As Introduced

132nd General Assembly Regular Session 2017-2018

H. B. No. 56

Representatives Dever, Gavarone

A BILL

Го	amend sections 2951.041 and 2953.38 and to enact	1
	section 2953.521 of the Revised Code to permit a	2
	person who is found not guilty or is the	3
	defendant in a dismissed case to apply for an	4
	expungement of the person's records in the case	5
	if the complaint, indictment, or finding of not	6
	guilty resulted from the applicant having been a	7
	victim of human trafficking, to permit a person	8
	convicted of certain prostitution-related	9
	offenses to apply for the expungement of any	10
	record of conviction of an offense, with certain	11
	exceptions, if the person's participation in the	12
	offense was a result of having been a victim of	13
	human trafficking, and to authorize intervention	14
	in lieu of conviction for persons charged with	15
	committing an offense while a victim of	16
	compelling prostitution.	17

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

	Section	n 1. That	section	s 2951.041 a	nd 2953.38 be amended	18
and	section	2953.521	of the 1	Revised Code	be enacted to read a	19
foll	Lows:					20

Sec. 2951.041. (A)(1) If an offender is charged with a	21
criminal offense, including but not limited to a violation of	22
section 2913.02, 2913.03, 2913.11, 2913.21, 2913.31, or 2919.21	23
of the Revised Code, and the court has reason to believe that	24
drug or alcohol usage by the offender was a factor leading to	25
the criminal offense with which the offender is charged or that,	26
at the time of committing that offense, the offender had a	27
mental illness, was a person with an intellectual disability, or	28
was a victim of a violation of section 2905.32 <u>or 2907.21</u> of the	29
Revised Code and that the mental illness, status as a person	30
with <u>an</u> intellectual disability, or fact that the offender was a	31
victim of a violation of section 2905.32 <u>or 2907.21</u> of the	32
Revised Code was a factor leading to the offender's criminal	33
behavior, the court may accept, prior to the entry of a guilty	34
plea, the offender's request for intervention in lieu of	35
conviction. The request shall include a statement from the	36
offender as to whether the offender is alleging that drug or	37
alcohol usage by the offender was a factor leading to the	38
criminal offense with which the offender is charged or is	39
alleging that, at the time of committing that offense, the	40
offender had a mental illness, was a person with an intellectual	41
disability, or was a victim of a violation of section 2905.32 <u>or</u>	42
2907.21 of the Revised Code and that the mental illness, status	43
as a person with an intellectual disability, or fact that the	44
offender was a victim of a violation of section 2905.32 <u>or</u>	45
2907.21 of the Revised Code was a factor leading to the criminal	46
offense with which the offender is charged. The request also	47
shall include a waiver of the defendant's right to a speedy	48
trial, the preliminary hearing, the time period within which the	49
grand jury may consider an indictment against the offender, and	50
arraignment, unless the hearing, indictment, or arraignment has	51
already occurred. The court may reject an offender's request	52

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without a hearing. If the court elects to consider an offender's	53
request, the court shall conduct a hearing to determine whether	54
the offender is eligible under this section for intervention in	55
lieu of conviction and shall stay all criminal proceedings	56
pending the outcome of the hearing. If the court schedules a	57
hearing, the court shall order an assessment of the offender for	58
the purpose of determining the offender's eligibility for	59
intervention in lieu of conviction and recommending an	60
appropriate intervention plan.	61

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

- (2) The victim notification provisions of division (C) of section 2930.06 of the Revised Code apply in relation to any hearing held under division (A)(1) of this section.
- (B) An offender is eligible for intervention in lieu of conviction if the court finds all of the following:
- (1) The offender previously has not been convicted of or pleaded guilty to a felony offense of violence or previously has been convicted of or pleaded quilty to any felony that is not an offense of violence and the prosecuting attorney recommends that the offender be found eligible for participation in intervention in lieu of treatment under this section, previously has not been

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through intervention in lieu of conviction under this section or

any similar regimen, and is charged with a felony for which the

court, upon conviction, would impose a community control

sanction on the offender under division (B)(2) of section

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2929.13 of the Revised Code or with a misdemeanor.

- (2) The offense is not a felony of the first, second, or 88 third degree, is not an offense of violence, is not a violation 89 of division (A)(1) or (2) of section 2903.06 of the Revised 90 Code, is not a violation of division (A)(1) of section 2903.08 91 of the Revised Code, is not a violation of division (A) of 92 93 section 4511.19 of the Revised Code or a municipal ordinance that is substantially similar to that division, and is not an 94 offense for which a sentencing court is required to impose a 95 mandatory prison term, a mandatory term of local incarceration, 96 or a mandatory term of imprisonment in a jail. 97
- (3) The offender is not charged with a violation of

 section 2925.02, 2925.04, or 2925.06 of the Revised Code, is not

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 charged with a violation of section 2925.03 of the Revised Code

 that is a felony of the first, second, third, or fourth degree,

 and is not charged with a violation of section 2925.11 of the

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 Revised Code that is a felony of the first, second, or third

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 degree.
- (4) If an offender alleges that drug or alcohol usage by 105 the offender was a factor leading to the criminal offense with 106 which the offender is charged, the court has ordered that the 107 offender be assessed by a community addiction services provider 108 or a properly credentialed professional for the purpose of 109 determining the offender's eligibility for intervention in lieu 110 of conviction and recommending an appropriate intervention plan, 111 the offender has been assessed by a community addiction services 112

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provider of that nature or a properly credentialed professional	113
in accordance with the court's order, and the community	114
addiction services provider or properly credentialed	115
professional has filed the written assessment of the offender	116
with the court.	117
(5) If an offender alleges that, at the time of committing	118
the criminal offense with which the offender is charged, the	119
offender had a mental illness, was a person with an intellectual	120
disability, or was a victim of a violation of section 2905.32 or	121
2907.21 of the Revised Code and that the mental illness, status	122
as a person with an intellectual disability, or fact that the	123
offender was a victim of a violation of section 2905.32 <u>or</u>	124
2907.21 of the Revised Code was a factor leading to that	125
offense, the offender has been assessed by a psychiatrist,	126
psychologist, independent social worker, licensed professional	127
clinical counselor, or independent marriage and family therapist	128
for the purpose of determining the offender's eligibility for	129
intervention in lieu of conviction and recommending an	130
appropriate intervention plan.	131
(6) The offender's drug usage, alcohol usage, mental	132
illness, or intellectual disability, or the fact that the	133
offender was a victim of a violation of section 2905.32 <u>or</u>	134
2907.21 of the Revised Code, whichever is applicable, was a	135
factor leading to the criminal offense with which the offender	136
is charged, intervention in lieu of conviction would not demean	137
the seriousness of the offense, and intervention would	138
substantially reduce the likelihood of any future criminal	139
activity.	140
(7) The alleged victim of the offense was not sixty-five	141

years of age or older, permanently and totally disabled, under

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

If the court finds that the offender is not eligible or does not

grant the offender's request, the criminal proceedings against

the offender shall proceed as if the offender's request for

intervention in lieu of conviction had not been made.

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- (D) If the court grants an offender's request for 176 intervention in lieu of conviction, the court shall place the 177 offender under the general control and supervision of the county 178 probation department, the adult parole authority, or another 179 appropriate local probation or court services agency, if one 180 exists, as if the offender was subject to a community control 181 sanction imposed under section 2929.15, 2929.18, or 2929.25 of 182 the Revised Code. The court shall establish an intervention plan 183 for the offender. The terms and conditions of the intervention 184 plan shall require the offender, for at least one year from the 185 date on which the court grants the order of intervention in lieu 186 of conviction, to abstain from the use of illegal drugs and 187 alcohol, to participate in treatment and recovery support 188 services, and to submit to regular random testing for drug and 189 alcohol use and may include any other treatment terms and 190 conditions, or terms and conditions similar to community control 191 sanctions, which may include community service or restitution, 192 that are ordered by the court. 193
- 194 (E) If the court grants an offender's request for intervention in lieu of conviction and the court finds that the 195 offender has successfully completed the intervention plan for 196 the offender, including the requirement that the offender 197 abstain from using illegal drugs and alcohol for a period of at 198 least one year from the date on which the court granted the 199 order of intervention in lieu of conviction, the requirement 200 that the offender participate in treatment and recovery support 201 services, and all other terms and conditions ordered by the 202 court, the court shall dismiss the proceedings against the 203

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offender. Successful completion of the intervention plan and	204
period of abstinence under this section shall be without	205
adjudication of guilt and is not a criminal conviction for	206
purposes of any disqualification or disability imposed by law	207
and upon conviction of a crime, and the court may order the	208
sealing of records related to the offense in question in the	209
manner provided in sections 2953.31 to 2953.36 of the Revised	210
Code.	211
(F) If the court grants an offender's request for	212

- intervention in lieu of conviction and the offender fails to 213 comply with any term or condition imposed as part of the 214 intervention plan for the offender, the supervising authority 215 for the offender promptly shall advise the court of this 216 failure, and the court shall hold a hearing to determine whether 217 the offender failed to comply with any term or condition imposed 218 as part of the plan. If the court determines that the offender 219 has failed to comply with any of those terms and conditions, it 220 shall enter a finding of guilty and shall impose an appropriate 221 sanction under Chapter 2929. of the Revised Code. If the court 222 sentences the offender to a prison term, the court, after 223 consulting with the department of rehabilitation and correction 224 regarding the availability of services, may order continued 225 court-supervised activity and treatment of the offender during 226 the prison term and, upon consideration of reports received from 227 the department concerning the offender's progress in the program 228 of activity and treatment, may consider judicial release under 229 section 2929.20 of the Revised Code. 230
 - (G) As used in this section:
- (1) "Community addiction services provider" has the same232meaning as in section 5119.01 of the Revised Code.233

(2) "Community control sanction" has the same meaning as	234
in section 2929.01 of the Revised Code.	235
(3) "Intervention in lieu of conviction" means any court-	236
supervised activity that complies with this section.	237
(4) "Intellectual disability" has the same meaning as in	238
section 5123.01 of the Revised Code.	239
(5) "Peace officer" has the same meaning as in section	240
2935.01 of the Revised Code.	241
(6) "Mental illness" and "psychiatrist" have the same	242
meanings as in section 5122.01 of the Revised Code.	243
(7) "Psychologist" has the same meaning as in section	244
4732.01 of the Revised Code.	245
Sec. 2953.38. (A) As used in this section:	246
(1) "Expunge" means to destroy, delete, or erase a record	247
as appropriate for the record's physical or electronic form or	248
characteristic so that the record is permanently irretrievable.	249
(2) "Prosecutor" has the same meaning as in section	250
2953.31 of the Revised Code.	251
(3) "Record of conviction" means the any record related to	252
a conviction of or plea of guilty to an offense.	253
(4) "Victim of human trafficking" means a person who is or	254
was a victim of a violation of section 2905.32 of the Revised	255
Code, regardless of whether anyone has been convicted of a	256
violation of that section or of any other section for	257
victimizing the person.	258
(B) Any person who is or was convicted of a violation of	259
section 2907 24 2907 241 or 2907 25 of the Revised Code may	260

apply to the sentencing court for the expungement of the-any	261
record of conviction, other than a record of a conviction	262
specified in section 2953.36 of the Revised Code, if the	263
person's participation in the offense was a result of the person	264
having been a victim of human trafficking. The person may file	265
the application at any time. The application may request an	266
order to expunge the record of conviction for more than one	267
offense, but if it does, the court shall consider the request	268
for each offense separately as if a separate application had	269
been made for each offense and all references in divisions (B)	270
to (H) of this section to "the offense" or "that offense" mean	271
each of those offenses that are the subject of the application.	272
The application shall do all of the following:	273
(1) Identify the applicant, the offense for which the	274
expungement is sought, the date of the conviction of that	275
offense, and the court in which the conviction occurred;	276
(2) Describe the evidence and provide copies of any	277
documentation showing that the person is entitled to relief	278
under this section;	279
(3) Include a request for expungement of the record of	280
conviction of that offense under this section.	281
(C) The court may deny an application made under division	282
(B) of this section if it finds that the application fails to	283
assert grounds on which relief may be granted.	284
(D) If the court does not deny an application under	285
division (C) of this section, it shall set a date for a hearing	286
and shall notify the prosecutor for the case from which the	287
record of conviction resulted of the hearing on the application.	288
The prosecutor may object to the granting of the application by	289

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filing an objection with the court prior to the date set for the	290
hearing. The prosecutor shall specify in the objection the	291
reasons for believing a denial of the application is justified.	292
The court may direct its regular probation officer, a state	293
probation officer, or the department of probation of the county	294
in which the applicant resides to make inquiries and written	295
reports as the court requires concerning the applicant.	296
(E) At the hearing held under division (D) of this	297
section, the court shall do both of the following:	298
(1) If the prosecutor has filed an objection, consider the	299
reasons against granting the application specified by the	300
prosecutor in the objection;	301
(2) Determine whether the applicant has demonstrated by a	302
preponderance of the evidence that the applicant's participation	303
in the offense was a result of having been a victim of human	304
trafficking.	305
(F) If after a hearing the court finds that the applicant	306
has demonstrated by a preponderance of the evidence that the	307
applicant's participation in the offense that is the subject of	308
the application was the result of the applicant having been a	309
victim of human trafficking, the court shall grant the	310
application and order that the record of conviction be expunged.	311
(G)(1) The court shall send notice of the order of	312
expungement to each public office or agency that the court has	313
reason to believe may have an official record pertaining to the	314
case if the court, after complying with division (E) of this	315
section, determines both of the following:	316
(a) That the applicant has been convicted of a violation	317

of section 2907.24, 2907.241, or 2907.25 of the Revised Code;

(b) That the interests of the applicant in having the	319
records pertaining to the applicant's conviction expunged are	320
not outweighed by any legitimate needs of the government to	321
maintain those records.	322
(2) The proceedings in the case that is the subject of an	323
order issued under division (F) of this section shall be	324
considered not to have occurred and the conviction of the person	325
who is the subject of the proceedings shall be expunged. The	326
record of the conviction shall not be used for any purpose,	327
including, but not limited to, a criminal records check under	328
section 109.572 of the Revised Code. The applicant may, and the	329
court shall, reply that no record exists with respect to the	330
applicant upon any inquiry into the matter.	331
(H) Upon the filing of an application under this section,	332
the applicant, unless indigent, shall pay a fee of fifty	333
dollars. The court shall pay thirty dollars of the fee into the	334
state treasury and shall pay twenty dollars of the fee into the	335
county general revenue fund.	336
Sec. 2953.521. (A) As used in this section, "expunge" has	337
the same meaning as in section 2953.38 of the Revised Code.	338
(B) Any person who is found not guilty of an offense by a	339
jury or a court or who is the defendant named in a dismissed	340
complaint, indictment, or information may apply to the court for	341
an order to expunge the person's official records in the case if	342
the complaint, indictment, information, or finding of not guilty	343
that is the subject of the application was the result of the	344
applicant having been a victim of human trafficking. The	345
application may be filed at any time after the finding of not	346
guilty or the dismissal of the complaint, indictment, or	347
information is entered upon the minutes of the court or the	348

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journal, whichever entry occurs first. The application may	349
request an order to expunge official records for more than one	350
offense, but if it does, the court shall consider the request	351
for each offense separately as if a separate application had	352
been made for each offense and all references in divisions (B)	353
to (H) of this section to "the offense" or "that offense" mean	354
each of those offenses that are the subject of the application.	355
(C) The court may deny an application made under division	356
(B) of this section if it finds that the application fails to	357
assert grounds on which relief may be granted.	358
(D) If the court does not deny an application under	359
division (C) of this section, the court shall set a date for a	360
hearing and shall notify the prosecutor for the case of the	361
hearing on the application. The prosecutor may object to the	362
granting of the application by filing an objection with the	363
court prior to the date set for the hearing. The prosecutor	364
shall specify in the objection the reasons for believing a	365
denial of the application is justified.	366
(E) At the hearing held under division (D) of this	367
section, the court shall do all of the following:	368
(1) If the prosecutor has filed an objection, consider the	369
reasons against granting the application specified by the	370
<pre>prosecutor in the objection;</pre>	371
(2) Determine whether the applicant has demonstrated by a	372
preponderance of the evidence that the complaint, indictment,	373
information, or finding of not guilty that is the subject of the	374
application was the result of the applicant having been a victim	375
of human trafficking;	376
(3) If the application pertains to a dismissed complaint,	377

indictment, or information, determine whether the dismissal was	378
with prejudice or without prejudice and, if the dismissal was	379
without prejudice, whether the period of limitations applicable	380
to the offense that was the subject of that complaint,	381
<pre>indictment, or information has expired;</pre>	382
(4) Determine whether any criminal proceedings are pending	383
against the applicant.	384
(F) (1) Subject to division (F) (2) of this section, if the	385
court finds that the applicant has demonstrated by a	386
preponderance of the evidence that the complaint, indictment,	387
information, or finding of not guilty that is the subject of the	388
application was the result of the applicant having been a victim	389
of human trafficking, the court shall grant the application and	390
order that the official records be expunged.	391
(2) The court shall not grant the application and order	392
that the official records be expunged unless the court	393
determines that the interests of the applicant in having the	394
official records pertaining to the complaint, indictment, or	395
information or finding of not guilty that is the subject of the	396
application expunded are not outweighed by any legitimate needs	397
of the government to maintain those records.	398
(G) If an expungement is ordered under division (F) of	399
this section, the court shall send notice of the order of	400
expungement to each public office or agency that the court has	401
reason to believe may have an official record pertaining to the	402
case.	403
(H) The proceedings in the case that is the subject of an	404
order issued under division (F) of this section shall be	405
considered not to have occurred and the official records shall	406

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be expunged. The official records shall not be used for any	407
purpose, including a criminal records check under section	408
109.572 of the Revised Code. The applicant may, and the court	409
shall, reply that no record exists with respect to the applicant	410
upon any inquiry into the matter.	411
Section 2. That existing sections 2951.041 and 2953.38 of	412
the Revised Code are hereby repealed.	413