



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

Jeff Hobday

### Sub. S.B. 4

132nd General Assembly  
(As Passed by the General Assembly)

- Sens.** Kunze and Oelslager, 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
- Reps.** Manning, Celebrezze, Galonski, Rogers, Anielski, Antani, Antonio, Barnes, Boggs, Boyd, Brenner, Craig, Dean, Edwards, Fedor, Gavarone, Greenspan, Hambley, Howse, Ingram, Lanese, LaTourette, Lepore-Hagan, Miller, O'Brien, Patterson, Patton, Pelanda, Perales, Ramos, Reineke, Ryan, Schuring, K. Smith, Strahorn, Sykes, West, R. Smith

**Effective date:** September 28, 2018

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## ACT SUMMARY

- For an offender convicted of any of six specified offenses, including soliciting and prostitution, expands the offenses for which records may be expunged to include any offense, if the offender's participation in the offense resulted from being a victim of human trafficking.
- Excludes records of an aggravated murder, murder, or rape conviction from eligibility for expungement.
- Regarding an application for expungement of records of a first or second degree felony conviction:
  - Specifies factors that a court must consider in deciding whether to grant the expungement; and
  - Requires, as a condition of granting the expungement, that the court find that the applicant's interests in having the records expunged are not outweighed by legitimate government needs to maintain the records.

- Enacts a mechanism to expunge records related to a finding of not guilty or to a dismissed criminal charge, if the finding or charge was the result of the person having been a victim of human trafficking.
- Specifies that, for either type of expungement, an application may request expungement for more than one offense, but if it does, the court must consider the request for each offense separately, as if a separate application had been made for each offense.
- Authorizes intervention in lieu of conviction for a person whose criminal activity resulted from the person's status as a victim of compelling prostitution.

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## **CONTENT AND OPERATION**

### **Expungement of criminal conviction records**

The act clarifies the criminal offenses for which conviction records may be expunged, if the person who was convicted was a victim of human trafficking. Under the act, expungement is available for any offense resulting from being a victim of human trafficking, excluding aggravated murder, murder, or rape.<sup>1</sup>

Previously, a person convicted of one of the following offenses could apply to the sentencing court for expungement of the conviction record if the person's participation in the offense resulted from the person's being a victim of human trafficking:<sup>2</sup>

- (1) Soliciting;
- (2) Engaging in solicitation after a positive HIV test;
- (3) Loitering to engage in solicitation;
- (4) Loitering to engage in solicitation after a positive HIV test;
- (5) Prostitution; or
- (6) Prostitution after a positive HIV test.

The act clarifies that a person convicted of one of the six specified offenses may have any record of conviction expunged, other than a record of aggravated murder, murder, or rape, if the person's participation in the offense was a result of having been a human trafficking victim. Related to this, the act modifies the definition of "record of

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<sup>1</sup> R.C. 2953.38.

<sup>2</sup> R.C. 2953.38(B).



conviction" that applies to the provision so that it means "any" record related to a conviction of or plea of guilty to an offense (before, it referred to "the" record related to a conviction of or plea of guilty to an offense).<sup>3</sup>

Under continuing law, (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, and (2) "victim of human trafficking" means a person who is or was a victim of trafficking in persons, regardless of whether anyone has been convicted of that offense or any other offense for victimizing the person.<sup>4</sup>

The act also specifies that an application for expungement may request an order to expunge the record of conviction for more than one offense. But if it does, the court must consider the request for each offense separately, as if a separate application had been made for each offense. All references to "the offense" or "that offense" mean each of those offenses that are the subject of the application.<sup>5</sup>

### **Procedure for expungement**

Continuing law specifies that a court may deny an application for expungement without a hearing if it finds that the application does not state grounds for relief. If it does not deny the application under this authority, it must conduct a hearing.<sup>6</sup> If the court conducts a hearing, one of the things it must do at the hearing is determine whether the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense was a result of having been a victim of human trafficking.

The act retains the court procedure for determining whether to grant an application for expungement, with three changes:

(1) The act clarifies that the determination is as to whether the applicant's participation in the offense *that is the subject of the application* (the subject offense) was a result of the applicant having been a victim of human trafficking.<sup>7</sup>

(2) Under the act, if the court determines that the applicant's participation in the subject offense was a result of having been a victim of human trafficking, and if that

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<sup>3</sup> R.C. 2953.38(A)(3).

<sup>4</sup> R.C. 2953.38(A)(1) and (4).

<sup>5</sup> R.C. 2953.38(B).

<sup>6</sup> R.C. 2953.38(C) and (D).

<sup>7</sup> R.C. 2953.38(E)(1)(b).



offense is a first or second degree felony, the court at the hearing also must consider all of the following factors and, upon consideration of them, determine whether the applicant's interests in having the record expunged are outweighed by any legitimate government needs to maintain that record:<sup>8</sup>

(a) The degree of duress under which the applicant acted in committing the subject offense, including the history of the use of force or threaten of force against the applicant or another person; whether the applicant's judgment or control was impaired by the administration to the applicant of any intoxicant, drug, or controlled substance; and the threat of withholding from the applicant food, water, or any drug;

(b) The seriousness of the subject offense;

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

(d) The length of time since commission of the subject offense;

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

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

(3) Generally, if the court finds that the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the subject offense was the result of having been a victim of human trafficking, the court must grant the application and order that the conviction record be expunged. Under the act, if the subject offense is a first or second degree felony, in order to grant the application and order that the record of conviction be expunged, the court must also find after consideration of the factors specified above in (2) that the applicant's interests in having the record expunged are not outweighed by any legitimate government needs to maintain that record.

### **Expungement of records if finding of not guilty or dismissal of charges**

The act allows any person who is found not guilty of an offense by a jury or a court, or whose case is dismissed, to apply to the court for an order to expunge the person's official records in the case, if the charge or finding was the result of the applicant having been a victim of human trafficking. The application may be filed at

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<sup>8</sup> R.C. 2953.38(E)(2).



any time after the not guilty finding or the dismissal is entered in the court's minutes or the journal, whichever entry occurs first. The application may request an order to expunge official records for more than one offense. But if it does, the court must consider the request for each offense separately, as if a separate application had been made for each offense. All references to "the offense" or "that offense" mean each of those offenses that are the subject of the application.<sup>9</sup>

### **Procedure for expungement**

The court may deny an application to expunge records related to a finding of not guilty or to a dismissed criminal charge if it finds that the application fails to assert grounds on which relief may be granted. If the court does not deny an application, it must set a date for a hearing and notify the prosecutor of the hearing. The prosecutor may file an objection with the court prior to the hearing date, specifying the reasons for believing a denial is justified.

At the hearing, the court must consider and determine four things. First, it must consider the reasons the prosecutor specified against granting the application, if the prosecutor filed an objection. Second, it must determine whether the applicant demonstrated by a preponderance of the evidence that the dismissed charge or not guilty finding was the result of the applicant having been a victim of human trafficking. Third, if the application pertains to a dismissed charge, it must determine whether the dismissal was with prejudice or without prejudice and, if the dismissal was without prejudice, whether the period of limitations applicable to the offense has expired. And fourth, it must determine whether any criminal proceedings are pending against the applicant.<sup>10</sup>

If the court finds that the applicant demonstrated by a preponderance of the evidence that the dismissed charge or not guilty finding was the result of the applicant having been a victim of human trafficking and makes one additional finding, the court must grant the application and order that the official records be expunged. The additional finding required is that the applicant's interests in having the official records expunged are not outweighed by any legitimate needs of the government to maintain those records.<sup>11</sup>

If the court orders an expungement, it must send notice of the expungement order to each public office or agency that the court has reason to believe may have an official record pertaining to the case. The proceedings in the case that is the subject of

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<sup>9</sup> R.C. 2953.521(B).

<sup>10</sup> R.C. 2953.521(C), (D), and (E).

<sup>11</sup> R.C. 2953.521(F).



the expungement order must be considered not to have occurred, the official records must be expunged and may not be used for any purpose (including a criminal records check under R.C. 109.572), and the applicant may, and the court must, reply that no record exists with respect to the applicant upon any inquiry into the matter.<sup>12</sup>

## **Intervention in lieu of conviction**

The act allows a victim of compelling prostitution to request and be granted intervention in lieu of conviction (ILC) under the same conditions and subject to the same criteria and procedures that apply to a victim of trafficking in persons.

As before the enactment of this act, a person charged with a criminal offense may request ILC if: (1) drug or alcohol usage by the offender was a factor leading to the criminal offense, or (2) at the time of committing that offense, the offender had a mental illness, was a person with an intellectual disability, or was a victim of trafficking in persons, and at least one of the three was a factor leading to the offender's criminal behavior. If the court grants ILC, the person enters a guilty plea and waives certain trial-related rights, the court stays all criminal proceedings and imposes intervention terms and conditions, and the person remains under court supervision while undergoing intervention. If the person successfully completes the plan of intervention, the criminal proceeding is dismissed; if not, the court enters a finding of guilty and imposes an appropriate sentence.<sup>13</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	01-31-17
Reported, S. Judiciary	05-10-17
Passed Senate (33-0)	05-17-17
Reported, H. Criminal Justice	05-23-18
Passed House (81-12)	06-20-18

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<sup>12</sup> R.C. 2953.521(G) and (H).

<sup>13</sup> R.C. 2951.041.

