

As Introduced

135th General Assembly

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H. B. No. 385

Representatives Richardson, Williams

Cosponsors: Representatives Barhorst, Brennan, Carruthers, Dobos, Gross, Hillyer, Isaacsohn, King, Klopfenstein, LaRe, Miller, K., Miranda, Pavliga, Robb Blasdel, Santucci, Schmidt, Seitz, White

A BILL

To amend section 2953.36 of the Revised Code to
allow a victim of human trafficking to expunge
certain criminal records.

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

Section 1. That section 2953.36 of the Revised Code be
amended to read as follows:

Sec. 2953.36. ~~(A)~~ (A) (1) Any person who is or was convicted
of a violation of section 2907.24, 2907.241, or 2907.25 of the
Revised Code may apply to the sentencing court for the
expungement of the record of conviction of any offense, other
than a record of conviction of a violation of section 2903.01,
2903.02, or 2907.02 of the Revised Code, the person's
participation in which was a result of the person having been a
victim of human trafficking. ~~The~~

(2) Any person who is or was convicted of a misdemeanor or
a felony of the fourth or fifth degree may apply to the
sentencing court for the expungement of the record of conviction

of that offense, the person's participation in which was a 17
result of the person having been a victim of human trafficking. 18

(3) The person may file the application at any time. The 19
application may request an order to expunge the record of 20
conviction for more than one offense, but if it does, the court 21
shall consider the request for each offense separately as if a 22
separate application had been made for each offense and all 23
references in divisions (A) to (G) of this section to "the 24
offense" or "that offense" mean each of those offenses that are 25
the subject of the application. The application shall do all of 26
the following: 27

~~(1)~~(a) Identify the applicant, the offense for which the 28
expungement is sought, the date of the conviction of that 29
offense, and the court in which the conviction occurred; 30

~~(2)~~(b) Describe the evidence and provide copies of any 31
documentation showing that the person is entitled to relief 32
under this section; 33

~~(3)~~(c) Include a request for expungement of the record of 34
conviction of that offense under this section. 35

(B) The court may deny an application made under division 36
(A) of this section if it finds that the application fails to 37
assert grounds on which relief may be granted. 38

(C) If the court does not deny an application under 39
division (B) of this section, it shall set a date for a hearing 40
and shall notify the prosecutor for the case from which the 41
record of conviction resulted of the hearing on the application. 42
The prosecutor may object to the granting of the application by 43
filing an objection with the court prior to the date set for the 44
hearing. The prosecutor shall specify in the objection the 45

reasons for believing a denial of the application is justified. 46
The court may direct its regular probation officer, a state 47
probation officer, or the department of probation of the county 48
in which the applicant resides to make inquiries and written 49
reports as the court requires concerning the applicant. 50

(D) (1) At the hearing held under division (C) of this 51
section, the court shall do both of the following: 52

(a) If the prosecutor has filed an objection, consider the 53
reasons against granting the application specified by the 54
prosecutor in the objection; 55

(b) Determine whether the applicant, for an application 56
submitted under division (A) (1) of this section, has 57
demonstrated by a preponderance of the evidence, or for an 58
application submitted under division (A) (2) of this section, has 59
demonstrated by clear and convincing evidence, that the 60
applicant's participation in the offense that is the subject of 61
the application was a result of the applicant having been a 62
victim of human trafficking. 63

(2) If the court at the hearing held under division (C) of 64
this section determines that the applicant's participation in 65
the offense that is the subject of the application was a result 66
of the applicant having been a victim of human trafficking and 67
if that subject offense is a felony of the first or second 68
degree, the court at the hearing also shall consider all of the 69
following factors and, upon consideration of the factors, shall 70
determine whether the interests of the applicant in having the 71
record of the conviction of that offense expunged are outweighed 72
by any legitimate needs of the government to maintain that 73
record of conviction: 74

(a) The degree of duress under which the applicant acted	75
in committing the subject offense, including, but not limited	76
to, the history of the use of force or threatened use of force	77
against the applicant or another person, whether the applicant's	78
judgment or control was impaired by the administration to the	79
applicant of any intoxicant, drug, or controlled substance, and	80
the threat of withholding from the applicant food, water, or any	81
drug;	82
(b) The seriousness of the subject offense;	83
(c) The relative degree of physical harm done to any	84
person in the commission of the subject offense;	85
(d) The length of time that has expired since the	86
commission of the subject offense;	87
(e) Whether the prosecutor represents to the court that	88
criminal proceedings are likely to still be initiated against	89
the applicant for a felony offense for which the period of	90
limitations has not expired;	91
(f) Whether the applicant at the time of the hearing is	92
subject to supervision as a result of the subject offense.	93
(E) If after a hearing held under division (C) of this	94
section the court finds that the applicant has demonstrated by a	95
preponderance of the evidence <u>for an application made under</u>	96
<u>division (A)(1) of this section, or by clear and convincing</u>	97
<u>evidence for an application made under division (A)(2) of this</u>	98
<u>section,</u> that the applicant's participation in the offense that	99
is the subject of the application was the result of the	100
applicant having been a victim of human trafficking, and, if the	101
offense that is the subject of the application is a felony of	102
the first or second degree, after consideration of the factors	103

required under division (D) (2) of this section, it finds that 104
the interests of the applicant in having the record of the 105
conviction of that offense expunged are not outweighed by any 106
legitimate needs of the government to maintain that record of 107
conviction, the court shall grant the application and order that 108
the record of conviction be expunged. 109

(F) (1) The court shall send notice of the order of 110
expungement issued under division (E) of this section to each 111
public office or agency that the court has reason to believe may 112
have an official record pertaining to the case ~~if the court,~~ 113
~~after complying with division (D) of this section, determines~~ 114
~~both of the following:~~ 115

~~(a) That the applicant has been convicted of a violation~~ 116
~~of section 2907.24, 2907.241, or 2907.25 of the Revised Code,~~ 117

~~(b) That the interests of the applicant in having the~~ 118
~~records pertaining to the applicant's conviction expunged are~~ 119
~~not outweighed by any legitimate needs of the government to~~ 120
~~maintain those records.~~ 121

(2) The proceedings in the case that is the subject of an 122
order of expungement issued under division (E) of this section 123
shall be considered not to have occurred and the conviction of 124
the person who is the subject of the proceedings shall be 125
expunged. The record of the conviction shall not be used for any 126
purpose, including, but not limited to, a criminal records check 127
under section 109.572 of the Revised Code. The applicant may, 128
and the court shall, reply that no record exists with respect to 129
the applicant upon any inquiry into the matter. 130

(G) Upon the filing of an application under this section, 131
the applicant, unless indigent, shall pay a fee of fifty 132

dollars. The court shall pay thirty dollars of the fee into the 133
state treasury and shall pay twenty dollars of the fee into the 134
county general revenue fund. 135

Section 2. That existing section 2953.36 of the Revised 136
Code is hereby repealed. 137