

Ohio's Safe Harbor Expungement & Trauma-Informed Lawyering

An Overview of Ohio Revised Code 2953.36 & 2953.521

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Ohio Justice & Policy Center's Mission

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OJPC's mission is to create fair, intelligent, redemptive criminal justice systems through zealous client-centered advocacy, innovative policy reform, and cross-sector community education.

Second Chances: expanding the freedom of people with criminal records to participate fully in their communities.

Decarceration: substantially reducing the number and racial disparity of incarcerated people.

Human Rights in Prison: protecting the rights and dignity of incarcerated people (e.g., medical care, safety, religious needs).



Verjine Adanalian

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Agenda

1. What is “safe harbor” expungement?
2. Trauma and its impact on memory.
3. Logistics of applying for safe harbor expungement.

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What is Safe Harbor Expungement?

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What is Safe Harbor Expungement?

Caution: The word “expungement” is often used interchangeably with “record sealing”—but these two are not the same.

Safe Harbor expungement **completely erases** a criminal record and is treated as if it never happened. See R.C. 2953.36

- Generally, not available for most adults.
- Available to victims of human trafficking with prostitution/soliciting/loitering conviction(s).

Record sealing **does NOT completely erase** a criminal record. See R.C. 2953.32

- Many state officials and agencies still have the “key” to that box.
- Record sealing eligibility is more open to the general population (with exceptions).

NOTE: In April 2023, a new expungement path was created under 2953.32 for adult convictions. This will add additional layers of confusion for jurisdictions unfamiliar with safe harbor expungement.

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Criminal Records & Background Checks

Who wants to know about a criminal record?

Employers
Landlords
Schools / Training Programs
Volunteer Programs
Family Services
Neighbors
...etc.

Criminal records create barriers to employment, housing, education, family relationships, civic participation, and much more.

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Safe Harbor Expungement Requirements

For expunging convictions, use R.C. 2953.36(B):

At any time, any person convicted of soliciting, loitering, or prostitution, may apply to the sentencing court to expunge the record of conviction of any offense other than aggravated murder, murder, or rape, when their participation in the underlying offense was the result of being a victim of human trafficking.¹

← These offenses are referred to as “predicate offenses”.

← Any offense can be applied for with these three exceptions.

← The offense must connect to the trafficking victimization.

1. R.C. 2953.36(B): 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 person may file the application at any time.

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“Victim of Human Trafficking”

A “victim of human trafficking” is a victim of “trafficking in persons” as defined by R.C. 2905.32(A):

Trafficking in Persons occurs when **someone knowingly recruits, lures, entices, isolates, harbors, transports, provides, obtains, or maintains another person** for the following reasons: (1) to be subjected to involuntary servitude [labor trafficking]; or (2) to be **compelled to engage in sexual activity for hire, to engage in obscene, sexually-oriented, or nudity-oriented performance** [sex trafficking].¹

← Here, we see the trafficker's actions identified.

← Here, we see the result of the trafficker's actions; the victim subjected to involuntary servitude or “compelled” to engage in sexual activity for hire.

1. R.C. 2905.32(A): No person shall knowingly recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person if either of the following applies: (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.

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Definition of “Compelled”

A victim is “compelled” through **force, fear, duress, intimidation, or fraud**; this element doesn’t require openly-displayed or physically-exerted action.¹

1. R.C. 2905.32(B): For a prosecution under division (A)(1) of this section, the element “compelled” does not require that the compulsion be openly displayed or physically exerted. The element “compelled” has been established if the state proves that the victim’s will was overcome by force, fear, duress, intimidation, or fraud.

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What does “force” look like?

Traffickers create barriers for their victims...

- Limited access to services
- Manipulation of personal relationships/love/care
- Shame & hopelessness
- **Drug and alcohol addiction**
- Unstable/unsafe housing
- Exploitation of mental health problems
- Threats of violence and retaliation
- **Lack of healthy support structure/relationships**
- **Normalized abuse**
- **Distrust of authority**

Many victims do not self-identify as victims. Some victims are unaware that what was done to them is a crime.

Many victims have been trafficked by romantic partners, including spouses, and by family members, including parents.

Victims often stay in their trafficking situations for reasons that are more complicated, especially when traffickers use psychological means such as tricking, manipulating or threatening victims.

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Why do victims have criminal records?

Besides prostitution-related activities, victims of human trafficking **are often compelled to participate in a variety of illegal activities**, resulting in multiple records of arrests and convictions.

Commonly-acquired records:

1. Drug/alcohol-related (e.g, trafficking, possession)
2. Theft-related (e.g., forgery, robbery, burglary)
3. Assault (sometimes domestic violence)
4. Criminal trespass
5. Endangering children

Remember that the trafficker uses the victim for financial benefit. Whether it be through prostitution, theft, or drug-trafficking—one way or another the trafficker will make their money.

Often, human trafficking is not the only illicit enterprise the trafficker is engaged in.

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What is Trauma?

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Trauma

Trauma is the lasting effect from experiences that alter an individual's schematic understanding of the way the world is organized.

Trauma occurs when a person is overwhelmed by something beyond their conscious control.

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Trauma

Trauma exposure occurs along a continuum of complexity.

- **From the less complex single onset incident (e.g., car accident) where all else is stable in a person's life, to the repeated, intrusive trauma with significant stigma or shame and pre-existing vulnerability.**

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Triggers

“Trigger”

- **Something that evokes a memory of past traumatizing events, including feelings and sensations associated with those experiences.**
- **A trigger can make someone feel as if they are reliving a traumatic experience and can elicit a “fight, flight or freeze” response.**

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Triggers

What causes a “trigger”?

- **External sense:** the way you are sitting or speaking, a particular color of clothing, the smell of a certain food, a sound, the time of year.
- **Internal sensations:** a rapid heartbeat, nausea, tightened muscles, closed eyes.

Certain topics, memories, and stories are often triggers.

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Triggers

How does it look?

- Uneasy, afraid, distracted, anxious, and agitated
- Unhappy, quiet, “depressed”, crying
- Bored, disinterested, numb, talking in a flat/unemotional way, having a blank stare and spacey look, appearing shut down or checked out
- Answers to questions may be slow, jumbled, and incomplete

NOTE: It looks different for different people at different times. They may not know that they’re reacting this way or why

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Triggers

How do I avoid triggering someone? (At intake, during research/interviews, in a court hearing, etc.)

- Offer options in the physical space. Seating, door open/closed
- Be open and thoughtful about note taking—ask permission, explain the reason, and don’t let it take you away from being present, face person.
- Offer breaks
- A place to doodle, fidget object, something to hold.
- Know when to stop
- Explain things in advance (even if it feels instinctually tedious)

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Triggers

What do I do if I trigger a person?

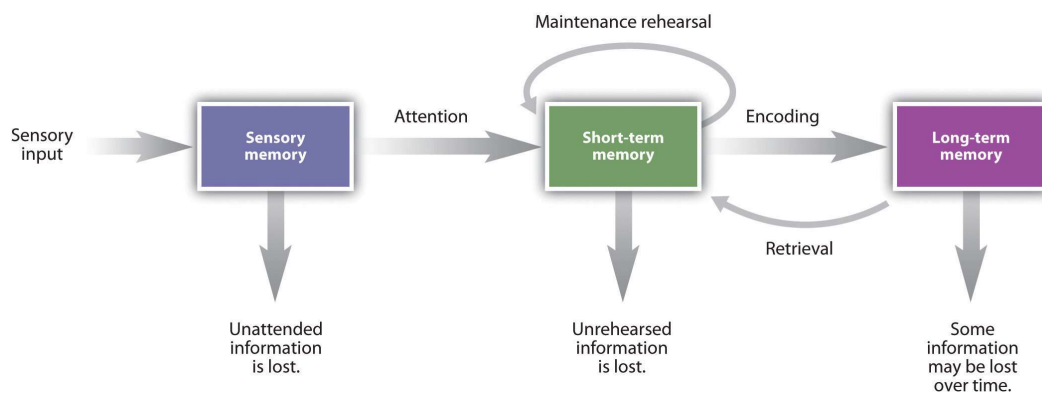
- Ask directly what would help.
- **Don't close off** or agitate your own body language and voice.
- **Change "modes"**: stand, invoke new senses, and bring their attention to it. Helps to get them grounded in the present.
- Tell them "you can take your time".
- **Acknowledge and validate their feelings**. Let them know you care about their emotional safety.

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Memory

How memory traditionally works:

Original event/experience → encoding → memory → retrieval



But, with trauma, this process is disrupted and changed.

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Memory

How do attorneys “reconstruct” clients’ memory?

- **Start with the events they do recall, engage with the feelings, build on that. Build a skeleton and then put meat on it.**
 - Ask questions like: “What can you tell me about that evening?” Smells? Sounds? “Do you remember seeing anything?”
- **Work from the sensory or instinctual parts of the brain.**
- **You are looking for “central details” as opposed to “peripheral details”.**
 - Central details are the details focused on by the victim—these are the details that were central to survival and coping. These details get coded and have very low vulnerability to change.
 - Peripheral details are not focused on by the victim. These details have a lower rate of getting encoded or consolidated, so they have a very high vulnerability to change.

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Memory

How do attorneys “reconstruct” clients’ memory?

- **Use “goal posts” and “mile markers”: Did that happen before you moved out? Let’s focus on the time you lived in Cincinnati.**
- **Ask clients to review their story in chronological order.**
- **Focus on simple scenarios: What would happen if X? Could you do Y? Who did Z?**
- **Use hypotheticals to see what generally happened in similar circumstances (helps with multi-event trauma especially).**
- **Trigger memories CAREFULLY: case docs, invoke senses, etc.**

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Impacts on You

Vicarious or secondary trauma

Experience of a professional developing and reporting personal symptoms of trauma as a result of responding to traumatized clients

“Compassion fatigue”

“Burn out”

Cumulative effect of multiple exposures to trauma(s).

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Impacts on You

Vicarious or secondary trauma

Symptoms: decreased energy; increased disconnection from loved ones; social withdrawal; increased or decreased sensitivity to violence, threat, or fear; cynicism; generalized sense of despair and hopelessness

Just as the effects of trauma vary by individual, vicarious trauma has myriad manifestations.

Some studies show that as many as 20 % of lawyers experience alcoholism, depression, and other forms of psychological distress and dissatisfaction. This is twice the amount found in the general population.

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Impacts on You

- How do we not suffer from trauma ourselves? A lot of intentionality is required.
- You need to know your limits and integrate SELF-CARE.
- Building in rituals of positivity (especially with your office) is helpful.



- Be conscious that sharing too many details with others could result in passing on the trauma (to colleagues, family, and friends).
- Be a good “host” to yourself.

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Logistics of Apply for Safe Harbor

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Safe Harbor Expungement Requirements

The Safe Harbor Expungement application shall:

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; and
3. **A request for expungement of the record of conviction of that offense.**

**COURT OF COMMON PLEAS
CRIMINAL DIVISION
HAMILTON COUNTY, OHIO**

APPLICATION FOR EXPUNGEMENT – R.C. 2953.38 & 2953.521

Full Name:	Alias:	
Address:	Phone Number:	
City:	State:	ZIP:
Date of Birth:	SSN:	
I have been convicted of:		
<input type="checkbox"/> R.C. 2907.24 (soliciting) <input type="checkbox"/> R.C. 2907.241 (loitering) <input type="checkbox"/> R.C. 2907.25 (prostitution)		
I am requesting an expungement for:		
CASE NUMBER	OFFENSE(S)	DATE OF CONVICTION/ NON-CONVICTION

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Safe Harbor Expungement Requirements

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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;** and
3. A request for expungement of the record of conviction of that offense.

AFFIDAVIT OF JANE DOE

On MONTH DAY, YEAR, affiant, Jane Doe, after being duly sworn, states and affirms as follows:

¶1. I currently reside in Hamilton County, Ohio. I was born on MONTH DAY, YEAR.

¶2. I am writing this affidavit to the best of my knowledge and recollection. I cannot recall all details about the human trafficking situation because trauma and addiction clouds some memories.

Vulnerability from Childhood

¶3. I grew up as an only child. My mother was often away on business trips, so I spent a lot of time alone.

¶4. My self-esteem fluctuated. I struggled with my body image and I was never at peace in my own skin. I did not fit in with other children so I would have imaginary friends.

¶5. At 14 or 15 years old, I started wanting certain types of clothes that were more mature for my age to attract attention, but my mother would not allow it.

.....

My Most-Abusive Trafficker (approx. late-1991 through 2000)

¶6. When I met him, he made me feel protected from the dangers of the world. He made me believe that he was the only person who truly cared for me and my best interests.

¶7. He started taking care of me physically and financially. I moved into his apartment.

¶8. He would dress me and literally put clothes on me as if I were a child. He did everything

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Statutory Requirements from the Court

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 the application, it **shall set a date for a hearing** and shall notify the prosecutor for the case from which the record of conviction resulted.

The Court shall send notice of the order of expungement to each public office or agency that the Court has reason to believe may have an official record pertaining to the case.

The proceedings in the case that is the subject of an order of expungement issued **shall be considered not to have occurred**. The Court shall reply that **no record exists** with respect to the applicant upon any inquiry into the matter.

The Court shall do the following:

- If the prosecutor filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection;
- 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**;
- Determine **the interests of the applicant** in having the record of conviction of that offense expunged **are not outweighed by any legitimate needs of the government** to maintain that record of conviction; and
- Determine that the applicant has been convicted of soliciting, loitering to solicit, or prostitution.

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Add'l Requirements for First- or Second-Degree Felonies

If the subject offense is a first- or second-degree felony, the Court at the hearing shall also consider the following factors:

1. The degree of duress under which the applicant acted in committing the subject offense, including but not limited to:
 - a) The history of the use of force or threatened use of force;
 - b) Whether the applicant's judgment or control was impaired by the administration to the applicant of any intoxicant, drug, or controlled substance; and
 - c) The threat of withholding 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 offense;
4. The length of time that has expired since the commission of the 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 hasn't expired; and
6. Whether the applicant at the time of the hearing is subject to supervision as a result of the subject offense.¹

1. See R.C. 2953.38(E)(2)(a-f).

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Collaborative Process in Hamilton County

1. After application materials are completed, a copy is sent to the designated assistant prosecutor for initial review. This is the opportunity to answer questions and work through initial flags before filing.
 1. If issues cannot be resolved, file application and be prepared for a filed objection.
2. Contact the designated judge's bailiff and acquire a hearing date.
3. File with the designated clerk, who initiates tech management to pull cases from the publicly-available website.
4. Attend hearing.
 1. If granted, entries are signed.
5. Agencies alerted to update their databases.

* Dayton Municipal Court designated Judge Mia Spells to hear safe harbor expungement applications.
 * Montgomery County Court of Common Pleas is in initial stage of developing process and who the designated judge can and should be.

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Thank you!

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 free virtual legal clinics: www.ohiojpc.org



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