

TO: House Judiciary Committee

FROM: Gary Daniels, Legislative Director, ACLU of Ohio

DATE: May 14, 2025

RE: Amended House Bill 5 – Interested Party Testimony

To Chairman Thomas, Vice Chair Matthews, Ranking Member Isaacsohn, and members of the House Judiciary Committee, thank you for this opportunity to provide interested party testimony on Amended House Bill 5.

The ACLU of Ohio has two main points with regard to HB 5, its effect on Ohio's overcrowded prison system and the changes to record sealing.

PRISON POPULATION

To date in these hearings, there has been very little discussion or thought regarding HB 5's fiscal and practical impacts on Ohio's prisons. During the worst of the COVID-19 pandemic, our prison numbers shrunk, albeit still leaving Ohio's prison system above capacity. However, since that time, Ohio's prison numbers have been steadily climbing, despite various changes in recent years to record sealing, record expungement, judicial release, intervention in lieu of conviction, and other positive methods meant to stem the tide of people arriving to our prisons.

This all begs the question how will HB 5 further impact these numbers as this legislation increases gun penalties in multiple areas, including the imposition and expansion of mandatory minimum sentences.

While there is an official fiscal note via the Legislative Service Commission regarding HB 5's impact on our prisons, we respectfully submit that analysis is insufficient. First, it examines the prison system as a whole, instead of HB 5's impact on individual prisons. Second, the data it uses to compute "average time served" for offenses relevant to HB 5 is from 2016. Third, as the fiscal note acknowledges, this data does not account for multiple offenses such as when Weapons Under Disability is not the most serious offense that led to a conviction and sentence. Finally, the fiscal note does not distinguish between people going to prison because of an HB 5 offense versus those who re-enter prison because of a community control or post release control violation.

Regarding the first point about the whole prison system vs. individual prisons, thankfully LSC concentrates on the marginal costs. That is variable, shifting costs attributable to individuals such as food, health care and medicine, bedding, and more, per person.



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But, what the fiscal analysis does not reveal is how much potential does HB 5 have to overload specific prisons where those with HB 5 offenses are most likely to do their time. Because if we run out of space to house those particular individuals, increasing in number via HB 5, then how long until Ohio must build one or prisons to accommodate them, keeping in mind one of the primary ways Ohio divides up people in prison is the nature and seriousness of their offense. We must also keep in mind HB 5 is only one bill of others designed to incarcerate more people, driving these prison numbers even higher.

In other words, for the sake of conversation here, if Ohio has fifteen total prisons where people with these offenses are typically assigned, then what happens when one, two, or ten of those prisons reach capacity? Where do we put the new people? This is a real concern as HB 5 increases penalties for numerous offenses, including the expansion of mandatory minimums, for a prison system already above capacity, that continues to add more and more people.

In short, the ACLU of Ohio urges a more complete examination of HB 5's costs and the possibility – perhaps likelihood – its passage will result in the necessity of building, staffing, and maintaining additional prisons, how soon, and at what cost..

RECORD SEALING AND EXPUNGEMENT

With regard to House Bill 5's provisions on record sealing and expungement, we also urge fuller examination to make sure Ohio gets the best possible outcome in this regard. Conceptually, the ACLU of Ohio does support the effort here for a process by which misdemeanors and low-level felonies can be sealed outside the current petition-based process.

As this committee continues to debate and deliberate this party of HB 5, please be aware Ohio's record sealing laws are only effective if petitioners have adequate access to that relief. Indeed, one-in-six Ohioans have a conviction record. Of Ohio's over 240 courts, only 112 provide a downloadable application for sealing a criminal conviction. Less than one quarter of courts provide information about the record-sealing process including where to file an application, what documents to include, or whether a hearing will be required. Petitioners also must file in counties/courts where they have convictions. See Hrdinová, Jana. *Is Expanding Eligibility Enough?: Improving Record Sealing Access and Transparency in Ohio Courts*, DRUG ENFORCEMENT AND POLICY CENTER. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4412551.

The good news is there is a coalition of advocates and practitioners across the political spectrum who have been meeting and discussing how to improve Ohio's record sealing process, including whether HB 5 can be the best possible bill for record sealing and expungement and to ensure any changes via this bill can be effectively implemented and benefit as many as possible.

In conclusion, the ACLU of Ohio believes there are aspects of Amended House Bill 5 worthy of additional and thorough consideration so you, and all Ohioans, know the complete ramifications of its passage. We urge this committee to proceed prudently and the ACLU of Ohio stands ready to assist.