

AN ACT

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

Be it enacted by the General Assembly of the State of Ohio:

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

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

(1) "Prosecuting ~~attorney~~officer" means the prosecuting attorney of the county in which a public official who is charged as described in division (B) of this section serves, ~~the attorney general, or a special prosecutor designated by the prosecuting attorney. A federal prosecutor may serve as a prosecuting officer under this section at the federal prosecutor's own volition.~~

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

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

(2) If a public official is charged with a felony in a state or federal court and if the attorney general, if the attorney general is prosecuting the case, or prosecuting attorney-officer with responsibility to prosecute the case determines that the felony relates to the public official's administration of, or conduct in the performance of the duties of, the office of the public official, the attorney general, if the attorney general is prosecuting the case, or prosecuting attorney-officer with responsibility to prosecute the case shall transmit a copy of the charging document to the chief justice clerk of the supreme court with a request that the chief justice proceed as provided in division (C) of this section. If the attorney general or the prosecuting attorney-officer transmits a copy of the charging document to the chief justice clerk, a copy also shall be sent to the attorney general if the prosecuting attorney of the county in which the public official serves, special prosecutor, or federal prosecutor serving as a prosecuting officer under this section transmits the copy to the chief justice clerk or to the prosecuting attorney of the county in which the public official holds office, special

prosecutor, or federal prosecutor with responsibility to prosecute the case if the attorney general transmits the copy to the chief justice clerk.

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

If the public official voluntarily authorizes the ~~attorney general or prosecuting attorney~~ officer to prepare a judgment entry for the judge presiding in the case to provisionally suspend the public official from office as described in this division, the ~~attorney general or prosecuting attorney~~ officer shall prepare a judgment entry for the judge presiding in the case to provisionally suspend the public official from office immediately upon receipt of the judgment entry and shall notify the ~~chief justice clerk~~ of the supreme court of the provisional suspension. Upon receipt of the judgment entry, the judge presiding in the criminal case shall sign the judgment entry and file the signed judgment entry in the case. The signing and filing of the judgment entry provisionally suspends the public official from office. The ~~attorney general's or prosecuting attorney's~~ officer's request to the chief justice that was made under division ~~(B)(1)-(B)(2)~~ of this section remains applicable regarding the public official, and the chief justice shall establish a special commission pursuant to division (C)(1) of this section. A provisional suspension imposed under this division shall remain in effect until the special commission established by the chief justice enters its judgment under division (C)(3) of this section. After the special commission so enters its judgment, divisions (C)(3) and (4) of this section shall govern the continuation of the suspension. Division (E) of this section applies to a provisional suspension imposed under this division.

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

(C)(1) Not sooner than fourteen days after the chief justice's receipt of the ~~attorney general's or prosecuting attorney's~~ officer's request under division ~~(B)(1)-(B)(2)~~ of this section, the chief justice shall establish a special commission composed of three retired justices or judges of a court of

record. A special commission established under this division is an administrative agency. The chief justice shall appoint the members of the special commission and shall provide to the special commission all documents and materials pertaining to the matter that were received from the ~~attorney general or prosecuting attorney officer~~ under division ~~(B)(1)-(B)(2)~~ or ~~(2)-(3)~~ of this section. At least one member of the special commission shall be of the same political party as the public official. Members of the special commission shall receive compensation for their services, and shall be reimbursed for any expenses incurred in connection with special commission functions, from funds appropriated to the attorney general's office.

(2) Once established under division (C)(1) of this section, a special commission shall review the document that charges the public official with the felony, all other documents and materials pertaining to the matter that were provided by the chief justice under division (C)(1) of this section, and the facts and circumstances related to the offense charged. Within fourteen days after it is established, the special commission shall make a preliminary determination as to whether the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interests of the public and, as a result, whether the public official should be suspended from office. Upon making the preliminary determination, the special commission immediately shall provide the public official with notice of the preliminary determination. The notice may be in writing, by telephone, or in another manner. If the preliminary determination is that the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, does not adversely affect the functioning of the office or does not adversely affect the rights and interests of the public, the preliminary determination automatically shall become the special commission's final determination for purposes of division (C)(3) of this section. If the preliminary determination is that the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of the office or adversely affects the rights and interests of the public and that the public official should be suspended from office, the notice shall inform the public official that the public official may contest the preliminary determination by filing with the special commission, within fourteen days after the date of receipt of the notice to the public official, a notice contesting the preliminary determination.

If the public official files a notice contesting the preliminary determination within fourteen days after the date of receipt of the notice to the public official, the public official may review the reasons and evidence for the determination and may appear at a meeting of the special commission to contest the determination and present the public official's position on the matter. The meeting of the special commission shall be held not later than fourteen days after the public official files the notice contesting the preliminary determination. The public official has a right to be accompanied by an attorney while appearing before the special commission, but the attorney is not entitled to act as counsel or advocate for the public official before the special commission or to present evidence or

examine or cross-examine witnesses before the special commission. At the conclusion of the meeting, the special commission shall make a final determination as to whether the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of the office or adversely affects the rights and interests of the public and, as a result, whether the public official should be suspended from office, and shall proceed in accordance with division (C)(3) of this section.

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

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

(3) Upon making the final determination described in division (C)(2) of this section regarding a public official who is charged with a felony, including, if applicable, conducting a meeting pursuant to that division for the public official to contest the preliminary determination, the special commission shall issue a written report that sets forth its findings and final determination. The special commission shall send the report by certified mail to the public official, ~~the attorney general if the attorney general is prosecuting the case or the prosecuting attorney with responsibility to prosecute the case, whichever is applicable~~ officer, and any other person that the special commission determines to be appropriate. Upon the issuance of the report, one of the following applies:

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

(b) If the special commission in its final determination determines that the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interests of the public, the special commission shall include in the report a holding that the public official be suspended from office. The holding that the public official be suspended from office and the suspension take effect immediately upon the special commission's issuance of the report. If the public official was provisionally suspended from office under division ~~(B)(2)-(B)(3)~~ of this section,

the holding that the public official be suspended from office shall continue the suspension immediately upon the special commission's issuance of the report. The report and holding shall have the same force and effect as a judgment of a court of record.

(4) A suspension imposed or continued under division (C)(3) of this section shall continue until one of the following occurs:

(a) The public official is reinstated to office by an appeal as provided in division (D) of this section;

(b) All charges are disposed of by dismissal or by a finding or findings of not guilty;

(c) A successor is elected and qualified to serve the next succeeding term of the public official's office.

(D) If a special commission issues a written report and holding pursuant to division (C)(3)(b) of this section that suspends a public official from office or that continues a provisional suspension imposed under division (B)(2) of this section, the public official may appeal the report and holding to the supreme court. The public official shall take the appeal by filing within thirty days of the date on which the report is issued a notice of appeal with the supreme court and the special commission. Unless waived, notice of the appeal shall be served upon all persons to whom the report was sent under division (C)(3) of this section. The special commission, upon written demand filed by the public official, shall file with the supreme court, within thirty days after the filing of the demand, a certified transcript of the proceedings of the special commission pertaining to the report and the evidence considered by the special commission in making its decision.

The supreme court shall consider an appeal under this division on an expedited basis. If the public official appeals the report and holding, the appeal itself does not stay the operation of the suspension imposed or continued under the report and holding. If, upon hearing and consideration of the record and evidence, the supreme court decides that the determinations and findings of the special commission are reasonable and lawful, the court shall affirm the special commission's report and holding, and the suspension, and shall enter final judgment in accordance with its decision. If the public official subsequently pleads guilty to or is found guilty of any felony with which the public official was charged, the public official is liable for any amount of compensation paid to the official during the suspension, with the liability relating back to the date of the original suspension under the special commission's report and holding, and the amount of that liability may be recovered as provided in division (G) of this section. If, upon hearing and consideration of the record and evidence, the supreme court decides that the determinations and findings of the special commission are unreasonable or unlawful, the court shall reverse and vacate the special commission's report and holding, and the suspension, reinstate the public official, and enter final judgment in accordance with its decision.

The clerk of the supreme court shall certify the judgment of the court to the special commission. Upon receipt of the judgment, the special commission shall certify the judgment to all persons to whom the special commission's report was certified under division (C)(3) of this section

and shall certify the judgment to all other public officials or take any other action in connection with the judgment as is required to give effect to it.

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

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

(3)(a) Except as provided in division (E)(3)(b) of this section, for the duration of the public official's suspension, an interim replacement official shall be appointed by the county central committee of the political party that nominated the suspended public official if the suspended public official is an elected county official, to perform the suspended public official's duties. Not less than five nor more than forty-five days after the suspension of a public official that is an elected county official, the county central committee shall meet to appoint the interim replacement official. Not less than four days before the date of the meeting, the chairperson or secretary of the county central committee shall send by first class mail to each member of the committee a written notice that states the time and place of the meeting and the purpose thereof. The approval of a majority of the members of the county central committee present at the meeting is required to appoint the interim replacement official.

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

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

(5) An acting officer appointed under division (E)(2) of this section or an interim replacement official appointed under division (E)(3) or (4) of this section shall be certified to the county board of elections and the secretary of state by the county central committee, probate judge of the court of common pleas, or board of county commissioners that made the appointment. The

acting officer or interim replacement official so certified shall have all of the rights, powers, and responsibilities of, and shall be entitled to the same rate of pay as, the suspended public official. The acting officer or interim replacement official shall give bond and take the oath of office. If the office of the suspended public official becomes vacant during the period of suspension, a public official shall be appointed or elected to fill such vacancy as provided by law. If a regular election is to occur during the period of suspension, a public official shall be elected as provided by law.

(F) A person appointed as an acting or interim replacement prosecuting attorney shall meet the qualifications to hold the office of a prosecuting attorney under section 309.02 of the Revised Code. A person appointed as an acting or interim replacement sheriff shall meet the requirements to hold the office of sheriff prescribed by section 311.01 of the Revised Code. A person appointed as an acting or interim replacement coroner shall meet the requirements to hold the office of coroner prescribed by section 313.02 of the Revised Code. And a person appointed as an acting or interim replacement county engineer shall meet the requirements to hold the office of county engineer prescribed by section 315.02 of the Revised Code.

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

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

(B) 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 more serious than conduct normally constituting the offense:

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

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

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

(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.

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

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

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

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

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

(3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1,

2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

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

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

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

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

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

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

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

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

(F) The sentencing court shall consider the offender's military service record and whether the offender has an emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses.

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

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

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

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

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

(b) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender has a history of persistent criminal activity and that the offender's character and condition reveal a substantial risk that the offender will commit another offense;

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

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

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

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

(g) The offender's military service record.

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

(3) In determining the appropriate sentence for a misdemeanor, in addition to complying with division (B)(1) of this section, the court may consider any other factors that are relevant to achieving the purposes and principles of sentencing set forth in section 2929.21 of the Revised Code.

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

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

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

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

of the following:

(a) Convictions under Chapter 4506., 4507., 4510., 4511., or 4549. of the Revised Code, or a conviction for a violation of a municipal ordinance that is substantially similar to any section contained in any of those chapters;

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

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

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

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

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

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

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

(2) Sections 2953.32 to 2953.34 of the Revised Code apply to ~~a conviction~~ the following for purposes of sealing, but not for purposes of expungement of the record of the case:

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

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

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

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

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

(B)(1) Except as provided in section 2953.61 of the Revised Code or as otherwise provided

in division (B)(1)(a)(iii) of this section, an eligible offender may apply to the sentencing court if convicted in this state, or to a court of common pleas if convicted in another state or in a federal court, for the sealing or expungement of the record of the case that pertains to the conviction, except for convictions listed in division (A)(1) of this section. Application may be made at whichever of the following times is applicable regarding the offense:

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

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

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

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

(iv) If the offender was subject to the requirements of Chapter 2950. of the Revised Code or Chapter 2950. of the Revised Code as it existed prior to January 1, 2008, at the expiration of five years after the requirements have ended under section 2950.07 of the Revised Code or section 2950.07 of the Revised Code as it existed prior to January 1, 2008, or are terminated under section 2950.15 or 2950.151 of the Revised Code;

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

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

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

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

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

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

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

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

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

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

(C) Upon the filing of an application under this section, the court shall set a date for a hearing and shall notify the prosecutor for the case of the hearing on the application not less than sixty days prior to the hearing. Pursuant to the Ohio Constitution, the prosecutor shall provide timely notice of the application and the date and time of the hearing to a victim and victim's representative, if applicable, if the victim or victim's representative requested notice of the proceedings in the underlying case. The court shall hold the hearing not less than forty-five days and not more than ninety days from the date of the filing of the application. The prosecutor may object to the granting of the application by filing a written objection with the court not later than thirty days prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The victim, victim's representative, and victim's attorney, if applicable, may be present and heard orally, in writing, or both at any hearing under this section. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant. The probation officer or county department of probation that the court directs to make inquiries and written reports as the court requires concerning the applicant shall determine whether or not the applicant was fingerprinted at the time of arrest or under section 109.60 of the Revised Code. If the applicant was so fingerprinted, the probation officer or county department of probation shall include with the written report a record of the applicant's fingerprints. If the applicant was convicted of or pleaded guilty to a violation of division (A)(2) or (B) of section 2919.21 of the Revised Code, the probation officer or county department of probation that the court directed to make inquiries concerning the applicant shall contact the child support enforcement agency enforcing the applicant's obligations under the child support order to inquire about the offender's compliance with the child support order.

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

(a) Determine whether the applicant is pursuing sealing or expunging a conviction of an offense that is prohibited under division (A) of this section or whether the forfeiture of bail was

agreed to by the applicant and the prosecutor in the case, and determine whether 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;

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

(c) Determine whether the applicant has been rehabilitated to the satisfaction of the court;

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

(e) If the victim objected, pursuant to the Ohio Constitution, consider the reasons against granting the application specified by the victim in the objection;

(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;

(g) Consider the oral or written statement of any victim, victim's representative, and victim's attorney, if applicable;

(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~~ April 4, 2023, determine whether the offender has been rehabilitated to a satisfactory degree. In making the determination, the court may consider all of the following:

(i) The age of the offender;

(ii) The facts and circumstances of the offense;

(iii) The cessation or continuation of criminal behavior;

(iv) The education and employment of the offender;

(v) Any other circumstances that may relate to the offender's rehabilitation.

(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:

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

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

(3) An applicant may request the sealing or expungement of the records of more than one case in a single application under this section. Upon the filing of an application under this section, the applicant, unless the applicant presents a poverty affidavit showing that the applicant is indigent, shall pay an application fee of fifty dollars and may pay a local court fee of not more than fifty dollars, regardless of the number of records the application requests to have sealed or expunged. If the applicant pays a fee, the court shall pay three-fifths of the fee collected into the state treasury, with half of that amount credited to the attorney general reimbursement fund created by section 109.11 of the Revised Code. If the applicant pays a fee, the court shall pay two-fifths of the fee collected into the county general revenue fund if the sealed or expunged conviction or bail forfeiture was pursuant to a state statute, or into the general revenue fund of the municipal corporation involved if the sealed or expunged conviction or bail forfeiture was pursuant to a municipal ordinance.

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

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

(b) If the applicant was not fingerprinted at the time of arrest or under section 109.60 of the Revised Code, or the record of the applicant's fingerprints was not provided to the court under

division (C) of this section, but fingerprinting was required for the offense, order the applicant to appear before a sheriff to have the applicant's fingerprints taken according to the fingerprint system of identification on the forms furnished by the superintendent of the bureau of criminal identification and investigation. The sheriff shall forward the applicant's fingerprints to the court. The court shall forward the applicant's fingerprints and a copy of the sealing or expungement order to the bureau of criminal identification and investigation.

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

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

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

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

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 234

135th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____