

**As Reported by the Senate Criminal Justice Committee**

**131st General Assembly**

**Regular Session**

**2015-2016**

**Sub. S. B. No. 284**

**Senator Obhof**

**Cosponsors: Senators Cafaro, Eklund, Gardner, Hite, Jones, Lehner, Patton, 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 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 of certain offenses, if the person's 15  
participation in the offense was a result of 16  
having been a victim of human trafficking, and 17  
to authorize intervention in lieu of conviction 18  
for persons charged with committing an offense 19  
while a victim of compelling prostitution. 20

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

**Section 1.** That sections 2951.041 and 2953.38 be amended 21  
and section 2953.521 of the Revised Code be enacted to read as 22  
follows: 23

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

trial, the preliminary hearing, the time period within which the 52  
grand jury may consider an indictment against the offender, and 53  
arraignment, unless the hearing, indictment, or arraignment has 54  
already occurred. The court may reject an offender's request 55  
without a hearing. If the court elects to consider an offender's 56  
request, the court shall conduct a hearing to determine whether 57  
the offender is eligible under this section for intervention in 58  
lieu of conviction and shall stay all criminal proceedings 59  
pending the outcome of the hearing. If the court schedules a 60  
hearing, the court shall order an assessment of the offender for 61  
the purpose of determining the offender's eligibility for 62  
intervention in lieu of conviction and recommending an 63  
appropriate intervention plan. 64

If the offender alleges that drug or alcohol usage by the 65  
offender was a factor leading to the criminal offense with which 66  
the offender is charged, the court may order that the offender 67  
be assessed by a community addiction services provider or a 68  
properly credentialed professional for the purpose of 69  
determining the offender's eligibility for intervention in lieu 70  
of conviction and recommending an appropriate intervention plan. 71  
The community addiction services provider or the properly 72  
credentialed professional shall provide a written assessment of 73  
the offender to the court. 74

(2) The victim notification provisions of division (C) of 75  
section 2930.06 of the Revised Code apply in relation to any 76  
hearing held under division (A) (1) of this section. 77

(B) An offender is eligible for intervention in lieu of 78  
conviction if the court finds all of the following: 79

(1) The offender previously has not been convicted of or 80  
pleaded guilty to a felony offense of violence or previously has 81

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

(2) The offense is not a felony of the first, second, or 91  
third degree, is not an offense of violence, is not a violation 92  
of division (A) (1) or (2) of section 2903.06 of the Revised 93  
Code, is not a violation of division (A) (1) of section 2903.08 94  
of the Revised Code, is not a violation of division (A) of 95  
section 4511.19 of the Revised Code or a municipal ordinance 96  
that is substantially similar to that division, and is not an 97  
offense for which a sentencing court is required to impose a 98  
mandatory prison term, a mandatory term of local incarceration, 99  
or a mandatory term of imprisonment in a jail. 100

(3) The offender is not charged with a violation of 101  
section 2925.02, 2925.04, or 2925.06 of the Revised Code, is not 102  
charged with a violation of section 2925.03 of the Revised Code 103  
that is a felony of the first, second, third, or fourth degree, 104  
and is not charged with a violation of section 2925.11 of the 105  
Revised Code that is a felony of the first, second, or third 106  
degree. 107

(4) If an offender alleges that drug or alcohol usage by 108  
the offender was a factor leading to the criminal offense with 109  
which the offender is charged, the court has ordered that the 110  
offender be assessed by a community addiction services provider 111

or a properly credentialed professional for the purpose of 112  
determining the offender's eligibility for intervention in lieu 113  
of conviction and recommending an appropriate intervention plan, 114  
the offender has been assessed by a community addiction services 115  
provider of that nature or a properly credentialed professional 116  
in accordance with the court's order, and the community 117  
addiction services provider or properly credentialed 118  
professional has filed the written assessment of the offender 119  
with the court. 120

(5) If an offender alleges that, at the time of committing 121  
the criminal offense with which the offender is charged, the 122  
offender had a mental illness, was a person with intellectual 123  
disability, or was a victim of a violation of section 2905.32 or 124  
2907.21 of the Revised Code and that the mental illness, status 125  
as a person with intellectual disability, or fact that the 126  
offender was a victim of a violation of section 2905.32 or 127  
2907.21 of the Revised Code was a factor leading to that 128  
offense, the offender has been assessed by a psychiatrist, 129  
psychologist, independent social worker, licensed professional 130  
clinical counselor, or independent marriage and family therapist 131  
for the purpose of determining the offender's eligibility for 132  
intervention in lieu of conviction and recommending an 133  
appropriate intervention plan. 134

(6) The offender's drug usage, alcohol usage, mental 135  
illness, or intellectual disability, or the fact that the 136  
offender was a victim of a violation of section 2905.32 or 137  
2907.21 of the Revised Code, whichever is applicable, was a 138  
factor leading to the criminal offense with which the offender 139  
is charged, intervention in lieu of conviction would not demean 140  
the seriousness of the offense, and intervention would 141  
substantially reduce the likelihood of any future criminal 142

activity.	143
(7) The alleged victim of the offense was not sixty-five	144
years of age or older, permanently and totally disabled, under	145
thirteen years of age, or a peace officer engaged in the	146
officer's official duties at the time of the alleged offense.	147
(8) If the offender is charged with a violation of section	148
2925.24 of the Revised Code, the alleged violation did not	149
result in physical harm to any person, and the offender	150
previously has not been treated for drug abuse.	151
(9) The offender is willing to comply with all terms and	152
conditions imposed by the court pursuant to division (D) of this	153
section.	154
(10) The offender is not charged with an offense that	155
would result in the offender being disqualified under Chapter	156
4506. of the Revised Code from operating a commercial motor	157
vehicle or would subject the offender to any other sanction	158
under that chapter.	159
(C) At the conclusion of a hearing held pursuant to	160
division (A) of this section, the court shall enter its	161
determination as to whether the offender is eligible for	162
intervention in lieu of conviction and as to whether to grant	163
the offender's request. If the court finds under division (B) of	164
this section that the offender is eligible for intervention in	165
lieu of conviction and grants the offender's request, the court	166
shall accept the offender's plea of guilty and waiver of the	167
defendant's right to a speedy trial, the preliminary hearing,	168
the time period within which the grand jury may consider an	169
indictment against the offender, and arraignment, unless the	170
hearing, indictment, or arraignment has already occurred. In	171

addition, the court then may stay all criminal proceedings and 172  
order the offender to comply with all terms and conditions 173  
imposed by the court pursuant to division (D) of this section. 174  
If the court finds that the offender is not eligible or does not 175  
grant the offender's request, the criminal proceedings against 176  
the offender shall proceed as if the offender's request for 177  
intervention in lieu of conviction had not been made. 178

(D) If the court grants an offender's request for 179  
intervention in lieu of conviction, the court shall place the 180  
offender under the general control and supervision of the county 181  
probation department, the adult parole authority, or another 182  
appropriate local probation or court services agency, if one 183  
exists, as if the offender was subject to a community control 184  
sanction imposed under section 2929.15, 2929.18, or 2929.25 of 185  
the Revised Code. The court shall establish an intervention plan 186  
for the offender. The terms and conditions of the intervention 187  
plan shall require the offender, for at least one year from the 188  
date on which the court grants the order of intervention in lieu 189  
of conviction, to abstain from the use of illegal drugs and 190  
alcohol, to participate in treatment and recovery support 191  
services, and to submit to regular random testing for drug and 192  
alcohol use and may include any other treatment terms and 193  
conditions, or terms and conditions similar to community control 194  
sanctions, which may include community service or restitution, 195  
that are ordered by the court. 196

(E) If the court grants an offender's request for 197  
intervention in lieu of conviction and the court finds that the 198  
offender has successfully completed the intervention plan for 199  
the offender, including the requirement that the offender 200  
abstain from using illegal drugs and alcohol for a period of at 201  
least one year from the date on which the court granted the 202

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

(F) If the court grants an offender's request for 215  
intervention in lieu of conviction and the offender fails to 216  
comply with any term or condition imposed as part of the 217  
intervention plan for the offender, the supervising authority 218  
for the offender promptly shall advise the court of this 219  
failure, and the court shall hold a hearing to determine whether 220  
the offender failed to comply with any term or condition imposed 221  
as part of the plan. If the court determines that the offender 222  
has failed to comply with any of those terms and conditions, it 223  
shall enter a finding of guilty and shall impose an appropriate 224  
sanction under Chapter 2929. of the Revised Code. If the court 225  
sentences the offender to a prison term, the court, after 226  
consulting with the department of rehabilitation and correction 227  
regarding the availability of services, may order continued 228  
court-supervised activity and treatment of the offender during 229  
the prison term and, upon consideration of reports received from 230  
the department concerning the offender's progress in the program 231  
of activity and treatment, may consider judicial release under 232  
section 2929.20 of the Revised Code. 233



(G) As used in this section:	234
(1) "Community addiction services provider" has the same meaning as in section 5119.01 of the Revised Code.	235 236
(2) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.	237 238
(3) "Intervention in lieu of conviction" means any court-supervised activity that complies with this section.	239 240
(4) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.	241 242
(5) "Mental illness" and "psychiatrist" have the same meanings as in section 5122.01 of the Revised Code.	243 244
(6) "Person with intellectual disability" means a person having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period.	245 246 247 248
(7) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.	249 250
(H) Whenever the term "mentally retarded person" is used in any statute, rule, contract, grant, or other document, the reference shall be deemed to include a "person with intellectual disability," as defined in this section.	251 252 253 254
<b>Sec. 2953.38.</b> (A) As used in this section:	255
(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.	256 257 258
(2) "Prosecutor" has the same meaning as in section 2953.31 of the Revised Code.	259 260

(3) "Record of conviction" means ~~the~~ any record related to 261  
a conviction of or plea of guilty to an offense. 262

(4) "Victim of human trafficking" means a person who is or 263  
was a victim of a violation of section 2905.32 of the Revised 264  
Code, regardless of whether anyone has been convicted of a 265  
violation of that section or of any other section for 266  
victimizing the person. 267

(B) Any person who is or was convicted of a violation of 268  
section 2907.24, 2907.241, or 2907.25 of the Revised Code may 269  
apply to the sentencing court for the expungement of the record 270  
of conviction ~~if~~ of any offense, other than a record of 271  
conviction of a violation of section 2903.01, 2903.02, or 272  
2907.02 of the Revised Code, the person's participation in ~~the~~ 273  
~~offense~~ which was a result of the person having been a victim of 274  
human trafficking. The person may file the application at any 275  
time. The application may request an order to expunge the record 276  
of conviction for more than one offense, but if it does, the 277  
court shall consider the request for each offense separately as 278  
if a separate application had been made for each offense and all 279  
references in divisions (B) to (H) of this section to "the 280  
offense" or "that offense" mean each of those offenses that are 281  
the subject of the application. The application shall do all of 282  
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 conviction of that offense under this section.	290 291
(C) The court may deny an application made under division (B) of this section if it finds that the application fails to assert grounds on which relief may be granted.	292 293 294
(D) If the court does not deny an application under division (C) of this section, it shall set a date for a hearing and shall notify the prosecutor for the case from which the record of conviction resulted of the hearing on the application. The prosecutor may object to the granting of the application by 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.	295 296 297 298 299 300 301 302 303 304 305 306
(E) At the hearing held under division (D) of this section, the court shall do both of the following:	307 308
(1) If the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection;	309 310 311
(2) Determine whether the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense <u>that is the subject of the application</u> was a result of <u>the applicant</u> having been a victim of human trafficking.	312 313 314 315 316
(F) If after a hearing the court finds that the applicant has demonstrated by a preponderance of the evidence that the	317 318

applicant's participation in the offense that is the subject of 319  
the application was the result of the applicant having been a 320  
victim of human trafficking, the court shall grant the 321  
application and order that the record of conviction be expunged. 322

(G) (1) The court shall send notice of the order of 323  
expungement to each public office or agency that the court has 324  
reason to believe may have an official record pertaining to the 325  
case if the court, after complying with division (E) of this 326  
section, determines both of the following: 327

(a) That the applicant has been convicted of a violation 328  
of section 2907.24, 2907.241, or 2907.25 of the Revised Code; 329

(b) That the interests of the applicant in having the 330  
records pertaining to the applicant's conviction expunged are 331  
not outweighed by any legitimate needs of the government to 332  
maintain those records. 333

(2) The proceedings in the case that is the subject of an 334  
order issued under division (F) of this section shall be 335  
considered not to have occurred and the conviction of the person 336  
who is the subject of the proceedings shall be expunged. The 337  
record of the conviction shall not be used for any purpose, 338  
including, but not limited to, a criminal records check under 339  
section 109.572 of the Revised Code. The applicant may, and the 340  
court shall, reply that no record exists with respect to the 341  
applicant upon any inquiry into the matter. 342

(H) Upon the filing of an application under this section, 343  
the applicant, unless indigent, shall pay a fee of fifty 344  
dollars. The court shall pay thirty dollars of the fee into the 345  
state treasury and shall pay twenty dollars of the fee into the 346  
county general revenue fund. 347

Sec. 2953.521. (A) As used in this section, "expunge" has 348  
the same meaning as in section 2953.38 of the Revised Code. 349

(B) Any person who is found not guilty of an offense by a 350  
jury or a court or who is the defendant named in a dismissed 351  
complaint, indictment, or information may apply to the court for 352  
an order to expunge the person's official records in the case if 353  
the complaint, indictment, information, or finding of not guilty 354  
that is the subject of the application was the result of the 355  
applicant having been a victim of human trafficking. The 356  
application may be filed at any time after the finding of not 357  
guilty or the dismissal of the complaint, indictment, or 358  
information is entered upon the minutes of the court or the 359  
journal, whichever entry occurs first. The application may 360  
request an order to expunge official records for more than one 361  
offense, but if it does, the court shall consider the request 362  
for each offense separately as if a separate application had 363  
been made for each offense and all references in divisions (B) 364  
to (H) of this section to "the offense" or "that offense" mean 365  
each of those offenses that are the subject of the application. 366

(C) The court may deny an application made under division 367  
(B) of this section if it finds that the application fails to 368  
assert grounds on which relief may be granted. 369

(D) If the court does not deny an application under 370  
division (C) of this section, the court shall set a date for a 371  
hearing and shall notify the prosecutor for the case of the 372  
hearing on the application. The prosecutor may object to the 373  
granting of the application by filing an objection with the 374  
court prior to the date set for the hearing. The prosecutor 375  
shall specify in the objection the reasons for believing a 376  
denial of the application is justified. 377

(E) At the hearing held under division (D) of this 378  
section, the court shall do all of the following: 379

(1) If the prosecutor has filed an objection, consider the 380  
reasons against granting the application specified by the 381  
prosecutor in the objection; 382

(2) Determine whether the applicant has demonstrated by a 383  
preponderance of the evidence that the complaint, indictment, 384  
information, or finding of not guilty that is the subject of the 385  
application was the result of the applicant having been a victim 386  
of human trafficking; 387

(3) If the application pertains to a dismissed complaint, 388  
indictment, or information, determine whether the dismissal was 389  
with prejudice or without prejudice and, if the dismissal was 390  
without prejudice, whether the period of limitations applicable 391  
to the offense that was the subject of that complaint, 392  
indictment, or information has expired; 393

(4) Determine whether any criminal proceedings are pending 394  
against the applicant. 395

(F) (1) Subject to division (F) (2) of this section, if the 396  
court finds that the applicant has demonstrated by a 397  
preponderance of the evidence that the complaint, indictment, 398  
information, or finding of not guilty that is the subject of the 399  
application was the result of the applicant having been a victim 400  
of human trafficking, the court shall grant the application and 401  
order that the official records be expunged. 402

(2) The court shall not grant the application and order 403  
that the official records be expunged unless the court 404  
determines that the interests of the applicant in having the 405  
official records pertaining to the complaint, indictment, or 406

information or finding of not guilty that is the subject of the 407  
application expunged are not outweighed by any legitimate needs 408  
of the government to maintain those records. 409

(G) If an expungement is ordered under division (F) of 410  
this section, the court shall send notice of the order of 411  
expungement to each public office or agency that the court has 412  
reason to believe may have an official record pertaining to the 413  
case. 414

(H) The proceedings in the case that is the subject of an 415  
order issued under division (F) of this section shall be 416  
considered not to have occurred and the official records shall 417  
be expunged. The official records shall not be used for any 418  
purpose, including a criminal records check under section 419  
109.572 of the Revised Code. The applicant may, and the court 420  
shall, reply that no record exists with respect to the applicant 421  
upon any inquiry into the matter. 422

**Section 2.** That existing sections 2951.041 and 2953.38 of 423  
the Revised Code are hereby repealed. 424