



OHIO LEGISLATIVE SERVICE COMMISSION

Robert Meeker

Fiscal Note & Local Impact Statement

Bill: S.B. 4 of the 132nd G.A.

Status: As Passed by the House

Sponsor: Sens. Kunze and Oelslager

Local Impact Statement Procedure Required: No

Subject: Human trafficking victim records expungement and sealing

State & Local Fiscal Highlights

- An expected small increase in the number of persons eligible to apply for records expungements and sealings each year may generate, at most, a minimal amount of related application fee revenue for crediting to the state's General Revenue Fund (GRF).
- The records sealing and expungement provisions will have a minimal annual fiscal effect on local criminal and juvenile justice systems, as there will be some gain in fee revenues (record sealing and expungement applications; and consumer reporting agency notification fees) and a minimal increase in time and effort for courts to seal or expunge additional delinquency and criminal records.
- There may be a relatively small increase in the number of persons granted intervention in lieu of conviction, the cost of which for any given county or municipality is likely to be no more than minimal annually.
- The fiscal effect of the bill's abeyance of court proceedings provision on county juvenile justice systems is uncertain.

Detailed Fiscal Analysis

The bill (1) allows for expungement of any conviction records, other than a conviction record that cannot be sealed under current law,¹ if a person is convicted of certain sex offenses resulting from being a human trafficking victim, (2) provides for the expungement of any human trafficking-related offense that did not result in conviction and establishes a procedure to approve or deny expungement, (3) provides a process for record sealing in certain cases when a person is convicted of certain sex offenses resulting from being a human trafficking victim, (4) authorizes intervention in lieu of conviction for certain offenses committed while a victim of compelling prostitution, and (5) allows a juvenile court to extend the abeyance period indefinitely in certain cases.

¹ See R.C. 2953.36 for a complete list of exceptions.

According to data collected and then reported in the Attorney General's Human Trafficking Commission's annual reports indicate that the number of potential victims of human trafficking identified by law enforcement in recent years are as follows: 208 (2017), 151 (2016), 203 (2015), 181 (2014), and 23 (2013).² This data suggests that, relative to the existing size of the state and local criminal and juvenile justice systems, changing their respective operations strictly related to victims of human trafficking will generate minimal annual fiscal effects.

Expungement of delinquency and criminal records

For an offender convicted of six specified offenses, including soliciting and prostitution, the bill expands the list of criminal offenses the records of which may be expunged to include the offender being a victim of human trafficking. In addition, the bill authorizes 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 bill, a relatively small number of additional persons may be eligible to apply for expungement. Expungement applicants, unless indigent, are required to pay a \$50 fee. The \$50 application fee is divided between the state GRF (\$30) and the county general revenue fund (\$20).

Under continuing law, the court may charge an additional fee for the notification of consumer reporting agencies of the expungement unless the applicant opts out. The amount of such fee and its distribution between the state and local agencies is to be set by the Attorney General under the requirements of H.B. 49 of the 132nd General Assembly.

The annual costs for local criminal and juvenile justice systems to handle a potential increase in expungement requests will be minimal at most, with the application fee likely to offset all, or some portion, of those costs.

The bill also establishes a procedure to approve or deny an application to expunge the aforementioned records, including notice to the prosecutor, a hearing, and a determination by the court. Given the relatively small number of new records eligible for expungement under the bill, any additional costs for local sentencing courts will be minimal at most annually.

Additionally, the bill permits any person who is found not guilty of an offense by a jury or court or who is the defendant in a dismissed complaint, indictment, or other action as a result of being a victim of human trafficking to apply to the court for an order to expunge the person's official record. The annual costs for local criminal and juvenile justice systems to handle a potential increase in expungement requests will be minimal at most.

² It is important to note that 2013 was the first year in which local law enforcement agencies were required to collect certain information related to human trafficking investigations and forward it to the state's Bureau of Criminal Investigation.

Record sealing

The bill permits persons convicted of solicitation, loitering to engage in solicitation, or prostitution as a victim of human trafficking to apply to the sentencing court for the sealing of any record of conviction, other than those specifically excluded by the bill, if participation in the offense is a result of the person being a victim of human trafficking.³ Applicants for record sealing are also subject to the same application and consumer reporting agency notification fees noted in record expungements above.

Under the bill, a relatively small number of additional persons may be eligible to apply for record sealing. The annual costs for local criminal and juvenile justice systems to handle a potential increase in sealing requests will be minimal at most.

The bill also establishes a procedure to approve or deny an application to seal the aforementioned records, including notice to the prosecutor, a hearing, and determination by the court. Given the relatively small number of new records eligible for sealing under the bill, any additional costs for local sentencing courts will be minimal at most annually.

Intervention in lieu of conviction

The bill allows a victim of compelling prostitution to request intervention in lieu of conviction (ILC) when charged with certain offenses⁴ in the same manner as current law provides when certain factors may have led to the offense: alcohol or drug usage, mental illness, intellectual disability, or the offender was a victim of human trafficking. LSC conversations with subject matter experts suggest that victims of compelling prostitution may already commonly be granted ILC at the judge's discretion, indicating the bill is widely codifying current practice in this regard. This suggests that any cost for a given municipality or county will be minimal annually, as the likely number of additional persons granted ILC would be relatively small.

Juvenile court complaint abeyance

Under continuing law, for child victims of human trafficking, a juvenile court may hold court proceedings in abeyance until the court is satisfied that the child has complied with the conditions of the abeyance and has completed the court-ordered diversion actions. Under current law, the abeyance period is set at 90 days with up to two 90-day extensions permitted. Under the bill, the abeyance period may be extended until the court is satisfied that the child has complied with the conditions of abeyance

³ Excluded offenses include aggravated murder; murder; voluntary manslaughter; aggravated vehicular homicide; vehicular homicide; vehicular manslaughter; rape; aggravated arson; terrorism; criminal use or possession of a chemical; biological, radiological, or nuclear weapon or explosive device; permitting child abuse if the offense results in the death of the child; and obstructing justice under certain conditions.

⁴ These offenses include: theft, unauthorized use of a motor vehicle, passing bad checks, misuse of credit cards, forgery, and/or nonsupport or contributing to nonsupport of dependents.

and has completed the diversion actions. This may extend the length of certain juvenile court cases, and may increase the number of children successfully completing diversion programming. It is unclear what fiscal effect, if any, this change will have on the juvenile justice system.