

REQUIREMENTS FOR SAFE HARBOR EXPUNGEMENT

THE APPLICANT IS A VICTIM OF HUMAN TRAFFICKING

A victim of human trafficking is defined as a person who is or was a victim of Trafficking in Persons under R.C. 2905.32, regardless of whether anyone has been convicted for victimizing the person.

Trafficking in Persons occurs when someone knowingly recruits, lures, entices, isolates, harbors, transports, provides, obtains, or maintains another person to be subjected to involuntary servitude or to be compelled to engage in sexual activity for hire. (R.C. 2905.32(A)).

A victim is “compelled” through force, fear, duress, intimidation, or fraud; this element does not require openly-displayed or physically-exerted action. (R.C. 2905.32(B)).

Disclaimer: This guide is a general source of information about expungement. It is not a substitute for individualized legal advice. For answers to specific questions, it is best to consult an attorney.

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THE CRIMINAL RECORD IS THE RESULT OF TRAFFICKING

An applicant must demonstrate 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. (R.C. 2953.38(E)(1)(b)).

A person can apply to expunge ANY record EXCEPT a conviction for aggravated murder, murder, or rape. (R.C. 2953.38(B)).

FOR CONVICTIONS	FOR NONCONVICTIONS
To have convictions expunged, the applicant must have (or have had) a conviction of at least one of the following offenses: soliciting, loitering to engage in solicitation, or prostitution. These convictions do not have to be from the same court or happen at the same time as the convictions that are being applied for. (R.C. 2953.38(B)).	To have non-convictions expunged, the court must additionally determine: * (1) If the application pertains to a dismissed complaint/indictment/information — (2) whether the dismissal was with or without prejudice and, (3) if the dismissal was without prejudice, whether the period of limitations applicable to the offense that was the subject of that complaint/indictment/information has expired; and * Whether any criminal proceedings are pending against the applicant. (R.C. 2953.521(E)(3)).

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THE APPLICANT IS ABLE TO PASS THE INTEREST TEST

The court will determine whether the interests of the applicant in having the record expunged are not outweighed by any legitimate needs of the government to maintain the record. (R.C. 2953.38(G)(1)(b)).

BACKGROUND

Through Ohio Revised Code 2953.38 and 2953.521, the Ohio Legislature created a “Safe Harbor Expungement” process to help victims of human trafficking. The law recognizes that human trafficking victims are compelled to participate in illegal acts and, in response to this, a process has been created to destroy those criminal records.

HOW TO APPLY

The application must be submitted to the sentencing court for each offense.

The application must:

- 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.
- Describe the evidence and provide copies of any documentation showing that the person is entitled to relief under this section.
- Include a request for expungement of the record of conviction of that offense. (R.C. 2953.38(B)(1)-(3)).

What else can be included in the application?

- A memorandum in support of the expungement.
- A sworn affidavit by the applicant, describing the human trafficking, the context of the criminal records, the need for expungement, and present-day healthy, productive, law-abiding behavior.
- Other evidence that the criminal record resulted from human trafficking, if available (e.g., medical records, photos of scars/tattoos, statements from witnesses, statements from social services agencies, therapy records, etc.). If no such evidence is available, the testimony of the applicant can be sufficient evidence.
- Other evidence that the applicant's need for expungement outweighs any government interest in keeping the criminal records (e.g., letters of support, certificates of accomplishment/competition, transcripts or degrees, employment offers/rejections, documentation of community service, etc.)

There is a \$50 filing fee that can be waived through a poverty affidavit (or "affidavit of indigency").

WHAT TO EXPECT AT THE HEARING

The court may deny the application if it finds that the application fails to assert grounds on which relief may be granted. (R.C. 2953.38 (C)). If the court does not deny the application, it must set a hearing date. (R.C. 2953.38 (D)). Prosecutors can file an objection prior to the hearing date and specify the reasons for believing a denial is justified. The court may also direct a probation officer to make inquiries and written reports as the court requires concerning the applicant.

At the hearing, the court must consider the reasons provided in the prosecutor's objection, if any, and all of the Requirements for Safe Harbor Expungement as detailed on the other page of this guide.

PLEASE NOTE: *Additional factors are considered when the subject offense is a first or second degree felony. (R.C. 2953.38 (E)(2)(a-f).*

For first or second degree felonies, the court must also consider:

- Degree of duress under which the applicant acted in committing the subject offense, including but not limited to: (1) History of use of force/threatened use of force against applicant/another person; (2) Whether applicant's judgement/control was impaired by the administration to the applicant of any intoxicant/drug/controlled substance; and (3) Any threat of withholding food/water/drug.
- Seriousness of the subject offense;
- Relative degree of physical harm done to any person in the commission of the subject offense;
- Length of time that has expired since the commission of the subject offense;
- 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; and
- Whether the applicant at the time of the hearing is subject to supervision as a result of the subject offense.

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