



TO: Ohio Criminal Sentencing Commission

FROM: Alex Jones, Criminal Justice Counsel

DATE: May 18, 2023

RE: R.C. 2953.32 definition of “expunge” and what happens to the “official records” that are ordered to be expunged under this section

Introduction

With the passage and enactment of SB 288, the General Assembly expanded expungement to now allow all offenders whose convictions are eligible for expungement the opportunity to petition the court for an order to expunge the official records of their case. This change in the law came with a nuanced modification of the definition of expunge. There are now two different statutory definitions for the word “expunge”.

- There is a “delete, destroy, and erase” definition of “expunge”, meaning that when a court orders a record expunged there should be action taken to delete, destroy, and erase the record so it is permanently irretrievable.¹
- There is an ineffectual definition of “expunge”, meaning that when the court orders the official records of a case “expunged” no action should be taken and the official records should remain intact.²

Many public and private entities throughout Ohio have updated their literature in response to the enactment of SB 288. However, many are not making the distinction between the two types of expungement orders. For example, one county clerk of courts website plainly indicates that “when a criminal case is expunged, the records are permanently deleted so that the record is permanently irretrievable.” One law school law library states that SB 288 “created a true expungement where the records are destroyed.” A legal aid brochure says, without distinction, that “expungement is like putting the record in a paper shredder.”

This memo is being presented to the Commission members for edification, discussion, and/or legislative recommendation.³ Should the legislature make the distinction clearer? Should the official records ordered expunged under R.C. 2953.32 be deleted, destroyed, and erased? Have courts and the public been properly informed of the distinction? If not, what are the potential complications with implementing the new law?

¹ See R.C. 2953.32(B)(2)(b).

² See R.C. 2953.32(B)(1).

³ Any action on this topic is consistent with R.C. 181.27(B)(1), which tasks the Commission with studying the impacts of changes made to R.C. 2953.32.



Memorandum

Prior to the enactment of [SB 288](#), expungement was only available in limited circumstances and for limited offenses. SB 288 added expungement as an option under [R.C. 2953.32](#), allowing all offenders whose convictions are eligible for expungement and for whom the applicable waiting period has elapsed an opportunity to petition the court for an order to expunge. This memo will highlight that, as defined by statute, expungement for the purposes of R.C. 2953.32 does *not* mean that the official records of the case should be destroyed, deleted, and erased. The only records that should be deleted when an expungement is granted under this section are the index records.

By nature of its broad applicability, R.C. 2953.32 (“Sealing or Expungement of Record of Conviction or Bail Forfeiture; Exceptions”) is the section that the majority of offenders will utilize to expunge their convictions. Pursuant to R.C. 2953.32(D)(2)(a), when granting an expungement of a conviction, a court shall “...order all official records of the case...expunged...and...all index records...deleted...”⁴ The other expungement options are:

- [R.C. 2953.35](#) (“Expungement of Certain Convictions Relating to Firearms”)
- [R.C. 2953.36](#) (“Expungement of Certain Convictions for Victims of Human Trafficking”)
- [R.C. 2953.39](#) (“Low-level Controlled Substance Offense Conviction Record Sealing or Expungement, on Prosecutor’s Motion”)
- [R.C. 2953.521](#) (“Expungement of Record of Not Guilty Finding or Dismissed Charges When Defendant Victim of Human Trafficking”)

Before the enactment of SB 288, “expunge” was defined in each of the relevant code sections as “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.”⁵ This definition was left unchanged by SB 288, but it was moved from each individual section and placed into R.C. 2953.31(B)(2)(b).

⁴ Pursuant to R.C. 2953.31(A)(3), “official records” are all records that are possessed by any public office or agency that relate to a criminal case, including, but not limited to:

- The notation in the criminal docket; all subpoenas issued;
- All papers and documents filed by the defendant or the prosecutor;
- All records of all testimony and evidence presented;
- 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 and DNA records; and
- All records that are possessed by any public office or agency that relate to a CQE.

⁵ See former R.C. 2953.37(A)(1), former R.C. 2953.38(A)(1), and former R.C. 2953.521(A).



In my review, for convictions being expunged under R.C. 2953.32, expunge does not mean to “delete, destroy, and erase” the official records. This opinion is based on the plain language of [R.C. 2953.31\(B\)](#):

(1) As used in section 2953.32 of the Revised Code, "expunge" means the expungement process described in section 2953.32 of the Revised Code.

(2) As used in sections 2953.33 to 2953.521 of the Revised Code, "expunge" means both of the following:

(a) The expungement process described in sections 2953.35, 2953.36, 2953.39, and 2953.521 of the Revised Code;

(b) 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.

Thus, when R.C. 2953.32(D)(2)(a) states that a court shall “order all official records of the case...expunged...”, the term expunge merely “means the expungement process described in section 2953.32 of the Revised Code.” The “destroy, delete, and erase” language is not included in the definition of expunge for purposes of R.C. 2953.32, and the court’s R.C. 2953.32(D)(2)(a) order that “all official records of the case” be “expunged” is ineffectual.⁶ Accordingly, for expungements granted under R.C. 2932.32, only index records should be deleted.

⁶ The “destroy, delete, and erase...” language also does not appear anywhere in the text of R.C.2953.32.