

*Protecting Ohio's Families*



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**Ohio Attorney General's  
2018 Report to the General Assembly:  
Pilot Project Regarding the Removal  
of Sealed or Expunged Records  
from Databases**

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Report  
November 2018



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Dear Honorable Members of the General Assembly,

As directed by the 132nd General Assembly through a measure enacted in June 2017, the Ohio Attorney General's Office is charged with reporting on its findings and recommendations regarding the pilot program comprised of the provisions of Ohio Revised Code (ORC) sections 109.38 and 109.381 and the amendments to ORC 2953.32, 2953.37, 2953.38, and 2953.53.

Through this program, the Attorney General's Office was tasked with selecting a private entity to receive notices of court orders of sealed or expunged records and to notify identified data repositories and other websites of their obligation to remove the sealed or expunged record.

The enclosed report details the background, implementation, and evaluation of this pilot program created through Am. Sub. H.B. 49, 132d Gen. A. (2017) (eff., in part, Sept. 29, 2017).

Very respectfully yours,

Mike DeWine  
Ohio Attorney General

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## Definitions

**Applicant:** An individual who has submitted an application to the clerk of courts to have his or her records sealed or expunged

**Consumer reporting agency:** As defined in section 1681a(f) of the Fair Credit Reporting Act:

Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports

**Conviction of crime:** A conviction of, or a plea of guilty to, an offense

**Expunge, expungement, or expunged:** The process defined in Ohio Revised Code (ORC) sections 2953.37 or 2953.38

**Fair Credit Reporting Act:** 15 U.S.C. 1681 et seq., as amended

**Identified data repository:** Either of the following:

A person or entity that is a consumer reporting agency and is known to a qualified third party as having a database that includes publicly available records of convictions of crime and from which consumer reports are prepared pursuant to the Fair Credit Reporting Act;

Any person or entity, other than a consumer reporting agency, that is known to a qualified third party as having a database that includes publicly available records of convictions of crime and that registers with a qualified third party for the purpose of receiving notices of court orders of sealed or expunged records under section 2953.32, 2953.37, 2953.38, or 2953.53 of the Revised Code and agreeing to remove those records and any references to and information from those records from the person's or entity's database

**Qualified third party:** A private entity selected by the Attorney General pursuant to ORC 109.38

**Seal, sealing, or sealed:** The process defined in ORC 2953.32 or 2953.53

## Background

On June 30, 2017, Gov. John Kasich signed a bill establishing the operating budget for fiscal year 2018-2019 – Am. Sub. H.B. 149, 132d Gen. A. (2017) (eff., in part, Sept. 29, 2017). Among other things, the bill contained provisions that created a pilot program involving the treatment of sealed or expunged criminal records.

Under the program, a qualified third party would be responsible for receiving notices of sealing or expungement from a court and directing identified data repositories and other websites to remove the record from its database or website. The program appears to have been motivated by reports that the criminal records of those who had followed the legal process to have their records sealed or expunged nonetheless continued to appear on online background checks and websites when they applied for jobs or housing.

As part of the pilot program, the Ohio Attorney General's Office was entrusted with five primary responsibilities including:

1. Selecting and contracting with the vendor.

“The attorney general shall select a private entity as a qualified third party for the purpose of receiving notices of court orders of sealed or expunged records.” ORC 109.38(C). “Upon the selection or retention of a qualified third party...the attorney general and the qualified third party shall enter into a contract...” ORC 109.38(D)(2).

2. Determining the distribution of the fee.

“The attorney general shall determine the proportion of the fee described in division (D)(2)(b) of this section that the qualified third party shall retain for its services...and each proportion of the fee that the qualified third party shall remit to the clerk of the court that sent the notice of the order..., the attorney general, and the state treasury.” ORC 109.38(D)(3).

3. Promulgating rules.

“The attorney general shall promulgate rules pursuant to Chapter 119 of the Revised Code to implement this section and section 109.381 of the Revised Code.” ORC 109.38(F).

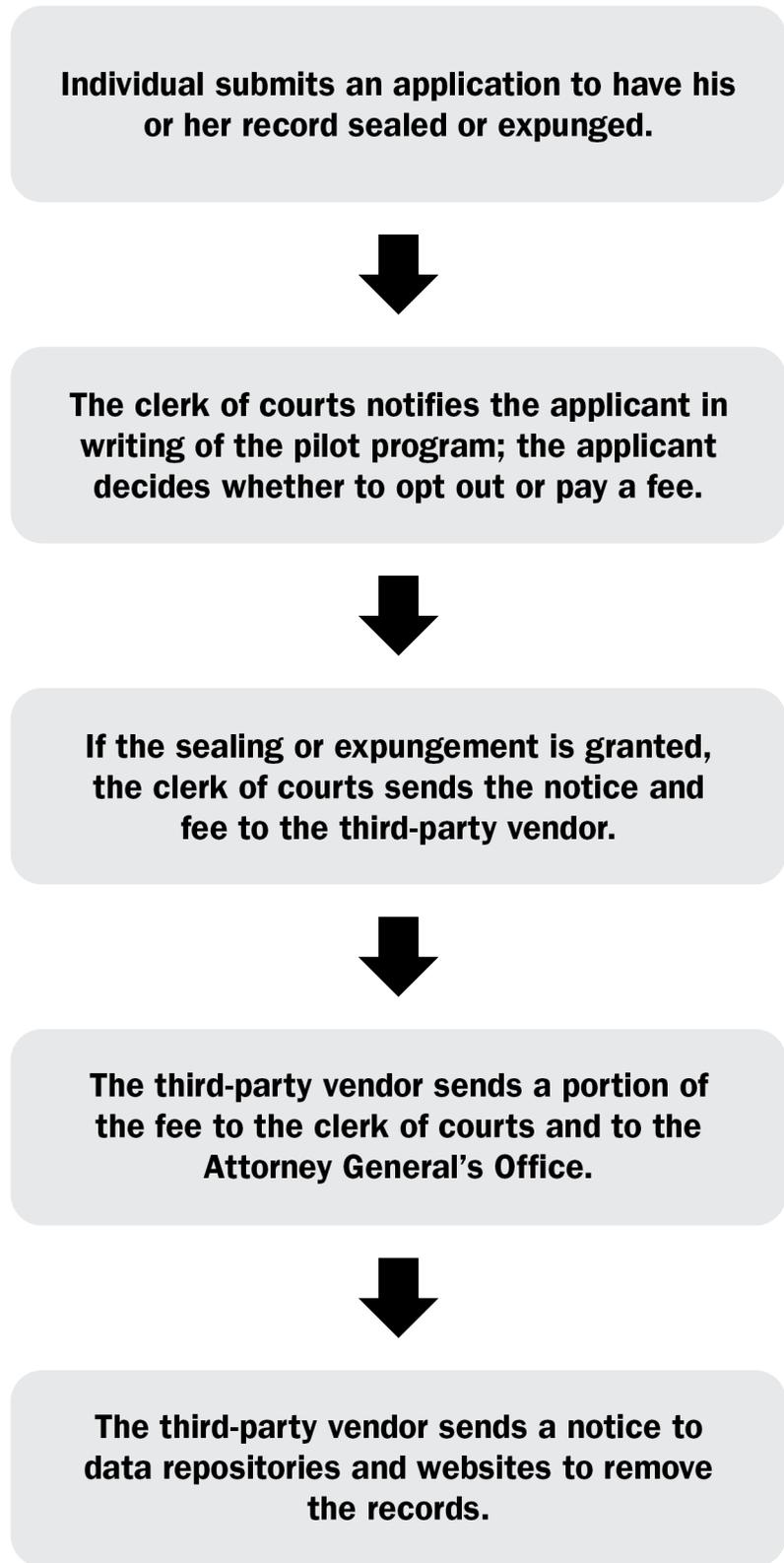
4. Oversight.

“The attorney general shall have oversight of the functions and activities of the qualified third party under section 109.381 of the Revised Code.” ORC 109.38(E).

5. Reporting to the General Assembly.

“Within three months after the pilot program ends, the attorney general shall submit a report of its findings and recommendations to the general assembly.” ORC 109.38(B).

As designed by the statute, the pilot program operates as follows:



# Implementation

## Vendor Selection and Contracting

Though the bill did not specify the procedures by which the Attorney General's Office should select the qualified third party, the office chose to engage in a competitive, open-bid process. In consultation with members of the consumer data industry and clerks of court, the office created a Request for Quotations (RFQ), which was posted on Aug. 28, 2017 — along with a form contract — on the office's external website. Interested parties had until 1 p.m. on Sept. 11, 2017, to submit their bids. At the conclusion of this period, the office had received quotations from two potential vendors. The two vendors were invited to give more detailed presentations to the staff of the Attorney General's Office during the week of Oct. 9, 2017. On Dec. 19, 2017, the office notified the law firm of Higbee & Associates that it had been awarded the contract to serve as the qualified third party for the pilot program. The contract between the Attorney General's Office and Higbee & Associates was executed on Jan. 16, 2018.

## Rule-making

One of the responsibilities of the Attorney General's Office was promulgating rules "pursuant to Chapter 119 of the Revised Code to implement" the pilot program. To ensure the rules were workable and not unduly burdensome, the office met with representatives of the consumer data industry and clerks of court associations to solicit feedback.

After seeking feedback, the office followed the requirements of the Joint Committee on Agency Rule Review (JCARR) in order to promulgate the rules. The rules were originally filed on Sep. 1, 2017, but were held in "to be refiled" status at the request of the clerks of court associations in order to give them more time to review them and provide feedback. Consistent with JCARR requirements, the office held a public hearing on the rules on Oct. 5, 2017, at the Rhodes State Office Tower in Columbus. This meeting was attended by a representative from the Ohio Clerk of Courts Association, the Cuyahoga County Clerk of Courts, and the Franklin County Clerk of Courts. The representative from the Ohio Clerk of Courts Association provided the office with a page of written feedback on the rules.

The rules were refiled on Oct. 26, 2017, and went before JCARR on Dec. 11, 2017. Neither proponents nor opponents of the rules offered testimony during that meeting, nor were any questions asked by the committee. The rules became effective Dec. 31, 2017, and are located in Ohio Administrative Code sections 109-5-01 and 109-5-02. For a copy of the rules, see Appendix 2.

## Notification to Clerks of Court

Throughout the pilot program, the Attorney General's Office was intentional about soliciting feedback from clerks of court. As active participants in the program, clerks from several counties and various associations provided the office with suggestions for making it less administratively burdensome for them and more effective for applicants. Where appropriate, the office integrated these suggestions into both the rules and the contract with the qualified third party.

Following the execution of the contract with Higbee & Associates, the office sent letters to the Ohio Association of Municipal/County Court Clerks and the Ohio Clerk of Courts Association advising them that a vendor had been selected and that the pilot period had commenced. The letter further advised the clerks of the applicable provisions of the Ohio Administrative Code which governed the pilot program. Finally, the

letter identified and provided contact information for two representatives from Higbee & Associates who were available to answer questions regarding the pilot program.

After receiving multiple inquiries from clerks of court regarding the program and the selection of the vendor, the office sent out additional correspondence. These letters – which were sent to the Ohio Association of Municipal/County Court Clerks, the Ohio Clerk of Courts Association, and the Association of Mayor’s Court Clerks of Ohio – advised clerks of the obligations of the Attorney General’s Office under the pilot program and invited them to share feedback with the office regarding their experience with the program.

In addition, throughout the pilot period, representatives from the office also attended several association meetings with the vendor to assist clerks with understanding and implementing the program. Specifically, representatives from the office attended meetings of the Ohio Clerk of Courts Association, the Ohio Association of Municipal/County Court Clerks, and the Ohio Association of Magistrates. The office also continued to field calls from clerks of court associations and individual clerks throughout the duration of the pilot program.

## **Vendor Implementation of Program**

Following the execution of the contract on Jan. 16, 2018, Higbee & Associates began working with clerks of court to launch the pilot program. In an effort to reduce the administrative burden on Ohio’s clerks, Higbee & Associates took the following steps:

1. Conducted in-person training and information sessions for the Ohio Clerk of Courts Association and the Ohio Association of Municipal/County Court Clerks.
2. Presented information and answered questions about the pilot program via remote conference to the Southwest Ohio Mayor’s Court Clerk Association.
3. Created a phone and email helpline for clerks of court.
4. Provided Web-based resources and email updates to clerks.
5. Developed a standard “Notice” form for clerks to provide to applicants containing the information required by statute and rule.
6. Established an online system for clerks to submit expungement notifications and track invoices.

In order to accommodate the diversity of systems and technological capabilities of Ohio's many courts, Higbee & Associates advised clerks that it was open to receiving notices of sealing or expungement by whatever manner was most convenient for them (electronically, by mail, by fax, etc.). For clerks who wanted to participate electronically, Higbee & Associates created an online system to submit expungement notifications and track invoices. The online system also allowed the applicants to check the status of their expungement and when notice was sent to identified data repositories and websites.

In addition to creating the online system, Higbee & Associates also developed an invoice and disbursement schedule in order to distribute the program fees as described in ORC 109.38(D)(3). Each clerk was tasked with collecting the full program fee (\$45) and sending it to Higbee & Associates upon the court's granting of the application. Higbee & Associates was then to retain its portion of the fee (\$30) and remit the remaining portions to the clerk who issued the notice (\$10) and the Attorney General's Office (\$5). Accordingly, Higbee & Associates created individual invoices for each expungement notice and subsequently disbursed the fees owed to the clerks and Attorney General's Office on a quarterly basis.

# Evaluation

## Utilization Statistics

Throughout the course of the pilot program, 205 courts created an online account with Higbee & Associates in order to participate in the program. Of those, 72 were courts of common pleas, 108 were municipal courts and courts that cover portions of a county (such as area courts), and 25 were mayor's courts. The courts represented 79 of Ohio's 88 counties. Since there was no deadline for registration, courts registered throughout the pilot period, including during the final quarter of the program. Municipal courts participated at the highest level, likely due to the fact that they are the courts most often processing cases that are eligible for sealing or expungement.

A general overview of the number of records processed in each quarter is below.

Q1 Submissions	Q2 Submissions	Q3 Submissions
158	1,037	1,402
Mayor's Court: 1 Municipal Courts <sup>1</sup> : 140 Common Pleas Courts: 17	Mayor's Court: 6 Municipal Courts: 898 Common Pleas Courts: 133	Mayor's Court: 23 Municipal Courts: 1,256 Common Pleas Courts: 123
N/A	16.2 avg. daily submissions	22.3 avg. daily submissions
January: 0 February: 21 March: 137	April: 215 May: 405 June 417	July: 492 Aug: 482 Sept: 428

During the pilot program, Higbee & Associates received 2,597 submissions from Ohio courts. For a complete list of the numbers of notices sent by each court, see Appendix 3.

## Feedback from Clerks of Court

Clerks were invited to share their formal feedback on the expungement vendor pilot program by email with the Attorney General's Office for inclusion in this report. Of those who shared their feedback, their main concerns can be categorized as those regarding indigent applicants; the fee distribution process; the notification/opt-out system; and technological challenges.

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<sup>1</sup> The statistics for municipal courts include submissions received from divisional and area courts.

### **Indigent Applicants:**

From the beginning, many clerks expressed concern that neither the statute nor the rules addressed whether the fee for participating in the pilot program could be waived for indigent applicants. Clerks advised that many individuals who apply to have a record sealed or expunged have the fees associated with that process waived by the court. There was concern that the statute's failure to address the issue of indigency would preclude many from being able to participate in the program. Accordingly, the Attorney General's Office and the vendor worked to ensure that the fee for participation in the pilot program was not cost-prohibitive for the majority of applicants. The fee for participation in the program was substantially lower than what an individual would pay if he or she had to hire private counsel to notify data repositories and websites to remove a sealed or expunged record.

Nonetheless, clerks inquired as to whether an order from the court waiving an applicant's costs also exempted the applicant from having to pay the fee for the pilot program. Clerks were advised that, pursuant to the rules, a failure to pay the fee associated with the program automatically opted that individual out from participation in the pilot program. Higbee & Associates expressed its openness to developing a solution for indigent applicants who wished to participate in the program.

### **Fee Distribution Process:**

Another complaint from clerks was the fee distribution process. According to the statute, clerks were required to collect the full program fee and send it to the qualified third party upon the issuance of an order granting the sealing or expungement. The vendor would then keep its portion of the fee and remit the remaining portions back to the clerk who issued the notice and to the Attorney General's Office. Both clerks and the vendor expressed that this process created substantial accounting and record-keeping challenges.

### **Notification/Opt-Out System:**

According to the statute, clerks are required to notify applicants in writing about the pilot program and give them an opportunity to opt out. At the request of the clerks, Higbee & Associates created a standard notification and opt-out form. However, clerks still took issue with the process outlined by statute because it did not consider the variety of ways in which an applicant could apply to have a record sealed or expunged. For example, though the statute requires the applicant to opt out of the benefits of the program, what happens if an applicant's attorney is the one applying for sealing or expungement on the client's behalf? Are they able to opt out on behalf of their client? Or, what if an applicant applies for a sealing or expungement online? How should notice be provided and their opt-out secured?

### **Technological Challenges:**

Clerks from throughout Ohio expressed frustration and concern with trying to meet the program's statutory obligations using their current technical systems. For example, in Franklin County, the clerk of court's e-filing system would not allow them to waive the fee for the applicant's sealing or expungement without also waiving the pilot program fee. Other smaller counties also stated that full participation in the program would require changes to their computer programs or reorganization of their employees' workflow and duties.

## Feedback From Others

In addition to receiving feedback from clerks of court, throughout the course of the pilot program the Attorney General's Office also received feedback from applicants and attorneys. In general, the feedback was positive, with many stating that the program was a step forward in preventing recently sealed or expunged records from appearing on criminal background checks. However, not all individuals were happy with the program and the office received complaints from several attorneys who thought that their indigent clients should not have to pay the \$45 fee for Higbee & Associates' services. Some attorneys were unhappy that applicants were required to opt out rather than into the program.

## APPENDIX 1: Statutory Provisions

### 109.38 Removing sealed or expunged records from databases; pilot project.

(A) As used in this section and section 109.381 of the Revised Code:

- (1) "Consumer reporting agency" has the same meaning as in section 1681a(f) of the Fair Credit Reporting Act.
- (2) "Conviction of crime" means a conviction of, or a plea of guilty to, an offense.
- (3) "Fair Credit Reporting Act" means 15 U.S.C. 1681 et seq., as amended.
- (4) "Identified data repository" means either of the following:
  - (a) A person or entity that is a consumer reporting agency and is known to a qualified third party as having a database that includes publicly available records of convictions of crime and from which consumer reports are prepared pursuant to the Fair Credit Reporting Act;
  - (b) Any person or entity, other than a consumer reporting agency, that is known to a qualified third party as having a database that includes publicly available records of convictions of crime and that registers with a qualified third party for the purpose of receiving notices of court orders of sealed or expunged records under section 2953.32, 2953.37, 2953.38, or 2953.53 of the Revised Code and agreeing to remove those records and any references to and information from those records from the person's or entity's database.
- (5) "Qualified third party" means a private entity that is selected by the attorney general pursuant to this section.

(B) The attorney general shall develop a pilot program comprised of the provisions of sections 109.38 and 109.381 of the Revised Code, as enacted by this act, and the amendments to sections 2953.32, 2953.37, 2953.38, and 2953.53 of the Revised Code made by this act. The pilot program shall end one year after the effective date of this section. Within three months after the pilot program ends, the attorney general shall submit a report of its findings and recommendations to the general assembly.

(C) The attorney general shall select a private entity as a qualified third party for the purpose of receiving notices of court orders of sealed or expunged records under section 2953.32, 2953.37, 2953.38, or 2953.53 of the Revised Code. A qualified third party selected by the attorney general shall have the following qualifications:

- (1) The entity has specific knowledge and expertise regarding the operation of the Fair Credit Reporting Act.
- (2) The entity has prior experience in interacting and cooperating with consumer reporting agencies regarding their obligations for accuracy under section 1681e(b) of the Fair Credit Reporting Act and reinvestigations of disputed information under section 1681i of the Fair Credit Reporting Act to ensure the accomplishment of the goal of updating the records, files, or databases of the consumer reporting agencies that contain references to, or information on, convictions of crime.

(3) The entity has relationships with data aggregators, public record vendors, and other companies that collect and compile from various sources data or information in records of convictions of crime to ensure their cooperation in maintaining the legitimacy, accuracy, completeness, and security of that data or information.

(4) The entity has at least two years' experience in processing and sending notices of sealed or expunged records of convictions of crime to identified data repositories.

(5) The entity is not an identified data repository or an entity that is owned or controlled by an identified data repository.

(6) The entity meets all security clearances and security requirements imposed by the attorney general to ensure that the entity does not misuse any information received from the courts under section 109.381 of the Revised Code and that other persons do not have unauthorized access to that information.

(D)

(1) The qualified third party selected by the attorney general under this section shall serve as such qualified third party for a minimum of three years. The attorney general may either select another qualified third party at the end of any three-year period or retain the existing qualified third party for another three-year period.

(2) Upon the selection or retention of a qualified third party under division (D)(1) of this section, the attorney general and the qualified third party shall enter into a contract that shall include all of the following:

(a) The duties of the qualified third party under section 109.381 of the Revised Code;

(b) The amount of the fee to be paid by an applicant for a court order to seal or expunge records under section 2953.32, 2953.37, 2953.38, or 2953.53 of the Revised Code who wishes to have the court send notice of the order to the qualified third party and to have the procedures under section 109.381 of the Revised Code apply to the records;

(c) Any other provisions as determined by the attorney general in the rules promulgated under division (F) of this section.

(3) The attorney general shall determine the proportion of the fee described in division (D)(2)(b) of this section that the qualified third party shall retain for its services under section 109.381 of the Revised Code and each proportion of the fee that the qualified third party shall remit to the clerk of the court that sent the notice of the order under section 2953.32, 2953.37, 2953.38, or 2953.53 of the Revised Code, the attorney general, and the state treasury.

(E) The attorney general shall have oversight of the functions and activities of the qualified third party under section 109.381 of the Revised Code.

(F) The attorney general shall promulgate rules pursuant to Chapter 119. of the Revised Code to implement this section and section 109.381 of the Revised Code.

Added by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

## **109.381 Notice from qualified third party.**

(A) Upon receiving a notice of a court order under section 2953.32, 2953.37, 2953.38, or 2953.53 of the Revised Code sealing or expunging the records subject to the order, the qualified third party shall send a notice of that order to all of the following:

(1) Identified data repositories;

(2) Web sites and publications that the qualified third party knows utilize, display, publish, or disseminate any information from those records.

(B) Immediately upon receipt of the notice from the qualified third party under division (A) of this section, the following shall apply:

(1) An identified data repository that received the notice shall remove from its database all of the records that are subject to the court order sealing or expunging the records and all references to, and information from, those records.

(2) The web sites and publications that received the notice shall remove from the web site or publication all of the records that are subject to the court order sealing or expunging the records and all references to, and information from, those records.

Added by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

## **2953.32 [Effective Until 10/29/2018] Sealing of conviction record or bail forfeiture record.**

(A)

(1) Except as provided in section 2953.61 of the Revised Code, an eligible offender may apply to the sentencing court if convicted in this state, or to a court of common pleas if convicted in another state or in a federal court, for the sealing of the record of the case that pertains to the conviction. 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 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.

(5) At the time an applicant files an application under division (A) of this section, the following shall apply:

(a) The clerk of court shall notify the applicant in writing that the court will send notice of any order under division (C)(2) of this section to the qualified third party selected by the attorney general under section 109.38 of the Revised Code and shall inform the applicant of the procedures under section 109.381 of the Revised Code.

(b) The applicant shall then notify the clerk if the applicant wishes to opt out of receiving the benefits of having the court send notice of its order under division (C)(2) of this section to the qualified third party and having the procedures under section 109.381 of the Revised Code apply to the records that are subject to the order.

(c) If the applicant does not opt out under division (C)(5)(b) of this section, the applicant shall pay to the clerk of court the fee provided in the contract between the attorney general and the qualified third party under division (D)(2)(b) of section 109.38 of the Revised Code.

(6)

(a) Upon the issuance of an order under division (C)(2) of this section, and unless the applicant opts out under division (C)(5)(b) of this section, the clerk shall remit the fee paid by the applicant under division (C)(5)(c) of this section to the qualified third party. The court shall send notice of the order under division (C)(2) of this section to the qualified third party.

(b) If the applicant's application under division (A) of this section is denied for any reason or if the applicant informs the clerk of court in writing, before the issuance of the order under division (C)(2) of this section, that the applicant wishes to opt out of having the court send notice of its order under division (C)(2) of this section to the qualified third party, the clerk shall remit the fee paid by the applicant under division (C)(5)(c) of this section that is intended for the qualified third party back to the applicant.

(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) 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) 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.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

## 2953.37 Expungement of certain convictions relating to firearms.

(A) As used in this section:

(1) "Expunge" means to destroy, delete, and erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.

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

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

(4) "Record of conviction" means the record related to a conviction of or plea of guilty to an offense.

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

(1) Identify the applicant, the offense for which the expungement is sought, the date of the conviction of or plea of guilty to that offense, and the court in which the conviction occurred or the plea of guilty was entered;

(2) Include evidence that the offense was a violation of division (B), (C), or (E) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and that the applicant is authorized by division (H)(2)(a) of that section to file an application under this section;

(3) Include a request for expungement of the record of conviction of that offense under this section.

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

(D)

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

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

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

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

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

(2)

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

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

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

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

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

(4) At the time an applicant files an application under division (B) of this section, the following shall apply:

(a) The clerk of court shall notify the applicant in writing that the court will send notice of any order under division (D)(2)(a) of this section to the qualified third party selected by the attorney general under section 109.38 of the Revised Code and shall inform the applicant of the procedures under section 109.381 of the Revised Code.

(b) The applicant shall then notify the clerk if the applicant wishes to opt out of receiving the benefits of having the court send notice of its order under division (D)(2)(a) of this section to the qualified third party and having the procedures under section 109.381 of the Revised Code apply to the records that are subject to the order.

(c) If the applicant does not opt out under division (D)(4)(b) of this section, the applicant shall pay to the clerk of court the fee provided in the contract between the attorney general and the qualified third party under division (D)(2)(b) of section 109.38 of the Revised Code.

(5)

(a) Upon issuance of an order under division (D)(2)(a) of this section, and unless the applicant opts out under division (D)(4)(b) of this section, the clerk shall remit the fee paid by the applicant under division (D)(4)(c) of this section to the qualified third party. The court shall send notice of the order under division (D)(2)(a) of this section to the qualified third party.

(b) If the applicant's application under division (B) of this section is denied for any reason or if the applicant informs the clerk of court in writing, before the issuance of the order under division (D)(2)(a) of this section, that the applicant wishes to opt out of having the court send notice of its order under division (D)(2)(a) of this section to the qualified third party, the clerk shall remit the fee paid by the applicant under division (D)(4)(c) of this section that is intended for the qualified third party back to the applicant.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

## 2953.38 Expungement of certain crimes for victims of human trafficking.

(A) As used in this section:

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

(B) Any person who is or was convicted of a violation of section 2907.24, 2907.241, or 2907.25 of the Revised Code may apply to the sentencing court for the expungement of the record of conviction of any offense, other than a record of conviction of a violation of section 2903.01, 2903.02, or 2907.02 of the Revised Code, the person's participation in which was a result of the person having been a victim of human trafficking. The person may file the application at any time. The application may request an order to expunge the record of conviction for more than one offense, but if it does, the court shall consider the request for each offense separately as if a separate application had been made for each offense and all references in divisions (B) to (H) of this section to "the offense" or "that offense" mean each of those offenses that are the subject of the application. The application shall do all of the following:

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

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

(D) If the court does not deny an application under division (C) of this section, it shall set a date for a hearing and shall notify the prosecutor for the case from which the record of conviction resulted of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The court may direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant.

(E)

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

- (a) If the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection;

(b) Determine whether the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense that is the subject of the application was a result of the applicant having been a victim of human trafficking.

(2) If the court at the hearing held under division (D) of this section determines that the applicant's participation in the offense that is the subject of the application was a result of the applicant having been a victim of human trafficking and if that subject offense is a felony of the first or second degree, the court at the hearing also shall consider all of the following factors and, upon consideration of the factors, shall determine whether the interests of the applicant in having the record of the conviction of that offense expunged are outweighed by any legitimate needs of the government to maintain that record of conviction:

(a) The degree of duress under which the applicant acted in committing the subject offense, including, but not limited to, the history of the use of force or threatened use of force against the applicant or another person, whether the applicant's judgment or control was impaired by the administration to the applicant of any intoxicant, drug, or controlled substance, and the threat of withholding from the applicant food, water, or any drug;

(b) The seriousness of the subject offense;

(c) The relative degree of physical harm done to any person in the commission of the subject offense;

(d) The length of time that has expired since the commission of the subject offense;

(e) Whether the prosecutor represents to the court that criminal proceedings are likely to still be initiated against the applicant for a felony offense for which the period of limitations has not expired;

(f) Whether the applicant at the time of the hearing is subject to supervision as a result of the subject offense.

(F) If after a hearing held under division (D) of this section the court finds that the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense that is the subject of the application was the result of the applicant having been a victim of human trafficking, and, if the offense that is the subject of the application is a felony of the first or second degree, after consideration of the factors required under division (E)(2) of this section, it finds that the interests of the applicant in having the record of the conviction of that offense expunged are not outweighed by any legitimate needs of the government to maintain that record of conviction, the court shall grant the application and order that the record of conviction be expunged.

(G)

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

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

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

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

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

(I) At the time an applicant files an application under division (B) of this section, the following shall apply:

(1) The clerk of court shall notify the applicant in writing that the court will send notice of any order under division (F) of this section to the qualified third party selected by the attorney general under section 109.38 of the Revised Code and shall inform the applicant of the procedures under section 109.381 of the Revised Code.

(2) The applicant shall then notify the clerk if the applicant wishes to opt out of receiving the benefits of having the court send notice of its order under division (F) of this section to the qualified third party and having the procedures under section 109.381 of the Revised Code apply to the records that are subject to the order.

(3) If the applicant does not opt out under division (I)(2) of this section, the applicant shall pay to the clerk of court the fee provided in the contract between the attorney general and the qualified third party under division (D)(2)(b) of section 109.38 of the Revised Code.

(J)

(1) Upon the issuance of an order under division (F) of this section, and unless the applicant opts out under division (I)(2) of this section, the clerk shall remit the fee paid by the applicant under division (I)(3) of this section to the qualified third party. The court shall send notice of the order under division (F) of this section to the qualified third party.

(2) If the applicant's application under division (B) of this section is denied for any reason or if the applicant informs the clerk of court in writing, before the issuance of the order under division (F) of this section, that the applicant wishes to opt out of having the court send notice of its order under division (F) of this section to the qualified third party, the clerk shall remit the fee paid by the applicant under division (I)(3) of this section that is intended for the qualified third party back to the applicant.

Amended by 132nd General Assembly File No. TBD, SB 4, §1, eff. 9/28/2018.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

## **2953.53 Order to seal records; index.**

(A)

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

(2)

(a) At the time an applicant files an application under division (A) of section 2953.52 of the Revised Code, the following shall apply:

(i) The clerk of court shall notify the applicant in writing that the court will send notice of any order under division (B)(4) of section 2953.52 of the Revised Code to the qualified third party selected by the attorney general under section 109.38 of the Revised Code and shall inform the applicant of the procedures under section 109.381 of the Revised Code.

(ii) The applicant shall then notify the clerk if the applicant wishes to opt out of receiving the benefits of having the court send notice of its order under division (B)(4) of section 2953.52 of the Revised Code to the qualified third party and having the procedures under section 109.381 of the Revised Code apply to the records that are subject to the order.

(iii) If the applicant does not opt out under division (A)(2)(a)(ii) of this section, the applicant shall pay to the clerk of court the fee provided in the contract between the attorney general and the qualified third party under division (D)(2)(b) of section 109.38 of the Revised Code.

(b) Upon the issuance of an order under division (B)(4) of section 2953.52 of the Revised Code, and unless the applicant opts out under division (A)(2)(a)(ii) of this section, the clerk shall remit the fee paid by the applicant under division (A)(2)(a)(iii) of this section to the qualified third party. The court shall send notice of the order under division (B)(4) of section 2953.52 of the Revised Code to the qualified third party.

(c) If the applicant's application under division (A) of section 2953.52 of the Revised Code is denied for any reason or if the applicant informs the clerk of court in writing, before the issuance of the order under division (B)(4) of that section, that the applicant wishes to opt out of having the court send notice of its order under division (B)(4) of that section to the qualified third party, the clerk shall remit the fee paid by the applicant under division (A)(2)(a)(iii) of this section that is intended for the qualified third party back to the applicant.

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

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

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

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

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

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

## APPENDIX 2: Administrative Code Provisions

### Chapter 109-5 Sealed or Expunged Records

#### 109-5-01 Definitions.

For the purposes of this chapter, the following definitions apply:

- (A) "The applicant" means an individual who has submitted an application to the clerk of courts to have his or her records sealed or expunged.
- (B) "Seal," "sealing," or "sealed" refers to the process defined in 2953.32 or 2953.53 of the Revised Code.
- (C) "Expunge," "expungement," or "expunged" refers to the process defined in section 2953.37 or 2953.38 of the Revised Code.

Effective: 12/31/2017

Five Year Review (FYR) Dates: 12/31/2022

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 109.38

Rule Amplifies: R.C. 109.381

#### 109-5-02 Notification of expungement or sealing of records by qualified third party.

(A) When the applicant applies to have his or her record sealed or expunged, the clerk of courts must notify the applicant in writing that notice of the sealing or expungement will be sent to the qualified third party as described in division (C)(5) of section 2953.32, division A)(2) of section 2953.53, division (D)(4) of section 2953.37, and division (I) of section 2953.38 of the Revised Code. The written notice must include:

- (1) Explanation of the services to be provided by the qualified third party;
- (2) The fee to be paid by the applicant for this service;
- (3) An explanation that, if the applicant's application for sealing or expungement is denied, the entire fee for providing notice of the sealing and expungement will be remitted to the applicant;
- (4) Notice that the applicant may opt out of the benefits of having the court send notice of the sealing or expungement to the qualified third party;
- (5) Explanation that the applicant's decision to opt-out must be confirmed in writing with a signature.

(B) In the event that the applicant fails to pay the fee for services provided by the qualified third party, they will be considered to have opted-out for the purposes of division (C)(5) of section 2953.32, division (A)(2) of section 2953.53, division (D)(4) of section 2953.37, and division (I) of section 2953.38 of the Revised Code.

(C) Upon the issuance of an order sealing or expunging the applicant's record, and unless the applicant opts out as described in division (C)(5) of section 2953.32, division (A)(2) of section 2953.53, division (D)(4) of section 2953.37, and division (I) of section 2953.38 of the Revised Code, the court shall send notice of the order to the qualified third party. The notice shall contain the following information:

- (1) The applicant's full name;

(2) If different, name on record being sealed or expunged;

(3) The applicant's date of birth;

(4) The county and court where case was originally filed;

(5) The original case number;

(6) The charges being expunged or sealed; and

(7) The effective date of expungement or sealing.

(D) The notice required by division (A) of section 109.381 shall be sent electronically and shall contain the information listed in paragraph (C) of rule 109-5-02 of the Administrative Code.

(E) The fee paid by the applicant for the services provided by the qualified third party shall be handled as following:

(1) When the applicant files the application to have his or her records sealed or expunged, the applicant shall pay the fee detailed in division (D)(2)(b) of section 109.38 of the Revised Code to the clerk who will hold the funds until an order is issued regarding the sealing or expungement.

(2) If the application for sealing or expungement is granted, the clerk shall remit the entire fee to the qualified third party;

(3) If the application for sealing or expungement is denied, the clerk shall remit the entire fee back to the applicant.

(4) If the applicant opts out of receiving the services of the qualified third party, he or she does not need to pay the fee.

(5) If the applicant opts out of receiving the services of the qualified third party after paying the fee, but before the court has issued an order regarding the sealing or expungement, the entire fee shall be remitted to the applicant.

(F) Upon receipt of the fee from the clerk of courts, the qualified third party shall distribute it as determined by the attorney general

(G) The attorney general will select the qualified third party through an open bidding process. Once the qualified third party has been selected, the attorney general will notify Ohio's clerks of court of the selected third party.

Effective: 12/31/2017

Five Year Review (FYR) Dates: 12/31/2022

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 109.38

Rule Amplifies: R.C. 109.381

### APPENDIX 3: Number of Cases Processed by Court<sup>2</sup>

COURT HOUSE NAME	COUNTY	# OF CASES
Athens County Municipal Court	Athens	265
Portage County Municipal Court	Portage	228
Hamilton County Municipal Court	Hamilton	224
Franklin County Municipal Court	Franklin	198
Butler County Area I Court	Butler	160
Clermont Municipal Court	Clermont	113
Massillon Municipal Court	Stark	91
Stow Municipal Court	Summit	78
Lyndhurst Municipal Court	Cuyahoga	75
Miamisburg Municipal Court	Montgomery	64
Canton Municipal Court	Stark	60
Bowling Green Municipal Court	Wood	59
Rocky River Municipal Court	Cuyahoga	54
Dayton Municipal Court	Montgomery	54
Xenia Municipal Court	Greene	53
Parma Municipal Court	Cuyahoga	43
Vandalia Municipal Court	Montgomery	40
Bedford Municipal Court	Cuyahoga	39
Kettering Municipal Court	Montgomery	36
The Common Pleas Court	Cuyahoga	34
Clark County Municipal Court	Clark	32
Fairborn Municipal Court	Greene	32
Perrysburg Municipal Court	Wood	31
Butler County Area III Court	Butler	29
Medina Municipal Court	Medina	27
The Common Pleas Court	Richland	24
Oregon Municipal Court	Lucas	23

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<sup>2</sup> Number of Cases Processed by Court from Jan. 1, 2018 to Oct. 23, 2018.

<b>COURT HOUSE NAME</b>	<b>COUNTY</b>	<b># OF CASES</b>
Lakewood Municipal Court	Cuyahoga	23
The Municipal Court of Montgomery County Ohio Western Division	Montgomery	22
The Common Pleas Court	Butler	22
The Common Pleas Court	Stark	20
The Common Pleas Court	Hamilton	20
Chardon Municipal Court	Geauga	19
The Common Pleas Court	Allen	19
The Common Pleas Court	Licking	18
Findlay Municipal Court	Hancock	18
Zanesville Municipal Court	Muskingum	17
Marietta Municipal Court	Washington	16
The Common Pleas Court	Wood	16
Fremont Municipal Court	Sandusky	14
Carroll County Municipal Court	Carroll	14
Mahoning County Area Court #2	Mahoning	14
The Common Pleas Court	Summit	14
The Common Pleas Court	Clermont	13
Fairfield Municipal Court	Butler	13
Mason Municipal Court	Warren	13
Shaker Heights Municipal Court	Cuyahoga	12
Marysville Municipal Court	Union	12
Licking County Municipal Court	Licking	12
The Common Pleas Court	Preble	11
The Common Pleas Court	Huron	11
Mahoning County Area Court #4	Mahoning	11
Toledo Municipal Clerk of Court	Lucas	10
Ohio Municipal Court	Marion	10
Bellefontaine Municipal Court	Logan	10
Mahoning County Area Court #3	Mahoning	9
Butler County Area II Court	Butler	9

<b>COURT HOUSE NAME</b>	<b>COUNTY</b>	<b># OF CASES</b>
The Common Pleas Court	Medina	9
Champaign County Municipal Court	Champaign	9
Vermilion Municipal Court	Erie	9
Huron Municipal Court	Erie	9
Darke County Municipal Court	Darke	8
Lima Municipal Court	Allen	8
The Common Pleas Court	Clark	8
Norwalk Municipal Court	Huron	7
Mansfield Municipal Court	Richland	7
Eaton Municipal Court	Preble	7
Belmont County Western Court	Belmont	7
Oberlin Municipal Court	Lorain	7
The Common Pleas Court	Lucas	6
Erie County Clerk of Courts	Erie	6
The Common Pleas Court	Hocking	6
Alliance Municipal Court	Stark	6
The Common Pleas Court	Lorain	6
The Common Pleas Court	Mahoning	6
Westerville Mayor's Court	Franklin	6
Chillicothe Municipal Court	Ross	5
The Common Pleas Court	Brown	5
Defiance Municipal Court	Defiance	5
Napoleon Municipal Court	Henry	5
Moraine Mayor's Court	Montgomery	5
The Common Pleas Court	Pickaway	4
The Common Pleas Court	Holmes	4
Niles Municipal Court	Trumbull	4
Belmont County Northern Court	Belmont	4
Auglaize County Municipal Court	Auglaize	4
The Common Pleas Court	Union	4
Youngstown Municipal Court	Mahoning	4

<b>COURT HOUSE NAME</b>	<b>COUNTY</b>	<b># OF CASES</b>
The Common Pleas Court	Crawford	4
The Common Pleas Court	Defiance	3
The Common Pleas Court	Trumbull	3
Newton Falls Municipal Court	Trumbull	3
Canfield Mayor's Court	Mahoning	3
Bryan Municipal Court	Williams	3
Fulton County Court - Western District	Fulton	3
The Common Pleas Court	Ashtabula	3
Fairfield County Municipal Court	Fairfield	3
The Common Pleas Court	Scioto	3
Cambridge Municipal Court	Guernsey	3
Springboro Mayor's Court	Warren	3
Brunswick Mayor's Court	Medina	3
The Common Pleas Court	Putnam	3
Morrow County Municipal Court	Morrow	3
The Common Pleas Court	Jefferson	2
The Common Pleas Court	Fulton	2
Sidney Municipal Court	Shelby	2
The Common Pleas Court	Tuscarawas	2
The Common Pleas Court	Ottawa	2
Warren Municipal Court	Trumbull	2
Gallipolis Municipal Court	Gallia	2
Macedonia Mayor's Court	Summit	2
Washington Court House Municipal Court	Fayette	2
The Common Pleas Court	Fairfield	2
The Common Pleas Court	Henry	2
City of New Albany Mayor's Court	Franklin	2
Monroe Mayor's Court	Butler	1
North Olmsted Mayor's court	Cuyahoga	1
Lawrence County Municipal Court	Lawrence	1

<b>COURT HOUSE NAME</b>	<b>COUNTY</b>	<b># OF CASES</b>
Municipal Court of Montgomery County Ohio Eastern Division	Montgomery	1
North Ridgeville Mayor's Court	Lorain	1
The Common Pleas Court	Geauga	1
Cleveland Municipal Court	Cuyahoga	1
The Common Pleas Court	Morrow	1
Hocking County Municipal Court	Hocking	1
Worthington Mayor's Court	Franklin	1
Wayne County Municipal Court	Wayne	1
Broadview Heights Mayor's Court	Cuyahoga	1
Ottawa County Municipal Court	Ottawa	1
Euclid Municipal Court	Cuyahoga	1
The Common Pleas Court	Delaware	1
Harrison County Court	Harrison	1
The Common Pleas Court	Champaign	1
Ontario Mayor's Court	Richland	1
Mount Vernon Municipal Court	Knox	1
The Common Pleas Court	Meigs	1
The Common Pleas Court	Auglaize	1
Berea Municipal Court	Cuyahoga	1
Avon Lake Municipal Court	Lorain	1
The Common Pleas Court	Hancock	1
The Common Pleas Court	Coshocton	1
The Common Pleas Court	Wayne	1
Blue Ash Mayor's Court	Hamilton	1
The Common Pleas Court	Seneca	1
Upper Arlington Mayor's Court	Franklin	1
Independence Mayor's Court	Cuyahoga	1



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**Ohio Attorney General's**  
**2018 Report to the General Assembly:**  
**Pilot Project Regarding the Removal**  
**of Sealed or Expunged Records**  
**from Databases**

**2018**

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