



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 172\*

131st General Assembly  
(As Reported by S. Criminal Justice)

**Reps.** Barnes, Amstutz, Anielski, Antonio, Boccieri, Brown, Buchy, Dever, Fedor, Green, Hall, Hambley, Lepore-Hagan, Manning, Ramos, Reineke, Rezabek, Roegner, Rogers, Sheehy, Sprague, Sweeney, Terhar, Young

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## BILL SUMMARY

- Prohibits a person engaged in publishing or disseminating criminal record information from soliciting or accepting payment in exchange for removing, correcting, modifying, or refraining from publishing or disseminating the criminal record information.
- Makes a violation of the prohibition a first degree misdemeanor.
- Allows a victim who sues for a violation of the prohibition to be awarded specified damages, attorney's fees, costs, and other remedies.
- For an offender convicted of any of six specified offenses, including soliciting and prostitution, expands the list of criminal offenses the records of which may be expunged to include any offense other than aggravated murder, murder, or rape (instead of only the six listed offenses), the person's participation in which resulted from the offender being a victim of human trafficking.
- 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.
- 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.

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

- Authorizes intervention in lieu of conviction for a person whose criminal activity resulted from the person's status as a victim of compelling prostitution.
- Specifies that the criminal penalty related to casino operators and employees participating in casino gaming other than as part of operation or employment applies at their casino facility or an affiliated casino facility.
- Includes a severability clause.

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## **CONTENT AND OPERATION**

### **Misuse of criminal record information**

#### **Creation of criminal offense**

The bill creates the offense of "misuse of criminal record information." The bill prohibits a person engaged in publishing or otherwise disseminating criminal record information in print or electronic form from negligently soliciting or accepting from a subject individual the payment of a fee or other consideration to remove, correct, modify, or refrain from publishing or disseminating criminal record information.<sup>1</sup> A "subject individual" is an individual who was arrested and had the individual's photograph taken by a "law enforcement agency" (a defined term) during the processing of the arrest. "Criminal record information" means any of the following:

- A photograph of the subject individual taken in Ohio by an arresting law enforcement agency (i.e., a booking photograph);
- The subject individual's name;
- The subject individual's address;
- The charges filed against the subject individual;
- A description of the subject individual who is asserted or implied to have engaged in illegal conduct.<sup>2</sup>

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<sup>1</sup> R.C. 2927.21(B) and (C).

<sup>2</sup> R.C. 2927.21(A), by reference to R.C. 109.573, not in the bill.



## **Criminal penalty for violation**

The bill makes misuse of criminal record information a first degree misdemeanor. Each payment solicited or accepted in violation of the prohibition is a separate violation.<sup>3</sup>

## **Civil action for damages**

Existing law retained by the bill allows an individual injured by a criminal act to sue for damages.<sup>4</sup> Under the bill, in such a lawsuit for a violation of the bill's criminal prohibition described above, the individual may be awarded the greater of \$10,000 or actual and punitive damages. The individual also may be awarded reasonable attorney's fees, court costs, and any other remedies provided by law. Under the bill, humiliation or embarrassment is adequate to show that the individual has incurred damages. The individual does not need to prove a physical manifestation of humiliation or embarrassment to show damages.<sup>5</sup>

## **Expungement of criminal conviction records**

The bill expands the list of criminal offenses for which the conviction records may be expunged if the person who was convicted was a victim of human trafficking.

Under current law, 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 conviction resulted from the person's being a victim of human trafficking (current law, unchanged by the bill, contains a similar provision regarding delinquent child adjudications<sup>6</sup>). The bill expands the list of convictions, the records of which a person convicted of one of the six specified offenses may have expunged, to include any offense, other than aggravated murder, murder, or rape, the person's participation in which was a result of the person having been a victim of human trafficking.<sup>7</sup> Related to this, the bill modifies the definition of "record of conviction" that applies to the provision so that it means

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<sup>3</sup> R.C. 2927.21(C) and (D).

<sup>4</sup> R.C. 2307.60, not in the bill.

<sup>5</sup> R.C. 2927.21(E), by reference to R.C. 2307.60, not in the bill.

<sup>6</sup> R.C. 2151.358(E), not in the bill.

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



"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.<sup>8</sup>

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.<sup>9</sup>

The bill retains the existing court procedure for determining whether to grant an application for expungement under the mechanism, with one change. Currently, a provision specifies that, if a court that receives an application 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 was a result of the applicant having been a victim of human trafficking.<sup>10</sup>

Under current law, 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, regardless of whether anyone has been convicted of that offense or any other offense for victimizing the person.<sup>11</sup>

### **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

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<sup>8</sup> R.C. 2953.38(A)(3).

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

<sup>10</sup> R.C. 2953.38(E)(2).

<sup>11</sup> R.C. 2953.38(A).

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.<sup>12</sup>

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 complaint, indictment, or information, 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.<sup>13</sup>

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 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.<sup>14</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

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<sup>12</sup> R.C. 2953.521(B).

<sup>13</sup> R.C. 2953.521(C), (D), and (E).

<sup>14</sup> R.C. 2953.521(F).

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 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>15</sup>

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

### **Intervention in lieu of conviction**

The bill allows a victim of the offense of compelling prostitution to request intervention in lieu of conviction (ILC) under the same conditions 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 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

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<sup>15</sup> R.C. 2953.521(G) and (H).

<sup>16</sup> R.C. 2953.521(A).



proceeding is dismissed; if not, the court enters a finding of guilty and imposes sentence.<sup>17</sup>

## **Revision of prohibition against casino operators and employees participating in casino gaming**

The Casino Control Law<sup>18</sup> provides that a person who purposely or knowingly engages in any of five specified types of prohibited conduct commits a first degree misdemeanor on the first offense and a fifth degree felony for a subsequent offense. One of the specified types of prohibited conduct is being a casino operator or employee and participating in casino gaming other than as part of operation or employment. The bill modifies this specified type of prohibited conduct by stating that it applies with respect to casino gaming at the casino facility at which the casino operator or employee has an interest or is employed or at an affiliated casino facility in Ohio. Thus, under the bill, the specified type of prohibited conduct is being a casino operator or employee and purposely or knowingly participating in casino gaming at the casino facility at which the casino operator or employee has an interest or is employed or at an affiliated casino facility in Ohio other than as part of operation or employment.<sup>19</sup>

As used in the bill's provision, "casino facility" means the Cleveland, Franklin County, Cincinnati, and Toledo casino facilities defined in Section 6(C)(9) of Article XV, Ohio Constitution. "Casino gaming" means any type of slot machine or table game wagering, using money, casino credit, or any representative of value, authorized in Indiana, Michigan, Pennsylvania, and West Virginia as of January 1, 2009, and includes subsequently authorized slot machines and table gaming but does not include specified bingo or horse racing authorized under Ohio law.<sup>20</sup>

The other four specified types of conduct prohibited under the provision, unchanged by the bill, are: making a false statement on an application submitted under the Casino Control Law; permitting a person under 21 to make a wager at a casino facility; aiding, inducing, or causing a person under 21 who is not an employee of the casino gaming operation to enter or attempt to enter a casino facility; and entering or attempting to enter a casino facility while under 21, unless the person enters a permitted designated area.<sup>21</sup>

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<sup>17</sup> R.C. 2951.041.

<sup>18</sup> R.C. Chapter 3772., not in the bill except for R.C. 3772.99.

<sup>19</sup> R.C. 3772.99(D)(5).

<sup>20</sup> R.C. 3772.01, not in the bill.

<sup>21</sup> R.C. 3772.99(D)(1) to (4).



Separate provisions of the Casino Control Law, unchanged by the bill, prohibit many other types of specified conduct and provide felony penalties for violations of the prohibitions.<sup>22</sup> And under that Law, unchanged by the bill:<sup>23</sup> (1) if a licensed casino operator, management company, holding company, gaming-related vendor, or key employee violates any prohibition under that Law, including the prohibition amended by the bill, or engages in a fraudulent act, the Casino Control Commission may suspend or revoke the license and may suspend, revoke, or restrict the casino gaming operations of a casino operator, require the removal of a management company, key employee, or discontinuance of services from a gaming-related vendor, or impose both of those sanctions, and (2) a person who is convicted of a felony violation of any prohibition under that Law, including the prohibition amended by the bill, may be barred for life from entering a casino facility by the Commission.

### Severability clause

The bill specifies that if any provisions of a section it amends or enacts, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.<sup>24</sup>

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## HISTORY

ACTION	DATE
Introduced	04-28-15
Reported, H. Commerce & Labor	04-20-16
Passed House (96-0)	05-18-16
Reported, S. Criminal Justice	---

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<sup>22</sup> R.C. 3772.99(E), (G), and (H).

<sup>23</sup> R.C. 3772.99(B) and (I).

<sup>24</sup> Section 3 of the bill.

