



## Ohio Revised Code

### Section 2953.39 Low-level controlled substance offense conviction record sealing or expungement, on prosecutor's motion.

Effective: October 3, 2023

Legislation: House Bill 33

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(A) As used in this section:

(1) "Applicant prosecutor" means the prosecutor who applies under division (B)(1) of this section for the sealing or expungement of the record of a case that pertains to a conviction of a person of a low-level controlled substance offense.

(2) "Low-level controlled substance offense" means a violation of any provision of Chapter 2925. of the Revised Code that is a misdemeanor of the fourth degree or a minor misdemeanor or a violation of an ordinance of a municipal corporation that is substantially equivalent to a violation of any provision of Chapter 2925. of the Revised Code and that, if the violation were to be charged under the provision of Chapter 2925. of the Revised Code, would be a misdemeanor of the fourth degree or a minor misdemeanor.

(3) "Subject offender" means, regarding an application filed under division (B)(1) of this section requesting the sealing or expungement of the record of a case that pertains to a conviction of a low-level controlled substance offense, the person who was convicted of the low-level controlled substance offense for which the application requests the sealing or expungement.

(B)(1) If a person is or was convicted of a low-level controlled substance offense, the prosecutor in the case may apply to the sentencing court for the sealing or expungement of the record of the case that pertains to the conviction. The prosecutor may file the application with respect to the offense that is the subject of the application at any time after the expiration, with respect to that offense and the subject offender, of the corresponding period of time specified in division (B)(1) of section 2953.32 of the Revised Code for sealing or expungement applications filed by an offender under that section.

(2) An application under division (B)(1) of this section may request an order to seal or expunge the



record of conviction for more than one low-level controlled substance 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 (F) of this section to "the offense" or "that offense" mean each of those offenses that are the subject of the application.

(3) Upon the filing of an application under division (B)(1) of this section, except as otherwise provided in this division, the applicant prosecutor shall pay a fee of not more than fifty dollars, including court fees, regardless of the number of records the application requests to have sealed or expunged. The court may direct the clerk of the court to waive some or all of the fee that otherwise would be charged. If the applicant pays a fee, the court shall pay three-fifths of the fee collected into the state treasury, with half of that amount credited to the attorney general reimbursement fund created under section 109.11 of the Revised Code. If the applicant pays a fee, the court shall pay two-fifths of the fee collected into the county general revenue fund if the sealed or expunged conviction was pursuant to a state statute, or into the general revenue fund of the municipal corporation involved if the sealed or expunged conviction was pursuant to a municipal ordinance.

(C) An application filed under division (B)(1) of this section shall do all of the following:

(1) Identify the subject offender and the applicant prosecutor, the offense for which the sealing or 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 subject offender is entitled to relief under this section;

(3) Include a request for sealing or expungement under this section of the record of the case that pertains to the conviction of that offense.

(D)(1) Upon the filing of an application under division (B)(1) of this section, the court shall set a date for a hearing and shall notify the applicant prosecutor of the date, time, and location of the hearing not later than sixty days prior to the hearing. Upon receipt of the notice, the prosecutor shall do both of the following:



(a) Notify the subject offender of the application, the date, time, and location of the hearing on the application, and the offender's right to object to the granting of the application. The notice shall be provided at the offender's last known address or through another means of contact.

(b) Provide timely notice to the victim of the offense, if such a victim exists, or the victim's representative, of the application, the date, time, and location of the hearing on the application, and the victim's or representative's right to object to the granting of the application. The victim, victim's representative, and victim's attorney, if applicable, may be present and heard orally, in writing, or both at any hearing under this section. The notice shall be provided by any reasonable means reasonably calculated to provide prompt actual notice, including regular mail, telephone, and electronic mail. If the prosecutor attempts to provide notice to a victim under this division but the attempt is unsuccessful because the prosecutor is unable to locate the victim, is unable to provide the notice by the chosen method because the mailing address, telephone number, or electronic mail address at which to provide the notice cannot be determined, or the notice is sent by mail and it is returned, the prosecutor shall make another attempt to provide the notice to the victim. If the second attempt is unsuccessful, the prosecutor shall make at least one more attempt to provide the notice.

(2) The court shall hold the hearing set under division (D)(1) of this section not less than forty-five days and not more than ninety days from the date of the filing of the application.

The subject offender may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The victim of the offense may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The subject offender or victim shall specify in the objection the reasons for believing that the application should be denied.

(E)(1) At the hearing held under division (D) of this section, the court shall determine whether the offense that is the subject of the application is a low-level controlled substance offense and whether the amount of time specified in division (B)(1) of this section for the filing of the application has expired.

(2) If the court at the hearing held under division (D) of this section determines that the offense that is the subject of the application is a low-level controlled substance offense and that the amount of



time specified in division (B)(1) of this section for the filing of the application has expired, the court at the hearing also shall do all of the following:

- (a) Determine whether criminal proceedings are pending against the subject offender;
- (b) Determine whether the subject offender has been rehabilitated to the satisfaction of the court;
- (c) If the subject offender objected, consider the reasons against granting the application specified by the offender in the objection;
- (d) If the victim objected, pursuant to the Ohio Constitution, consider the reasons against granting the application specified by the victim in the objection;
- (e) Weigh the interests of the subject offender in having the records pertaining to the offender's conviction sealed or expunged against the legitimate needs, if any, of the government to maintain those records;
- (f) Consider the oral or written statement of the victim, victim's representative, and victim's attorney, if applicable.

(F)(1) If the court determines, after complying with divisions (E)(1) and (2) of this section, that no criminal proceeding is pending against the subject offender, that the interests of the offender in having the records pertaining to the offender's conviction sealed or expunged are not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of the offender has been attained to the satisfaction of the court, all of the following apply:

- (a) The court shall issue orders of the type specified in division (D)(2) of section 2953.32 of the Revised Code, subject to the exceptions specified in that division.
- (b) The proceedings in the case that pertain to the conviction shall be considered not to have occurred and the conviction of the subject offender shall be sealed or expunged, subject to the exceptions specified in division (D)(2) of section 2953.32 of the Revised Code.



(c) The court shall notify the subject offender, at the offender's last known address or through another means of contact, that the court has issued the order requiring the sealing or expungement of the official records pertaining to the case and shall specifically identify the offense and case with respect to which the order applies.

(2) If the court orders the official records pertaining to the case sealed or expunged under division (F)(1) of this section, the court shall comply with division (D)(4)(a) or (b) of section 2953.32 of the Revised Code, whichever is applicable.

(3) All provisions of section 2953.34 of the Revised Code that apply with respect to an order to seal or expunge official records that is issued under section 2953.32 of the Revised Code, or that apply with respect to the official records to be sealed or expunged under such an order, apply with respect to an order to seal or expunge official records that is issued under division (F)(1) of this section and to the official records to be sealed or expunged under such an order.

(G) A record that is expunged pursuant to an order issued under division (F)(1) of this section shall be destroyed, deleted, and erased, as appropriate for the record's physical or electronic form or characteristic, so that the record is permanently irretrievable.

(H) The provisions of this section are separate from, and independent of, the provisions of sections 2953.35 and 2953.36 and, except as otherwise specified in this section, the provisions of sections 2953.32 and 2953.34 of the Revised Code.