

As Introduced

132nd General Assembly

Regular Session

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H. B. No. 56

Representatives Dever, Gavarone

A BILL

To amend sections 2951.041 and 2953.38 and to enact
section 2953.521 of the Revised Code to permit a
person who is found not guilty or is the
defendant in a dismissed case to apply for an
expungement of the person's records in the case
if the complaint, indictment, or finding of not
guilty resulted from the applicant having been a
victim of human trafficking, to permit a person
convicted of certain prostitution-related
offenses to apply for the expungement of any
record of conviction of an offense, with certain
exceptions, if the person's participation in the
offense was a result of having been a victim of
human trafficking, and to authorize intervention
in lieu of conviction for persons charged with
committing an offense while a victim of
compelling prostitution.

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

Section 1. That sections 2951.041 and 2953.38 be amended
and section 2953.521 of the Revised Code be enacted to read as
follows:

Sec. 2951.041. (A) (1) If an offender is charged with a 21
criminal offense, including but not limited to a violation of 22
section 2913.02, 2913.03, 2913.11, 2913.21, 2913.31, or 2919.21 23
of the Revised Code, and the court has reason to believe that 24
drug or alcohol usage by the offender was a factor leading to 25
the criminal offense with which the offender is charged or that, 26
at the time of committing that offense, the offender had a 27
mental illness, was a person with an intellectual disability, or 28
was a victim of a violation of section 2905.32 or 2907.21 of the 29
Revised Code and that the mental illness, status as a person 30
with an intellectual disability, or fact that the offender was a 31
victim of a violation of section 2905.32 or 2907.21 of the 32
Revised Code was a factor leading to the offender's criminal 33
behavior, the court may accept, prior to the entry of a guilty 34
plea, the offender's request for intervention in lieu of 35
conviction. The request shall include a statement from the 36
offender as to whether the offender is alleging that drug or 37
alcohol usage by the offender was a factor leading to the 38
criminal offense with which the offender is charged or is 39
alleging that, at the time of committing that offense, the 40
offender had a mental illness, was a person with an intellectual 41
disability, or was a victim of a violation of section 2905.32 or 42
2907.21 of the Revised Code and that the mental illness, status 43
as a person with an intellectual disability, or fact that the 44
offender was a victim of a violation of section 2905.32 or 45
2907.21 of the Revised Code was a factor leading to the criminal 46
offense with which the offender is charged. The request also 47
shall include a waiver of the defendant's right to a speedy 48
trial, the preliminary hearing, the time period within which the 49
grand jury may consider an indictment against the offender, and 50
arraignment, unless the hearing, indictment, or arraignment has 51
already occurred. The court may reject an offender's request 52

without a hearing. If the court elects to consider an offender's request, the court shall conduct a hearing to determine whether the offender is eligible under this section for intervention in lieu of conviction and shall stay all criminal proceedings pending the outcome of the hearing. If the court schedules a hearing, the court shall order an assessment of the offender for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan.

If the offender alleges that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged, the court may order that the offender be assessed by a community addiction services provider or a properly credentialed professional for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan. The community addiction services provider or the properly credentialed professional shall provide a written assessment of the offender to the court.

(2) The victim notification provisions of division (C) of section 2930.06 of the Revised Code apply in relation to any hearing held under division (A) (1) of this section.

(B) An offender is eligible for intervention in lieu of conviction if the court finds all of the following:

(1) The offender previously has not been convicted of or pleaded guilty to a felony offense of violence or previously has been convicted of or pleaded guilty to any felony that is not an offense of violence and the prosecuting attorney recommends that the offender be found eligible for participation in intervention in lieu of treatment under this section, previously has not been

through intervention in lieu of conviction under this section or 83
any similar regimen, and is charged with a felony for which the 84
court, upon conviction, would impose a community control 85
sanction on the offender under division (B) (2) of section 86
2929.13 of the Revised Code or with a misdemeanor. 87

(2) The offense is not a felony of the first, second, or 88
third degree, is not an offense of violence, is not a violation 89
of division (A) (1) or (2) of section 2903.06 of the Revised 90
Code, is not a violation of division (A) (1) of section 2903.08 91
of the Revised Code, is not a violation of division (A) of 92
section 4511.19 of the Revised Code or a municipal ordinance 93
that is substantially similar to that division, and is not an 94
offense for which a sentencing court is required to impose a 95
mandatory prison term, a mandatory term of local incarceration, 96
or a mandatory term of imprisonment in a jail. 97

(3) The offender is not charged with a violation of 98
section 2925.02, 2925.04, or 2925.06 of the Revised Code, is not 99
charged with a violation of section 2925.03 of the Revised Code 100
that is a felony of the first, second, third, or fourth degree, 101
and is not charged with a violation of section 2925.11 of the 102
Revised Code that is a felony of the first, second, or third 103
degree. 104

(4) If an offender alleges that drug or alcohol usage by 105
the offender was a factor leading to the criminal offense with 106
which the offender is charged, the court has ordered that the 107
offender be assessed by a community addiction services provider 108
or a properly credentialed professional for the purpose of 109
determining the offender's eligibility for intervention in lieu 110
of conviction and recommending an appropriate intervention plan, 111
the offender has been assessed by a community addiction services 112

provider of that nature or a properly credentialed professional 113
in accordance with the court's order, and the community 114
addiction services provider or properly credentialed 115
professional has filed the written assessment of the offender 116
with the court. 117

(5) If an offender alleges that, at the time of committing 118
the criminal offense with which the offender is charged, the 119
offender had a mental illness, was a person with an intellectual 120
disability, or was a victim of a violation of section 2905.32 or 121
2907.21 of the Revised Code and that the mental illness, status 122
as a person with an intellectual disability, or fact that the 123
offender was a victim of a violation of section 2905.32 or 124
2907.21 of the Revised Code was a factor leading to that 125
offense, the offender has been assessed by a psychiatrist, 126
psychologist, independent social worker, licensed professional 127
clinical counselor, or independent marriage and family therapist 128
for the purpose of determining the offender's eligibility for 129
intervention in lieu of conviction and recommending an 130
appropriate intervention plan. 131

(6) The offender's drug usage, alcohol usage, mental 132
illness, or intellectual disability, or the fact that the 133
offender was a victim of a violation of section 2905.32 or 134
2907.21 of the Revised Code, whichever is applicable, was a 135
factor leading to the criminal offense with which the offender 136
is charged, intervention in lieu of conviction would not demean 137
the seriousness of the offense, and intervention would 138
substantially reduce the likelihood of any future criminal 139
activity. 140

(7) The alleged victim of the offense was not sixty-five 141
years of age or older, permanently and totally disabled, under 142

thirteen years of age, or a peace officer engaged in the 143
officer's official duties at the time of the alleged offense. 144

(8) If the offender is charged with a violation of section 145
2925.24 of the Revised Code, the alleged violation did not 146
result in physical harm to any person, and the offender 147
previously has not been treated for drug abuse. 148

(9) The offender is willing to comply with all terms and 149
conditions imposed by the court pursuant to division (D) of this 150
section. 151

(10) The offender is not charged with an offense that 152
would result in the offender being disqualified under Chapter 153
4506. of the Revised Code from operating a commercial motor 154
vehicle or would subject the offender to any other sanction 155
under that chapter. 156

(C) At the conclusion of a hearing held pursuant to 157
division (A) of this section, the court shall enter its 158
determination as to whether the offender is eligible for 159
intervention in lieu of conviction and as to whether to grant 160
the offender's request. If the court finds under division (B) of 161
this section that the offender is eligible for intervention in 162
lieu of conviction and grants the offender's request, the court 163
shall accept the offender's plea of guilty and waiver of the 164
defendant's right to a speedy trial, the preliminary hearing, 165
the time period within which the grand jury may consider an 166
indictment against the offender, and arraignment, unless the 167
hearing, indictment, or arraignment has already occurred. In 168
addition, the court then may stay all criminal proceedings and 169
order the offender to comply with all terms and conditions 170
imposed by the court pursuant to division (D) of this section. 171
If the court finds that the offender is not eligible or does not 172

grant the offender's request, the criminal proceedings against 173
the offender shall proceed as if the offender's request for 174
intervention in lieu of conviction had not been made. 175

(D) If the court grants an offender's request for 176
intervention in lieu of conviction, the court shall place the 177
offender under the general control and supervision of the county 178
probation department, the adult parole authority, or another 179
appropriate local probation or court services agency, if one 180
exists, as if the offender was subject to a community control 181
sanction imposed under section 2929.15, 2929.18, or 2929.25 of 182
the Revised Code. The court shall establish an intervention plan 183
for the offender. The terms and conditions of the intervention 184
plan shall require the offender, for at least one year from the 185
date on which the court grants the order of intervention in lieu 186
of conviction, to abstain from the use of illegal drugs and 187
alcohol, to participate in treatment and recovery support 188
services, and to submit to regular random testing for drug and 189
alcohol use and may include any other treatment terms and 190
conditions, or terms and conditions similar to community control 191
sanctions, which may include community service or restitution, 192
that are ordered by the court. 193

(E) If the court grants an offender's request for 194
intervention in lieu of conviction and the court finds that the 195
offender has successfully completed the intervention plan for 196
the offender, including the requirement that the offender 197
abstain from using illegal drugs and alcohol for a period of at 198
least one year from the date on which the court granted the 199
order of intervention in lieu of conviction, the requirement 200
that the offender participate in treatment and recovery support 201
services, and all other terms and conditions ordered by the 202
court, the court shall dismiss the proceedings against the 203

offender. Successful completion of the intervention plan and 204
period of abstinence under this section shall be without 205
adjudication of guilt and is not a criminal conviction for 206
purposes of any disqualification or disability imposed by law 207
and upon conviction of a crime, and the court may order the 208
sealing of records related to the offense in question in the 209
manner provided in sections 2953.31 to 2953.36 of the Revised 210
Code. 211

(F) If the court grants an offender's request for 212
intervention in lieu of conviction and the offender fails to 213
comply with any term or condition imposed as part of the 214
intervention plan for the offender, the supervising authority 215
for the offender promptly shall advise the court of this 216
failure, and the court shall hold a hearing to determine whether 217
the offender failed to comply with any term or condition imposed 218
as part of the plan. If the court determines that the offender 219
has failed to comply with any of those terms and conditions, it 220
shall enter a finding of guilty and shall impose an appropriate 221
sanction under Chapter 2929. of the Revised Code. If the court 222
sentences the offender to a prison term, the court, after 223
consulting with the department of rehabilitation and correction 224
regarding the availability of services, may order continued 225
court-supervised activity and treatment of the offender during 226
the prison term and, upon consideration of reports received from 227
the department concerning the offender's progress in the program 228
of activity and treatment, may consider judicial release under 229
section 2929.20 of the Revised Code. 230

(G) As used in this section: 231

(1) "Community addiction services provider" has the same 232
meaning as in section 5119.01 of the Revised Code. 233

(2) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.	234 235
(3) "Intervention in lieu of conviction" means any court-supervised activity that complies with this section.	236 237
(4) "Intellectual disability" has the same meaning as in section 5123.01 of the Revised Code.	238 239
(5) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.	240 241
(6) "Mental illness" and "psychiatrist" have the same meanings as in section 5122.01 of the Revised Code.	242 243
(7) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.	244 245
Sec. 2953.38. (A) As used in this section:	246
(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.	247 248 249
(2) "Prosecutor" has the same meaning as in section 2953.31 of the Revised Code.	250 251
(3) "Record of conviction" means the <u>any</u> record related to a conviction of or plea of guilty to an offense.	252 253
(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.	254 255 256 257 258
(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	259 260

apply to the sentencing court for the expungement of ~~the any~~ 261
record of conviction, other than a record of a conviction 262
specified in section 2953.36 of the Revised Code, if the 263
person's participation in the offense was a result of the person 264
having been a victim of human trafficking. The person may file 265
the application at any time. The application may request an 266
order to expunge the record of conviction for more than one 267
offense, but if it does, the court shall consider the request 268
for each offense separately as if a separate application had 269
been made for each offense and all references in divisions (B) 270
to (H) of this section to "the offense" or "that offense" mean 271
each of those offenses that are the subject of the application. 272
The application shall do all of the following: 273

(1) Identify the applicant, the offense for which the 274
expungement is sought, the date of the conviction of that 275
offense, and the court in which the conviction occurred; 276

(2) Describe the evidence and provide copies of any 277
documentation showing that the person is entitled to relief 278
under this section; 279

(3) Include a request for expungement of the record of 280
conviction of that offense under this section. 281

(C) The court may deny an application made under division 282
(B) of this section if it finds that the application fails to 283
assert grounds on which relief may be granted. 284

(D) If the court does not deny an application under 285
division (C) of this section, it shall set a date for a hearing 286
and shall notify the prosecutor for the case from which the 287
record of conviction resulted of the hearing on the application. 288
The prosecutor may object to the granting of the application by 289

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

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

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

(F) If after a hearing 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, 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 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 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.

Sec. 2953.521. (A) As used in this section, "expunge" has the same meaning as in section 2953.38 of the Revised Code.

(B) Any person who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information may apply to the court for an order to expunge the person's official records in the case if the complaint, indictment, information, or finding of not guilty that is the subject of the application was the result of the applicant having been a victim of human trafficking. The application may be filed at any time after the finding of not guilty or the dismissal of the complaint, indictment, or information is entered upon the minutes of the court or the

journal, whichever entry occurs first. The application may 349
request an order to expunge official records for more than one 350
offense, but if it does, the court shall consider the request 351
for each offense separately as if a separate application had 352
been made for each offense and all references in divisions (B) 353
to (H) of this section to "the offense" or "that offense" mean 354
each of those offenses that are the subject of the application. 355

(C) The court may deny an application made under division 356
(B) of this section if it finds that the application fails to 357
assert grounds on which relief may be granted. 358

(D) If the court does not deny an application under 359
division (C) of this section, the court shall set a date for a 360
hearing and shall notify the prosecutor for the case of the 361
hearing on the application. The prosecutor may object to the 362
granting of the application by filing an objection with the 363
court prior to the date set for the hearing. The prosecutor 364
shall specify in the objection the reasons for believing a 365
denial of the application is justified. 366

(E) At the hearing held under division (D) of this 367
section, the court shall do all of the following: 368

(1) If the prosecutor has filed an objection, consider the 369
reasons against granting the application specified by the 370
prosecutor in the objection; 371

(2) Determine whether the applicant has demonstrated by a 372
preponderance of the evidence that the complaint, indictment, 373
information, or finding of not guilty that is the subject of the 374
application was the result of the applicant having been a victim 375
of human trafficking; 376

(3) If the application pertains to a dismissed complaint, 377

indictment, or information, determine whether the dismissal was 378
with prejudice or without prejudice and, if the dismissal was 379
without prejudice, whether the period of limitations applicable 380
to the offense that was the subject of that complaint, 381
indictment, or information has expired; 382

(4) Determine whether any criminal proceedings are pending 383
against the applicant. 384

(F) (1) Subject to division (F) (2) of this section, if the 385
court finds that the applicant has demonstrated by a 386
preponderance of the evidence that the complaint, indictment, 387
information, or finding of not guilty that is the subject of the 388
application was the result of the applicant having been a victim 389
of human trafficking, the court shall grant the application and 390
order that the official records be expunged. 391

(2) The court shall not grant the application and order 392
that the official records be expunged unless the court 393
determines that the interests of the applicant in having the 394
official records pertaining to the complaint, indictment, or 395
information or finding of not guilty that is the subject of the 396
application expunged are not outweighed by any legitimate needs 397
of the government to maintain those records. 398

(G) If an expungement is ordered under division (F) of 399
this section, the court shall send notice of the order of 400
expungement to each public office or agency that the court has 401
reason to believe may have an official record pertaining to the 402
case. 403

(H) The proceedings in the case that is the subject of an 404
order issued under division (F) of this section shall be 405
considered not to have occurred and the official records shall 406

be expunged. The official records shall not be used for any 407
purpose, including a criminal records check under section 408
109.572 of the Revised Code. The applicant may, and the court 409
shall, reply that no record exists with respect to the applicant 410
upon any inquiry into the matter. 411

Section 2. That existing sections 2951.041 and 2953.38 of 412
the Revised Code are hereby repealed. 413