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134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. Fedor and Kunze

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### SUMMARY

- Expands the law that allows a victim of any of six specified sex offenses to obtain, in specified circumstances, expungement of conviction records of offenses that the person participated in as a result of being a victim of human trafficking so that it instead allows any victim of human trafficking to obtain the expungement of such conviction records.
- Names its provisions the Expanding Human Trafficking Justice Act.

### DETAILED ANALYSIS

The bill expands the applicability of a law under which a victim of human trafficking, in specified circumstances, may obtain expungement of conviction records of offenses that the person participated in as a result of the human trafficking victimization.<sup>1</sup> The bill names its provisions the Expanding Human Trafficking Justice Act.<sup>2</sup>

#### Authorization to apply for expungement

Under the bill, any person who is or was a victim of “human trafficking” may apply to the sentencing court for the “expungement” of the “record of conviction” of any offense (see below for the meaning of the terms in quotation marks), other than a record of conviction of an offense of “aggravated murder,” “murder,” or “rape,” the person’s participation in which was a result of the person having been a victim of human trafficking. Currently, the provision is not as broad in its application, in that it authorizes only a person who is or was convicted of the offense of “soliciting,” “solicitation after a positive HIV test,” “loitering to engage in solicitation,” “loitering to engage in solicitation after a positive HIV test,” “prostitution,” or

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

<sup>2</sup> Section 3.

“engaging in prostitution after a positive HIV test” to apply for expungement. Under the current provision, a person who is or was convicted of any of those prostitution-related offenses may apply for the expungement of the record of conviction of any offense, other than any of the three excluded offenses, the person’s participation in which was a result of the person having been a victim of human trafficking.<sup>3</sup>

As used in the expungement provisions, unchanged by the bill:<sup>4</sup>

“**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.

“**Record of conviction**” means any record related to a conviction of or plea of guilty to an offense.

“**Victim of human trafficking**” means a person who is or was a victim of the offense of “trafficking in persons,” regardless of whether anyone has been convicted of a violation of that section or of any other section for victimizing the person. The prohibition under the offense of “trafficking in persons”<sup>5</sup> prohibits a person from knowingly recruiting, luring, enticing, isolating, harboring, transporting, providing, obtaining, or maintaining another person, or knowingly attempting to do any of those things with respect to another person, if (1) the offender knows that the other person will be subjected to involuntary servitude or be compelled to engage in sexual activity for hire, engage in a performance that is obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented, or (2) the other person is under age 18 or is a person with a developmental disability whom the offender knows or has reasonable cause to believe is a person with a developmental disability, and either the offender knows that the other person will be subjected to involuntary servitude or the offender’s knowing recruitment, luring, enticement, isolation, harboring, transportation, provision, obtaining, or maintenance of the other person, or knowing attempt to do any of those things with respect to the other person, is for the other person to engage in sexual activity for hire with one or more third parties, is to engage in a performance for hire that is obscene, sexually oriented, or nudity oriented, or is to be a model or participant for hire in the production of material that is obscene, sexually oriented, or nudity oriented.

## Expungement mechanism

With one exception described below in “**Outcome of hearing, grant of application, and notification of grant,**” the bill does not change the existing mechanism that governs the making of an application for expungement filed by a person who is authorized to apply for expungement, the consideration of an application, the grant or denial of an application, or the effect of a grant. A description of the mechanism follows.

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

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

<sup>5</sup> R.C. 2905.32, not in the bill.

## Application

Under the mechanism, a person authorized to apply for expungement under the provisions described above may file the application at any time. The application 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 provisions described below to “the offense” or “that offense” mean each of those offenses that are the subject of the application. Upon the filing of an application, the applicant, unless indigent, must pay a \$50 fee (the court must pay \$30 of the fee into the state treasury and pay \$20 of the fee into the county general revenue fund).<sup>6</sup>

An application must do all of the following:<sup>7</sup>

1. Identify the applicant, the offense for which the expungement is sought, the date of the conviction of that offense, and the court in which the conviction occurred;
2. Describe the evidence and provide copies of any documentation showing that the person is entitled to relief under this section;
3. Include a request for expungement of the record of conviction of that offense under this section.

## Initial procedures upon court’s receipt of application

Under the procedures that apply upon a court’s receipt of an application made by a person authorized to apply for expungement:<sup>8</sup>

1. The court may deny the application if it finds that the application fails to assert grounds on which relief may be granted;
2. If the court does not deny an application under the provision described above in (1):
  - a. The court must set a date for a hearing and notify the prosecutor for the case from which the record of conviction resulted of the hearing on the application (the “prosecutor” is the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer, with authority to prosecute a criminal case in the court in which the case is filed<sup>9</sup>);
  - b. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing, which objection must specify the reasons for believing a denial of the application is justified; and

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

<sup>7</sup> R.C. 2953.38(B).

<sup>8</sup> R.C. 2953.38(C) and (D).

<sup>9</sup> R.C. 2953.38(A).

- c. The court may direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant.

### **Hearing procedures**

At a hearing on an application made by a person authorized to apply for expungement, the court must consider the reasons specified by the prosecutor in the prosecutor's objection to granting the application, if the prosecutor has filed an objection, and must determine whether the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense that is the subject of the application was a result of the applicant having been a victim of human trafficking.<sup>10</sup>

If the court at the hearing determines that the applicant's participation in the offense that is the subject of the application was a result of the applicant having been a victim of human trafficking and if that subject 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 the factors, must determine whether the applicant's interests in having the record of the conviction of that offense expunged are outweighed by any legitimate needs of the government to maintain that record of conviction:<sup>11</sup>

1. The degree of duress under which the applicant acted in committing the subject offense, including 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;
2. The seriousness of the subject offense;
3. The relative degree of physical harm done to any person in the commission of the subject offense;
4. The length of time that has expired since the commission of the subject offense;
5. 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;
6. Whether the applicant at the time of the hearing is subject to supervision as a result of the subject offense.

### **Outcome of hearing, grant of application, and notification of grant**

Under the mechanism, unchanged by the bill except as specifically indicated in (2):<sup>12</sup>

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<sup>10</sup> R.C. 2953.38(E)(1).

<sup>11</sup> R.C. 2953.38(E)(2).

<sup>12</sup> R.C. 2953.38(F) and (G)(1).

1. If, after a hearing held as described above, the court finds that the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense that is the subject of the application was the result of the applicant having been a victim of human trafficking, and, if the offense that is the subject of the application is a first or second degree felony, after consideration of the factors listed above, it finds that the applicant's interests in having the record of the conviction of that offense expunged are not outweighed by any legitimate needs of the government to maintain that record of conviction, the court must grant the application and order that the record of conviction be expunged.
2. The court must send notice of an order of expungement issued as described above in (1) to each public office or agency that the court has reason to believe may have an official record pertaining to the case if the court, after complying with the hearing procedures, determines that the applicant "is or was a victim of human trafficking" (changed from "has been convicted of "soliciting," "solicitation after a positive HIV test," "loitering to engage in solicitation," "loitering to engage in solicitation after a positive HIV test," "prostitution," or "engaging in prostitution after a positive HIV test"") and that the applicant's interests 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.

### **Effect of expungement order**

If an expungement order is issued under the mechanism:<sup>13</sup>

1. The proceedings in the case that is the subject of the order must be considered not to have occurred and the conviction of the person who is the subject of the proceedings must be expunged;
2. The record of the conviction may not be used for any purpose, including, but not limited to, a criminal records check by the Bureau of Criminal Identification and Investigation under R.C. 109.572; and
3. The applicant may, and the court must, reply that no record exists with respect to the applicant upon any inquiry into the matter.

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<sup>13</sup> R.C. 2953.38(G)(2).

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## HISTORY

Action	Date
Introduced	05-19-21

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