



# OHIO LEGISLATIVE SERVICE COMMISSION

## Bill Analysis

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### **H.B. 618**

131st General Assembly  
(As Introduced)

**Reps.** Schuring, Reece

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## **BILL SUMMARY**

- Provides a mechanism for the expungement of official records related to the apprehension, arrest, charging, or trial of a person for a crime based on mistaken identity.
- Expands the effect of an order for the sealing of records after a not guilty finding, dismissal of charges, or entry of a no bill to also specify that the records may not be used for any purpose related to employment, license, any other right or privilege, or appearance as a witness.

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## **CONTENT AND OPERATION**

### **Mistaken identity expungement mechanism**

#### **In general**

The bill provides a mechanism for the expungement of official records related to the apprehension, arrest, charging, or trial of a person for a criminal offense based on any of the following (collectively referred to as the "mistaken identity" of the person with respect to the commission of the offense or to the charge of the offense):<sup>1</sup>

(1) Misidentification by a witness or law enforcement personnel as to the identity of the offender who committed the offense;

(2) Confusion on the part of a witness or law enforcement personnel as to the offender's identity;

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<sup>1</sup> R.C. 2953.51(H).

(3) Misinformation provided to law enforcement personnel as to the offender's identity; or

(4) Any other mistake on the part of a witness or law enforcement personnel as to the offender's identity.

Under the mechanism, "expungement" is the destruction, deletion, or erasure of a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.<sup>2</sup>

The bill's mechanism is separate from existing mechanisms, unchanged by the bill with one exception described in the last part of this analysis, that authorize in specified circumstances the sealing of the conviction record of eligible offenders, the sealing of records after a not guilty finding, dismissal of charges, or entry of a no bill or when a court vacates and sets aside a conviction because of DNA testing, the expungement of a prior conviction of "improperly handling firearms in a motor vehicle" that no longer is a crime, and the expungement of certain conviction records of victims of human trafficking.<sup>3</sup>

### **Law enforcement and prosecutor duties**

Under the bill, if a person is arrested as a result of the mistaken identity of the person with respect to the commission of a criminal offense, no charges are filed against the person regarding that offense, and the person is released from custody, the arresting law enforcement agency, immediately upon the release, must notify the prosecutor who would have handled the case involving the most serious offense for which the person was arrested of the mistaken identity arrest and of the person's release. Upon receipt of the notice, the prosecutor promptly must provide the same notice to the court in which that charge would have been filed.

If a person is named in a charge of a criminal offense as a result of mistaken identity of the person and the charge is dismissed, the prosecutor in the case, immediately upon the dismissal, must notify the court in which the charge was pending of the dismissal.

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<sup>2</sup> R.C. 2953.51(G).

<sup>3</sup> R.C. 2953.51 to 2953.55, and R.C. 2953.31 to 2953.38, R.C. 2953.56, and R.C. 2953.57 to 2953.60, not in the bill.

Upon receipt of the notice in either circumstance, the court must proceed as described below.<sup>4</sup>

## **Court duties**

### **Issuance of expungement order**

Upon the receipt of a notice from a prosecutor as described above, the court must issue an order directing that all official records containing any entry relating to the subject person's apprehension, arrest, charging, or trial with respect to the mistaken identity arrest or charge in question (hereafter, the "mistaken identity activity") be expunged and that the proceedings with respect to that mistaken identity activity be deemed not to have occurred. The court also must issue an order to the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) directing that the DNA-related official records relating to the mistaken identity activity against the person that the Bureau possesses be expunged. The issuance of these orders is automatic upon receipt of the notice from the prosecutor, and the court will not conduct a hearing before issuing the orders.<sup>5</sup>

The "official records" that are the subject of the order are all records possessed by any public office or agency that relate to the mistaken identity activity against the person. The official records include: the criminal docket case notation; all subpoenas issued, and all papers and documents filed by the defendant or prosecutor in the case; all records of testimony and evidence presented in the case; all case-related court files, papers, documents, folders, entries, affidavits, writs, electronic records, indices, references, or index references; all fingerprints, photographs, and DNA specimens, records, and profiles; all case-related law enforcement agency or officer records and investigative reports, subject to an investigatory work product exception; and all case-related investigative records and reports other than those of a law enforcement officer or agency. The official records do not include certain public children service agency or Department of Job and Family Services records or Inspector General reports.<sup>6</sup>

### **Notification to agencies**

The court that issues an expungement order under the bill's mechanism must send notice of the order to BCII and to any public office or agency that the court knows

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<sup>4</sup> R.C. 2953.52(A)(3); R.C. 2953.51(C)(2) and (3).

<sup>5</sup> R.C. 2953.52(C).

<sup>6</sup> R.C. 2953.51(D).



or has reason to believe may have any record relating to the mistaken identity activity, whether or not it is an official record, that is the subject of the order.<sup>7</sup>

### **Notice to agencies by person whose records are expunged**

If a court issues an expungement order under the bill's mechanism, the person whose official records are to be expunged under the order may present a copy of the order and a request to comply with it to a public office or agency that has a record relating to the mistaken identity activity that is the subject of the order.<sup>8</sup>

### **Agency duties**

An order to expunge official records issued under the bill's mechanism applies to every public office or agency that has a record relating to the mistaken identity activity that is the subject of the order, regardless of whether it receives a copy of the order.

Upon receiving a copy of such an expungement order, a public office or agency must comply with the order and, if applicable, with the investigatory work product provisions described below, except that it may maintain a record relating to the mistaken identity activity that is the subject of the order if the record is maintained only to compile statistical data and does not contain any reference to the person who is the subject of the mistaken identity activity and the order.<sup>9</sup>

### **Investigatory work product**

#### **Delivery, closing, and use**

Upon a court's issuance of an expungement order under the bill's mechanism regarding a mistaken identity activity against a person:<sup>10</sup>

(1) Every law enforcement officer possessing records related to the mistaken identity activity that are the officer's specific investigatory work product and that are not official records must immediately deliver the records to the officer's employing law enforcement agency.

(2) Every law enforcement agency possessing records related to the mistaken identity activity that are its specific investigatory work product and that are not official

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<sup>7</sup> R.C. 2953.53(A).

<sup>8</sup> R.C. 2953.53(B).

<sup>9</sup> R.C. 2953.53(C) and (D).

<sup>10</sup> R.C. 2953.54(A).



records, or that were delivered to the agency by an officer as described above in (1), must, except as described below in (3), close the records to all persons not directly employed by the agency and treat the records, in relation to all persons not employed by agency, as if they never existed.

(3) Except as otherwise described in this paragraph, an officer described above in (1) and employees of a law enforcement agency described above in (2) are prohibited from knowingly making the records in the officer's or agency's possession or any information contained in them available to, or discussing any information contained in them with, any person not employed by the agency or, regarding an officer described above in (1), the officer's employing agency. An agency possessing records related to the mistaken identity activity as described above in (2) may permit another law enforcement agency to use the records in investigating another offense, the facts of which are reasonably similar to the facts of the offense that is the subject of the mistaken identity activity. The providing agency may give the other agency the name of the person who is the subject of the mistaken identity activity, if it believes that the person's name is necessary for the other agency's investigation. Law enforcement agencies, and their employees, that receive from another agency records relating to a mistaken identity activity that have been ordered expunged are prohibited from using the records for any purpose other than investigating the offense for which they were obtained from the providing agency, or disclosing the name of the subject person except when necessary in investigating or prosecuting that offense.

### **Violation of prohibition**

A violation of a prohibition described above in (3) regarding investigatory work product is the offense of "divulging confidential information," a fourth degree misdemeanor. The prohibitions currently apply with respect to sealed not guilty, dismissed charge, and no bill records -- an existing exception to the prohibitions as they currently apply to sealed records regarding BCII's use or sharing of DNA records or fingerprints does not apply with respect to records or fingerprints covered by an expungement order issued under the bill's mechanism.<sup>11</sup>

### **Effect of expungement order for subject person**

In any application for employment, license, or any other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any record that has been expunged under the bill's mechanism, and the record may not be used for any purpose related to employment, license, any other right or privilege, or appearance as a witness, including a criminal records check, a

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<sup>11</sup> R.C. 2953.54(B) and (C).

determination as to whether the person is authorized to obtain or possess a firearm or is eligible for a concealed handgun license, or a determination as to whether the person is eligible to hold public office or to be an elector, a law enforcement officer, or a school employee.

If an inquiry is made in violation of this provision, the person whose official record was expunged may respond as if the mistaken identity apprehension, arrest, charging, or trial to which the expunged records pertain and all other proceedings related to that activity did not occur, and the person is not subject to any adverse action because of the mistaken identity activity or the person's response.<sup>12</sup>

A government officer or employee who knowingly makes available for any purpose involving employment, bonding, licensing, or education to any person or to any government entity any information or other data concerning any arrest, complaint, indictment, information, trial, adjudication, or correctional supervision, the records of which have been expunged under the bill's mechanism, is guilty of "divulging confidential information," a fourth degree misdemeanor. The prohibition currently applies with respect to sealed not guilty, dismissed charge, and no bill records -- an existing exception to the prohibition as it applies to those records regarding BCII's use or sharing of DNA records or fingerprints does not apply with respect to records or fingerprints covered by an expungement order issued under the bill's mechanism.<sup>13</sup>

### **Multiple charge provisions**

The bill specifies that existing provisions that pertain to the sealing of records of a person charged with two or more offenses as a result of or in connection with the same act do not apply with respect to the expungement of official records under the bill's mechanism.<sup>14</sup>

### **Effect of sealing order regarding not guilty finding, dismissal of charges, or entry of a no bill for subject person**

Existing law provides a mechanism that authorizes in specified circumstances the sealing of records after a not guilty finding, dismissal of charges, or entry of a no bill. Currently, in any application for employment, license, or any other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any record that has been sealed under that mechanism. The

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<sup>12</sup> R.C. 2953.55(A).

<sup>13</sup> R.C. 2953.55(B).

<sup>14</sup> R.C. 2953.61.



bill expands the provision to also specify that the records may not be used for any purpose related to employment, license, any other right or privilege, or appearance as a witness, including a criminal records check, a determination as to whether the person is authorized to obtain or possess a firearm or is eligible for a concealed handgun license, or a determination as to whether the person is eligible to hold public office or to be an elector, a law enforcement officer, or a school employee.

If an inquiry is made in violation of the new protections, the person whose official record was sealed may respond as if the arrest underlying the case to which the sealed records pertain and all other proceedings in that case did not occur, and the person is not subject to any adverse action because of the arrest, the proceedings, or the person's response.<sup>15</sup> The bill retains the existing prohibition (under the offense of "divulging confidential information"), and penalty regarding use or sharing of information or data from a sealed record and the existing exception to the prohibition as it applies to those records regarding BCII's use or sharing of DNA information or fingerprints.<sup>16</sup>

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## HISTORY

ACTION	DATE
Introduced	11-15-16

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<sup>15</sup> R.C. 2953.55(A).

<sup>16</sup> R.C. 2953.55(B).

