

IN THE SUPREME COURT OF OHIO

ORIGINAL

State of Ohio, :
 :
 Plaintiff-Appellant, : Case Nos. 13-0870; 13-0876
 :
 v. : On Appeal from the Franklin
 : County Court of Appeals
 Sharlene Aguirre, : Tenth Appellate District
 : Case No. 12AP-415
 Defendant-Appellee. :

MERIT BRIEF OF DEFENDANT-APPELLEE SHARLENE AGUIRRE

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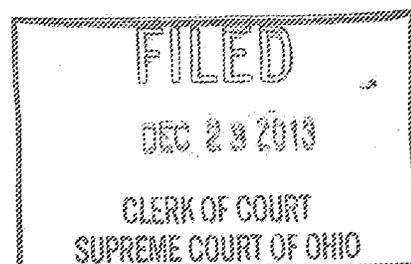


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INTRODUCTION

Ohio's public policy recognizes that sometimes people make mistakes but that they can earn second chances. *See State v. Boddie*, 170 Ohio App.3d 590, 2007-Ohio-626, 868 N.E.2d 699, ¶ 8 (referring to Ohio's expungement statutes). Sometimes those mistakes may result in a criminal conviction. And even minor criminal convictions have substantial collateral consequences, which may profoundly limit job, educational, and housing opportunities. *See Ohio Justice & Policy Center, Civil Impacts of Criminal Convictions Under Ohio Law*, <http://civicohio.org/> (accessed on Dec. 19, 2013); Lisa Riordan Seville and Hanna Rapleye, NBC News, *Sentenced to debt: Some tossed in prison over unpaid fines*, available at http://inplainsight.nbcnews.com/_news/2013/05/27/18380470-sentenced-to-debt-some-tossed-in-prison-over-unpaid-fines?lite (accessed Dec. 19, 2013).

The legislature created a statutory method for courts to grant a person relief from a conviction, so long as the offender can demonstrate that an offense was an isolated incident and that he or she has been rehabilitated. Accordingly, when the legislature enacted R.C. 2953.31 et seq., those statutes were designed to give trial courts discretion to give second chances to people so long as sealing an offender's conviction is consistent with the public's interest. R.C. 2953.32(C). This case is about an indigent woman who has earned a second chance.

In 2001, Appellee Sharlene Aguirre was arrested for making a serious mistake: she stole approximately \$34,000. This occurred during a time of enormous stress in Ms. Aguirre's life: her son had just been diagnosed with HIV. *State v. Aguirre*, Case No. 12EP01-26, Apr. 5, 2012 Transcript of Expungement Hearing Proceedings, 2 (Franklin C.P.). To cope, she started gambling, and to feed that behavior, she stole. *Id.* When she was caught, she took responsibility for her actions. First, by pleading guilty to theft and then by agreeing to repay the victim and the victim's third-party insurance companies for the economic impact of her actions. She was placed on community control for five years, and as part of her supervision, she was directed to pay \$34,000 in restitution. *State v. Aguirre*, Case No. 2001CR-12-7203, July 9, 2002 Judgment Entry 1 (Franklin C.P.). Ms. Aguirre continued paying the restitution award, and over the course of roughly ten years, she has managed to pay down approximately \$16,000. Apr. 5, 2012 Tr. 5.

In 2007, she was discharged from community control, and in 2012, she applied to have her record sealed. There is no indication that Ms. Aguirre asked to be relieved of her responsibility to continue paying restitution to the third-party insurance companies. The trial court granted her motion. Case No. 12EP01-26, Apr. 12, 2012 Entry Sealing Record of Conviction Pursuant to R.C. 2953.32. But the State continues to challenge the trial court's decision. It claims that so long as Ms. Aguirre has an outstanding restitution balance, she has not been "finally discharged" from her conviction and is not

eligible to have her record sealed under R.C. 2953.32(A)(1). The State's argument should be rejected.

The State advocates for a position that defeats the remedial purpose of the expungement statutes by asking for a statutory interpretation that would treat indigent and affluent offenders differently from one another. Because the State's position appears to be contrary to the fundamental purpose of the expungement statutes, this Court should rule that a trial court may seal an offender's criminal conviction, even if the restitution amount is not fully paid.

STATEMENT OF THE CASE AND FACTS

On May 22, 2002, Ms. Aguirre pleaded guilty to theft, a fourth-degree felony and a violation of R.C. 2913.02. *State v. Aguirre*, 2001CR-12-7203, July 9, 2002 Judgment Entry 1 (Franklin C.P.). At sentencing, the parties recommended five years of community control with the "[e]xpress condition * * * that defendant pay \$2,000.00 in restitution to Economy Enterprises Inc. Further restitution owed to Westfield Insurance Company and Harleysville Insurance to be determined by probation." *Id.* At her July 2012 sentencing hearing, the court imposed five years of community control and "the following Community Control Sanctions * * * The Defendant shall pay the balance of the \$32,562.47 restitution amount to probation and \$2,000.00 to Economy Enterprises as soon as possible." *Id.* at 2. The Judgment Entry also stated that "[t]he total fine and financial sanction judgment is Court costs." *Id.*

On June 19, 2007, the Franklin County Court of Common Pleas terminated Ms. Aguirre's community control. Case No. 2001 CR-12-7203, June 19, 2007 Entry. It noted that Ms. Aguirre "has complied with the terms of her probation, except that the restitution are not paid." *Id.* There is no indication that the State objected.

On January 12, 2012 – four and a half years after her community control was terminated – Ms. Aguirre filed a pro se application to seal her conviction. Case No. 12EP-26, Jan. 12, 2012 App. for Order Sealing Record of Conviction or Bail Forfeiture. At that time, Ms. Aguirre had paid all but \$14,152 of the restitution award. Apr. 5, 2012 Tr. 5. The State objected, arguing that Ms. Aguirre had not been "finally discharged" from her conviction because she had "failed to pay the court-ordered restitution." Feb. 17, 2012 State's Objections to Applicant's Request for Expungement Due to Applicant's Failure to Pay Restitution, 1. On April 5, 2013, a hearing was held. After finding that there were no criminal proceedings pending against Ms. Aguirre, that she had paid more than \$16,000 in restitution, and that it was consistent with the public interest to do so, the trial court sealed Ms. Aguirre's conviction. *Id.* at 6; Apr. 12, 2012 Entry Sealing Record of Conviction Pursuant to R.C. 2953.32. And that entry directs that all records pertaining to Ms. Aguirre's conviction be sealed "except as provided in R.C. 2953.32(F),¹ all index references be deleted. This order does not exempt from use records and work product in this case in any civil litigation arising out of, or related to, the facts in this

¹ Revised Code 2953.32(F) allows a governmental agency, office, or department to maintain an index of convictions that have been sealed.

case, and such records and work product will be available for inspection and use for such purposes if necessary.” *Id.*

In May 2011, the State appealed, arguing that Ms. Aguirre was not eligible to have her record sealed under R.C. 2953.32(A) because the restitution had not been fully paid to the third-party insurance companies. On March 7, 2013, the Tenth District Court of Appeals overruled the State’s assignment of error, reasoning that the expungement statutes should be liberally construed to effect their remedial purpose and that if Ms. Aguirre’s conviction was unsealed it would act as a continuing punishment, which has no benefit to the insurance companies or Ms. Aguirre. *State v. Aguirre*, 10th Dist. No. 12AP-415, 2013-Ohio-768, ¶ 17. Moreover, even if Ms. Aguirre’s conviction was sealed, the third-party insurance companies had civil collection remedies available to them; and thus, they were not without an avenue to obtain relief. *Id.* at ¶ 16.

On March 8, 2013, the State filed a motion for en banc consideration and motion to certify a conflict. The motion for en banc consideration was denied, but the Tenth District Court of Appeals certified the following question to this Court:

Whether an offender’s record of conviction may be sealed when the offender still owes court-ordered restitution to a third-party insurance company.

May 7, 2013 Journal Entry. It was assigned Case Number 2013-0870.

On May 31, 2013, the State filed a discretionary appeal, which was assigned Case Number 2013-0876. It included the following Proposition of Law:

A defendant/applicant who still owes restitution has not been finally discharged and is not eligible to seal her conviction, under R.C. 2953.32(A)(1).

On September 4, 2013, this Court consolidated both cases, determined that a conflict existed and accepted jurisdiction to resolve the certified question and accepted jurisdiction over the State's Proposition of Law. As explained below, the State's interpretation of R.C. 2953.32(A)(1) conflicts with the legislature's intent. Ms. Aguirre asks that this Court rule that a trial court has discretion to seal an offender's conviction even if restitution has not been fully paid.

ARGUMENT

First Proposition of Law:

Under 2953.32(A)(1), a felony offender with a qualifying offense becomes eligible to have his or her record sealed three years after the offender has been finally discharged from supervision and/or incarceration.

- A. In the criminal context, discharged means released from jail, prison, or supervision.
1. A person is discharged when he or she is finally released from supervision and there is no threat that the offender may be returned to jail or prison for that offense.

As used in the criminal statutes, a person is "discharged" when he or she is released from jail, prison, or supervision. And a person is "finally discharged" when he

or she completes any term of supervision associated with a sentence, and the court no longer has jurisdiction to extend the offender's period of supervision or return the offender to jail or prison. Ms. Aguirre completed her term of community control in June 2007, and the court no longer had jurisdiction to extend her period of supervision or impose a prison term for a violation of her supervision. Thus, Ms. Aguirre was finally discharged on June 19, 2007.

Revised Code 2953.32(A) states:

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.

(Emphasis added.)

The dispute in this case turns on whether Ms. Aguirre was eligible to have her record sealed. For a felony conviction to be eligible for expungement, the person must show that (1) he or she was a first offender; (2) that the offense qualifies for sealing and is not excluded by R.C. 2953.36 or another applicable exception; and (3) that three years have passed since the offender's "final discharge" from the offense. *Id.*

"Final discharge" is not defined in those sections of the Revised Code addressing the sealing of criminal records. See R.C. 2953.31 – 2953.36. But the State argues that an offender is not finally discharged until he or she completes any term of incarceration

and/or supervision and has fully paid all restitution. That interpretation expands well beyond how the legislature has used “discharged” in the criminal context and conflicts with R.C. 2953.32(A)’s remedial purpose. *See State ex rel. Gains v. Ross*, 86 Ohio St.3d 620, 622, 716 N.E.2d 204 (1999) (stating that R.C. 2953.32 should be liberally construed to effectuate its remedial purpose); *State v. Boddie*, 170 Ohio App.3d 590, 2007-Ohio-626, 868 N.E.2d 699, ¶ 8 (noting that the purpose of R.C. 2953.32 is to grant second chances to those people who demonstrate that they have been rehabilitated). *See generally Schussheim v. Schussheim*, ___ Ohio St.3d ___, 2013-Ohio-4529, ¶ 17 (giving a liberal interpretation to the expungement statutes so that courts could seal the records of a CPO complaint, even though not statutorily authorized to do so). In criminal statutes, “discharge” refers to a defendant’s release from jail, prison, or supervision. And because R.C. 2953.31 et seq. address the sealing of a criminal conviction, “final discharge” should be construed consistent with its use in the criminal statutes.

In construing statutes, a court’s primary purpose is to discern and give effect to the legislature’s intent. *State v. Anthony*, 96 Ohio St.3d 173, 2002-Ohio-4008, 772 N.E.2d 1167 ¶ 10. Courts begin by examining the plain language of the statute. *Id.* And “[w]here the meaning of the statute is clear and definite, it must be applied as written.” *Id.* But, where the words are ambiguous and subject to varying interpretations, further interpretation is necessary. *Id.*; *D.A.B.E., Inc. v. Toledo-Lucas County Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172, 773 N.E.2d 536, ¶ 20 (stating that if the language is

ambiguous, courts should consider laws on the same subject matter to determine the legislative intent); *State ex rel. Nw. Mut. Life Ins. Co. v. Tomlinson*, 90 Ohio St. 233, 124 N.E. 220 (1919), paragraph one of the syllabus (ruling that when a word or phrase is ambiguous, courts should give that word the meaning that it was given in statutes referring to the same subject matter).

As used in Ohio's criminal statutes, "discharge" is a term with a specialized meaning that refers to a person's release from jail, prison, or supervision. See *D.A.B.E., Inc.* at ¶ 21 ("words that have acquired technical or particular meaning * * * shall be construed accordingly."). An offender is discharged when he or she is released from jail, prison, or a term of supervision. See, e.g., R.C. 2935.31 (stating that if an arrest is unlawful the magistrate shall order the arrestee to be "discharged"); R.C. 2947.16 (a person may be "discharged" on his or her own recognizance if convicted of a misdemeanor); R.C. 2949.08(A) (when a person is convicted and sentenced, the person shall remain in the jailer's, administrator's, or keeper's custody until "discharged"). Final means "not to be altered or undone," "coming at the end," "being the last in a series, process, or progress," or "of or relating to the ultimate purpose or result of a process." Merriam-Webster Online, *Final*, available at <http://www.merriam-webster.com/dictionary/final> (accessed Dec. 18, 2013). Thus, when read together, a final discharge occurs when an offender is released from a period of incarceration and/or

supervision and may no longer be sent back to jail or prison, and is not subject to any further period of supervision.

Ms. Aguirre's community control was terminated on June 19, 2007, and that is when she was finally discharged from supervision. June 19, 2007 Entry. Once discharged, the trial court no longer had authority or jurisdiction to send Ms. Aguirre to jail or prison for the 2002 conviction, and her period of community control could not be extended. Consequently, she was eligible to have her record sealed in June 2010.

2. The legislature would not have intended to impose greater punishment on indigent defendants.

The State argues that an offender may only have his or her record sealed if restitution has been fully paid. If the State's position is accepted, this Court would be perpetuating the cycle of poverty by forcing indigent persons to overcome greater burdens in having their records sealed than the burdens that fall on more affluent offenders. This cannot be what the legislature intended when it enacted R.C. 2953.32.

There are significant collateral consequences associated with having a criminal conviction, which limit an offender's access to job, education, and housing opportunities. See Ohio Justice & Policy Center, *Civil Impacts of Criminal Convictions Under Ohio Law*, <http://civiccoho.org/> (accessed on Dec. 19, 2013); Lisa Riordan Seville and Hanna Rapleye, NBC News, *Sentenced to debt: Some tossed in prison over unpaid fines*, available at http://inplainsight.nbcnews.com/_news/2013/05/27/18380470-sentenced-to-debt-some-tossed-in-prison-over-unpaid-fines?lite (accessed Dec. 19, 2013)

(discussing an offender's inability to get a job in her field with a criminal conviction). Indigent people do not have the same resources as affluent people. Indeed, indigent persons generally have less education, fewer job opportunities, fewer financial resources, and greater debt than more affluent persons. See The Stanford Center on Poverty and Inequality, *Inequality in the United States*, available at <http://www.stanford.edu/group/scspi/slides.html> (accessed Dec. 19, 2013). Thus, an indigent offender is far less likely to have the ability to pay restitution, and may even be wholly unable to make restitution payments if, for example, he or she has become homeless. And unlike the more affluent offender, who may be able to immediately write a check for a restitution order, the indigent person will have to make restitution payments, which may take the offender months or even years to pay off.

According to the State, an indigent offender who has consistently made payments on a restitution order is not eligible to have his or her record sealed until the restitution has been paid in its entirety. As a result, comparable affluent offenders' convictions are eligible for expungement before indigent offenders' convictions. Thus, the criminal conviction will remain on the indigent offender's criminal record for a longer period of time. And during that period, the indigent offender will remain ineligible for job, scholarship, housing, and educational opportunities, while the more affluent offender will have successfully erased his or her criminal record. This could not be what the Ohio legislature intended nor should this be the public policy of Ohio.

Importantly, allowing a court to seal an offender's record before restitution is fully paid, but only when the offender establishes a good faith effort to pay the financial sanctions, acts as an incentive that encourages the offender to make payments and "stay out of trouble." An indigent offender who is ordered to repay a substantial sum of restitution may believe that it is impossible to repay that amount in his or her lifetime and, under the State's position, would have a greatly reduced incentive to make payments or avoid criminal activity. Ruling that trial courts have discretion to seal an offender's record when restitution has not been fully paid levels the playing field between the rich and the poor. *See Schussheim, 2013-Ohio-4529, ¶ 14* (when deciding whether to seal a person's record, a court should examine whether the state has a compelling interest in retaining the records).

Moreover, if an offender's record is sealed when restitution has not been fully paid, the offender is still subject to a civil judgment, which can harm a person's credit and limit the offender's job opportunities. Lisa Riordan Seville and Hanna Rapleye, NBC News, *Sentenced to debt: Some tossed in prison over unpaid fines, supra*. Thus, once a conviction is sealed, there are still incentives for repaying any outstanding financial sanctions.

Ms. Aguirre was ordered to pay \$2,000 in restitution to her victim, Economy Enterprises, Inc., and an aggregate amount of \$32,562.47 to two, third-party insurance companies. July 9, 2002 Judgment Entry. By the time of her expungement hearing, Ms.

Aguirre had repaid all but \$14,152, which evidences Ms. Aguirre's continued, good-faith effort to pay restitution. *See* Apr. 5, 2012 Tr. 5. But it has taken Ms. Aguirre approximately ten years to pay that amount, and it could take her an additional ten years to pay the remainder. Thus, according to the State, she would not be "eligible" to have her record sealed until 2025, when she is sixty-eight years old. This result would be absurd and could not be what the Ohio legislature intended.

B. The State's appeal should be dismissed as improvidently accepted.

The trial court ordered Ms. Aguirre to pay restitution as a condition of her supervision. *See* July 9, 2002 Judgment Entry (stating that "[t]he Court imposes the following Community Control Sanctions * * * [Ms. Aguirre] shall pay the balance of the * * * restitution amount [and] * * * [t]he total fine and financial sanction judgment is Court costs."); June 19, 2007 Entry (discharging Ms. Aguirre from community control and stating that she "has complied with the terms of her probation, except that the restitution [is] not paid."). Based on the plain language of the trial court's July 2002 and June 2007 entries, the payment of restitution was a condition of Ms. Aguirre's supervision that expired at the same time that her community control was terminated. *See* R.C. 2929.15(A)(1) (stating that "[t]he duration of all community control sanctions imposed upon an offender under this division shall not exceed five years."). And when her supervision was terminated without objection, the State forfeited its argument that Ms. Aguirre was not "finally discharged." Because the State's current appeal arises

from an argument that has been forfeited, this Court should dismiss this appeal as having been improvidently accepted.

Second Proposition of Law:

An offender's record of conviction may be sealed when the offender has not fully paid court-ordered restitution to a third-party insurance company.

Revised Code 2929.18 did not – and does not – authorize third-party insurance companies to recover monies paid to a crime victim pursuant to an insurance contract. *State v. Kreischer*, 109 Ohio St.3d 391, 2006-Ohio-2706, 848 N.E.2d 496, ¶ 15 (Pfeiffer, J. concurring in part and dissenting in part). This is because the insurance company is not a crime victim that has suffered an economic loss as contemplated by the statute.

The version of R.C. 2929.18(A)(1) in effect at the time of Ms. Aguirre's conviction provided:

the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section * * * . Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. The court shall order that the restitution be made to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court, except that it may include a requirement that reimbursement be made to third parties for amounts paid to or on behalf of the victim * * * for economic loss resulting from the offense. * * * At sentencing, the court shall determine the amount of restitution to be made by the offender. All restitution payments shall be

credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

Former 2929.18(A)(1).

In 2006, this Court construed that statute and ruled that a defendant may be ordered to pay restitution to a third-party insurer for medical costs it paid for a crime victim's care under former 2929.18(A)(1). But Justice Pfeiffer recognized:

[f]ormer R.C. 2929.18(A) * * * provided for restitution, including restitution to third parties, "based on the victim's economic loss." R.C. 2929.01(M) defines economic loss as "any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense," including medical costs. The majority opinion conflates money that an insurance company paid pursuant to a contract of insurance on behalf of an insured with "economic detriment suffered by a victim." Whatever amount the insurance company paid is unambiguously and by definition not a "detriment suffered by a victim." It is more in the nature of detriment suffered by the insurance company. Apparently, a majority of this court believes that the insurance company was the victim of felonious assault. Fortunately, the General Assembly, perhaps foreseeing such a decision by this court, has already amended R.C. 2929.18(A) to make it clear that restitution is not intended to be a windfall for insurance companies. See 2003 Sub.H.B. No. 52.

Kreischer at ¶ 15 (Pfeiffer, J. concurring in part and dissenting in part). Indeed, R.C. 2929.18(A) was amended in 2004 and now clearly provides that a third-party insurance company may not recover for monies it paid pursuant to a contract of insurance. *Kreischer* at ¶ 1, citing 2003 Sub.H.B. No. 52. See *State v. Wickline*, 3d Dist. No. 8-10-20, 2011-Ohio-3004, ¶ 10, 11 (stating that restitution payments to an insurance company violate the revised statute).

An insurance company is in the business of insuring victims against crime; they are not the victim of a crime when they must pay out for an insured's loss. Moreover, insurance companies knowingly take the risk that one of its insureds may be a crime victim. These third-party insurance companies are not entitled to a windfall for participating in its regular business activities, which would occur if the insurance companies are permitted to collect premiums from the victim as well as restitution from the offender. *See Kreisler* at ¶ 15.

In this case, the trial court sealed Ms. Aguirre's record and stated:

[t]he reason I'm not relying on the insurance company is because that's why the insurance company is there in the event that you do something wrong, they're supposed to step in and do what they're supposed to do. Their recourse is to go against you and to try and obtain a judgment or what have you to recover, but that's what they're there for.

And I'm not excusing your conduct by doing this, this is a principle matter here that saying that the insurance – I shouldn't be ordering restitution to the insurance company, that's the only thing I'm saying.

Apr. 5, 2012 Tr. 6. In other words, the third-party insurance companies did not suffer the type of "economic loss" required for a restitution award. Consequently, the trial court did not have the authority to order Ms. Aguirre to pay restitution to two, third-party insurance companies. *See Agee v. Russell*, 92 Ohio St.3d 540, 751 N.E.2d 1043 (2001) (recognizing that this Court may revisit a prior interpretation of a statute to clarify the statute's meaning and overrule a prior decision that misinterpreted that statute).

Because the trial court did not have statutory authority to order restitution to a third-party insurance company, unusual and extraordinary circumstances exist for sealing Ms. Aguirre's conviction. This Court recently held that courts have the inherent authority to expunge and seal records when the case involves unusual and exceptional circumstances, and the interest in the party seeking expungement outweighs the government's interest in maintaining the records. *Schussheim*, 2013-Ohio-4529. Ms. Aguirre was finally discharged from the valid portion of her sentence on June 19, 2007. Because the trial court was not authorized to order restitution to the third-party insurance companies, the restitution payments are not valid. Ms. Aguirre was finally discharged from the valid portion of the court's 2002 judgment on June 19, 2007. Consequently, she was eligible to have her record sealed in June 2010. Unusual and extraordinary circumstances exist for sealing Ms. Aguirre's record.

Finally, to the extent that any economic losses suffered by a third-party insurance company can be attributed to an offender, nothing prevents a third-party insurance company from seeking a civil judgment against an offender. In fact, the entry that seals Ms. Aguirre's conviction provides: "[t]his order does not exempt from use records and work product in this case in any civil litigation arising out of, or related to, the facts in this case, and such records and work product will be available for inspection and use for such purposes if necessary." Apr. 12, 2012 Entry Sealing Record of Conviction

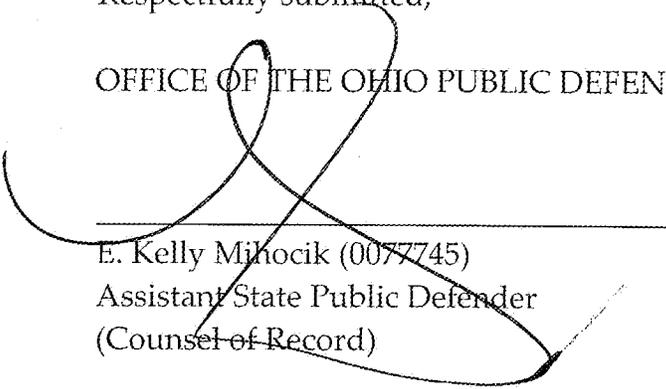
Pursuant to R.C. 2953.32. Thus, sealing Ms. Aguirre's record may not relieve her from her obligation to repay the third-party insurance companies.

CONCLUSION

Ms. Aguirre asks that this Court rule that a trial court has discretion to seal an offender's criminal conviction, even if the restitution amount is not fully paid. Alternatively, Ms. Aguirre asks that this Court dismiss the State's appeal as improvidently accepted because the State did not object to Ms. Aguirre's final discharge from community control, and, thus, forfeited its argument that Ms. Aguirre was not eligible to have her record sealed.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by regular U.S. Mail, to the Office
Barbara A. Farnbacher, Assistant Franklin County Prosecutor, 373 S. High St., 13th Floor,
Columbus, Ohio 43215 this 23rd day of December, 2013.



E. Kelly Mihocik (0077745)
Assistant State Public Defender
Counsel for Sharlene Aguirre

#408169

IN THE SUPREME COURT OF OHIO

State of Ohio, :
 :
 Plaintiff-Appellant, : Case Nos. 13-0870; 13-0876
 :
 v. : On Appeal from the Franklin
 : County Court of Appeals
 Sharlene Aguirre, : Tenth Appellate District
 : Case No. 12AP-415
 Defendant-Appellee. :

APPENDIX TO
MERIT BRIEF DEFENDANT-APPELLEE SHARLENE AGUIRRE

52 of 77 DOCUMENTS

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*** ARCHIVE MATERIAL ***

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH OCTOBER 24, 2001 ***

TITLE XXIX [29] CRIMES -- PROCEDURE
CHAPTER 2929: PENALTIES AND SENTENCING
[PENALTIES FOR FELONY]

ORC Ann. 2929.18 (Anderson 2001)

§ 2929.18 Financial sanctions; restitution.

(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to section 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in section 2929.25 of the Revised Code, may impose upon the offender a fine in accordance with that section. If the offender is sentenced to a sanction of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another governmental entity, the court imposing sentence upon an offender for a felony shall comply with division (A)(4)(b) of this section in determining whether to sentence the offender to a financial sanction described in division (A)(4)(a) of this section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. The court shall order that the restitution be made to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court, except that it may include a requirement that reimbursement be made to third parties for amounts paid to or on behalf of the victim or any survivor of the victim for economic loss resulting from the offense. If reimbursement to third parties is re-

quired, the reimbursement shall be made to any governmental agency to repay any amounts paid by the agency to or on behalf of the victim or any survivor of the victim for economic loss resulting from the offense before any reimbursement is made to any person other than a governmental agency. If no governmental agency incurred expenses for economic loss of the victim or any survivor of the victim resulting from the offense, the reimbursement shall be made to any person other than a governmental agency to repay amounts paid by that person to or on behalf of the victim or any survivor of the victim for economic loss of the victim resulting from the offense. The court shall not require an offender to repay an insurance company for any amounts the company paid on behalf of the offender pursuant to a policy of insurance. At sentencing, the court shall determine the amount of restitution to be made by the offender. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

(2) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision, or as described in division (B)(2) of this section to one or more law enforcement agencies, with the amount of the fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based upon the seriousness of the offense. A fine ordered under this division shall not exceed the statutory fine amount authorized for the level of the offense under division (A)(3) of this section.

(3) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or as described in division (B)(2) of this section to one or more law enforcement agencies, in the following amount:

- (a) For a felony of the first degree, not more than twenty thousand dollars;
- (b) For a felony of the second degree, not more than fifteen thousand dollars;
- (c) For a felony of the third degree, not more than ten thousand dollars;
- (d) For a felony of the fourth degree, not more than five thousand dollars;
- (e) For a felony of the fifth degree, not more than two thousand five hundred dollars.

(4)(a) Subject to division (A)(4)(b) of this section, reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following:

- (i) All or part of the costs of implementing any community control sanction;
- (ii) All or part of the costs of confinement under a sanction imposed pursuant to section 2929.14 or 2929.16 of the Revised Code, provided that the amount of reim-

bursement ordered under this division shall not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement;

(b) If the offender is sentenced to a sanction of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another local governmental entity, one of the following applies:

(i) If, pursuant to section 307.93, 341.14, 341.19, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code, the board, legislative authority, or other local governmental entity requires prisoners convicted of an offense other than a minor misdemeanor to reimburse the county, municipal corporation, or other entity for its expenses incurred by reason of the prisoner's confinement, the court shall impose a financial sanction under division (A)(4)(a) of this section that requires the offender to reimburse the county, municipal corporation, or other local governmental entity for the cost of the confinement. In addition, the court may impose any other financial sanction under this section.

(ii) If, pursuant to any section identified in division (A)(4)(b)(i) of this section, the board, legislative authority, or other local governmental entity has adopted a resolution or ordinance specifying that prisoners convicted of felonies are not required to reimburse the county, municipal corporation, or other local governmental entity for its expenses incurred by reason of the prisoner's confinement, the court shall not impose a financial sanction under division (A)(4)(a) of this section that requires the offender to reimburse the county, municipal corporation, or other local governmental entity for the cost of the confinement, but the court may impose any other financial sanction under this section.

(iii) If neither division (A)(4)(b)(i) nor (A)(4)(b)(ii) of this section applies, the court may impose, but is not required to impose, any financial sanction under this section.

(c) Reimbursement by the offender for costs pursuant to section 2929.28 of the Revised Code.

(B)(1) For a first, second, or third degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, the sentencing court shall impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to division (A)(3) of this section. If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the

mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.

(2) Any mandatory fine imposed upon an offender under division (B)(1) of this section and any fine imposed upon an offender under division (A)(2) or (3) of this section for any fourth or fifth degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code shall be paid to law enforcement agencies pursuant to division (F) of section 2925.03 of the Revised Code.

(3) For a fourth degree felony OMVI offense and for a third degree felony OMVI offense, the sentencing court shall impose upon the offender a mandatory fine in the amount specified in division (A)(4) of section 4511.99 of the Revised Code. The mandatory fine so imposed shall be disbursed as provided in division (A)(4) of section 4511.99 of the Revised Code.

(4) Notwithstanding any fine otherwise authorized or required to be imposed under division (A)(2) or (3) or (B)(1) of this section or section 2929.31 of the Revised Code for a violation of section 2925.03 of the Revised Code, in addition to any penalty or sanction imposed for that offense under section 2925.03 or sections 2929.11 to 2929.18 of the Revised Code and in addition to the forfeiture of property in connection with the offense as prescribed in sections 2925.42 to 2925.45 of the Revised Code, the court that sentences an offender for a violation of section 2925.03 of the Revised Code may impose upon the offender a fine in addition to any fine imposed under division (A)(2) or (3) of this section and in addition to any mandatory fine imposed under division (B)(1) of this section. The fine imposed under division (B)(4) of this section shall be used as provided in division (H) of section 2925.03 of the Revised Code. A fine imposed under division (B)(4) of this section shall not exceed whichever of the following is applicable:

(a) The total value of any personal or real property in which the offender has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 2925.03 of the Revised Code, including any property that constitutes proceeds derived from that offense;

(b) If the offender has no interest in any property of the type described in division (B)(4)(a) of this section or if it is not possible to ascertain whether the offender has an interest in any property of that type in which the offender may have an interest, the amount of the mandatory fine for the offense imposed under division (B)(1) of this section or, if no mandatory fine is imposed under division (B)(1) of this section, the amount of the fine authorized for the level of the offense imposed under division (A)(3) of this section.

(5) Prior to imposing a fine under division (B)(4) of this section, the court shall determine whether the offender has an interest in any property of the type described in division (B)(4)(a) of this section. Except as provided in division (B)(6) or (7) of this section, a fine that is authorized and imposed under division (B)(4) of this section does not limit or affect the imposition of the penalties and sanctions for a violation of section 2925.03 of the Revised Code prescribed under those sections or sections 2929.11 to 2929.18 of the Revised Code and does not limit or affect a forfeiture of property in connection with the offense as prescribed in sections 2925.42 to 2925.45 of the Revised Code.

(6) If the sum total of a mandatory fine amount imposed for a first, second, or third degree felony violation of section 2925.03 of the Revised Code under division (B)(1) of this section plus the amount of any fine imposed under division (B)(4) of this section does not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code, the court may impose a fine for the offense in addition to the mandatory fine and the fine imposed under division (B)(4) of this section. The sum total of the amounts of the mandatory fine, the fine imposed under division (B)(4) of this section, and the additional fine imposed under division (B)(6) of this section shall not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code. The clerk of the court shall pay any fine that is imposed under division (B)(6) of this section to the county, township, municipal corporation, park district as created pursuant to section 511.18 or 1545.04 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender pursuant to division (F) of section 2925.03 of the Revised Code.

(7) If the sum total of the amount of a mandatory fine imposed for a first, second, or third degree felony violation of section 2925.03 of the Revised Code plus the amount of any fine imposed under division (B)(4) of this section exceeds the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code, the court shall not impose a fine under division (B)(6) of this section.

(C)(1) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(4)(a) of this section to pay the costs incurred by the department of rehabilitation and correction in operating a prison or other facility used to confine offenders pursuant to sanctions imposed under section 2929.14 or 2929.16 of the Revised Code to the treasurer of state. The treasurer of state shall deposit the reimbursements in the confinement cost reimbursement fund that is hereby created in the

state treasury. The department of rehabilitation and correction shall use the amounts deposited in the fund to fund the operation of facilities used to confine offenders pursuant to sections 2929.14 and 2929.16 of the Revised Code.

(2) Except as provided in section 2951.021 [2951.02.1] of the Revised Code, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(4)(a) of this section to pay the costs incurred by a county pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code to the county treasurer. The county treasurer shall deposit the reimbursements in the sanction cost reimbursement fund that each board of county commissioners shall create in its county treasury. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code.

(3) Except as provided in section 2951.021 [2951.02.1] of the Revised Code, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(4)(a) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in a special fund that shall be established in the treasury of each municipal corporation. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code.

(4) Except as provided in section 2951.021 [2951.02.1] of the Revised Code, the offender shall pay reimbursements imposed pursuant to division (A)(4)(a) of this section for the costs incurred by a private provider pursuant to a sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code to the provider.

(D) A financial sanction imposed pursuant to division (A) or (B) of this section is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, except that a financial sanction of reimbursement imposed pursuant to division (A)(4)(a)(ii) of this section upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal corporation, a financial sanction of reimbursement imposed upon an offender pursuant to this section for costs incurred by a private provider of sanctions

is a judgment in favor of the private provider, and a financial sanction of restitution imposed pursuant to this section is a judgment in favor of the victim of the offender's criminal act. The offender subject to the sanction is the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment, the victim, private provider, state, or political subdivision may bring an action to do any of the following:

- (1) Obtain execution of the judgment through any available procedure, including:
 - (a) An execution against the property of the judgment debtor under Chapter 2329. of the Revised Code;
 - (b) An execution against the person of the judgment debtor under Chapter 2331. of the Revised Code;
 - (c) A proceeding in aid of execution under Chapter 2333. of the Revised Code, including:
 - (i) A proceeding for the examination of the judgment debtor under sections 2333.09 to 2333.12 and sections 2333.15 to 2333.27 of the Revised Code;
 - (ii) A proceeding for attachment of the person of the judgment debtor under section 2333.28 of the Revised Code;
 - (iii) A creditor's suit under section 2333.01 of the Revised Code.
 - (d) The attachment of the property of the judgment debtor under Chapter 2715. of the Revised Code;
 - (e) The garnishment of the property of the judgment debtor under Chapter 2716. of the Revised Code.
- (2) Obtain an order for the assignment of wages of the judgment debtor under section 1321.33 of the Revised Code.
 - (E) A court that imposes a financial sanction upon an offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it.
 - (F) Each court imposing a financial sanction upon an offender under this section or under section 2929.25 of the Revised Code may designate a court employee to collect, or may enter into contracts with one or more public agencies or private vendors for the collection of, amounts due under the financial sanction imposed pursuant to this section or section 2929.25 of the Revised Code. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction

imposed pursuant to this section or section 2929.25 of the Revised Code, a court shall comply with sections 307.86 to 307.92 of the Revised Code.

(G) If a court that imposes a financial sanction under division (A) or (B) of this section finds that an offender satisfactorily has completed all other sanctions imposed upon the offender and that all restitution that has been ordered has been paid as ordered, the court may suspend any financial sanctions imposed pursuant to this section or section 2929.25 of the Revised Code that have not been paid.

(H) No financial sanction imposed under this section or section 2929.25 of the Revised Code shall preclude a victim from bringing a civil action against the offender.

HISTORY:

: 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 480 (Eff 10-16-96); 146 v S 166 (Eff 10-17-96); 147 v H 122 (Eff 7-29-98); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 528. Eff 2-13-2001.

The provisions of § 3 of HB 528 (148 v --) read as follows:

SECTION 3. Section 2929.18 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 22 and Am. Sub. S.B. 107 of the 123rd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

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*** Annotations current through October 21, 2013 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR FELONY

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ORC Ann. 2929.15 (2013)

Legislative Alert: LEXSEE 2013 Ohio HB 59 -- See sections 101X01 and 101X02.

§ 2929.15. Community control sanctions

(A) (1) If in sentencing an offender for a felony the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more community control sanctions authorized pursuant to *section 2929.16, 2929.17, or 2929.18 of the Revised Code*. If the court is sentencing an offender for a fourth degree felony OVI offense under division (G)(1) of *section 2929.13 of the Revised Code*, in addition to the mandatory term of local incarceration imposed under that division and the mandatory fine required by division (B)(3) of *section 2929.18 of the Revised Code*, the court may impose upon the offender a community control sanction or combination of community control sanctions in accordance with *sections 2929.16 and 2929.17 of the Revised Code*. If the court is sentencing an offender for a third or fourth degree felony OVI offense under division (G)(2) of *section 2929.13 of the Revised Code*, in addition to the mandatory prison term or mandatory prison term and additional prison term imposed under that division, the court also may impose upon the offender a community control sanction or combination of community control sanctions under *section 2929.16 or 2929.17 of the Revised Code*, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

The duration of all community control sanctions imposed upon an offender under this division shall not exceed five years. If the offender absconds or otherwise leaves the jurisdiction of the court in which the offender resides without obtaining permission from the court or the offender's probation officer to leave the jurisdiction of the court, or if the offender is confined in any institution for the commission of any offense while under a community control sanction, the period of the community control sanction ceases to run until the offender is brought before the court for its further action. If the court sentences the offender to one or more nonresidential sanctions under *section 2929.17 of the Revised Code*, the court shall impose as a condition of the nonresidential sanctions that, during the period of the sanctions, the offender must abide by the law and must not leave the state without the permission of the court or the offender's probation officer. The court may impose any other conditions of release under a community control sanction that the court considers appropriate, including, but not limited to, requiring that the offender not ingest or be injected with a drug of abuse and submit to random drug testing as provided in division (D) of this section to determine whether the offender ingested or was injected with a drug of abuse and requiring that the results of the drug test indicate that the offender did not ingest or was not injected with a drug of abuse.

(2) (a) If a court sentences an offender to any community control sanction or combination of community control sanctions authorized pursuant to *section 2929.16, 2929.17, or 2929.18 of the Revised Code*, the court shall place the offender under the general control and supervision of a department of probation in the county that serves the court for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without

the permission of the court or the offender's probation officer. Alternatively, if the offender resides in another county and a county department of probation has been established in that county or that county is served by a multicounty probation department established under *section 2301.27 of the Revised Code*, the court may request the court of common pleas of that county to receive the offender into the general control and supervision of that county or multicounty department of probation for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer, subject to the jurisdiction of the trial judge over and with respect to the person of the offender, and to the rules governing that department of probation.

If there is no department of probation in the county that serves the court, the court shall place the offender, regardless of the offender's county of residence, under the general control and supervision of the adult parole authority for purposes of reporting to the court a violation of any of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from this state without the permission of the court or the offender's probation officer.

(b) If the court imposing sentence upon an offender sentences the offender to any community control sanction or combination of community control sanctions authorized pursuant to *section 2929.16, 2929.17, or 2929.18 of the Revised Code*, and if the offender violates any condition of the sanctions, any condition of release under a community control sanction imposed by the court, violates any law, or departs the state without the permission of the court or the offender's probation officer, the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction shall report the violation or departure directly to the sentencing court, or shall report the violation or departure to the county or multicounty department of probation with general control and supervision over the offender under division (A)(2)(a) of this section or the officer of that department who supervises the offender, or, if there is no such department with general control and supervision over the offender under that division, to the adult parole authority. If the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction reports the violation or departure to the county or multicounty department of probation or the adult parole authority, the department's or authority's officers may treat the offender as if the offender were on probation and in violation of the probation, and shall report the violation of the condition of the sanction, any condition of release under a community control sanction imposed by the court, the violation of law, or the departure from the state without the required permission to the sentencing court.

(3) If an offender who is eligible for community control sanctions under this section admits to being drug addicted or the court has reason to believe that the offender is drug addicted, and if the offense for which the offender is being sentenced was related to the addiction, the court may require that the offender be assessed by a properly credentialed professional within a specified period of time and shall require the professional to file a written assessment of the offender with the court. If a court imposes treatment and recovery support services as a community control sanction, the court shall direct the level and type of treatment and recovery support services after consideration of the written assessment, if available at the time of sentencing, and recommendations of the professional and other treatment and recovery support services providers.

(4) If an assessment completed pursuant to division (A)(3) of this section indicates that the offender is addicted to drugs or alcohol, the court may include in any community control sanction imposed for a violation of *section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 of the Revised Code* a requirement that the offender participate in a treatment and recovery support services program certified under *section 5119.36 of the Revised Code* or offered by another properly credentialed community addiction services provider.

(B) (1) If the conditions of a community control sanction are violated or if the offender violates a law or leaves the state without the permission of the court or the offender's probation officer, the sentencing court may impose upon the violator one or more of the following penalties:

(a) A longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit specified in division (A) of this section;

(b) A more restrictive sanction under *section 2929.16, 2929.17, or 2929.18 of the Revised Code*;

(c) A prison term on the offender pursuant to *section 2929.14 of the Revised Code*.

(2) The prison term, if any, imposed upon a violator pursuant to this division shall be within the range of prison terms available for the offense for which the sanction that was violated was imposed and shall not exceed the prison term specified in the notice provided to the offender at the sentencing hearing pursuant to division (B)(2) of *section*

2929.19 of the Revised Code. The court may reduce the longer period of time that the offender is required to spend under the longer sanction, the more restrictive sanction, or a prison term imposed pursuant to this division by the time the offender successfully spent under the sanction that was initially imposed.

(C) If an offender, for a significant period of time, fulfills the conditions of a sanction imposed pursuant to *section 2929.16, 2929.17, or 2929.18 of the Revised Code* in an exemplary manner, the court may reduce the period of time under the sanction or impose a less restrictive sanction, but the court shall not permit the offender to violate any law or permit the offender to leave the state without the permission of the court or the offender's probation officer.

(D) (1) If a court under division (A)(1) of this section imposes a condition of release under a community control sanction that requires the offender to submit to random drug testing, the department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section may cause the offender to submit to random drug testing performed by a laboratory or entity that has entered into a contract with any of the governmental entities or officers authorized to enter into a contract with that laboratory or entity under *section 341.26, 753.33, or 5120.63 of the Revised Code*.

(2) If no laboratory or entity described in division (D)(1) of this section has entered into a contract as specified in that division, the department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section shall cause the offender to submit to random drug testing performed by a reputable public laboratory to determine whether the individual who is the subject of the drug test ingested or was injected with a drug of abuse.

(3) A laboratory or entity that has entered into a contract pursuant to *section 341.26, 753.33, or 5120.63 of the Revised Code* shall perform the random drug tests under division (D)(1) of this section in accordance with the applicable standards that are included in the terms of that contract. A public laboratory shall perform the random drug tests under division (D)(2) of this section in accordance with the standards set forth in the policies and procedures established by the department of rehabilitation and correction pursuant to *section 5120.63 of the Revised Code*. An offender who is required under division (A)(1) of this section to submit to random drug testing as a condition of release under a community control sanction and whose test results indicate that the offender ingested or was injected with a drug of abuse shall pay the fee for the drug test if the department of probation or the adult parole authority that has general control and supervision of the offender requires payment of a fee. A laboratory or entity that performs the random drug testing on an offender under division (D)(1) or (2) of this section shall transmit the results of the drug test to the appropriate department of probation or the adult parole authority that has general control and supervision of the offender under division (A)(2)(a) of this section.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 166 (Eff 10-17-96); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349, Eff 9-22-2000; 149 v S 123, § 1, eff. 1-1-04; 150 v H 163, § 1, eff. 9-23-04; 152 v H 130, § 1, eff. 4-7-09; 153 v H 338, § 1, eff. 9-17-10; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2013 HB 59, § 101.01, eff. Sept. 29, 2013.

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Legislative Alert: LEXSEE 2013 Ohio HB 59 -- See sections 101X01 and 101X02.

§ 2929.18. Financial sanctions; restitution; reimbursements

(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to *section 2947.23 of the Revised Code*, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in *section 2929.32 of the Revised Code*, may impose upon the offender a fine in accordance with that section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

If the court imposes restitution, the court may order that the offender pay a surcharge of not more than five per cent of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision, or as described in division (B)(2) of this section to one or more law enforcement agencies, with the amount of the fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based upon the seriousness of the offense. A fine ordered under this division shall not exceed the maximum conventional fine amount authorized for the level of the offense under division (A)(3) of this section.

(3) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or as described in division (B)(2) of this section to one or more law enforcement agencies, in the following amount:

- (a) For a felony of the first degree, not more than twenty thousand dollars;
- (b) For a felony of the second degree, not more than fifteen thousand dollars;
- (c) For a felony of the third degree, not more than ten thousand dollars;
- (d) For a felony of the fourth degree, not more than five thousand dollars;
- (e) For a felony of the fifth degree, not more than two thousand five hundred dollars.

(4) A state fine or costs as defined in *section 2949.111 of the Revised Code*.

(5) (a) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following:

(i) All or part of the costs of implementing any community control sanction, including a supervision fee under *section 2951.021 of the Revised Code*;

(ii) All or part of the costs of confinement under a sanction imposed pursuant to *section 2929.14, 2929.142, or 2929.16 of the Revised Code*, provided that the amount of reimbursement ordered under this division shall not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement;

(iii) All or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under *section 4510.13 of the Revised Code*.

(b) If the offender is sentenced to a sanction of confinement pursuant to *section 2929.14 or 2929.16 of the Revised Code* that is to be served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another local governmental entity, if, pursuant to *section 307.93, 341.14, 341.19, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code* and *section 2929.37 of the Revised Code*, the board, legislative authority, or other local governmental entity requires prisoners to reimburse the county, municipal corporation, or other entity for its expenses incurred by reason of the prisoner's confinement, and if the court does not impose a financial sanction under division (A)(5)(a)(ii) of this section, confinement costs may be assessed pursuant to *section 2929.37 of the Revised Code*. In addition, the offender may be required to pay the fees specified in *section 2929.38 of the Revised Code* in accordance with that section.

(c) Reimbursement by the offender for costs pursuant to *section 2929.71 of the Revised Code*.

(B) (1) For a first, second, or third degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, the sentencing court shall impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to division (A)(3) of this section. If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.

(2) Any mandatory fine imposed upon an offender under division (B)(1) of this section and any fine imposed upon an offender under division (A)(2) or (3) of this section for any fourth or fifth degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code shall be paid to law enforcement agencies pursuant to division (F) of *section 2925.03 of the Revised Code*.

(3) For a fourth degree felony OVI offense and for a third degree felony OVI offense, the sentencing court shall impose upon the offender a mandatory fine in the amount specified in division (G)(1)(d) or (e) of *section 4511.19 of the Revised Code*, whichever is applicable. The mandatory fine so imposed shall be disbursed as provided in the division pursuant to which it is imposed.

(4) Notwithstanding any fine otherwise authorized or required to be imposed under division (A)(2) or (3) or (B)(1) of this section or *section 2929.31 of the Revised Code* for a violation of *section 2925.03 of the Revised Code*, in addition to any penalty or sanction imposed for that offense under *section 2925.03 or sections 2929.11 to 2929.18 of the*

Revised Code and in addition to the forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code, the court that sentences an offender for a violation of *section 2925.03 of the Revised Code* may impose upon the offender a fine in addition to any fine imposed under division (A)(2) or (3) of this section and in addition to any mandatory fine imposed under division (B)(1) of this section. The fine imposed under division (B)(4) of this section shall be used as provided in division (H) of *section 2925.03 of the Revised Code*. A fine imposed under division (B)(4) of this section shall not exceed whichever of the following is applicable:

(a) The total value of any personal or real property in which the offender has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of *section 2925.03 of the Revised Code*, including any property that constitutes proceeds derived from that offense;

(b) If the offender has no interest in any property of the type described in division (B)(4)(a) of this section or if it is not possible to ascertain whether the offender has an interest in any property of that type in which the offender may have an interest, the amount of the mandatory fine for the offense imposed under division (B)(1) of this section or, if no mandatory fine is imposed under division (B)(1) of this section, the amount of the fine authorized for the level of the offense imposed under division (A)(3) of this section.

(5) Prior to imposing a fine under division (B)(4) of this section, the court shall determine whether the offender has an interest in any property of the type described in division (B)(4)(a) of this section. Except as provided in division (B)(6) or (7) of this section, a fine that is authorized and imposed under division (B)(4) of this section does not limit or affect the imposition of the penalties and sanctions for a violation of *section 2925.03 of the Revised Code* prescribed under those sections or *sections 2929.11 to 2929.18 of the Revised Code* and does not limit or affect a forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code.

(6) If the sum total of a mandatory fine amount imposed for a first, second, or third degree felony violation of *section 2925.03 of the Revised Code* under division (B)(1) of this section plus the amount of any fine imposed under division (B)(4) of this section does not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or *section 2929.31 of the Revised Code*, the court may impose a fine for the offense in addition to the mandatory fine and the fine imposed under division (B)(4) of this section. The sum total of the amounts of the mandatory fine, the fine imposed under division (B)(4) of this section, and the additional fine imposed under division (B)(6) of this section shall not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or *section 2929.31 of the Revised Code*. The clerk of the court shall pay any fine that is imposed under division (B)(6) of this section to the county, township, municipal corporation, park district as created pursuant to *section 511.18 or 1545.04 of the Revised Code*, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender pursuant to division (F) of *section 2925.03 of the Revised Code*.

(7) If the sum total of the amount of a mandatory fine imposed for a first, second, or third degree felony violation of *section 2925.03 of the Revised Code* plus the amount of any fine imposed under division (B)(4) of this section exceeds the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or *section 2929.31 of the Revised Code*, the court shall not impose a fine under division (B)(6) of this section.

(8) (a) If an offender who is convicted of or pleads guilty to a violation of *section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32*, division (A)(1) or (2) of *section 2907.323*, or division (B)(1), (2), (3), (4), or (5) of *section 2919.22 of the Revised Code* also is convicted of or pleads guilty to a specification of the type described in *section 2941.1422 of the Revised Code* that charges that the offender knowingly committed the offense in furtherance of human trafficking, the sentencing court shall sentence the offender to a financial sanction of restitution by the offender to the victim or any survivor of the victim, with the restitution including the costs of housing, counseling, and medical and legal assistance incurred by the victim as a direct result of the offense and the greater of the following:

(i) The gross income or value to the offender of the victim's labor or services;

(ii) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the "Federal Fair Labor Standards Act of 1938," *52 Stat. 1060, 20 U.S.C. 207*, and state labor laws.

(b) If a court imposing sentence upon an offender for a felony is required to impose upon the offender a financial sanction of restitution under division (B)(8)(a) of this section, in addition to that financial sanction of restitution, the court may sentence the offender to any other financial sanction or combination of financial sanctions authorized under this section, including a restitution sanction under division (A)(1) of this section.

(9) In addition to any other fine that is or may be imposed under this section, the court imposing sentence upon an offender for a felony that is a sexually oriented offense or a child-victim oriented offense, as those terms are defined in *section 2950.01 of the Revised Code*, may impose a fine of not less than fifty nor more than five hundred dollars.

(C) (1) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by the department of rehabilitation and correction in operating a prison or other facility used to confine offenders pursuant to sanctions imposed under *section 2929.14, 2929.142, or 2929.16 of the Revised Code* to the treasurer of state. The treasurer of state shall deposit the reimbursements in the confinement cost reimbursement fund that is hereby created in the state treasury. The department of rehabilitation and correction shall use the amounts deposited in the fund to fund the operation of facilities used to confine offenders pursuant to *sections 2929.14, 2929.142, and 2929.16 of the Revised Code*.

(2) Except as provided in *section 2951.021 of the Revised Code*, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by a county pursuant to any sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.16 of the Revised Code* to the county treasurer. The county treasurer shall deposit the reimbursements in the sanction cost reimbursement fund that each board of county commissioners shall create in its county treasury. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.16 of the Revised Code*.

(3) Except as provided in *section 2951.021 of the Revised Code*, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.16 of the Revised Code* to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in a special fund that shall be established in the treasury of each municipal corporation. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* or in operating a facility used to confine offenders pursuant to a sanction imposed under *section 2929.16 of the Revised Code*.

(4) Except as provided in *section 2951.021 of the Revised Code*, the offender shall pay reimbursements imposed pursuant to division (A)(5)(a) of this section for the costs incurred by a private provider pursuant to a sanction imposed under this section or *section 2929.16 or 2929.17 of the Revised Code* to the provider.

(D) Except as otherwise provided in this division, a financial sanction imposed pursuant to division (A) or (B) of this section is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (A)(5)(a)(ii) of this section upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal corporation, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed upon an offender pursuant to this section for costs incurred by a private provider of sanctions is a judgment in favor of the private provider, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed pursuant to division (A)(1) or (B)(8) of this section is an order in favor of the victim of the offender's criminal act that can be collected through a certificate of judgment as described in division (D)(1) of this section, through execution as described in division (D)(2) of this section, or through an order as described in division (D)(3) of this section, and the offender shall be considered for purposes of the collection as the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may do any of the following:

(1) Obtain from the clerk of the court in which the judgment was entered a certificate of judgment that shall be in the same manner and form as a certificate of judgment issued in a civil action;

(2) Obtain execution of the judgment or order through any available procedure, including:

(a) An execution against the property of the judgment debtor under Chapter 2329. of the Revised Code;

(b) An execution against the person of the judgment debtor under Chapter 2331. of the Revised Code;

(c) A proceeding in aid of execution under Chapter 2333. of the Revised Code, including:

(i) A proceeding for the examination of the judgment debtor under *sections 2333.09 to 2333.12 and sections 2333.15 to 2333.27 of the Revised Code*;

(ii) A proceeding for attachment of the person of the judgment debtor under *section 2333.28 of the Revised Code*;

(iii) A creditor's suit under *section 2333.01 of the Revised Code*.

(d) The attachment of the property of the judgment debtor under Chapter 2715. of the Revised Code;

(e) The garnishment of the property of the judgment debtor under Chapter 2716. of the Revised Code.

(3) Obtain an order for the assignment of wages of the judgment debtor under *section 1321.33 of the Revised Code*.

(E) A court that imposes a financial sanction upon an offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it.

(F) Each court imposing a financial sanction upon an offender under this section or under *section 2929.32 of the Revised Code* may designate the clerk of the court or another person to collect the financial sanction. The clerk or other person authorized by law or the court to collect the financial sanction may enter into contracts with one or more public agencies or private vendors for the collection of, amounts due under the financial sanction imposed pursuant to this section or *section 2929.32 of the Revised Code*. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this section or *section 2929.32 of the Revised Code*, a court shall comply with *sections 307.86 to 307.92 of the Revised Code*.

(G) If a court that imposes a financial sanction under division (A) or (B) of this section finds that an offender satisfactorily has completed all other sanctions imposed upon the offender and that all restitution that has been ordered has been paid as ordered, the court may suspend any financial sanctions imposed pursuant to this section or *section 2929.32 of the Revised Code* that have not been paid.

(H) No financial sanction imposed under this section or *section 2929.32 of the Revised Code* shall preclude a victim from bringing a civil action against the offender.

HISTORY:

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 480 (Eff 10-16-96); 146 v S 166 (Eff 10-17-96); 147 v H 122 (Eff 7-29-98); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 528 (Eff 2-13-2001); 149 v H 170, Eff 9-6-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 151 v H 461, § 1, eff. 4-4-07; 151 v H 241, § 1, eff. 7-1-07; 152 v S 17, § 1, eff. 9-30-08; 152 v H 280, § 1, eff. 4-7-09; 2011 HB 5, § 1, eff. Sept. 23, 2011; 2013 HB 59, § 101.01, eff. Sept. 29, 2013.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2935. ARREST, CITATION, AND DISPOSITION ALTERNATIVES
UNIFORM ACT ON FRESH PURSUIT

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ORC Ann. 2935.31 (2013)

§ 2935.31. Hearing before magistrate in county of arrest

If an arrest is made in this state by an officer of another state under *section 2935.30 of the Revised Code*, he shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state, or admit him to bail for such purposes. If the magistrate determines that the arrest was unlawful he shall discharge the person arrested.

HISTORY:

GC § 13434-5; 117 v 671; Bureau of Code Revision. Eff 10-1-53.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2947. JUDGMENT; SENTENCE
SENTENCE AND PROCEEDINGS

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ORC Am. 2947.16 (2013)

§ 2947.16. Recognizance

A person convicted of a misdemeanor may be required by the judge or magistrate to enter into a recognizance, with sufficient surety, in such sum as the judge or magistrate finds proper, to keep the peace and be of good behavior for such time, not exceeding two years, as the court directs. The court may order such person to stand committed until such order is complied with or he is discharged by law, but the court may discharge such person at any time on his own recognizance, or cancel such recognizance.

HISTORY:

GC § 13451-11; 113 v 123(199), ch 30, § 11; Bureau of Code Revision. Eff 10-1-53.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2949. EXECUTION OF SENTENCE
SUSPENSION OF SENTENCE

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ORC Ann. 2949.08 (2013)

§ 2949.08. Confinement upon conviction; reduction of sentence for prior confinement

(A) When a person who is convicted of or pleads guilty to a felony is sentenced to a community residential sanction in a community-based correctional facility pursuant to *section 2929.16 of the Revised Code* or when a person who is convicted of or pleads guilty to a felony or a misdemeanor is sentenced to a term of imprisonment in a jail, the judge or magistrate shall order the person into the custody of the sheriff or constable, and the sheriff or constable shall deliver the person with the record of the person's conviction to the jailer, administrator, or keeper, in whose custody the person shall remain until the term of imprisonment expires or the person is otherwise legally discharged.

(B) The record of the person's conviction shall specify the total number of days, if any, that the person was confined for any reason arising out of the offense for which the person was convicted and sentenced prior to delivery to the jailer, administrator, or keeper under this section. The record shall be used to determine any reduction of sentence under division (C) of this section.

(C) (1) If the person is sentenced to a jail for a felony or a misdemeanor, the jailer in charge of a jail shall reduce the sentence of a person delivered into the jailer's custody pursuant to division (A) of this section 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, confinement while awaiting transportation to the place where the person is to serve the sentence, and confinement in a juvenile facility.

(2) If the person is sentenced to a community-based correctional facility for a felony, the total amount of time that a person shall be confined in a community-based correctional facility, in a jail, and for any reason arising out of the offense for which the person was convicted and sentenced prior to delivery to the jailer, administrator, or keeper shall not exceed the maximum prison term available for that offense. Any term in a jail shall be reduced first pursuant to division (C)(1) of this section by the total number of days the person was confined prior to delivery to the jailer, administrator, or keeper. Only after the term in a jail has been entirely reduced may the term in a community-based correctional facility be reduced pursuant to this division. This division does not affect the limitations placed on the duration of a term in a jail or a community-based correctional facility under divisions (A)(1), (2), and (3) of *section 2929.16 of the Revised Code*.

(D) For purposes of divisions (B) and (C) of this section, a person shall be considered to have been confined for a day if the person was confined for any period or periods of time totaling more than eight hours during that day.

(E) As used in this section, "community-based correctional facility" and "jail" have the same meanings as in *section 2929.01 of the Revised Code*.

HISTORY:

GC § 13454-1; I13 v 123(205), ch 33; Bureau of Code Revision, 10-1-53; 138 v S 23 (Eff 3-27-80); 148 v S 107.
Eff 3-23-2000; 2012 SB 337, § 1, eff. Sept. 28, 2012.

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

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ORC Ann. 2953.31 (2013)

§ 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.

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

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ORC Ann. 2953.32 (2013)

§ 2953.32. Sealing of record of conviction or bail forfeiture

(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 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.

HISTORY:

135 v S 5 (Eff 1-1-74); 137 v H 219 (Eff 11-1-77); 138 v H 105 (Eff 10-25-79); 140 v H 227 (Eff 9-26-84); 142 v H 8 (Eff 7-31-87); 142 v H 175 (Eff 6-29-88); 143 v S 140 (Eff 10-2-89); 144 v H 154 (Eff 7-31-92); 145 v H 571 (Eff 10-6-94); 146 v H 566 (Eff 10-16-96); 146 v S 160 (Eff 1-27-97); 148 v S 13, Eff 3-23-2000; 149 v H 490, § 1, eff. 1-1-04; 150 v H 12, §§ 1, 3, eff. 4-8-04*; 152 v S 10, § 1, eff. 7-1-07; 152 v H 104, § 1, eff. 3-24-08; 152 v H 195, § 1, eff. 9-30-08; 153 v S 77, § 1, eff. 7-6-10; 2012 SB 337, § 1, eff. Sept. 28, 2012.

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

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ORC Ann. 2953.33 (2013)

§ 2953.33. Rights and privileges restored; answering questions

(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*.

HISTORY:

135 v S 5 (Eff 1-1-74); 138 v H 105 (Eff 10-25-79); 142 v H 175 (Eff 6-29-88); 144 v H 154. Eff 7-31-92; 149 v H 490, § 1, eff. 1-1-04; 152 v H 428, § 1, eff. 9-12-08; 2011 SB 17, § 1, eff. Sept. 30, 2011.

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ORC Ann. 2953.34 (2013)

§ 2953.34. First offender may still take appeal or seek relief

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.

HISTORY:

135 v S 5, § 2. Eff 1-1-74; 2012 SB 337, § 1, eff. Sept. 28, 2012.

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ORC Ann. 2953.35 (2013)

§ 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.

HISTORY:

135 v S 5 (Eff 1-1-74); 136 v H 1 (Eff 6-13-75); 138 v H 105 (Eff 10-25-79); 142 v H 175 (Eff 6-29-88); 146 v H 180. Eff 7-1-97; 153 v S 77, § 1, eff. 7-6-10; 2011 SB 17, § 1, eff. Sept. 30, 2011; 2012 HB 262, § 1, eff. June 27, 2012.

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ORC Ann. 2953.36 (2013)

§ 2953.36. Exceptions to preceding sections

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*.

HISTORY:

135 v S 5 (Eff 1-1-74); 142 v H 175 (Eff 6-29-88); 145 v H 335 (Eff 12-9-94); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v H 353 (Eff 9-17-96); 148 v S 13. Eff 3-23-2000; 149 v S 123, § 1, eff. 1-1-04; 152 v S 18, § 1, eff. 10-10-07; 2012 SB 337, § 1, eff. Sept. 28, 2012.