

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 56**

**Representatives Dever, Gavarone**

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**A BILL**

To amend sections 2951.041 and 2953.38 and to enact  
section 2953.521 of the Revised Code to permit a  
person who is found not guilty or is the  
defendant in a dismissed case to apply for an  
expungement of the person's records in the case  
if the complaint, indictment, or finding of not  
guilty resulted from the applicant having been a  
victim of human trafficking, to permit a person  
convicted of certain prostitution-related  
offenses to apply for the expungement of any  
record of conviction of an offense, with certain  
exceptions, if the person's participation in the  
offense was a result of having been a victim of  
human trafficking, and to authorize intervention  
in lieu of conviction for persons charged with  
committing an offense while a victim of  
compelling prostitution.

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

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

**Sec. 2951.041.** (A) (1) If an offender is charged with a criminal offense, including but not limited to a violation of section 2913.02, 2913.03, 2913.11, 2913.21, 2913.31, or 2919.21 of the Revised Code, and the court has reason to believe that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged or that, 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 a violation of section 2905.32 or 2907.21 of the Revised Code and that the mental illness, status as a person with an intellectual disability, or fact that the offender was a victim of a violation of section 2905.32 or 2907.21 of the Revised Code was a factor leading to the offender's criminal behavior, the court may accept, prior to the entry of a guilty plea, the offender's request for intervention in lieu of conviction. The request shall include a statement from the offender as to whether the offender is alleging that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged or is alleging that, 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 a violation of section 2905.32 or 2907.21 of the Revised Code and that the mental illness, status as a person with an intellectual disability, or fact that the offender was a victim of a violation of section 2905.32 or 2907.21 of the Revised Code was a factor leading to the criminal offense with which the offender is charged. The request also shall include a waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment against the offender, and arraignment, unless the hearing, indictment, or arraignment has already occurred. The court may reject an offender's request

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

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 guilty 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

through intervention in lieu of conviction under this section or 83  
any similar regimen, and is charged with a felony for which the 84  
court, upon conviction, would impose a community control 85  
sanction on the offender under division (B) (2) of section 86  
2929.13 of the Revised Code or with a misdemeanor. 87

(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  
section 4511.19 of the Revised Code or a municipal ordinance 93  
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 98  
section 2925.02, 2925.04, or 2925.06 of the Revised Code, is not 99  
charged with a violation of section 2925.03 of the Revised Code 100  
that is a felony of the first, second, third, or fourth degree, 101  
and is not charged with a violation of section 2925.11 of the 102  
Revised Code that is a felony of the first, second, or third 103  
degree. 104

(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

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 or 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 or 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 142

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 172

grant the offender's request, the criminal proceedings against 173  
the offender shall proceed as if the offender's request for 174  
intervention in lieu of conviction had not been made. 175

(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

(E) If the court grants an offender's request for 194  
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

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: 231

(1) "Community addiction services provider" has the same 232  
meaning as in section 5119.01 of the Revised Code. 233



(2) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.	234 235
(3) "Intervention in lieu of conviction" means any court-supervised activity that complies with this section.	236 237
(4) "Intellectual disability" has the same meaning as in section 5123.01 of the Revised Code.	238 239
(5) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.	240 241
(6) "Mental illness" and "psychiatrist" have the same meanings as in section 5122.01 of the Revised Code.	242 243
(7) "Psychologist" has the same meaning as in section 4732.01 of the Revised Code.	244 245
<b>Sec. 2953.38.</b> (A) As used in this section:	246
(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.	247 248 249
(2) "Prosecutor" has the same meaning as in section 2953.31 of the Revised Code.	250 251
(3) "Record of conviction" means <del>the</del> <u>any</u> record related to a conviction of or plea of guilty to an offense.	252 253
(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 victimizing the person.	254 255 256 257 258
(B) Any person who is or was convicted of a violation of section 2907.24, 2907.241, or 2907.25 of the Revised Code may	259 260

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

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; 318

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

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

(H) Upon the filing of an application under this section,  
the applicant, unless indigent, shall pay a fee of fifty  
dollars. The court shall pay thirty dollars of the fee into the  
state treasury and shall pay twenty dollars of the fee into the  
county general revenue fund.

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

(B) 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 complaint, indictment, information, or finding of not guilty  
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 finding of not  
guilty or the dismissal of the complaint, indictment, or  
information is entered upon the minutes of the court or the

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  
prosecutor in the objection; 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  
indictment, or information has expired; 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 expunged 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

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