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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

S.B. 418
136th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Reynolds

Nicholas A. Keller, Attorney

SUMMARY

- Creates a process for state-initiated sealing of criminal records.
- Encourages the Ohio Supreme Court to review the Rules of Superintendence to facilitate state-initiated sealing under the bill and to create a form for courts to use when taking objections to state-initiated sealing under the bill.
- Prohibits a court from considering a case that has been sealed or expunged as evidence against an employer for negligent hiring or supervision and provides immunity for the employer against a negligent hiring or supervision action to the extent the sealed or expunged record is the basis of the claim.
- Names the bill the “Grow Act.”

DETAILED ANALYSIS

State-initiated sealing

Initiation

Beginning three years after the effective date, the bill requires the Bureau of Criminal Identification and Investigation (BCI) to identify records that are eligible for sealing under the existing Sealing and Expungement Law at least once every calendar month. BCI must provide each prosecuting attorney and court a list of those cases over which the prosecuting attorney or court has jurisdiction. The prosecutor in each case must provide timely notification to any victim of an offense identified by BCI.¹ For purposes of identifying records that are eligible for sealing under the bill, BCI is to consider an offender’s final discharge to be the point at which all

¹ R.C. 2953.322(A).

nonmonetary sanctions imposed on the offender have been completed.² The bill allows the Attorney General to adopt rules, in accordance with the Administrative Procedure Act,³ governing the procedure to be followed by BCI in carrying out their duties under the bill.⁴

Objection

A prosecutor may object to the sealing of a record identified by BCI for any of the following reasons:⁵

1. After reviewing the records of the case, the prosecutor determines that the records are not eligible for sealing under the existing Sealing and Expungement Law;
2. The prosecutor determines that the subject of the criminal records has not paid court-ordered restitution to the victim;
3. The prosecutor has a reasonable belief, grounded in supporting facts, that the subject of the criminal record is continuing to engage in criminal activity, whether or not the individual has been charged with an offense, and whether or not the activity in question takes place within or outside of Ohio;
4. The subject of the criminal records is the defendant in a pending criminal case;
5. The interests of the government in maintaining the criminal records outweigh the interests of the individual who is the subject of the records in having those records sealed.

Sealing of records

If the prosecutor objects to the sealing of records under “**Objection**,” above, within 90 days after a record has been identified as eligible and provided to the court and the prosecutor by BCI, that record is not to be sealed under the bill.⁶ If the court has not received an objection to the sealing of a record identified as eligible for state-initiated sealing within 90 days after the record has been identified on a list of eligible records and provided to the court and prosecutor under “**Initiation**,” above, the court with jurisdiction over the record must determine whether the interests of the subject of the records in having the records pertaining to the case sealed are outweighed by any legitimate governmental needs to maintain the records. If the court does not determine that a legitimate governmental need to maintain the records outweighs the interests of the subject of the records in having the records pertaining to the case sealed, the court must order all official records that pertain to the conviction sealed and, except for index references that may be maintained under the existing Sealing and Expungement Law, must order all index references to the cases that pertain to the conviction deleted.⁷

² R.C. 2953.322(G).

³ R.C. Chapter 119, not in the bill.

⁴ R.C. 2953.322(F).

⁵ R.C. 2953.322(B).

⁶ R.C. 2953.322(D).

⁷ R.C. 2953.322(C) and 2953.34.

Report to the General Assembly

At least once each calendar year, beginning the year that is three years after the bill's effective date, BCI must submit a report to the General Assembly identifying every case for which a record included on a list for sealing under "**Initiation**," above, was not sealed because of an objection by the prosecutor under "**Objection**," above. The report must identify the records not sealed under the bill by the county with jurisdiction over the matter and by the objection raised for each record that was not sealed.⁸

Interpretation

Nothing in the bill is to be construed to prohibit an individual from filing for sealing or expungement under continuing law or to create an individual cause of action against BCI for failing to identify a record that is eligible for sealing under the bill.⁹

Existing technology and information sharing

To the extent practicable, the bill requires BCI, prosecutors, and courts to use or adapt existing technology and interagency information sharing services to comply with the requirements of the bill, including the Ohio Law Enforcement Gateway established under existing law and the Ohio Courts Network.¹⁰

Negligent hiring or supervision

In a civil action or administrative proceeding alleging negligence or other fault, the bill prohibits a case that has been sealed or expunged from being considered as evidence against an employer for negligent hiring or negligent supervision, and provides immunity for the employer to the extent that a sealed or expunged record is the basis of a claim against the employer for negligent hiring or negligent supervision.¹¹

Review of Rules of Superintendence and creation of form for objections

The bill states that the General Assembly, in enacting the bill, encourages the Ohio Supreme Court to do both of the following:¹²

- Review the Rules of Superintendence and update the Rules to facilitate state-initiated sealing under the bill;

⁸ R.C. 2953.322(E).

⁹ R.C. 2953.322(H).

¹⁰ R.C. 2953.323.

¹¹ R.C. 2953.32(D)(6).

¹² Section 3.

- Create a form for courts to use when taking objections to state-initiated sealing that specifies the objection the prosecutor is raising to prevent a record from being sealed so that the reasons for objection may be tracked and aggregated.

The Grow Act

The bill names the act the “Grow Act.”¹³

HISTORY

Action	Date
Introduced	04-02-26

ANSB0418IN-136/ar

¹³ Section 4.