

PROPONENT TESTIMONY
SB 183, The Ohio Senate Judiciary Committee
Advocating Opportunity
October 18, 2021

Chair Manning, Vice Chair McColley, Ranking Member Thomas, and members of the committee, thank you for the opportunity to provide proponent testimony for Senate Bill 183 on behalf of Advocating Opportunity.

Advocating Opportunity is an Ohio nonprofit organization that provides holistic advocacy and free legal services to survivors of human trafficking. With offices in both Toledo and Columbus, we represent survivors in communities across the state. Our attorneys and advocates serve over 200 survivors of human trafficking a year in 30 counties. These survivors include people of all genders, nationalities, and ages who experienced labor trafficking, sex trafficking, and not uncommonly, both forms of victimization.

This serves to supplement our previous proponent testimony. As subject matter experts we would like to provide some real-life context for some of the concerns raised about this bill. I appreciate the opportunity to speak to you as someone who has spent much of her time over the last four years using this law to help survivors of human trafficking expunge their records.

Safe Harbor Expungement is not a simple process. It is not record sealing. Record sealing is designed to give certain people who have made mistakes the opportunity to prove to the court that they are rehabilitated and have earned a second chance. There are a number of requirements that an applicant must meet to seal their records, including wait time provisions and the number, type, and seriousness of the offenses on their records. Records that are sealed are hidden from the public but remain discoverable to entities like employers, law enforcement, and licensing boards.

In contrast, Safe Harbor Expungement is a specialized mechanism for criminal record relief for people who, had the courts had full knowledge of their circumstances at the time, may not have been charged or convicted of these crimes in the first place. Courts generally try to avoid charging and convicting victims for things they did while under force, threat of force, or duress by their trafficker. Much of the time, however, victims are not able to raise these defenses or tell the whole story in court because they are still under the control of, or fear retribution from, their traffickers. This expungement law was designed to give courts a second look at cases with

the full facts and circumstances in front of them. Unlike sealing, it completely eliminates the barriers caused by these records. It allows survivors true freedom from their past victimization. For these reasons, not only do some survivors have records that exclude them from traditional record sealing, but sealing is not the appropriate solution for survivors of human trafficking.

Record sealing is fairly simple. People complete and file standard form applications and commonly move through the process without a lawyer. Record sealing is routine in every court in Ohio, and as such I can understand why people who are more familiar with record sealing may have reservations about this law. However, the process for Safe Harbor Expungement is much more complicated than record sealing. To help illustrate this point, I have broken down the standard procedure that we use for Safe Harbor Expungement applications.

First, someone needs to be able to identify that what happened to them was human trafficking and know that expungement under this law is even a legal possibility. While this might strike Committee members as a strange first step, many survivors might know that they went through something terrible but have no idea that what happened to them was human trafficking. Then, they need to get connected to an attorney who also knows about and understands this law so they can begin their expungement case. This is not a process that a survivor can typically navigate without the assistance of an attorney.

During my first appointment with a survivor, I introduce the law and the steps we will be taking. I explain that we will need to discuss extremely traumatic events in our meetings, because every application must include a detailed, sworn affidavit as evidence, as required by the statute. I ask if they have a strong support system in place for taking good care of themselves after those particularly difficult meetings. I have their record compiled and can usually give them an estimate for how many months the application process will take based on the length of their record and the nature of the offenses therein.

We then start regular meetings, once about every two weeks for at least an hour. During the second meeting I ask for background information, determining how they met their trafficker and what happened to them that made them vulnerable to the trafficker. Then, using their record as a roadmap, I begin asking them questions about every single case they are asking to be expunged. To meet the burden in the statute, I need them to tell me how every case they are asking to be expunged was related to their trafficking. This requires a great deal of explanation about how their traffickers manipulated them, hurt them, and threatened them into the activity

that got them arrested. I ask them if they were ever allowed to keep any of the money that resulted from what they had to do. The answer is always no. They tell me about what would happen to them if they tried to say no to their trafficker.

We always finish the affidavits with my favorite part: explaining to the court all the amazing things the survivor has accomplished since escaping their traffickers and living life on their own terms. They light up talking about what steps they have taken in their recovery journey, how far they have come, their dreams and their goals, the pride they take in who they are today. They bring in graduation certificates, letters from their therapists and case workers, diplomas, and all kinds of accolades to include in their applications to show how hard they have worked. Survivors also take time to talk about what the expungement would mean to them, how life changing it would be, the doors it would open to opportunity and the ones it would close, not having to live in the shadow of their past any longer.

These meetings usually stretch on anywhere from 3-6 months. The length of time to build an application depends on how many cases they have to explain, how emotionally traumatic this process is for them, whether they need to take breaks from our regular meetings, and which court we are approaching with the application. This means that, as a conservative estimate, I meet with clients for at least 6 to 12 hours, sometimes spending over 20 hours, working with them to get all the information for the affidavit required by the statute.

Completing the affidavit is only the first step. If we are lucky enough to be somewhere like Franklin County, home of CATCH Court and a wealth of institutional knowledge about human trafficking, the process is fairly established and we generally know what to expect. However, survivors have cases all over the state: some recent ones include Fairfield, Ross, Athens, Hocking, Medina and a variety of Mayor's Courts around the state. Most courts in Ohio have never heard of this law and are hesitant to believe that human trafficking even happens in their jurisdictions. I spend an average of 3 hours on the phone with clerk's offices and prosecutors in new counties, explaining how this law is different than traditional sealing and talking everyone through the requirements. Nearly all courts do not have forms that can be used for these kinds of cases, so we spend several hours filing lengthy motions explaining the steps and the requirements for an expungement.

Next, after meeting with client for at least 6-12 hours to prepare the evidence required by the statute, spending 3 hours on the phone with the clerk's office and the prosecutor, logging

several hours filing motions, we prepare for the hearing. I spend hours preparing my client for their testimony, at times even working to provide the court with an expert witness to help them understand human trafficking. I want to stress that the time I am spending is not because I am overwhelmingly thorough, but this amount of work and preparation is what we have found that courts will accept in order to grant these expungement applications. As I mentioned, this is not a process that someone is likely to successfully navigate without an attorney.

Our applications are regularly met with objections and questions because even though we may have provided a 6 to 10 page detailed affidavit, prosecutors and the courts want even more information to be sure that our clients are *really* victims of human trafficking and their cases are *actually* related to their victimization. Prosecutors spend time pulling arrest reports and old files to make sure that what the survivor is saying matches up with the facts. The statute requires a hearing and I have attended many that have drawn on for hours while survivors emotionally recount the details of their victimization and abuse. At these hearings, prosecutors may cross-examine applicants, investigating any doubts or concerns they have with the application. Judges commonly ask questions directly to the applicants to ensure they have met their burden of proof. This law operates in a system that is designed to test the voracity of the applicant's testimony.

While we do have success stories, which we would hope for considering AO only provides services to human trafficking survivors, applications have been denied. Applying for an expungement does not mean that a court will grant an expungement, and the process is an extremely thorough one. These applications are met with skepticism and the courts apply sufficient scrutiny to be satisfied that an expungement is appropriate.

In summary, having worked on many of these cases, I cannot fathom a situation in which a random individual, having hatched a plot to defraud a court into granting them an expungement based on human trafficking that never occurred, would prevail. The burden already built into the statute is more than sufficient to prevent this kind of deceit. Further, someone having a predicate commercial sex offense on their record has no bearing on whether they are a victim of human trafficking. We have already spoken to the reasons why having the predicate offenses is uncommon for survivors in many regions of our state. Instead, these cases hinge on the mountains of painstaking evidence that survivors must submit to the courts detailing how they were exploited by their traffickers and how every single case they wish to expunge is a result of their victimization.

In my experience, a simple assertion is never sufficient. Instead, pages of testimony and supporting evidence are submitted and then many times verbally recounted in a hearing before a judge and a prosecutor so a survivor can meet their evidentiary burden. Increasing barriers to expungement in an already exhausting process based on hypothetical “floodgate” concerns only serves to push survivors back, keeping them from moving forward in their lives. Advocating Opportunity, with 29 survivors having their records expunged in 14 counties over the last 4 years, works on the lion’s share of these expungement cases in Ohio. We do this with 2.5 lawyers and occasional pro bono support from law firms like Bricker & Eckler, Ice Miller, and Jones Day. As stated previously, our firm has instituted a waitlist, not because there is an overwhelming number eligible applicants, but because we have minimal capacity. Using fairly liberal parameters, our best estimates are that out of the over 200 Ohio survivors we serve every year, only 38 would become eligible for expungement if this bill were to pass. That is not a flood. These are survivors who have worked so hard to get where they are today and remain held back by their record. Unfair barriers to expungement are exactly what the Senators are trying to eliminate by proposing this bill. The gates are already high enough. Please trust our judges and our prosecutors who are already applying this law with thorough and appropriate scrutiny to continue to do their jobs.

Thank you to the Committee for your thoughtful consideration of the great benefits of SB183 and the lack of practical justification for the concerns raised. Thank you again to Senators Kunze and Fedor for being such strong advocates for survivors of human trafficking. We urge you to move swiftly in passing this critical fix to the existing human trafficking expungement law that will ensure the opportunity for expungement for all survivors of human trafficking.

/s/Megan Mattimoe_____

Executive Director
Advocating Opportunity
2 Maritime Plaza
Toledo, OH 43604
855-855-1945