



# Judicial Impact Statement

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Prepared By Marta Mudri, Esq., Legislative Counsel

## HOUSE BILL 64 (MISTAKEN IDENTITY EXPUNGEMENT)

### Sponsor

Rep. Reece

Rep. Schuring

### Version

As Introduced

### TITLE INFORMATION

To amend sections 2953.51, 2953.52, 2953.53, 2953.54, 2953.55, and 2953.61 of the Revised Code to provide for the expungement of official records related to the apprehension, arrest, criminal charging, or trial of a person based on mistaken identity.

### IMPACT SUMMARY

House Bill 64 will have a significant impact on Ohio courts and their ability to fairly and effectively administer justice. As currently written, the bill will not accomplish the goal of the legislature and will create confusion and undue burden on the courts. Additionally, as introduced, the bill greatly curtails the discretion of the courts.

### BACKGROUND

House Bill 64 was introduced as HB 618 during the 131<sup>st</sup> General Assembly. Under current law in Ohio, documents can be sealed – which greatly reduces who has access to them – or, in rarer circumstances, they can be expunged, which means they are destroyed and treated as never having existed. As expungement is the more drastic approach, in Ohio it is utilized sparingly (e.g. Sec. 2923.14 Relief from Weapons Disability and Sec. 2953.38 Victims of Human Trafficking).

### JUDICIAL IMPACT

**R.C. 2953.51. Record Sealing.** The new expungement statute is better located in a different section of the Ohio Revised Code. The bill currently includes it in R.C. 2953.51 et seq., statutes which outline sealing procedures. Sealing is fundamentally different than expungement. Both terms are defined in RC 2151.355 and “expunge” is identically defined in Sec. 2953.37 (regarding certain firearm offenses) and Sec. 2953.38 (regarding human trafficking situations). Expunging mistaken identity situations is better treated with these other expungement statutes (such as by adding Sec. 2953.39).

### What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

**R.C. 2953.52 - Expungement Process for Records Resulting from Mistaken Arrest.** As a practical matter, someone may be detained for a crime and not charged. Strictly speaking, someone cannot be arrested without being charged, i.e., an arrest requires a charge, and a charge initiates the creation of a record. In order for a record to be sealed or expunged, there must be a record. Apprehension or detention would probably not create such a record while arrest with photo, fingerprint, and/or DNA would. If someone is not charged with a crime, there is no case and no case number associated with the charge. A court has no jurisdiction without a case and case number and also has no way to track the case and order its expungement.

In the event of a detention that does not result in charges, the request for expungement should involve only the arresting entity. That agency can seal or destroy its own records, which have no case number, without involving the court. It is counterintuitive to create documents to produce to the court only to require the court to order those documents destroyed.

In the event of an arrest that does result in charges that are later dismissed, the court should have discretion in making its decision, especially if the records are being destroyed. Due process is necessary. Both of the other expungement statutes, Sec. 2953.37 and Sec. 2953.38, call for a hearing and for the court to make a factual determination of the triggering event, to balance the needs of the government and the interests of the citizen in making a decision to expunge. In HB 64, neither the court nor the prosecutor have any discretion or, importantly, any factual determination. The underlying and triggering fact is one of mistaken identity, and there is no indication of who determines there was a mistaken arrest, by what degree of proof, and on what basis. By omission, it appears to fall to the arresting officer or supervisor to make such determination and start the process. If the officer does not, then there is no avenue for the expungement. Unlike 2953.37 and 2953.38, in this bill the potentially wronged citizen has no path to apply to the court to expunge the arrest. Once before the court, the factual decision of mistaken identity is better made by a prosecutor or a judge with the opportunity for input.

## **RECOMMENDATION**

The Ohio Judicial Conference does not recommend passage of House Bill 64 as currently written.