

As Introduced

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H. B. No. 319

Representatives Galonski, Richardson

**Cosponsors: Representatives Brent, Lightbody, Miller, A., Smith, K., Miller, J.,
Sobecki, Lepore-Hagan, Crawley, Weinstein, Howse, Miranda, Boyd, White, Smith,
M., Lanese**

A BILL

To amend section 2953.38 of the Revised Code to 1
allow a victim of human trafficking to expunge 2
certain criminal records and to name this act 3
the Expanding Human Trafficking Justice Act. 4

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

Section 1. That section 2953.38 of the Revised Code be 5
amended to read as follows: 6

Sec. 2953.38. (A) As used in this section: 7

(1) "Expunge" means to destroy, delete, or erase a record 8
as appropriate for the record's physical or electronic form or 9
characteristic so that the record is permanently irretrievable. 10

(2) "Prosecutor" has the same meaning as in section 11
2953.31 of the Revised Code. 12

(3) "Record of conviction" means any record related to a 13
conviction of or plea of guilty to an offense. 14

(4) "Victim of human trafficking" means a person who is or 15

was a victim of a violation of section 2905.32 of the Revised Code, regardless of whether anyone has been convicted of a violation of that section or of any other section for victimizing the person.

(B) Any person who is or was ~~convicted of a violation of section 2907.24, 2907.241, or 2907.25 of the Revised Code~~ a victim of human trafficking may apply to the sentencing court for the expungement of the record of conviction of any offense, other than a record of conviction of a violation of section 2903.01, 2903.02, or 2907.02 of the Revised Code, the person's participation in which was a result of the person having been a victim of human trafficking. The person may file the application at any time. The application may request an order to expunge the record of conviction for more than one offense, but if it does, the court shall consider the request for each offense separately as if a separate application had been made for each offense and all references in divisions (B) to (H) of this section to "the offense" or "that offense" mean each of those offenses that are the subject of the application. The application shall do all of the following:

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

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

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

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

(B) of this section if it finds that the application fails to 45
assert grounds on which relief may be granted. 46

(D) If the court does not deny an application under 47
division (C) of this section, it shall set a date for a hearing 48
and shall notify the prosecutor for the case from which the 49
record of conviction resulted of the hearing on the application. 50
The prosecutor may object to the granting of the application by 51
filing an objection with the court prior to the date set for the 52
hearing. The prosecutor shall specify in the objection the 53
reasons for believing a denial of the application is justified. 54
The court may direct its regular probation officer, a state 55
probation officer, or the department of probation of the county 56
in which the applicant resides to make inquiries and written 57
reports as the court requires concerning the applicant. 58

(E) (1) At the hearing held under division (D) of this 59
section, the court shall do both of the following: 60

(a) If the prosecutor has filed an objection, consider the 61
reasons against granting the application specified by the 62
prosecutor in the objection; 63

(b) Determine whether the applicant has demonstrated by a 64
preponderance of the evidence that the applicant's participation 65
in the offense that is the subject of the application was a 66
result of the applicant having been a victim of human 67
trafficking. 68

(2) If the court at the hearing held under division (D) of 69
this section determines that the applicant's participation in 70
the offense that is the subject of the application was a result 71
of the applicant having been a victim of human trafficking and 72
if that subject offense is a felony of the first or second 73

degree, the court at the hearing also shall consider all of the 74
following factors and, upon consideration of the factors, shall 75
determine whether the interests of the applicant in having the 76
record of the conviction of that offense expunged are outweighed 77
by any legitimate needs of the government to maintain that 78
record of conviction: 79

(a) The degree of duress under which the applicant acted 80
in committing the subject offense, including, but not limited 81
to, the history of the use of force or threatened use of force 82
against the applicant or another person, whether the applicant's 83
judgment or control was impaired by the administration to the 84
applicant of any intoxicant, drug, or controlled substance, and 85
the threat of withholding from the applicant food, water, or any 86
drug; 87

(b) The seriousness of the subject offense; 88

(c) The relative degree of physical harm done to any 89
person in the commission of the subject offense; 90

(d) The length of time that has expired since the 91
commission of the subject offense; 92

(e) Whether the prosecutor represents to the court that 93
criminal proceedings are likely to still be initiated against 94
the applicant for a felony offense for which the period of 95
limitations has not expired; 96

(f) Whether the applicant at the time of the hearing is 97
subject to supervision as a result of the subject offense. 98

(F) If after a hearing held under division (D) of this 99
section the court finds that the applicant has demonstrated by a 100
preponderance of the evidence that the applicant's participation 101
in the offense that is the subject of the application was the 102

result of the applicant having been a victim of human 103
trafficking, and, if the offense that is the subject of the 104
application is a felony of the first or second degree, after 105
consideration of the factors required under division (E) (2) of 106
this section, it finds that the interests of the applicant in 107
having the record of the conviction of that offense expunged are 108
not outweighed by any legitimate needs of the government to 109
maintain that record of conviction, the court shall grant the 110
application and order that the record of conviction be expunged. 111

(G) (1) The court shall send notice of the order of 112
expungement issued under division (F) of this section to each 113
public office or agency that the court has reason to believe may 114
have an official record pertaining to the case if the court, 115
after complying with division (E) of this section, determines 116
both of the following: 117

(a) That the applicant ~~has been convicted of a violation~~ 118
~~of section 2907.24, 2907.241, or 2907.25 of the Revised Code~~ is 119
or was a victim of human trafficking; 120

(b) That the interests of the applicant in having the 121
records pertaining to the applicant's conviction expunged are 122
not outweighed by any legitimate needs of the government to 123
maintain those records. 124

(2) The proceedings in the case that is the subject of an 125
order of expungement issued under division (F) of this section 126
shall be considered not to have occurred and the conviction of 127
the person who is the subject of the proceedings shall be 128
expunged. The record of the conviction shall not be used for any 129
purpose, including, but not limited to, a criminal records check 130
under section 109.572 of the Revised Code. The applicant may, 131
and the court shall, reply that no record exists with respect to 132

the applicant upon any inquiry into the matter. 133

(H) Upon the filing of an application under this section, 134
the applicant, unless indigent, shall pay a fee of fifty 135
dollars. The court shall pay thirty dollars of the fee into the 136
state treasury and shall pay twenty dollars of the fee into the 137
county general revenue fund. 138

Section 2. That existing section 2953.38 of the Revised 139
Code is hereby repealed. 140

Section 3. This act shall be known as the Expanding Human 141
Trafficking Justice Act. 142