

OHIO PROSECUTING ATTORNEYS ASSOCIATION

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HB-64; Misidentification
Interested Party Testimony
May 24, 2017

House Community and Family Advancement Committee

Our association has concerns about the provisions of HB-64 that require the immediate expungement of all records concerning any case where a person was arrested or charged with an offense based on a mistaken identification.

Our main concern is that although somewhat ambiguous, the language of the bill could be read to require the expungement, or destruction, of investigative files. Simply because one person was misidentified does not mean that the offense was not committed. But how are the officers to proceed to further investigate the case and determine who is actually responsible if all of their files and records in the case have been destroyed? A remedy to protect the identity of the person who was misidentified is certainly in order. But this bill, as currently drafted, goes too far in requiring destruction of all of the records, including the investigation records.

We suggest that the bill be redrafted to require the sealing or expungement of all of the court records and court filings related to the misidentification. This would include the charging documents, docket entries, journal entries, subpoenas, and the filings in the case. But the investigation files must be retained. Otherwise, we might be unable to prosecute the real culprit if and when he or she is finally accurately identified.

We are also concerned about the lack of a regular procedure to determine whether this is a case of misidentification. As drafted, the court has no discretion in this determination. The bill in effect leaves the determination of whether this is a case of mistaken identification to the police agency and to the prosecutor in the case. Once they notify the court, the bill requires the court to automatically order expungement without a hearing and without an independent determination of whether this is in fact a case of misidentification.

We suggest that the procedure be altered to provide for a more deliberative process. The court must have authority to make the determination that this in fact was a mistaken identification and the prosecutor should have a role in that process the same as in current law.

While we agree with the basic purpose of the bill, we think it needs redrafting to address these two issues - preservation of investigative files and a regular process restoring the role of the prosecutor and the discretion of the judge.

cc: Rep. Schuring
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