

**As Passed by the Senate**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Sub. S. B. No. 4**

**Senators Kunze, Oelslager**

**Cosponsors: Senators Obhof, Terhar, Gardner, Hite, Eklund, Huffman, LaRose, Hottinger, Bacon, Balderson, Beagle, Brown, Burke, Coley, Dolan, Hackett, Hoagland, Jordan, Lehner, Manning, O'Brien, Schiavoni, Sykes, Tavares, Thomas, Uecker, Wilson, Yuko**

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**A BILL**

To amend sections 2951.041 and 2953.38 and to enact 1  
section 2953.521 of the Revised Code to allow a 2  
person who is found not guilty of an offense or 3  
who is the defendant named in a dismissed 4  
criminal charge to apply for a court order to 5  
expunge the person's official records in the 6  
case if the charge or not guilty finding was the 7  
result of the applicant having been a human 8  
trafficking victim; to allow a person convicted 9  
of certain prostitution-related offenses to 10  
apply for the expungement of the conviction 11  
record of any offense, other than a specified 12  
disqualifying offense, the person's 13  
participation in which was a result of having 14  
been a human trafficking victim; and to allow 15  
intervention in lieu of conviction for persons 16  
charged with committing an offense while a 17  
victim of compelling prostitution. 18

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

**Section 1.** That sections 2951.041 and 2953.38 be amended 19  
and section 2953.521 of the Revised Code be enacted to read as 20  
follows: 21

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

trial, the preliminary hearing, the time period within which the 50  
grand jury may consider an indictment against the offender, and 51  
arraignment, unless the hearing, indictment, or arraignment has 52  
already occurred. The court may reject an offender's request 53  
without a hearing. If the court elects to consider an offender's 54  
request, the court shall conduct a hearing to determine whether 55  
the offender is eligible under this section for intervention in 56  
lieu of conviction and shall stay all criminal proceedings 57  
pending the outcome of the hearing. If the court schedules a 58  
hearing, the court shall order an assessment of the offender for 59  
the purpose of determining the offender's eligibility for 60  
intervention in lieu of conviction and recommending an 61  
appropriate intervention plan. 62

If the offender alleges that drug or alcohol usage by the 63  
offender was a factor leading to the criminal offense with which 64  
the offender is charged, the court may order that the offender 65  
be assessed by a community addiction services provider or a 66  
properly credentialed professional for the purpose of 67  
determining the offender's eligibility for intervention in lieu 68  
of conviction and recommending an appropriate intervention plan. 69  
The community addiction services provider or the properly 70  
credentialed professional shall provide a written assessment of 71  
the offender to the court. 72

(2) The victim notification provisions of division (C) of 73  
section 2930.06 of the Revised Code apply in relation to any 74  
hearing held under division (A) (1) of this section. 75

(B) An offender is eligible for intervention in lieu of 76  
conviction if the court finds all of the following: 77

(1) The offender previously has not been convicted of or 78  
pleaded guilty to a felony offense of violence or previously has 79

been convicted of or pleaded guilty to any felony that is not an 80  
offense of violence and the prosecuting attorney recommends that 81  
the offender be found eligible for participation in intervention 82  
in lieu of treatment under this section, previously has not been 83  
through intervention in lieu of conviction under this section or 84  
any similar regimen, and is charged with a felony for which the 85  
court, upon conviction, would impose a community control 86  
sanction on the offender under division (B) (2) of section 87  
2929.13 of the Revised Code or with a misdemeanor. 88

(2) The offense is not a felony of the first, second, or 89  
third degree, is not an offense of violence, is not a violation 90  
of division (A) (1) or (2) of section 2903.06 of the Revised 91  
Code, is not a violation of division (A) (1) of section 2903.08 92  
of the Revised Code, is not a violation of division (A) of 93  
section 4511.19 of the Revised Code or a municipal ordinance 94  
that is substantially similar to that division, and is not an 95  
offense for which a sentencing court is required to impose a 96  
mandatory prison term, a mandatory term of local incarceration, 97  
or a mandatory term of imprisonment in a jail. 98

(3) The offender is not charged with a violation of 99  
section 2925.02, 2925.04, or 2925.06 of the Revised Code, is not 100  
charged with a violation of section 2925.03 of the Revised Code 101  
that is a felony of the first, second, third, or fourth degree, 102  
and is not charged with a violation of section 2925.11 of the 103  
Revised Code that is a felony of the first, second, or third 104  
degree. 105

(4) If an offender alleges that drug or alcohol usage by 106  
the offender was a factor leading to the criminal offense with 107  
which the offender is charged, the court has ordered that the 108  
offender be assessed by a community addiction services provider 109

or a properly credentialed professional for the purpose of 110  
determining the offender's eligibility for intervention in lieu 111  
of conviction and recommending an appropriate intervention plan, 112  
the offender has been assessed by a community addiction services 113  
provider of that nature or a properly credentialed professional 114  
in accordance with the court's order, and the community 115  
addiction services provider or properly credentialed 116  
professional has filed the written assessment of the offender 117  
with the court. 118

(5) If an offender alleges that, at the time of committing 119  
the criminal offense with which the offender is charged, the 120  
offender had a mental illness, was a person with an intellectual 121  
disability, or was a victim of a violation of section 2905.32 or 122  
2907.21 of the Revised Code and that the mental illness, status 123  
as a person with an intellectual disability, or fact that the 124  
offender was a victim of a violation of section 2905.32 or 125  
2907.21 of the Revised Code was a factor leading to that 126  
offense, the offender has been assessed by a psychiatrist, 127  
psychologist, independent social worker, licensed professional 128  
clinical counselor, or independent marriage and family therapist 129  
for the purpose of determining the offender's eligibility for 130  
intervention in lieu of conviction and recommending an 131  
appropriate intervention plan. 132

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

activity.	141
(7) The alleged victim of the offense was not sixty-five	142
years of age or older, permanently and totally disabled, under	143
thirteen years of age, or a peace officer engaged in the	144
officer's official duties at the time of the alleged offense.	145
(8) If the offender is charged with a violation of section	146
2925.24 of the Revised Code, the alleged violation did not	147
result in physical harm to any person, and the offender	148
previously has not been treated for drug abuse.	149
(9) The offender is willing to comply with all terms and	150
conditions imposed by the court pursuant to division (D) of this	151
section.	152
(10) The offender is not charged with an offense that	153
would result in the offender being disqualified under Chapter	154
4506. of the Revised Code from operating a commercial motor	155
vehicle or would subject the offender to any other sanction	156
under that chapter.	157
(C) At the conclusion of a hearing held pursuant to	158
division (A) of this section, the court shall enter its	159
determination as to whether the offender is eligible for	160
intervention in lieu of conviction and as to whether to grant	161
the offender's request. If the court finds under division (B) of	162
this section that the offender is eligible for intervention in	163
lieu of conviction and grants the offender's request, the court	164
shall accept the offender's plea of guilty and waiver of the	165
defendant's right to a speedy trial, the preliminary hearing,	166
the time period within which the grand jury may consider an	167
indictment against the offender, and arraignment, unless the	168
hearing, indictment, or arraignment has already occurred. In	169

addition, the court then may stay all criminal proceedings and 170  
order the offender to comply with all terms and conditions 171  
imposed by the court pursuant to division (D) of this section. 172  
If the court finds that the offender is not eligible or does not 173  
grant the offender's request, the criminal proceedings against 174  
the offender shall proceed as if the offender's request for 175  
intervention in lieu of conviction had not been made. 176

(D) If the court grants an offender's request for 177  
intervention in lieu of conviction, the court shall place the 178  
offender under the general control and supervision of the county 179  
probation department, the adult parole authority, or another 180  
appropriate local probation or court services agency, if one 181  
exists, as if the offender was subject to a community control 182  
sanction imposed under section 2929.15, 2929.18, or 2929.25 of 183  
the Revised Code. The court shall establish an intervention plan 184  
for the offender. The terms and conditions of the intervention 185  
plan shall require the offender, for at least one year from the 186  
date on which the court grants the order of intervention in lieu 187  
of conviction, to abstain from the use of illegal drugs and 188  
alcohol, to participate in treatment and recovery support 189  
services, and to submit to regular random testing for drug and 190  
alcohol use and may include any other treatment terms and 191  
conditions, or terms and conditions similar to community control 192  
sanctions, which may include community service or restitution, 193  
that are ordered by the court. 194

(E) If the court grants an offender's request for 195  
intervention in lieu of conviction and the court finds that the 196  
offender has successfully completed the intervention plan for 197  
the offender, including the requirement that the offender 198  
abstain from using illegal drugs and alcohol for a period of at 199  
least one year from the date on which the court granted the 200

order of intervention in lieu of conviction, the requirement 201  
that the offender participate in treatment and recovery support 202  
services, and all other terms and conditions ordered by the 203  
court, the court shall dismiss the proceedings against the 204  
offender. Successful completion of the intervention plan and 205  
period of abstinence under this section shall be without 206  
adjudication of guilt and is not a criminal conviction for 207  
purposes of any disqualification or disability imposed by law 208  
and upon conviction of a crime, and the court may order the 209  
sealing of records related to the offense in question in the 210  
manner provided in sections 2953.31 to 2953.36 of the Revised 211  
Code. 212

(F) If the court grants an offender's request for 213  
intervention in lieu of conviction and the offender fails to 214  
comply with any term or condition imposed as part of the 215  
intervention plan for the offender, the supervising authority 216  
for the offender promptly shall advise the court of this 217  
failure, and the court shall hold a hearing to determine whether 218  
the offender failed to comply with any term or condition imposed 219  
as part of the plan. If the court determines that the offender 220  
has failed to comply with any of those terms and conditions, it 221  
shall enter a finding of guilty and shall impose an appropriate 222  
sanction under Chapter 2929. of the Revised Code. If the court 223  
sentences the offender to a prison term, the court, after 224  
consulting with the department of rehabilitation and correction 225  
regarding the availability of services, may order continued 226  
court-supervised activity and treatment of the offender during 227  
the prison term and, upon consideration of reports received from 228  
the department concerning the offender's progress in the program 229  
of activity and treatment, may consider judicial release under 230  
section 2929.20 of the Revised Code. 231



(G) As used in this section:	232
(1) "Community addiction services provider" has the same meaning as in section 5119.01 of the Revised Code.	233 234
(2) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.	235 236
(3) "Intervention in lieu of conviction" means any court-supervised activity that complies with this section.	237 238
(4) "Intellectual disability" has the same meaning as in section 5123.01 of the Revised Code.	239 240
(5) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.	241 242
(6) "Mental illness" and "psychiatrist" have the same meanings as in section 5122.01 of the Revised Code.	243 244
(7) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.	245 246
<b>Sec. 2953.38.</b> (A) As used in this section:	247
(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.	248 249 250
(2) "Prosecutor" has the same meaning as in section 2953.31 of the Revised Code.	251 252
(3) "Record of conviction" means <del>the</del> <u>any</u> record related to a conviction of or plea of guilty to an offense.	253 254
(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	255 256 257 258

victimizing the person. 259

(B) Any person who is or was convicted of a violation of 260  
section 2907.24, 2907.241, or 2907.25 of the Revised Code may 261  
apply to the sentencing court for the expungement of the record 262  
of conviction if of any offense, other than a record of 263  
conviction of a violation of section 2903.01, 2903.02, or 264  
2907.02 of the Revised Code, the person's participation in ~~the~~ 265  
~~offense which~~ was a result of the person having been a victim of 266  
human trafficking. The person may file the application at any 267  
time. The application may request an order to expunge the record 268  
of conviction for more than one offense, but if it does, the 269  
court shall consider the request for each offense separately as 270  
if a separate application had been made for each offense and all 271  
references in divisions (B) to (H) of this section to "the 272  
offense" or "that offense" mean each of those offenses that are 273  
the subject of the application. The application shall do all of 274  
the following: 275

(1) Identify the applicant, the offense for which the 276  
expungement is sought, the date of the conviction of that 277  
offense, and the court in which the conviction occurred; 278

(2) Describe the evidence and provide copies of any 279  
documentation showing that the person is entitled to relief 280  
under this section; 281

(3) Include a request for expungement of the record of 282  
conviction of that offense under this section. 283

(C) The court may deny an application made under division 284  
(B) of this section if it finds that the application fails to 285  
assert grounds on which relief may be granted. 286

(D) If the court does not deny an application under 287

division (C) of this section, it shall set a date for a hearing 288  
and shall notify the prosecutor for the case from which the 289  
record of conviction resulted of the hearing on the application. 290  
The prosecutor may object to the granting of the application by 291  
filing an objection with the court prior to the date set for the 292  
hearing. The prosecutor shall specify in the objection the 293  
reasons for believing a denial of the application is justified. 294  
The court may direct its regular probation officer, a state 295  
probation officer, or the department of probation of the county 296  
in which the applicant resides to make inquiries and written 297  
reports as the court requires concerning the applicant. 298

(E) (1) At the hearing held under division (D) of this 299  
section, the court shall do both of the following: 300

~~(1)~~ (a) If the prosecutor has filed an objection, consider 301  
the reasons against granting the application specified by the 302  
prosecutor in the objection; 303

~~(2)~~ (b) Determine whether the applicant has demonstrated 304  
by a preponderance of the evidence that the applicant's 305  
participation in the offense that is the subject of the 306  
application was a result of the applicant having been a victim 307  
of human trafficking. 308

(2) If the court at the hearing held under division (D) of 309  
this section determines that the applicant's participation in 310  
the offense that is the subject of the application was a result 311  
of the applicant having been a victim of human trafficking and 312  
if that subject offense is a felony of the first or second 313  
degree, the court at the hearing also shall consider all of the 314  
following factors and, upon consideration of the factors, shall 315  
determine whether the interests of the applicant in having the 316  
record of the conviction of that offense expunged are outweighed 317

by any legitimate needs of the government to maintain that 318  
record of conviction: 319

(a) The degree of duress under which the applicant acted 320  
in committing the subject offense, including, but not limited 321  
to, the history of the use of force or threatened use of force 322  
against the applicant or another person, whether the applicant's 323  
judgment or control was impaired by the administration to the 324  
applicant of any intoxicant, drug, or controlled substance, and 325  
the threat of withholding from the applicant food, water, or any 326  
drug; 327

(b) The seriousness of the subject offense; 328

(c) The relative degree of physical harm done to any 329  
person in the commission of the subject offense; 330

(d) The length of time that has expired since the 331  
commission of the subject offense; 332

(e) Whether the prosecutor represents to the court that 333  
criminal proceedings are likely to still be initiated against 334  
the applicant for a felony offense for which the period of 335  
limitations has not expired; 336

(f) Whether the applicant at the time of the hearing is 337  
subject to supervision as a result of the subject offense. 338

(F) If after a hearing held under division (D) of this 339  
section the court finds that the applicant has demonstrated by a 340  
preponderance of the evidence that the applicant's participation 341  
in the offense that is the subject of the application was the 342  
result of the applicant having been a victim of human 343  
trafficking, and, if the offense that is the subject of the 344  
application is a felony of the first or second degree, after 345  
consideration of the factors required under division (E) (2) of 346

this section, it finds that the interests of the applicant in 347  
having the record of the conviction of that offense expunged are 348  
not outweighed by any legitimate needs of the government to 349  
maintain that record of conviction, the court shall grant the 350  
application and order that the record of conviction be expunged. 351

(G) (1) The court shall send notice of the order of 352  
expungement issued under division (F) of this section to each 353  
public office or agency that the court has reason to believe may 354  
have an official record pertaining to the case if the court, 355  
after complying with division (E) of this section, determines 356  
both of the following: 357

(a) That the applicant has been convicted of a violation 358  
of section 2907.24, 2907.241, or 2907.25 of the Revised Code; 359

(b) That the interests of the applicant in having the 360  
records pertaining to the applicant's conviction expunged are 361  
not outweighed by any legitimate needs of the government to 362  
maintain those records. 363

(2) The proceedings in the case that is the subject of an 364  
order of expungement issued under division (F) of this section 365  
shall be considered not to have occurred and the conviction of 366  
the person who is the subject of the proceedings shall be 367  
expunged. The record of the conviction shall not be used for any 368  
purpose, including, but not limited to, a criminal records check 369  
under section 109.572 of the Revised Code. The applicant may, 370  
and the court shall, reply that no record exists with respect to 371  
the applicant upon any inquiry into the matter. 372

(H) Upon the filing of an application under this section, 373  
the applicant, unless indigent, shall pay a fee of fifty 374  
dollars. The court shall pay thirty dollars of the fee into the 375

state treasury and shall pay twenty dollars of the fee into the 376  
county general revenue fund. 377

Sec. 2953.521. (A) As used in this section, "expunge" has 378  
the same meaning as in section 2953.38 of the Revised Code. 379

(B) Any person who is found not guilty of an offense by a 380  
jury or a court or who is the defendant named in a dismissed 381  
complaint, indictment, or information may apply to the court for 382  
an order to expunge the person's official records in the case if 383  
the complaint, indictment, information, or finding of not guilty 384  
that is the subject of the application was the result of the 385  
applicant having been a victim of human trafficking. The 386  
application may be filed at any time after the finding of not 387  
guilty or the dismissal of the complaint, indictment, or 388  
information is entered upon the minutes of the court or the 389  
journal, whichever entry occurs first. The application may 390  
request an order to expunge official records for more than one 391  
offense, but if it does, the court shall consider the request 392  
for each offense separately as if a separate application had 393  
been made for each offense and all references in divisions (B) 394  
to (H) of this section to "the offense" or "that offense" mean 395  
each of those offenses that are the subject of the application. 396

(C) The court may deny an application made under division 397  
(B) of this section if it finds that the application fails to 398  
assert grounds on which relief may be granted. 399

(D) If the court does not deny an application under 400  
division (C) of this section, the court shall set a date for a 401  
hearing and shall notify the prosecutor for the case of the 402  
hearing on the application. The prosecutor may object to the 403  
granting of the application by filing an objection with the 404  
court prior to the date set for the hearing. The prosecutor 405

shall specify in the objection the reasons for believing a 406  
denial of the application is justified. 407

(E) At the hearing held under division (D) of this 408  
section, the court shall do all of the following: 409

(1) If the prosecutor has filed an objection, consider the 410  
reasons against granting the application specified by the 411  
prosecutor in the objection; 412

(2) Determine whether the applicant has demonstrated by a 413  
preponderance of the evidence that the complaint, indictment, 414  
information, or finding of not guilty that is the subject of the 415  
application was the result of the applicant having been a victim 416  
of human trafficking; 417

(3) If the application pertains to a dismissed complaint, 418  
indictment, or information, determine whether the dismissal was 419  
with prejudice or without prejudice and, if the dismissal was 420  
without prejudice, whether the period of limitations applicable 421  
to the offense that was the subject of that complaint, 422  
indictment, or information has expired; 423

(4) Determine whether any criminal proceedings are pending 424  
against the applicant. 425

(F) (1) Subject to division (F) (2) of this section, if the 426  
court finds that the applicant has demonstrated by a 427  
preponderance of the evidence that the complaint, indictment, 428  
information, or finding of not guilty that is the subject of the 429  
application was the result of the applicant having been a victim 430  
of human trafficking, the court shall grant the application and 431  
order that the official records be expunged. 432

(2) The court shall not grant the application and order 433  
that the official records be expunged unless the court 434

determines that the interests of the applicant in having the 435  
official records pertaining to the complaint, indictment, or 436  
information or finding of not guilty that is the subject of the 437  
application expunged are not outweighed by any legitimate needs 438  
of the government to maintain those records. 439

(G) If an expungement is ordered under division (F) of 440  
this section, the court shall send notice of the order of 441  
expungement to each public office or agency that the court has 442  
reason to believe may have an official record pertaining to the 443  
case. 444

(H) The proceedings in the case that is the subject of an 445  
order issued under division (F) of this section shall be 446  
considered not to have occurred and the official records shall 447  
be expunged. The official records shall not be used for any 448  
purpose, including a criminal records check under section 449  
109.572 of the Revised Code. The applicant may, and the court 450  
shall, reply that no record exists with respect to the applicant 451  
upon any inquiry into the matter. 452

**Section 2.** That existing sections 2951.041 and 2953.38 of 453  
the Revised Code are hereby repealed. 454