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Representatives Hall, Dever

Cosponsors: Representatives Anielski, Baker, Barnes, Becker, Boose, Conditt, DeVitis, Green, Grossman, Hambley, Johnson, T., Kraus, LaTourette, Maag, McColley, O'Brien, S., Patmon, Rezabek, Ruhl, Ryan, Schuring, Slaby, Sprague, Thompson, Young

A BILL

To amend sections 2951.041 and 2953.38 and to enact 1
section 2953.521 of the Revised Code to provide 2
that a person who is found not guilty of an 3
offense by a jury or a court or who is the 4
defendant named in a dismissed complaint, 5
indictment, or information may apply to the 6
court for an order to expunge the person's 7
official records in the case if the complaint, 8
indictment, or information or finding of not 9
guilty was the result of the applicant having 10
been a victim of human trafficking, to permit a 11
person convicted of certain prostitution related 12
offenses to apply for the expungement of any 13
record of conviction of an offense, other than a 14
conviction record that cannot be sealed under 15
existing law, if the person's participation in 16
the offense was a result of having been a victim 17
of human trafficking, and to authorize 18
intervention in lieu of conviction for persons 19
charged with committing an offense while a 20
victim of compelling prostitution. 21

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

Section 1. That sections 2951.041 and 2953.38 be amended 22
and section 2953.521 of the Revised Code be enacted to read as 23
follows: 24

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

2907.21 of the Revised Code was a factor leading to the criminal offense with which the offender is charged. The request also shall include a waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment against the offender, and arraignment, unless the hearing, indictment, or arraignment has already occurred. The court may reject an offender's request 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: 80

(1) The offender previously has not been convicted of or 81
pleaded guilty to a felony offense of violence or previously has 82
been convicted of or pleaded guilty to any felony that is not an 83
offense of violence and the prosecuting attorney recommends that 84
the offender be found eligible for participation in intervention 85
in lieu of treatment under this section, previously has not been 86
through intervention in lieu of conviction under this section or 87
any similar regimen, and is charged with a felony for which the 88
court, upon conviction, would impose a community control 89
sanction on the offender under division (B) (2) of section 90
2929.13 of the Revised Code or with a misdemeanor. 91

(2) The offense is not a felony of the first, second, or 92
third degree, is not an offense of violence, is not a violation 93
of division (A) (1) or (2) of section 2903.06 of the Revised 94
Code, is not a violation of division (A) (1) of section 2903.08 95
of the Revised Code, is not a violation of division (A) of 96
section 4511.19 of the Revised Code or a municipal ordinance 97
that is substantially similar to that division, and is not an 98
offense for which a sentencing court is required to impose a 99
mandatory prison term, a mandatory term of local incarceration, 100
or a mandatory term of imprisonment in a jail. 101

(3) The offender is not charged with a violation of 102
section 2925.02, 2925.04, or 2925.06 of the Revised Code, is not 103
charged with a violation of section 2925.03 of the Revised Code 104
that is a felony of the first, second, third, or fourth degree, 105
and is not charged with a violation of section 2925.11 of the 106
Revised Code that is a felony of the first, second, or third 107
degree. 108

(4) If an offender alleges that drug or alcohol usage by 109

the offender was a factor leading to the criminal offense with 110
which the offender is charged, the court has ordered that the 111
offender be assessed by a community addiction services provider 112
or a properly credentialed professional for the purpose of 113
determining the offender's eligibility for intervention in lieu 114
of conviction and recommending an appropriate intervention plan, 115
the offender has been assessed by a community addiction services 116
provider of that nature or a properly credentialed professional 117
in accordance with the court's order, and the community 118
addiction services provider or properly credentialed 119
professional has filed the written assessment of the offender 120
with the court. 121

(5) If an offender alleges that, at the time of committing 122
the criminal offense with which the offender is charged, the 123
offender had a mental illness, was a person with intellectual 124
disability, or was a victim of a violation of section 2905.32 or 125
2907.21 of the Revised Code and that the mental illness, status 126
as a person with intellectual disability, or fact that the 127
offender was a victim of a violation of section 2905.32 or 128
2907.21 of the Revised Code was a factor leading to that 129
offense, the offender has been assessed by a psychiatrist, 130
psychologist, independent social worker, licensed professional 131
clinical counselor, or independent marriage and family therapist 132
for the purpose of determining the offender's eligibility for 133
intervention in lieu of conviction and recommending an 134
appropriate intervention plan. 135

(6) The offender's drug usage, alcohol usage, mental 136
illness, or intellectual disability, or the fact that the 137
offender was a victim of a violation of section 2905.32 or 138
2907.21 of the Revised Code, whichever is applicable, was a 139
factor leading to the criminal offense with which the offender 140

is charged, intervention in lieu of conviction would not demean 141
the seriousness of the offense, and intervention would 142
substantially reduce the likelihood of any future criminal 143
activity. 144

(7) The alleged victim of the offense was not sixty-five 145
years of age or older, permanently and totally disabled, under 146
thirteen years of age, or a peace officer engaged in the 147
officer's official duties at the time of the alleged offense. 148

(8) If the offender is charged with a violation of section 149
2925.24 of the Revised Code, the alleged violation did not 150
result in physical harm to any person, and the offender 151
previously has not been treated for drug abuse. 152

(9) The offender is willing to comply with all terms and 153
conditions imposed by the court pursuant to division (D) of this 154
section. 155

(10) The offender is not charged with an offense that 156
would result in the offender being disqualified under Chapter 157
4506. of the Revised Code from operating a commercial motor 158
vehicle or would subject the offender to any other sanction 159
under that chapter. 160

(C) At the conclusion of a hearing held pursuant to 161
division (A) of this section, the court shall enter its 162
determination as to whether the offender is eligible for 163
intervention in lieu of conviction and as to whether to grant 164
the offender's request. If the court finds under division (B) of 165
this section that the offender is eligible for intervention in 166
lieu of conviction and grants the offender's request, the court 167
shall accept the offender's plea of guilty and waiver of the 168
defendant's right to a speedy trial, the preliminary hearing, 169

the time period within which the grand jury may consider an 170
indictment against the offender, and arraignment, unless the 171
hearing, indictment, or arraignment has already occurred. In 172
addition, the court then may stay all criminal proceedings and 173
order the offender to comply with all terms and conditions 174
imposed by the court pursuant to division (D) of this section. 175
If the court finds that the offender is not eligible or does not 176
grant the offender's request, the criminal proceedings against 177
the offender shall proceed as if the offender's request for 178
intervention in lieu of conviction had not been made. 179

(D) If the court grants an offender's request for 180
intervention in lieu of conviction, the court shall place the 181
offender under the general control and supervision of the county 182
probation department, the adult parole authority, or another 183
appropriate local probation or court services agency, if one 184
exists, as if the offender was subject to a community control 185
sanction imposed under section 2929.15, 2929.18, or 2929.25 of 186
the Revised Code. The court shall establish an intervention plan 187
for the offender. The terms and conditions of the intervention 188
plan shall require the offender, for at least one year from the 189
date on which the court grants the order of intervention in lieu 190
of conviction, to abstain from the use of illegal drugs and 191
alcohol, to participate in treatment and recovery support 192
services, and to submit to regular random testing for drug and 193
alcohol use and may include any other treatment terms and 194
conditions, or terms and conditions similar to community control 195
sanctions, which may include community service or restitution, 196
that are ordered by the court. 197

(E) If the court grants an offender's request for 198
intervention in lieu of conviction and the court finds that the 199
offender has successfully completed the intervention plan for 200

the offender, including the requirement that the offender 201
abstain from using illegal drugs and alcohol for a period of at 202
least one year from the date on which the court granted the 203
order of intervention in lieu of conviction, the requirement 204
that the offender participate in treatment and recovery support 205
services, and all other terms and conditions ordered by the 206
court, the court shall dismiss the proceedings against the 207
offender. Successful completion of the intervention plan and 208
period of abstinence under this section shall be without 209
adjudication of guilt and is not a criminal conviction for 210
purposes of any disqualification or disability imposed by law 211
and upon conviction of a crime, and the court may order the 212
sealing of records related to the offense in question in the 213
manner provided in sections 2953.31 to 2953.36 of the Revised 214
Code. 215

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

the department concerning the offender's progress in the program 232
of activity and treatment, may consider judicial release under 233
section 2929.20 of the Revised Code. 234

(G) As used in this section: 235

(1) "Community addiction services provider" has the same 236
meaning as in section 5119.01 of the Revised Code. 237

(2) "Community control sanction" has the same meaning as 238
in section 2929.01 of the Revised Code. 239

(3) "Intervention in lieu of conviction" means any court- 240
supervised activity that complies with this section. 241

(4) "Peace officer" has the same meaning as in section 242
2935.01 of the Revised Code. 243

(5) "Mental illness" and "psychiatrist" have the same 244
meanings as in section 5122.01 of the Revised Code. 245

(6) "Person with intellectual disability" means a person 246
having significantly subaverage general intellectual functioning 247
existing concurrently with deficiencies in adaptive behavior, 248
manifested during the developmental period. 249

(7) "Psychologist" has the same meaning as in section 250
4732.01 of the Revised Code. 251

(H) Whenever the term "mentally retarded person" is used 252
in any statute, rule, contract, grant, or other document, the 253
reference shall be deemed to include a "person with intellectual 254
disability," as defined in this section. 255

Sec. 2953.38. (A) As used in this section: 256

(1) "Expunge" means to destroy, delete, or erase a record 257
as appropriate for the record's physical or electronic form or 258

characteristic so that the record is permanently irretrievable. 259

(2) "Prosecutor" has the same meaning as in section 260
2953.31 of the Revised Code. 261

(3) "Record of conviction" means ~~the~~ any record related to 262
a conviction of or plea of guilty to an offense. 263

(4) "Victim of human trafficking" means a person who is or 264
was a victim of a violation of section 2905.32 of the Revised 265
Code, regardless of whether anyone has been convicted of a 266
violation of that section or of any other section for 267
victimizing the person. 268

(B) Any person who is or was convicted of a violation of 269
section 2907.24, 2907.241, or 2907.25 of the Revised Code may 270
apply to the sentencing court for the expungement of ~~the~~ any 271
record of conviction, other than a record of a conviction 272
specified in section 2953.36 of the Revised Code, if the 273
person's participation in the offense was a result of the person 274
having been a victim of human trafficking. The person may file 275
the application at any time. The application may request an 276
order to expunge the record of conviction for more than one 277
offense, but if it does, the court shall consider the request 278
for each offense separately as if a separate application had 279
been made for each offense and all references in divisions (B) 280
to (H) of this section to "the offense" or "that offense" mean 281
each of those offenses that are the subject of the application. 282
The application shall do all of the following: 283

(1) Identify the applicant, the offense for which the 284
expungement is sought, the date of the conviction of that 285
offense, and the court in which the conviction occurred; 286

(2) Describe the evidence and provide copies of any 287

documentation showing that the person is entitled to relief	288
under this section;	289
(3) Include a request for expungement of the record of	290
conviction of that offense under this section.	291
(C) The court may deny an application made under division	292
(B) of this section if it finds that the application fails to	293
assert grounds on which relief may be granted.	294
(D) If the court does not deny an application under	295
division (C) of this section, it shall set a date for a hearing	296
and shall notify the prosecutor for the case from which the	297
record of conviction resulted of the hearing on the application.	298
The prosecutor may object to the granting of the application by	299
filing an objection with the court prior to the date set for the	300
hearing. The prosecutor shall specify in the objection the	301
reasons for believing a denial of the application is justified.	302
The court may direct its regular probation officer, a state	303
probation officer, or the department of probation of the county	304
in which the applicant resides to make inquiries and written	305
reports as the court requires concerning the applicant.	306
(E) At the hearing held under division (D) of this	307
section, the court shall do both of the following:	308
(1) If the prosecutor has filed an objection, consider the	309
reasons against granting the application specified by the	310
prosecutor in the objection;	311
(2) Determine whether the applicant has demonstrated by a	312
preponderance of the evidence that the applicant's participation	313
in the offense was a result of having been a victim of human	314
trafficking.	315
(F) If after a hearing the court finds that the applicant	316

has demonstrated by a preponderance of the evidence that the 317
applicant's participation in the offense that is the subject of 318
the application was the result of the applicant having been a 319
victim of human trafficking, the court shall grant the 320
application and order that the record of conviction be expunged. 321

(G) (1) The court shall send notice of the order of 322
expungement to each public office or agency that the court has 323
reason to believe may have an official record pertaining to the 324
case if the court, after complying with division (E) of this 325
section, determines both of the following: 326

(a) That the applicant has been convicted of a violation 327
of section 2907.24, 2907.241, or 2907.25 of the Revised Code; 328

(b) That the interests of the applicant in having the 329
records pertaining to the applicant's conviction expunged are 330
not outweighed by any legitimate needs of the government to 331
maintain those records. 332

(2) The proceedings in the case that is the subject of an 333
order issued under division (F) of this section shall be 334
considered not to have occurred and the conviction of the person 335
who is the subject of the proceedings shall be expunged. The 336
record of the conviction shall not be used for any purpose, 337
including, but not limited to, a criminal records check under 338
section 109.572 of the Revised Code. The applicant may, and the 339
court shall, reply that no record exists with respect to the 340
applicant upon any inquiry into the matter. 341

(H) Upon the filing of an application under this section, 342
the applicant, unless indigent, shall pay a fee of fifty 343
dollars. The court shall pay thirty dollars of the fee into the 344
state treasury and shall pay twenty dollars of the fee into the 345

county general revenue fund. 346

Sec. 2953.521. (A) As used in this section, "expunge" has 347
the same meaning as in section 2953.38 of the Revised Code. 348

(B) Any person who is found not guilty of an offense by a 349
jury or a court or who is the defendant named in a dismissed 350
complaint, indictment, or information may apply to the court for 351
an order to expunge the person's official records in the case if 352
the complaint, indictment, information, or finding of not guilty 353
that is the subject of the application was the result of the 354
applicant having been a victim of human trafficking. The 355
application may be filed at any time after the finding of not 356
guilty or the dismissal of the complaint, indictment, or 357
information is entered upon the minutes of the court or the 358
journal, whichever entry occurs first. The application may 359
request an order to expunge official records for more than one 360
offense, but if it does, the court shall consider the request 361
for each offense separately as if a separate application had 362
been made for each offense and all references in divisions (B) 363
to (H) of this section to "the offense" or "that offense" mean 364
each of those offenses that are the subject of the application. 365

(C) The court may deny an application made under division 366
(B) of this section if it finds that the application fails to 367
assert grounds on which relief may be granted. 368

(D) If the court does not deny an application under 369
division (C) of this section, the court shall set a date for a 370
hearing and shall notify the prosecutor for the case of the 371
hearing on the application. The prosecutor may object to the 372
granting of the application by filing an objection with the 373
court prior to the date set for the hearing. The prosecutor 374
shall specify in the objection the reasons for believing a 375

denial of the application is justified. 376

(E) At the hearing held under division (D) of this section, the court shall do all of the following: 377
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(1) If the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection; 379
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(2) Determine whether the applicant has demonstrated by a preponderance of the evidence that 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; 382
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(3) If the application pertains to a dismissed complaint, indictment, or information, determine whether the dismissal was with prejudice or without prejudice and, if the dismissal was without prejudice, whether the period of limitations applicable to the offense that was the subject of that complaint, indictment, or information has expired; 387
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(4) Determine whether any criminal proceedings are pending against the applicant. 393
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(F) (1) Subject to division (F) (2) of this section, if the court finds that the applicant has demonstrated by a preponderance of the evidence that 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 court shall grant the application and order that the official records be expunged. 395
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(2) The court shall not grant the application and order that the official records be expunged unless the court determines that the interests of the applicant in having the 402
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official records pertaining to the complaint, indictment, or 405
information or finding of not guilty that is the subject of the 406
application expunged are not outweighed by any legitimate needs 407
of the government to maintain those records. 408

(G) If an expungement is ordered under division (F) of 409
this section, the court shall send notice of the order of 410
expungement to each public office or agency that the court has 411
reason to believe may have an official record pertaining to the 412
case. 413

(H) The proceedings in the case that is the subject of an 414
order issued under division (F) of this section shall be 415
considered not to have occurred and the official records shall 416
be expunged. The official records shall not be used for any 417
purpose, including a criminal records check under section 418
109.572 of the Revised Code. The applicant may, and the court 419
shall, reply that no record exists with respect to the applicant 420
upon any inquiry into the matter. 421

Section 2. That existing sections 2951.041 and 2953.38 of 422
the Revised Code are hereby repealed. 423