



Ohio Prosecuting Attorneys Association

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Senate Bill 4
Interested Party Testimony
December 12, 2017

Chairman Manning, Vice-Chair Rezabek, Ranking Member Celebreeze and members of the House Criminal Justice Committee, thank you for the opportunity to provide interested party testimony on Senate Bill 4, a bill that would greatly expand the expungement of records if the person's participation in the offense was a result of having been a victim of human trafficking.

Section 2953.38 currently authorizes the expungement of records for soliciting (R.C. 2907.24), loitering to engage in solicitation (R.C. 2907.241), and prostitution (R.C. 2907.25) if those offenses were the result of the person's having been a victim of human trafficking. The crimes range from third degree misdemeanors to third degree felonies depending on attendant circumstances. Senate Bill 4 would allow a victim of human trafficking, whose offenses were the result of being such a victim to seek to expunge records of offenses for everything other than aggravated murder, murder, and rape.

Ohio prosecutors are as sympathetic as anyone to the victims of human trafficking. We are concerned, however, with the possible destruction of records of crimes as serious as first and second degree felonies. Something that Senate Bill 4 would permit. Under the bill, someone would be able to seek to expunge the records of offenses as serious as voluntary manslaughter, felonious assault, kidnapping, abduction, aggravated robbery, and aggravated burglary, among many others. The ability to seek to expunge these records is based on the premise that victims of human trafficking commit such offenses under duress. We have no doubt that many such victims do commit offenses while under duress or at least while under some sort of pressure from their trafficker or traffickers. The problem though is that if the person's participation in an offense was the result of duress, there should have been a duress defense raised prior to the conviction for that offense. If such a defense was successful, there would be no conviction to expunge. If such a defense was not successful, it means the judge or jury did not believe that the act was committed while under duress. In other words, Senate Bill 4 would allow a person to seek to expunge records based on duress even though at trial the factfinder did not believe that the acts were committed under duress.

It has been argued that a duress defense would not be offered or would not be successful because there are no witnesses other than the offender and her trafficker, and further that to put the offender on the stand to testify about the duress risks subjecting her to cross examination and evidence of her criminal record. There may, however, be other witnesses to the duress, including other victims. Perhaps more importantly, whatever risk there is in placing a victim of human trafficking on the stand pales in comparison to a conviction for a first, second, or third degree felony.

Additionally, Senate Bill 4 would allow the victim of human trafficking to file the application for expungement “at any time.” This means that an application to expunge the records of an offense could be filed and potentially granted while a person is still serving a sentence for the offense.

Finally, the bill creates a separate process for victims of human trafficking to seek to expunge records of cases which were dismissed or in which the individual was found not guilty. Sometimes cases are dismissed without prejudice and prosecuted at a later date. Senate Bill 4 would allow a victim of human trafficking to seek to have the records in the case destroyed even though charges may be refiled.

If Senate Bill 4 is to be enacted, we recommend three changes:

- 1) The exclusion of first and second degree felonies from the expungement process.
- 2) A provision that the application for expungement may be filed only after the completion of any sentence for the offense and final discharge by the court or ODRC.
- 3) A provision that makes explicit that the court cannot order an expungement if the dismissal was without prejudice and the statute of limitations has not expired for the offense.

Thank you for your consideration of these comments. I would be happy to answer any questions that you might have.