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**House Community & Family Advancement Committee  
House Bill 64 – Record Expungement  
Interested Party Testimony  
Dennis Hetzel, President & Executive Director, Ohio News Media Association**

Chairman Ginter, Vice-Chair Conditt, Ranking Member Boyd and other committee members, thank you for this opportunity to offer testimony on House Bill 64 on behalf of the roughly 400 newspapers and local news websites represented by the Ohio News Media Association. We view HB 64 as an extremely well-intentioned bill, but one that we believe is in great need of further study as part of a larger issue.

I used the adverb “extremely” in front of “well-intentioned” because I was present for the last hearing and some of these anecdotes of people being victimized by sealed records that shouldn’t have been released are horrific. The system is broken. I don’t doubt the contention of the public defender’s office that these situations are all-too common. In my former life as a reporter and editor, I’d be the first one writing stories and editorializing in support of the intent of this bill – to prevent people from being victimized by records that are released inappropriately. And, it is hard to think of a situation more egregious than being arrested based on mistaken identity and then having the record of that arrest coming back to haunt you.

However, we are concerned that your proposed solution – the complete, irreversible destruction of public records – causes new problems and may not solve what you are trying to fix as there is no guarantee that the same systemic failures that other witnesses have documented won’t occur in the new process. The real problem is the inappropriate release of records that are supposed to remain sealed under existing Ohio law but are being released anyway.

You might ask why we so concerned about expungement as a solution. There is a critical distinction between sealing and expungement. Once a record is destroyed, there is no turning back. There is no accountability; no transparency. In the case of HB 64, the primary source materials that document how the government incorrectly deprived someone of their liberty and charged him or her with a crime will be destroyed. Destroying evidence of citizen arrests is an action one would associate with totalitarian nations.

There are a number of scenarios that can illustrate this point. Consider wrongful arrests and resulting convictions due to police misconduct, which could include allegations such as inappropriate use of force or racial profiling. We also know there are many situations in which it isn’t clear until years later that scrutiny is needed. That’s particularly true in death penalty cases and the work of groups such as the Ohio Innocence Project.

The opposite scenario is relevant, too. Sometimes the authorities need these records for information that is both appropriate and important to law enforcement. However, HB 64 would destroy most of the relevant source material – not just documents in the case files

but also prosecutor records and all official law enforcement records. Even the arrest log, which documents the police activity on that shift, would be scrubbed.

We believe that some record of the arrest should remain public because of the need for government accountability in false arrest cases. This can be done in ways that minimize the re-victimization of those who are wrongly accused. For example, records could be banned from being available in computerized searches and, as this bill discusses, be forbidden from being used inappropriately, such as in employment determinations.

The Legislature should be applauded for its interest in this subject. It may provide context to note that this is one of several pending bills that involve expungement and sealing. Other examples are Senate Bill 66, which will seal more records of certain felony convictions; SB 4, which expunges records involving victims of human trafficking; and the House's decision to put the full language of House Bill 427 from the previous session into the budget bill (HB 49). This involves new procedures from the attorney general to notify various agencies of sealing or expungement orders.

These multiple bills provide more evidence that you have a problem that deserves serious, comprehensive study, not piecemeal efforts.

Earlier witnesses have given good direction on where to start. Kari Bloom of the Office of the Ohio Public Defender pointed to outdated software and slow updates of state systems. Patrick Higgins of the Ohio Poverty Law Center described how the burden is on the victim of wrongful arrest or conviction to take the initiative to get records sealed -- a process that takes time, money and the ability to navigate an intimidating system.

To appreciate the complexity and the mistake it would be to go at this in a piecemeal manner, you may wish to examine the Ohio Justice and Policy Center's instructions on what an individual must do to get a record sealed. (<http://www.ohiojpc.org/criminal-record-sealing-in-ohio/>.)

So, we urge you to take a step back from expungement and first find out why our record-sealing requirements are not being followed as the law apparently requires, and to explore ways to make sure Ohio has record sealing practices that work and are enforced with less burden on the aggrieved party to accomplish. We should avoid the path of permanent record destruction that removes government accountability and any chance to retain potentially valuable information in those records.

Thank you for this opportunity, and I would be happy to answer any questions that committee members have.