

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,
Appellee

vs.

TERRELL VANZANDT,
Appellant

:
: No. 2013-1010
: App. Case No. C-130079
:
:
:
:

MERIT BRIEF OF APPELLANT

Scott M. Heenan #0075734P
Assistant Hamilton County Prosecutor
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202
513-946-3227
513-946-3021 (fax)
scott.heenan@hcpros.org

ATTORNEY FOR APPELLEE

Christine Y. Jones #0055225
Josh Thompson #0089539
230 East 9th Street, Floor 3
Cincinnati, Ohio 45202
513-946-3712
513-946-3808 (fax)
CYJones@cms.hamilton-co.org

ATTORNEYS FOR APPELLANT

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STATEMENT OF THE CASE AND STATEMENT OF FACTS

In October and November of 2011, the State alleged that Appellant Terrell Vanzandt trafficked in various controlled substances. Mr. Vanzandt was indicted for trafficking in drugs on February 17, 2012. On July 30, 2012, a jury trial began. On August 3, the jury found Mr. Vanzandt not guilty of all counts. On October 4, 2012, the trial court granted Mr. Vanzandt's request to seal his the case in accordance with R.C. 2953.51. Late in 2012, Mr. Vanzandt was indicted for retaliation against a witness in Case No. B-1206778. On January 15, 2013, the State filed a Motion to Unseal Case; Mr. Vanzandt filed a response on January 24. On February 4, 2013, after a hearing where counsel objected to the State's motion, the trial court granted the State's Motion to Unseal. (February 4, 2013 T.p. 3-4). An appeal was timely filed on February 6, 2013 in the First District Court of Appeals. A Decision affirming the judgment of the trial court was entered on June 5, 2013 by the First District Court of Appeals. Mr. Vanzandt then filed a Notice of Appeal to this Court on June 24, 2013. That appeal was accepted by this Court on September 25, 2013.

PROPOSITION OF LAW

The trial court erred to the prejudice of the Appellant by granting the State's Motion to Unseal Case.

Initially, it should be noted that this proposition involves the interpretation of a statute, which is a question of law; therefore, the First District Court of Appeal's judgment should be reviewed de novo by this Court. *See State v. Pariag*, Slip Opinion No. 2013-Ohio-4010.

Until 1984, the Ohio Revised Code provided only for sealing records of convictions. Under R.C. 2953.31-.38, a first offender, defined in those sections, could apply to have his record

sealed by the trial court. Because there was no statutory authority to seal records of acquittal, this Court recognized a judicial power to order the expungement and sealing of records where charges were dismissed. *Pepper Pike v. Doe*, 66 Ohio St.2d 374, 421 N.E.2d 1303 (1981). This Court stated that “absent statutory authorization,” trial courts retain the authority “to order expungement where such unusual and exceptional circumstances make it appropriate to exercise jurisdiction over the matter.” *Pepper Pike* at 376.

Three years after the holding in *Pepper Pike*, the Ohio General Assembly remedied this lack of “statutory authority” and enacted R.C. 2953.51-.56, which provide for sealing records after a not-guilty finding or dismissal. Specifically, R.C. 2953.53(D) states “[t]he sealed official records * * * **shall not** be available to any person” other than 1) the person whose records have been sealed; 2) a law enforcement officer involved with the case for purposes of defense in a civil action; or 3) a prosecuting attorney determining a defendant’s eligibility for a diversion program. (emphasis added). In fact, under certain circumstances, it is a crime to divulge such sealed records. *See* R.C. 2953.55(B); *see also State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004 Ohio 1581, 805 N.E.2d 1094 (2004). The use of the word “shall” connotes a mandatory duty, excluding the idea of discretion. *State v. Golphin*, 81 Ohio St.3d 543, 545-546, 692 N.E.2d 608 (1998). This should preclude a trial court from making sealed records available to a prosecuting attorney for the use in a subsequent prosecution because the trial court would lack jurisdiction. Therefore, the trial court in the case at bar was clearly mistaken when it stated that “the law is silent as to the use of an expungement - - or sealing of the record of non-conviction.” (February 4, 2013 T.p. 3-4). R.C. 2953.53(D) clearly delineates how and by whom the sealed records may be used.

Appellate courts in Ohio have repeatedly held that where a defendant has been convicted, expungement may be granted only as allowed by statute. See *State v. Weber*, 19 Ohio App.3d 214, 484 N.E.2d 207 (1st Dist. 1984); *State v. Netter*, 64 Ohio App.3d 322, 581 N.E.2d 597 (4th Dist. 1989). This reasoning should also hold true for expungements of non-convictions, considering the passage of R.C. 2953.51-.56 by the General Assembly. The First District in this case ignored the statutory scheme contained in R.C. 2953.51-.56 and held that courts have an additional judiciary power to seal, and in the case at bar, unseal acquittals. This judiciary power, especially to unseal a non-conviction in direct violation of the Ohio Revised Code, flies directly in the face of the legislative intent and is violative of the Separation of Powers doctrine. Even this Court, in its recent holding in *Schussheim v. Schussheim*, Slip Opinion 2013-Ohio-4529, found that a dissolved civil protective order could be sealed because of “a court’s inherent power to expunge and seal criminal records **absent** statutory authority.” (emphasis added). In the case at bar, there is not an absence of statutory authority to expunge and seal non-convictions; that authority is clearly stated in R.C. 2953.51-.56, as is how and by whom the sealed records may be used.

The State suggested in its appellate brief filed with the First District that it should be allowed to use the sealed record to prove a new offense because R.C. 2953.54(A)(3) allows law enforcement agencies to use expunged records to investigate another offense if the facts of that other offense are similar to the facts in the sealed case. This reliance is wholly misplaced; not only are the facts of the two offenses dissimilar (trafficking in drugs versus retaliation), but the State is not a law-enforcement agency. Also, if the General Assembly wished to allow for this type of use of sealed records of non-convictions, it would have included a section similar to R.C.

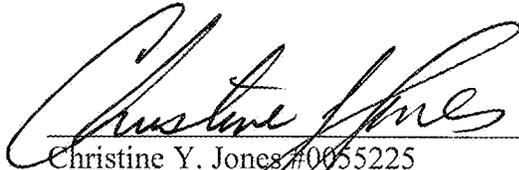
2953.32(E) (dealing with expungement of convictions) which allows for the use of a sealed record of conviction in any criminal proceeding.

Therefore, the trial court erroneously unsealed Mr. Vanzandt's record of acquittal in violation of the Ohio Revised Code, the legislative intent, and the Separation of Powers doctrine; and the First District Court of Appeals was incorrect in affirming the decision of the trial court.

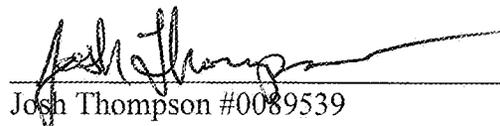
CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the judgment of the First District Court of Appeals; order the record of Mr. Vanzandt's non-conviction to remain sealed; and hold that sealed records of non-convictions cannot be unsealed and used in any way, except as stated in R.C. 2953.53(D).

Respectfully submitted,



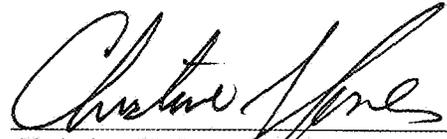
Christine Y. Jones #0055225
Attorney for Appellant
230 East 9th Street, Floor 3
Cincinnati, Ohio 45202
513-946-3712
513-946-3808 (fax)
CYJones@cms.hamilton-co.org



Josh Thompson #0089539
Attorney for Appellant
230 East 9th Street, Floor 3
Cincinnati, Ohio 45202
513-946-3863
513-946-3808 (fax)
JAThompson@cms.hamilton-co.org

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was personally served upon Scott M. Heenan,
Assistant Hamilton County Prosecuting Attorney, this 31st day of October, 2013.



Christine Y. Jones #0055225
Attorney for Appellant

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,
Appellee

: Appeal No. C-130079
: Trial No. B-1200737-B
:
:
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:
:

vs.

13-1010

TERRELL VANZANDT,
Appellant

APPEAL FROM THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

NOTICE OF APPEAL

Scott M. Heenan #0075734P
Assistant Hamilton County Prosecutor
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202
513-946-3227
513-946-3021 (fax)

Christine Y. Jones #0055225
Josh Thompson #0089539
230 East 9th Street, Floor 3
Cincinnati, Ohio 45202
513-946-3712
513-946-3808 (fax)
CYJones@cms.hamilton-co.org

ATTORNEY FOR APPELLEE

ATTORNEYS FOR APPELLANT

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SUPREME COURT OF OHIO

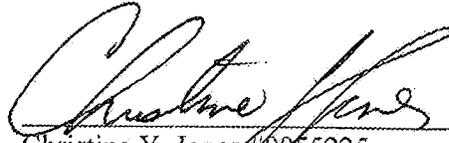
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SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Appeal No. C-130079
Appellee : Trial No. B-1200737-B
vs. :
TERRELL VANZANDT, :
Appellant :

Now comes Terrell Vanzandt, Defendant-Appellant, and hereby files his Notice of Appeal to the Ohio Supreme Court in the above captioned matter. Said appeal is from the decision of the First District Court of Appeals, entered on June 5, 2013, affirming the trial court's judgment. This appeal involves constitutional questions and questions of great public interest.

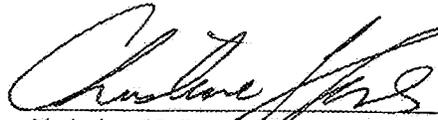
Respectfully submitted,



Christine Y. Jones #0055225
Josh Thompson #0089539
Attorneys for Defendant-Appellant
230 East 9th Street, Floor 3
Cincinnati, Ohio 45202
513-946-3712
513-946-3808 (fax)
CYJones@cms.hamilton-co.org

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was personally served upon Scott M. Heenan, Assistant Hamilton County Prosecuting Attorney, this 19th day of June, 2013.



Christine Y. Jones #0055225
Attorney for Appellant

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,

Plaintiff-Appellee,

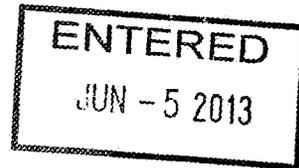
vs.

TERRELL VANZANDT, f.k.a.
TERRELL ASBERRY,

Defendant-Appellant.

APPEAL NO. C-130079
TRIAL NO. B-1200737-B

JUDGMENT ENTRY.



This cause was heard upon the appeal, the record, the briefs, and arguments.

The judgment of the trial court is affirmed for the reasons set forth in the Opinion filed this date.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty and orders that costs are taxed under App. R. 24.

The Court further orders that 1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App. R. 27.

To the clerk:

Enter upon the journal of the court on June 5, 2013 per order of the court.

By: _____

[Signature]
Presiding Judge



D102467295

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,

Plaintiff-Appellee,

vs.

TERRELL VANZANDT, f.k.a.
TERRELL ASBERRY,

Defendant-Appellant.

APPEAL NO. C-130079
TRIAL NO. B-1200737-B

OPINION.

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COURT OF APPEALS

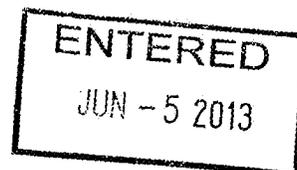
Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: June 5, 2013

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Scott M. Heenan*,
Assistant Prosecuting Attorney, for Plaintiff-Appellee,

A. Brian McIntosh, for Defendant-Appellant.



Please note: this case has been removed from the accelerated calendar.

DEWINE, Judge.

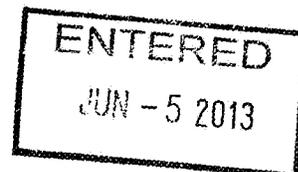
{¶1} This case presents a question of first impression: may a trial court that has issued an order sealing a criminal defendant's record of acquittal later unseal the record to allow for the criminal prosecution of the defendant? The defendant argues that the trial court erred in unsealing his record of acquittal because the court lacked explicit statutory authority to do so. We disagree. We conclude that a court possesses inherent authority to unseal records that have been sealed, and may exercise that authority in unusual and exceptional cases. We further conclude that under the facts before us, the trial court did not abuse its discretion in unsealing the defendant's records.

I.

{¶2} Terrell Vanzandt was indicted on three counts of trafficking in drugs and one count of aggravated trafficking. A jury acquitted Mr. Vanzandt of all charges. Shortly thereafter, Mr. Vanzandt moved to seal the record of his acquittal pursuant to R.C. 2953.52. With no objection from the state, the trial court granted the motion to seal.

{¶3} Three months after the case had been sealed, the state moved to unseal the case. The state alleged that Mr. Vanzandt had retaliated against the confidential informant just three days after his case was sealed. The state argued that it needed to use the trafficking case as evidence to prove its case of witness retaliation. Following a hearing, the trial court granted the motion to unseal for the limited purpose of use by the state in the retaliation case. The court's order provides:

The defendant is currently facing a retaliation charge in case no. B-1206778. That charge springs forth from this case. Because evidence



of this case is crucial to the state's case, the court grants the motion to unseal. The state of Ohio shall be permitted to use the records of this case in case no. B-1206778 and may introduce them as evidence. The records shall otherwise remain sealed.

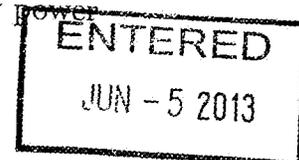
II.

{¶4} In his sole assignment of error, Mr. Vanzandt asserts that the trial court erred when it unsealed the records because it lacked statutory authority to do so.

{¶5} R.C. 2953.52 sets forth procedures under which a person who has been found not guilty or has had charges against him dismissed may have the case records sealed. The statutory scheme provides that such "sealed official records * * * shall not be available to any person" except (1) to the person who is the subject of the record and anyone designated by that person, (2) to a law enforcement official defending himself in a civil suit arising out of the case, and (3) to the prosecutor in certain circumstances to determine eligibility for a pretrial diversion program. R.C. 2953.53(D). Ohio has a separate statutory framework that governs the sealing or expungement of records of convictions, and access to such records. See R.C. 2953.31-2953.36.

{¶6} There is nothing in the statutory scheme that addresses the question of whether, in a case like ours, a trial court that has sealed records retains the power to unseal the records and to allow their use outside the confines set forth in R.C. 2953.53(D). To answer this question, it is helpful to trace the sources of a court's authority to seal its records.

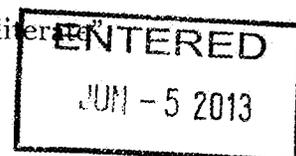
{¶7} There is a strong presumption of a public right of access to court records, but it also has been long understood that a court has "supervisory power



over its own records and files[.]” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978). See *State ex rel. Cincinnati Enquirer v. Winkler*, 149 Ohio App.3d 350, 2002-Ohio-4803, 777 N.E.2d 320, ¶ 15 (1st Dist.); *In re Search Warrant No. 5077/91*, 96 Ohio App.3d 737, 645 N.E.2d 1304 (10th Dist.1994).

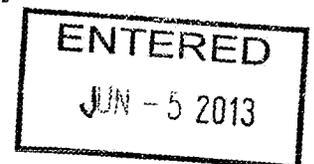
{¶8} The power to seal a record of acquittal does not flow solely from R.C. 2953.52. Prior to the statute’s enactment, the Ohio Supreme Court recognized a judicial power to order the expungement and sealing of records where charges were dismissed prior to trial. *Pepper Pike v. Doe*, 66 Ohio St.2d 374, 421 N.E.2d 1303 (1981). In *Pepper Pike*, the defendant sought to seal the record of an assault case that had been filed against her based on allegations of her ex-husband and his wife. *Id.* at 377. The charges—which the Supreme Court characterized as “a vindictive tool to harass appellant”—had been dismissed with prejudice at the request of the prosecuting witness prior to trial. *Id.* at 377 and paragraph one of the syllabus. The trial court concluded that it did not have authority to seal the record of the case because the only statutory mechanism in place at the time, R.C. 2953.32, provided only for the sealing of records of convictions.

{¶9} While acknowledging that R.C. 2953.32 only provided for the sealing and expungement of convictions, the Supreme Court held that the lack of a similar statutory scheme for dismissed charges did not mean that a court lacked the authority to seal such records in appropriate circumstances. *Id.* at 376-77. To the contrary, “even absent statutory authorization,” trial courts retain the authority “to order expungement where such unusual and exceptional circumstances make it appropriate to exercise jurisdiction over the matter.” *Id.* at 376 and paragraph two of the syllabus. The court cautioned that an order of expungement did not “obliterate”



the criminal record. Rather, as with conviction expungements under R.C. 2953.32, “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.” *Id.* at 378.

{¶10} Three years after *Pepper Pike*, the legislature enacted a statutory means, R.C. 2953.51 through 2953.56, by which a defendant could move to seal the record of his case following an acquittal or a dismissal. Since the enactment of the statutes, courts have recognized that in areas not addressed by the legislation there continues to exist a judicial power to seal records in unusual and exceptional cases. For example, it has been held that despite a lack of statutory authorization, a court has the authority to grant judicial expungement where an executive pardon is at issue. *State v. Boykin*, 9th Dist. Nos. 25752 and 25845, 2012-Ohio-1381. It also has been held that a court may seal children services records as part of a criminal case where a no bill has been issued even though the statute specifically excludes children services records from “official records” that are subject to statutory expungement. See *In re Application to Seal Record of No Bill*, 131 Ohio App.3d 399, 722 N.E.2d 602 (3d Dist.1999). Likewise, at least one court has authorized the sealing of an arrest record where no charges were ever filed. *Bound v. Biscotti*, 76 Ohio Misc.2d 6, 663 N.E.2d 1376 (M.C.1995). Courts that have found such judicial authority to exist have been careful to note its limited scope. It has been said that “although the judicial expungement power to grant an expungement still exists * * * it is limited to cases where the accused has been acquitted or exonerated in some way and protection of the accused’s privacy interests is paramount to prevent injustice.”



State v. Chiaverini, 6th Dist. No. L-000-1305, 2001 Ohio App. LEXIS 1190, *4 (Mar. 16, 2001).

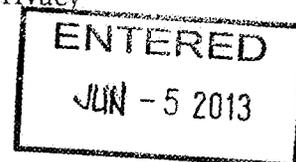
{¶11} It does not appear that any other Ohio appellate courts have been confronted with the issue of whether this inherent and limited judicial authority to seal records also extends to the power to unseal. Certainly, however, the existence of extra-statutory authority to seal a case suggests the existence of extra-statutory authority to unseal a case as well.

{¶12} Further, there is nothing in the statutory scheme that is inconsistent with a judicial power to grant access to sealed cases. R.C. 2953.53(D) provides a mandatory duty to allow access for the individuals identified therein. *See Akron v. Frazier*, 142 Ohio App.3d 718, 756 N.E.2d 1258 (9th Dist.2001). The statute does not even require intervention by the court for individuals given access under R.C. 2953.53(D). We do not believe that in providing that certain people are entitled to automatic access, the legislature meant to preclude the courts from granting access to others on a discretionary basis in the appropriate circumstances. Allowing a court to grant access on a discretionary basis upon a proper showing is perfectly consistent with a statute that allows a certain narrow category of people to view sealed records as a matter of right.

{¶13} Thus, in light of the court's supervisory power over its own records and the nonexclusive nature of the statute providing for access to sealed records, we conclude that within the court's power to seal its records is a concomitant power to unseal such records in appropriate circumstances.

III.

{¶14} This power to unseal must not be exercised lightly. We presume that a court that has issued an order sealing a record has carefully balanced the privacy

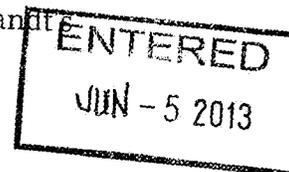


interests of the individual and the legitimate needs of the state (including the public's presumptive right of access to judicial records) and has determined that these interests weigh in favor of sealing the record. *See State ex rel. Cincinnati Enquirer*, 149 Ohio App.3d 350, 2002-Ohio-4803, 777 N.E.2d 320, at ¶ 30. Further, individuals whose records have been sealed necessarily rely upon the limitations on access to those records and have a right to expect that individuals beyond those set forth in R.C. 2953.53(D) will not ordinarily be able to obtain their records. Thus, we hold that in considering a request to exercise judicial authority to unseal records that have been sealed, a court should be guided by the Ohio Supreme Court's admonition in *Pepper Pike*, and only exercise such authority in "unusual and exceptional circumstances."

{¶15} We consider next whether the trial court properly exercised its power in this case. A trial court's decision to seal a record is reviewed for an abuse of discretion, and we believe it also appropriate to review a decision to allow access to a sealed record under the same standard. *State v. Moore*, 5th Dist. No. 2012CA00047, 2012-Ohio-4483, ¶ 16.

{¶16} In *Pepper Pike*, the court provided guidance for the analysis that a court should perform before sealing a record. "When exercising these powers, the trial court should use a balancing test, which weighs the interest of the accused in his good name and right to be free from unwarranted punishment against the legitimate need of government to maintain records." *Pepper Pike*, 66 Ohio St.2d at 377, 421 N.E.2d 1303. A similar balancing should occur when a court considers a governmental request to unseal a record.

{¶17} Here, Mr. Vanzandt is not trying to save "his good name"; he is trying to save his skin. As acknowledged in his appellate brief, Mr. Vanzandt



contention is that his trafficking case should remain under seal to prevent prosecution for witness retaliation. The state's interest in prosecuting the alleged crime, however, far outweighs Mr. Vanzandt's interest in avoiding prosecution.

{¶18} Another factor that weighs in favor of the trial court's decision is that this is not a case where a record has long been sealed and a party has relied upon the contents of the record remaining private. Here, the alleged witness retaliation occurred just three days after the order sealing the records, and the state's request to unseal came three months later.

{¶19} It is also significant that the trial court's order was narrowly tailored. Here the court did not issue a blanket order unsealing the records for all purposes, but issued a limited order allowing use of the record only in the retaliation case against Mr. Vanzandt.

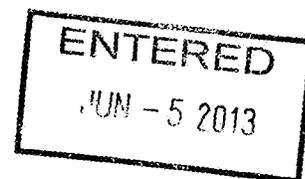
{¶20} Considering the foregoing, we conclude that this case is one of the "unusual and exceptional" cases in which the power to unseal records properly could be exercised. The trial court did not abuse its discretion in unsealing the record of Mr. Vanzandt's acquittal. The sole assignment of error is overruled, and we affirm the judgment of the trial court.

Judgment affirmed.

CUNNINGHAM, P.J., and **DINKELACKER, J.**, concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.



2953.31 Sealing of record of conviction 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.

Amended by 129th General Assembly File No.131, SB 337, §1, eff. 9/28/2012.

Amended by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

Effective Date: 01-01-2004

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2953.32 Sealing of conviction record or bail forfeiture record.

(A)

(1) Except as provided in section 2953.61 of the Revised Code, an eligible offender may apply to the sentencing court if convicted in this state, or to a court of common pleas if convicted in another state or in a federal court, for the sealing of the conviction record. Application may be made at the expiration of three years after the offender's final discharge if convicted of a felony, or at the expiration of one year after the offender's final discharge if convicted of a misdemeanor.

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

(B) Upon the filing of an application under this section, the court shall set a date for a hearing and shall notify the prosecutor for the case of the hearing on the application. 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. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant. If the applicant was convicted of or pleaded guilty to a violation of division (A)(2) or (B) of section 2919.21 of the Revised Code, the probation officer or county department of probation that the court directed to make inquiries concerning the applicant shall contact the child support enforcement agency enforcing the applicant's obligations under the child support order to inquire about the offender's compliance with the child support order.

(C)

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

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

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

(c) If the applicant is an eligible offender who applies pursuant to division (A)(1) of this section, determine whether the applicant has been rehabilitated to the satisfaction of the court;

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

(e) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction sealed against the legitimate needs, if any, of the government to maintain those records.

(2) If the court determines, after complying with division (C)(1) of this section, that the applicant is an eligible offender or the subject of a bail forfeiture, that no criminal proceeding is pending against the applicant, and that the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed are not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of

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an applicant who is an eligible offender applying pursuant to division (A)(1) of this section has been attained to the satisfaction of the court, the court, except as provided in divisions (G) and (H) of this section, shall order all official records pertaining to the case sealed and, except as provided in division (F) of this section, all index references to the case deleted and, in the case of bail forfeitures, shall dismiss the charges in the case. The proceedings in the case shall be considered not to have occurred and the conviction or bail forfeiture of the person who is the subject of the proceedings shall be sealed, except that upon conviction of a subsequent offense, the sealed record of prior conviction or bail forfeiture may be considered by the court in determining the sentence or other appropriate disposition, including the relief provided for in sections 2953.31 to 2953.33 of the Revised Code.

(3) Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars. The court shall pay thirty dollars of the fee into the state treasury. It shall pay twenty dollars of the fee into the county general revenue fund if the sealed conviction or bail forfeiture was pursuant to a state statute, or into the general revenue fund of the municipal corporation involved if the sealed conviction or bail forfeiture was pursuant to a municipal ordinance.

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

- (1) By a law enforcement officer or prosecutor, or the assistants of either, to determine whether the nature and character of the offense with which a person is to be charged would be affected by virtue of the person's previously having been convicted of a crime;
- (2) By the parole or probation officer of the person who is the subject of the records, for the exclusive use of the officer in supervising the person while on parole or under a community control sanction or a post-release control sanction, and in making inquiries and written reports as requested by the court or adult parole authority;
- (3) Upon application by the person who is the subject of the records, by the persons named in the application;
- (4) By a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;
- (5) By a prosecuting attorney or the prosecuting attorney's assistants, to determine a defendant's eligibility to enter a pre-trial diversion program established pursuant to section 2935.36 of the Revised Code;
- (6) By any law enforcement agency or any authorized employee of a law enforcement agency or by the department of rehabilitation and correction as part of a background investigation of a person who applies for employment with the agency as a law enforcement officer or with the department as a corrections officer;
- (7) By any law enforcement agency or any authorized employee of a law enforcement agency, for the purposes set forth in, and in the manner provided in, section 2953.321 of the Revised Code;
- (8) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of providing information to a board or person pursuant to division (F) or (G) of section 109.57 of the Revised Code;
- (9) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of performing a criminal history records check on a person to whom a certificate as prescribed in section 109.77 of the Revised Code is to be awarded;
- (10) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of conducting a criminal records check of an individual pursuant to division (B) of section 109.572 of the Revised Code that was requested pursuant to any of the sections identified in division (B)(1) of that section;
- (11) By the bureau of criminal identification and investigation, an authorized employee of the bureau, a sheriff, or an authorized employee of a sheriff in connection with a criminal records check described in section 311.41 of the Revised Code;
- (12) By the attorney general or an authorized employee of the attorney general or a court for purposes of determining a person's classification pursuant to Chapter 2950. of the Revised Code.

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

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

(F) The person or governmental agency, office, or department that maintains sealed records pertaining to convictions or bail forfeitures that have been sealed pursuant to this section may maintain a manual or computerized index to the sealed records. The index shall contain only the name of, and alphanumeric identifiers that relate to, the persons who are the subject of the sealed records, the word "sealed," and the name of the person, agency, office, or department that has custody of the sealed records, and shall not contain the name of the crime committed. The index shall be made available by the person who has custody of the sealed records only for the purposes set forth in divisions (C), (D), and (E) of this section.

(G) Notwithstanding any provision of this section or section 2953.33 of the Revised Code that requires otherwise, a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under sections 3301.121 and 3313.662 of the Revised Code is permitted to maintain records regarding a conviction that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record. An order issued under this section to seal the record of a conviction does not revoke the adjudication order of the superintendent of public instruction to permanently exclude the individual who is the subject of the sealing order. An order issued under this section to seal the record of a conviction of an individual may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who is the subject of the sealing order be revoked. Except as otherwise authorized by this division and sections 3301.121 and 3313.662 of the Revised Code, any school employee in possession of or having access to the sealed conviction records of an individual that were the basis of a permanent exclusion of the individual is subject to section 2953.35 of the Revised Code.

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

Amended by 129th General Assembly File No. 131, SB 337, §1, eff. 9/28/2012.

Amended by 128th General Assembly File No. 30, SB 77, §1, eff. 7/6/2010.

Effective Date: 04-08-2004; 2007 SB10 07-01-2007; 2007 HB104 03-24-2008; 2008 HB195 09-30-2008

Related Legislative Provision: See 129th General Assembly File No. 127, HB 487, §610.10.

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2953.321 Divulging confidential investigatory work product.

(A) As used in this section, "investigatory work product" means any records or reports of a law enforcement officer or agency that are excepted from the definition of "official records" contained in section 2953.51 of the Revised Code and that pertain to a case the records of which have been ordered sealed pursuant to division (C)(2) of section 2953.32 of the Revised Code or have been ordered expunged pursuant to division (E) of section 2151.358, division (D)(2) of section 2953.37, or division (G) of section 2953.38 of the Revised Code.

(B) Upon the issuance of an order by a court pursuant to division (C)(2) of section 2953.32 of the Revised Code directing that all official records pertaining to a case be sealed or an order by a court pursuant to division (E) of section 2151.358, division (D)(2) of section 2953.37, or division (G) of section 2953.38 of the Revised Code directing that all official records pertaining to a case be expunged:

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

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

(3) A law enforcement agency that possesses investigatory work product may permit another law enforcement agency to use that work product in the investigation of another offense if the facts incident to the offense being investigated by the other law enforcement agency and the facts incident to an offense that is the subject of the case are reasonably similar. The agency that permits the use of investigatory work product may provide the other agency with the name of the person who is the subject of the case if it believes that the name of the person is necessary to the conduct of the investigation by the other agency.

(C)

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

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

(3) It is not a violation of division (C)(1) or (2) of this section for the bureau of criminal identification and investigation or any authorized employee of the bureau participating in the investigation of criminal activity to release, disseminate, or otherwise make available to, or discuss with, a person directly employed by a law enforcement agency DNA records collected in the DNA database or fingerprints filed for record by the superintendent of the bureau of criminal identification and investigation.

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

Amended by 129th General Assembly File No. 142, HB 262, §1, eff. 6/27/2012.

Amended by 129th General Assembly File No. 34, SB 17, §1, eff. 9/30/2011.

Amended by 128th General Assembly File No. 30, SB 77, §1, eff. 7/6/2010.

Effective Date: 06-29-1988

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2953.33 Restoration of rights and privileges.

(A) An order issued under section 2953.37 of the Revised Code to expunge the record of a person's conviction or, except as provided in division (G) of section 2953.32 of the Revised Code, an order issued under that section to seal the record of a person's conviction restores the person who is the subject of the order to all rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release on parole or post-release control.

(B)

(1) In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, except as provided in division (E) of section 2953.32 and in section 3319.292 of the Revised Code and subject to division (B)(2) of this section, a person may be questioned only with respect to convictions not sealed, bail forfeitures not expunged under section 2953.42 of the Revised Code as it existed prior to June 29, 1988, and bail forfeitures not sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered.

(2) A person may not be questioned in any application, appearance, or inquiry of a type described in division (B)(1) of this section with respect to any conviction expunged under section 2953.37 of the Revised Code.

Amended by 129th General Assembly File No. 34, SB 17, §1, eff. 9/30/2011.

Effective Date: 01-01-2004; 2008 HB428 09-12-2008

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2953.34 Sealing record not to affect appeal rights of eligible offender.

Nothing in sections 2953.31 to 2953.33 of the Revised Code precludes an eligible offender from taking an appeal or seeking any relief from the eligible offender's conviction or from relying on it in lieu of any subsequent prosecution for the same offense.

Amended by 129th General Assembly File No. 131, SB 337, §1, eff. 9/28/2012.

Effective Date: 01-01-1974

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2953.35 Divulging confidential information.

(A) Except as authorized by divisions (D), (E), and (F) of section 2953.32 of the Revised Code or by Chapter 2950. of the Revised Code, any officer or employee of the state, or a political subdivision of the state, who releases or otherwise disseminates or makes available for any purpose involving employment, bonding, or licensing in connection with any business, trade, or profession to any person, or to any department, agency, or other instrumentality of the state, or any political subdivision of the state, any information or other data concerning any arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision the records with respect to which the officer or employee had knowledge of were sealed by an existing order issued pursuant to sections 2953.31 to 2953.36 of the Revised Code, were expunged by an order issued pursuant to division (E) of section 2151.358, section 2953.37, or section 2953.38 of the Revised Code, or were expunged by an order issued pursuant to section 2953.42 of the Revised Code as it existed prior to June 29, 1988, is guilty of divulging confidential information, a misdemeanor of the fourth degree.

(B) Any person who, in violation of section 2953.32 of the Revised Code, uses, disseminates, or otherwise makes available any index prepared pursuant to division (F) of section 2953.32 of the Revised Code is guilty of a misdemeanor of the fourth degree.

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

Amended by 129th General Assembly File No.142, HB 262, §1, eff. 6/27/2012.

Amended by 129th General Assembly File No.34, SB 17, §1, eff. 9/30/2011.

Amended by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

Effective Date: 07-01-1997

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2953.36 Sealing of record of conviction exceptions.

Sections 2953.31 to 2953.35 of the Revised Code do not apply to any of the following:

- (A) Convictions when the offender is subject to a mandatory prison term;
- (B) Convictions under section 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.321, 2907.322, or 2907.323, former section 2907.12, or Chapter 4507., 4510., 4511., or 4549. of the Revised Code, or a conviction for a violation of a municipal ordinance that is substantially similar to any section contained in any of those chapters;
- (C) Convictions of an offense of violence when the offense is a misdemeanor of the first degree or a felony and when the offense is not a violation of section 2917.03 of the Revised Code and is not a violation of section 2903.13, 2917.01, or 2917.31 of the Revised Code that is a misdemeanor of the first degree;
- (D) Convictions on or after October 10, 2007, under section 2907.07 of the Revised Code or a conviction on or after October 10, 2007, for a violation of a municipal ordinance that is substantially similar to that section;
- (E) Convictions on or after October 10, 2007, under section 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.31, 2907.311, 2907.32, or 2907.33 of the Revised Code when the victim of the offense was under eighteen years of age;
- (F) Convictions of an offense in circumstances in which the victim of the offense was under eighteen years of age when the offense is a misdemeanor of the first degree or a felony, except for convictions under section 2919.21 of the Revised Code;
- (G) Convictions of a felony of the first or second degree;
- (H) Bail forfeitures in a traffic case as defined in Traffic Rule 2.

Amended by 129th General Assembly File No.131, SB 337, §1, eff. 9/28/2012.

Effective Date: 01-01-2004; 2007 SB18 10-10-2007

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2953.37 Expungement of certain convictions relating to firearms.

(A) As used in this section:

- (1) "Expunge" means to destroy, delete, and erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.
- (2) "Official records" has the same meaning as in section 2953.51 of the Revised Code.
- (3) "Prosecutor" has the same meaning as in section 2953.31 of the Revised Code.
- (4) "Record of conviction" means the record related to a conviction of or plea of guilty to an offense.

(B) Any person who is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (B), (C), or (E) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and who is authorized by division (H)(2)(a) of that section to file an application under this section for the expungement of the conviction record may apply to the sentencing court for the expungement of the record of conviction. The person may file the application at any time on or after September 30, 2011. The application shall do all of the following:

- (1) Identify the applicant, the offense for which the expungement is sought, the date of the conviction of or plea of guilty to that offense, and the court in which the conviction occurred or the plea of guilty was entered;
- (2) Include evidence that the offense was a violation of division (B), (C), or (E) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and that the applicant is authorized by division (H)(2)(a) of that section to file an application under this section;
- (3) Include a request for expungement of the record of conviction of that offense under this section.

(C) Upon the filing of an application under division (B) of this section and the payment of the fee described in division (D)(3) of this section if applicable, the court shall set a date for a hearing and shall notify the prosecutor for the case 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. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant. The court shall hold the hearing scheduled under this division.

(D)

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

(a) Determine whether the applicant has been convicted of or pleaded guilty to a violation of division (E) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and whether the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011;

(b) Determine whether the applicant has been convicted of or pleaded guilty to a violation of division (B) or (C) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and whether the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011, due to the application of division (F)(5) of that section as it exists on and after September 30, 2011;

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

(d) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction or guilty plea expunged against the legitimate needs, if any, of the government to maintain those records.

(2)

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(a) The court may order the expungement of all official records pertaining to the case and the deletion of all index references to the case and, if it does order the expungement, shall send notice of the order to each public office or agency that the court has reason to believe may have an official record pertaining to the case if the court, after complying with division (D)(1) of this section, determines both of the following:

(i) That the applicant has been convicted of or pleaded guilty to a violation of division (E) of section 2923.16 of the Revised Code as it existed prior to September 30, 2011, and the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011, or that the applicant has been convicted of or pleaded guilty to a violation of division (B) or (C) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011, due to the application of division (F)(5) of that section as it exists on and after September 30, 2011;

(ii) That the interests of the applicant in having the records pertaining to the applicant's conviction or guilty plea expunged are not outweighed by any legitimate needs of the government to maintain those records.

(b) The proceedings in the case that is the subject of an order issued under division (D)(2)(a) of this section shall be considered not to have occurred and the conviction or guilty plea of the person who is the subject of the proceedings shall be expunged. The record of the conviction shall not be used for any purpose, including, but not limited to, a criminal records check under section 109.572 of the Revised Code or a determination under section 2923.125 or 2923.1212 of the Revised Code of eligibility for a concealed handgun license. The applicant may, and the court shall, reply that no record exists with respect to the applicant upon any inquiry into the matter.

(3) Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars. The court shall pay thirty dollars of the fee into the state treasury and shall pay twenty dollars of the fee into the county general revenue fund.

Amended by 129th General Assembly File No. 190, HB 495, §1, eff. 3/27/2013.

Added by 129th General Assembly File No. 34, SB 17, §1, eff. 9/30/2011.

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2953.38 Expungement of certain crimes for victims of human trafficking.

(A) As used in this section:

- (1) "Expunge" means to destroy, delete, or erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.
- (2) "Prosecutor" has the same meaning as in section 2953.31 of the Revised Code.
- (3) "Record of conviction" means the record related to a conviction of or plea of guilty to an offense.
- (4) "Victim of human trafficking" means a person who is or was a victim of a violation of section 2905.32 of the Revised Code, regardless of whether anyone has been convicted of a violation of that section or of any other section for victimizing the person.

(B) Any person who is or was convicted of a violation of section 2907.24, 2907.241, or 2907.25 of the Revised Code may apply to the sentencing court for the expungement of the record of conviction if the person's participation in the offense was a result of the person having been a victim of human trafficking. The person may file the application at any time. The application shall do all of the following:

- (1) Identify the applicant, the offense for which the expungement is sought, the date of the conviction of that offense, and the court in which the conviction occurred;
- (2) Describe the evidence and provide copies of any documentation showing that the person is entitled to relief under this section;
- (3) Include a request for expungement of the record of conviction of that offense under this section.

(C) The court may deny an application made under division (B) of this section if it finds that the application fails to assert grounds on which relief may be granted.

(D) If the court does not deny an application under division (C) of this section, it shall set a date for a hearing and shall notify the prosecutor for the case from which the record of conviction resulted 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. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The court may 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.

(E) At the hearing held under division (D) of this section, the court shall do both of the following:

- (1) If the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection;
- (2) Determine whether the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense was a result of having been a victim of human trafficking.

(F) If after a hearing the court finds that the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense that is the subject of the application was the result of the applicant having been a victim of human trafficking, the court shall grant the application and order that the record of conviction be expunged.

(G)

(1) The court shall send notice of the order of expungement to each public office or agency that the court has reason to believe may have an official record pertaining to the case if the court, after complying with division (E) of this section, determines both of the following:

- (a) That the applicant has been convicted of a violation of section 2907.24, 2907.241, or 2907.25 of the Revised

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Code;

(b) That the interests of the applicant in having the records pertaining to the applicant's conviction expunged are not outweighed by any legitimate needs of the government to maintain those records.

(2) The proceedings in the case that is the subject of an order issued under division (F) of this section shall be considered not to have occurred and the conviction of the person who is the subject of the proceedings shall be expunged. The record of the conviction shall not be used for any purpose, including, but not limited to, a criminal records check under section 109.572 of the Revised Code. The applicant may, and the court shall, reply that no record exists with respect to the applicant upon any inquiry into the matter.

(H) Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars. The court shall pay thirty dollars of the fee into the state treasury and shall pay twenty dollars of the fee into the county general revenue fund.

Added by 129th General Assembly File No.142, HB 262, §1, eff. 6/27/2012.

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2953.51 Sealing of records after not guilty or dismissal definitions.

As used in sections 2953.51 to 2953.56 of the Revised Code:

(A) "No bill" means a report by the foreperson or deputy foreperson of a grand jury that an indictment is not found by the grand jury against a person who has been held to answer before the grand jury for the commission of an offense.

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

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

(D) "Official records" means all records that are possessed by any public office or agency that relate to a criminal case, including, but not limited to: the notation to the case in the criminal docket; all subpoenas issued in the case; all papers and documents filed by the defendant or the prosecutor in the case; all records of all testimony and evidence presented in all proceedings in the case; all court files, papers, documents, folders, entries, affidavits, or writs that pertain to the case; all computer, microfilm, microfiche, or microdot records, indices, or references to the case; all index references to the case; all fingerprints and photographs; all DNA specimens, DNA records, and DNA profiles; all records and investigative reports pertaining to the case that are possessed by any law enforcement officer or agency, except that any records or reports that are the specific investigatory work product of a law enforcement officer or agency are not and shall not be considered to be official records when they are in the possession of that officer or agency; and all investigative records and reports other than those possessed by a law enforcement officer or agency pertaining to the case. "Official records" does not include records or reports maintained pursuant to section 2151.421 of the Revised Code by a public children services agency or the department of job and family services.

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

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

Amended by 129th General Assembly File No. 99, SB 268, §1, eff. 8/6/2012.

Amended by 128th General Assembly File No. 30, SB 77, §1, eff. 7/6/2010.

Effective Date: 07-01-2000

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2953.52 Sealing of records after not guilty finding, dismissal of proceedings or no bill by grand jury.

(A)

(1) Any person, who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information, may apply to the court for an order to seal the person's official records in the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the finding of not guilty or the dismissal of the complaint, indictment, or information is entered upon the minutes of the court or the journal, whichever entry occurs first.

(2) Any person, against whom a no bill is entered by a grand jury, may apply to the court for an order to seal his official records in the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the expiration of two years after the date on which the foreperson or deputy foreperson of the grand jury reports to the court that the grand jury has reported a no bill.

(B)

(1) Upon the filing of an application pursuant to division (A) of this section, the court shall set a date for a hearing and shall notify the prosecutor in the case 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. The prosecutor shall specify in the objection the reasons the prosecutor believes justify a denial of the application.

(2) The court shall do each of the following, except as provided in division (B)(3) of this section:

(a)

(i) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed, or a no bill was returned in the case and a period of two years or a longer period as required by section 2953.61 of the Revised Code has expired from the date of the report to the court of that no bill by the foreperson or deputy foreperson of the grand jury;

(ii) If the complaint, indictment, or information in the case was dismissed, determine whether it was dismissed with prejudice or without prejudice and, if it was dismissed without prejudice, determine whether the relevant statute of limitations has expired;

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

(c) If the prosecutor has filed an objection in accordance with division (B)(1) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(d) Weigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records.

(3) If the court determines after complying with division (B)(2)(a) of this section that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed with prejudice, or that the complaint, indictment, or information in the case was dismissed without prejudice and that the relevant statute of limitations has expired, the court shall issue an order to the superintendent of the bureau of criminal identification and investigation directing that the superintendent seal or cause to be sealed the official records in the case consisting of DNA specimens that are in the possession of the bureau and all DNA records and DNA profiles. The determinations and considerations described in divisions (B)(2)(b), (c), and (d) of this section do not apply with respect to a determination of the court described in this division.

(4) The determinations described in this division are separate from the determination described in division (B)(3) of this section. If the court determines, after complying with division (B)(2) of this section, that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed, or that a no bill was returned in the case and that the appropriate period of time has expired from the date of the report to the

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court of the no bill by the foreperson or deputy foreperson of the grand jury; that no criminal proceedings are pending against the person; and the interests of the person in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain such records, or if division (E)(2)(b) of section 4301.69 of the Revised Code applies, in addition to the order required under division (B)(3) of this section, the court shall issue an order directing that all official records pertaining to the case be sealed and that, except as provided in section 2953.53 of the Revised Code, the proceedings in the case be deemed not to have occurred.

(5) Any DNA specimens, DNA records, and DNA profiles ordered to be sealed under this section shall not be sealed if the person with respect to whom the order applies is otherwise eligible to have DNA records or a DNA profile in the national DNA index system.

Amended by 129th General Assembly File No.99,SB 268, §1, eff. 8/6/2012.

Effective Date: 10-11-2002

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2953.53 Order to seal records - index.

(A) The court shall send notice of any order to seal official records issued pursuant to division (B)(3) of section 2953.52 of the Revised Code to the bureau of criminal identification and investigation and shall send notice of any order issued pursuant to division (B)(4) of that section to any public office or agency that the court knows or has reason to believe may have any record of the case, whether or not it is an official record, that is the subject of the order. The notice shall be sent by certified mail, return receipt requested.

(B) A person whose official records have been sealed pursuant to an order issued pursuant to section 2953.52 of the Revised Code may present a copy of that order and a written request to comply with it, to a public office or agency that has a record of the case that is the subject of the order.

(C) An order to seal official records issued pursuant to section 2953.52 of the Revised Code applies to every public office or agency that has a record of the case that is the subject of the order, regardless of whether it receives notice of the hearing on the application for the order to seal the official records or receives a copy of the order to seal the official records pursuant to division (A) or (B) of this section.

(D) Upon receiving a copy of an order to seal official records pursuant to division (A) or (B) of this section or upon otherwise becoming aware of an applicable order to seal official records issued pursuant to section 2953.52 of the Revised Code, a public office or agency shall comply with the order and, if applicable, with the provisions of section 2953.54 of the Revised Code, except that it may maintain a record of the case that is the subject of the order if the record is maintained for the purpose of compiling statistical data only and does not contain any reference to the person who is the subject of the case and the order.

A public office or agency also may maintain an index of sealed official records, in a form similar to that for sealed records of conviction as set forth in division (F) of section 2953.32 of the Revised Code, access to which may not be afforded to any person other than the person who has custody of the sealed official records. The sealed official records to which such an index pertains shall not be available to any person, except that the official records of a case that have been sealed may be made available to the following persons for the following purposes:

- (1) To the person who is the subject of the records upon written application, and to any other person named in the application, for any purpose;
- (2) To a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;
- (3) To a prosecuting attorney or the prosecuting attorney's assistants to determine a defendant's eligibility to enter a pre-trial diversion program established pursuant to section 2935.36 of the Revised Code;
- (4) To a prosecuting attorney or the prosecuting attorney's assistants to determine a defendant's eligibility to enter a pre-trial diversion program under division (E)(2)(b) of section 4301.69 of the Revised Code.

Amended by 129th General Assembly File No. 99, SB 268, §1, eff. 8/6/2012.

Effective Date: 10-11-2002

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2953.54 Officer's specific investigatory work product - divulging confidential information.

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

(1) Every law enforcement officer possessing records or reports pertaining to the case that are the officer's specific investigatory work product and that are excepted from the definition of "official records" contained in section 2953.51 of the Revised Code shall immediately deliver the records and reports to the officer's employing law enforcement agency. Except as provided in division (A)(3) of this section, no such officer shall knowingly release, disseminate, or otherwise make the records and reports or any information contained in them available to, or discuss any information contained in them with, any person not employed by the officer's employing law enforcement agency.

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

(3) A law enforcement agency that possesses records or reports pertaining to the case that are its specific investigatory work product and that are excepted from the definition of "official records" contained in division (D) of section 2953.51 of the Revised Code, or that are the specific investigatory work product of a law enforcement officer it employs and that were delivered to it under division (A)(1) of this section may permit another law enforcement agency to use the records or reports in the investigation of another offense, if the facts incident to the offense being investigated by the other law enforcement agency and the facts incident to an offense that is the subject of the case are reasonably similar. The agency that provides the records and reports may provide the other agency with the name of the person who is the subject of the case, if it believes that the name of the person is necessary to the conduct of the investigation by the other agency.

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

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

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

Amended by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

Effective Date: 07-01-1997

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2953.55 Inquiries as records sealed after not guilty finding - divulging confidential information.

(A) In any application for employment, license, or any other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any record that has been sealed pursuant to section 2953.52 of the Revised Code. If an inquiry is made in violation of this section, the person whose official record was sealed may respond as if the arrest underlying the case to which the sealed official records pertain and all other proceedings in that case did not occur, and the person whose official record was sealed shall not be subject to any adverse action because of the arrest, the proceedings, or the person's response.

(B) An officer or employee of the state or any of its political subdivisions who knowingly releases, disseminates, or makes available for any purpose involving employment, bonding, licensing, or education to any person or to any department, agency, or other instrumentality of the state, or of any of its political subdivisions, any information or other data concerning any arrest, complaint, indictment, information, trial, adjudication, or correctional supervision, the records of which have been sealed pursuant to section 2953.52 of the Revised Code, is guilty of divulging confidential information, a misdemeanor of the fourth degree.

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

Amended by 128th General Assembly File No. 30, SB 77, §1, eff. 7/6/2010.

Effective Date: 09-26-1984

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2953.56 Violations of secs. 2953.31-2953.61 not basis to exclude or suppress certain evidence.

Violations of sections 2953.31 to 2953.61 of the Revised Code shall not provide the basis to exclude or suppress any of the following evidence that is otherwise admissible in a criminal proceeding, delinquent child proceeding, or other legal proceeding:

(A) DNA records collected in the DNA database;

(B) Fingerprints filed for record by the superintendent of the bureau of criminal identification and investigation;

(C) Other evidence that was obtained or discovered as the direct or indirect result of divulging or otherwise using the records described in divisions (A) and (B) of this section.

Added by 128th General Assembly File No.30, SB 77, §1, eff. 7/6/2010.

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