

IN THE SUPREME COURT OF OHIO
Case Nos. 2012-0808
2012-1216

ORIGINAL

Appeal from the Court of Appeals
Ninth Appellate District
Summit County, Ohio
Case Nos. 25752
25845

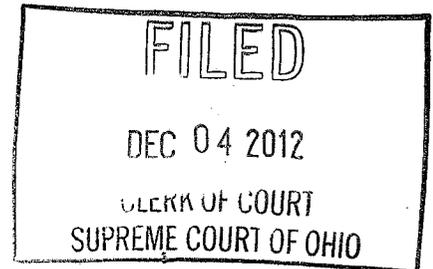
STATE OF OHIO
CITY OF AKRON

Appellees

v.

MONTOYA BOYKIN

Appellant



APPELLEE, CITY OF AKRON'S MERIT BRIEF

JOANN SAHL - No. 0037265
Legal Clinic-University of Akron
School of Law
Akron, Ohio 44325-2901
(330) 972-7189 Fax: (330) 972-6326
jsahl@uakron.edu
Counsel for Appellant

JANE P. PERRY - No. 0029698
Attorney at Law
Counsel of Record
46 Northmoor Place
Columbus, Ohio 43214
(614) 261-1711
perday@columbus.rr.com
Counsel for Amici Curiae
Advocates for Basic Legal Equality
Coalition on Homelessness and Housing in Ohio
Community Legal Aid Service
Disability Rights OH Legal Aid Soc. of SW Ohio
Legal Aid of Western Ohio, Inc.
Legal Aid Society of Cleveland, Columbus
Office of the Ohio Public Defender

CHERI B. CUNNINGHAM - No. 000433
Director of Law

MICHAEL J. DEFIBAUGH - No. 0072683
Assistant Director of Law
GERTRUDE WILMS - No. 0073771
Chief City Prosecutor
161 S. High Street, Suite 202
Akron, OH 44308
(330) 375-2030 FAX: (330) 375-2041
MDefibaugh@akronohio.gov
GWilms@akronohio.gov
Counsel for Appellee City of Akron

SHERI BEVAN WALSH - No. 003038
Summit County Prosecutor
HEAVEN DIMARTINO - No. 0073423
Assistant Summit County Prosecutor
53 University Ave., Akron, OH 44308
(330) 643-2800
Counsel for Appellee, Summit County

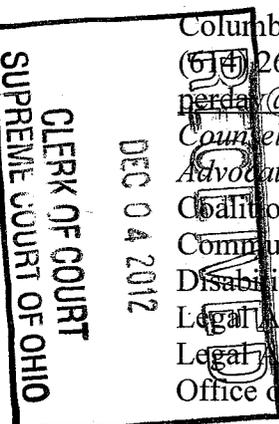


TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii, iv

I. STATEMENT OF FACTS 1

II. LAW AND ARGUMENT 2

Proposition of Law: “Whether a pardon conclusively entitles the recipient to have her pardoned conviction sealed?”

III. CONCLUSION 16

IV. CERTIFICATE OF SERVICE 17

APPENDIX

House Bill 524, Bill Summary APX 1

Senate Bill 337, Bill Summary APX. 42

Ohio Revised Code §2953.25 APX. 84

Ohio Revised Code §2953.31 APX. 89

TABLE OF AUTHORITIES

	<u>Page</u>
<i>Abrams</i> , 689 A.2d 6, 17 (D.C. App. 1997)	10
<i>Akron v. Boykin</i> , 9 th District No. 25845, 2012-Ohio-1381	5, 16, 17
<i>Bjerkan v. U.S.</i> , 529 F. 2d 125, 128 (7 th Cir. 1975).....	10
<i>Burdick v. United States</i> , 236 U.S. 79 (1915)	3, 4, 5, 6
<i>City of Peppertike v. Doe</i> , 66 Ohio St.2d 374 (1981).....	11, 12, 13
<i>Commonwealth v. Vickey</i> , 412 N.E.2d 877 (1980, Mass. Sup. Ct.).....	8, 9, 12
<i>Exparte Garland</i> , 71 U.S. 333(1866).....	3, 5, 6, 7
<i>Harsher v. Commonwealth</i> , 327 S.W. 3d 519, 522 (Ky. App. 2010).....	10
<i>Hirschberg v. Commodity Futures Trading Comm.</i> , 414 F.3d 679, 682 (7 th Cir. 2005).....	10
<i>Hozer v. State Police & Firemen's Pension Fund</i> , 230 A.2d 508 (1967, N.J. Super. App. Div.)10	
<i>Knapp v. Thomas</i> , 39 Ohio St. 377 (1883)	6
<i>Koehler v. State</i> , 10 th Dist. No. 07AP-913, 2008-Ohio-3472, ¶14	2
<i>Lavine</i> , 2 Cal.2d 324 (1935, Cal. Sup. Ct.).....	10
<i>North</i> , 62 F.3d 1434, 1437 (D.C. Cir. 1994)	10
<i>People v. Glisson</i> , 372 N.E.2d 669 (1978, 111. Sup. Ct.)	8
<i>R.J.L. v. State</i> , 887 So.2d 1268 (2004, Fla. Sup. Ct.).....	10
<i>Roberts v. State</i> , 14 E.H. Smith 217, 54 NE 678 (1899, NY Ct of App).....	7
<i>Sang Man Shin</i> , 125 Nev. 100, 105 (Nev. 2009).....	10
<i>State ex rel. Atny. Gen. V. Peters</i> , 43 Ohio St. 629 (1885)	6, 7
<i>State ex rel. Gordon v. Zangerle</i> , 136 Ohio St. 371 (1940)	5, 7
<i>State ex rel. Maurer v. Sheward</i> , 1994-Ohio-496 (1994, Sup. Ct.)	7
<i>State v. Bachman</i> , 675S.W.2d41 (1984, Mo. App. W.D.).....	10
<i>State v. Blanchard</i> , 100 S.W.3d 226 (2002, Tenn. Sup. Ct.)	9

	<u>Page</u>
<i>State v. Brewer</i> , 2003-Ohio-701 (Ohio App. 11 th Dist).....	12
<i>State v. Chiaverini</i> , 2001 WL 256104 (2001, Ohio App. 6 th Dist.).....	12
<i>State v. Cope</i> , 111 Ohio App.3d 309 (1996).....	5, 6
<i>State v. Culp</i> 27 P.2d 257(1942, Washington Supreme Court).....	8
<i>State v. Hamilton</i> , 75 Ohio St.3d 636, 639 (1996)	2
<i>State v. Netter</i> , 64 Ohio App.3d 322 (1989, 4 th Dist.).....	12
<i>State v. Simon</i> , 87 Ohio St. 3d 531, 533 (2000)	2
<i>State of Ohio v. Radcliff</i> , Tenth Dist. No. 11AP-652, 2012-Ohio-4732.....	5, 10, 15, 16, 17
<i>State v. Skinner</i> , 632 A. 2d 82, 89 (Del. 1993).....	9, 10
<i>Stone v. Oklahoma Real Estate Comm.</i> , 369 P.2d 642(1962, Okla. Sup. Ct.).....	10
<i>U. S. v. Noonan</i> , 906 F.2d 952, 958 (3d Cir. 1990).....	3, 4,10
<i>U. S. v. Wilson</i> , 32 U.S. 150 (1833).....	2, 3, 4, 7

Other Statutes:

O.C.A. Article III, §11

R.C. 107.10(E)
R.C. 2453.25
R.C. 2953.31
R.C. 2953.36
R.C. 2953.51
R.C. 2953.52
R.C. 2961.01
R.C. 2961.06
R.C. 2967.01
R.C. 2967.04
R.C. 2967.06

I. STATEMENT OF FACTS

Between 1987 and 2007, Appellant, Montoya A. Boykin, was convicted three separate times for misdemeanor Theft and one time for Disorderly Conduct in the Akron Municipal Court and was convicted of Theft and Receiving Stolen Property in the Summit and Cuyahoga County Common Pleas Court respectively.(Appellant's Appendix, hereafter Appx. 34).

In 2007, the Appellant filed an application for pardon for three theft cases and one receiving stolen property case. Presumably by oversight, Appellant did not include the 1987 theft case in her application to the governor. (Appx. 34). While the application was under review by the Ohio Parole Authority, Appellant pled to a minor misdemeanor Disorderly Conduct charge.

All six convictions were of record before the Ohio Parole Authority when it made this recommendation:

Following careful consideration of available information and after due deliberation, the Ohio Parole Board, with eight (8) members participating, recommends to the Honorable Ted Strickland, Governor of the State of Ohio, by a vote of eight (8) to zero (0) that Clemency be granted to Montoya L Boykin. (Appx. 44)

The Governor's Warrant of Pardon signed November 23, 2009 states in pertinent part as follows:

Montoya Boykin was convicted of three counts of the crime of Theft and one count of Receiving Stolen Property and was sentenced by the Cuyahoga County Common Pleas Court, Akron Municipal Court, and the Summit County Common Pleas Court.

... I do hereby direct that the conviction of Montoya Boykin for the crimes of Theft and Receiving Stolen Property be pardoned.(Appx. 34).

While the Parole Board's recommendation arguably could have included all of the Defendant's convictions in its recommendation, the Governor's Warrant did not and granted

pardon for four convictions without specifying which of the convictions were included or excluded.

II. LAW AND ARGUMENT

Proposition of Law: A pardon does not conclusively entitle the recipient to have her pardoned convictions sealed.

A. Effect of a Pardon.

The City of Akron (“City”) contends that the effect of a pardon very simply relieves the person from the penalties arising from the conviction. It does not, in and of itself, alter the fact that the defendant did commit the acts underlying the conviction nor does it carry with it an entitlement to a sealing of the records of the conviction. Neither the United States nor Ohio Constitutions endows an individual convicted of a crime with a substantive right to have the record of conviction expunged. *Koehler v. State*, 10th Dist. No. 07AP-913, 2008-Ohio-3472, ¶14. “Rather, “[e]xpungement is an act of grace created by the state” and so is a privilege, not a right.” *Koehler*, quoting *State v. Simon*, 87 Ohio St. 3d 531, 533 (2000), quoting *State v. Hamilton*, 75 Ohio St.3d 636, 639 (1996).

The historical basis for an executive pardon comes from the power of English kings to mitigate harsh criminal sentences in the early years in that nation. In *U.S. v. Wilson*, 32 U.S. 150 (1833), Chief Justice Marshall acknowledged this origin and expressly adopted the English common law's "principles respecting the operation and effect of a pardon". *Id.*

Chief Justice Marshall concisely defined a pardon as follows:

A pardon is an act of grace, proceeding from the power intrusted [sic] with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official, act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the court. *Id.* at 160-161.

After the United States Civil War, the U.S. Supreme Court had occasion to address the effect of a pardon granted to those who fought for the Confederacy and struck down a statutory requirement that attorneys swear an oath that they had never borne arms against the United States. *Ex parte Garland*, 71 U.S. 333(1866). In *Garland*, the Court stated an expansive view of a pardon:

.. it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. *Ex parte Garland*, 71 U.S. at 380.

This flowery portrayal of a pardon may have helped with reconciliation between the North and the South, but the description was dictum and not a statement of law in the case. This dictum was rejected later by the Supreme Court in *Burdick v. United States*, 236 U.S. 79 (1915). The Court reaffirmed Chief Justice Marshall's decision regarding the effect of a pardon when it determined that a pardon does no more than remit a defendant's punishment. The Third Circuit Court of Appeals in *U.S. v. Noonan*, 906 F.2d 952 (3rd Cir. 1990) summarized the history this way:

By 1915, ... the [Supreme] Court made clear that it was not accepting the *Garland* dictum that a pardon "blots out of existence the guilt." In *Burdick v. United States*, 236 U.S. 79, (1915), the Court reaffirmed its reasoning in *United States v. Wilson*, 32 U.S. 150, (1833), and concluded that there is a "confession of guilt implied in the acceptance of a pardon." *Burdick*, 236 U.S. at 91. The Court explained that "[a pardon] carries an imputation of guilt; acceptance a confession of it." *Id.* at 94, 35 S.Ct. at 270. *U.S. v. Noonan*, *id.* at p. 958.

The Third Circuit summarized the effect of an executive pardon:

The pardon removes all legal punishment for the offense. Therefore if the mere conviction involves certain disqualifications which would not follow from the commission of the crime without conviction, the pardon removes such disqualifications. On the other hand, if character is a necessary qualification and the commission of a crime would disqualify even though there had been

no criminal prosecution for the crime, the fact that the criminal has been convicted and pardoned does not make him any more eligible.

Thus, the fact of conviction after a pardon cannot be taken into account in subsequent proceedings. However, the fact of the commission of the crime may be considered. Therefore, although the effects of the commission of the crime may linger after a pardon, the effects of the conviction are all but wiped out. *U.S. v. Noonan*, 906 F.2d at 958-959.

The State of Ohio's provision for an executive pardon is found in Article III, Section 11 of the Ohio Constitution. The Constitution does not define the term nor set forth any particular effects of a pardon. The City argues that the meaning and effect of a pardon in Ohio follows that of the executive pardon as established in the United States Constitution as the concept and practice is derived from the same common law precedent from England.

The Ohio General Assembly's understanding of the effect of a pardon is consistent with the effect prescribed by *U.S. Wilson, supra* and *Burdick v. U.S., supra* as is evinced in R.C. § 2967.01:

"Pardon" means the remission of penalty by the governor in accordance with the power vested in the governor by the constitution. R.C. § 2967.01

This statutory definition clearly and succinctly limits the effect of a pardon to "remission of penalty."

Pardon is also addressed by Ohio's legislature in the context of voting, serving as a juror and holding public office. In these regards the General Assembly expressly provides that a person who has received a pardon may vote, serve as a juror and hold public office. R.C. §2961.06. Thus the General Assembly has consciously expanded the effect of a pardon, but has not elected to provide for a process for expunction of records following a pardon.

Regarding the sealing of records, the legislature has provided for sealing for eligible offenders (R.C. §2953.31, et seq.), for persons who are acquitted or whose charges are

dismissed (R.C. §2953.51 et seq.). The General Assembly also recently enacted the collateral sanctions statute (R.C. 2453.25). There is no other legislative grant of authority for sealing records in criminal cases.

There is nothing in the Ohio Constitution or in the Ohio Revised Code that hints that a pardon provides for a re-write of history or the sealing of records of conviction.

The cases relied on by Appellant to suggest that Ohio follows the proposition in *Ex parte Garland, supra* that an executive pardon negates the fact of conviction is misguided.

Appellant cites *State v. Cope*, 111 Ohio App. 3d 309 (1996), a decision from the First District that upheld the trial court sealing of a felony conviction based on the governor's warrant of pardon. The First District cites *State ex rel. Gordon v. Zangerle*, 136 Ohio St. 371 (1940) as "the definitive pronouncement by the Ohio Supreme Court" on the issue. *Id* at Fn. #4. However, the Supreme Court's comments on pardon in *Zangerle* were dicta and any statement regarding the effect of a pardon was gratuitous. In *Zangerle*, the petitioner sought an injunction to prevent the Cuyahoga County Treasurer from paying monies for the support of the Common Pleas Court Probation Department on a theory that the governor has exclusive authority to issue pardons. The Supreme Court held that the system of probation established in 1925 in Cuyahoga County was authorized by statute and not constitutionally infirm. The description of the governor's constitutional power to grant a pardon was tangentially relevant to the discussion, but the specific effects of a governor's pardon was not a question before the court. In accord with *City of Akron v. Boykin*, 9th District No. 25845, 2012-Ohio-1381, the Tenth District Court of Appeals in *State of Ohio v. James A. Radcliff*, 2012-Ohio-4732 recently rejected the rationale in *Cope*. The Tenth District held:

...the state and federal law governing the effect of a pardon on a recipient's ability to seek expungement compels us to conclude that a pardon neither erases

the conviction nor renders the pardon recipient innocent as if the crime were never committed. Recent case law dismissed *Garland's* interpretation of a pardon as dicta and acknowledged the United States Supreme Court's implicitly overruling *Garland's* dicta in *Burdick*. Because a pardon cannot work a legal fiction and erase the fact of conviction, and *Bailey* and similar cases have limited *Pepper Pike's* application to cases where the defendant has not been convicted, defendant cannot invoke the court's inherent jurisdiction to seal his records. *Id* at ¶ 51.

The Appellant also cites *Knapp v. Thomas*, 39 Ohio St. 377 (1883) for support and *Knapp* is cited in the *Zangerle*, decision in its description of a gubernatorial pardon. Again, the Supreme Court's comments on the effect of pardon are dicta. The issue in *Knapp* is the ability of the governor to revoke a pardon once granted in the context of a petition for a writ of habeas corpus. Governor Foster gave Mr. Knapp a pardon based on information that the prisoner was gravely ill and in imminent danger of death. Learning later that the diagnosis was fraudulently obtained, the Governor sent the prison warden an instrument under seal declaring the pardon null and void causing the warden to re-incarcerate Mr. Knapp without notice, trial or hearing. The Supreme Court found "a want of power in this court, under the present legislation to enter upon the proposed inquiry as to the validity of Knapp's pardon." *Knapp*, 39 Ohio St. at 394.

The dictum in *Knapp* that a pardon obliterates the crime cites the dictum from *Ex parte Garland*, which was negated in 1915 by *Burdick v. United States, supra*. Thus the conclusion stated in *State v. Cope* that the Ohio Supreme Court has definitively determined that a pardon erases the crime itself relies on dictum citing dictum citing dictum -a house of cards that collapses after a review of the holdings in the cited Ohio and United States Supreme cases.

Two years after *Knapp*, the Ohio Supreme Court decided *State ex rel Any. Gen. v. Peters*, 43 Ohio St. 629 (1885), also cited by Appellant. The *Peters* decision, similarly

to *Zangerle*, determined that the State's creation of a system for parole is constitutional. The *Peters* opinion quotes the *U.S. v. Wilson, supra* definition of pardon as only canceling punishment. While it cites *Ex rel Garland, supra*, it does not repeat the dictum that a pardon erases the crime itself. Another case cited by Appellant is *St. ex rel Maurer v. Sheward*, 71 Ohio 3d. 513, 1994-Ohio-496, which revoked two pardons granted because the applicant failed to properly apply to the Adult Parole Board. *Sheward* quotes the definition from the *Peters* case and again omits the gratuitous language about the crime never having occurred. Regardless, the description of the effect of a pardon in both *Peters* and *Sheward* are dicta, as the effect of a pardon was not an issue in either case.

Several other states have considered the effect of pardons and have concluded that an executive pardon does not change history or encompass a sealing of records.

In 1899 the New York Court of Appeals determined that the effect of a pardon simply cancels any penalties imposed by the Court. *Roberts v. State*, 14 E.H. Smith 217, 54 NE 678 (1899, NY App. Ct.).

We think the effect of a pardon is to relieve the offender of all unenforced penalties annexed to the conviction, but what the party convicted has already endured or paid, the pardon does not restore. When it takes effect, it puts an end to any further infliction of punishment, but has no operation upon the portion of the sentence already executed. A pardon proceeds not upon the theory of innocence, but implies guilt. If there was no guilt, theoretically at least, there would be no basis for pardon. It is granted not as a matter of right, but of grace. In the language of another: 'A party is acquitted on the ground of innocence; he is pardoned through favor. ... The pardon in this case shows upon its face that it was granted as an act of mercy, and not as one of justice. It was upon the representation that the appellant was a fit subject for mercy that it was obtained, and not upon the ground that the judgment was unjust or invalid. If the judgment was erroneous, the remedy was by appeal or by application to set it aside, and not by pardon. *Roberts v. State, supra* at 221-222.

In 1942 the Supreme Court of the State of Washington also decided that a pardon of a person does not obliterate the history of the offense and held that a person's sentence for a

conviction occurring afterwards must take into account the earlier conviction for purpose of sentencing in the new offense. *State v. Culp*, 27 P.2d 257 (1942 Wash. Sup. Ct.).

The pardon in this case merely restored the defendant to his civil rights. If it had been granted before his term of imprisonment had been served, it would also have relieved the defendant of that. But it did not obliterate the record of his conviction or blot out the fact that he had been convicted. *State v. Culp, supra* at p. 259.

In more recent times, six states have considered the specific issue of the effect of a pardon on sealing a conviction and determined that a governor's pardon does not include an entitlement to sealing of records.

In 1975, John Glisson asked an Illinois court to order that his fingerprint card, photographs and identifying records be returned to him and the court records sealed after receiving a governor's pardon for his conviction for contributing to the delinquency of a minor. *People v. Glisson*, 372 N.E.2d 669 (1978, Ill. Sup. Ct.) . Illinois statutes provided for sealing records for persons who were not convicted following arrest. The Illinois Supreme Court held that Mr. Glisson was not entitled to a sealing order, as "the effects of a pardon are not unlimited". *Id.* at 670. That Court noted that the state's legislature had acted to restore some rights to the beneficiaries, but had not acted to authorize the expunction of records. The same is true in Ohio. R.C. §2961.01 provides that a pardon restores a person's right to vote, serve as a jury and hold office, but no statute provides for sealing records.

In 1978, Mr. Robert Vickey was granted a full pardon by Massachusetts' governor for his conviction of making a false bomb report. *Commonwealth v. Vickey*, 412 N.E.2d 877 (1980, Mass. Sup. Ct.). The Massachusetts Supreme Court determined that Mr. Vickey was not entitled to a sealing and affirmed the trial court's decision that "a pardon is not analogous to a dismissal" and so did not qualify for sealing under the state statute permitting sealing of

dismissed cases. *Id.* at 879. Mr. Vickey further argued that the Massachusetts courts had "inherent or ancillary powers" to order a sealing in the absence of a legislative grant of authority. The Massachusetts Supreme Court declined to exercise such authority noting that while a pardon may remit all penal consequences of a criminal conviction, it cannot obliterate the acts which constituted the crime. The Court recognized the need of the state to have the information of conviction available for other purposes, where the conviction may affect matters such as licensing. The Court declined to exercise inherent judicial authority and concluded as follows:

Rather, the statutory scheme of parole and pardon, as well as the legislative definition of rehabilitation which entitles a convicted person to have his record sealed, are spelled out by the Legislature in terms which require no judicial enlargement. *Commonwealth v. Vickey, supra* at 883.

In 2000, Jonathan Blanchard was pardoned for sale of cocaine in Tennessee after serving seven years in prison and completing his PhD in chemistry and earning a JD. *State v. Blanchard*, 100 S.W.3d 226 (2002, Tenn. Sup. Ct.). Mr. Blanchard argued first that the court had discretion to seal, as there was no express prohibition. The Tennessee Supreme Court disagreed finding that "the legislature's exclusion of the trial court's discretion results in a finding that the court had no such discretion." *Id.* at 229. Secondly, Mr. Blanchard argued that a pardon is the equivalent of a successful appeal through the judiciary. The Supreme Court again disagreed and held that a pardon is not the same as an acquittal and does not erase the guilt but is a matter of a favor to the guilty, "granted not of right but of grace." *Id.* at 229.

Courts in Delaware, Florida and Missouri have also considered the question of sealing records based on a governor's pardon and are in accord with the position that a full pardon does not entail a sealing of the defendant's record. *State v. Skinner*, 632 A. 2d 82 (1993, Del. Sup

Ct.); *R.J.L v. State*, 887 So.2d 1268 (2004, Fla. Sup. Ct.) ; *State v. Bachman*, 675 S.W. 2d 41(1984, Mo. App. W.D.).

While not on the direct issue of sealing records, courts in California, Oklahoma and New Jersey are in accord with the federal view that a pardon does not change history and erase the crime. *In re Lavine*, 2 Cal.2d 324 (1935, Cal. Sup. Ct.); *Stone v. Oklahoma Real Estate Comm.*, 369 P.2d 642 (1962, Okla. Sup. Ct.); *Hozer v. State Police & Firemen's Pension Fund*, 230 A.2d 508 (1967, N.J. Super. App. Div.) .

A survey of modern case law in other jurisdictions clearly shows that courts have rejected Garland's "blotting out" language and its expansive view of a pardon. In re *Abrams*, 689 A.2d 6, 17 (D.C. App. 1997; *Bjerkman v. U.S.*, 529 F. 2d 125, 128 (7th Cir. 1975); In re *North*, 62 F.3d 1434, 1437 (D.C. Cir. 1994); *State v. Skinner*, 632 A. 2d 82, 89 (Del. 1993); *Hirschberg v. Commodity Futures Trading Comm.*, 414 F.3d 679, 682 (7th Cir. 2005); *U.S. v. Noon*, 906 F.2d 952, 958 (3d Cir. 1990).

Furthermore, modern cases have continued to hold that a pardon does not entitle the recipient to have their criminal record expunged. *State of Ohio v. Radcliff*, Tenth Dist. No. 11AP-652, 2012-Ohio-4732; *Harsher v. Commonwealth*, 327 S.W. 3d 519, 522 (Ky. App. 2010); In re *Sang Man Shin*, 125 Nev. 100, 105 (Nev. 2009).

There are no Ohio Supreme Court cases that have directly addressed the issue of the effect of a pardon related to sealing of records. Upon a full reading of the cases discussed above, the City urges this Court to follow the decision of *City of Akron v. Boykin*, *supra*.

B. A pardon does not automatically create unusual and extraordinary circumstances requiring courts to invoke inherent judicial powers to seal the record of conviction.

The Ohio Supreme Court held that in unusual and extraordinary circumstances the courts have the inherent authority to order the sealing of records and approved the availability of sealing of records for persons who were exonerated of criminal charges where the General Assembly had provided for sealing records for persons convicted of a first offense, but not for persons who were exonerated. *City of Pepperpike v. Doe*, 66 Ohio St.2d 374 (1981). *Pepper Pike, syllabus*, held:

1. The trial courts in Ohio have jurisdiction to order expungement and sealing of records in a criminal case where the charges are dismissed with prejudice prior to trial by the party initiating the proceedings.
2. The trial courts have authority to order expungement where such unusual and exceptional circumstances make it appropriate to exercise jurisdiction over the matter. When exercising this power, the court should use a balancing test which weighs the privacy interest of the defendant against the government's legitimate need to maintain records of criminal proceedings. *Pepperpike*, Syllabus by the Court.

The City contends that the situation of a pardon is dissimilar to exoneration and does not create unusual and extraordinary circumstances **requiring** the courts to exercise inherent powers. In *Pepperpike*, the Court noted that the criminal charges against the defendant were dismissed by the party bringing the charge and with prejudice. The grant of a sealing order of court and arrest records for a person who is not convicted serves the significant and proper purpose of preserving the principle of presumption of innocence. With the sealing of arrest and court records, a person is less likely to have to deny guilt and explain circumstances to people, such as potential employers, who may learn of old unfounded charges.

However, as discussed above, the grant of a full and unconditional pardon does not have the effect of exonerating a defendant or negating the existence of the crime or the conviction.

The crime was committed and the governor has forgiven it. No further penalty is exacted for the crime, but the pardon's effect goes no further. The circumstances of a pardon are therefore not so unusual and extraordinary to **require** sealing of a conviction as those of a person who seeks to protect his or her reputation of innocence.

Ohio courts have been asked to extend the *Pepperpike* principle of inherent judicial authority to seal records to other situations and in these cases the Courts declined to enlarge the holding in *Pepperpike*. In *State v. Brewer*, 2003-Ohio-701 (Ohio App. 11th Dist.), David Brewer asked the court to exercise inherent powers to seal a conviction of four counts of gross sexual imposition although R.C. § 2953.36 excepted that offense from the availability of sealing for first time offenders. The Eleventh District reversed the sealing of the Mr. Brewer's conviction and concluded that *Pepperpike* only applies to cases where the "defendant is charged but not convicted of a criminal offense." *Id.* at ¶18, [*Emphasis in original.*] In accord, are *State v. Chiaverini*, 2001 WL 256104 (Ohio App. 6th Dist.), and *State v. Netter*, 64 Ohio App.3d 322 (1989, 4th Dist.).

The Supreme Courts in the States of Massachusetts and Tennessee were asked to use inherent or ancillary judicial powers to create expunction rights for persons with full pardons and declined to do so. *Commonwealth v. Vickey*, *supra*; *State v. Blanchard*, *supra*. The Massachusetts Supreme Court noted that the State has a comprehensive scheme for probation, parole and rehabilitation by created statute that does not require the judicial branch to enlarge on that system. The City urges that the circumstances in Ohio are similar and the grant of a pardon is not so unusual or extraordinary as to require the courts to create new mechanisms of rehabilitation in substitution for the legislative process.

In *Pepperpike* the Supreme Court determined that the then existing statutory sealing provisions for first time offenders should apply:

To make the right of expungement uniform in this state, we follow the guidelines set out in Ohio's criminal expungement statute, and conclude that the government, even after expungement, is entitled to retain the record of appellant's arrest in its appropriate files. It will remain an historical event, available for use in legitimate criminal investigations, and as the appellant may direct. *Pepperpike*, at 378.

That decision was simple and efficient, but now there are two procedures to choose from: R.C. 2953.31 and R.C. 2953.51; *See also*, R.C. 2953.25. Further, the legislature has amended the sealing statutes to create exceptions in the practice as to who can gain access to sealed records and for what purposes. Would future amendments to the sealing statutes be applicable to records ordered sealed by the court pursuant to court ordered sealing or would the courts find it necessary to write rules to govern the circumstances? What would be the enforcement mechanism for a violation of a sealing order and what parties are before the court that are subject to the court's authority to enforce its order to seal?

In *U.S. v. Wilson, supra*, Chief Justice Marshall stated a pardon "is the private, though official, act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the court." *Id.* at p. 160-161. A pardon to be effective must be delivered to the person and accepted and that person then may elect to use the pardon. In *Wilson*, the Court recognized the right of a person not to use the pardon. It is clear that a pardon is not an order to the courts or to any other entity, but is only a status granted to the person pardoned by the governor.

The courts have inherent powers to achieve justice and uphold the inalienable rights of Ohio citizens as the Ohio Supreme Court did in *Pepperpike*, when it invoked its inherent

authority to make sealing available to exonerated persons on a par with first time offenders.

However, while the Ohio Constitution has enabled the Governor to grant a pardon of conviction and order the remission of penalties, it has not also created a right for the recipient of a pardon to deny that he had ever done wrong. There are no unusual or extraordinary circumstances in the instance of a pardon that **require** the courts to create such a claim of right. It remains for the General Assembly to determine any additional benefits given to the recipient of a pardon beyond those already stated in R.C. §2961.01.

C. The Ohio General Assembly is the Proper Entity to Grant Appellant's Requested Expungement.

The Ohio General Assembly has enacted specific statutes addressing the rights that are to be restored to a pardoned individual. As previously discussed, R.C. 2967.01(B) defines a pardon as “the remission of penalty by the governor in accordance with the power vested in the governor by the constitution.” R.C. 2967.04(B) provides that a pardon “relieves the person to whom it is granted of all disabilities arising out of the conviction or convictions from which it is granted.” R.C. 2961.01(A) and (B) restores a felon granted a pardon the right to be an elector, juror and to hold office. However, the General Assembly prohibits a pardoned felon from circulating a petition. *Id.* Despite these rights returned to a pardoned felon, a pardon does “not release the person from the costs of a conviction in this state, unless so specified.” R.C. 2961.01(A)(2).

The Ohio Constitution and the Revised Code prescribe particular requirements for maintaining a record of the pardon and conviction. Article III, Section 11 of the Ohio Constitution requires the governor to communicate to the General Assembly “the name and crime of the convict, the sentence, its date, and the date of the ***pardon*** with the Governor’s reasons therefore.” R.C. 107.10(E) requires the Governor to keep a “pardon record” itemizing the name of the convict, date of application of pardon, the crime committed, the county

the crime was committed, the sentence, the governor's actions, and reasons for said action. Further, warrants of pardon shall be issued in "triplicate, one to be given to the convict, one to be filed with the clerk of court***in whose office the sentence is recorded, and one to be filed with the head of the institution in which the convict was confined." R.C. 2967.06. Notably, the clerk must record the pardon. R.C. 2967.04(A).

The Ohio General Assembly, additionally, enacted specific criteria for sealing records based on innocence. R.C. 2953.52 states that any person may apply to have records expunged when a charge results in a not guilty verdict, an indictment is dismissed, or a Grand Jury issues a no bill. Conspicuously absent in R.C. 2953.52 is a pardon. *See, Radcliff*, 2012-Ohio-4732, ¶49. If the General Assembly intended for pardons to equate to innocence, the General Assembly could have easily included same in R.C. 2953.52, but did not. *Id.* at 52.

This year the 129th General Assembly of Ohio introduced legislation to deal with criminal offender "collateral sanctions" in Senate Bill 337 and House Bill 524. The following language is a bill summary of House Bill 524, as introduced on April 24th, 2012, provided by the Ohio Legislative Service Commission specifically addressing pardons:

Pardons

Requires the clerk of court in whose office the case, conviction and sentence related to a pardon are recorded to destroy all paper and electronic records of the case, conviction and sentence upon presentation of proof that the conditions of a conditional pardon have been met

Specifies that an unconditional pardon relieves the person to whom it is granted of the penalty, the guilt, and all civil and criminal disabilities arising out of the conviction or convictions from which it is granted, and requires the clerk to destroy all paper and electronic records of the case, conviction and sentence upon receipt of a warrant of unconditional pardon.

Appellee City of Akron Appendix, hereafter Appx. 1. The Ohio Legislative Service Commission provided verbatim the same language in the bill summary as introduced on April 26th, 2012 of Senate Bill 337 as to pardons. (Appx. 42)

However in the final version of the “collateral sanction” legislation of House Bill 524 and Senate Bill 337 signed by Governor Kasich on June 26th, 2012 all language that addressed pardons was removed in its entirety. (Appx. 1, 42) This legislation went into effect on September 28th, 2012 so the Ohio legislature still remains silent on the effect of a pardon. (Appx. 84, 89)

In *Radcliff*, 2012-Ohio-4732, ¶52, the Tenth District Court of Appeals succinctly held:

***the General Assembly enacted laws specifically (1) requiring the governor to maintain a copy of both the pardon and the conviction, (2) requiring the clerk of court to maintain a copy of the warrant of pardon, which identifies the pardoned conviction, and (3) authorizing expungement of records when an individual is acquitted, found not guilty, or a no bill returned. Under (1) and (2), sealed records are of questionable value if the record of conviction, accessible through the internet, continues to reveal the underlying conviction. Under (3), if a pardon truly rendered the defendant innocent as if the crime were never committed, the General Assembly should have included pardons with the other innocence-based reasons for expungement contained in R.C. 2953.52

As held in *Boykin*, and *Radcliff*, the Ohio statutes do not provide Appellant with the requested relief. The General Assembly is the proper entity to determine whether a pardoned individual is entitled to automatic expungement.

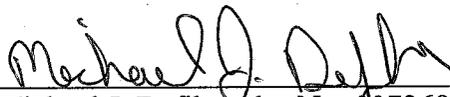
CONCLUSION

A pardon is a forgiveness of a conviction granted to a person and if given in full has the effect of remitting all penalties not already executed. It is neither a request nor an order to the courts to order a sealing of records. The legislature may determine any additional benefits to be derived from a pardon as it has done in regards to voting, jury service and holding office. A

pardon does not negate the existence of the acts of the offense and is not so unusual and extraordinary as to require the courts to exercise inherent powers to correct an injustice. The Court should follow the holdings in *Boykin* and *Radcliff*.

Respectfully submitted,

Cheri B. Cunningham - No. 0009433
Director of Law



Michael J. Defibaugh - No. 0072683

Assistant Director of Law

MDefibaugh@akronohio.gov

Gertrude E. Wilms - No. 0073771

Chief Prosecutor

GWilms@akronohio.gov

161 S. High Street, Suite 202

Akron, Ohio 44308

(330) 375-2030 FAX: (330) 375-2041

MDefibaugh@akronohio.gov

Attorney for Appellees

PROOF OF SERVICE

This is to certify that a true and accurate copy of the foregoing Merit Brief of Appellee, City of Akron was sent this 3rd day of December, 2012 to:

Heaven Dimartino
Assistant Summit County Prosecutor
53 University Avenue
Akron, OH 44308
Counsel for Appellee

Joann Sahl
Legal Clinic
The University of Akron
School of Law
Akron, Ohio 443256-2901
Counsel for Appellant Boykin

Jane P. Perry
46 Northmoor Place
Columbus, OH 43214
Council for Amici Curiae


Michael J. Defibaugh - No. 0072683



Ohio Legislative Service Commission

Bill Analysis

Andrea Holmes
Allison M. Mease
Laurel Mannion
Joseph G. Aninao

H.B. 524

129th General Assembly
(As Introduced)

Reps. McGregor and Heard, Williams, Sears, Garland, Driehaus, Brenner, Fedor, Yuko,
Winburn, Antonio, Phillips, Letson

BILL SUMMARY

Order of limited relief

- Creates a process by which an individual who is subject to a "collateral sanction" (a penalty, disability, or disadvantage that is related to employment or occupational licensing as a result of the individual's conviction of or plea of guilty to an offense and that applies by operation of law in this state whether or not the penalty, disability, or disadvantage is included in the sentence or judgment) may obtain an order of limited relief from a court that will provide relief from certain bars on employment or occupational licensing.
- Permits an individual who is subject to collateral sanctions to file a petition with the designee of the Deputy Director of the Division of Parole and Community Services of the Department of Rehabilitation and Correction for a court order of limited relief.
- Requires the designee to notify the prosecutor's office that prosecuted the offense that resulted in the collateral sanction to review a petition for an order of limited relief, the individual's criminal history, all filings submitted by the prosecutor or by the victim in accordance with rules adopted by the Adult Parole Authority, and all other relevant evidence.
- Requires the designee to forward the petition to the sentencing court if the designee determines that the individual's petition for an order of limited relief should be considered by the sentencing court.
- Requires the designee to provide written notice to the individual if the designee decides not to forward the petition.

- Permits the Adult Parole Authority to adopt rules in accordance with the Administrative Procedure Act governing the designee's performance of the duties assigned to the designee.
- Requires the court that receives an individual's petition for an order of limited relief to review the petition and permits the court to issue an order of limited relief if the court finds that the individual has established by a preponderance of the evidence that granting the petition will materially assist the individual in obtaining employment, education, housing, public benefits, or occupational licensing, the individual has a substantial need for the relief requested in order to live a law-abiding life, and granting the petition will not pose an unreasonable risk to the safety of the public or any individual.
- Prohibits the sentencing court from issuing an order of limited relief from any of a list of certain specified collateral sanctions.
- Specifies that an order of limited relief lifts the automatic bar of a collateral sanction, and a decision-maker may consider on a case-by-case basis whether it is appropriate to grant or deny the issuance or restoration of an occupational license or an employment opportunity.
- Specifies that an order of limited relief does not grant relief from any of a list of certain specified impacts.
- Permits an order of limited relief to be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order of limited relief was issued if the person knew of the order at the time of the alleged negligence or other fault, in a judicial or administrative proceeding alleging negligence or other fault.
- Requires an order of limited relief to be presumptively revoked if the individual to whom the order of limited relief was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the order of limited relief.

Sealing of criminal records

- As it relates to the procedure for the sealing of criminal records, replaces the term "first offender" with the term "eligible offenders" and defines the new term as anyone who has been convicted of an offense in this state or any other jurisdiction and who *has not more than one felony conviction and not more than one misdemeanor conviction* in this state or any other jurisdiction.



- Requires the probation officer or county department of probation that the court directs to make the required inquiries concerning an applicant for the sealing of a criminal record to contact the child support enforcement agency enforcing the applicant's obligations under a child support order to inquire about the offender's compliance with the child support order if the applicant was convicted of or pleaded guilty to a violation of nonsupport of dependents.
- Provides an exception to the current prohibition against sealing the records of conviction in cases in which the victim of the offense was under 18 years of age and the offense is a first degree misdemeanor or a felony violation of "nonsupport of dependents."

Pardons

- Requires the clerk of the court in whose office the case, conviction, and sentence related to a pardon are recorded to destroy all paper and electronic records of the case, conviction, and sentence upon presentation of proof that the conditions of a conditional pardon have been met.
- Specifies that an unconditional pardon relieves the person to whom it is granted of *the penalty, the guilt, and all civil and criminal* disabilities arising out of the conviction or convictions from which it is granted, and requires the clerk to destroy all paper and electronic records of the case, conviction, and sentence upon receipt of a warrant of unconditional pardon.

Drug paraphernalia

- Decreases the penalty for "illegal use or possession of drug paraphernalia" to a minor misdemeanor if the offender uses or possesses the drug paraphernalia with purpose to use it with marijuana.

Definition of "indigent"

- Defines "indigent" for use in Title 29 of the Revised Code (Ohio's Criminal Laws, generally) to mean, when used in connection with the payment of a fine, costs, or a fee, as "unable to pay the fine, costs, or fee" and creates a rebuttable presumption that a person is indigent if the person has an income equal to or less than the income set forth in the federal poverty guidelines.

Ex-offender Reentry Coalition

- Adds a member to the Ex-offender Reentry Coalition who must be an ex-offender appointed by the Director of Rehabilitation and Correction.



Juvenile law

Juvenile court jurisdiction

- Provides that if a juvenile court makes a disposition of a delinquent child or juvenile traffic offender after the child attains 21, the child may be held in places other than places solely for confinement of children.
- Specifies that the juvenile court has jurisdiction over any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person under certain specified circumstances unless the person is convicted of or pleads guilty to a felony in the adult court.

Places of detention

- Modifies the exceptions to the list of places that, generally, a child alleged to be or adjudicated a delinquent child or a juvenile traffic offender may be held.
- Creates a procedure whereby a prosecutor may petition the court to require any person whose case is transferred to adult court for criminal prosecution to be held under that disposition in places other than those generally considered to be for the placement of children, if the prosecutor, upon motion and after notice and a hearing, establishes by a preponderance of the evidence and makes written findings that the youth has done any of the following:
 - Injured or created an imminent danger to the life or health of another youth or staff member in the facility or program by violent behavior.
 - Escaped from the facility or program in which the youth is being held on more than one occasion.
 - Established a pattern of disruptive behavior as verified by a written record that the youth's behavior is not conducive to the established policies and procedures of the facility or program in which the youth is being held.
- Requires the court to consider certain specified factors when considering a motion as described above in the prior dot point.
- Permits a person whom a court has determined that a place other than those generally considered to be for the placement of children is the appropriate place for confinement of a person to petition the juvenile court for a review hearing 30 days after the initial confinement decision or 30 days after any subsequent review hearing.



- Requires a facility to advise the person of the person's right to request a review hearing as described above in the prior dot point, upon the admission of a person whose case has been transferred to adult court for criminal prosecution to a place other than those generally considered to be for the placement of children.

Jail time and prison time credits – transfer from juvenile facility

- Requires the jailer in charge of a jail or the Department of Rehabilitation and Correction to additionally reduce the sentence or stated prison term of a person by the number of days the person was confined in a juvenile facility.

Sealing of juvenile records – sexual battery and gross sexual imposition

- Removes sexual battery and gross sexual imposition from the list of offenses for which juvenile records may not be sealed.

Sealing of juvenile records – application process

- Permits a motion or application for the sealing of juvenile records to be made at any time after each of certain specified actions occurs, including the date the court enters an order after a hearing or a petition upon the classification of a child as a juvenile offender registrant under the Sex Offender Registration and Notification Law that contains a determination that the child is no longer a juvenile offender registrant.
- Prohibits the court from charging a fee for the filing of an application for the sealing of juvenile records.
- Adds an additional factor to the factors that the court must consider in determining whether the person has been rehabilitated to a satisfactory degree for the purposes of sealing juvenile records: the granting of a new tier classification or declassification from the Juvenile Offender Registry under the Sex Offender Registration and Notification Law, except for public registry-qualified juvenile offender registrants.

Confidentiality of juvenile records – criminal records checks

- Specifies that any criminal records check conducted by the Superintendent of the Bureau of Criminal Identification and Investigation for any reason prescribed by the Revised Code may not include any proceeding in criminal court against a person under 18 years of age or any criminal conviction of a person under 18 years of age if the proceeding or case was transferred back to the juvenile court.



Confidentiality of juvenile records – Public Records Law

- Specifies that records pertaining to a case or proceeding in which a person was or is alleged to be or adjudicated an unruly or delinquent child or a juvenile traffic offender are not to be considered a "public record" under the Public Records Law.

Prohibitions of licensing preclusions

- In general, requires the Ohio Optical Dispensers Board, the Registrar of Motor Vehicles (with regard to motor vehicle salvage dealers, motor vehicle auctions, and salvage motor vehicle pools), the Construction Industry Licensing Board, the Casino Control Commission, the Hearing Aid Dealers and Fitters Licensing Board, and the Director of Public Safety (with regard to private investigators and security guards) to prohibit the preclusion of individuals from obtaining or renewing licenses, certifications, or permits due to any past criminal history unless the individual had committed a crime of moral turpitude or a disqualifying offense.
- Defines "moral turpitude" and "disqualifying offense."
- Requires the State Board of Cosmetology to assist ex-offenders and military veterans who hold licenses to find employment.
- Prohibits the State Board of Cosmetology from denying a license based on prior incarceration or conviction for a crime.

Child support

- Prohibits a court or child support enforcement agency (CSEA) from determining that an incarcerated or institutionalized parent is voluntarily unemployed or underemployed for the purposes of imputing income when calculating child support.
- Permits a court or CSEA to disregard a parent's additional income from overtime or additional employment in limited circumstances such as when the income was generated primarily to support a new or additional family member.
- Requires a court or CSEA to collect information about preexisting child support orders for other children of the same parents when calculating a child support order to ensure that the total of all orders for the children of both parents does not exceed the amount that would have been ordered in a single order.



Driving under suspension, driver's license suspensions, limited driving privileges, payment of reinstatement fees, and motor vehicle equipment violations

- Reduces the penalties for driving under suspension (DUS) if the suspension was imposed as a penalty for one of a number of specified offenses in which the operation of a motor vehicle is not one of the main elements of the offense or for violating the state financial responsibility law.
- Provides that a court, in lieu of imposing a driver's license suspension upon a person who commits one of a number of specified offenses in which the operation of a motor vehicle is not one of the main elements of the offense but for which upon conviction one of the penalties the court is permitted or required to impose is the suspension of the person's driver's license, instead may require the offender to perform community service for a number of hours determined by the court.
- Permits a court to grant limited driving privileges to a person whose driver's license is suspended because the person is in default or noncompliance under a child support order.
- Provides that in any case in which a person's driver's license has been suspended for being in default or noncompliance under a child support order, the prosecuting attorney prosecuting the case must file a motion requesting dismissal of the case if the prosecuting attorney becomes aware that the records of the Bureau of Motor Vehicles indicate that the person is no longer in default or out of compliance with the child support order and the date on which the person no longer was in default or out of compliance is not greater than 15 days after the date that the person was stopped and charged with the DUS violation.
- Requires a court, in a case in which a person is convicted of DUS and at the time of the offense the person's driver's license was suspended under the aggravated vehicular homicide sentencing provisions that apply when the offender also was guilty of committing a state or local OVI offense at the time of the aggravated vehicular homicide offense, to order the criminal forfeiture of the vehicle involved in the offense if the vehicle is registered in the offender's name.
- Permits the Registrar of Motor Vehicles, with the approval of the Director of Public Safety, to adopt rules that permit a person to pay reinstatement fees in installments.
- Eliminates the requirement that the Registrar suspend the driver's license of any person who is named in a motor vehicle accident report that alleges that the person was uninsured at the time of the accident and the person then fails to give to the Registrar acceptable proof of financial responsibility.



- Permits a court to grant limited driving privileges to a person whose driver's license has been suspended for a third or subsequent time within a five-year period for violation of the state financial responsibility law, but provides that the privileges cannot take effect until after the first 30 days of the suspension have elapsed.
- Establishes as a minor misdemeanor in all circumstances most motor vehicle equipment violations.
- Requires the Bureau to conduct a study on the advisability and feasibility of establishing in this state a one-time amnesty program for the payment of fees and fines owed by persons who have been convicted of motor vehicle traffic and equipment offenses or have had their driver's license, commercial driver's license, or temporary instruction permit suspended for any reason, and to issue a report on the study.

TABLE OF CONTENTS

Sealing of juvenile records – sexual battery and gross sexual imposition	5
Order of limited relief from collateral sanctions	9
Filing of petition for order of limited relief with designee	9
Court review of petition for order of limited relief	11
Effects of order of limited relief	12
Order of limited relief – definitions	13
Sealing of criminal records	14
Offenders eligible to have records sealed	14
Pardons	15
Conditional pardons	15
Unconditional pardons	16
Pardons – definitions	16
Drug paraphernalia	17
Definition of "indigent"	17
Ex-offender Reentry Coalition	18
Juvenile law	19
Juvenile court jurisdiction	19
Places of detention	20
Juveniles detained in places other than those solely for confinement of children	22
Jail time and prison time credits – transfer from juvenile facility	24
Sealing of juvenile records – sexual battery and gross sexual imposition	24
Sealing of juvenile records – application process	24
Confidentiality of juvenile records – criminal records checks	26
Confidentiality of juvenile records – Public Records Law	26
Juvenile law – definitions	26
Prohibitions of licensing preclusions	27
Ohio Optical Dispensers Board	29
Registrar of Motor Vehicles – motor vehicle salvage dealers, salvage motor vehicle auctions, salvage motor vehicle pools	29
Ohio Construction Industry Licensing Board	30
Casino Control Commission	31



Hearing Aid Dealers and Fitters Licensing Board	31
Director of Public Safety – private investigators and security guards.....	32
State Board of Cosmetology	33
Child support.....	33
Income calculation when a parent is incarcerated	33
Discretionary disregard of additional income and multiple orders	34
Reduction of the penalties imposed for certain driving under suspension violations.....	34
Reduction in penalties for driving under suspension if the suspension was imposed for violating the financial responsibility law	36
Community service in lieu of driver's license suspension	36
Provisions relating to child support.....	37
Granting of limited driving privileges to a person whose driver's license is suspended for being in default or noncompliance under a child support order.....	37
Dismissal of a DUS charge when the suspension was imposed for not being in compliance with a child support order.....	37
Vehicle forfeiture for aggravated vehicular homicide	38
Payment of reinstatement fees in installments	38
Financial responsibility provisions	39
Elimination of the driver's license suspension that is imposed for failing to respond to a filed accident report.....	39
Limited driving privileges for a third or subsequent violation within a five-year period of the financial responsibility law	39
Reduction in penalties for motor vehicle equipment violations.....	40
Bureau of Motor Vehicles amnesty study committee	40

CONTENT AND OPERATION

Order of limited relief from collateral sanctions

The bill creates a process by which an individual who is subject to a "collateral sanction" may obtain from a court an order of limited relief that will provide relief from certain bars on employment or occupational licensing. The bill defines a "collateral sanction" as a penalty, disability, or disadvantage that is related to employment or occupational licensing, however denominated, as a result of the individual's conviction of or plea of guilty to an offense (see "**Order of limited relief – definitions**," below) and that applies by operation of law in this state whether or not the penalty, disability, or disadvantage is included in the sentence or judgment imposed. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.¹

Filing of petition for order of limited relief with designee

Under the bill, an individual who is subject to collateral sanctions as a result of being convicted of or pleading guilty to an offense may file a petition with the designee

¹ R.C. 2953.25(A).



(see "**Order of limited relief – definitions**," below) of the Deputy Director of the Division of Parole and Community Services of the Department of Rehabilitation and Correction for a court order of limited relief. The individual may file a petition for an order of limited relief at any time after the individual completes a period of confinement in a state or local correctional facility.²

Upon receiving a petition for an order of limited relief, the designee must notify the prosecutor's office that prosecuted the offense that resulted in the imposition of the collateral sanction from which the individual seeks relief. The designee must review the individual's petition for an order of limited relief, the individual's criminal history, all filings submitted by the prosecutor or by the victim in accordance with rules adopted by the Adult Parole Authority, and all other relevant evidence. The designee may order any test, report, investigation, or disclosure by the individual that the designee believes is necessary for the designee to reach a decision on whether to forward the individual's petition for an order of limited relief to the court that sentenced the individual for the offense that resulted in the imposition of collateral sanctions on the individual.³

If the designee determines that the individual's petition for an order of limited relief should be considered by the sentencing court, the designee must forward the petition to the sentencing court. The designee must make all filings, evidence, reports, investigations, disclosures, and test results that the designee obtained as described in the prior paragraph available to the sentencing court. The designee's forwarding of, or failure to forward, an individual's petition for an order of limited relief does not give rise to a claim for damages against the Department of Rehabilitation and Correction.⁴

If the designee declines to forward the individual's petition for an order of limited relief to the sentencing court, the designee must provide written notice to the individual of the designee's decision not to forward the petition. The designee may place conditions on the individual regulating the individual's filing of any subsequent petition for an order of limited relief. The written notice must notify the individual of any conditions placed on the individual's filing of a new petition for an order of limited relief.⁵

² R.C. 2953.25(B)(1).

³ R.C. 2953.25(B)(2) and (3)(a).

⁴ R.C. 2953.25(B)(3)(b) and (I).

⁵ R.C. 2953.25(B)(3)(c).



The Adult Parole Authority may adopt rules in accordance with the Administrative Procedure Act governing the designee's performance of the duties assigned to the designee.⁶

Court review of petition for order of limited relief

The court that receives an individual's petition for an order of limited relief from the designee must review the individual's petition and may issue an order of limited relief (subject to the conditions described in the following paragraph) at the court's discretion if the court finds that the individual has established all of the following by a preponderance of the evidence:⁷

(1) Granting the petition will materially assist the individual in obtaining employment, education, housing, public benefits, or occupational licensing.

(2) The individual has a substantial need for the relief requested in order to live a law-abiding life.

(3) Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

The sentencing court may not issue an order of limited relief from any of the following collateral sanctions:⁸

(1) Requirements imposed by the Sex Offender Registration and Notification Law and rules adopted with respect to the State Registry of Sex Offenders and with respect to the conformity of Ohio sex registration laws to federal laws;

(2) A driver's license, commercial driver's license, or probationary license suspension, cancellation, or revocation due to exceeding the point limit under certain specified conditions, the suspension of the license due to a violation of a municipal ordinance substantially equivalent to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, soliciting, or an OVI offense, OVI, or underage OVI if the relief sought is available;

(3) Restrictions on employment as a prosecutor or law enforcement officer;

⁶ R.C. 2953.25(F).

⁷ R.C. 2953.25(C)(1) and (2).

⁸ R.C. 2953.25(C)(3).



(4) The denial, ineligibility, or automatic suspension of a license that is imposed upon an individual applying for or holding a license as a health care professional if the individual is convicted of, pleads guilty to, is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state, or is subject to treatment or intervention in lieu of conviction for aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, aggravated burglary, or unlawful distribution of an abortion-inducing drug;

(5) The immediate suspension of a license, certificate, or evidence of registration that is imposed upon an individual holding a license as a health care professional if the board under which the individual has been issued a license, certificate, or evidence of registration determines that there is clear and convincing evidence that continuation of the individual's professional practice or method of prescribing or personally furnishing controlled substances presents a danger of immediate and serious harm to others;

(6) The denial or ineligibility for employment in a pain clinic;

(7) The mandatory suspension of a license that is imposed on an individual applying for or holding a license as a health care professional pursuant to the individual's default on a child support order.

Effects of order of limited relief

An order of limited relief lifts the automatic bar of a collateral sanction, and a decision-maker (see "**Order of limited relief – definitions**," below) may consider on a case-by-case basis whether it is appropriate to grant or deny the issuance or restoration of an occupational license or an employment opportunity.⁹

An order of limited relief does not grant the individual to whom the order was issued relief from the mandatory civil impacts identified in R.C. 2961.01(A)(1) (a person who pleads guilty to a felony and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing a felony, unless the plea, verdict, or finding is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit) or 2961.02(B) (any person who pleads guilty to one of a set of specified disqualifying offenses and whose plea is accepted by the court or any person against whom a verdict or finding of guilt for committing the disqualifying offense is returned is incompetent to hold a public office or position of public employment or to serve as a volunteer, if holding the public office or position of public employment or serving as the volunteer involves substantial management or

⁹ R.C. 2953.25(D).

control over the property of a state agency, political subdivision, or private entity) at any time during the individual's term of supervision.¹⁰

In a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order of limited relief was issued if the person knew of the order at the time of the alleged negligence or other fault. In any proceeding on a claim against an employer for negligent hiring, an order of limited relief provides immunity for the employer as to the claim if the employer knew of the order at the time of the alleged negligence.¹¹

An order of limited relief is presumptively revoked if the individual to whom the order of limited relief was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the order of limited relief.¹²

Order of limited relief – definitions

As used in the provisions described above in "**Order of limited relief**":

"Offense" means any felony or misdemeanor under the laws of this state.¹³

"Designee" means the person designated by the Deputy Director of the Division of Parole and Community Services of the Department of Rehabilitation and Correction to perform the duties described above under "**Order of limited relief**."¹⁴

"Decision-maker" includes, but is not limited to, the state acting through a department, agency, board, commission, or instrumentality established by the law of this state for the exercise of any function of government, a political subdivision, an educational institution, or a government contractor or subcontractor made subject to this section by contract, law, or ordinance.¹⁵

As used in the definition of "Decision-maker," above:

¹⁰ R.C. 2953.25(E).

¹¹ R.C. 2953.25(G).

¹² R.C. 2953.25(H).

¹³ R.C. 2953.25(A)(4).

¹⁴ R.C. 2953.25(A)(3).

¹⁵ R.C. 2953.25(A)(2).

"Political subdivision" means a county, township, city, or village; the office of an elected officer of a county, township, city, or village; or a department, board, office, commission, agency, institution, or other instrumentality of a county, township, city, or village.¹⁶

Sealing of criminal records

Offenders eligible to have records sealed

Under existing law, a "first offender" may apply for the sealing of the conviction record 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. "First offender" is currently defined as anyone who has been convicted of an offense in this state or any other jurisdiction and who *previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction*. The bill replaces the term "first offender" with "eligible offender," which is defined as anyone who has been convicted of an offense in this state or any other jurisdiction and who *has not more than one felony conviction and not more than one misdemeanor conviction* in this state or any other jurisdiction.¹⁷

Continuing law, unchanged by the bill, provides for a hearing upon the filing of an application to have a conviction sealed, and the prosecutor for the case must be notified of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing that specifies the reasons for believing a denial of the application is justified. The court must 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.¹⁸

Under the bill, if the applicant was convicted of or pleaded guilty to a violation of nonsupport of dependents (abandoning, or failing to provide support as established by a court order to, another person whom, by court order or decree, the offender is legally obligated to support), the probation officer or county department of probation that the court directed to make inquiries concerning the applicant as described in the previous paragraph must 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.

¹⁶ R.C. 2953.25(A)(5), by reference to R.C. 2969.21(F).

¹⁷ R.C. 2953.31(A), with corresponding changes at R.C. 2953.32(A)(1), (B), and (C) and 2953.34.

¹⁸ R.C. 2953.32(B).



The bill provides an exception for the offense of "nonsupport of dependents" to the current prohibition against sealing the record of conviction in a case in which the victim of the offense was under 18 years of age and the offense is a first degree misdemeanor or a felony.¹⁹

Pardons

Conditional pardons

Under existing law, a pardon or commutation (see "**Pardons – definitions,**" below) may be granted upon *such* conditions precedent or subsequent as the Governor may impose, *which* conditions must be stated in the warrant. Such pardon or commutation may not take effect until the conditions so imposed are accepted by the convict or prisoner so pardoned or having *his* sentence commuted, and *his* acceptance is indorsed upon the warrant, signed by *him*, and attested by one witness. Such witness must go before the clerk of the *court of common pleas* in whose office the *sentence* is recorded and prove the signature of the convict, and the clerk must thereupon record the warrant, indorsement, and proof in the journal of the court, which record, or a duly certified transcript thereof, must be evidence of such pardon or commutation, the conditions thereof, and the acceptance of the conditions.²⁰

Under the bill, a pardon or commutation may be granted upon *any* conditions precedent or subsequent that the Governor may impose, *and the* conditions must be stated in the warrant. Such pardon or commutation may not take effect until the conditions so imposed are accepted by the convict or prisoner so pardoned or having *a* sentence commuted, and *the convict's or prisoner's* acceptance is indorsed upon the warrant, signed by *the prisoner or convict*, and attested by one witness. The witness must go before the clerk of the *court* in whose office the *case, conviction, and sentence* is recorded and prove the signature of the convict, and the clerk must thereupon record the warrant, indorsement, and proof in the journal of the court, which record, or a duly certified transcript thereof, must be evidence of such pardon or commutation, the conditions thereof, and the acceptance of the conditions.²¹

Additionally, under the bill, upon presentation of proof that the conditions of a conditional pardon have been met, the clerk of the court in whose office the case, conviction, and sentence related to that pardon are recorded must destroy all paper and electronic records of the case, conviction, and sentence. The clerk must then notify all

¹⁹ R.C. 2953.36(F).

²⁰ R.C. 2967.04(A).

²¹ R.C. 2967.04(A), with conforming changes made in R.C. 2967.06.



prosecution agencies and law enforcement agencies that had a part in the convict's charge, arrest, and any incarceration and the Bureau of Criminal Identification and Investigation of the pardon. Upon receipt of the notification, the prosecution agencies and law enforcement agencies and the Bureau must destroy all paper and electronic records of the case, conviction, and sentence.²²

Unconditional pardons

Under existing law, an unconditional pardon relieves the person to whom it is granted of all disabilities arising out of the conviction or convictions from which it is granted. "Unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.²³

Under the bill, an unconditional pardon relieves the person to whom it is granted of *the penalty, the guilt, and all civil and criminal* disabilities arising out of the conviction or convictions from which it is granted. Additionally, upon receipt of a warrant of unconditional pardon, the clerk of court in whose office the case, conviction, and sentence are recorded must record the warrant and destroy all paper and electronic records of the charge or charges and conviction or convictions. The clerk must then notify all prosecution agencies and law enforcement agencies that had a part in the convict's charge, arrest, and incarceration and the Bureau of Criminal Identification and Investigation of the pardon. Upon receipt of the notification, the prosecution agencies and law enforcement agencies and the Bureau must destroy all paper and electronic records of the case, conviction, and sentence.

Pardons – definitions

Under existing law, "pardon" means the remission of penalty by the Governor in accordance with the power vested in the Governor by the Constitution. Under the bill, "pardon" means the remission of penalty, *guilt, and all criminal and civil disabilities* by the Governor in accordance with the power vested in the Governor by the Constitution.²⁴

Continuing law, unchanged by the bill, defines "commutation" or "commutation of sentence" as the substitution by the Governor of a lesser for a greater punishment.²⁵

²² R.C. 2967.04(A).

²³ R.C. 2967.04(B).

²⁴ R.C. 2967.01(B).

²⁵ R.C. 2967.01(C).



Drug paraphernalia

Existing law prohibits any person from knowingly using, or possessing with purpose to use, drug paraphernalia. A violation of this prohibition is "illegal use or possession of drug paraphernalia," a fourth degree misdemeanor.²⁶

The bill decreases the penalty for "illegal use or possession of drug paraphernalia" to a minor misdemeanor if the offender uses or possesses with purpose to use the drug paraphernalia with marihuana.²⁷

Existing law, unchanged by the bill, defines "drug paraphernalia" as any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of Ohio's Drug Law.²⁸

Definition of "indigent"

The bill defines "indigent" for use in Title 29 of the Revised Code (Ohio's Criminal Laws, generally). Under the bill, "indigent," when used in connection with the payment of a fine, costs, or a fee, means unable to pay the fine, costs, or fee. There is a rebuttable presumption that a person is indigent if the person has an income that is equal to or less than the income set forth in the federal poverty guidelines as revised annually by the United States Department of Health and Human Services in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, for a family size equal to the size of the family of the person whose income is being determined.²⁹

²⁶ R.C. 2925.14(C)(1).

²⁷ R.C. 2925.14(F)(1).

²⁸ R.C. 2925.14(A).

²⁹ R.C. 2901.01(C)(5).



Ex-offender Reentry Coalition

Existing law provides for an Ex-offender Reentry Coalition to identify and examine social service barriers and other obstacles to the reentry of ex-offenders into the community. Currently the Coalition consists of the following 17 members:³⁰

- (1) The Director of Rehabilitation and Correction;
- (2) The Director of Aging;
- (3) The Director of Alcohol and Drug Addiction Services;
- (4) The Director of Development;
- (5) The Superintendent of Public Instruction;
- (6) The Director of Health;
- (7) The Director of Job and Family Services;
- (8) The Director of Mental Health;
- (9) The Director of Developmental Disabilities;
- (10) The Director of Public Safety;
- (11) The Director of Youth Services;
- (12) The Chancellor of the Ohio Board of Regents;
- (13) A representative or member of the Governor's staff;
- (14) The Director of the Rehabilitation Services Commission;
- (15) The Director of the Department of Commerce;
- (16) The executive director of a health care licensing board created under Title 47 of the Revised Code, as appointed by the chairperson of the Coalition;
- (17) The Director of Veterans Services.

³⁰ R.C. 5120.07(A).



The bill adds an additional member to the Ex-offender Reentry Coalition. The new member must be an ex-offender appointed by the Director of Rehabilitation and Correction.³¹

Juvenile law

Juvenile court jurisdiction

Under existing law, the juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining 18 years of age until the person attains 21 years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided below, a person who is so adjudicated a delinquent child or juvenile traffic offender is deemed a "child" until the person attains 21 years of age. If a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under Chapter 2152. of the Revised Code, at any time after the person attains *18 years of age*, the places at which the person may be held under that disposition are not limited to places authorized under Chapter 2152. of the Revised Code solely for confinement of children, and the person may be confined under that disposition in places other than those authorized solely for confinement of children.

Under the bill, if a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under Chapter 2152., at any time after the person attains *21 years of age*, the places at which the person may be held under that disposition are not limited to places authorized under Chapter 2152. of the Revised Code solely for confinement of children, and the person may be confined under that disposition in places other than those authorized solely for confinement of children.³²

Additionally, the bill specifies that the juvenile court has jurisdiction over any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4) (see "**Juveniles detained in places other than those solely for confinement of children**," below) unless the person is convicted of or pleads guilty to a felony in the adult court.³³

³¹ R.C. 5120.07(A)(18).

³² R.C. 2152.02(C)(6).

³³ R.C. 2152.02(C)(7).



Places of detention

Existing law provides that, generally, a child alleged to be or adjudicated a delinquent child or a juvenile traffic offender may be held only in the following places:³⁴

- (1) A certified foster home or a home approved by the court;
- (2) A facility operated by a certified child welfare agency;
- (3) Any other suitable place designated by the court.

The bill modifies the exceptions to the list of places described above in the following ways:

(1) In addition to the places listed above, a child alleged to be or adjudicated a delinquent child *or any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4)* (see "**Juveniles detained in places other than those solely for confinement of children,**" below) may be held in a detention facility for delinquent children that is under the direction or supervision of the court or other public authority or of a private agency and approved by the court and a child adjudicated a delinquent child may be held in accordance with R.C. 2152.26(F)(2) (places other than those specified in the prior paragraph, including a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of a crime, under arrest, or charged with crime is held).³⁵

(2) Except as provided below or in R.C. 2151.311 (juvenile court procedures for taking child into custody), R.C. 5139.06(C)(2) and 5120.162 (transfers to correctional medical centers), or R.C. 5120.16(B) (separate housing units in state correctional institutions), a child who is alleged to be or adjudicated a delinquent child *or any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4)* (see "**Juveniles detained in places other than those solely for confinement of children,**" below) may not be held in a state correctional institution, county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.³⁶

(3) Unless the detention is pursuant to a situation described below or in R.C. 2151.311 (juvenile court procedures for taking child into custody), R.C. 5139.06(C)(2) and 5120.162 (transfers to correctional medical centers), or R.C. 5120.16(B) (separate

³⁴ R.C. 2152.26(A).

³⁵ R.C. 2152.26(B).

³⁶ R.C. 2152.26(D).

housing units in state correctional institutions), the official in charge of the institution, jail, workhouse, or other facility must inform the court immediately when a child, who is or appears to be under the age of 21 years (18 years under existing law), is received at the facility, and must deliver the child to the court upon request or transfer the child to a detention facility designated by the court.³⁷

(4) If a case is transferred to adult court for criminal prosecution *and the alleged offender is a person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4)* (see "**Juveniles detained in places other than those solely for confinement of children**," below), the person may not be transferred for detention pending the criminal prosecution in a jail or other facility *except under the circumstances described in R.C. 2152.26(F)(4)*. Any child held *in accordance with the second subsequent paragraph* must be confined in a manner that keeps the child beyond the *sight and sound* of all adult detainees. The child must be supervised at all times during the detention.³⁸

(5) If a person is adjudicated a delinquent child or juvenile traffic offender *or is a person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4)* (see "**Juveniles detained in places other than those solely for confinement of children**," below) and the court makes a disposition of the person under this Chapter 2152. of the Revised Code, at any time after the person attains *twenty-one years of age*, the person may be held under that disposition *or under the circumstances described in R.C. 2152.26(F)(4)* in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.³⁹

(6) A person alleged to be a delinquent child may be held in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail, if the delinquent act that the child allegedly committed would be a felony if committed by an adult, and if either of the following applies:⁴⁰

(a) The person attains *twenty-one years of age* (18 years of age under existing law) before the person is arrested or apprehended for that act.

³⁷ R.C. 2152.26(E).

³⁸ R.C. 2152.26(F)(1).

³⁹ R.C. 2152.26(F)(2).

⁴⁰ R.C. 2152.26(F)(3)(a).

(b) The person is arrested or apprehended for that act before the person attains *twenty-one years of age* (18 years of age under existing law), but the person attains *twenty-one years of age* (18 years of age under existing law) before the court orders a disposition in the case.

Juveniles detained in places other than those solely for confinement of children

Under the bill, any person whose case is transferred to adult court for criminal prosecution may be held under that disposition in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail or workhouse, or other place where an adult under arrest or charged with crime is held if the juvenile court, upon motion by the prosecutor and after notice and hearing, establishes by a preponderance of the evidence and makes written findings that the youth has done any of the following:⁴¹

(1) Injured or created an imminent danger to the life or health of another youth or staff member in the facility or program by violent behavior;

(2) Escaped from the facility or program in which the youth is being held on more than one occasion;

(3) Established a pattern of disruptive behavior as verified by a written record that the youth's behavior is not conducive to the established policies and procedures of the facility or program in which the youth is being held.

If the prosecutor submits a motion requesting that the person be held in a place other than those generally considered to be for the placement of children, the juvenile court must hold a hearing within five days of the filing of the motion, and, in determining whether a place other than those generally considered to be for the placement of children is the appropriate place of confinement for the person, the court must consider the following factors:⁴²

(1) The age of the person;

(2) Whether the person would be deprived of contact with other people for a significant portion of the day or would not have access to recreational facilities or age-appropriate educational opportunities in order to provide physical separation from adults;

⁴¹ R.C. 2152.26(F)(4)(a).

⁴² R.C. 2152.26(F)(4)(b).

(3) The person's current emotional state, intelligence, and developmental maturity, including any emotional and psychological trauma, and the risk to the person in an adult facility, which may be evidenced by mental health or psychological assessments or screenings made available to the prosecuting attorney and the defense counsel;

(4) Whether detention in a juvenile facility would adequately serve the need for community protection pending the outcome of the criminal proceeding;

(5) The relative ability of the available adult and juvenile detention facilities to meet the needs of the person, including the person's need for age-appropriate mental health and educational services delivered by individuals specifically trained to deal with youth;

(6) Whether the person presents an imminent risk of self-inflicted harm or an imminent risk of harm to others within a juvenile facility;

(7) Any other factors the juvenile court considers to be relevant.

If the juvenile court determines that a place other than those generally considered to be for the placement of children is the appropriate place for confinement of a person, the person may petition the juvenile court for a review hearing 30 days after the initial confinement decision or 30 days after any subsequent review hearing. Upon receipt of the petition, the juvenile court has discretion over whether to conduct the review hearing and may set the matter for a review hearing if the youth has alleged facts or circumstances that, if true, would warrant reconsideration of the youth's placement in a place other than those generally considered to be for the placement of children based on the factors listed in the preceding paragraph.⁴³

Upon the admission of a person whose case has been transferred to adult court for criminal prosecution to a place other than those generally considered to be for the placement of children, the facility must advise the person of the person's right to request a review hearing as described above. Additionally, any person transferred as such to a place other than those generally considered to be for the placement of children must be confined in a manner that keeps the person beyond sight and sound of all adult detainees. The person must be supervised at all times during the detention.⁴⁴

⁴³ R.C. 2152.26(F)(4)(c).

⁴⁴ R.C. 2152.26(F)(4)(d) and (e).

Jail time and prison time credits – transfer from juvenile facility

Existing law requires the jailer in charge of a jail or the Department of Rehabilitation and Correction to reduce the sentence or stated prison term of a person, as applicable, by the number of days the person was confined for any reason arising out of the offense for which the person was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the person's competence to stand trial or to determine sanity, and confinement while awaiting transportation to the place where the person is to serve the person's sentence or prison term. The bill additionally requires the jailer in charge of a jail or the Department of Rehabilitation and Correction to reduce the sentence or stated prison term by the number of days the person was confined in a juvenile facility.⁴⁵

Sealing of juvenile records – sexual battery and gross sexual imposition

Existing law prohibits the sealing of the records of a case in which a person was adjudicated a delinquent child for committing aggravated murder, murder, rape, sexual battery, or gross sexual imposition. The bill removes sexual battery and gross sexual imposition from the list of offenses for which the records may not be sealed.⁴⁶

Sealing of juvenile records – application process

Under existing law, the juvenile court must consider the sealing of records pertaining to a juvenile upon the court's own motion or upon the application of a person adjudicated a delinquent child for committing an act other than a violation described above in "**Sealing of juvenile records – sexual battery and gross sexual imposition**," an unruly child, or a juvenile traffic offender and if, at the time of the motion or application, the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child. The motion or application may be made at any time after *two years after the later of* the following:⁴⁷

(1) The termination of any order made by the court in relation to the adjudication;

(2) The unconditional discharge of the person from the Department of Youth Services with respect to a dispositional order made in relation to the adjudication or from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication.

⁴⁵ R.C. 2949.08(C)(1) and 2967.191.

⁴⁶ R.C. 2151.356(A), with corresponding changes at (C)(1) and (D)(2).

⁴⁷ R.C. 2151.356(C)(1).

Under the bill, the motion or application may be made at any time after *each of* the following *that applies*:

(1) The termination of any order made by the court in relation to the adjudication;

(2) The unconditional discharge of the person from the Department of Youth Services with respect to a dispositional order made in relation to the adjudication or from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication.

(3) *The court enters an order after a hearing or a petition upon the classification of a child as a juvenile offender registrant (see "Juvenile law – definitions," below) under the Sex Offender Registration and Notification Law that contains a determination that the child is no longer a juvenile offender registrant.*

Additionally, the bill specifies that the court may not require a fee for the filing of an application as described above.⁴⁸

During the process of the juvenile court's consideration of whether to seal the records pertaining to a juvenile, the prosecuting attorney may file a response with the court within 30 days of receiving notice of the sealing proceedings, and the court must conduct a hearing on the motion or application within 30 days after the court receives any response from the prosecuting attorney. After conducting the hearing or after due consideration when a hearing is not conducted (in cases where the prosecuting attorney does not file a response), the court may order the records of the person that are the subject of the motion or application to be sealed if it finds that the person has been rehabilitated to a satisfactory degree. In determining whether the person has been rehabilitated to a satisfactory degree, the court may consider all of the following:⁴⁹

- (1) The age of the person;
- (2) The nature of the case;
- (3) The cessation or continuation of delinquent, unruly, or criminal behavior;
- (4) The education and employment history of the person;

⁴⁸ R.C. 2151.356(C)(1).

⁴⁹ R.C. 2151.356(C)(2)(e).

(5) Any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.

The bill adds one additional factor for the court to consider: the granting of a new tier classification or declassification from the Juvenile Offender Registry under the Sex Offender Registration and Notification Law, except for public registry-qualified juvenile offender registrants (see "**Juvenile law – definitions**, below).⁵⁰

The bill erroneously includes R.C. 2151.357. No changes were made to this section.

Confidentiality of juvenile records – criminal records checks

The bill specifies that any criminal records check conducted by the Superintendent of the Bureau of Criminal Identification and Investigation for any reason prescribed by the Revised Code may not include any proceeding in criminal court against a person under 18 years of age or any criminal conviction of a person under 18 years of age if the proceeding or case was transferred back to the juvenile court pursuant to R.C. 2152.121.⁵¹

Confidentiality of juvenile records – Public Records Law

As used in the Public Records Law, except as described below, "public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by the nonprofit or for-profit entity operating the alternative school. A provision of the Public Records Law excludes many types of records from the definition of "public record." The bill adds to this list of exclusions and specifies that records pertaining to a case or proceeding in which a person was or is alleged to be or adjudicated an unruly or delinquent child or a juvenile traffic offender are not to be considered a "public record" under the Public Records Law.⁵²

Juvenile law – definitions

As used in the bill:

⁵⁰ R.C. 2151.356(C)(2)(e)(v).

⁵¹ R.C. 109.572(B) and (F) and 109.578(B) and (E).

⁵² R.C. 149.43(A)(1)(cc).



"Juvenile offender registrant" means a person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense, who is 14 years of age or older at the time of committing the offense, and who a juvenile court judge classifies a juvenile offender registrant and specifies has a duty to comply with the Sex Offender Notification and Registration requirements. "Juvenile offender registrant" includes a person who prior to January 1, 2008, was a "juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.⁵³

"Public registry-qualified juvenile offender registrant" means a person who is adjudicated a delinquent child and on whom a juvenile court has imposed a serious youthful offender dispositional sentence before, on, or after January 1, 2008, and to whom all of the following apply:⁵⁴

(1) The person is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing one of the following acts:

(a) Rape, knowingly touching the genitalia of another, when the touching is not through clothing, the other person is less than 12 years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, or sexual battery if the victim of the violation was less than 12 years of age;

(b) Aggravated murder, murder, or kidnapping that was committed with a purpose to gratify the sexual needs or desires of the child.

(2) The person was 14, 15, 16, or 17 years of age at the time of committing the act.

(3) A juvenile court judge classifies the person a juvenile offender registrant, specifies the person has a duty to comply with the Sex Offender Notification and Registration requirements, and classifies the person a public registry-qualified juvenile offender registrant, and the classification of the person as a public registry-qualified juvenile offender registrant has not been terminated.

Prohibitions of licensing preclusions

The bill, in general, requires the Optical Dispensers Board; the Registrar of Motor Vehicles, with regard to motor vehicle salvage dealers, motor vehicle auctions, and

⁵³ R.C. 2950.01(M).

⁵⁴ R.C. 2950.01(N).

salvage motor vehicle pools; the Construction Industry Licensing Board; the Casino Control Commission; the Hearing Aid Dealers and Fitters Licensing Board; and the Director of Public Safety, with regard to private investigators and security guards, to prohibit the preclusion of individuals from obtaining or renewing licenses, certifications, or permits due to any past criminal history unless the individual has committed a crime of moral turpitude or a disqualifying offense.⁵⁵

"Moral turpitude" or "crime of moral turpitude" is defined in the bill as any of the following:

- (1) Aggravated murder;
- (2) Murder;
- (3) Complicity in aggravated murder or murder;
- (4) A sexually oriented offense;
- (5) A first or second degree felony offense of violence;
- (6) An attempt or conspiracy to commit or complicity in committing aggravated murder, murder, a sexually oriented offense, or a first or second degree felony offense of violence, if the attempt, conspiracy, or complicity is a first or second degree felony;
- (7) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in (1) through (6) above.⁵⁶ The Revised Code does not currently define what constitutes a crime of moral turpitude. *Black's Law Dictionary* defines "moral turpitude" as "[c]onduct that is contrary to justice, honesty, and morality. In the area of legal ethics, offenses involving moral turpitude – such as fraud or breach of trust – traditionally make a person unfit to practice law."⁵⁷

"Disqualifying offense" is defined in the bill as an offense that is a felony and that has a direct nexus to an individual's proposed or current field of licensure, certification, or employment. "Direct nexus" means that the nature of the offense for which the

⁵⁵ R.C. 3772.07, 4501.02, 4725.44, 4725.48, 4725.52, 4725.53, 4738.04, 4738.07, 4740.06, 4740.10, 4747.05, 4747.10, 4747.12, 4749.03, 4749.04, 4749.06, and 5502.011.

⁵⁶ R.C. 4776.10(A).

⁵⁷ *Black's Law Dictionary* 1101 (9th Ed.2009).



individual was convicted or to which the individual pleaded guilty has a direct bearing on the fitness or ability of the individual to perform one or more of the duties or responsibilities necessarily related to a particular occupation, profession, or trade.⁵⁸

Ohio Optical Dispensers Board

The bill requires the Ohio Optical Dispensers Board to adopt rules that establish disqualifying offenses for licensure as a dispensing optician or certification as an apprentice dispensing optician.⁵⁹ The bill prohibits the Board from doing either of the following in relation to an individual due to any past criminal activity or interpretation of moral character of that individual, unless the individual has committed a crime of moral turpitude or a disqualifying offense, as defined in the bill:

(1) Adopting, maintaining, renewing, or enforcing any rule that precludes an individual from receiving or renewing a license as a dispensing optician;

(2) Denying certification as an apprentice dispensing optician.⁶⁰

The bill allows the Board, by a majority vote of its members, to refuse to grant a license, to suspend or revoke the license of a licensed dispensing optician, or to impose a fine on or order restitution for a licensee who is convicted of a crime involving moral turpitude or a disqualifying offense, as defined in the bill. Current law allows the Board to take these actions for a conviction of a felony or a crime of moral turpitude.⁶¹

The bill removes the requirement that a person be of good moral character to be eligible to apply for an optical dispensing license.⁶²

Registrar of Motor Vehicles – motor vehicle salvage dealers, salvage motor vehicle auctions, salvage motor vehicle pools

Continuing law requires any person applying for a motor vehicle salvage dealer license, salvage motor vehicle auction license, or salvage motor vehicle pool license to submit an application to the Registrar of Motor Vehicles. The bill changes the requirement that a statement showing whether the applicant has previously been convicted of a felony be included in the application, and instead requires that a

⁵⁸ R.C. 4776.10(B) and (C).

⁵⁹ R.C. 4725.44(B).

⁶⁰ R.C. 4725.48(D) and 4725.52.

⁶¹ R.C. 4725.53.

⁶² R.C. 4725.48(B).



statement showing whether the applicant has previously been convicted of a crime of moral turpitude or a disqualifying offense, as defined in the bill, be included in the application.⁶³

Similarly, the bill directs the Registrar to deny the application of a person for licensure if the person has been convicted of a crime of moral turpitude or a disqualifying offense, as defined in the bill, instead of if the person has been convicted of a felony, as under current law.

The bill requires the Registrar, with the approval of the Director of Public Safety, to develop rules that establish disqualifying offenses for motor vehicle salvage dealer licensure.⁶⁴ The bill prohibits the Registrar from adopting, maintaining, renewing, or enforcing any rule, or otherwise precluding in any way, an individual from receiving or renewing a license due to any past criminal activity or interpretation of moral character, except if the applicant or licensee has been convicted of a crime of moral turpitude or a disqualifying offense.⁶⁵

Ohio Construction Industry Licensing Board

The bill requires each trade section of the Ohio Construction Industry Licensing Board to adopt rules that offer a list of disqualifying offenses for licensure in commercial plumbing and hydronics, electrical, and HVAC (heating, ventilation, air conditioning, and refrigeration).⁶⁶ However, the bill prohibits a trade section from adopting, maintaining, renewing, or enforcing any rule, or otherwise precluding in any way, an individual from receiving or renewing a license due to any past criminal activity or interpretation of moral character, except if the person has been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill.⁶⁷

The bill provides that if a person has been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill, (1) the person is not qualified to take an examination for licensure and (2) a trade section, upon an affirmative vote of four of its members, may direct the administrative section of the Board to refuse to issue or renew a license to the person. Current law provides for (1)

⁶³ R.C. 4738.04.

⁶⁴ R.C. 4501.02(A)(6).

⁶⁵ R.C. 4738.07.

⁶⁶ R.C. 4740.05.

⁶⁷ R.C. 4740.06(H).



and (2), above, if the person has been convicted of or pleaded guilty to a misdemeanor involving moral turpitude or a felony.⁶⁸

Casino Control Commission

Continuing law prohibits an appointing or licensing authority of the Casino Control Commission, which includes the Governor, the Commission, and the Executive Director of the Commission, from appointing or licensing or retaining the appointment or licensure of a person that has been convicted of or has pleaded guilty or no contest to a disqualifying offense. The bill expands the definition of "disqualifying offense" in the Casino Gaming Law to also include "disqualifying offense" as defined in the bill and any offense that is a crime of moral turpitude, as defined above. Continuing law defines "disqualifying offense" as any gambling offense, any theft offense, and any offense having an element of fraud or misrepresentation. The bill removes from the definition any offense having an element of moral turpitude and any felony not otherwise included in the continuing law list.⁶⁹

Hearing Aid Dealers and Fitters Licensing Board

The bill requires the Hearing Aid Dealers and Fitters Licensing Board to establish a list of disqualifying offenses for licensure as a hearing aid dealer or fitter or for a hearing aid dealer or fitter trainee permit.⁷⁰ However, the bill prohibits the Board from doing either of the following due to any past criminal activity or interpretation of moral character, except if the person has been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill:

- (1) Adopting, maintaining, renewing, or enforcing any rule that precludes an individual from receiving or renewing a license;
- (2) Denying a hearing aid dealer's and fitter's trainee permit.⁷¹

Continuing law provides a list of criteria for applicants that, if met, the Board is required to issue a license or trainee permit to an applicant. The bill changes one of the criteria from the applicant being a person of good moral character to the applicant not

⁶⁸ R.C. 4740.06(B)(5)(a) and 4740.10.

⁶⁹ R.C. 3772.07.

⁷⁰ R.C. 4747.04.

⁷¹ R.C. 4747.05(C) and 4747.10.

having committed a disqualifying offense or crime of moral turpitude, as defined in the bill.⁷²

The bill provides that the Board may revoke or suspend the license or trainee permit of a person who is convicted of a disqualifying offense or a crime of moral turpitude, as defined in the bill. Current law allows this disciplinary action if a person is convicted of a felony or a misdemeanor involving moral turpitude.⁷³

Director of Public Safety – private investigators and security guards

Continuing law provides a list of criteria that, if met, entitles an applicant to be licensed as a private investigator, security guard, or both. The bill provides that a person who has been convicted of a disqualifying offense, as defined in the bill, in the last three years or any crime of moral turpitude, as defined in the bill, is not eligible for licensure. Current law disqualifies from licensing a person who has been convicted of a felony in the last 20 years or any offense involving moral turpitude.⁷⁴

The bill provides that if, after an investigation by the Superintendent of the Bureau of Criminal Identification and Investigation, the Director of Public Safety finds that an employee has not been convicted of a disqualifying offense within the last three years, the Director must issue the employee an identification card.⁷⁵

The bill requires the Director to develop a list of disqualifying offenses for licensure as a private investigator or a security guard provider.⁷⁶ The bill prohibits the Superintendent from adopting, maintaining, renewing, or enforcing any rule, or otherwise precluding in any way, an individual from receiving or renewing a license due to any past criminal activity or interpretation of moral character, except if the person has been convicted of a crime of moral turpitude or a disqualifying offense, as defined in the bill. Current law requires the Director to issue the identification card to an employee who has not been convicted of a felony within the last 20 years.⁷⁷

The bill allows the Director to revoke, suspend, or refuse to renew the license of any private investigator or security guard provider, or the registration of any employee

⁷² R.C. 4747.05(A) and 4747.10(C).

⁷³ R.C. 4747.12.

⁷⁴ R.C. 4749.03(A)(1)(a).

⁷⁵ R.C. 4749.06(B)(3).

⁷⁶ R.C. 5502.011(C)(8).

⁷⁷ R.C. 4749.03(C)(4).



of a private investigator or security guard provider, for conviction of a disqualifying offense, as defined in the bill, that occurred within the last three years, or conviction of a crime involving moral turpitude, as defined in the bill. Current law allows these disciplinary actions if a licensee or employee is convicted of a felony or a crime involving moral turpitude.⁷⁸

The bill requires an employee of a private investigator or security guard to report any conviction of a disqualifying offense to the employee's employer and the Director when applying for registration renewal. Current law requires this report for an employee convicted of a felony.⁷⁹

State Board of Cosmetology

The bill prohibits the State Board of Cosmetology from denying a license to any applicant based on prior incarceration or conviction for any crime.⁸⁰ It also requires the Board to assist ex-offenders and military veterans, who hold licenses issued by the Board, to find employment within salons or other facilities within Ohio.⁸¹

Child support

Income calculation when a parent is incarcerated

When a parent's income is determined as part of the child support calculation or modification process, the court or child support enforcement agency (CSEA) must consider not only the parent's gross income, but also any potential income, which is imputed to a parent who is voluntarily unemployed or underemployed.⁸² While the Revised Code does not address how incarceration affects child support obligations, Ohio appellate courts have generally held that a parent's incarceration constitutes voluntary unemployment or underemployment.⁸³ The bill prohibits a court from determining that a parent is voluntarily unemployed or underemployed and from imputing income to that parent if the parent is incarcerated or institutionalized for a period of 12 months or more with no other available assets. However, this requirement does not apply if the parent is incarcerated for an offense relating to the abuse or neglect

⁷⁸ R.C. 4749.04(A).

⁷⁹ R.C. 4749.06(F).

⁸⁰ R.C. 4713.28(K).

⁸¹ R.C. 4713.07(F).

⁸² R.C. 3119.01(B)(5)(b).

⁸³ See e.g. *Craig v. Craig*, 2012 Ohio App. LEXIS 919 (Franklin Co. Ct. App. 3/15/12).



of a child who is the subject of the support order or a criminal offense when the obligee or a child who is the subject of the support order is a victim of the offense. Further, it does not apply if its application would be unjust, inappropriate, and not in the best interest of the child.⁸⁴

In determining imputed income, current law requires the court or CSEA to consider a number of factors, including the parent's prior employment experience, education, mental and physical disabilities, the availability of employment in the area, the prevailing wage and salary levels in the area, the parent's special skills and training, whether there is evidence that the parent has the ability to earn the income, the age and special needs of the child for whom support is being calculated, and the parent's increased earning capacity because of experience. The bill includes as an additional enumerated factor the parent's decreased earning capacity because of a prior felony conviction.

Discretionary disregard of additional income and multiple orders

The bill also adds that a court or CSEA may disregard a parent's additional income from overtime or additional employment when the court or CSEA finds that the additional income was generated primarily to support a new or additional family member or members, or under other appropriate circumstances. Finally, the bill provides that if both parents involved in the immediate child support determination have a prior order for support for a minor child or children born to both parents, the court or CSEA must collect information about the existing order or orders and consider those together with the current calculation for support to ensure that the total of all orders for all children of the parties does not exceed the amount that would have been ordered if all children were addressed in a single judicial or administrative proceeding.⁸⁵

Reduction of the penalties imposed for certain driving under suspension violations

The bill provides that if a person pleads guilty to or is convicted of driving under suspension (DUS) and the suspension of the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege was imposed as a penalty for one of a number of specified offenses in which the operation of a motor vehicle is not one of the main elements of the offense but for which upon conviction the suspension of the offender's driver's license is one of

⁸⁴ R.C. 5119.05(I).

⁸⁵ R.C. 5119.05(K) and (L).



the penalties the court is permitted or required to impose, the offense is a minor misdemeanor on a first offense and a fourth degree misdemeanor on a third or subsequent offense within three years of such a first offense.⁸⁶ The offenses, sentencing provisions, or other provisions that are the subjects of these new penalty classifications are as follows:

- (1) Disposition of an unruly child;
- (2) The possession, use, purchase, or receipt of cigarettes or other tobacco products by a minor;
- (3) Failure to appear in court to answer a citation issued for any of a number of specified minor misdemeanor offenses;
- (4) Being in default or noncompliance under a child support order;
- (5) Violation of certain provisions relating to beer or intoxicating liquor;
- (6) Failure to appear to answer a charge alleging a motor vehicle operation or equipment violation or a general motor vehicle-related violation, or to pay a fine imposed for such a violation;
- (7) Use of a fictitious or altered driver's license or a driver's license belonging to another person by a person under 21 years of age in order to purchase beer or intoxicating liquor.⁸⁷

The bill eliminates all other penalties that currently apply to driving under suspension based upon these offenses or provisions, including community service, filing proof of financial responsibility with the court, restitution, an additional driver's license suspension, and possible immobilization or forfeiture of the motor vehicle the offender was driving at the time of the DUS offense if the vehicle is registered in the name of the offender.⁸⁸

⁸⁶ R.C. 4510.11(A) and 4510.111(A) and new (C). A minor misdemeanor is punishable by a fine of not more than \$150; no jail term may be imposed. A fourth degree misdemeanor is punishable by a fine of not more than \$250, a jail term of not more than 30 days, or both.

⁸⁷ R.C. 4510.111(A).

⁸⁸ R.C. 4510.111(D) to (F).

Reduction in penalties for driving under suspension if the suspension was imposed for violating the financial responsibility law

The bill provides that if a person pleads guilty to or is convicted of DUS and the suspension was imposed for violating the state financial responsibility law, the offense is a minor misdemeanor on a first offense. On a third or subsequent offense within three years of such a first offense, the offense is a fourth degree misdemeanor.⁸⁹ The bill eliminates all other penalties that currently apply to the offense, including community service, filing proof of financial responsibility with the court, restitution, an additional driver's license suspension, and possible immobilization or forfeiture of the motor vehicle the offender was driving at the time of the DUS offense if the vehicle is registered in the name of the offender.⁹⁰

Community service in lieu of driver's license suspension

In the case of a number of offenses in which the operation of a motor vehicle is not one of the main elements of the offense but for which upon conviction one of the penalties the court is permitted or required to impose is the suspension of the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege, the bill provides that the court, in lieu of imposing the suspension, instead may require the offender to perform community service for a number of hours determined by the court. The affected offenses are as follows:

- (1) Soliciting;⁹¹
- (2) Theft of gasoline from a retail seller;⁹²
- (3) Conveyance of a deadly weapon or dangerous ordnance into a school safety zone;⁹³

⁸⁹ R.C. 4507.02(B)(1), 4510.11(A), and 4510.16(D)(1) and (2).

⁹⁰ R.C. 4503.233(A)(1), 4503.234(A) and (E), 4507.164(D), existing 4510.16(D) to (I), 4510.161(A) and (B), and 4510.41(A)(1), (B)(1), (C)(2)(a) and (b), and (D)(1) to (4).

⁹¹ R.C. 2907.24(D).

⁹² R.C. 2913.02(B)(9)(c).

⁹³ R.C. 2923.122(F)(2).

(4) Consumption of beer or intoxicating liquor in a motor vehicle by a person less than 18 years of age;⁹⁴

(5) Giving false information in order to purchase or otherwise obtain beer or intoxicating liquor by a person less than 21 years of age;⁹⁵

(6) Trafficking in cigarettes while using a motor vehicle.⁹⁶

Provisions relating to child support

Granting of limited driving privileges to a person whose driver's license is suspended for being in default or noncompliance under a child support order

The bill permits a court to grant limited driving privileges to a person whose driver's or commercial driver's license, temporary instruction permit, or motorcycle operator's license or endorsement is suspended by the Registrar of Motor Vehicles because the Registrar received a notice from a child support enforcement agency indicating that the person is in default or noncompliance under a child support order. Prior to granting the person such limited driving privileges, the court is required to request the child support enforcement agency that issued the notice to the Registrar to advise the court, either in person through a representative testifying at a hearing or through a written document, the position of the agency relative to the issue of the granting of limited driving privileges to the individual. The court, in determining whether to grant the individual such privileges, is required to take into consideration the position of the child support enforcement agency, but the court is not bound by the position of the agency.⁹⁷

Dismissal of a DUS charge when the suspension was imposed for not being in compliance with a child support order

Under the bill, in any case in which a person is charged with DUS and the person's driver's or commercial driver's license has been suspended for being in default or noncompliance under a child support order, the prosecuting attorney prosecuting the case is required to file a motion with the court dismissing the case against the person if, at any time, the prosecuting attorney becomes aware in any manner that the records of the Bureau of Motor Vehicles indicate that the Bureau received a notice from the proper child support enforcement agency informing the Bureau that the person is

⁹⁴ R.C. 4301.99(B).

⁹⁵ R.C. 4301.99(F)(3).

⁹⁶ R.C. 5743.99(G).

⁹⁷ R.C. 3123.58(B).

no longer out of compliance with a child support order and the date that the notice lists as being the date on which the person no longer was out of compliance with the child support order is not greater than 15 days after the date that the person was stopped and charged with the DUS violation.⁹⁸

In any case in which a law enforcement officer stops a motor vehicle being operated upon any highway or any private property used by the public for purposes of vehicular travel or parking in this state and the records of the Bureau indicate that the driver's or commercial driver's license of the person operating the vehicle has been suspended for being in default or noncompliance under a child support order, the law enforcement officer must issue to the operator a citation, ticket, or summons for the DUS violation. The law enforcement officer cannot arrest the operator solely for that violation. If the law enforcement officer issues the person such a citation, ticket, or summons, at the time the officer issues the citation, ticket, or summons the officer is required to inform the person that if, not later than 15 days after that date the person goes to the proper child support enforcement agency and makes payments or arrangements so that the operator is no longer out of compliance with the child support order, the citation, ticket, or summons will be dismissed.⁹⁹

Vehicle forfeiture for aggravated vehicular homicide

Under the bill, if an offender pleads guilty to or is convicted of driving under suspension and at the time of the offense the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended under the aggravated vehicular homicide sentencing provisions that apply when the offender also was guilty of committing a state or local OVI offense at the time of the aggravated vehicular homicide offense, the court, in addition to any other penalties it is required or authorized by law to impose upon the offender, must order the criminal forfeiture of the vehicle involved in the offense to the state if the vehicle is registered in the offender's name.¹⁰⁰

Payment of reinstatement fees in installments

The bill permits the Registrar of Motor Vehicles, with the approval of the Director of Public Safety and in accordance with the Administrative Procedure Act, to adopt rules that permit a person to pay reinstatement fees in installments in accordance with those rules. The rules may contain any of the following:

⁹⁸ R.C. 3123.582(A).

⁹⁹ R.C. 3123.582(B).

¹⁰⁰ R.C. 2903.06(B)(2)(d), not in the bill, 4503.234(A), and 4510.11(D)(2)(c)(ii).



(1) A schedule establishing a minimum monthly payment amount;

(2) A provision allowing the Registrar to record the person's driving privileges as "valid" so long as the person's installments are current if the person otherwise would have valid driving privileges;

(3) A provision allowing the Registrar to record the person's driving privileges as "suspended" or "failure to reinstate," as appropriate, if the person's installments are not current;

(4) Any other provision the Registrar reasonably may prescribe.¹⁰¹

These reinstatement fee payment provisions are in addition to provisions of existing law that allow a court to permit an offender to pay driver's license reinstatement fees in installments.¹⁰²

Financial responsibility provisions

Elimination of the driver's license suspension that is imposed for failing to respond to a filed accident report

The bill eliminates the requirement that the Registrar of Motor Vehicles suspend the driver's license of any person who is named in a motor vehicle accident report that alleges that the person was uninsured at the time of the accident and the person then fails to give to the Registrar acceptable proof of financial responsibility.¹⁰³

Limited driving privileges for a third or subsequent violation within a five-year period of the financial responsibility law

The bill permits a court to grant limited driving privileges to a person whose driver's or commercial driver's license, probationary license, temporary instruction permit, or nonresident operating privilege has been suspended for a third or subsequent time within a five-year period for violation of the state financial responsibility law. The privileges cannot take effect until after the first 30 days of the suspension have elapsed, pays all fees the person owes to the Registrar for violations of the law, and presents proof of financial responsibility.¹⁰⁴ Existing law does not permit a court to grant limited driving privileges to such offenders under any circumstances.

¹⁰¹ R.C. 4510.10(G)(1) to (4).

¹⁰² R.C. 4510.10(A) to (F) and (H).

¹⁰³ R.C. 4509.06(D).

¹⁰⁴ R.C. 4509.101(A)(2)(c).

Reduction in penalties for motor vehicle equipment violations

The bill establishes as a minor misdemeanor, in all circumstances, the following offenses:

(1) Driving or moving a vehicle or combination of vehicles that is in such an unsafe condition that it endangers any person;¹⁰⁵

(2) Operating on the public roads a vehicle that is registered in this state and does not conform to the statutory provisions or rules governing the height of bumpers;¹⁰⁶

(3) Certain specified motor vehicle equipment violations and all other motor vehicle equipment violations for which no penalty is otherwise provided.¹⁰⁷

Under current law, the offenses described in items (1) and (2) are a minor misdemeanor on a first violation and all subsequent violations are third degree misdemeanors.¹⁰⁸ For the offenses described in item (3), a first violation is a minor misdemeanor, a second violation within one year of the first violation is a fourth degree misdemeanor, and each subsequent violation within one year after the first violation is a third degree misdemeanor.

Bureau of Motor Vehicles amnesty study committee

The bill requires the Bureau of Motor Vehicles to conduct a study on the advisability and feasibility of establishing in this state a one-time amnesty program for the payment of fees and fines owed by persons who have pleaded guilty to or been convicted of motor vehicle traffic and equipment offenses or have had their driver's license, commercial driver's license, or temporary instruction permit suspended for any reason by this state. The bill permits the Bureau to confer with any public or private organization or entity that the Bureau determines could be of assistance to the Bureau in conducting the study. The Bureau is required to study all aspects of such a program, including its scope, duration, the amounts or percentages of fees or fines persons would be permitted to pay under the program, and which persons would be eligible to participate in the program. Not later than six months after the bill's effective date, the

¹⁰⁵ R.C. 4513.02(H).

¹⁰⁶ R.C. 4513.021(G).

¹⁰⁷ R.C. 4513.99(B).

¹⁰⁸ A third degree misdemeanor is punishable by a fine of not more than \$500, a jail term of not more than 60 days, or both.



Bureau must issue a report containing the results of the study and furnish copies of the report to the Governor, the Ohio Senate, and the Ohio House of Representatives.¹⁰⁹

HISTORY

ACTION	DATE
Introduced	04-24-12

H0524-I-129.docx/jc

¹⁰⁹ Section 3.





Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

S.B. 337

129th General Assembly
(As Introduced)

Sens. Seitz and Smith, Wagoner, Lehner

BILL SUMMARY

Order of limited relief

- Creates a process by which an individual who is subject to a "collateral sanction" (a penalty, disability, or disadvantage that is related to employment or occupational licensing as a result of the individual's conviction of or plea of guilty to an offense and that applies by operation of law in this state whether or not the penalty, disability, or disadvantage is included in the sentence or judgment) may obtain an order of limited relief from a court that will provide relief from certain bars on employment or occupational licensing.
- Permits an individual who is subject to collateral sanctions to file a petition with the designee of the Deputy Director of the Division of Parole and Community Services of the Department of Rehabilitation and Correction for a court order of limited relief.
- Requires the designee to notify the prosecutor's office that prosecuted the offense that resulted in the collateral sanction to review a petition for an order of limited relief, the individual's criminal history, all filings submitted by the prosecutor or by the victim in accordance with rules adopted by the Adult Parole Authority, and all other relevant evidence.
- Requires the designee to forward the petition to the sentencing court if the designee determines that the individual's petition for an order of limited relief should be considered by the sentencing court.
- Requires the designee to provide written notice to the individual if the designee decides not to forward the petition.

- Permits the Adult Parole Authority to adopt rules in accordance with the Administrative Procedure Act governing the designee's performance of the duties assigned to the designee.
- Requires the court that receives an individual's petition for an order of limited relief to review the petition and permits the court to issue an order of limited relief if the court finds that the individual has established by a preponderance of the evidence that granting the petition will materially assist the individual in obtaining employment, education, housing, public benefits, or occupational licensing, the individual has a substantial need for the relief requested in order to live a law-abiding life, and granting the petition will not pose an unreasonable risk to the safety of the public or any individual.
- Prohibits the sentencing court from issuing an order of limited relief from any of a list of certain specified collateral sanctions.
- Specifies that an order of limited relief lifts the automatic bar of a collateral sanction, and a "decision-maker" (defined in the bill) may consider on a case-by-case basis whether it is appropriate to grant or deny the issuance or restoration of an occupational license or an employment opportunity.
- Specifies that an order of limited relief does not grant relief from any of a list of certain specified impacts.
- Permits an order of limited relief to be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order of limited relief was issued if the person knew of the order at the time of the alleged negligence or other fault, in a judicial or administrative proceeding alleging negligence or other fault.
- Specifies that an order of limited relief is presumptively revoked if the individual to whom the order of limited relief was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the order of limited relief.

Sealing of criminal records

- As it relates to the procedure for the sealing of criminal records, replaces the term "first offender" with the term "eligible offenders" and defines the new term as anyone who has been convicted of an offense in this state or any other jurisdiction and who *has not more than one felony conviction and not more than one misdemeanor conviction* in this state or any other jurisdiction.



- Requires the probation officer or county department of probation that the court directs to make the required inquiries concerning an applicant for the sealing of a criminal record to contact the child support enforcement agency enforcing the applicant's obligations under a child support order to inquire about the offender's compliance with the child support order if the applicant was convicted of or pleaded guilty to a violation of nonsupport of dependents.
- Provides an exception to the current prohibition against sealing the records of an offender's conviction in cases in which the victim of the offense was under 18 years of age and the offense is a first degree misdemeanor or a felony violation of "nonsupport of dependents."

Pardons

- Requires the clerk of the court in whose office the case, conviction, and sentence related to a pardon are recorded to destroy all paper and electronic records of the case, conviction, and sentence upon presentation of proof that the conditions of a conditional pardon have been met.
- Specifies that an unconditional pardon relieves the person to whom it is granted of *the penalty, the guilt, and all civil and criminal* disabilities arising out of the conviction or convictions from which it is granted, and requires the clerk to destroy all paper and electronic records of the case, conviction, and sentence upon receipt of a warrant of unconditional pardon.

Drug paraphernalia

- Decreases the penalty for "illegal use or possession of drug paraphernalia" to a minor misdemeanor if the offender uses or possesses the drug paraphernalia with purpose to use it with marihuana.

Definition of "indigent"

- Defines "indigent" for use in Title 29 of the Revised Code (Ohio's Criminal Laws, generally) to mean, when used in connection with the payment of a fine, costs, or a fee, "unable to pay the fine, costs, or fee," and creates a rebuttable presumption that a person is indigent if the person has an income equal to or less than the income set forth in the federal poverty guidelines.

Ex-offender Reentry Coalition

- Adds a member to the Ex-offender Reentry Coalition who must be an ex-offender appointed by the Director of Rehabilitation and Correction.



Juvenile law

Juvenile court jurisdiction after adjudication

- Provides that if a juvenile court makes a disposition of a delinquent child or juvenile traffic offender after the child attains 21, the child may be held in places other than places solely for confinement of children.
- Specifies that the juvenile court has jurisdiction over any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person under certain specified circumstances unless the person is convicted of or pleads guilty to a felony in the adult court.

Places of detention

- Modifies the exceptions to the list of places that, generally, a child alleged to be or adjudicated a delinquent child or a juvenile traffic offender may be held.
- Creates a procedure whereby a prosecutor may petition the court to require any person whose case is transferred to adult court for criminal prosecution to be held under that disposition in places other than those generally considered to be for the placement of children, if the prosecutor, upon motion and after notice and a hearing, establishes by a preponderance of the evidence and makes written findings that the youth has done any of the following:
 - Injured or created an imminent danger to the life or health of another youth or staff member in the facility or program by violent behavior.
 - Escaped from the facility or program in which the youth is being held on more than one occasion.
 - Established a pattern of disruptive behavior as verified by a written record that the youth's behavior is not conducive to the established policies and procedures of the facility or program in which the youth is being held.
- Requires the court to consider certain specified factors when considering a motion as described above in the prior dot point.
- Permits a person whom a court has determined that a place other than those generally considered to be for the placement of children is the appropriate place for confinement of a person to petition the juvenile court for a review hearing 30 days after the initial confinement decision or 30 days after any subsequent review hearing.



- Requires a facility to advise the person of the person's right to request a review hearing as described above in the prior dot point, upon the admission of a person whose case has been transferred to adult court for criminal prosecution to a place other than those generally considered to be for the placement of children.

Jail time and prison time credits – transfer from juvenile facility

- Requires the jailer in charge of a jail or the Department of Rehabilitation and Correction to additionally reduce the sentence or stated prison term of a person sentenced to the jail or to prison by the number of days the person was confined in a juvenile facility.

Sealing of juvenile records – sexual battery and gross sexual imposition

- Removes sexual battery and gross sexual imposition from the list of offenses for which juvenile records may not be sealed.

Sealing of juvenile records – application process

- Permits a motion or application for the sealing of juvenile records to be made at any time after each of certain specified actions occurs, including the date the court enters an order after a hearing or a petition upon the classification of a child as a juvenile offender registrant under the Sex Offender Registration and Notification Law that contains a determination that the child is no longer a juvenile offender registrant.
- Prohibits the court from charging a fee for the filing of an application for the sealing of juvenile records.

Sealing of juvenile records – determination procedures

- Adds an additional factor to the factors that the court must consider in determining whether the person has been rehabilitated to a satisfactory degree for the purposes of sealing juvenile records: the granting of a new tier classification or declassification from the Juvenile Offender Registry under the Sex Offender Registration and Notification Law, except for public registry-qualified juvenile offender registrants.

Confidentiality of juvenile records – criminal records checks

- Specifies that any criminal records check conducted by the Superintendent of the Bureau of Criminal Identification and Investigation for any reason prescribed by the Revised Code may not include any proceeding in criminal court against a person under 18 years of age or any criminal conviction of a person under 18 years of age if the proceeding or case was transferred back to the juvenile court.



Confidentiality of juvenile records – Public Records Law

- Specifies that records pertaining to a case or proceeding in which a person was or is alleged to be or adjudicated an unruly or delinquent child or a juvenile traffic offender are not to be considered a "public record" under the Public Records Law.

Prohibitions of licensing preclusions

- In general, requires the Ohio Optical Dispensers Board, the Registrar of Motor Vehicles (with regard to motor vehicle salvage dealers, motor vehicle auctions, and salvage motor vehicle pools), the Construction Industry Licensing Board, the Casino Control Commission, the Hearing Aid Dealers and Fitters Licensing Board, and the Director of Public Safety (with regard to private investigators and security guards) to prohibit the preclusion of individuals from obtaining or renewing licenses, certifications, or permits the entity issues due to any past criminal history of the individual unless the individual had committed a crime of moral turpitude or a disqualifying offense.
- Defines "moral turpitude" and "disqualifying offense" for purposes of the provisions.

State Board of Cosmetology license denial and ex-offender assistance

- Requires the State Board of Cosmetology to assist ex-offenders and military veterans who hold licenses to find employment.
- Prohibits the State Board of Cosmetology from denying a license based on prior incarceration or conviction for a crime.

Child support determination

- Prohibits a court or child support enforcement agency (CSEA) from determining that an incarcerated or institutionalized parent is voluntarily unemployed or underemployed for the purposes of imputing income when calculating child support.
- Permits a court or CSEA to disregard a parent's additional income from overtime or additional employment in limited circumstances such as when the income was generated primarily to support a new or additional family member.
- Requires a court or CSEA to collect information about preexisting child support orders for other children of the same parents when calculating a child support order to ensure that the total of all orders for the children of both parents does not exceed the amount that would have been ordered in a single order.



Driving under suspension, driver's license suspensions, limited driving privileges, payment of reinstatement fees, and motor vehicle equipment violations

- Reduces the penalties for driving under suspension (DUS) if the suspension was imposed as a penalty for one of a number of specified offenses in which the operation of a motor vehicle is not one of the main elements of the offense or for violating the state financial responsibility law (also applies in limited circumstances to a comparable municipal offense).
- Provides that a court, in lieu of imposing a driver's license suspension upon a person who commits one of a number of specified offenses in which the operation of a motor vehicle is not one of the main elements of the offense but for which upon conviction one of the penalties the court is permitted or required to impose is the suspension of the person's driver's license, instead may require the offender to perform community service for a number of hours determined by the court.
- Permits a court to grant limited driving privileges to a person whose driver's license is suspended because the person is in default or noncompliance under a child support order.
- Provides that in any case in which a person's driver's license has been suspended for being in default or noncompliance under a child support order, the prosecuting attorney prosecuting the case must file a motion requesting dismissal of the case if the prosecuting attorney becomes aware that the records of the Bureau of Motor Vehicles indicate that the person is no longer in default or out of compliance with the child support order and the date on which the person no longer was in default or out of compliance is not greater than 15 days after the date that the person was stopped and charged with the DUS violation.
- Requires a court, in a case in which a person is convicted of DUS and at the time of the offense the person's driver's license was suspended under the aggravated vehicular homicide sentencing provisions that apply when the offender also was guilty of committing a state or local OVI offense at the time of the aggravated vehicular homicide offense, to order the criminal forfeiture of the vehicle involved in the offense if the vehicle is registered in the offender's name.
- Permits the Registrar of Motor Vehicles, with the approval of the Director of Public Safety, to adopt rules that permit a person to pay reinstatement fees in installments.
- Eliminates the requirement that the Registrar suspend the driver's license of any person who is named in a motor vehicle accident report that alleges that the person



was uninsured at the time of the accident and the person then fails to give to the Registrar acceptable proof of financial responsibility.

- Permits a court to grant limited driving privileges to a person whose driver's license has been suspended for a third or subsequent time within a five-year period for violation of the state financial responsibility law, but provides that the privileges cannot take effect until after the first 30 days of the suspension have elapsed.
- Establishes as a minor misdemeanor in all circumstances most motor vehicle equipment violations.
- Requires the Bureau to conduct a study on the advisability and feasibility of establishing in this state a one-time amnesty program for the payment of fees and fines owed by persons who have been convicted of motor vehicle traffic and equipment offenses or have had their driver's license, commercial driver's license, or temporary instruction permit suspended for any reason, and to issue a report on the study.

TABLE OF CONTENTS

Order of limited relief from collateral sanctions.....	9
Filing of petition for order of limited relief with designee	10
Court review of petition for order of limited relief.....	11
In general	11
Restrictions	12
Effects of order of limited relief	13
Order of limited relief – definitions	14
Sealing of criminal records.....	14
Offenders eligible to have records sealed	14
Pardons and commutations.....	15
Conditional pardons and commutations	15
Unconditional pardons.....	16
Pardons – definitions.....	17
Drug paraphernalia	17
Definition of "indigent"	18
Ex-offender Reentry Coalition	18
Juvenile law	19
Juvenile court jurisdiction after adjudication	19
Places of detention in general	20
Juveniles detained in places other than those solely for confinement of children.....	22
In general; motion and proof.....	22
Hearing	23
Review hearing	24
Placement	24
Jail time and prison time credits – transfer from juvenile facility.....	24
Sealing of juvenile records – sexual battery and gross sexual imposition	25
Sealing of juvenile records – application process	25
Existing law	25



Operation of the bill	25
Sealing of juvenile records – determination procedures	26
Confidentiality of juvenile records – criminal records checks	27
Confidentiality of juvenile records – Public Records Law	27
Juvenile law – definitions.....	27
Prohibitions of licensing preclusions.....	28
Ohio Optical Dispensers Board	30
Registrar of Motor Vehicles – motor vehicle salvage dealers, salvage motor vehicle auctions, salvage motor vehicle pools	31
Ohio Construction Industry Licensing Board.....	31
Casino Control Commission	32
Hearing Aid Dealers and Fitters Licensing Board	32
Director of Public Safety – private investigators and security guard provider.....	33
State Board of Cosmetology license denial and ex-offender assistance.....	34
Child support determination	34
Income calculation when a parent is incarcerated	34
Discretionary disregard of additional income and multiple orders	35
Reduction of the penalties imposed for certain driving under suspension violations.....	36
Reduction in penalties for driving under suspension if the suspension was imposed for violating the financial responsibility law or for nonpayment of a judgment under that law	37
Community service in lieu of driver's license suspension	37
Provisions relating to child support.....	38
Granting of limited driving privileges to a person whose driver's license is suspended for being in default or noncompliance under a child support order	38
Dismissal of a DUS charge when the suspension was imposed for not being in compliance with a child support order.....	39
Vehicle forfeiture for aggravated vehicular homicide	40
Payment of reinstatement fees in installments	40
Financial responsibility provisions	41
Elimination of the driver's license suspension that is imposed for failing to respond to a filed accident report.....	41
Limited driving privileges for a third or subsequent violation within a five-year period of the financial responsibility law	41
Reduction in penalties for motor vehicle equipment violations.....	41
Bureau of Motor Vehicles amnesty study committee	42

CONTENT AND OPERATION

Order of limited relief from collateral sanctions

The bill creates a process by which an individual who is subject to a "collateral sanction" may obtain from a court an order of limited relief that will provide relief from certain bars on employment or occupational licensing (existing law contains a mechanism, enacted in Am. Sub. H.B. 86 of the 129th General Assembly and located in R.C. 2961.21 to 2961.24, that provides for the issuance in specified circumstances of certificates of achievement and employability to persons serving or released from a prison term; the bill's provision appears to overlap in some regards the existing mechanism). The bill defines a "collateral sanction" as a penalty, disability, or disadvantage that is related to employment or occupational licensing, however



denominated, as a result of the individual's conviction of or plea of guilty to an offense (see "**Order of limited relief – definitions**," below) and that applies by operation of law in this state whether or not the penalty, disability, or disadvantage is included in the sentence or judgment imposed. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.¹

Filing of petition for order of limited relief with designee

Under the bill, an individual who is subject to collateral sanctions as a result of being convicted of or pleading guilty to an offense may file a petition with the designee (see "**Order of limited relief – definitions**," below) of the Deputy Director of the Division of Parole and Community Services of the Department of Rehabilitation and Correction for a court order of limited relief. The individual may file a petition for an order of limited relief at any time after the individual completes a period of confinement in a state or local correctional facility.²

Upon receiving a petition for an order of limited relief, the designee must notify the prosecutor's office that prosecuted the offense that resulted in the imposition of the collateral sanction from which the individual seeks relief. The designee must review the individual's petition for an order of limited relief, the individual's criminal history, all filings submitted by the prosecutor or by the victim in accordance with rules adopted by the Adult Parole Authority, and all other relevant evidence. The designee may order any test, report, investigation, or disclosure by the individual that the designee believes is necessary for the designee to reach a decision on whether to forward the individual's petition for an order of limited relief to the court that sentenced the individual for the offense that resulted in the imposition of collateral sanctions on the individual.³

If the designee determines that the individual's petition for an order of limited relief should be considered by the sentencing court, the designee must forward the petition to the sentencing court. The designee must make all filings, evidence, reports, investigations, disclosures, and test results that the designee obtained as described in the prior paragraph available to the sentencing court. The designee's forwarding of, or

¹ R.C. 2953.25(A).

² R.C. 2953.25(B)(1).

³ R.C. 2953.25(B)(2) and (3)(a).

failure to forward, an individual's petition for an order of limited relief does not give rise to a claim for damages against the Department of Rehabilitation and Correction.⁴

If the designee declines to forward the individual's petition for an order of limited relief to the sentencing court, the designee must provide written notice to the individual of the designee's decision not to forward the petition. The designee may place conditions on the individual regulating the individual's filing of any subsequent petition for an order of limited relief. The written notice must notify the individual of any conditions placed on the individual's filing of a new petition for an order of limited relief.⁵

The Adult Parole Authority may adopt rules in accordance with the Administrative Procedure Act governing the designee's performance of the duties assigned to the designee.⁶

Court review of petition for order of limited relief

In general

The court that receives an individual's petition for an order of limited relief from the designee must review the individual's petition and may issue an order of limited relief (subject to the conditions described below in "**Restrictions**") at the court's discretion if the court finds that the individual has established all of the following by a preponderance of the evidence:⁷

(1) Granting the petition will materially assist the individual in obtaining employment, education, housing, public benefits, or occupational licensing.

(2) The individual has a substantial need for the relief requested in order to live a law-abiding life.

(3) Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

⁴ R.C. 2953.25(B)(3)(b) and (I).

⁵ R.C. 2953.25(B)(3)(c).

⁶ R.C. 2953.25(F).

⁷ R.C. 2953.25(C)(1) and (2).



Restrictions

The sentencing court may not issue an order of limited relief from any of the following collateral sanctions:⁸

(1) Requirements imposed by the Sex Offender Registration and Notification Law (R.C. Chapter 2950.) and rules adopted under that Law with respect to the State Registry of Sex Offenders and with respect to the conformity of Ohio sex registration laws to federal laws;

(2) A driver's license, commercial driver's license, or probationary license suspension, cancellation, or revocation due to exceeding the point limit under certain specified conditions, due to a violation of a municipal ordinance substantially equivalent to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, soliciting, or an OVI offense, OVI, or underage OVI, due to an OVI conviction, or under the Vehicle Implied Consent Law if the relief sought otherwise is available;

(3) Restrictions on employment as a prosecutor or law enforcement officer;

(4) The denial, ineligibility, or automatic suspension of a license that is imposed upon an individual applying for or holding a license as a health care professional if the individual is convicted of, pleads guilty to, is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state, or is subject to treatment or intervention in lieu of conviction for aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, aggravated burglary, or unlawful distribution of an abortion-inducing drug;

(5) The immediate suspension of a license, certificate, or evidence of registration that is imposed upon an individual holding a license as a health care professional if the board under which the individual has been issued a license, certificate, or evidence of registration determines that there is clear and convincing evidence that continuation of the individual's professional practice or method of prescribing or personally furnishing controlled substances presents a danger of immediate and serious harm to others;

(6) The denial or ineligibility for employment in a pain clinic;

(7) The mandatory suspension of a license that is imposed on an individual applying for or holding a license as a health care professional pursuant to the individual's default on a child support order.

⁸ R.C. 2953.25(C)(3).

Effects of order of limited relief

An order of limited relief lifts the automatic bar of a collateral sanction, and a decision-maker (see "**Order of limited relief – definitions**," below) may consider on a case-by-case basis whether it is appropriate to grant or deny the issuance or restoration of an occupational license or an employment opportunity.⁹

An order of limited relief does not grant the individual to whom the order was issued relief from the mandatory civil impacts identified in R.C. 2961.01(A)(1) (a person who pleads guilty to a felony and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing a felony, unless the plea, verdict, or finding is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit) or 2961.02(B) (any person who pleads guilty to one of a set of specified disqualifying offenses and whose plea is accepted by the court or any person against whom a verdict or finding of guilt for committing the disqualifying offense is returned is incompetent to hold a public office or position of public employment or to serve as a volunteer, if holding the public office or position of public employment or serving as the volunteer involves substantial management or control over the property of a state agency, political subdivision, or private entity) at any time during the individual's term of supervision.¹⁰

In a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order of limited relief was issued if the person knew of the order at the time of the alleged negligence or other fault. In any proceeding on a claim against an employer for negligent hiring, an order of limited relief provides immunity for the employer as to the claim if the employer knew of the order at the time of the alleged negligence.¹¹

An order of limited relief is presumptively revoked if the individual to whom the order of limited relief was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the order of limited relief.¹²

⁹ R.C. 2953.25(D).

¹⁰ R.C. 2953.25(E).

¹¹ R.C. 2953.25(G).

¹² R.C. 2953.25(H).



Order of limited relief – definitions

As used in the provisions described above in "**Order of limited relief**":

"Offense" means any felony or misdemeanor under the laws of this state.¹³

"Designee" means the person designated by the Deputy Director of the Division of Parole and Community Services of the Department of Rehabilitation and Correction to perform the duties described above under "**Order of limited relief**."¹⁴

"Decision-maker" includes, but is not limited to, the state acting through a department, agency, board, commission, or instrumentality established by the law of this state for the exercise of any function of government, a political subdivision, an educational institution, or a government contractor or subcontractor made subject to this section by contract, law, or ordinance.¹⁵

As used in the definition of "Decision-maker" above, "political subdivision" means a county, township, city, or village; the office of an elected officer of a county, township, city, or village; or a department, board, office, commission, agency, institution, or other instrumentality of a county, township, city, or village.¹⁶

Sealing of criminal records

Offenders eligible to have records sealed

Under existing law, a "first offender" may apply for the sealing of the conviction record 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. "First offender" is currently defined as anyone who has been convicted of an offense in this state or any other jurisdiction and who *previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction*. Convictions of certain specified offenses, and related convictions in specified circumstances, do not count as a previous or subsequent conviction. The bill replaces the term "first offender" with "eligible offender," which is defined as anyone who has been convicted of an offense in this state or any other jurisdiction and who *has not more than one felony conviction and not more than one misdemeanor conviction* in this state or any other jurisdiction. Similar to existing law,

¹³ R.C. 2953.25(A)(4).

¹⁴ R.C. 2953.25(A)(3).

¹⁵ R.C. 2953.25(A)(2).

¹⁶ R.C. 2953.25(A)(5), by reference to R.C. 2969.21(F), which is not in the bill.



convictions of certain specified offenses, and related convictions in specified circumstances, do not count as a conviction under the bill.¹⁷

Existing law, unchanged by the bill, provides for a hearing upon the filing of an application to have a conviction sealed, and the prosecutor for the case must be notified of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing that specifies the reasons for believing a denial of the application is justified. The court must 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.¹⁸

Under the bill, if the applicant was convicted of or pleaded guilty to a violation of nonsupport of dependents (abandoning, or failing to provide support as established by a court order to, another person whom, by court order or decree, the offender is legally obligated to support), the probation officer or county department of probation that the court directed to make inquiries concerning the applicant as described in the previous paragraph must 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.

The bill provides an exception for the offense of "nonsupport of dependents" to the current prohibition against sealing the record of an offender's conviction in a case in which the victim of the offense was under 18 years of age and the offense is a first degree misdemeanor or a felony.¹⁹

Pardons and commutations

Conditional pardons and commutations

Under existing law, a pardon or commutation (see "**Pardons – definitions**," below) may be granted upon *such* conditions precedent or subsequent as the Governor may impose, *which* conditions must be stated in the warrant. A pardon or commutation may not take effect until the conditions so imposed are accepted by the convict or prisoner so pardoned or having *his* sentence commuted, and *his* acceptance is indorsed upon the warrant, signed by *him*, and attested by one witness. Such witness must go before the clerk of the *court of common pleas* in whose office the *sentence* is recorded and

¹⁷ R.C. 2953.31(A), with corresponding changes at R.C. 2953.32(A)(1), (B), and (C) and 2953.34.

¹⁸ R.C. 2953.32(B).

¹⁹ R.C. 2953.36(F).

prove the signature of the convict, and the clerk must thereupon record the warrant, indorsement, and proof in the journal of the court, which record, or a duly certified transcript thereof, must be evidence of such pardon or commutation, the conditions thereof, and the acceptance of the conditions.²⁰

Under the bill, a pardon or commutation may be granted upon *any* conditions precedent or subsequent that the Governor may impose, *and the* conditions must be stated in the warrant. A pardon or commutation may not take effect until the conditions so imposed are accepted by the convict or prisoner so pardoned or having a sentence commuted, and *the convict's or prisoner's* acceptance is indorsed upon the warrant, signed by *the prisoner or convict*, and attested by one witness. The witness must go before the clerk of the *court* in whose office the *case, conviction, and sentence* are recorded and prove the signature of the convict, and the clerk must thereupon record the warrant, indorsement, and proof in the journal of the court, which record, or a duly certified transcript thereof, must be evidence of such pardon or commutation, the conditions thereof, and the acceptance of the conditions.²¹

Additionally, under the bill, upon presentation of proof that the conditions of a conditional pardon have been met, the clerk of the court in whose office the case, conviction, and sentence related to that pardon are recorded must destroy all paper and electronic records of the case, conviction, and sentence. The clerk must then notify all prosecution agencies and law enforcement agencies that had a part in the convict's charge, arrest, and any incarceration and the Bureau of Criminal Identification and Investigation of the pardon. Upon receipt of the notification, the prosecution agencies and law enforcement agencies and the Bureau must destroy all paper and electronic records of the case, conviction, and sentence.²²

Unconditional pardons

Under existing law, an unconditional pardon relieves the person to whom it is granted of all disabilities arising out of the conviction or convictions from which it is granted. "Unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.²³

Under the bill, an unconditional pardon relieves the person to whom it is granted *of the penalty, the guilt, and all civil and criminal* disabilities arising out of the conviction

²⁰ R.C. 2967.04(A).

²¹ R.C. 2967.04(A), with conforming changes made in R.C. 2967.06.

²² R.C. 2967.04(A).

²³ R.C. 2967.04(B).

or convictions from which it is granted. Additionally, upon receipt of a warrant of unconditional pardon, the clerk of court in whose office the case, conviction, and sentence are recorded must record the warrant and destroy all paper and electronic records of the charge or charges and conviction or convictions. The clerk must then notify all prosecution agencies and law enforcement agencies that had a part in the convict's charge, arrest, and incarceration and the Bureau of Criminal Identification and Investigation of the pardon. Upon receipt of the notification, the prosecution agencies and law enforcement agencies and the Bureau must destroy all paper and electronic records of the case, conviction, and sentence.²⁴

Pardons – definitions

Under existing law, "*pardon*" means the remission of penalty by the Governor in accordance with the power vested in the Governor by the Constitution. Under the bill, "*pardon*" means the remission of penalty, *guilt, and all criminal and civil disabilities* by the Governor in accordance with the power vested in the Governor by the Constitution.²⁵

Existing law, unchanged by the bill, defines "*commutation*" or "*commutation of sentence*" as the substitution by the Governor of a lesser for a greater punishment.²⁶

Drug paraphernalia

Existing law prohibits any person from knowingly using, or possessing with purpose to use, drug paraphernalia. A violation of this prohibition is "illegal use or possession of drug paraphernalia," a fourth degree misdemeanor.²⁷

The bill decreases the penalty for "illegal use or possession of drug paraphernalia" to a minor misdemeanor if the offender uses or possesses with purpose to use the drug paraphernalia with marihuana.²⁸

Existing law, unchanged by the bill, defines "drug paraphernalia" as any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing,

²⁴ R.C. 2967.04(B)

²⁵ R.C. 2967.01(B).

²⁶ R.C. 2967.01(C).

²⁷ R.C. 2925.14(C)(1).

²⁸ R.C. 2925.14(F)(1).

injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of Ohio's Drug Law. Existing law, unchanged by the bill, provides numerous examples of drug paraphernalia.²⁹

Definition of "indigent"

The bill defines "indigent" for use in Title 29 of the Revised Code (Ohio's Criminal Laws, generally). Under the bill, "indigent," when used in connection with the payment of a fine, costs, or a fee, means unable to pay the fine, costs, or fee. There is a rebuttable presumption that a person is indigent if the person has an income that is equal to or less than the income set forth in the federal poverty guidelines as revised annually by the United States Department of Health and Human Services in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, for a family size equal to the size of the family of the person whose income is being determined.³⁰

Thirty-six Revised Code sections in Title 29 use the term "indigent." Most of those sections include provisions that pertain to a fine, cost, or fee.

Ex-offender Reentry Coalition

Existing law provides for an Ex-offender Reentry Coalition to identify and examine social service barriers and other obstacles to the reentry of ex-offenders into the community. Currently the Coalition consists of the following 17 members:³¹

- (1) The Director of Rehabilitation and Correction;
- (2) The Director of Aging;
- (3) The Director of Alcohol and Drug Addiction Services;
- (4) The Director of Development;
- (5) The Superintendent of Public Instruction;
- (6) The Director of Health;
- (7) The Director of Job and Family Services;

²⁹ R.C. 2925.14(A).

³⁰ R.C. 2901.01(C)(5).

³¹ R.C. 5120.07(A).



- (8) The Director of Mental Health;
- (9) The Director of Developmental Disabilities;
- (10) The Director of Public Safety;
- (11) The Director of Youth Services;
- (12) The Chancellor of the Ohio Board of Regents;
- (13) A representative or member of the Governor's staff;
- (14) The Director of the Rehabilitation Services Commission;
- (15) The Director of the Department of Commerce;
- (16) The executive director of a health care licensing board created under Title 47 of the Revised Code, as appointed by the chairperson of the Coalition;
- (17) The Director of Veterans Services.

The bill adds an additional member to the Ex-offender Reentry Coalition. The new member must be an ex-offender appointed by the Director of Rehabilitation and Correction.³²

Juvenile law

Juvenile court jurisdiction after adjudication

Under existing law, a juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining 18 years of age until the person attains 21 years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided below, a person who is so adjudicated a delinquent child or juvenile traffic offender is deemed a "child" until the person attains 21 years of age. If a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under R.C. Chapter 2152., at any time after the person attains *18 years of age*, the places at which the person may be held under that disposition are not limited to places authorized under R.C. Chapter 2152. solely for confinement of children, and the person

³² R.C. 5120.07(A)(18).



may be confined under that disposition in places other than those authorized solely for confinement of children.³³

Under the bill, if a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under R.C. Chapter 2152., at any time after the person attains *21 years of age*, the places at which the person may be held under that disposition are not limited to places authorized under R.C. Chapter 2152. solely for confinement of children, and the person may be confined under that disposition under division (F)(2) of R.C. 2152.26 (see "**Places of detention**," below) in places other than those authorized solely for confinement of children.³⁴

Additionally, the bill specifies that the juvenile court has jurisdiction over any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4) (see "**Juveniles detained in places other than those solely for confinement of children**," below) unless the person is convicted of or pleads guilty to a felony in the adult court.³⁵

Places of detention in general

Existing law provides that, subject to several specified exceptions, a child alleged to be or adjudicated a delinquent child or a juvenile traffic offender may be held only in the following places:³⁶

- (1) A certified foster home or a home approved by the court;
- (2) A facility operated by a certified child welfare agency;
- (3) Any other suitable place designated by the court.

The bill modifies the exceptions to the list of places described above in the following ways (the bill's changes are in italics):

(1) In addition to the places listed above, a child alleged to be or adjudicated a delinquent child *or any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4)* (see "**Juveniles detained in places other than those solely for confinement of children**," below) may be held in a detention facility for delinquent children that is under the direction or supervision

³³ R.C. 2152.02(C)(6).

³⁴ R.C. 2152.02(C)(6).

³⁵ R.C. 2152.02(C)(7) and conforming change in R.C. 2152.02(C)(4).

³⁶ R.C. 2152.26(A).

of the court or other public authority or of a private agency and approved by the court and a child adjudicated a delinquent child may be held in accordance with R.C. 2152.26(F)(2) (places other than those specified in the prior paragraph, including a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of a crime, under arrest, or charged with crime is held).³⁷

(2) Except as provided below or in R.C. 2151.311 (juvenile court procedures for taking child into custody), R.C. 5139.06(C)(2) and 5120.162 (transfers to correctional medical centers), or R.C. 5120.16(B) (separate housing units in state correctional institutions), a child who is alleged to be or adjudicated a delinquent child *or any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4)* (see "**Juveniles detained in places other than those solely for confinement of children**," below) may not be held in a state correctional institution, county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.³⁸

(3) Unless the detention is pursuant to a situation described below or in R.C. 2151.311 (juvenile court procedures for taking child into custody), R.C. 5139.06(C)(2) and 5120.162 (transfers to correctional medical centers), or R.C. 5120.16(B) (separate housing units in state correctional institutions), the official in charge of the institution, jail, workhouse, or other facility must inform the court immediately when a child, who is or appears to be under the age of 21 years (18 years under existing law), is received at the facility, and must deliver the child to the court upon request or transfer the child to a detention facility designated by the court.³⁹

(4) If a case is transferred to adult court for criminal prosecution *and the alleged offender is a person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4)* (see "**Juveniles detained in places other than those solely for confinement of children**," below), the *person* may not be transferred for detention pending the criminal prosecution in a jail or other facility *except under the circumstances described in R.C. 2152.26(F)(4)*. Any child held *in accordance with the second subsequent paragraph* must be confined in a manner that keeps the child beyond the *sight and sound* of all adult detainees. The child must be supervised at all times during the detention.⁴⁰

³⁷ R.C. 2152.26(B).

³⁸ R.C. 2152.26(D).

³⁹ R.C. 2152.26(E).

⁴⁰ R.C. 2152.26(F)(1).

(5) If a person is adjudicated a delinquent child or juvenile traffic offender or is a person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4) (see "**Juveniles detained in places other than those solely for confinement of children,**" below) and the court makes a disposition of the person under this Chapter 2152. of the Revised Code, at any time after the person attains 21 years of age, the person may be held under that disposition or under the circumstances described in R.C. 2152.26(F)(4) in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.⁴¹

(6) A person alleged to be a delinquent child may be held in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail, if the delinquent act that the child allegedly committed would be a felony if committed by an adult, and if either of the following applies:⁴²

(a) The person attains 21 years of age (18 years of age under existing law) before the person is arrested or apprehended for that act.

(b) The person is arrested or apprehended for that act before the person attains 21 years of age (18 years of age under existing law), but the person attains 21 years of age (18 years of age under existing law) before the court orders a disposition in the case.

Juveniles detained in places other than those solely for confinement of children

In general; motion and proof

Under the bill, any person whose case is transferred to adult court for criminal prosecution may be held under that disposition in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail or workhouse, or other place where an adult under arrest or charged with crime is held if the juvenile court, upon motion by the prosecutor and after notice and hearing, establishes by a preponderance of the evidence and makes written findings that the youth has done any of the following:⁴³

(1) Injured or created an imminent danger to the life or health of another youth or staff member in the facility or program by violent behavior;

⁴¹ R.C. 2152.26(F)(2).

⁴² R.C. 2152.26(F)(3)(a).

⁴³ R.C. 2152.26(F)(4)(a).

(2) Escaped from the facility or program in which the youth is being held on more than one occasion;

(3) Established a pattern of disruptive behavior as verified by a written record that the youth's behavior is not conducive to the established policies and procedures of the facility or program in which the youth is being held.

Hearing

If the prosecutor submits a motion requesting that the person be held in a place other than those generally considered to be for the placement of children, the juvenile court must hold a hearing within five days of the filing of the motion, and, in determining whether a place other than those generally considered to be for the placement of children is the appropriate place of confinement for the person, the court must consider the following factors:⁴⁴

(1) The age of the person;

(2) Whether the person would be deprived of contact with other people for a significant portion of the day or would not have access to recreational facilities or age-appropriate educational opportunities in order to provide physical separation from adults;

(3) The person's current emotional state, intelligence, and developmental maturity, including any emotional and psychological trauma, and the risk to the person in an adult facility, which may be evidenced by mental health or psychological assessments or screenings made available to the prosecuting attorney and the defense counsel;

(4) Whether detention in a juvenile facility would adequately serve the need for community protection pending the outcome of the criminal proceeding;

(5) The relative ability of the available adult and juvenile detention facilities to meet the needs of the person, including the person's need for age-appropriate mental health and educational services delivered by individuals specifically trained to deal with youth;

(6) Whether the person presents an imminent risk of self-inflicted harm or an imminent risk of harm to others within a juvenile facility;

(7) Any other factors the juvenile court considers to be relevant.

⁴⁴ R.C. 2152.26(F)(4)(b).



Review hearing

If the juvenile court determines that a place other than those generally considered to be for the placement of children is the appropriate place for confinement of a person, the person may petition the juvenile court for a review hearing 30 days after the initial confinement decision or 30 days after any subsequent review hearing. Upon receipt of the petition, the juvenile court has discretion over whether to conduct the review hearing and may set the matter for a review hearing if the youth has alleged facts or circumstances that, if true, would warrant reconsideration of the youth's placement in a place other than those generally considered to be for the placement of children based on the factors listed in the preceding paragraph.⁴⁵

Placement

Upon the admission of a person whose case has been transferred to adult court for criminal prosecution to a place other than those generally considered to be for the placement of children, the facility must advise the person of the person's right to request a review hearing as described above. Additionally, any person transferred as such to a place other than those generally considered to be for the placement of children must be confined in a manner that keeps the person beyond sight and sound of all adult detainees. The person must be supervised at all times during the detention.⁴⁶

Jail time and prison time credits – transfer from juvenile facility

Existing law requires the jailer in charge of a jail to which a person is sentenced for a felony or misdemeanor or the Department of Rehabilitation and Correction when a person is sentenced to prison to reduce the sentence or stated prison term of the person, as applicable, by the total number of days the person was confined for any reason arising out of the offense for which the person was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the person's competence to stand trial or to determine sanity, and confinement while awaiting transportation to the place where the person is to serve the person's sentence or prison term. The bill additionally requires the jailer in charge of a jail or the Department of Rehabilitation and Correction to reduce the person's sentence or stated prison term by the number of days the person was confined in a juvenile facility.⁴⁷

⁴⁵ R.C. 2152.26(F)(4)(c).

⁴⁶ R.C. 2152.26(F)(4)(d) and (e).

⁴⁷ R.C. 2949.08(C)(1) and 2967.191.



Sealing of juvenile records – sexual battery and gross sexual imposition

Existing law sets forth a procedure for the sealing of the records of a case in which a person was adjudicated a delinquent child, but it prohibits the sealing of the records if the adjudication is for committing aggravated murder, murder, rape, sexual battery, or gross sexual imposition. The bill removes sexual battery and gross sexual imposition from the list of offenses for which the records may not be sealed.⁴⁸

Sealing of juvenile records – application process

Existing law

Under the existing record-sealing mechanism, the juvenile court must consider the sealing of records pertaining to a juvenile upon the court's own motion or upon the application of a person adjudicated a delinquent child for committing an act other than a violation described above in "**Sealing of juvenile records – sexual battery and gross sexual imposition**," an unruly child, or a juvenile traffic offender and if, at the time of the motion or application, the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child. The motion or application may be made at any time after *two years after the later of* the following:⁴⁹

- (1) The termination of any order made by the court in relation to the adjudication;
- (2) The unconditional discharge of the person from the Department of Youth Services with respect to a dispositional order made in relation to the adjudication or from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication.

Operation of the bill

Under the bill, the motion or application may be made at any time after *each of* the following *that applies*:

- (1) The termination of any order made by the court in relation to the adjudication;
- (2) The unconditional discharge of the person from the Department of Youth Services with respect to a dispositional order made in relation to the adjudication or

⁴⁸ R.C. 2151.356(A), with corresponding changes at divisions (C)(1) and (D)(2).

⁴⁹ R.C. 2151.356(C)(1).



from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication.

(3) *The court enters an order after a hearing or a petition upon the classification of a child as a juvenile offender registrant (see "Juvenile law – definitions," below) under the Sex Offender Registration and Notification Law that contains a determination that the child is no longer a juvenile offender registrant.*

Additionally, the bill specifies that the court may not require a fee for the filing of an application as described above.⁵⁰

Sealing of juvenile records – determination procedures

During the process of the juvenile court's consideration of whether to seal the records pertaining to a juvenile, the prosecuting attorney may file a response with the court within 30 days of receiving notice of the sealing proceedings, and the court must conduct a hearing on the motion or application within 30 days after the court receives any response from the prosecuting attorney.⁵¹ After conducting the hearing or after due consideration when a hearing is not conducted (in cases where the prosecuting attorney does not file a response), the court may order the records of the person that are the subject of the motion or application to be sealed if it finds that the person has been rehabilitated to a satisfactory degree. In determining whether the person has been rehabilitated to a satisfactory degree, the court may consider all of the following.⁵²

- (1) The age of the person;
- (2) The nature of the case;
- (3) The cessation or continuation of delinquent, unruly, or criminal behavior;
- (4) The education and employment history of the person;
- (5) Any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.

The bill adds one additional factor for the court to consider: the granting of a new tier classification or declassification from the Juvenile Offender Registry under the

⁵⁰ R.C. 2151.356(C)(1).

⁵¹ R.C. 2151.356(C)(2)(d).

⁵² R.C. 2151.356(C)(2)(e).



Sex Offender Registration and Notification Law, except for public registry-qualified juvenile offender registrants (see "**Juvenile law – definitions**, below).⁵³

The bill erroneously includes R.C. 2151.357. No changes are made to this section.

Confidentiality of juvenile records – criminal records checks

Existing law specifies numerous circumstances in which specified persons or entities must request, and other circumstances in which they may request, the Superintendent of the Bureau of Criminal Identification and Investigation to conduct a criminal records check.⁵⁴ The bill specifies that any criminal records check conducted by the Superintendent pursuant to any such request may not include any proceeding in criminal court against a person under 18 years of age or any criminal conviction of a person under 18 years of age if the proceeding or case was transferred back to the juvenile court pursuant to the "reverse bindover" procedures of R.C. 2152.121.⁵⁵

Confidentiality of juvenile records – Public Records Law

Currently, as used in the Public Records Law, except as described below, "public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by the nonprofit or for-profit entity operating the alternative school. A provision of the Public Records Law excludes many types of records from the definition of "public record." The bill adds to this list of exclusions and specifies that records pertaining to a case or proceeding in which a person was or is alleged to be or adjudicated an unruly or delinquent child or a juvenile traffic offender are not a "public record" under the Public Records Law.⁵⁶

Juvenile law – definitions

As used in the bill:

"Juvenile offender registrant" means a person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense, who is 14 years of age or older at the time of committing the offense, and who a juvenile court judge classifies a juvenile offender registrant and

⁵³ R.C. 2151.356(C)(2)(e)(v).

⁵⁴ R.C. 109.572 and 109.578.

⁵⁵ R.C. 109.572(B) and (F) and 109.578(B) and (E).

⁵⁶ R.C. 149.43(A)(1)(cc).



specifies has a duty to comply with the Sex Offender Notification and Registration requirements. "Juvenile offender registrant" includes a person who prior to January 1, 2008, was a "juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.⁵⁷

"Public registry-qualified juvenile offender registrant" means a person who is adjudicated a delinquent child and on whom a juvenile court has imposed a serious youthful offender dispositional sentence before, on, or after January 1, 2008, and to whom all of the following apply:⁵⁸

(1) The person is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing one of the following acts:

(a) Rape, knowingly touching the genitalia of another, when the touching is not through clothing, the other person is less than 12 years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, or sexual battery if the victim of the violation was less than 12 years of age;

(b) Aggravated murder, murder, or kidnapping that was committed with a purpose to gratify the sexual needs or desires of the child.

(2) The person was 14, 15, 16, or 17 years of age at the time of committing the act.

(3) A juvenile court judge classifies the person a juvenile offender registrant, specifies the person has a duty to comply with the Sex Offender Notification and Registration requirements, and classifies the person a public registry-qualified juvenile offender registrant, and the classification of the person as a public registry-qualified juvenile offender registrant has not been terminated.

Prohibitions of licensing preclusions

Many provisions of existing law require or authorize specified entities that issue licenses or certificates to engage in specified professions to deny the license or certificate or its renewal if the applicant has been convicted of a specified offense. The bill, in general, requires the Optical Dispensers Board; the Registrar of Motor Vehicles, with regard to motor vehicle salvage dealers, motor vehicle auctions, and salvage motor vehicle pools; the Construction Industry Licensing Board; the Casino Control

⁵⁷ R.C. 2152.02(Y), by reference to R.C. 2950.01(M), which is not in the bill.

⁵⁸ R.C. 2152.02(Y), by reference to R.C. 2950.01(N), which is not in the bill.



Commission; the Hearing Aid Dealers and Fitters Licensing Board; and the Director of Public Safety, with regard to private investigators and security guards provides, to prohibit the preclusion of individuals from obtaining or renewing licenses, certifications, or permits the entity issues due to any past criminal history of the individual unless the individual has committed a crime of moral turpitude or a disqualifying offense.⁵⁹

"Moral turpitude" or "crime of moral turpitude" is defined in the bill, for purposes of the provisions described in the preceding paragraph, as any of the following:⁶⁰

- (1) Aggravated murder;
- (2) Murder;
- (3) Complicity in aggravated murder or murder;
- (4) A sexually oriented offense, as defined in the Sex Offender Registration and Notification Law;
- (5) A first or second degree felony offense of violence;
- (6) An attempt or conspiracy to commit or complicity in committing aggravated murder, murder, a sexually oriented offense, or a first or second degree felony offense of violence, if the attempt, conspiracy, or complicity is a first or second degree felony;
- (7) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in (1) through (6) above. The Revised Code does not currently define what constitutes a crime of moral turpitude. *Black's Law Dictionary* defines "moral turpitude" as "[c]onduct that is contrary to justice, honesty, and morality. In the area of legal ethics, offenses involving moral turpitude – such as fraud or breach of trust – traditionally make a person unfit to practice law."⁶¹

⁵⁹ R.C. 3772.07, 4501.02, 4725.44, 4725.48, 4725.52, 4725.53, 4738.04, 4738.07, 4740.06, 4740.10, 4747.05, 4747.10, 4747.12, 4749.03, 4749.04, 4749.06, and 5502.011.

⁶⁰ R.C. 4776.10(A).

⁶¹ *Black's Law Dictionary* 1101 (9th Ed.2009).



"Disqualifying offense" is defined in the bill, for purposes of the provisions described in the first paragraph in this part of the analysis, as an offense that is a felony and that has a direct nexus to an individual's proposed or current field of licensure, certification, or employment. "Direct nexus" means that the nature of the offense for which the individual was convicted or to which the individual pleaded guilty has a direct bearing on the fitness or ability of the individual to perform one or more of the duties or responsibilities necessarily related to a particular occupation, profession, or trade.⁶²

Ohio Optical Dispensers Board

The bill requires the Ohio Optical Dispensers Board to adopt rules that establish disqualifying offenses for licensure as a dispensing optician or certification as an apprentice dispensing optician.⁶³ The bill prohibits the Board from doing either of the following in relation to an individual due to any past criminal activity or interpretation of moral character of that individual, unless the individual has committed a crime of moral turpitude or a disqualifying offense, as defined in the bill:⁶⁴

(1) Adopting, maintaining, renewing, or enforcing any rule that precludes the individual from receiving or renewing a license as a dispensing optician;

(2) Denying certification to the individual as an apprentice dispensing optician.

The bill allows the Board, by a majority vote of its members, to refuse to grant a license or to suspend or revoke the license of a licensed dispensing optician, or to impose a fine on or order restitution for a licensee, if the person is convicted of a crime involving moral turpitude or a disqualifying offense, as defined in the bill. Current law allows the Board to take these actions for a conviction of a felony or a crime of moral turpitude or for any other of a list of specified actions.⁶⁵

The bill removes the requirement that a person be of good moral character to be eligible to apply for an optical dispensing license.⁶⁶

⁶² R.C. 4776.10(B) and (C).

⁶³ R.C. 4725.44(B).

⁶⁴ R.C. 4725.48(D) and 4725.52.

⁶⁵ R.C. 4725.53.

⁶⁶ R.C. 4725.48(B).

Registrar of Motor Vehicles – motor vehicle salvage dealers, salvage motor vehicle auctions, salvage motor vehicle pools

Existing law requires any person applying for a motor vehicle salvage dealer license, salvage motor vehicle auction license, or salvage motor vehicle pool license to submit an application containing specified information to the Registrar of Motor Vehicles. The bill changes the requirement that a statement showing whether the applicant has previously been convicted of a felony be included in the application, and instead requires that a statement showing whether the applicant has previously been convicted of a crime of moral turpitude or a disqualifying offense, as defined in the bill, be included in the application.⁶⁷

Similarly, the bill directs the Registrar to deny the application of a person for licensure if the person has been convicted of a crime of moral turpitude or a disqualifying offense, as defined in the bill, instead of if the person has been convicted of a felony, as under current law.⁶⁸

The bill requires the Registrar, with the approval of the Director of Public Safety, to develop rules that establish disqualifying offenses for motor vehicle salvage dealer licensure.⁶⁹ The bill prohibits the Registrar from adopting, maintaining, renewing, or enforcing any rule, or otherwise precluding in any way, an individual from receiving or renewing a license due to any past criminal activity or interpretation of moral character, except if the applicant or licensee has been convicted of a crime of moral turpitude or a disqualifying offense.⁷⁰

Ohio Construction Industry Licensing Board

The bill requires each trade section of the Ohio Construction Industry Licensing Board to adopt rules that offer a list of disqualifying offenses for licensure in commercial plumbing and hydronics, electrical, and HVAC (heating, ventilation, air conditioning, and refrigeration).⁷¹ However, the bill prohibits a trade section from adopting, maintaining, renewing, or enforcing any rule, or otherwise precluding in any way, an individual from receiving or renewing a license due to any past criminal activity or interpretation of moral character, except if the person has been convicted of

⁶⁷ R.C. 4738.04.

⁶⁸ R.C. 4738.07(D).

⁶⁹ R.C. 4501.02(A)(6).

⁷⁰ R.C. 4738.07.

⁷¹ R.C. 4740.05.



or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill.⁷²

The bill provides that if a person has been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill, (1) the person is not qualified to take an examination for licensure and (2) a trade section, upon an affirmative vote of four of its members, may direct the administrative section of the Board to refuse to issue or renew a license to the person. Current law provides for (1) and (2), above, if the person has been convicted of or pleaded guilty to a misdemeanor involving moral turpitude or a felony.⁷³

Casino Control Commission

Existing law prohibits an appointing or licensing authority of the Casino Control Commission, which includes the Governor, the Commission, and the Executive Director of the Commission, from appointing or licensing or retaining the appointment or licensure of a person that has been convicted of or has pleaded guilty or no contest to a disqualifying offense. The bill modifies the definition of "disqualifying offense" in the Casino Gaming Law as follows: (1) it adds "disqualifying offense" as defined in the bill and any offense that is a crime of moral turpitude, as defined above, (2) it retains from existing law any gambling offense, any theft offense, and any offense having an element of fraud or misrepresentation, and (3) it removes from the definition any offense having an element of moral turpitude and any felony not otherwise included in the continuing law list.⁷⁴

Hearing Aid Dealers and Fitters Licensing Board

The bill requires the Hearing Aid Dealers and Fitters Licensing Board to establish a list of disqualifying offenses for licensure as a hearing aid dealer or fitter or for a hearing aid dealer or fitter trainee permit.⁷⁵ However, the bill prohibits the Board from doing either of the following in relation to an individual due to any past criminal activity or interpretation of moral character, except if the individual has been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill:⁷⁶

⁷² R.C. 4740.06(H).

⁷³ R.C. 4740.06(B)(5)(a) and 4740.10.

⁷⁴ R.C. 3772.07.

⁷⁵ R.C. 4747.04.

⁷⁶ R.C. 4747.05(C) and 4747.10.



(1) Adopting, maintaining, renewing, or enforcing any rule that precludes the individual from receiving or renewing a license;

(2) Denying a hearing aid dealer's and fitter's trainee permit.

Existing law provides a list of criteria for applicants that, if met, require the Board to issue a license or trainee permit to an applicant. The bill changes one of the criteria from the applicant being a person of good moral character to the applicant not having committed a disqualifying offense or crime of moral turpitude, as defined in the bill.⁷⁷

The bill provides that the Board may revoke or suspend the license or trainee permit of a person who is convicted of a disqualifying offense or a crime of moral turpitude, as defined in the bill. Current law allows this disciplinary action if a person is convicted of a felony or a misdemeanor involving moral turpitude.⁷⁸

Director of Public Safety – private investigators and security guard provider

Existing law provides a list of criteria that, if met, entitles an applicant to be licensed as a private investigator, security guard provider, or both. The bill provides that a person who has been convicted of a disqualifying offense, as defined in the bill, in the last three years or any crime of moral turpitude, as defined in the bill, is not eligible for licensure. Current law disqualifies from licensing a person who has been convicted of a felony in the last 20 years or any offense involving moral turpitude. Current law requires the Director to issue the identification card to an employee who has not been convicted of a felony within the last 20 years.⁷⁹

The bill provides that if, after an investigation by the Superintendent of the Bureau of Criminal Identification and Investigation, the Bureau finds that an investigator on security guard employee has not been convicted of a disqualifying offense within the last three years, the Director of Public Safety must issue the employee an identification card.⁸⁰

The bill requires the Director to develop a list of disqualifying offenses for licensure as a private investigator or a security guard provider.⁸¹ The bill prohibits the

⁷⁷ R.C. 4747.05(A) and 4747.10(C).

⁷⁸ R.C. 4747.12.

⁷⁹ R.C. 4749.03(A)(1)(a).

⁸⁰ R.C. 4749.06(B)(3).

⁸¹ R.C. 5502.011(C)(8).

Superintendent from adopting, maintaining, renewing, or enforcing any rule, or otherwise precluding in any way, an individual from receiving or renewing a license due to any past criminal activity or interpretation of moral character, except if the person has been convicted of a crime of moral turpitude or a disqualifying offense, as defined in the bill.⁸²

The bill allows the Director to revoke, suspend, or refuse to renew the license of any private investigator or security guard provider, or the registration of any employee of a private investigator or security guard provider, for conviction of a disqualifying offense, as defined in the bill, that occurred within the last three years, or conviction of a crime involving moral turpitude, as defined in the bill. Current law allows these disciplinary actions if a licensee or employee is convicted of a felony or a crime involving moral turpitude.⁸³

The bill requires an employee of a private investigator or security guard to report any conviction of a disqualifying offense to the employee's employer and the Director when applying for registration renewal. Current law requires this report for an employee convicted of a felony.⁸⁴

State Board of Cosmetology license denial and ex-offender assistance

The bill prohibits the State Board of Cosmetology from denying a license to any applicant based on prior incarceration or conviction for any crime.⁸⁵ It also requires the Board to assist ex-offenders and military veterans who hold licenses issued by the Board to find employment within salons or other facilities within Ohio.⁸⁶

Child support determination

Income calculation when a parent is incarcerated

When a parent's income is determined as part of the child support calculation or modification process, the court or child support enforcement agency (CSEA) must consider not only the parent's gross income, but also any potential income, which is imputed to a parent who is voluntarily unemployed or underemployed.⁸⁷ While the

⁸² R.C. 4749.03(C)(4).

⁸³ R.C. 4749.04(A).

⁸⁴ R.C. 4749.06(F).

⁸⁵ R.C. 4713.28(K).

⁸⁶ R.C. 4713.07(F).

⁸⁷ R.C. 3119.01(C)(5)(b).



Revised Code does not address how incarceration affects child support obligations, Ohio appellate courts have generally held that a parent's incarceration constitutes voluntary unemployment or underemployment.⁸⁸ The bill prohibits a court from determining that a parent is voluntarily unemployed or underemployed and from imputing income to that parent if the parent is incarcerated or institutionalized for a period of 12 months or more with no other available assets. However, this requirement does not apply if the parent is incarcerated for an offense relating to the abuse or neglect of a child who is the subject of the support order or a criminal offense when the obligee or a child who is the subject of the support order is a victim of the offense. Further, this requirement (and an existing requirement that a parent receiving means-tested public assistance benefits not be determined to be unemployed or underemployed and not have income imputed) does not apply if its application would be unjust, inappropriate, and not in the best interest of the child.⁸⁹

In determining imputed income, current law requires the court or CSEA to consider a number of factors, including the parent's prior employment experience, education, mental and physical disabilities, the availability of employment in the area, the prevailing wage and salary levels in the area, the parent's special skills and training, whether there is evidence that the parent has the ability to earn the income, the age and special needs of the child for whom support is being calculated, and the parent's increased earning capacity because of experience. The bill includes as an additional enumerated factor the parent's decreased earning capacity because of a prior felony conviction.⁹⁰

Discretionary disregard of additional income and multiple orders

The bill also adds that a court or CSEA may disregard a parent's additional income from overtime or additional employment when the court or CSEA finds that the additional income was generated primarily to support a new or additional family member or members, or under other appropriate circumstances. Finally, the bill provides that if both parents involved in the immediate child support determination have a prior order for support for a minor child or children born to both parents, the court or CSEA must collect information about the existing order or orders and consider those together with the current calculation for support to ensure that the total of all orders for all children of the parties does not exceed the amount that would have been

⁸⁸ See e.g. *Craig v. Craig*, 2012 Ohio App. LEXIS 919 (Franklin Co. Ct. App. 3/15/12).

⁸⁹ R.C. 3119.05(I).

⁹⁰ R.C. 3119.01(C)(11)(a)(x).



ordered if all children were addressed in a single judicial or administrative proceeding.⁹¹

Reduction of the penalties imposed for certain driving under suspension violations

The bill provides that if a person pleads guilty to or is convicted of driving under suspension (DUS) and the suspension of the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege was imposed as a penalty for one of a number of specified offenses in which the operation of a motor vehicle is not one of the main elements of the offense but for which upon conviction the suspension of the offender's driver's license is one of the penalties the court is permitted or required to impose, the offense is a minor misdemeanor on a first offense and a fourth degree misdemeanor on a third or subsequent offense within three years of such a first offense or of a violation of R.C. 4510.11 or 4510.16 or a comparable municipal offense.⁹² The offenses, sentencing provisions, or other provisions that are the subjects of these new penalty classifications are as follows:⁹³

- (1) Disposition of an unruly child;
- (2) The possession, use, purchase, or receipt of cigarettes or other tobacco products by a minor;
- (3) Failure to appear in court to answer a citation issued for any of a number of specified minor misdemeanor offenses;
- (4) Being in default or noncompliance under a child support order;
- (5) Violation of certain provisions relating to beer or intoxicating liquor;
- (6) Failure to appear to answer a charge alleging a specified motor vehicle operation or equipment violation or a general motor vehicle-related violation, or to pay a fine imposed for such a violation;

⁹¹ R.C. 3119.05(K) and (L).

⁹² R.C. 4510.11(A) and 4510.111(A) and new (C). A minor misdemeanor is punishable by a fine of not more than \$150; no jail term may be imposed. A fourth degree misdemeanor is punishable by a fine of not more than \$250, a jail term of not more than 30 days, or both.

⁹³ R.C. 4510.111(A).

(7) Use of a fictitious or altered driver's license or a driver's license belonging to another person by a person under 21 years of age in order to purchase beer or intoxicating liquor.

The bill eliminates all other penalties that currently apply to driving under suspension based upon these offenses or provisions, including community service, filing proof of financial responsibility with the court, restitution, an additional driver's license suspension, and possible immobilization or forfeiture of the motor vehicle the offender was driving at the time of the DUS offense if the vehicle is registered in the name of the offender.⁹⁴

Reduction in penalties for driving under suspension if the suspension was imposed for violating the financial responsibility law or for nonpayment of a judgment under that law

The bill provides that if a person pleads guilty to or is convicted of DUS and the suspension was imposed for violating the state financial responsibility law (the offenses of driving under financial responsibility law suspension or cancellation and driving under a nonpayment of judgment suspension), the offense is a minor misdemeanor on a first offense. On a third or subsequent offense within three years of such a first offense or of a violation of R.C. 4510.11 or 4510.111 or a comparable municipal offense, the offense is a fourth degree misdemeanor.⁹⁵ The bill eliminates all other penalties that currently apply to the offenses, including community service, filing proof of financial responsibility with the court, restitution, an additional driver's license suspension, and possible immobilization or forfeiture of the motor vehicle the offender was driving at the time of the DUS offense if the vehicle is registered in the name of the offender.⁹⁶

The bill also eliminates the existing impoundment and forfeiture sanctions for municipal ordinance violations that are comparable to driving under a financial responsibility law suspension.⁹⁷

Community service in lieu of driver's license suspension

In the case of a number of offenses in which the operation of a motor vehicle is not one of the main elements of the offense but for which upon conviction one of the

⁹⁴ R.C. 4510.111(D) to (F).

⁹⁵ R.C. 4507.02(B)(1), 4510.11(A), and 4510.16(D)(1) and (2).

⁹⁶ R.C. 4503.233(A)(1), 4503.234(A) and (E), 4507.02(B), 4507.164(D), existing 4510.16(D) to (I), 4510.161(A) and (B), and 4510.41(A)(1), (B)(1), (C)(2)(a) and (b), and (D)(1) to (4).

⁹⁷ R.C. 4510.161.

penalties the court is permitted or required to impose is the suspension of the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege, the bill provides that the court, in lieu of imposing the suspension, instead may require the offender to perform community service for a number of hours determined by the court. The affected offenses are as follows:

- (1) Soliciting;⁹⁸
- (2) Theft of gasoline from a retail seller;⁹⁹
- (3) Illegal conveyance of a deadly weapon or dangerous ordnance into a school safety zone;¹⁰⁰
- (4) Consumption of beer or intoxicating liquor in a motor vehicle by a person less than 18 years of age;¹⁰¹
- (5) Giving false information in order to purchase or otherwise obtain beer or intoxicating liquor by a person less than 21 years of age;¹⁰²
- (6) Trafficking in cigarettes while using a motor vehicle.¹⁰³

Provisions relating to child support

Granting of limited driving privileges to a person whose driver's license is suspended for being in default or noncompliance under a child support order

The bill permits a court to grant limited driving privileges to a person whose driver's or commercial driver's license, temporary instruction permit, or motorcycle operator's license or endorsement is suspended by the Registrar of Motor Vehicles because the Registrar received a notice from a child support enforcement agency indicating that the person is in default or noncompliance under a child support order. Prior to granting the person such limited driving privileges, the court is required to request the child support enforcement agency that issued the notice to the Registrar to

⁹⁸ R.C. 2907.24(D).

⁹⁹ R.C. 2913.02(B)(9)(c).

¹⁰⁰ R.C. 2923.122(F)(2).

¹⁰¹ R.C. 4301.99(B).

¹⁰² R.C. 4301.99(F)(3).

¹⁰³ R.C. 5743.99(G).



advise the court, either in person through a representative testifying at a hearing or through a written document, the position of the agency relative to the issue of the granting of limited driving privileges to the individual. The court, in determining whether to grant the individual such privileges, is required to take into consideration the position of the child support enforcement agency, but the court is not bound by the position of the agency.¹⁰⁴

Dismissal of a DUS charge when the suspension was imposed for not being in compliance with a child support order

Under the bill, in any case in which a person is charged with DUS because the person's driver's or commercial driver's license has been suspended for being in default or noncompliance under a child support order, the prosecuting attorney prosecuting the case is required to file a motion with the court dismissing the case against the person if, at any time, the prosecuting attorney becomes aware in any manner that the records of the Bureau of Motor Vehicles indicate that the Bureau received a notice from the proper child support enforcement agency informing the Bureau that the person is no longer out of compliance with a child support order and the date that the notice lists as being the date on which the person no longer was out of compliance with the child support order is not greater than 15 days after the date that the person was stopped and charged with the DUS violation.¹⁰⁵

In any case in which a law enforcement officer stops a motor vehicle being operated upon any highway or any private property used by the public for purposes of vehicular travel or parking in this state and the records of the Bureau indicate that the driver's or commercial driver's license of the person operating the vehicle has been suspended for being in default or noncompliance under a child support order, the law enforcement officer must issue to the operator a citation, ticket, or summons for the DUS violation. The law enforcement officer cannot arrest the operator solely for that violation. If the law enforcement officer issues the person such a citation, ticket, or summons, at the time the officer issues the citation, ticket, or summons the officer is required to inform the person that if, not later than 15 days after that date the person goes to the proper child support enforcement agency and makes payments or arrangements so that the operator is no longer out of compliance with the child support order, the citation, ticket, or summons will be dismissed.¹⁰⁶

¹⁰⁴ R.C. 3123.58(B).

¹⁰⁵ R.C. 3123.582(A).

¹⁰⁶ R.C. 3123.582(B).

Vehicle forfeiture for aggravated vehicular homicide

Under the bill, if an offender pleads guilty to or is convicted of driving under suspension and at the time of the offense the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended under the aggravated vehicular homicide sentencing provisions that apply when the offender also was guilty of committing a state or local OVI offense at the time of the aggravated vehicular homicide offense, the court, in addition to any other penalties it is required or authorized by law to impose upon the offender, must order the criminal forfeiture of the vehicle involved in the offense to the state if the vehicle is registered in the offender's name.¹⁰⁷

Payment of reinstatement fees in installments

The bill permits the Registrar of Motor Vehicles, with the approval of the Director of Public Safety and in accordance with the Administrative Procedure Act, to adopt rules that permit a person to pay reinstatement fees in installments in accordance with those rules. The rules may contain any of the following:¹⁰⁸

- (1) A schedule establishing a minimum monthly payment amount;
- (2) A provision allowing the Registrar to record the person's driving privileges as "valid" so long as the person's installments are current if the person otherwise would have valid driving privileges;
- (3) A provision allowing the Registrar to record the person's driving privileges as "suspended" or "failure to reinstate," as appropriate, if the person's installments are not current;
- (4) Any other provision the Registrar reasonably may prescribe.

These reinstatement fee payment provisions are in addition to provisions of existing law that allow a court to permit an offender to pay driver's license reinstatement fees in installments.¹⁰⁹

¹⁰⁷ R.C. 2903.06(B)(2)(d), not in the bill, 4503.234(A), and 4510.11(D)(2)(c)(ii).

¹⁰⁸ R.C. 4510.10(G)(1) to (4).

¹⁰⁹ R.C. 4510.10(A) to (F) and (H).



Financial responsibility provisions

Elimination of the driver's license suspension that is imposed for failing to respond to a filed accident report

The bill eliminates the requirement that the Registrar of Motor Vehicles suspend the driver's license of any person who is named in a motor vehicle accident report that alleges that the person was uninsured at the time of the accident and the person then fails to give to the Registrar acceptable proof of financial responsibility.¹¹⁰

Limited driving privileges for a third or subsequent violation within a five-year period of the financial responsibility law

The bill permits a court to grant limited driving privileges to a person whose driver's or commercial driver's license, probationary license, temporary instruction permit, or nonresident operating privilege has been suspended for a third or subsequent time within a five-year period for violation of the state financial responsibility law. The privileges cannot take effect until after the first 30 days of the suspension have elapsed, pays all fees the person owes to the Registrar for violations of the law, and presents proof of financial responsibility.¹¹¹ Existing law does not permit a court to grant limited driving privileges to such offenders under any circumstances.

Reduction in penalties for motor vehicle equipment violations

The bill establishes as a minor misdemeanor, in all circumstances, the following offenses:

(1) Driving or moving a vehicle or combination of vehicles that is in such an unsafe condition that it endangers any person;¹¹²

(2) Operating on the public roads a vehicle that is registered in this state and does not conform to the statutory provisions or rules governing the height of bumpers;¹¹³

(3) Certain specified motor vehicle equipment violations and all other motor vehicle equipment violations for which no penalty is otherwise provided.¹¹⁴

¹¹⁰ R.C. 4509.06(D).

¹¹¹ R.C. 4509.101(A)(2)(c).

¹¹² R.C. 4513.02(H).

¹¹³ R.C. 4513.021(G).



Under current law, the offenses described in items (1) and (2) are a minor misdemeanor on a first violation and all subsequent violations are third degree misdemeanors.¹¹⁵ For the offenses described in item (3), a first violation is a minor misdemeanor, a second violation within one year of the first violation is a fourth degree misdemeanor, and each subsequent violation within one year after the first violation is a third degree misdemeanor.

Bureau of Motor Vehicles amnesty study committee

The bill requires the Bureau of Motor Vehicles to conduct a study on the advisability and feasibility of establishing in this state a one-time amnesty program for the payment of fees and fines owed by persons who have pleaded guilty to or been convicted of motor vehicle traffic and equipment offenses or have had their driver's license, commercial driver's license, or temporary instruction permit suspended for any reason by this state. The bill permits the Bureau to confer with any public or private organization or entity that the Bureau determines could be of assistance to the Bureau in conducting the study. The Bureau is required to study all aspects of such a program, including its scope, duration, the amounts or percentages of fees or fines persons would be permitted to pay under the program, and which persons would be eligible to participate in the program. Not later than six months after the bill's effective date, the Bureau must issue a report containing the results of the study and furnish copies of the report to the Governor, the Ohio Senate, and the Ohio House of Representatives.¹¹⁶

HISTORY

ACTION	DATE
Introduced	04-26-12

S0337-I-129.docx/ejs

¹¹⁴ R.C. 4513.99(B).

¹¹⁵ A third degree misdemeanor is punishable by a fine of not more than \$500, a jail term of not more than 60 days, or both.

¹¹⁶ Section 3.



1 of 1 DOCUMENT

Page's Ohio Revised Code Annotated:
 Copyright (c) 2012 by Matthew Bender & Company, Inc., a member of the LexisNexis Group.
 All rights reserved.

Current through Legislation passed by the 129th Ohio General Assembly
 and filed with the Secretary of State through File 149
 *** Annotations current through September 28, 2012 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2953. APPEALS; OTHER POSTCONVICTION REMEDIES
 POSTCONVICTION REMEDIES

Go to the Ohio Code Archive Directory

ORC Ann. 2953.25 (2012)

§ 2953.25. Petitioner for certification of qualification for employment for individuals subject to collateral sanctions for conviction or imprisonment

(A) As used in this section:

(1) "Collateral sanction" means a penalty, disability, or disadvantage that is related to employment or occupational licensing, however denominated, as a result of the individual's conviction of or plea of guilty to an offense and that applies by operation of law in this state whether or not the penalty, disability, or disadvantage is included in the sentence or judgment imposed.

"Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

(2) "Decision-maker" includes, but is not limited to, the state acting through a department, agency, board, commission, or instrumentality established by the law of this state for the exercise of any function of government, a political subdivision, an educational institution, or a government contractor or subcontractor made subject to this section by contract, law, or ordinance.

(3) "Department-funded program" means a residential or nonresidential program that is not a term in a state correctional institution, that is funded in whole or part by the department of rehabilitation and correction, and that is imposed as a sanction for an offense, as part of a sanction that is imposed for an offense, or as a term or condition of any sanction that is imposed for an offense.

(4) "Designee" means the person designated by the deputy director of the division of parole and community services to perform the duties designated in division (B) of this section.

(5) "Division of parole and community services" means the division of parole and community services of the department of rehabilitation and correction.

(6) "Offense" means any felony or misdemeanor under the laws of this state.

(7) "Political subdivision" has the same meaning as in *section 2969.21 of the Revised Code*.

(B) (1) After the provisions of this division become operative as described in division (J) of this section, an individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who either has served a term in a state correctional institution for any offense or has spent time in a department-funded program for any offense may file a petition with the designee of the deputy director of the division of

parole and community services for a certificate of qualification for employment.

(2) After the provisions of this division become operative as described in division (J) of this section, an individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who is not in a category described in division (B)(1) of this section may file a petition with the court of common pleas of the county in which the person resides or with the designee of the deputy director of the division of parole and community services for a certificate of qualification for employment.

(3) A petition under division (B)(1) or (2) of this section shall be made on a copy of the form prescribed by the division of parole and community services under division (J) of this section and shall contain all of the information described in division (F) of this section.

(4) An individual may file a petition under division (B)(1) or (2) of this section at any time after the expiration of whichever of the following is applicable:

(a) If the offense that resulted in the collateral sanction from which the individual seeks relief is a felony, at any time after the expiration of one year from the date of release of the individual from any period of incarceration in a state or local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at any time after the expiration of one year from the date of the individual's final release from all other sanctions imposed for that offense.

(b) If the offense that resulted in the collateral sanction from which the individual seeks relief is a misdemeanor, at any time after the expiration of six months from the date of release of the individual from any period of incarceration in a local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at any time after the expiration of six months from the date of the final release of the individual from all sanctions imposed for that offense including any period of supervision.

(5) (a) A designee that receives a petition for a certification of qualification for employment from an individual under division (B)(1) or (2) of this section shall review the petition to determine whether it is complete. If the petition is complete, the designee shall forward the petition, and any other information the designee possesses that relates to the petition, to the court of common pleas of the county in which the individual resides.

(b) A court of common pleas that receives a petition for a certificate of qualification for employment from an individual under division (B)(2) of this section, or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section, shall attempt to determine all other courts in this state in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief. The court that receives or is forwarded the petition shall notify all other courts in this state that it determines under this division were courts in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief that the individual has filed the petition and that the court may send comments regarding the possible issuance of the certificate.

A court of common pleas that receives a petition for a certificate of qualification for employment under division (B)(2) of this section shall notify the prosecuting attorney of the county in which the individual resides that the individual has filed the petition.

(C) (1) Upon receiving a petition for a certificate of qualification for employment filed by an individual under division (B)(2) of this section or being forwarded a petition for such a certificate under division (B)(5)(a) of this section, the court shall review the individual's petition, the individual's criminal history, all filings submitted by the prosecutor or by the victim in accordance with rules adopted by the division of parole and community services, and all other relevant evidence. The court may order any report, investigation, or disclosure by the individual that the court believes is necessary for the court to reach a decision on whether to approve the individual's petition for a certificate of qualification for employment.

(2) Upon receiving a petition for a certificate of qualification for employment filed by an individual under division (B)(2) of this section or being forwarded a petition for such a certificate under division (B)(5)(a) of this section, except as otherwise provided in this division, the court shall decide whether to issue the certificate within sixty days after the court receives or is forwarded the completed petition and all information requested for the court to make that decision. Upon request of the individual who filed the petition, the court may extend the sixty-day period specified in this

division.

(3) Subject to division (C)(5) of this section, a court that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section may issue a certificate of qualification for employment, at the court's discretion, if the court finds that the individual has established all of the following by a preponderance of the evidence:

- (a) Granting the petition will materially assist the individual in obtaining employment or occupational licensing.
- (b) The individual has a substantial need for the relief requested in order to live a law-abiding life.
- (c) Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

(4) The submission of an incomplete petition by an individual shall not be grounds for the designee or court to deny the petition.

(5) A court that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section shall not issue a certificate of qualification for employment that grants the individual relief from any of the following collateral sanctions:

(a) Requirements imposed by Chapter 2950. of the Revised Code and rules adopted under *sections 2950.13 and 2950.132 of the Revised Code*;

(b) A driver's license, commercial driver's license, or probationary license suspension, cancellation, or revocation pursuant to *section 4510.037, 4510.07, 4511.19, or 4511.191 of the Revised Code* if the relief sought is available pursuant to *section 4510.021* or division (B) of *section 4510.13 of the Revised Code*;

(c) Restrictions on employment as a prosecutor or law enforcement officer;

(d) The denial, ineligibility, or automatic suspension of a license that is imposed upon an individual applying for or holding a license as a health care professional under Title XLVII of the Revised Code if the individual is convicted of, pleads guilty to, is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state under *section 2951.041 of the Revised Code*, or is subject to treatment or intervention in lieu of conviction for a violation of *section 2903.01, 2903.02, 2903.03, 2903.11, 2905.01, 2907.02, 2907.03, 2907.05, 2909.02, 2911.01, 2911.11, or 2919.123 of the Revised Code*;

(e) The immediate suspension of a license, certificate, or evidence of registration that is imposed upon an individual holding a license as a health care professional under Title XLVII of the Revised Code pursuant to division (C) of *section 3719.121 of the Revised Code*;

(f) The denial or ineligibility for employment in a pain clinic under division (B)(4) of *section 4729.552 of the Revised Code*;

(g) The mandatory suspension of a license that is imposed on an individual applying for or holding a license as a health care professional under Title XLVII of the Revised Code pursuant to *section 3123.43 of the Revised Code*.

(6) If a court that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section denies the petition, the court shall provide written notice to the individual of the court's denial. The court may place conditions on the individual regarding the individual's filing of any subsequent petition for a certificate of qualification for employment. The written notice must notify the individual of any conditions placed on the individual's filing of a subsequent petition for a certificate of qualification for employment.

If a court of common pleas that receives an individual's petition for a certificate of qualification for employment under division (B)(2) of this section or that is forwarded a petition for such a certificate under division (B)(5)(a) of this section denies the petition, the individual may appeal the decision to the court of appeals only if the individual alleges that the denial was an abuse of discretion on the part of the court of common pleas.

(D) A certificate of qualification for employment issued to an individual lifts the automatic bar of a collateral sanction, and a decision-maker shall consider on a case-by-case basis whether to grant or deny the issuance or restoration of an occupational license or an employment opportunity, notwithstanding the individual's possession of the

certificate, without, however, reconsidering or rejecting any finding made by a designee or court under division (C)(3) of this section.

(E) A certificate of qualification for employment does not grant the individual to whom the certificate was issued relief from the mandatory civil impacts identified in division (A)(1) of section 2961.01 or division (B) of *section 2961.02 of the Revised Code*.

(F) A petition for a certificate of qualification for employment filed by an individual under division (B)(1) or (2) of this section shall include all of the following:

- (1) The individual's name, date of birth, and social security number;
- (2) All aliases of the individual and all social security numbers associated with those aliases;
- (3) The individual's residence address, including the city, county, and state of residence and zip code;
- (4) The length of time that the individual has been a resident of this state, expressed in years and months of residence;
- (5) The name or type of each collateral sanction from which the individual is requesting a certificate of qualification for employment;
- (6) A summary of the individual's criminal history with respect to each offense that is a disqualification from employment or licensing in an occupation or profession, including the years of each conviction or plea of guilty for each of those offenses;
- (7) A summary of the individual's employment history, specifying the name of, and dates of employment with, each employer;
- (8) Verifiable references and endorsements;
- (9) The name of one or more immediate family members of the individual, or other persons with whom the individual has a close relationship, who support the individual's reentry plan;
- (10) A summary of the reason the individual believes the certificate of qualification for employment should be granted;
- (11) Any other information required by rule by the department of rehabilitation and correction.

(G) (1) In a judicial or administrative proceeding alleging negligence or other fault, a certificate of qualification for employment issued to an individual under this section may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate of qualification for employment was issued if the person knew of the certificate at the time of the alleged negligence or other fault.

(2) In any proceeding on a claim against an employer for negligent hiring, a certificate of qualification for employment issued to an individual under this section shall provide immunity for the employer as to the claim if the employer knew of the certificate at the time of the alleged negligence.

(3) If an employer hires an individual who has been issued a certificate of qualification for employment under this section, if the individual, after being hired, subsequently demonstrates dangerousness or is convicted of or pleads guilty to a felony, and if the employer retains the individual as an employee after the demonstration of dangerousness or the conviction or guilty plea, the employer may be held liable in a civil action that is based on or relates to the retention of the individual as an employee only if it is proved by a preponderance of the evidence that the person having hiring and firing responsibility for the employer had actual knowledge that the employee was dangerous or had been convicted of or pleaded guilty to the felony and was willful in retaining the individual as an employee after the demonstration of dangerousness or the conviction or guilty plea of which the person has actual knowledge.

(H) A certificate of qualification for employment issued under this section shall be presumptively revoked if the individual to whom the certificate of qualification for employment was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the certificate of qualification for employment.

(I) A designee's forwarding, or failure to forward, a petition for a certificate of qualification for employment to a

court or a court's issuance, or failure to issue, a petition for a certificate of qualification for employment to an individual under division (B) of this section does not give rise to a claim for damages against the department of rehabilitation and correction or court.

(J) Not later than ninety days after the effective date of this section, the division of parole and community services shall adopt rules in accordance with Chapter 119. of the Revised Code for the implementation and administration of this section and shall prescribe the form for the petition to be used under division (B)(1) or (2) of this section. The form for the petition shall include places for all of the information specified in division (F) of this section. Upon the adoption of the rules, the provisions of divisions (A) to (I) of this section become operative.

(K) The department of rehabilitation and correction shall conduct a study to determine the manner for transferring the mechanism for the issuance of a certificate of qualification for employment created by this section to an electronic database established and maintained by the department. The database to which the mechanism is to be transferred shall include granted certificates and revoked certificates and shall be designed to track the number of certificates granted and revoked, the industries, occupations, and professions with respect to which the certificates have been most applicable, the types of employers that have accepted the certificates, and the recidivism rates of individuals who have been issued the certificates. Not later than the date that is one year after the effective date of this section, the department of rehabilitation and correction shall submit to the general assembly and the governor a report that contains the results of the study and recommendations for transferring the mechanism for the issuance of certificate of qualification for employment created by this section to an electronic database established and maintained by the department.

(L) The department of rehabilitation and correction, in conjunction with the Ohio judicial conference, shall conduct a study to determine whether the application process for certificates of qualification for employment created by this section is feasible based upon the caseload capacity of the department and the courts of common pleas. Not later than the date that is one year after the effective date of this section, the department shall submit to the general assembly a report that contains the results of the study and any recommendations for improvement of the application process.

HISTORY:

2012 SB 337, § 1, eff. Sept. 28, 2012.

1 of 60 DOCUMENTS

Page's Ohio Revised Code Annotated:
 Copyright (c) 2012 by Matthew Bender & Company, Inc., a member of the LexisNexis Group.
 All rights reserved.

Current through Legislation passed by the 129th Ohio General Assembly
 and filed with the Secretary of State through File 149
 *** Annotations current through September 28, 2012 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2953. APPEALS; OTHER POSTCONVICTION REMEDIES
 SEALING OF RECORD OF CONVICTION

Go to the Ohio Code Archive Directory

ORC Ann. 2953.31 (2012)

§ 2953.31. Definitions

As used in *sections 2953.31 to 2953.36 of the Revised Code*:

(A) "Eligible offender" means anyone who has been convicted of an offense in this state or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions if the convictions are not of the same offense, or not more than one felony conviction and one misdemeanor conviction in this state or any other jurisdiction. 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. 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 (C)(1)(a) of *section 2953.32 of the Revised Code* that it is not in the public interest for the two or three convictions to be counted as one conviction.

For purposes of, and except as otherwise provided in, this division, a conviction for a minor misdemeanor, for a violation of any section in Chapter 4507., 4510., 4511., 4513., or 4549. of the Revised Code, or for a violation of a municipal ordinance that is substantially similar to any section in those chapters is not a conviction. However, a conviction for a violation of *section 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, or 4549.62 or sections 4549.41 to 4549.46 of the Revised Code*, for a violation of *section 4510.11 or 4510.14 of the Revised Code* that is based upon the offender's operation of a vehicle during a suspension imposed under *section 4511.191 or 4511.196 of the Revised Code*, for a violation of a substantially equivalent municipal ordinance, for a felony violation of Title XLV of the Revised Code, or for a violation of a substantially equivalent former law of this state or former municipal ordinance shall be considered a conviction.

(B) "Prosecutor" means the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer, who has the authority to prosecute a criminal case in the court in which the case is filed.

(C) "Bail forfeiture" means the forfeiture of bail by a defendant who is arrested for the commission of a misdemeanor, other than a defendant in a traffic case as defined in *Traffic Rule 2*, if the forfeiture is pursuant to an agreement with the court and prosecutor in the case.

(D) "Official records" has the same meaning as in division (D) of *section 2953.51 of the Revised Code*.

(E) "Official proceeding" has the same meaning as in *section 2921.01 of the Revised Code*.

(F) "Community control sanction" has the same meaning as in *section 2929.01 of the Revised Code*.

(G) "Post-release control" and "post-release control sanction" have the same meanings as in *section 2967.01 of the Revised Code*.

(H) "DNA database," "DNA record," and "law enforcement agency" have the same meanings as in *section 109.573 of the Revised Code*.

(I) "Fingerprints filed for record" means any fingerprints obtained by the superintendent of the bureau of criminal identification and investigation pursuant to *sections 109.57 and 109.571 of the Revised Code*.

HISTORY:

135 v S 5 (Eff 1-1-74); 140 v H 227 (Eff 9-26-84); 142 v H 175 (Eff 6-29-88); 143 v S 49 (Eff 11-3-89); 143 v S 382 (Eff 12-31-90); 146 v H 274 (Eff 8-8-96); 148 v S 13. Eff 3-23-2000; 149 v H 490, § 1, eff. 1-1-04; 153 v S 77, § 1, eff. 7-6-10; 2012 SB 337, § 1, eff. Sept. 28, 2012.

NOTES:

Section Notes

Editor's Notes

The effective date is set by section 4 of H.B. 490.

The provisions of § 5 of S.B. 123 (149 v --), as amended by § 3 of H.B. 163 (150 v --), read as follows:

SECTION 5. (A) Notwithstanding division (B) of *section 1.58 of the Revised Code*, the provisions of the Revised Code amended or enacted in Sections 1 and 2 of Am. Sub. S.B. 123 of the 124th General Assembly shall apply only in relation to conduct and offenses committed on or after January 1, 2004. Conduct and offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed. * * *

The provisions of § 7 of S.B. 123 (149 v --) read as follows:

SECTION 7. (A) If, on or after March 31, 1999, a person filed an application in a court that requested the sealing of a conviction record under *sections 2953.31 to 2953.36 of the Revised Code*, if at the time the application was filed section 2953.36 did not make *sections 2953.31 to 2953.35 of the Revised Code* inapplicable to the conviction that was the subject of the application, if the person withdrew the application prior to March 31, 2001, and if the person refiles an application in the appropriate court within ninety days after the effective date of this section that requests the sealing of the same conviction record under *sections 2953.31 to 2953.36 of the Revised Code*, all of the following apply:

(1) Divisions (C), (D), and (E) of *section 2953.36 of the Revised Code*, as they have existed since March 23, 2000, do not apply regarding the application or the determination of whether it should be accepted or granted, and the court may accept and grant the application regardless of whether the conviction that is the subject of the application is a conviction to which any of those divisions, but for the operation of this division, makes *sections 2953.31 to 2953.35 of the Revised Code* inapplicable.

(2) Except as provided in division (A)(1) of this section, the provisions of *sections 2953.31 to 2953.36 of the Revised Code* that are in effect at the time of the refiling of the application apply regarding the application and the determination of whether it should be granted.

(B) This section shall expire one year after this act becomes law.

EFFECT OF AMENDMENTS

The 2012 amendment, in (A), in the first sentence of the first paragraph, substituted "Eligible offender" for "First offender" and "has not more than one felony conviction, not more than two misdemeanor convictions if the convictions are not of the same offense, or not more than one felony conviction and one misdemeanor conviction" for "previously or subsequently has not been convicted of the same or a different offense" and deleted "previous or subsequent" preceding "conviction" from the end of the first and second sentences of the second paragraph.