As Reported by the House Criminal Justice Committee

133rd General Assembly

Regular Session

2019-2020

Sub. S. B. No. 10

Senator Wilson

Cosponsors: Senators Peterson, Uecker, Coley, Hoagland, Gavarone, Antonio, Craig, Dolan, Eklund, Hackett, Hill, Hottinger, Huffman, M., Huffman, S., Kunze, Lehner, Maharath, McColley, Obhof, O'Brien, Roegner, Rulli, Sykes, Thomas, Williams Representatives Plummer, Leland, Crossman, Cupp, Galonski, Rogers, Smith, T., West, Lang, Grendell, Seitz

A BILL

To amend sections 319.16, 2921.41, 2953.32, 2953.321, 2953.36, 2953.51, 2953.54, and 5747.12 and to enact section 117.116 of the Revised Code to expand the penalties for theft in office based on the amount stolen, to include as restitution audit costs of the entity that suffered the loss, to modify various aspects of the laws regarding criminal and delinquency record sealing and expungement, to expand the list of debts toward satisfaction of which the Tax Commissioner may apply a tax refund due to a taxpayer, and to specify a separate standard for the issuance of warrants upon presentation of a court order.

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

Section 1. That sections 319.16, 2921.41, 2953.32, 2953.321, 2953.36, 2953.51, 2953.54, and 5747.12 be amended and section 117.116 of the Revised Code be enacted to read as follows:

Sec. 117.116. The auditor of state, upon receiving notification that a county auditor has filed a warrant under protest as specified in section 319.16 of the Revised Code, may review that warrant as part of the auditor of state's next regularly scheduled audit of the public office that presented documents under that section that led to issuance of the warrant under protest.

Sec. 319.16. (A) The county auditor shall issue warrants, including electronic warrants authorizing direct deposit for payment of county obligations in accordance with division (F) of section 9.37 of the Revised Code, on the county treasurer for all moneys payable from the county treasury, upon presentation of either of the following:

(1) Any proper order or voucher and evidentiary matter ~~for the moneys, and~~;

(2) Any proper court order for expenses of any court funded through the county treasury and, upon request of the county auditor, legible copies of any court-approved invoice, bill, receipt, check, or contract related to the order, redacted as required by law, to the extent those documents exist.

(B) When a court order described in division (A)(2) of this section is presented, the auditor shall have no liability for that expenditure. The county auditor shall keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose, and on what fund. ~~The~~

(C) The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal, including a county board of mental health or county board of developmental disabilities, so authorized by law. ~~If~~

(D) If the auditor questions the validity of an expenditure under division (A)(2) of this section that is within available appropriations~~ and for which a proper order or voucher and evidentiary matter is presented~~, the auditor shall notify the court that presented the documents, issue the warrant under protest, and notify the auditor of state of the protest. When a warrant is issued under division (D) of this section, the auditor has no liability for that expenditure. If the auditor refuses to issue the warrant, a writ of mandamus may be sought. The court shall issue a writ of mandamus for issuance of the warrant if the court determines that the claim is valid.

(E) If the auditor questions the validity of an expenditure presented under division (A)(1) of this section that is within available appropriations, the auditor shall —notify the board, officer, or tribunal who presented the ~~voucher~~documents. —If the board, officer, or tribunal determines that the expenditure —is valid and the auditor ~~continues to refuse~~ refuses to issue the appropriate warrant on the county treasury, a writ of mandamus may be sought. The court shall issue a writ of mandamus for issuance —of the warrant if the court determines that the claim is valid.

Evidentiary matter includes original invoices, receipts, bills and checks, and legible copies of contracts.

Sec. 2921.41. (A) No public official or party official shall commit any theft offense, as defined in division (K) of section 2913.01 of the Revised Code, when either of the following applies:

(1) The offender uses the offender's office in aid of committing the offense or permits or assents to its use in aid of committing the offense;

(2) The property or service involved is owned by this state, any other state, the United States, a county, a municipal corporation, a township, or any political subdivision, department, or agency of any of them, is owned by a political party, or is part of a political campaign fund.

(B) Whoever violates this section is guilty of theft in office. Except as otherwise provided in this division, theft in office is a felony of the fifth degree. If the value of property or services stolen is one thousand dollars or more and is less than seven thousand five hundred dollars, theft in office is a felony of the fourth degree. If the value of property or services stolen is seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, theft in office is a felony of the third degree. If the value of property or services stolen is one hundred fifty thousand dollars or more and is less than seven hundred fifty thousand dollars, theft in office is a felony of the second degree. If the value of property or services stolen is seven hundred fifty thousand dollars or more, theft in office is a felony of the first degree.

(C)(1) A public official or party official who pleads guilty to theft in office and whose plea is accepted by the court or a public official or party official against whom a verdict or finding of guilt for committing theft in office is returned is forever disqualified from holding any public office, employment, or position of trust in this state.

(2)(a)(i) A court that imposes sentence for a violation of this section based on conduct described in division (A)(2) of this section shall require the public official or party official who is convicted of or pleads guilty to the offense to make restitution for all of the property or the service that is the subject of the offense, in addition to the term of imprisonment and any fine imposed. The total amount of restitution imposed under this division shall include costs of auditing the public entities specified in division (A)(2) of this section that own the property or service involved in the conduct described in that division that is a violation of this section, but, except as otherwise provided in a negotiated plea agreement, shall not exceed the amount of the restitution imposed for all of the property or the service that is the subject of the offense.

(ii) A court that imposes sentence for a violation of this section based on conduct described in division (A)(1) of this section and that determines at trial that this state or a political subdivision of this state if the offender is a public official, or a political party in the United States or this state if the offender is a party official, suffered actual loss as a result of the offense shall require the offender to make restitution to the state, political subdivision, or political party for all of the actual loss experienced, in addition to the term of imprisonment and any fine imposed. The total amount of restitution imposed under this division shall include costs of auditing the state, political subdivision, or political party that suffered the actual loss based on conduct described in that division that is a violation of this section, but, except as otherwise provided in a negotiated plea agreement, shall not exceed the amount of the restitution imposed for all of the actual loss suffered.

(b)(i) In any case in which a sentencing court is required to order restitution under division (C)(2)(a) of this section and in which the offender, at the time of the commission of the offense or at any other time, was a member of the public employees retirement system, the Ohio police and fire pension fund, the state teachers retirement system, the school employees retirement system, or the state highway patrol retirement system; was an electing employee, as defined in section 3305.01 of the Revised Code, participating in an alternative retirement plan provided pursuant to Chapter 3305. of the Revised Code; was a participating employee or continuing member, as defined in section 148.01 of the Revised Code, in a deferred compensation program offered by the Ohio public employees deferred compensation board; was an officer or employee of a municipal corporation who was a participant in a deferred compensation program offered by that municipal corporation; was an officer or employee of a government unit, as defined in section 148.06 of the Revised Code, who was a participant in a deferred compensation program offered by that government unit, or was a participating employee, continuing member, or participant in any deferred compensation program described in this division and a member of a retirement system specified in this division or a retirement system of a municipal corporation, the entity to which restitution is to be made may file a motion with the sentencing court specifying any retirement system, any provider as defined in section 3305.01 of the Revised Code, and any deferred compensation program of which the offender was a member, electing employee, participating employee, continuing member, or participant and requesting the court to issue an order requiring the specified retirement system, the specified provider under the alternative retirement plan, or the specified deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, to withhold the amount required as restitution from any payment that is to be made under a pension, annuity, or allowance, under an option in the alternative retirement plan, under a participant account, as defined in section 148.01 of the Revised Code, or under any other type of benefit, other than a survivorship benefit, that has been or is in the future granted to the offender, from any payment of accumulated employee contributions standing to the offender's credit with that retirement system, that provider of the option under the alternative retirement plan, or that deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, and from any payment of any other amounts to be paid to the offender upon the offender's withdrawal of the offender's contributions pursuant to Chapter 145., 148., 742., 3307., 3309., or 5505. of the Revised Code. A motion described in this division may be filed at any time subsequent to the conviction of the offender or entry of a guilty plea. Upon the filing of the motion, the clerk of the court in which the motion is filed shall notify the offender, the specified retirement system, the specified provider under the alternative retirement plan, or the specified deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, in writing, of all of the following: that the motion was filed; that the offender will be granted a hearing on the issuance of the requested order if the offender files a written request for a hearing with the clerk prior to the expiration of thirty days after the offender receives the notice; that, if a hearing is requested, the court will schedule a hearing as soon as possible and notify the offender, any specified retirement system, any specified provider under an alternative retirement plan, and any specified deferred compensation program of the date, time, and place of the hearing; that, if a hearing is conducted, it will be limited only to a consideration of whether the offender can show good cause why the requested order should not be issued; that, if a hearing is conducted, the court will not issue the requested order if the court determines, based on evidence presented at the hearing by the offender, that there is good cause for the requested order not to be issued; that the court will issue the requested order if a hearing is not requested or if a hearing is conducted but the court does not determine, based on evidence presented at the hearing by the offender, that there is good cause for the requested order not to be issued; and that, if the requested order is issued, any retirement system, any provider under an alternative retirement plan, and any deferred compensation program specified in the motion will be required to withhold the amount required as restitution from payments to the offender.

(ii) In any case in which a sentencing court is required to order restitution under division (C)(2)(a) of this section and in which a motion requesting the issuance of a withholding order as described in division (C)(2)(b)(i) of this section is filed, the offender may receive a hearing on the motion by delivering a written request for a hearing to the court prior to the expiration of thirty days after the offender's receipt of the notice provided pursuant to division (C)(2)(b)(i) of this section. If a request for a hearing is made by the offender within the prescribed time, the court shall schedule a hearing as soon as possible after the request is made and shall notify the offender, the specified retirement system, the specified provider under the alternative retirement plan, or the specified deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, of the date, time, and place of the hearing. A hearing scheduled under this division shall be limited to a consideration of whether there is good cause, based on evidence presented by the offender, for the requested order not to be issued. If the court determines, based on evidence presented by the offender, that there is good cause for the order not to be issued, the court shall deny the motion and shall not issue the requested order. If the offender does not request a hearing within the prescribed time or if the court conducts a hearing but does not determine, based on evidence presented by the offender, that there is good cause for the order not to be issued, the court shall order the specified retirement system, the specified provider under the alternative retirement plan, or the specified deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, to withhold the amount required as restitution under division (C)(2)(a) of this section from any payments to be made under a pension, annuity, or allowance, under a participant account, as defined in section 148.01 of the Revised Code, under an option in the alternative retirement plan, or under any other type of benefit, other than a survivorship benefit, that has been or is in the future granted to the offender, from any payment of accumulated employee contributions standing to the offender's credit with that retirement system, that provider under the alternative retirement plan, or that deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, and from any payment of any other amounts to be paid to the offender upon the offender's withdrawal of the offender's contributions pursuant to Chapter 145., 148., 742., 3307., 3309., or 5505. of the Revised Code, and to continue the withholding for that purpose, in accordance with the order, out of each payment to be made on or after the date of issuance of the order, until further order of the court. Upon receipt of an order issued under this division, the public employees retirement system, the Ohio police and fire pension fund, the state teachers retirement system, the school employees retirement system, the state highway patrol retirement system, a municipal corporation retirement system, the provider under the alternative retirement plan, and the deferred compensation program offered by the Ohio public employees deferred compensation board, a municipal corporation, or a government unit, as defined in section 148.06 of the Revised Code, whichever are applicable, shall withhold the amount required as restitution, in accordance with the order, from any such payments and immediately shall forward the amount withheld to the clerk of the court in which the order was issued for payment to the entity to which restitution is to be made.

(iii) Service of a notice required by division (C)(2)(b)(i) or (ii) of this section shall be effected in the same manner as provided in the Rules of Civil Procedure for the service of process.

(c) Consistent with the ruling of the supreme court of the United States in Kelly v. Robinson, 479 U.S. 36 (1986), restitution imposed under division (C)(2)(a) of this section is not dischargeable under Chapter 7 of the United States Bankruptcy Code pursuant to 11 U.S.C. 523, as amended.

(D) Upon the filing of charges against a person under this section, the prosecutor, as defined in section 2935.01 of the Revised Code, who is assigned the case shall send written notice that charges have been filed against that person to the public employees retirement system, the Ohio police and fire pension fund, the state teachers retirement system, the school employees retirement system, the state highway patrol retirement system, the provider under an alternative retirement plan, any municipal corporation retirement system in this state, and the deferred compensation program offered by the Ohio public employees deferred compensation board, a municipal corporation, or a government unit, as defined in section 148.06 of the Revised Code. The written notice shall specifically identify the person charged.

Sec. 2953.32. (A)(1) Except as provided in section 2953.61 of the Revised Code or as otherwise provided in division (A)(1)(d) of this section, 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 record of the case that pertains to the conviction. Application may be made at one of the following times:

(a) At the expiration of three years after the offender's final discharge if convicted of one felony, so long as none of the offenses is a violation of section 2921.43 of the Revised Code;

(b) When division (A)(1)(a) of section 2953.31 of the Revised Code applies to the offender, at the expiration of four years after the offender's final discharge if convicted of two felonies, or at the expiration of five years after final discharge if convicted of three, four, or five felonies, so long as none of the offenses is a violation of section 2921.43 of the Revised Code;

(c) At the expiration of one year after the offender's final discharge if convicted of a misdemeanor, so long as none of the offenses is a violation of section 2921.43 of the Revised Code;

(d) At the expiration of seven years after the offender's final discharge if the record includes a conviction of soliciting improper compensation in violation of section 2921.43 of the Revised Code.

(2) Any person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture for the offense charged 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 that pertains to the charge. 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. The probation officer or county department of probation that the court directs to make inquiries concerning the applicant shall determine whether or not the applicant was fingerprinted at the time of arrest or under section 109.60 of the Revised Code. If the applicant was so fingerprinted, the probation officer or county department of probation shall include with the written report a record of the applicant's fingerprints. 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 or bail forfeiture 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, 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 division (C)(4), (G), (H), or (I) of this section, shall order all official records of the case that pertain to the conviction or bail forfeiture sealed and, except as provided in division (F) of this section, all index references to the case that pertain to the conviction or bail forfeiture deleted and, in the case of bail forfeitures,

shall dismiss the charges in the case. The proceedings in the case that pertain to the conviction or bail forfeiture 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) An applicant may request the sealing of the records of more than one case in a single application under this section. Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars, regardless of the number of records the application requests to have sealed. 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.

(4) If the court orders the official records pertaining to the case sealed, the court shall do one of the following:

(a) If the applicant was fingerprinted at the time of arrest or under section 109.60 of the Revised Code and the record of the applicant's fingerprints was provided to the court under division (B) of this section, forward a copy of the sealing order and the record of the applicant's fingerprints to the bureau of criminal identification and investigation.

(b) If the applicant was not fingerprinted at the time of arrest or under section 109.60 of the Revised Code, or the record of the applicant's fingerprints was not provided to the court under division (B) of this section, but fingerprinting was required for the offense, order the applicant to appear before a sheriff to have the applicant's fingerprints taken according to the fingerprint system of identification on the forms furnished by the superintendent of the bureau of criminal identification and investigation. The sheriff shall forward the applicant's fingerprints to the court. The court shall forward the applicant's fingerprints and a copy of the sealing order to the bureau of criminal identification and investigation.

Failure of the court to order fingerprints at the time of sealing does not constitute a reversible error.

(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 or department of youth services as part of a background investigation of a person who applies for employment with the agency or with the department;

(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;

(13) By a court, the registrar of motor vehicles, a prosecuting attorney or the prosecuting attorney's assistants, or a law enforcement officer for the purpose of assessing points against a person under section 4510.036 of the Revised Code or for taking action with regard to points assessed.

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) Notwithstanding any provision of this section or section 2953.33 of the Revised Code that requires otherwise, if the auditor of state or a prosecutor maintains records, reports, or audits of an individual who has been forever disqualified from holding public office, employment, or position of trust in this state under sections 2921.41 and 2921.43 of the Revised Code, or has otherwise been convicted of an offense based upon the records, reports, or audits of the auditor of state, the auditor of state or prosecutor is permitted to maintain those records to the extent they were used as the basis for the individual's disqualification or conviction, and shall not be compelled by court order to seal those records.

(I) 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.

~~(I)~~ (J) The sealing of a record under this section does not affect the assessment of points under section 4510.036 of the Revised Code and does not erase points assessed against a person as a result of the sealed record.

Sec. 2953.321. (A) As used in this section, "investigatory work product" means any records or reports of a law enforcement officer or agency that are excepted from the definition of "official records" contained in section 2953.51 of the Revised

Code and that pertain to a conviction or bail forfeiture the records of which have been ordered sealed pursuant to division (C)(2) of section 2953.32 of the Revised Code or that pertain to a conviction or delinquent child adjudication the records of which have been ordered expunged pursuant to division (E) of section 2151.358, division (D)(2) of section 2953.37, or division (G) of section 2953.38 of the Revised Code.

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

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

(2) Except as provided in division (B)(3) or (4) of this section, every law enforcement agency that possesses investigatory work product shall close that work product to all persons who are not directly employed by the law enforcement agency and shall treat that work product, in relation to all persons other than those who are directly employed by the law enforcement agency, as if it did not exist and never had existed.

(3) A law enforcement agency that possesses investigatory work product may permit another law enforcement agency to use that work product in the investigation of another offense if the

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

(4) The auditor of state may provide to or discuss with other parties investigatory work product maintained pursuant to Chapter 117. of the Revised Code by the auditor of state.

(C)(1) Except as provided in division (B)(3) or (4) of this section, no law enforcement officer or other person employed by a law enforcement agency shall knowingly release, disseminate, or otherwise make the investigatory work product or any information contained in that work product available to, or discuss any information contained in it with, any person not employed by the employing law enforcement agency.

(2) No law enforcement agency, or person employed by a law enforcement agency, that receives investigatory work product pursuant to division (B)(3) or (4) of this section shall use that work product for any purpose other than the investigation of the offense for which it was obtained from the other law enforcement agency, or disclose the name of the person who is the subject of the work product except when necessary for the conduct of the investigation of the offense, or the prosecution of the person for committing the offense, for which it was obtained from the other law enforcement agency.

(3) It is not a violation of division (C)(1) or (2) of this section for the bureau of criminal identification and

investigation or any authorized employee of the bureau participating in the investigation of criminal activity to release, disseminate, or otherwise make available to, or discuss with, a person directly employed by a law enforcement agency DNA records collected in the DNA database or fingerprints filed for record by the superintendent of the bureau of criminal identification and investigation.

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

Sec. 2953.36. (A) Except as otherwise provided in division (B) of this section, sections 2953.31 to 2953.35 of the Revised Code do not apply to any of the following:

(1) Convictions when the offender is subject to a mandatory prison term;

(2) 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 4506., 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, except as otherwise provided in section 2953.61 of the Revised Code;

(3) 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;

(4) 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;

(5) 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;

(6) Convictions of an offense in circumstances in which the victim of the offense was less than sixteen 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;

(7) Convictions of a felony of the first or second degree;

(8) Bail forfeitures in a traffic case as defined in Traffic Rule 2;

(9) Convictions of theft in office in violation of section 2921.41 of the Revised Code.

(B) Sections 2953.31 to 2953.35 of the Revised Code apply to a conviction listed in this section if, on the date of the conviction, those sections did not apply to the conviction, but after the date of the conviction, the penalty for or classification of the offense was changed so that those sections apply to the conviction.

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

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

(3) Records, reports, or audits maintained by the auditor of state pursuant to Chapter 117. of the Revised Code.

(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.

Sec. 2953.54. (A) Except as otherwise provided in Chapter 2950. of the Revised Code, upon the issuance of an order by a court under division (B) of section 2953.52 of the Revised Code directing that all official records pertaining to a case be sealed and that the proceedings in the case be deemed not to have occurred:

(1) Every law enforcement officer possessing records or reports pertaining to the case that are the officer's specific investigatory work product and that are excepted from the definition of "official records" contained in section 2953.51 of the Revised Code shall immediately deliver the records and reports to the officer's employing law enforcement agency.

Except as provided in division (A)(3) or (4) of this section, no such officer shall knowingly release, disseminate, or otherwise make the records and reports or any information contained in them available to, or discuss any information contained in them with, any person not employed by the officer's employing law enforcement agency.

(2) Every law enforcement agency that possesses records or reports pertaining to the case that are its specific investigatory work product and that are excepted from the definition of "official records" contained in section 2953.51 of the Revised Code, or that are the specific investigatory work product of a law enforcement officer it employs and that were delivered to it under division (A)(1) of this section shall, except as provided in division (A)(3) or (4) of this section, close the records and reports to all persons who are not directly employed by the law enforcement agency and shall, except as provided in division (A)(3) or (4) of this section, treat the records and reports, in relation to all persons other than those who are directly employed by the law enforcement agency, as if they did not exist and had never existed. Except as provided in division (A)(3) or (4) of this section, no person who is employed by the law enforcement agency shall knowingly release, disseminate, or otherwise make the records and reports in the possession of the employing law enforcement agency or any information contained in them available to, or discuss any information contained in them with, any person not employed by the employing law enforcement agency.

(3) A law enforcement agency that possesses records or reports pertaining to the case that are its specific investigatory work product and that are excepted from the definition of "official records" contained in division (D) of

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

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

(4) The auditor of state may provide to or discuss with other parties records, reports, or audits maintained by the auditor of state pursuant to Chapter 117. of the Revised Code pertaining to the case that are the auditor of state's specific investigatory work product and that are excepted from the definition of "official records" contained in division (D) of

section 2953.51 of the Revised Code, or that are the specific investigatory work product of a law enforcement officer the auditor of state employs and that were delivered to the auditor of state under division (A)(1) of this section.

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

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

Sec. 5747.12. (A) If a person entitled to a refund under section 5747.11 or 5747.13 of the Revised Code is indebted ~~to this state~~ for any of the following, the amount refundable may be applied in satisfaction of the debt:

(1) To this state for any tax, workers' compensation premium due under section 4123.35 of the Revised Code, or unemployment compensation contribution due under section 4141.25 of the Revised Code~~,~~;

(2) To the state or a political subdivision for a certified claim under section 131.02 or 131.021 of the Revised Code~~,~~ or a finding for recovery included in a certified report that has been filed with the attorney general pursuant to sections 117.28 and 117.30 of the Revised Code;

(3) For a fee that is paid to the state or to the clerk of

courts pursuant to section 4505.06 of the Revised Code~~, or~~;

(4) For any charge, penalty, collection cost, or interest arising from ~~such a tax, workers' compensation premium, unemployment compensation contribution, certified claim, or fee, the amount refundable may be applied in satisfaction of the debt~~a debt listed in divisions (A)(1) to (3) of this section. ~~If~~

(B) If the amount refundable is less than the amount of the debt owed under division (A) of this section, it may be applied in partial satisfaction of the debt. If the amount refundable is greater than the amount of ~~the~~ that debt, the amount remaining after satisfaction of the debt shall be refunded. If the person has more than one ~~such~~ debt listed in division (A) of this section, any debt subject to section 5739.33 or division (G) of section 5747.07 of the Revised Code or arising under section 5747.063 or 5747.064 of the Revised Code shall be satisfied first. ~~Except~~

(C) Except as provided in section 131.021 of the Revised Code, this section applies only to debts that have become final.

(D) The tax commissioner may charge each respective agency of the state for the commissioner's cost in applying refunds to debts due to the state and may charge the attorney general for the commissioner's cost in applying refunds to certified claims. ~~The~~

(E) The commissioner may promulgate rules to implement this section. The rules may address, among other things, situations such as those where persons may jointly be entitled to a refund but do not jointly owe a debt or certified claim.

(F) The commissioner may, with the consent of the taxpayer, provide for the crediting, against tax imposed under this chapter or Chapter 5748. of the Revised Code and due for any taxable year, of the amount of any refund due the taxpayer under this chapter or Chapter 5748. of the Revised Code, as appropriate, for a preceding taxable year.

Section 2. That existing sections 319.16, 2921.41, 2953.32, 2953.321, 2953.36, 2953.51, 2953.54, and 5747.12 of the Revised Code are hereby repealed.

Section 3. Section 2953.36 of the Revised Code is presented in this act as a composite of the section as amended by H.B. 53, H.B. 56, and H.B. 164, all of the 131st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.