

As Introduced

132nd General Assembly

Regular Session

2017-2018

S. B. No. 159

Senator Williams

Cosponsors: Senators Sykes, Brown, Tavares

A BILL

To amend sections 2953.51, 2953.52, and 2953.55 of
the Revised Code to permit a person to apply for
the sealing of the official records pertaining
to a case in which the person was convicted of
an offense for which the person is granted a
pardon.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2953.51, 2953.52, and 2953.55 of
the Revised Code be amended to read as follows:

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

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

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

(C) "Court" means ~~the~~ any of the following:

(1) The court in which a case is pending at the time a 18
finding of not guilty in the case or a dismissal of the 19
complaint, indictment, or information in the case is entered on 20
the minutes or journal of the court, ~~or the~~ ; 21

(2) The court to which the foreperson or deputy foreperson 22
of a grand jury reports, pursuant to section 2939.23 of the 23
Revised Code, that the grand jury has returned a no bill; 24

(3) The court that rendered a judgment of conviction of 25
the offense for the violation of which the convict was convicted 26
and incarcerated and for which the governor grants any of the 27
types of pardon specified in division (G) of this section. 28

(D) "Official records" means all records that are 29
possessed by any public office or agency that relate to a 30
criminal case, including, but not limited to: the notation to 31
the case in the criminal docket; all subpoenas issued in the 32
case; all papers and documents filed by the defendant or the 33
prosecutor in the case; all records of all testimony and 34
evidence presented in all proceedings in the case; all court 35
files, papers, documents, folders, entries, affidavits, or writs 36
that pertain to the case; all computer, microfilm, microfiche, 37
or microdot records, indices, or references to the case; all 38
index references to the case; all fingerprints and photographs; 39
all DNA specimens, DNA records, and DNA profiles; all records 40
and investigative reports pertaining to the case that are 41
possessed by any law enforcement officer or agency, except that 42
any records or reports that are the specific investigatory work 43
product of a law enforcement officer or agency are not and shall 44
not be considered to be official records when they are in the 45
possession of that officer or agency; and all investigative 46
records and reports other than those possessed by a law 47

enforcement officer or agency pertaining to the case. "Official
records" does not include any of the following:

(1) Records or reports maintained pursuant to section
2151.421 of the Revised Code by a public children services
agency or the department of job and family services;

(2) Any report of an investigation maintained by the
inspector general pursuant to section 121.42 of the Revised
Code, to the extent that the report contains information that
pertains to an individual who was convicted of or pleaded guilty
to an offense discovered in or related to the investigation and
whose conviction or guilty plea was not overturned on appeal.

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

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

(G) "Absolute and entire pardon," "partial pardon," and
"pardon upon conditions precedent or subsequent" mean the types
of pardon that the governor may grant after conviction pursuant
to division (B) of section 2967.02 of the Revised Code.

Sec. 2953.52. (A) (1) Any person, who is found not guilty
of an offense by a jury or a court or who is the defendant named
in a dismissed complaint, indictment, or information, may apply
to the court for an order to seal the person's official records
in the case. Except as provided in section 2953.61 of the
Revised Code, the application may be filed at any time after the
finding of not guilty or the dismissal of the complaint,
indictment, or information is entered upon the minutes of the
court or the journal, whichever entry occurs first.

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

(3) Any person who is granted by the governor an absolute and entire pardon, a partial pardon, or a pardon upon conditions precedent or subsequent under division (B) of section 2967.02 of the Revised Code may apply to the court for an order to seal the person's official records in the case in which the person was convicted of the offense for which any of those types of pardon is granted. The application may be filed at any time after an absolute and entire pardon or a partial pardon is granted or at any time after all of the conditions precedent or subsequent of a pardon are met.

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

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

(a)(i) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the

case was dismissed, ~~or~~ a no bill was returned in the case and a 107
period of two years or a longer period as required by section 108
2953.61 of the Revised Code has expired from the date of the 109
report to the court of that no bill by the foreperson or deputy 110
foreperson of the grand jury, or the person was granted an 111
absolute and entire pardon, a partial pardon, or a pardon upon 112
conditions precedent or subsequent for the offense of which the 113
person was convicted; 114

(ii) If the complaint, indictment, or information in the 115
case was dismissed, determine whether it was dismissed with 116
prejudice or without prejudice and, if it was dismissed without 117
prejudice, determine whether the relevant statute of limitations 118
has expired; 119

(iii) If the person was granted a pardon upon conditions 120
precedent or subsequent for the offense of which the person was 121
convicted, determine whether all of those conditions are met. 122

(b) Determine whether criminal proceedings are pending 123
against the person; 124

(c) If the prosecutor has filed an objection in accordance 125
with division (B)(1) of this section, consider the reasons 126
against granting the application specified by the prosecutor in 127
the objection; 128

(d) Weigh the interests of the person in having the 129
official records pertaining to the case sealed against the 130
legitimate needs, if any, of the government to maintain those 131
records. 132

(3) If the court determines after complying with ~~division~~ 133
divisions (B)(2)(a) (i) and (ii) of this section that the person 134
was found not guilty in the case, that the complaint, 135

indictment, or information in the case was dismissed with 136
prejudice, or that the complaint, indictment, or information in 137
the case was dismissed without prejudice and that the relevant 138
statute of limitations has expired, the court shall issue an 139
order to the superintendent of the bureau of criminal 140
identification and investigation directing that the 141
superintendent seal or cause to be sealed the official records 142
in the case consisting of DNA specimens that are in the 143
possession of the bureau and all DNA records and DNA profiles. 144
The determinations and considerations described in divisions (B) 145
(2) (b), (c), and (d) of this section do not apply with respect 146
to a determination of the court described in this division. 147

(4) The determinations described in this division are 148
separate from the determination described in division (B) (3) of 149
this section. If the court determines, after complying with 150
division (B) (2) of this section, that the person was found not 151
guilty in the case, that the complaint, indictment, or 152
information in the case was dismissed, ~~or~~ that a no bill was 153
returned in the case and that the appropriate period of time has 154
expired from the date of the report to the court of the no bill 155
by the foreperson or deputy foreperson of the grand jury, that 156
the person was granted an absolute and entire pardon or a 157
partial pardon, or if the person was granted a pardon upon 158
conditions precedent or subsequent, that all of those conditions 159
are met; that no criminal proceedings are pending against the 160
person; and the interests of the person in having the records 161
pertaining to the case sealed are not outweighed by any 162
legitimate governmental needs to maintain such records, or if 163
division (E) (2) (b) of section 4301.69 of the Revised Code 164
applies, in addition to the order required under division (B) (3) 165
of this section, the court shall issue an order directing that 166

all official records pertaining to the case be sealed and that, 167
except as provided in section 2953.53 of the Revised Code, the 168
proceedings in the case be deemed not to have occurred. 169

(5) Any DNA specimens, DNA records, and DNA profiles 170
ordered to be sealed under this section shall not be sealed if 171
the person with respect to whom the order applies is otherwise 172
eligible to have DNA records or a DNA profile in the national 173
DNA index system. 174

Sec. 2953.55. (A) In any application for employment, 175
license, or any other right or privilege, any appearance as a 176
witness, or any other inquiry, a person may not be questioned 177
with respect to any record that has been sealed pursuant to 178
section 2953.52 of the Revised Code. If an inquiry is made in 179
violation of this section, the person whose official record was 180
sealed may respond as if the arrest underlying the case to which 181
the sealed official records pertain and all other proceedings in 182
that case did not occur, ~~and the~~ or as if the conviction in the 183
criminal case to which the sealed official records pertain and 184
all proceedings in that criminal case did not occur. The person 185
whose official record was sealed shall not be subject to any 186
adverse action because of the arrest, the conviction, the 187
proceedings, or the person's response. 188

(B) An officer or employee of the state or any of its 189
political subdivisions who knowingly releases, disseminates, or 190
makes available for any purpose involving employment, bonding, 191
licensing, or education to any person or to any department, 192
agency, or other instrumentality of the state, or of any of its 193
political subdivisions, any information or other data concerning 194
any arrest, complaint, indictment, information, trial, 195
adjudication, conviction, or correctional supervision, the 196

records of which have been sealed pursuant to section 2953.52 of 197
the Revised Code, is guilty of divulging confidential 198
information, a misdemeanor of the fourth degree. 199

(C) It is not a violation of this section for the bureau 200
of criminal identification and investigation or any authorized 201
employee of the bureau participating in the investigation of 202
criminal activity to release, disseminate, or otherwise make 203
available to, or discuss with, a person directly employed by a 204
law enforcement agency DNA records collected in the DNA database 205
or fingerprints filed for record by the superintendent of the 206
bureau of criminal identification and investigation. 207

Section 2. That existing sections 2953.51, 2953.52, and 208
2953.55 of the Revised Code are hereby repealed. 209