



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. S.B. 4*

132nd General Assembly
(As Reported by S. Judiciary)

Sens. Kunze and Oelslager, Obhof, Terhar, Gardner, Hite, Eklund, Huffman, LaRose, Hottinger

BILL SUMMARY

- For an offender convicted of any of six specified offenses, including soliciting and prostitution, expands the statutory language regarding the criminal offenses the records of which may be expunged to clarify that the provision generally applies regarding any offense, the offender's participation in which resulted from the offender being a victim of human trafficking.
- Excludes from the expungement provision described in the preceding dot point records of an aggravated murder, murder, or rape conviction.
- Regarding an application for expungement under the provisions described in the preceding dot points 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 interest in having the records expunged are not outweighed by legitimate government needs to maintain the records.
- Enacts a mechanism for the expungement of 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.

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Specifies that, for either type of expungement, an application may request expungement of the record 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.

CONTENT AND OPERATION

Expungement of criminal conviction records

The bill expands the statutory language regarding the criminal offenses for which conviction records may be expunged under an existing mechanism, if the person who was convicted was a victim of human trafficking, to clarify that the mechanism generally applies regarding any offense, and it excludes certain specified offenses from the application of the mechanism.¹ The existing mechanism uses the following terms, unchanged by the bill: (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 the offense of trafficking in persons (R.C. 2905.32, not in the bill), regardless of whether anyone has been convicted of that offense or any other offense for victimizing the person.²

Under current law,³ a person convicted of soliciting, engaging in solicitation after a positive HIV test, loitering to engage in solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, or prostitution after a positive HIV test may 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 (current law, unchanged by the bill, contains a similar provision regarding delinquent child adjudications⁴). The bill expands the language regarding the convictions, the records of which a person convicted of one of the six specified offenses may have expunged, to clarify that the provision generally applies regarding any offense, the person's participation in which was a result of the person having been a victim of human trafficking. But the bill specifies that the expungement provision does

¹ R.C. 2953.38.

² R.C. 2953.38(A).

³ R.C. 2953.38.

⁴ R.C. 2151.358(E), not in the bill.

not apply with respect to a conviction of aggravated murder, murder, or rape.⁵ Related to this, the bill modifies the definition of "record of conviction" that applies to the provision so that it means "any" record related to a conviction of or plea of guilty to an offense – currently it means "the" record related to a conviction of or plea of guilty to an offense.⁶

The bill also specifies that an application for expungement under the mechanism 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 and all references in the mechanism to "the offense" or "that offense" mean each of those offenses that are the subject of the application.⁷

The bill retains the existing court procedure for determining whether to grant an application for expungement under the mechanism, with three changes:

(1) Currently, a provision specifies that, if a court that receives an application, it may deny the application without a hearing if it finds that the application does not state grounds for the granting of relief, but if it does not deny the application under this authority, it must conduct a hearing.⁸ 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 bill modifies this to specify 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.⁹

(2) Under the bill, if the court at a hearing described above in (1) determines that the applicant's participation in the subject offense was a result of the applicant having been a victim of human trafficking and if that 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, must determine whether the applicant's interest in having the

⁵ R.C. 2953.38(B).

⁶ R.C. 2953.38(A)(3).

⁷ R.C. 2953.38(B).

⁸ R.C. 2953.38(C) and (D).

⁹ R.C. 2953.38(E)(1)(b).

record of the conviction of that offense expunged are outweighed by any legitimate government needs to maintain that record:¹⁰

(a) The degree of duress under which the applicant acted in committing the subject offense, including, but not limited to, the history of the use of force or threatened use 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 that has expired since the 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;

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

(3) Currently, if the court at a hearing described above in (1) 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 the applicant having been a victim of human trafficking, the court must grant the application and order that the record of conviction be expunged. The bill modifies this provision, if the subject offense is a first or second degree felony. Under the bill, 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 at the hearing must make the finding required under existing law and, additionally, must find after consideration of the factors specified above in (2) that the applicant's interest in having the record of the conviction of that offense expunged are not outweighed by any legitimate government needs to maintain that record.¹¹

¹⁰ R.C. 2953.38(E)(2).

¹¹ R.C. 2953.38(F).

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

The bill enacts a mechanism for the expungement of 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. Under the mechanism, any person who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information may apply to the court for an order to expunge the person's official records in the case, if the charge or finding that is the subject of the application was the result of the applicant having been a victim of human trafficking. The application may be filed at any time after the not guilty finding or the dismissal of the charge is entered upon 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 and all references in the mechanism to "the offense" or "that offense" mean each of those offenses that are the subject of the application.¹²

The court may deny an application 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 on the application. The prosecutor may file an objection, specifying the reasons for believing a denial is justified, with the court prior to the hearing date. 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 that is the subject of the application 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 that was the subject of that dismissed charge has expired. And fourth, it must determine whether any criminal proceedings are pending against the applicant.¹³

If the court finds that the applicant demonstrated by a preponderance of the evidence that the dismissed charge or not guilty finding that is the subject of the application 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 specifies that the court cannot

¹² R.C. 2953.521(B).

¹³ R.C. 2953.521(C), (D), and (E).

grant the application and order that the official records be expunged unless it determines that the applicant's interests in having the official records pertaining to the subject dismissed charge or not guilty finding are not outweighed by any legitimate needs of the government to maintain those records.¹⁴

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 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 existing 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.¹⁵

For purposes of this mechanism, "expunge" has the same meaning as under the conviction record expungement provisions described above.¹⁶ The bill does not define "victim of human trafficking" for purposes of this mechanism.

Intervention in lieu of conviction

The bill allows a victim of the offense 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 currently apply to a victim of the offense of trafficking in persons.

Under current law, 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 intellectual disability, or was a victim of a violation of trafficking in persons and the mental illness, status as a person with intellectual disability, or fact that the offender was a victim of trafficking in persons was a factor leading to the offender's criminal behavior. To be eligible for ILC, a person must not have a prior conviction of an offense of violence, must not have a conviction of any other felony unless the prosecutor recommends ILC eligibility, the current offense must not be a first, second, or third degree felony, and the person must meet other criteria, depending on the circumstances of the offense or the grounds on which the person requests ILC. For example, a person who bases the request on status as a victim of trafficking in persons must be assessed by a psychiatrist or other specified professional for the purposes of

¹⁴ R.C. 2953.521(F).

¹⁵ R.C. 2953.521(G) and (H).

¹⁶ R.C. 2953.521(A).



determining the person's eligibility and recommending an intervention plan. Also, in any case, the court must find that ILC will not demean the seriousness of the offense and that intervention will substantially reduce the likelihood of future criminal activity. 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 sentence.¹⁷

HISTORY

ACTION	DATE
Introduced	01-31-17
Reported, S. Judiciary	---

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¹⁷ R.C. 2951.041.

