. 106

(C) (1) Not sooner than fourteen days after the chief 107

justice's receipt of the ~~attorney general's or prosecuting~~ 108
~~attorney's officer's request~~ under division ~~(B) (1)~~ (B) (2) of 109
this section, the chief justice shall establish a special 110
commission composed of three retired justices or judges of a 111
court of record. A special commission established under this 112
division is an administrative agency. The chief justice shall 113
appoint the members of the special commission and shall provide 114
to the special commission all documents and materials pertaining 115
to the matter that were received from the ~~attorney general or~~ 116
~~prosecuting attorney officer~~ under division ~~(B) (1)~~ (B) (2) or ~~(2)~~ 117
(3) of this section. At least one member of the special 118
commission shall be of the same political party as the public 119
official. Members of the special commission shall receive 120
compensation for their services, and shall be reimbursed for any 121
expenses incurred in connection with special commission 122
functions, from funds appropriated to the attorney general's 123
office. 124

(2) Once established under division (C) (1) of this 125
section, a special commission shall review the document that 126
charges the public official with the felony, all other documents 127
and materials pertaining to the matter that were provided by the 128
chief justice under division (C) (1) of this section, and the 129
facts and circumstances related to the offense charged. Within 130
fourteen days after it is established, the special commission 131
shall make a preliminary determination as to whether the public 132
official's administration of, or conduct in the performance of 133
the duties of, the official's office, as covered by the charges, 134
adversely affects the functioning of that office or adversely 135
affects the rights and interests of the public and, as a result, 136
whether the public official should be suspended from office. 137
Upon making the preliminary determination, the special 138

commission immediately shall provide the public official with 139
notice of the preliminary determination. The notice may be in 140
writing, by telephone, or in another manner. If the preliminary 141
determination is that the public official's administration of, 142
or conduct in the performance of the duties of, the official's 143
office, as covered by the charges, does not adversely affect the 144
functioning of the office or does not adversely affect the 145
rights and interests of the public, the preliminary 146
determination automatically shall become the special 147
commission's final determination for purposes of division (C) (3) 148
of this section. If the preliminary determination is that the 149
public official's administration of, or conduct in the 150
performance of the duties of, the official's office, as covered 151
by the charges, adversely affects the functioning of the office 152
or adversely affects the rights and interests of the public and 153
that the public official should be suspended from office, the 154
notice shall inform the public official that the public official 155
may contest the preliminary determination by filing with the 156
special commission, within fourteen days after the date of 157
receipt of the notice to the public official, a notice 158
contesting the preliminary determination. 159

If the public official files a notice contesting the 160
preliminary determination within fourteen days after the date of 161
receipt of the notice to the public official, the public 162
official may review the reasons and evidence for the 163
determination and may appear at a meeting of the special 164
commission to contest the determination and present the public 165
official's position on the matter. The meeting of the special 166
commission shall be held not later than fourteen days after the 167
public official files the notice contesting the preliminary 168
determination. The public official has a right to be accompanied 169

by an attorney while appearing before the special commission, 170
but the attorney is not entitled to act as counsel or advocate 171
for the public official before the special commission or to 172
present evidence or examine or cross-examine witnesses before 173
the special commission. At the conclusion of the meeting, the 174
special commission shall make a final determination as to 175
whether the public official's administration of, or conduct in 176
the performance of the duties of, the official's office, as 177
covered by the charges, adversely affects the functioning of the 178
office or adversely affects the rights and interests of the 179
public and, as a result, whether the public official should be 180
suspended from office, and shall proceed in accordance with 181
division (C) (3) of this section. 182

If the public official does not file a notice contesting 183
the determinations within fourteen days after the date of 184
receipt of the notice to the public official, the special 185
commission's preliminary determination automatically shall 186
become its final determination for purposes of division (C) (3) 187
of this section. 188

Notwithstanding anything to the contrary in section 121.22 189
of the Revised Code, all meetings of the special commission 190
shall be closed to the public. Notwithstanding anything to the 191
contrary in section 149.43 of the Revised Code, the records of 192
the special commission shall not be made available to the public 193
for inspection or copying until the special commission issues 194
its written report under this division. 195

(3) Upon making the final determination described in 196
division (C) (2) of this section regarding a public official who 197
is charged with a felony, including, if applicable, conducting a 198
meeting pursuant to that division for the public official to 199

contest the preliminary determination, the special commission 200
shall issue a written report that sets forth its findings and 201
final determination. The special commission shall send the 202
report by certified mail to the public official, ~~the attorney-~~ 203
~~general if the attorney general is prosecuting the case or the~~ 204
~~prosecuting attorney with responsibility to prosecute the case,~~ 205
~~whichever is applicable~~officer, and any other person that the 206
special commission determines to be appropriate. Upon the 207
issuance of the report, one of the following applies: 208

(a) If the special commission in its final determination 209
does not determine that the public official's administration of, 210
or conduct in the performance of the duties of, the official's 211
office, as covered by the charges, adversely affects the 212
functioning of that office or adversely affects the rights and 213
interests of the public, the special commission shall include in 214
the report a statement to that effect, and the public official 215
shall not be suspended from office. If the public official was 216
provisionally suspended from office under division ~~(B) (2)~~ (B) (3) 217
of this section, the provisional suspension shall terminate 218
immediately upon the issuance of the report. 219

(b) If the special commission in its final determination 220
determines that the public official's administration of, or 221
conduct in the performance of the duties of, the official's 222
office, as covered by the charges, adversely affects the 223
functioning of that office or adversely affects the rights and 224
interests of the public, the special commission shall include in 225
the report a holding that the public official be suspended from 226
office. The holding that the public official be suspended from 227
office and the suspension take effect immediately upon the 228
special commission's issuance of the report. If the public 229
official was provisionally suspended from office under division 230

(B) (2) <u>(B) (3)</u> of this section, the holding that the public	231
official be suspended from office shall continue the suspension	232
immediately upon the special commission's issuance of the	233
report. The report and holding shall have the same force and	234
effect as a judgment of a court of record.	235
(4) A suspension imposed or continued under division (C)	236
(3) of this section shall continue until one of the following	237
occurs:	238
(a) The public official is reinstated to office by an	239
appeal as provided in division (D) of this section;	240
(b) All charges are disposed of by dismissal or by a	241
finding or findings of not guilty;	242
(c) A successor is elected and qualified to serve the next	243
succeeding term of the public official's office.	244
(D) If a special commission issues a written report and	245
holding pursuant to division (C) (3) (b) of this section that	246
suspends a public official from office or that continues a	247
provisional suspension imposed under division (B) (2) of this	248
section, the public official may appeal the report and holding	249
to the supreme court. The public official shall take the appeal	250
by filing within thirty days of the date on which the report is	251
issued a notice of appeal with the supreme court and the special	252
commission. Unless waived, notice of the appeal shall be served	253
upon all persons to whom the report was sent under division (C)	254
(3) of this section. The special commission, upon written demand	255
filed by the public official, shall file with the supreme court,	256
within thirty days after the filing of the demand, a certified	257
transcript of the proceedings of the special commission	258
pertaining to the report and the evidence considered by the	259

special commission in making its decision. 260

The supreme court shall consider an appeal under this 261
division on an expedited basis. If the public official appeals 262
the report and holding, the appeal itself does not stay the 263
operation of the suspension imposed or continued under the 264
report and holding. If, upon hearing and consideration of the 265
record and evidence, the supreme court decides that the 266
determinations and findings of the special commission are 267
reasonable and lawful, the court shall affirm the special 268
commission's report and holding, and the suspension, and shall 269
enter final judgment in accordance with its decision. If the 270
public official subsequently pleads guilty to or is found guilty 271
of any felony with which the public official was charged, the 272
public official is liable for any amount of compensation paid to 273
the official during the suspension, with the liability relating 274
back to the date of the original suspension under the special 275
commission's report and holding, and the amount of that 276
liability may be recovered as provided in division (G) of this 277
section. If, upon hearing and consideration of the record and 278
evidence, the supreme court decides that the determinations and 279
findings of the special commission are unreasonable or unlawful, 280
the court shall reverse and vacate the special commission's 281
report and holding, and the suspension, reinstate the public 282
official, and enter final judgment in accordance with its 283
decision. 284

The clerk of the supreme court shall certify the judgment 285
of the court to the special commission. Upon receipt of the 286
judgment, the special commission shall certify the judgment to 287
all persons to whom the special commission's report was 288
certified under division (C) (3) of this section and shall 289
certify the judgment to all other public officials or take any 290

other action in connection with the judgment as is required to 291
give effect to it. 292

(E) (1) Any public official suspended from office under 293
this section shall not exercise any of the rights, powers, or 294
responsibilities of the holder of that office during the period 295
of the suspension. The suspended public official, however, shall 296
retain the title of the holder of that office during the period 297
of the suspension and continue to receive the compensation that 298
the official is entitled to receive for holding that office 299
during the period of the suspension, until the public official 300
pleads guilty to or is found guilty of any felony with which the 301
public official is charged, or until one of the conditions in 302
division (C) (4) (a), (b), or (c) of this section occurs. 303

(2) If the public official suspended under this section is 304
an elected county official, the board of county commissioners 305
may appoint a person in the official's office as the acting 306
officer to perform the suspended public official's duties 307
between the date of the signing and filing of the judgment entry 308
suspending the elected county official and the time at which the 309
interim replacement official appointed under division (E) (3) (a) 310
or (b) of this section qualifies and takes the office. 311

(3) (a) Except as provided in division (E) (3) (b) of this 312
section, for the duration of the public official's suspension, 313
an interim replacement official shall be appointed by the county 314
central committee of the political party that nominated the 315
suspended public official if the suspended public official is an 316
elected county official, to perform the suspended public 317
official's duties. Not less than five nor more than forty-five 318
days after the suspension of a public official that is an 319
elected county official, the county central committee shall meet 320

to appoint the interim replacement official. Not less than four 321
days before the date of the meeting, the chairperson or 322
secretary of the county central committee shall send by first 323
class mail to each member of the committee a written notice that 324
states the time and place of the meeting and the purpose 325
thereof. The approval of a majority of the members of the county 326
central committee present at the meeting is required to appoint 327
the interim replacement official. 328

(b) If the suspended public official is an elected county 329
official, except for a county commissioner, who was elected as 330
an independent candidate, the board of county commissioners 331
shall appoint the interim replacement official. If the suspended 332
public official is a county commissioner who was elected as an 333
independent candidate, the prosecuting attorney and the 334
remaining county commissioners, by majority vote, shall appoint 335
the interim replacement official. 336

(4) For the duration of the public official's suspension, 337
an interim replacement official shall be appointed by the 338
probate judge of the court of common pleas if the suspended 339
public official is an elected official of a municipal 340
corporation, township, school district, or other political 341
subdivision, to perform the suspended public official's duties. 342

(5) An acting officer appointed under division (E) (2) of 343
this section or an interim replacement official appointed under 344
division (E) (3) or (4) of this section shall be certified to the 345
county board of elections and the secretary of state by the 346
county central committee, probate judge of the court of common 347
pleas, or board of county commissioners that made the 348
appointment. The acting officer or interim replacement official 349
so certified shall have all of the rights, powers, and 350

responsibilities of, and shall be entitled to the same rate of 351
pay as, the suspended public official. The acting officer or 352
interim replacement official shall give bond and take the oath 353
of office. If the office of the suspended public official 354
becomes vacant during the period of suspension, a public 355
official shall be appointed or elected to fill such vacancy as 356
provided by law. If a regular election is to occur during the 357
period of suspension, a public official shall be elected as 358
provided by law. 359

(F) A person appointed as an acting or interim replacement 360
prosecuting attorney shall meet the qualifications to hold the 361
office of a prosecuting attorney under section 309.02 of the 362
Revised Code. A person appointed as an acting or interim 363
replacement sheriff shall meet the requirements to hold the 364
office of sheriff prescribed by section 311.01 of the Revised 365
Code. A person appointed as an acting or interim replacement 366
coroner shall meet the requirements to hold the office of 367
coroner prescribed by section 313.02 of the Revised Code. And a 368
person appointed as an acting or interim replacement county 369
engineer shall meet the requirements to hold the office of 370
county engineer prescribed by section 315.02 of the Revised 371
Code. 372

(G) A political subdivision may file a civil action in the 373
appropriate court to recover from any former public official of 374
the political subdivision the amount of compensation paid to 375
that former public official in accordance with this division 376
from the date of the former public official's suspension to the 377
date the former public official pleads guilty to or is found 378
guilty of any felony with which the former public official was 379
charged. 380

Sec. 2929.12. (A) Unless otherwise required by section 381
2929.13 or 2929.14 of the Revised Code, a court that imposes a 382
sentence under this chapter upon an offender for a felony has 383
discretion to determine the most effective way to comply with 384
the purposes and principles of sentencing set forth in section 385
2929.11 of the Revised Code. In exercising that discretion, the 386
court shall consider the factors set forth in divisions (B) and 387
(C) of this section relating to the seriousness of the conduct, 388
the factors provided in divisions (D) and (E) of this section 389
relating to the likelihood of the offender's recidivism, ~~and~~ the 390
factors set forth in division (F) of this section pertaining to 391
the offender's service in the armed forces of the United States, 392
and the factors set forth in division (G) of this section 393
relating to Alford pleas and, in addition, may consider any 394
other factors that are relevant to achieving those purposes and 395
principles of sentencing. 396

(B) The sentencing court shall consider all of the 397
following that apply regarding the offender, the offense, or the 398
victim, and any other relevant factors, as indicating that the 399
offender's conduct is more serious than conduct normally 400
constituting the offense: 401

(1) The physical or mental injury suffered by the victim 402
of the offense due to the conduct of the offender was 403
exacerbated because of the physical or mental condition or age 404
of the victim. 405

(2) The victim of the offense suffered serious physical, 406
psychological, or economic harm as a result of the offense. 407

(3) The offender held a public office or position of trust 408
in the community, and the offense related to that office or 409
position. 410

(4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

(5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.

(6) The offender's relationship with the victim facilitated the offense.

(7) The offender committed the offense for hire or as a part of an organized criminal activity.

(8) In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

(9) If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.

(C) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense:

(1) The victim induced or facilitated the offense.

(2) In committing the offense, the offender acted under

strong provocation. 439

(3) In committing the offense, the offender did not cause 440
or expect to cause physical harm to any person or property. 441

(4) There are substantial grounds to mitigate the 442
offender's conduct, although the grounds are not enough to 443
constitute a defense. 444

(D) The sentencing court shall consider all of the 445
following that apply regarding the offender, and any other 446
relevant factors, as factors indicating that the offender is 447
likely to commit future crimes: 448

(1) At the time of committing the offense, the offender 449
was under release from confinement before trial or sentencing; 450
was under a sanction imposed pursuant to section 2929.16, 451
2929.17, or 2929.18 of the Revised Code; was under post-release 452
control pursuant to section 2967.28 or any other provision of 453
the Revised Code for an earlier offense or had been unfavorably 454
terminated from post-release control for a prior offense 455
pursuant to division (B) of section 2967.16 or section 2929.141 456
of the Revised Code; was under transitional control in 457
connection with a prior offense; or had absconded from the 458
offender's approved community placement resulting in the 459
offender's removal from the transitional control program under 460
section 2967.26 of the Revised Code. 461

(2) The offender previously was adjudicated a delinquent 462
child pursuant to Chapter 2151. of the Revised Code prior to 463
January 1, 2002, or pursuant to Chapter 2152. of the Revised 464
Code, or the offender has a history of criminal convictions. 465

(3) The offender has not been rehabilitated to a 466
satisfactory degree after previously being adjudicated a 467

delinquent child pursuant to Chapter 2151. of the Revised Code 468
prior to January 1, 2002, or pursuant to Chapter 2152. of the 469
Revised Code, or the offender has not responded favorably to 470
sanctions previously imposed for criminal convictions. 471

(4) The offender has demonstrated a pattern of drug or 472
alcohol abuse that is related to the offense, and the offender 473
refuses to acknowledge that the offender has demonstrated that 474
pattern, or the offender refuses treatment for the drug or 475
alcohol abuse. 476

(5) The offender shows no genuine remorse for the offense. 477

(E) The sentencing court shall consider all of the 478
following that apply regarding the offender, and any other 479
relevant factors, as factors indicating that the offender is not 480
likely to commit future crimes: 481

(1) Prior to committing the offense, the offender had not 482
been adjudicated a delinquent child. 483

(2) Prior to committing the offense, the offender had not 484
been convicted of or pleaded guilty to a criminal offense. 485

(3) Prior to committing the offense, the offender had led 486
a law-abiding life for a significant number of years. 487

(4) The offense was committed under circumstances not 488
likely to recur. 489

(5) ~~The~~ Except as provided in division (G) of this 490
section, the offender shows genuine remorse for the offense. 491

(F) The sentencing court shall consider the offender's 492
military service record and whether the offender has an 493
emotional, mental, or physical condition that is traceable to 494
the offender's service in the armed forces of the United States 495

and that was a contributing factor in the offender's commission 496
of the offense or offenses. 497

(G) If the offender enters an Alford plea, the sentencing 498
court shall not consider whether the offender showed genuine 499
remorse for the offense. 500

Sec. 2929.22. (A) Unless a mandatory jail term is required 501
to be imposed by division (G) of section 1547.99, division (B) 502
of section 4510.14, division (G) of section 4511.19 of the 503
Revised Code, or any other provision of the Revised Code a court 504
that imposes a sentence under this chapter upon an offender for 505
a misdemeanor or minor misdemeanor has discretion to determine 506
the most effective way to achieve the purposes and principles of 507
sentencing set forth in section 2929.21 of the Revised Code. 508

Unless a specific sanction is required to be imposed or is 509
precluded from being imposed by the section setting forth an 510
offense or the penalty for an offense or by any provision of 511
sections 2929.23 to 2929.28 of the Revised Code, a court that 512
imposes a sentence upon an offender for a misdemeanor may impose 513
on the offender any sanction or combination of sanctions under 514
sections 2929.24 to 2929.28 of the Revised Code. The court shall 515
not impose a sentence that imposes an unnecessary burden on 516
local government resources. 517

(B) (1) In determining the appropriate sentence for a 518
misdemeanor, the court shall consider all of the following 519
factors: 520

(a) The nature and circumstances of the offense or 521
offenses; 522

(b) Whether the circumstances regarding the offender and 523
the offense or offenses indicate that the offender has a history 524

of persistent criminal activity and that the offender's 525
character and condition reveal a substantial risk that the 526
offender will commit another offense; 527

(c) Whether the circumstances regarding the offender and 528
the offense or offenses indicate that the offender's history, 529
character, and condition reveal a substantial risk that the 530
offender will be a danger to others and that the offender's 531
conduct has been characterized by a pattern of repetitive, 532
compulsive, or aggressive behavior with heedless indifference to 533
the consequences; 534

(d) Whether the victim's youth, age, disability, or other 535
factor made the victim particularly vulnerable to the offense or 536
made the impact of the offense more serious; 537

(e) Whether the offender is likely to commit future crimes 538
in general, in addition to the circumstances described in 539
divisions (B) (1) (b) and (c) of this section; 540

(f) Whether the offender has an emotional, mental, or 541
physical condition that is traceable to the offender's service 542
in the armed forces of the United States and that was a 543
contributing factor in the offender's commission of the offense 544
or offenses; 545

(g) The offender's military service record. 546

(2) In determining the appropriate sentence for a 547
misdemeanor, if the offender enters an Alford plea, the 548
sentencing court shall not consider whether the offender showed 549
genuine remorse for the offense. 550

(3) In determining the appropriate sentence for a 551
misdemeanor, in addition to complying with division (B) (1) of 552
this section, the court may consider any other factors that are 553

relevant to achieving the purposes and principles of sentencing 554
set forth in section 2929.21 of the Revised Code. 555

(C) Before imposing a jail term as a sentence for a 556
misdemeanor, a court shall consider the appropriateness of 557
imposing a community control sanction or a combination of 558
community control sanctions under sections 2929.25, 2929.26, 559
2929.27, and 2929.28 of the Revised Code. A court may impose the 560
longest jail term authorized under section 2929.24 of the 561
Revised Code only upon offenders who commit the worst forms of 562
the offense or upon offenders whose conduct and response to 563
prior sanctions for prior offenses demonstrate that the 564
imposition of the longest jail term is necessary to deter the 565
offender from committing a future criminal offense. 566

(D) (1) A sentencing court shall consider any relevant oral 567
and written statement made by the victim, the victim's 568
representative, the victim's attorney, if applicable, the 569
defendant, the defense attorney, and the prosecuting authority 570
regarding sentencing for a misdemeanor. This division does not 571
create any rights to notice other than those rights authorized 572
by Chapter 2930. of the Revised Code. 573

(2) At the time of sentencing for a misdemeanor or as soon 574
as possible after sentencing, the court shall notify the victim 575
of the offense of the victim's right to file an application for 576
an award of reparations pursuant to sections 2743.51 to 2743.72 577
of the Revised Code. 578

Sec. 2953.32. (A) (1) Sections 2953.32 to 2953.34 of the 579
Revised Code do not apply to any of the following: 580

(a) Convictions under Chapter 4506., 4507., 4510., 4511., 581
or 4549. of the Revised Code, or a conviction for a violation of 582

a municipal ordinance that is substantially similar to any 583
section contained in any of those chapters; 584

(b) Convictions of a felony offense of violence that is 585
not a sexually oriented offense; 586

(c) Convictions of a sexually oriented offense when the 587
offender is subject to the requirements of Chapter 2950. of the 588
Revised Code or Chapter 2950. of the Revised Code as it existed 589
prior to January 1, 2008; 590

(d) Convictions of an offense in circumstances in which 591
the victim of the offense was less than thirteen years of age, 592
except for convictions under section 2919.21 of the Revised 593
Code; 594

(e) Convictions for a violation of section 2921.41 of the 595
Revised Code; 596

(f) Convictions of a felony of the first or second degree; 597

~~(f) Except as provided in division (A) (2) of this section,~~ 598
~~convictions~~ (g) Convictions for a violation of section 2919.25 599
~~or 2919.27 of the Revised Code that is a misdemeanor of the~~ 600
first or second degree or ~~a conviction~~ convictions for a 601
violation of a municipal ordinance that is substantially similar 602
to ~~either that~~ that section; 603

~~(g)~~ (h) Convictions of a felony of the third degree if the 604
offender has more than one other conviction of any felony or, if 605
the person has exactly two convictions of a felony of the third 606
degree, has more convictions in total than those two third 607
degree felony convictions and two misdemeanor convictions. 608

(2) Sections 2953.32 to 2953.34 of the Revised Code apply 609
to ~~a conviction~~ the following for purposes of sealing, but not 610

for purposes of expungement of the record of the case: 611

(a) Convictions for a violation of section 2919.25 of the 612
Revised Code that is a misdemeanor of the third or fourth degree 613
~~for purposes of sealing, but not for purposes of expungement of~~ 614
~~the record of the case or~~ convictions for a violation of a 615
municipal ordinance that is substantially similar to that 616
section; 617

(b) Convictions for a violation of section 2919.27 of the 618
Revised Code or convictions for a violation of a municipal 619
ordinance that is substantially similar to that section. 620

(3) For purposes of division (A) (1) (h) of this section, 621
both of the following apply: 622

(a) When two or more convictions result from or are 623
connected with the same act or result from offenses committed at 624
the same time, they shall be counted as one conviction. 625

(b) When two or three convictions result from the same 626
indictment, information, or complaint, from the same plea of 627
guilty, or from the same official proceeding, and result from 628
related criminal acts that were committed within a three-month 629
period but do not result from the same act or from offenses 630
committed at the same time, they shall be counted as one 631
conviction, provided that a court may decide as provided in 632
division (D) (1) (i) of this section that it is not in the public 633
interest for the two or three convictions to be counted as one 634
conviction. 635

(B) (1) Except as provided in section 2953.61 of the 636
Revised Code or as otherwise provided in division (B) (1) (a) (iii) 637
of this section, an eligible offender may apply to the 638
sentencing court if convicted in this state, or to a court of 639

common pleas if convicted in another state or in a federal 640
court, for the sealing or expungement of the record of the case 641
that pertains to the conviction, except for convictions listed 642
in division (A) (1) of this section. Application may be made at 643
whichever of the following times is applicable regarding the 644
offense: 645

(a) An application for sealing under this section may be 646
made at whichever of the following times is applicable regarding 647
the offense: 648

(i) Except as otherwise provided in division (B) (1) (a) (iv) 649
of this section, at the expiration of three years after the 650
offender's final discharge if convicted of one or two felonies 651
of the third degree, so long as none of the offenses is a 652
violation of section 2921.43 of the Revised Code; 653

(ii) Except as otherwise provided in division (B) (1) (a) 654
(iv) of this section, at the expiration of one year after the 655
offender's final discharge if convicted of one or more felonies 656
of the fourth or fifth degree or one or more misdemeanors, so 657
long as none of the offenses is a violation of section 2921.43 658
of the Revised Code or a felony offense of violence; 659

(iii) At the expiration of seven years after the 660
offender's final discharge if the record includes one or more 661
convictions of soliciting improper compensation in violation of 662
section 2921.43 of the Revised Code; 663

(iv) If the offender was subject to the requirements of 664
Chapter 2950. of the Revised Code or Chapter 2950. of the 665
Revised Code as it existed prior to January 1, 2008, at the 666
expiration of five years after the requirements have ended under 667
section 2950.07 of the Revised Code or section 2950.07 of the 668

Revised Code as it existed prior to January 1, 2008, or are 669
terminated under section 2950.15 or 2950.151 of the Revised 670
Code; 671

(v) At the expiration of six months after the offender's 672
final discharge if convicted of a minor misdemeanor. 673

(b) An application for expungement under this section may 674
be made at whichever of the following times is applicable 675
regarding the offense: 676

(i) Except as otherwise provided in division (B) (1) (b) (ii) 677
of this section, if the offense is a misdemeanor, at the 678
expiration of one year after the offender's final discharge; 679

(ii) If the offense is a minor misdemeanor, at the 680
expiration of six months after the offender's final discharge; 681

(iii) If the offense is a felony, at the expiration of ten 682
years after the time specified in division (B) (1) (a) of this 683
section at which the person may file an application for sealing 684
with respect to that felony offense. 685

(2) Any person who has been arrested for any misdemeanor 686
offense and who has effected a bail forfeiture for the offense 687
charged may apply to the court in which the misdemeanor criminal 688
case was pending when bail was forfeited for the sealing or 689
expungement of the record of the case that pertains to the 690
charge. Except as provided in section 2953.61 of the Revised 691
Code, the application may be filed at whichever of the following 692
times is applicable regarding the offense: 693

(a) An application for sealing under this section may be 694
made at any time after the date on which the bail forfeiture was 695
entered upon the minutes of the court or the journal, whichever 696
entry occurs first. 697

(b) An application for expungement under this section may 698
be made at whichever of the following times is applicable 699
regarding the offense: 700

(i) Except as provided in division (B) (2) (b) (ii) of this 701
section, at any time after the expiration of one year from the 702
date on which the bail forfeiture was entered upon the minutes 703
of the court or the journal, whichever entry occurs first; 704

(ii) If the offense is a minor misdemeanor, at any time 705
after the expiration of six months from the date on which the 706
bail forfeiture was entered upon the minutes of the court or the 707
journal, whichever entry occurs first. 708

(C) Upon the filing of an application under this section, 709
the court shall set a date for a hearing and shall notify the 710
prosecutor for the case of the hearing on the application not 711
less than sixty days prior to the hearing. Pursuant to the Ohio 712
Constitution, the prosecutor shall provide timely notice of the 713
application and the date and time of the hearing to a victim and 714
victim's representative, if applicable, if the victim or 715
victim's representative requested notice of the proceedings in 716
the underlying case. The court shall hold the hearing not less 717
than forty-five days and not more than ninety days from the date 718
of the filing of the application. The prosecutor may object to 719
the granting of the application by filing a written objection 720
with the court not later than thirty days prior to the date set 721
for the hearing. The prosecutor shall specify in the objection 722
the reasons for believing a denial of the application is 723
justified. The victim, victim's representative, and victim's 724
attorney, if applicable, may be present and heard orally, in 725
writing, or both at any hearing under this section. The court 726
shall direct its regular probation officer, a state probation 727

officer, or the department of probation of the county in which 728
the applicant resides to make inquiries and written reports as 729
the court requires concerning the applicant. The probation 730
officer or county department of probation that the court directs 731
to make inquiries and written reports as the court requires 732
concerning the applicant shall determine whether or not the 733
applicant was fingerprinted at the time of arrest or under 734
section 109.60 of the Revised Code. If the applicant was so 735
fingerprinted, the probation officer or county department of 736
probation shall include with the written report a record of the 737
applicant's fingerprints. If the applicant was convicted of or 738
pleaded guilty to a violation of division (A) (2) or (B) of 739
section 2919.21 of the Revised Code, the probation officer or 740
county department of probation that the court directed to make 741
inquiries concerning the applicant shall contact the child 742
support enforcement agency enforcing the applicant's obligations 743
under the child support order to inquire about the offender's 744
compliance with the child support order. 745

(D) (1) At the hearing held under division (C) of this 746
section, the court shall do each of the following: 747

(a) Determine whether the applicant is pursuing sealing or 748
expunging a conviction of an offense that is prohibited under 749
division (A) of this section or whether the forfeiture of bail 750
was agreed to by the applicant and the prosecutor in the case, 751
and determine whether the application was made at the time 752
specified in division (B) (1) (a) or (b) or division (B) (2) (a) or 753
(b) of this section that is applicable with respect to the 754
application and the subject offense; 755

(b) Determine whether criminal proceedings are pending 756
against the applicant; 757

(c) Determine whether the applicant has been rehabilitated to the satisfaction of the court;	758 759
(d) 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;	760 761 762 763
(e) If the victim objected, pursuant to the Ohio Constitution, consider the reasons against granting the application specified by the victim in the objection;	764 765 766
(f) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed or expunged against the legitimate needs, if any, of the government to maintain those records;	767 768 769 770
(g) Consider the oral or written statement of any victim, victim's representative, and victim's attorney, if applicable;	771 772
(h) If the applicant was an eligible offender of the type described in division (A) (3) of section 2953.36 of the Revised Code as it existed prior to the effective date of this amendment <u>April 4, 2023</u> , determine whether the offender has been rehabilitated to a satisfactory degree. In making the determination, the court may consider all of the following:	773 774 775 776 777 778
(i) The age of the offender;	779
(ii) The facts and circumstances of the offense;	780
(iii) The cessation or continuation of criminal behavior;	781
(iv) The education and employment of the offender;	782
(v) Any other circumstances that may relate to the offender's rehabilitation.	783 784

(i) If the court is required to determine whether an applicant for sealing or expungement 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, 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 whether, when counting the convictions individually, the applicant is pursuing sealing or expunging a conviction that is prohibited under division (A) of this section.

(2) If the court determines, after complying with division (D) (1) of this section, that the offender is not pursuing sealing or expunging a conviction of an offense that is prohibited under division (A) of this section or that the forfeiture of bail was agreed to by the applicant and the prosecutor in the case, that the application was made at the time specified in division (B) (1) (a) or (b) or division (B) (2) (a) or (b) of this section that is applicable with respect to the application and the subject offense, 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 or expunged are not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of the applicant has been attained to the satisfaction of the court, both of the

following apply: 816

(a) The court, except as provided in division (D)(4) or 817
(5) of this section or division (D), (F), or (G) of section 818
2953.34 of the Revised Code, shall order all official records of 819
the case that pertain to the conviction or bail forfeiture 820
sealed if the application was for sealing or expunged if the 821
application was for expungement and, except as provided in 822
division (C) of section 2953.34 of the Revised Code, all index 823
references to the case that pertain to the conviction or bail 824
forfeiture deleted and, in the case of bail forfeitures, shall 825
dismiss the charges in the case. 826

(b) The proceedings in the case that pertain to the 827
conviction or bail forfeiture shall be considered not to have 828
occurred and the conviction or bail forfeiture of the person who 829
is the subject of the proceedings shall be sealed if the 830
application was for sealing or expunged if the application was 831
for expungement, except that upon conviction of a subsequent 832
offense, a sealed record of prior conviction or bail forfeiture 833
may be considered by the court in determining the sentence or 834
other appropriate disposition, including the relief provided for 835
in sections 2953.31, 2953.32, and 2953.34 of the Revised Code. 836

(3) An applicant may request the sealing or expungement of 837
the records of more than one case in a single application under 838
this section. Upon the filing of an application under this 839
section, the applicant, unless the applicant presents a poverty 840
affidavit showing that the applicant is indigent, shall pay an 841
application fee of fifty dollars and may pay a local court fee 842
of not more than fifty dollars, regardless of the number of 843
records the application requests to have sealed or expunged. If 844
the applicant pays a fee, the court shall pay three-fifths of 845

the fee collected into the state treasury, with half of that 846
amount credited to the attorney general reimbursement fund 847
created by section 109.11 of the Revised Code. If the applicant 848
pays a fee, the court shall pay two-fifths of the fee collected 849
into the county general revenue fund if the sealed or expunged 850
conviction or bail forfeiture was pursuant to a state statute, 851
or into the general revenue fund of the municipal corporation 852
involved if the sealed or expunged conviction or bail forfeiture 853
was pursuant to a municipal ordinance. 854

(4) If the court orders the official records pertaining to 855
the case sealed or expunged, the court shall do one of the 856
following: 857

(a) If the applicant was fingerprinted at the time of 858
arrest or under section 109.60 of the Revised Code and the 859
record of the applicant's fingerprints was provided to the court 860
under division (C) of this section, forward a copy of the 861
sealing or expungement order and the record of the applicant's 862
fingerprints to the bureau of criminal identification and 863
investigation. 864

(b) If the applicant was not fingerprinted at the time of 865
arrest or under section 109.60 of the Revised Code, or the 866
record of the applicant's fingerprints was not provided to the 867
court under division (C) of this section, but fingerprinting was 868
required for the offense, order the applicant to appear before a 869
sheriff to have the applicant's fingerprints taken according to 870
the fingerprint system of identification on the forms furnished 871
by the superintendent of the bureau of criminal identification 872
and investigation. The sheriff shall forward the applicant's 873
fingerprints to the court. The court shall forward the 874
applicant's fingerprints and a copy of the sealing or 875

expungement order to the bureau of criminal identification and 876
investigation. 877

Failure of the court to order fingerprints at the time of 878
sealing or expungement does not constitute a reversible error. 879

(5) Notwithstanding any other provision of the Revised 880
Code to the contrary, when the bureau of criminal identification 881
and investigation receives notice from a court that the record 882
of a conviction or bail forfeiture has been expunged under this 883
section, the bureau of criminal identification and investigation 884
shall maintain a record of the expunged conviction record for 885
the limited purpose of determining an individual's qualification 886
or disqualification for employment in law enforcement. The 887
bureau of criminal identification and investigation shall not be 888
compelled by the court to destroy, delete, or erase those 889
records so that the records are permanently irretrievable. These 890
records may only be disclosed or provided to law enforcement for 891
the limited purpose of determining an individual's qualification 892
or disqualification for employment in law enforcement. 893

When any other entity other than the bureau of criminal 894
identification and investigation receives notice from a court 895
that the record of a conviction or bail forfeiture has been 896
expunged under this section, the entity shall destroy, delete, 897
and erase the record as appropriate for the record's physical or 898
electronic form or characteristic so that the record is 899
permanently irretrievable. 900

Section 2. That existing sections 3.16, 2929.12, 2929.22, 901
and 2953.32 of the Revised Code are hereby repealed. 902