

As Passed by the Senate

132nd General Assembly

Regular Session

2017-2018

Sub. S. B. No. 4

Senators Kunze, Oelslager

Cosponsors: Senators Obhof, Terhar, Gardner, Hite, Eklund, Huffman, LaRose, Hottinger, Bacon, Balderson, Beagle, Brown, Burke, Coley, Dolan, Hackett, Hoagland, Jordan, Lehner, Manning, O'Brien, Schiavoni, Sykes, Tavares, Thomas, Uecker, Wilson, Yuko

A BILL

To amend sections 2951.041 and 2953.38 and to enact 1
section 2953.521 of the Revised Code to allow a 2
person who is found not guilty of an offense or 3
who is the defendant named in a dismissed 4
criminal charge to apply for a court order to 5
expunge the person's official records in the 6
case if the charge or not guilty finding was the 7
result of the applicant having been a human 8
trafficking victim; to allow a person convicted 9
of certain prostitution-related offenses to 10
apply for the expungement of the conviction 11
record of any offense, other than a specified 12
disqualifying offense, the person's 13
participation in which was a result of having 14
been a human trafficking victim; and to allow 15
intervention in lieu of conviction for persons 16
charged with committing an offense while a 17
victim of compelling prostitution. 18

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

Section 1. That sections 2951.041 and 2953.38 be amended 19
and section 2953.521 of the Revised Code be enacted to read as 20
follows: 21

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

trial, the preliminary hearing, the time period within which the 50
grand jury may consider an indictment against the offender, and 51
arraignment, unless the hearing, indictment, or arraignment has 52
already occurred. The court may reject an offender's request 53
without a hearing. If the court elects to consider an offender's 54
request, the court shall conduct a hearing to determine whether 55
the offender is eligible under this section for intervention in 56
lieu of conviction and shall stay all criminal proceedings 57
pending the outcome of the hearing. If the court schedules a 58
hearing, the court shall order an assessment of the offender for 59
the purpose of determining the offender's eligibility for 60
intervention in lieu of conviction and recommending an 61
appropriate intervention plan. 62

If the offender alleges that drug or alcohol usage by the 63
offender was a factor leading to the criminal offense with which 64
the offender is charged, the court may order that the offender 65
be assessed by a community addiction services provider or a 66
properly credentialed professional for the purpose of 67
determining the offender's eligibility for intervention in lieu 68
of conviction and recommending an appropriate intervention plan. 69
The community addiction services provider or the properly 70
credentialed professional shall provide a written assessment of 71
the offender to the court. 72

(2) The victim notification provisions of division (C) of 73
section 2930.06 of the Revised Code apply in relation to any 74
hearing held under division (A) (1) of this section. 75

(B) An offender is eligible for intervention in lieu of 76
conviction if the court finds all of the following: 77

(1) The offender previously has not been convicted of or 78
pleaded guilty to a felony offense of violence or previously has 79

been convicted of or pleaded guilty to any felony that is not an 80
offense of violence and the prosecuting attorney recommends that 81
the offender be found eligible for participation in intervention 82
in lieu of treatment under this section, previously has not been 83
through intervention in lieu of conviction under this section or 84
any similar regimen, and is charged with a felony for which the 85
court, upon conviction, would impose a community control 86
sanction on the offender under division (B) (2) of section 87
2929.13 of the Revised Code or with a misdemeanor. 88

(2) The offense is not a felony of the first, second, or 89
third degree, is not an offense of violence, is not a violation 90
of division (A) (1) or (2) of section 2903.06 of the Revised 91
Code, is not a violation of division (A) (1) of section 2903.08 92
of the Revised Code, is not a violation of division (A) of 93
section 4511.19 of the Revised Code or a municipal ordinance 94
that is substantially similar to that division, and is not an 95
offense for which a sentencing court is required to impose a 96
mandatory prison term, a mandatory term of local incarceration, 97
or a mandatory term of imprisonment in a jail. 98

(3) The offender is not charged with a violation of 99
section 2925.02, 2925.04, or 2925.06 of the Revised Code, is not 100
charged with a violation of section 2925.03 of the Revised Code 101
that is a felony of the first, second, third, or fourth degree, 102
and is not charged with a violation of section 2925.11 of the 103
Revised Code that is a felony of the first, second, or third 104
degree. 105

(4) If an offender alleges that drug or alcohol usage by 106
the offender was a factor leading to the criminal offense with 107
which the offender is charged, the court has ordered that the 108
offender be assessed by a community addiction services provider 109

or a properly credentialed professional for the purpose of 110
determining the offender's eligibility for intervention in lieu 111
of conviction and recommending an appropriate intervention plan, 112
the offender has been assessed by a community addiction services 113
provider of that nature or a properly credentialed professional 114
in accordance with the court's order, and the community 115
addiction services provider or properly credentialed 116
professional has filed the written assessment of the offender 117
with the court. 118

(5) If an offender alleges that, at the time of committing 119
the criminal offense with which the offender is charged, the 120
offender had a mental illness, was a person with an intellectual 121
disability, or was a victim of a violation of section 2905.32 or 122
2907.21 of the Revised Code and that the mental illness, status 123
as a person with an intellectual disability, or fact that the 124
offender was a victim of a violation of section 2905.32 or 125
2907.21 of the Revised Code was a factor leading to that 126
offense, the offender has been assessed by a psychiatrist, 127
psychologist, independent social worker, licensed professional 128
clinical counselor, or independent marriage and family therapist 129
for the purpose of determining the offender's eligibility for 130
intervention in lieu of conviction and recommending an 131
appropriate intervention plan. 132

(6) The offender's drug usage, alcohol usage, mental 133
illness, or intellectual disability, or the fact that the 134
offender was a victim of a violation of section 2905.32 or 135
2907.21 of the Revised Code, whichever is applicable, was a 136
factor leading to the criminal offense with which the offender 137
is charged, intervention in lieu of conviction would not demean 138
the seriousness of the offense, and intervention would 139
substantially reduce the likelihood of any future criminal 140

activity.	141
(7) The alleged victim of the offense was not sixty-five	142
years of age or older, permanently and totally disabled, under	143
thirteen years of age, or a peace officer engaged in the	144
officer's official duties at the time of the alleged offense.	145
(8) If the offender is charged with a violation of section	146
2925.24 of the Revised Code, the alleged violation did not	147
result in physical harm to any person, and the offender	148
previously has not been treated for drug abuse.	149
(9) The offender is willing to comply with all terms and	150
conditions imposed by the court pursuant to division (D) of this	151
section.	152
(10) The offender is not charged with an offense that	153
would result in the offender being disqualified under Chapter	154
4506. of the Revised Code from operating a commercial motor	155
vehicle or would subject the offender to any other sanction	156
under that chapter.	157
(C) At the conclusion of a hearing held pursuant to	158
division (A) of this section, the court shall enter its	159
determination as to whether the offender is eligible for	160
intervention in lieu of conviction and as to whether to grant	161
the offender's request. If the court finds under division (B) of	162
this section that the offender is eligible for intervention in	163
lieu of conviction and grants the offender's request, the court	164
shall accept the offender's plea of guilty and waiver of the	165
defendant's right to a speedy trial, the preliminary hearing,	166
the time period within which the grand jury may consider an	167
indictment against the offender, and arraignment, unless the	168
hearing, indictment, or arraignment has already occurred. In	169

addition, the court then may stay all criminal proceedings and 170
order the offender to comply with all terms and conditions 171
imposed by the court pursuant to division (D) of this section. 172
If the court finds that the offender is not eligible or does not 173
grant the offender's request, the criminal proceedings against 174
the offender shall proceed as if the offender's request for 175
intervention in lieu of conviction had not been made. 176

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

(E) If the court grants an offender's request for 195
intervention in lieu of conviction and the court finds that the 196
offender has successfully completed the intervention plan for 197
the offender, including the requirement that the offender 198
abstain from using illegal drugs and alcohol for a period of at 199
least one year from the date on which the court granted the 200

order of intervention in lieu of conviction, the requirement 201
that the offender participate in treatment and recovery support 202
services, and all other terms and conditions ordered by the 203
court, the court shall dismiss the proceedings against the 204
offender. Successful completion of the intervention plan and 205
period of abstinence under this section shall be without 206
adjudication of guilt and is not a criminal conviction for 207
purposes of any disqualification or disability imposed by law 208
and upon conviction of a crime, and the court may order the 209
sealing of records related to the offense in question in the 210
manner provided in sections 2953.31 to 2953.36 of the Revised 211
Code. 212

(F) If the court grants an offender's request for 213
intervention in lieu of conviction and the offender fails to 214
comply with any term or condition imposed as part of the 215
intervention plan for the offender, the supervising authority 216
for the offender promptly shall advise the court of this 217
failure, and the court shall hold a hearing to determine whether 218
the offender failed to comply with any term or condition imposed 219
as part of the plan. If the court determines that the offender 220
has failed to comply with any of those terms and conditions, it 221
shall enter a finding of guilty and shall impose an appropriate 222
sanction under Chapter 2929. of the Revised Code. If the court 223
sentences the offender to a prison term, the court, after 224
consulting with the department of rehabilitation and correction 225
regarding the availability of services, may order continued 226
court-supervised activity and treatment of the offender during 227
the prison term and, upon consideration of reports received from 228
the department concerning the offender's progress in the program 229
of activity and treatment, may consider judicial release under 230
section 2929.20 of the Revised Code. 231

(G) As used in this section:	232
(1) "Community addiction services provider" has the same meaning as in section 5119.01 of the Revised Code.	233 234
(2) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.	235 236
(3) "Intervention in lieu of conviction" means any court-supervised activity that complies with this section.	237 238
(4) "Intellectual disability" has the same meaning as in section 5123.01 of the Revised Code.	239 240
(5) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.	241 242
(6) "Mental illness" and "psychiatrist" have the same meanings as in section 5122.01 of the Revised Code.	243 244
(7) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.	245 246
Sec. 2953.38. (A) As used in this section:	247
(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.	248 249 250
(2) "Prosecutor" has the same meaning as in section 2953.31 of the Revised Code.	251 252
(3) "Record of conviction" means the <u>any</u> record related to a conviction of or plea of guilty to an offense.	253 254
(4) "Victim of human trafficking" means a person who is or 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	255 256 257 258

victimizing the person. 259

(B) Any person who is or was convicted of a violation of 260
section 2907.24, 2907.241, or 2907.25 of the Revised Code may 261
apply to the sentencing court for the expungement of the record 262
of conviction if of any offense, other than a record of 263
conviction of a violation of section 2903.01, 2903.02, or 264
2907.02 of the Revised Code, the person's participation in ~~the~~ 265
~~offense which~~ was a result of the person having been a victim of 266
human trafficking. The person may file the application at any 267
time. The application may request an order to expunge the record 268
of conviction for more than one offense, but if it does, the 269
court shall consider the request for each offense separately as 270
if a separate application had been made for each offense and all 271
references in divisions (B) to (H) of this section to "the 272
offense" or "that offense" mean each of those offenses that are 273
the subject of the application. The application shall do all of 274
the following: 275

(1) Identify the applicant, the offense for which the 276
expungement is sought, the date of the conviction of that 277
offense, and the court in which the conviction occurred; 278

(2) Describe the evidence and provide copies of any 279
documentation showing that the person is entitled to relief 280
under this section; 281

(3) Include a request for expungement of the record of 282
conviction of that offense under this section. 283

(C) The court may deny an application made under division 284
(B) of this section if it finds that the application fails to 285
assert grounds on which relief may be granted. 286

(D) If the court does not deny an application under 287

division (C) of this section, it shall set a date for a hearing 288
and shall notify the prosecutor for the case from which the 289
record of conviction resulted of the hearing on the application. 290
The prosecutor may object to the granting of the application by 291
filing an objection with the court prior to the date set for the 292
hearing. The prosecutor shall specify in the objection the 293
reasons for believing a denial of the application is justified. 294
The court may direct its regular probation officer, a state 295
probation officer, or the department of probation of the county 296
in which the applicant resides to make inquiries and written 297
reports as the court requires concerning the applicant. 298

(E) (1) At the hearing held under division (D) of this 299
section, the court shall do both of the following: 300

~~(1)~~ (a) If the prosecutor has filed an objection, consider 301
the reasons against granting the application specified by the 302
prosecutor in the objection; 303

~~(2)~~ (b) Determine whether the applicant has demonstrated 304
by a preponderance of the evidence that the applicant's 305
participation in the offense that is the subject of the 306
application was a result of the applicant having been a victim 307
of human trafficking. 308

(2) If the court at the hearing held under division (D) of 309
this section determines that the applicant's participation in 310
the offense that is the subject of the application was a result 311
of the applicant having been a victim of human trafficking and 312
if that subject offense is a felony of the first or second 313
degree, the court at the hearing also shall consider all of the 314
following factors and, upon consideration of the factors, shall 315
determine whether the interests of the applicant in having the 316
record of the conviction of that offense expunged are outweighed 317

by any legitimate needs of the government to maintain that 318
record of conviction: 319

(a) The degree of duress under which the applicant acted 320
in committing the subject offense, including, but not limited 321
to, the history of the use of force or threatened use of force 322
against the applicant or another person, whether the applicant's 323
judgment or control was impaired by the administration to the 324
applicant of any intoxicant, drug, or controlled substance, and 325
the threat of withholding from the applicant food, water, or any 326
drug; 327

(b) The seriousness of the subject offense; 328

(c) The relative degree of physical harm done to any 329
person in the commission of the subject offense; 330

(d) The length of time that has expired since the 331
commission of the subject offense; 332

(e) Whether the prosecutor represents to the court that 333
criminal proceedings are likely to still be initiated against 334
the applicant for a felony offense for which the period of 335
limitations has not expired; 336

(f) Whether the applicant at the time of the hearing is 337
subject to supervision as a result of the subject offense. 338

(F) If after a hearing held under division (D) of this 339
section the court finds that the applicant has demonstrated by a 340
preponderance of the evidence that the applicant's participation 341
in the offense that is the subject of the application was the 342
result of the applicant having been a victim of human 343
trafficking, and, if the offense that is the subject of the 344
application is a felony of the first or second degree, after 345
consideration of the factors required under division (E) (2) of 346

this section, it finds that the interests of the applicant in 347
having the record of the conviction of that offense expunged are 348
not outweighed by any legitimate needs of the government to 349
maintain that record of conviction, the court shall grant the 350
application and order that the record of conviction be expunged. 351

(G) (1) The court shall send notice of the order of 352
expungement issued under division (F) of this section to each 353
public office or agency that the court has reason to believe may 354
have an official record pertaining to the case if the court, 355
after complying with division (E) of this section, determines 356
both of the following: 357

(a) That the applicant has been convicted of a violation 358
of section 2907.24, 2907.241, or 2907.25 of the Revised Code; 359

(b) That the interests of the applicant in having the 360
records pertaining to the applicant's conviction expunged are 361
not outweighed by any legitimate needs of the government to 362
maintain those records. 363

(2) The proceedings in the case that is the subject of an 364
order of expungement issued under division (F) of this section 365
shall be considered not to have occurred and the conviction of 366
the person who is the subject of the proceedings shall be 367
expunged. The record of the conviction shall not be used for any 368
purpose, including, but not limited to, a criminal records check 369
under section 109.572 of the Revised Code. The applicant may, 370
and the court shall, reply that no record exists with respect to 371
the applicant upon any inquiry into the matter. 372

(H) Upon the filing of an application under this section, 373
the applicant, unless indigent, shall pay a fee of fifty 374
dollars. The court shall pay thirty dollars of the fee into the 375

state treasury and shall pay twenty dollars of the fee into the 376
county general revenue fund. 377

Sec. 2953.521. (A) As used in this section, "expunge" has 378
the same meaning as in section 2953.38 of the Revised Code. 379

(B) Any person who is found not guilty of an offense by a 380
jury or a court or who is the defendant named in a dismissed 381
complaint, indictment, or information may apply to the court for 382
an order to expunge the person's official records in the case if 383
the complaint, indictment, information, or finding of not guilty 384
that is the subject of the application was the result of the 385
applicant having been a victim of human trafficking. The 386
application may be filed at any time after the finding of not 387
guilty or the dismissal of the complaint, indictment, or 388
information is entered upon the minutes of the court or the 389
journal, whichever entry occurs first. The application may 390
request an order to expunge official records for more than one 391
offense, but if it does, the court shall consider the request 392
for each offense separately as if a separate application had 393
been made for each offense and all references in divisions (B) 394
to (H) of this section to "the offense" or "that offense" mean 395
each of those offenses that are the subject of the application. 396

(C) The court may deny an application made under division 397
(B) of this section if it finds that the application fails to 398
assert grounds on which relief may be granted. 399

(D) If the court does not deny an application under 400
division (C) of this section, the court shall set a date for a 401
hearing and shall notify the prosecutor for the case of the 402
hearing on the application. The prosecutor may object to the 403
granting of the application by filing an objection with the 404
court prior to the date set for the hearing. The prosecutor 405

shall specify in the objection the reasons for believing a 406
denial of the application is justified. 407

(E) At the hearing held under division (D) of this 408
section, the court shall do all of the following: 409

(1) If the prosecutor has filed an objection, consider the 410
reasons against granting the application specified by the 411
prosecutor in the objection; 412

(2) Determine whether the applicant has demonstrated by a 413
preponderance of the evidence that the complaint, indictment, 414
information, or finding of not guilty that is the subject of the 415
application was the result of the applicant having been a victim 416
of human trafficking; 417

(3) If the application pertains to a dismissed complaint, 418
indictment, or information, determine whether the dismissal was 419
with prejudice or without prejudice and, if the dismissal was 420
without prejudice, whether the period of limitations applicable 421
to the offense that was the subject of that complaint, 422
indictment, or information has expired; 423

(4) Determine whether any criminal proceedings are pending 424
against the applicant. 425

(F) (1) Subject to division (F) (2) of this section, if the 426
court finds that the applicant has demonstrated by a 427
preponderance of the evidence that the complaint, indictment, 428
information, or finding of not guilty that is the subject of the 429
application was the result of the applicant having been a victim 430
of human trafficking, the court shall grant the application and 431
order that the official records be expunged. 432

(2) The court shall not grant the application and order 433
that the official records be expunged unless the court 434

determines that the interests of the applicant in having the 435
official records pertaining to the complaint, indictment, or 436
information or finding of not guilty that is the subject of the 437
application expunged are not outweighed by any legitimate needs 438
of the government to maintain those records. 439

(G) If an expungement is ordered under division (F) of 440
this section, the court shall send notice of the order of 441
expungement to each public office or agency that the court has 442
reason to believe may have an official record pertaining to the 443
case. 444

(H) The proceedings in the case that is the subject of an 445
order issued under division (F) of this section shall be 446
considered not to have occurred and the official records shall 447
be expunged. The official records shall not be used for any 448
purpose, including a criminal records check under section 449
109.572 of the Revised Code. The applicant may, and the court 450
shall, reply that no record exists with respect to the applicant 451
upon any inquiry into the matter. 452

Section 2. That existing sections 2951.041 and 2953.38 of 453
the Revised Code are hereby repealed. 454