

As Introduced

**131st General Assembly
Regular Session
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S. B. No. 284

Senator Obhof

Cosponsors: Senators Cafaro, Eklund, Gardner, Hite, Jones, Lehner, Patton, Yuko

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 and to 11
authorize intervention in lieu of conviction for 12
persons charged with committing an offense while 13
a victim of compelling prostitution. 14

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

Section 1. That sections 2951.041 and 2953.38 be amended 15
and section 2953.521 of the Revised Code be enacted to read as 16
follows: 17

Sec. 2951.041. (A) (1) If an offender is charged with a 18

criminal offense, including but not limited to a violation of 19
section 2913.02, 2913.03, 2913.11, 2913.21, 2913.31, or 2919.21 20
of the Revised Code, and the court has reason to believe that 21
drug or alcohol usage by the offender was a factor leading to 22
the criminal offense with which the offender is charged or that, 23
at the time of committing that offense, the offender had a 24
mental illness, was a person with intellectual disability, or 25
was a victim of a violation of section 2905.32 or 2907.21 of the 26
Revised Code and that the mental illness, status as a person 27
with intellectual disability, or fact that the offender was a 28
victim of a violation of section 2905.32 or 2907.21 of the 29
Revised Code was a factor leading to the offender's criminal 30
behavior, the court may accept, prior to the entry of a guilty 31
plea, the offender's request for intervention in lieu of 32
conviction. The request shall include a statement from the 33
offender as to whether the offender is alleging that drug or 34
alcohol usage by the offender was a factor leading to the 35
criminal offense with which the offender is charged or is 36
alleging that, at the time of committing that offense, the 37
offender had a mental illness, was a person with intellectual 38
disability, or was a victim of a violation of section 2905.32 or 39
2907.21 of the Revised Code and that the mental illness, status 40
as a person with intellectual disability, or fact that the 41
offender was a victim of a violation of section 2905.32 or 42
2907.21 of the Revised Code was a factor leading to the criminal 43
offense with which the offender is charged. The request also 44
shall include a waiver of the defendant's right to a speedy 45
trial, the preliminary hearing, the time period within which the 46
grand jury may consider an indictment against the offender, and 47
arraignment, unless the hearing, indictment, or arraignment has 48
already occurred. The court may reject an offender's request 49
without a hearing. If the court elects to consider an offender's 50

request, the court shall conduct a hearing to determine whether 51
the offender is eligible under this section for intervention in 52
lieu of conviction and shall stay all criminal proceedings 53
pending the outcome of the hearing. If the court schedules a 54
hearing, the court shall order an assessment of the offender for 55
the purpose of determining the offender's eligibility for 56
intervention in lieu of conviction and recommending an 57
appropriate intervention plan. 58

If the offender alleges that drug or alcohol usage by the 59
offender was a factor leading to the criminal offense with which 60
the offender is charged, the court may order that the offender 61
be assessed by a community addiction services provider or a 62
properly credentialed professional for the purpose of 63
determining the offender's eligibility for intervention in lieu 64
of conviction and recommending an appropriate intervention plan. 65
The community addiction services provider or the properly 66
credentialed professional shall provide a written assessment of 67
the offender to the court. 68

(2) The victim notification provisions of division (C) of 69
section 2930.06 of the Revised Code apply in relation to any 70
hearing held under division (A)(1) of this section. 71

(B) An offender is eligible for intervention in lieu of 72
conviction if the court finds all of the following: 73

(1) The offender previously has not been convicted of or 74
pleaded guilty to a felony offense of violence or previously has 75
been convicted of or pleaded guilty to any felony that is not an 76
offense of violence and the prosecuting attorney recommends that 77
the offender be found eligible for participation in intervention 78
in lieu of treatment under this section, previously has not been 79
through intervention in lieu of conviction under this section or 80

any similar regimen, and is charged with a felony for which the 81
court, upon conviction, would impose a community control 82
sanction on the offender under division (B) (2) of section 83
2929.13 of the Revised Code or with a misdemeanor. 84

(2) The offense is not a felony of the first, second, or 85
third degree, is not an offense of violence, is not a violation 86
of division (A) (1) or (2) of section 2903.06 of the Revised 87
Code, is not a violation of division (A) (1) of section 2903.08 88
of the Revised Code, is not a violation of division (A) of 89
section 4511.19 of the Revised Code or a municipal ordinance 90
that is substantially similar to that division, and is not an 91
offense for which a sentencing court is required to impose a 92
mandatory prison term, a mandatory term of local incarceration, 93
or a mandatory term of imprisonment in a jail. 94

(3) The offender is not charged with a violation of 95
section 2925.02, 2925.04, or 2925.06 of the Revised Code, is not 96
charged with a violation of section 2925.03 of the Revised Code 97
that is a felony of the first, second, third, or fourth degree, 98
and is not charged with a violation of section 2925.11 of the 99
Revised Code that is a felony of the first, second, or third 100
degree. 101

(4) If an offender alleges that drug or alcohol usage by 102
the offender was a factor leading to the criminal offense with 103
which the offender is charged, the court has ordered that the 104
offender be assessed by a community addiction services provider 105
or a properly credentialed professional for the purpose of 106
determining the offender's eligibility for intervention in lieu 107
of conviction and recommending an appropriate intervention plan, 108
the offender has been assessed by a community addiction services 109
provider of that nature or a properly credentialed professional 110

in accordance with the court's order, and the community 111
addiction services provider or properly credentialed 112
professional has filed the written assessment of the offender 113
with the court. 114

(5) If an offender alleges that, at the time of committing 115
the criminal offense with which the offender is charged, the 116
offender had a mental illness, was a person with intellectual 117
disability, or was a victim of a violation of section 2905.32 or 118
2907.21 of the Revised Code and that the mental illness, status 119
as a person with intellectual disability, or fact that the 120
offender was a victim of a violation of section 2905.32 or 121
2907.21 of the Revised Code was a factor leading to that 122
offense, the offender has been assessed by a psychiatrist, 123
psychologist, independent social worker, licensed professional 124
clinical counselor, or independent marriage and family therapist 125
for the purpose of determining the offender's eligibility for 126
intervention in lieu of conviction and recommending an 127
appropriate intervention plan. 128

(6) The offender's drug usage, alcohol usage, mental 129
illness, or intellectual disability, or the fact that the 130
offender was a victim of a violation of section 2905.32 or 131
2907.21 of the Revised Code, whichever is applicable, was a 132
factor leading to the criminal offense with which the offender 133
is charged, intervention in lieu of conviction would not demean 134
the seriousness of the offense, and intervention would 135
substantially reduce the likelihood of any future criminal 136
activity. 137

(7) The alleged victim of the offense was not sixty-five 138
years of age or older, permanently and totally disabled, under 139
thirteen years of age, or a peace officer engaged in the 140

officer's official duties at the time of the alleged offense. 141

(8) If the offender is charged with a violation of section 142
2925.24 of the Revised Code, the alleged violation did not 143
result in physical harm to any person, and the offender 144
previously has not been treated for drug abuse. 145

(9) The offender is willing to comply with all terms and 146
conditions imposed by the court pursuant to division (D) of this 147
section. 148

(10) The offender is not charged with an offense that 149
would result in the offender being disqualified under Chapter 150
4506. of the Revised Code from operating a commercial motor 151
vehicle or would subject the offender to any other sanction 152
under that chapter. 153

(C) At the conclusion of a hearing held pursuant to 154
division (A) of this section, the court shall enter its 155
determination as to whether the offender is eligible for 156
intervention in lieu of conviction and as to whether to grant 157
the offender's request. If the court finds under division (B) of 158
this section that the offender is eligible for intervention in 159
lieu of conviction and grants the offender's request, the court 160
shall accept the offender's plea of guilty and waiver of the 161
defendant's right to a speedy trial, the preliminary hearing, 162
the time period within which the grand jury may consider an 163
indictment against the offender, and arraignment, unless the 164
hearing, indictment, or arraignment has already occurred. In 165
addition, the court then may stay all criminal proceedings and 166
order the offender to comply with all terms and conditions 167
imposed by the court pursuant to division (D) of this section. 168
If the court finds that the offender is not eligible or does not 169
grant the offender's request, the criminal proceedings against 170

the offender shall proceed as if the offender's request for 171
intervention in lieu of conviction had not been made. 172

(D) If the court grants an offender's request for 173
intervention in lieu of conviction, the court shall place the 174
offender under the general control and supervision of the county 175
probation department, the adult parole authority, or another 176
appropriate local probation or court services agency, if one 177
exists, as if the offender was subject to a community control 178
sanction imposed under section 2929.15, 2929.18, or 2929.25 of 179
the Revised Code. The court shall establish an intervention plan 180
for the offender. The terms and conditions of the intervention 181
plan shall require the offender, for at least one year from the 182
date on which the court grants the order of intervention in lieu 183
of conviction, to abstain from the use of illegal drugs and 184
alcohol, to participate in treatment and recovery support 185
services, and to submit to regular random testing for drug and 186
alcohol use and may include any other treatment terms and 187
conditions, or terms and conditions similar to community control 188
sanctions, which may include community service or restitution, 189
that are ordered by the court. 190

(E) If the court grants an offender's request for 191
intervention in lieu of conviction and the court finds that the 192
offender has successfully completed the intervention plan for 193
the offender, including the requirement that the offender 194
abstain from using illegal drugs and alcohol for a period of at 195
least one year from the date on which the court granted the 196
order of intervention in lieu of conviction, the requirement 197
that the offender participate in treatment and recovery support 198
services, and all other terms and conditions ordered by the 199
court, the court shall dismiss the proceedings against the 200
offender. Successful completion of the intervention plan and 201

period of abstinence under this section shall be without 202
adjudication of guilt and is not a criminal conviction for 203
purposes of any disqualification or disability imposed by law 204
and upon conviction of a crime, and the court may order the 205
sealing of records related to the offense in question in the 206
manner provided in sections 2953.31 to 2953.36 of the Revised 207
Code. 208

(F) If the court grants an offender's request for 209
intervention in lieu of conviction and the offender fails to 210
comply with any term or condition imposed as part of the 211
intervention plan for the offender, the supervising authority 212
for the offender promptly shall advise the court of this 213
failure, and the court shall hold a hearing to determine whether 214
the offender failed to comply with any term or condition imposed 215
as part of the plan. If the court determines that the offender 216
has failed to comply with any of those terms and conditions, it 217
shall enter a finding of guilty and shall impose an appropriate 218
sanction under Chapter 2929. of the Revised Code. If the court 219
sentences the offender to a prison term, the court, after 220
consulting with the department of rehabilitation and correction 221
regarding the availability of services, may order continued 222
court-supervised activity and treatment of the offender during 223
the prison term and, upon consideration of reports received from 224
the department concerning the offender's progress in the program 225
of activity and treatment, may consider judicial release under 226
section 2929.20 of the Revised Code. 227

(G) As used in this section: 228

(1) "Community addiction services provider" has the same 229
meaning as in section 5119.01 of the Revised Code. 230

(2) "Community control sanction" has the same meaning as 231

in section 2929.01 of the Revised Code.	232
(3) "Intervention in lieu of conviction" means any court-supervised activity that complies with this section.	233 234
(4) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.	235 236
(5) "Mental illness" and "psychiatrist" have the same meanings as in section 5122.01 of the Revised Code.	237 238
(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.	239 240 241 242
(7) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.	243 244
(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.	245 246 247 248
Sec. 2953.38. (A) As used in this section:	249
(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.	250 251 252
(2) "Prosecutor" has the same meaning as in section 2953.31 of the Revised Code.	253 254
(3) "Record of conviction" means the <u>any</u> record related to a conviction of or plea of guilty to an offense.	255 256
(4) "Victim of human trafficking" means a person who is or was a victim of a violation of section 2905.32 of the Revised	257 258

Code, regardless of whether anyone has been convicted of a 259
violation of that section or of any other section for 260
victimizing the person. 261

(B) Any person who is or was convicted of a violation of 262
section 2907.24, 2907.241, or 2907.25 of the Revised Code may 263
apply to the sentencing court for the expungement of ~~the~~ any 264
record of conviction if the person's participation in the 265
offense was a result of the person having been a victim of human 266
trafficking. The person may file the application at any time. 267
The application shall do all of the following: 268

(1) Identify the applicant, the offense for which the 269
expungement is sought, the date of the conviction of that 270
offense, and the court in which the conviction occurred; 271

(2) Describe the evidence and provide copies of any 272
documentation showing that the person is entitled to relief 273
under this section; 274

(3) Include a request for expungement of the record of 275
conviction of that offense under this section. 276

(C) The court may deny an application made under division 277
(B) of this section if it finds that the application fails to 278
assert grounds on which relief may be granted. 279

(D) If the court does not deny an application under 280
division (C) of this section, it shall set a date for a hearing 281
and shall notify the prosecutor for the case from which the 282
record of conviction resulted of the hearing on the application. 283
The prosecutor may object to the granting of the application by 284
filing an objection with the court prior to the date set for the 285
hearing. The prosecutor shall specify in the objection the 286
reasons for believing a denial of the application is justified. 287

The court may direct its regular probation officer, a state 288
probation officer, or the department of probation of the county 289
in which the applicant resides to make inquiries and written 290
reports as the court requires concerning the applicant. 291

(E) At the hearing held under division (D) of this 292
section, the court shall do both of the following: 293

(1) If the prosecutor has filed an objection, consider the 294
reasons against granting the application specified by the 295
prosecutor in the objection; 296

(2) Determine whether the applicant has demonstrated by a 297
preponderance of the evidence that the applicant's participation 298
in the offense was a result of having been a victim of human 299
trafficking. 300

(F) If after a hearing the court finds that the applicant 301
has demonstrated by a preponderance of the evidence that the 302
applicant's participation in the offense that is the subject of 303
the application was the result of the applicant having been a 304
victim of human trafficking, the court shall grant the 305
application and order that the record of conviction be expunged. 306

(G) (1) The court shall send notice of the order of 307
expungement to each public office or agency that the court has 308
reason to believe may have an official record pertaining to the 309
case if the court, after complying with division (E) of this 310
section, determines both of the following: 311

(a) That the applicant has been convicted of a violation 312
of section 2907.24, 2907.241, or 2907.25 of the Revised Code; 313

(b) That the interests of the applicant in having the 314
records pertaining to the applicant's conviction expunged are 315
not outweighed by any legitimate needs of the government to 316

maintain those records. 317

(2) The proceedings in the case that is the subject of an 318
order issued under division (F) of this section shall be 319
considered not to have occurred and the conviction of the person 320
who is the subject of the proceedings shall be expunged. The 321
record of the conviction shall not be used for any purpose, 322
including, but not limited to, a criminal records check under 323
section 109.572 of the Revised Code. The applicant may, and the 324
court shall, reply that no record exists with respect to the 325
applicant upon any inquiry into the matter. 326

(H) Upon the filing of an application under this section, 327
the applicant, unless indigent, shall pay a fee of fifty 328
dollars. The court shall pay thirty dollars of the fee into the 329
state treasury and shall pay twenty dollars of the fee into the 330
county general revenue fund. 331

Sec. 2953.521. (A) As used in this section, "expunge" has 332
the same meaning as in section 2953.38 of the Revised Code. 333

(B) Any person who is found not guilty of an offense by a 334
jury or a court or who is the defendant named in a dismissed 335
complaint, indictment, or information may apply to the court for 336
an order to expunge the person's official records in the case if 337
the complaint, indictment, information, or finding of not guilty 338
that is the subject of the application was the result of the 339
applicant having been a victim of human trafficking. The 340
application may be filed at any time after the finding of not 341
guilty or the dismissal of the complaint, indictment, or 342
information is entered upon the minutes of the court or the 343
journal, whichever entry occurs first. 344

(C) The court may deny an application made under division 345

(B) of this section if it finds that the application fails to 346
assert grounds on which relief may be granted. 347

(D) If the court does not deny an application under 348
division (C) of this section, the court shall set a date for a 349
hearing and shall notify the prosecutor for the case of the 350
hearing on the application. The prosecutor may object to the 351
granting of the application by filing an objection with the 352
court prior to the date set for the hearing. The prosecutor 353
shall specify in the objection the reasons for believing a 354
denial of the application is justified. 355

(E) At the hearing held under division (D) of this 356
section, the court shall do both of the following: 357

(1) If the prosecutor has filed an objection, consider the 358
reasons against granting the application specified by the 359
prosecutor in the objection; 360

(2) Determine whether the applicant has demonstrated by a 361
preponderance of the evidence that the complaint, indictment, 362
information, or finding of not guilty that is the subject of the 363
application was the result of the applicant having been a victim 364
of human trafficking. 365

(F) (1) Subject to division (F) (2) of this section, if the 366
court finds that the applicant has demonstrated by a 367
preponderance of the evidence that the complaint, indictment, 368
information, or finding of not guilty that is the subject of the 369
application was the result of the applicant having been a victim 370
of human trafficking, the court shall grant the application and 371
order that the official records be expunged. 372

(2) The court shall not grant the application and order 373
that the official records be expunged unless the court 374

determines that the interests of the applicant in having the 375
official records pertaining to the complaint, indictment, or 376
information or finding of not guilty that is the subject of the 377
application expunged are not outweighed by any legitimate needs 378
of the government to maintain those records. 379

(G) If an expungement is ordered under division (F) of 380
this section, the court shall send notice of the order of 381
expungement to each public office or agency that the court has 382
reason to believe may have an official record pertaining to the 383
case. 384

(H) The proceedings in the case that is the subject of an 385
order issued under division (F) of this section shall be 386
considered not to have occurred and the official records shall 387
be expunged. The official records shall not be used for any 388
purpose, including a criminal records check under section 389
109.572 of the Revised Code. The applicant may, and the court 390
shall, reply that no record exists with respect to the applicant 391
upon any inquiry into the matter. 392

Section 2. That existing sections 2951.041 and 2953.38 of 393
the Revised Code are hereby repealed. 394