



TO: House Commerce & Labor Committee  
FROM: Gary Daniels, Associate Director, ACLU of Ohio  
DATE: June 16, 2015  
RE: House Bill 172

To Chairman Young, Vice Chair DeVitis, Ranking Minority Member LePore-Hagan, and members of the House Commerce & Labor Committee, my name is Gary Daniels, chief lobbyist for the American Civil Liberties Union of Ohio ("ACLU of Ohio") and I appear to present interested party testimony on House Bill 172.

Before I proceed further, I would like to say Rep. Barnes is right to be concerned about the impact of these websites (and related hard-copy publications) that profit from the spread of this information. For many, a mugshot is not proof of anything but an arrest. An arrest can be a case of mistaken identity, a situation where no charges are filed, or for an offense as minor as an outstanding warrant for an unpaid fine. For others, it serves as a barrier to employment and housing as they re-enter society.

It is also a positive sign HB 172 seeks to regulate only those entities which profit from the removal or modification of such information. Applications of this bill to traditional newspapers and the wider Internet would be constitutionally doomed.

That said, House Bill 172 suffers from several fundamental flaws including at least a couple with serious free speech implications. More specifically:

*Sec. 1349.73. (A) No business entity shall publish any criminal record information in the business entity's possession with respect to which the business entity has knowledge or has received notice that a court has issued an order sealing or expunging the record.*

For the sake of brevity, I will simply say courts are, to put it mildly, extremely skeptical of any laws or policies demanding "prior restraint" of the publication of legally obtained information. On the occasions we do see such restrictions upheld, they were typically applied by judges themselves to very fact-specific and individual matters before their court, not to sweeping categories of information.

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*Sec. 1349.74. (D) The attorney general may bring an action in the name of the state to restrain or enjoin a violation or threatened violation of this section*

This section compounds the first problem mentioned by giving government an active role in the prior restraint against publication of this information.

Should members of this committee desire more detailed information about the ACLU of Ohio's free speech concerns, I would be happy to provide it as I realize my testimony only summarizes our thoughts on this matter.

In addition, much of the regulation present in HB 172 would prove to be unenforceable or, at best, a moving target escaping much enforcement. While there may be those businesses who would comply with HB 172, there are certainly others who will a) work hard to protect their identities and the relevant parties to sue, b) operate outside of state and national boundaries, and c) simply ignore any court rulings and judgments against them.

Certainly, there are regulations that can be passed against these companies that do not impact First Amendment rights or public access to government records and lend themselves to some effective enforcement. Other states have and continue to undertake such efforts. It is the recommendation of the ACLU of Ohio that constructive ways be considered to address the concerns of Rep. Barnes and others but avoid the concerns mentioned.

Finally, it is also worth mentioning the Ohio General Assembly is currently considering dozens of bills that create new crimes, enhance existing penalties and expand application of current law to new people and situations. If we are concerned about the effect of criminal records on individuals, efforts to rehabilitate and re-enter society, and society as a whole, then we must recognize the role of the legislature in at least part of this discussion.