



OHIO JUSTICE & POLICY CENTER

RECLAIMING LIVES • RENEWING COMMUNITIES • RESTORING JUSTICE

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To: Ohio Senate Judiciary Committee

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Vice Chair Matthew Dolan	Sen. Peggy Lehner	Sen. William Coley II
Ranking Member Cecil Thomas	Sen. John Eklund	Sen. Scott Oelslager
		Sen. Michael J. Skindell

From: Sasha Naiman, Deputy Director & Second Chance Project Director, OJPC

Date: May 9, 2017

Re: In Support of S.B. 4

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Greetings Chairman Bacon, Vice Chair Dolan, Ranking Member Thomas, and members of the Senate Judiciary Committee. I urge you to support S.B. 4 so that survivors of sex trafficking are empowered with meaningful opportunities to achieve **recovery, gainful employment, stable housing, and community reintegration.**

I submit this testimony on behalf of the Ohio Justice & Policy Center, a nonprofit law firm whose mission is to promote fair, intelligent, and redemptive criminal justice systems. OJPC has represented multiple victims of human trafficking in filing successful expungement applications under R.C. 2953.38 (Safe Harbor expungement). OJPC also conducts trainings statewide about expungement for trafficking-survivors.

BACKGROUND

Human trafficking in Ohio is a fast growing form of modern day slavery. Victims – usually women and children – are compelled to commit crimes, like prostitution, theft, and drug-sales, for traffickers' financial gain. The trauma and abuse they suffer is horrific. When survivors break free, their criminal records create serious barriers to employment, housing, education, family reunification, and more. In 2012, the Ohio created a new expungement process (Safe Harbor Act, H.B. 262) to **reverse the damage created by arresting victims of sex trafficking.** The law allows survivors to erase conviction records resulting from the trafficking situation.¹

SOLVING TWO PROBLEMS

While the 2012 expungement provision aimed to remove criminal-records-based barriers for survivors, **S.B. 4 is necessary** to truly achieve this goal. Based on OJPC's experience filing Safe Harbor expungements and our conversations with advocates statewide, there remain **two significant problems in the law, which are solved by S.B. 4.**

First, survivors should be able to apply to expunge **any criminal convictions** where the person's participation was a result of being a victim of human trafficking. The current language

¹ Before granting an expungement application, the court must determine that: 1) the applicant has previously been convicted of at least one enumerated predicate offense (prostitution, soliciting, or loitering to solicit) associated with sex trafficking; 2) the conviction(s) in the application resulted from the applicant being a trafficking victim; and 3) the interests of the applicant in the expungement are not outweighed by the government's interest in keeping the criminal record(s).



of R.C. 2953.38 is ambiguous, so some courts and prosecutors may think that expungement is available *only* for convictions of prostitution, loitering to solicit, and solicitation. In reality, after being subjected to tremendous abuse (e.g., rape, forced heroin use), victims have criminal records far exceeding these three charges. For example, traffickers exploit their victims to transport drugs, participate in “public indecency”, steal items for resale, and hide from police. If only a few offenses can be expunged, survivors are left with dozens of records that create the very barriers that the Safe Harbor law was meant to erase. S.B. 4 remedies this ambiguity.²

Second, survivors need to expunge records of **arrest that did not lead to conviction**. Under the current R.C. 2953.38, survivors of sex trafficking can erase convictions but cannot erase other case records. The non-convictions continue to appear on background checks, online clerk-of-courts sites, etc. Survivors have to take a separate action to seal these records – and even then, the records stay with the court and are accessible in the future (in limited situations). It is necessary for non-convictions to also be expunged to fully realize the purpose of the original Safe Harbor Act.

URGENT NEED TO RESOLVE INCONSISTENT READINGS OF THE STATUTE

OJPC represents over 20 survivors of sex trafficking, who want expungements under R.C. 2953.38. Some clients have successfully expunged extensive, varied criminal records. Others are hesitant to apply for expungement at all, not wishing to undergo a difficult, often-traumatic application process only to be denied expungement, based on statutory interpretation, for most of their records. Many fear being the first expungement applicant in a county because they do not want to set bad precedent for survivors there and across Ohio. Others faced prosecutors or judges who had a narrow reading of the law – sometimes even two prosecutors in the same court had different readings of R.C. 2953.38 for one applicant! As a result, survivors may erase all, some, or none of their criminal records, depending on the geographic footprint where they were trafficked and the judges/prosecutors they encountered. Our clients are left in a maze that does not promote evenhanded, consistent interpretation and application of legal principles.

CONCLUSION

S.B. 4 presents a simple, convenient remedy for two problems in the expungement law. It empowers trafficking survivors to remove the shackles forged by their traffickers – truly eliminating the criminal records that resulted from the trafficking situation. The bill clears up any past ambiguities and creates one of the strongest forms of redemption that has ever existed for survivors of sex trafficking in Ohio. OJPC urges each of you to vote for S.B. 4.

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² This bill allows survivors to apply for expungement of any convictions that resulted from trafficking, *except* aggravated murder, murder, and rape. This exclusion parallels the other “true expungement” in Ohio law – namely juvenile record expungement. While OJPC believes that *all* offenses should be expungable, we support the bill with this limited exception.