



TO: House Criminal Justice Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: May 24, 2017
RE: House Bill 64

To Chairman Ginther, Vice Chair Conditt, Ranking Member Boyd, and members of the House Community & Family Advancement 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 64.

House Bill 64 provides some complexities the ACLU of Ohio does not believe have been voiced to this committee prior to today. Those complexities derive from the sometimes competing interests of sealing and expunging criminal records versus government transparency.

Many times, these interests can be properly balanced in legislation. The ideal result is when those attempting to improve their lives can be afforded some measure of security their pasts will not unnecessarily impact their futures while still providing an important degree of transparency for those who closely follow our criminal justice system.

The ACLU of Ohio has zero doubt sponsors and proponents of HB 64 have good intentions and wish to assist the most sympathetic of those impacted by our laws. In this case, those who never even violated the laws they were apprehended, arrested, tried, or convicted for violating. Indeed, you heard testimony from those innocent people who, through no fault of their own, unfortunately have ongoing problems with inaccurate background checks.

However, the language of House Bill 64 is so broad it will result in unintended consequences this committee will hopefully give its full consideration.

Under HB 64, Sec. 2953.52(A)(3)(a) mandates expungement of nearly all government records related to a person wrongly arrested because of mistaken identity but not charged. Sec. 2953.52(A)(3)(b) does the same for those records resulting from a person being wrongly charged and then those charges are later dismissed.

With the latter section, it appears HB 63’s language knowingly mandates expungement of nearly all government records if the mistaken identity error is so severe the innocent person goes through a criminal trial – including, presumably, conviction - but charges are later dismissed.

Here, the ACLU of Ohio presents three scenarios that would be impacted by House Bill 63:

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1) A law enforcement agency could be engaging in harmful policies or deliberately apprehending or arresting people based on any number of factors – race, sexual orientation, age, or ideology among them. If they claim, or it is shown later to be the result of “mistaken identity,” every single record about that agency’s interactions, tactics, and experience with that innocent person is forever gone. Even if use of force - even deadly force - was used against that person. Any sloppy or illegal pattern there may (or may not) be of such wrongful arrests totally erased from all public records.

2) This problem is further compounded by wiping the official records of those who go to trial. In that case, more than law enforcement records are eliminated. All court records, all prosecutor records, almost everything is gone. Imagine a scenario where someone is sentenced to Death Row but later found, prior to execution, to be the victim of mistaken identity. Those rightly wishing to examine where in the system breakdowns occurred resulting in an innocent person almost being executed would be out of luck. Any mistakes, oversights, lack of diligence, or possible malfeasance by law enforcement, prosecutors, juries or judges off-limits to those who wish to hold their government accountable in those circumstances when accountability is undeniably needed and should be welcomed.

As I am sure you are aware, nine people in Ohio have been exonerated from Death Row since 1976. Several had their charges later dismissed, a triggering factor for the application of HB 64.

3) Related to these first two concerns, HB 64 could provide a loophole on accountability for law enforcement who may have acted recklessly or violently. If they were engaged in profiling or corrupt behavior when apprehending or arresting someone who was later found to be a victim of mistaken identity, a future prospective employer may not find any record of those actions. Similarly, if a county prosecutor did not perform due diligence in identifying a defendant, later found to be innocent because of mistaken identity, voters would never know of that serious oversight. If a district court, appellate court, or the Ohio Supreme Court issued a ruling against that person, only for them to later have their charges dismissed as result of mistaken identity, those rulings are wiped clean from the historical record. While expunging erroneous charges from a person’s file is important, we also do not want to forsake our ability to hold public officials responsible for unethical or incompetent behavior.

Again, the ACLU of Ohio does not believe these scenarios are welcomed by or even anticipated by most, or perhaps all, of House Bill 64’s supporters. Yet, they would all become reality by passage of this bill.

It appears the problems experienced by the innocent people this committee heard from come with Ohio’s sealing process. Instead of rushing to pass HB 64, the ACLU of Ohio urges more careful consideration of this bill and a thorough review of Ohio’s record sealing process to examine how problems like the ones you heard of can be minimized, if not eliminated. The ACLU of Ohio is available and would be pleased to participate in any such discussions to assist innocent people while still preserving a necessary amount of government transparency.