

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 64

Representatives Schuring, Reece

A BILL

To amend sections 2953.51, 2953.52, 2953.53, 1
2953.54, 2953.55, and 2953.61 of the Revised 2
Code to provide for the expungement of official 3
records related to the apprehension, arrest, 4
criminal charging, or trial of a person based on 5
mistaken identity. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2953.51, 2953.52, 2953.53, 7
2953.54, 2953.55, and 2953.61 of the Revised Code be amended to 8
read as follows: 9

Sec. 2953.51. As used in sections 2953.51 to 2953.56 of 10
the Revised Code: 11

(A) "No bill" means a report by the foreperson or deputy 12
foreperson of a grand jury that an indictment is not found by 13
the grand jury against a person who has been held to answer 14
before the grand jury for the commission of an offense. 15

(B) "Prosecutor" has the same meaning as in section 16
2953.31 of the Revised Code. 17

(C) "Court" means any of the following: 18

(1) Except as provided in division (C) (2) or (3) of this 19
section, the court in which a case is pending at the time a 20
finding of not guilty in the case or a dismissal of the 21
complaint, indictment, or information in the case is entered on 22
the minutes or journal of the court, or the court to which the 23
foreperson or deputy foreperson of a grand jury reports, 24
pursuant to section 2939.23 of the Revised Code, that the grand 25
jury has returned a no bill; 26

(2) With respect to release of a person who was arrested 27
as a result of mistaken identity, as described in division (A) 28
(3) (a) of section 2953.52 of the Revised Code, the court in 29
which a charge of the most serious offense with respect to which 30
the person was arrested would have been filed, had that charge 31
been filed against the person; 32

(3) With respect to the dismissal of a misdemeanor or 33
felony charge against a person who was named in the charge as a 34
result of mistaken identity, as described in division (A) (3) (b) 35
of section 2953.52 of the Revised Code, the court in which the 36
charge against the person was pending. 37

(D) (1) "Official records" means either of the following: 38

(a) Except with respect to records that are subject to 39
division (D) (1) (b) of this section and except as provided in 40
division (D) (2) of this section, all records that are possessed 41
by any public office or agency that relate to a criminal case, 42
including, but not limited to: the notation to the case in the 43
criminal docket; all subpoenas issued in the case; all papers 44
and documents filed by the defendant or the prosecutor in the 45
case; all records of all testimony and evidence presented in all 46
proceedings in the case; all court files, papers, documents, 47
folders, entries, affidavits, or writs that pertain to the case; 48

all computer, microfilm, microfiche, or microdot records, 49
indices, or references to the case; all index references to the 50
case; all fingerprints and photographs; all DNA specimens, DNA 51
records, and DNA profiles; all records and investigative reports 52
pertaining to the case that are possessed by any law enforcement 53
officer or agency, except that any records or reports that are 54
the specific investigatory work product of a law enforcement 55
officer or agency are not and shall not be considered to be 56
official records when they are in the possession of that officer 57
or agency; and all investigative records and reports other than 58
those possessed by a law enforcement officer or agency 59
pertaining to the case. ~~"Official";~~ 60

(b) Except as provided in division (D) (2) of this section, 61
with respect to an order issued under division (C) of section 62
2953.52 of the Revised Code for the expungement of official 63
records that relate to the mistaken identity apprehension, 64
arrest, charging, or trial of a person, all records possessed by 65
any public office or agency that relate to the person's mistaken 66
identity apprehension, arrest, charging, or trial, including 67
records described in division (D) (1) (a) of this section that 68
relate to that apprehension, arrest, charging, or trial. 69

(2) "Official records" does not include any of the 70
following: 71

~~(1)~~ (a) Records or reports maintained pursuant to section 72
2151.421 of the Revised Code by a public children services 73
agency or the department of job and family services; 74

~~(2)~~ (b) Any report of an investigation maintained by the 75
inspector general pursuant to section 121.42 of the Revised 76
Code, to the extent that the report contains information that 77
pertains to an individual who was convicted of or pleaded guilty 78

to an offense discovered in or related to the investigation and 79
whose conviction or guilty plea was not overturned on appeal. 80

(E) "DNA database," "DNA record," "DNA specimen," and "law 81
enforcement agency" have the same meanings as in section 109.573 82
of the Revised Code. 83

(F) "Fingerprints filed for record" has the same meaning 84
as in section 2953.31 of the Revised Code. 85

(G) "Expunge" means to destroy, delete, or erase a record 86
as appropriate for the record's physical or electronic form or 87
characteristic so that the record is permanently irretrievable. 88

(H) "Mistaken identity of a person with respect to the 89
commission of an offense" and "mistaken identity of a person 90
with respect to a charge of an offense" mean misidentification 91
by a witness or law enforcement personnel as to the identity of 92
the person who committed the offense, confusion on the part of a 93
witness or law enforcement personnel as to the identity of the 94
person who committed the offense, misinformation provided to law 95
enforcement personnel as to the identity of the person who 96
committed the offense, or any other mistake on the part of a 97
witness or law enforcement personnel as to the identity of the 98
person who committed the offense. 99

Sec. 2953.52. (A) (1) Any person, who is found not guilty 100
of an offense by a jury or a court or who is the defendant named 101
in a dismissed complaint, indictment, or information, may apply 102
to the court for an order to seal the person's official records 103
in the case. Except as provided in section 2953.61 of the 104
Revised Code, the application may be filed at any time after the 105
finding of not guilty or the dismissal of the complaint, 106
indictment, or information is entered upon the minutes of the 107

court or the journal, whichever entry occurs first. 108

(2) Any person, against whom a no bill is entered by a 109
grand jury, may apply to the court for an order to seal ~~his~~the 110
person's official records in the case. Except as provided in 111
section 2953.61 of the Revised Code, the application may be 112
filed at any time after the expiration of two years after the 113
date on which the foreperson or deputy foreperson of the grand 114
jury reports to the court that the grand jury has reported a no 115
bill. 116

(3) (a) If a person is arrested as a result of mistaken 117
identity of the person with respect to the commission of an 118
offense, no charges are filed against the person regarding that 119
offense, and the person is released from custody or detention, 120
the law enforcement agency that arrested the person, immediately 121
upon the release, shall notify the prosecutor who would have 122
handled the case involving a charge of the most serious offense 123
with respect to which the person was arrested of the arrest 124
based on mistaken identity of the person and of the person's 125
release. Upon receipt of the notice, the prosecutor promptly 126
shall notify the court in which that charge would have been 127
filed, had that charge been filed against the person, of the 128
arrest based on mistaken identity of the person and of the 129
person's release, and upon receipt of the notice, the court 130
shall proceed as specified in division (C) of this section. 131

(b) If a person is named in a charge of a misdemeanor or 132
felony offense as a result of mistaken identity of the person 133
with respect to the charge of the offense and the charge against 134
the person is dismissed, the prosecutor in the case, immediately 135
upon the dismissal, shall notify the court in which the charge 136
was pending of the dismissal, and upon receipt of the notice the 137

court shall proceed as specified in division (C) of this 138
section. 139

(B) (1) Upon the filing of an application pursuant to 140
division (A) (1) or (2) of this section, the court shall set a 141
date for a hearing and shall notify the prosecutor in the case 142
of the hearing on the application. The prosecutor may object to 143
the granting of the application by filing an objection with the 144
court prior to the date set for the hearing. The prosecutor 145
shall specify in the objection the reasons the prosecutor 146
believes justify a denial of the application. 147

(2) ~~The~~ Following a hearing on an application filed under 148
division (A) (1) or (2) of this section, the court shall do each 149
of the following, except as provided in division (B) (3) of this 150
section: 151

(a) (i) Determine whether the person was found not guilty 152
in the case, or the complaint, indictment, or information in the 153
case was dismissed, or a no bill was returned in the case and a 154
period of two years or a longer period as required by section 155
2953.61 of the Revised Code has expired from the date of the 156
report to the court of that no bill by the foreperson or deputy 157
foreperson of the grand jury; 158

(ii) If the complaint, indictment, or information in the 159
case was dismissed, determine whether it was dismissed with 160
prejudice or without prejudice and, if it was dismissed without 161
prejudice, determine whether the relevant statute of limitations 162
has expired; 163

(b) Determine whether criminal proceedings are pending 164
against the person; 165

(c) If the prosecutor has filed an objection in accordance 166

with division (B) (1) of this section, consider the reasons 167
against granting the application specified by the prosecutor in 168
the objection; 169

(d) Weigh the interests of the person in having the 170
official records pertaining to the case sealed against the 171
legitimate needs, if any, of the government to maintain those 172
records. 173

(3) If the court determines after complying with division 174
(B) (2) (a) of this section that the person was found not guilty 175
in the case, that the complaint, indictment, or information in 176
the case was dismissed with prejudice, or that the complaint, 177
indictment, or information in the case was dismissed without 178
prejudice and that the relevant statute of limitations has 179
expired, the court shall issue an order to the superintendent of 180
the bureau of criminal identification and investigation 181
directing that the superintendent seal or cause to be sealed the 182
official records in the case consisting of DNA specimens that 183
are in the possession of the bureau and all DNA records and DNA 184
profiles. The determinations and considerations described in 185
divisions (B) (2) (b), (c), and (d) of this section do not apply 186
with respect to a determination of the court described in this 187
division. 188

(4) The determinations described in this division are 189
separate from the determination described in division (B) (3) of 190
this section. If an application is filed pursuant to division 191
(A) (1) or (2) of this section and the court determines, after 192
complying with division (B) (2) of this section, that the person 193
was found not guilty in the case, that the complaint, 194
indictment, or information in the case was dismissed, or that a 195
no bill was returned in the case and that the appropriate period 196

of time has expired from the date of the report to the court of 197
the no bill by the foreperson or deputy foreperson of the grand 198
jury; that no criminal proceedings are pending against the 199
person; and that the interests of the person in having the 200
records pertaining to the case sealed are not outweighed by any 201
legitimate governmental needs to maintain such records, or if 202
division (E) (2) (b) of section 4301.69 of the Revised Code 203
applies, in addition to the order required under division (B) (3) 204
of this section, the court shall issue an order directing that 205
all official records pertaining to the case be sealed and that, 206
except as provided in section 2953.53 of the Revised Code, the 207
proceedings in the case be deemed not to have occurred. 208

(5) Any DNA specimens, DNA records, and DNA profiles 209
ordered to be sealed under this section shall not be sealed if 210
the person with respect to whom the order applies is otherwise 211
eligible to have DNA records or a DNA profile in the national 212
DNA index system. 213

(C) Upon the receipt of a notice from a prosecutor under 214
division (A) (3) (a) or (b) of this section, the court shall issue 215
an order directing that all official records containing any 216
entry relating to the subject person's apprehension, arrest, 217
charging, or trial with respect to the mistaken identity arrest 218
or mistaken identity charge in question be expunged and that the 219
proceedings with respect to that mistaken identity apprehension, 220
arrest, charging, or trial be deemed not to have occurred. In 221
addition, the court shall issue an order to the superintendent 222
of the bureau of criminal identification and investigation 223
directing that the superintendent expunge or cause to be 224
expunged the official records that relate to the subject 225
person's mistaken identity apprehension, arrest, charging, or 226
trial consisting of DNA specimens that are in the bureau's 227

possession and all DNA records and DNA profiles. The issuance of 228
the orders under this division shall be automatic upon receipt 229
of the notice from the prosecutor, and the court shall not 230
conduct a hearing before issuing the orders. 231

Sec. 2953.53. (A) The court shall send notice of any order 232
to seal or expunge official records issued pursuant to division 233
(B) (3) or (C) of section 2953.52 of the Revised Code to the 234
bureau of criminal identification and investigation and shall 235
send notice of any order to expunge official records issued 236
pursuant to division (B) (3) or (C) of that section or any order 237
to seal official records issued pursuant to division (B) (4) of 238
that section to any public office or agency that the court knows 239
or has reason to believe may have any record of the case or any 240
record relating to the mistaken identity apprehension, arrest, 241
charging, or trial regarding an order issued under division (C) 242
of that section, whether or not it is an official record, that 243
is the subject of the order. 244

(B) A person whose official records have been sealed or 245
expunged pursuant to an order issued pursuant to section 2953.52 246
of the Revised Code may present a copy of that order and a 247
written request to comply with it, to a public office or agency 248
that has a record of the case that is the subject of the order 249
or a record relating to the mistaken identity apprehension, 250
arrest, charging, or trial that is the subject of the order 251
issued under division (C) of that section. 252

(C) An order to seal or expunge official records issued 253
pursuant to section 2953.52 of the Revised Code applies to every 254
public office or agency that has a record of the case that is 255
the subject of the order or a record relating to the mistaken 256
identity apprehension, arrest, charging, or trial that is the 257

subject of the order issued under division (C) of that section, 258
regardless of whether it receives notice of ~~the a~~ hearing on the 259
application for the order to seal the official records or 260
receives a copy of the order to seal or expunge the official 261
records pursuant to division (A) or (B) of this section. 262

(D) Upon receiving a copy of an order to seal or expunge 263
official records pursuant to division (A) or (B) of this section 264
or upon otherwise becoming aware of an applicable order to seal 265
or expunge official records issued pursuant to section 2953.52 266
of the Revised Code, a public office or agency shall comply with 267
the order and, if applicable, with the provisions of section 268
2953.54 of the Revised Code, except that it may maintain a 269
record of the case that is the subject of the order or a record 270
relating to the mistaken identity apprehension, arrest, 271
charging, or trial that is the subject of the order issued under 272
division (C) of section 2953.32 of the Revised Code if the 273
record is maintained for the purpose of compiling statistical 274
data only and does not contain any reference to the person who 275
is the subject of the case or the mistaken identity 276
apprehension, arrest, charging, or trial and the order. 277

~~A~~ With respect to an order to seal official records issued 278
pursuant to division (B) (3) or (4) of section 2953.52 of the 279
Revised Code, a public office or agency also may maintain an 280
index of sealed official records, in a form similar to that for 281
sealed records of conviction as set forth in division (F) of 282
section 2953.32 of the Revised Code, access to which may not be 283
afforded to any person other than the person who has custody of 284
the sealed official records. The sealed official records to 285
which such an index pertains shall not be available to any 286
person, except that the official records of a case that have 287
been sealed may be made available to the following persons for 288

the following purposes: 289

(1) To the person who is the subject of the records upon 290
written application, and to any other person named in the 291
application, for any purpose; 292

(2) To a law enforcement officer who was involved in the 293
case, for use in the officer's defense of a civil action arising 294
out of the officer's involvement in that case; 295

(3) To a prosecuting attorney or the prosecuting 296
attorney's assistants to determine a defendant's eligibility to 297
enter a pre-trial diversion program established pursuant to 298
section 2935.36 of the Revised Code; 299

(4) To a prosecuting attorney or the prosecuting 300
attorney's assistants to determine a defendant's eligibility to 301
enter a pre-trial diversion program under division (E) (2) (b) of 302
section 4301.69 of the Revised Code. 303

Sec. 2953.54. (A) Except as otherwise provided in Chapter 304
2950. of the Revised Code, upon the issuance of an order by a 305
court under division (B) or (C) of section 2953.52 of the 306
Revised Code directing that all official records pertaining to a 307
case be sealed or that all official records related to a 308
person's mistaken identity apprehension, arrest, charging, or 309
trial be expunged and that the proceedings in the case or 310
related to the apprehension, arrest, charging, or trial be 311
deemed not to have occurred: 312

(1) Every law enforcement officer possessing records or 313
reports pertaining to the case or related to the mistaken 314
identity apprehension, arrest, charging, or trial that are the 315
officer's specific investigatory work product and that are 316
excepted from the definition of "official records" contained in 317

section 2953.51 of the Revised Code shall immediately deliver 318
the records and reports to the officer's employing law 319
enforcement agency. Except as provided in division (A)(3) of 320
this section, no such officer shall knowingly release, 321
disseminate, or otherwise make the records and reports or any 322
information contained in them available to, or discuss any 323
information contained in them with, any person not employed by 324
the officer's employing law enforcement agency. 325

(2) Every law enforcement agency that possesses records or 326
reports pertaining to the case or related to the mistaken 327
identity apprehension, arrest, charging, or trial that are its 328
specific investigatory work product and that are excepted from 329
the definition of "official records" contained in section 330
2953.51 of the Revised Code, or that are the specific 331
investigatory work product of a law enforcement officer it 332
employs and that were delivered to it under division (A)(1) of 333
this section shall, except as provided in division (A)(3) of 334
this section, close the records and reports to all persons who 335
are not directly employed by the law enforcement agency and 336
shall, except as provided in division (A)(3) of this section, 337
treat the records and reports, in relation to all persons other 338
than those who are directly employed by the law enforcement 339
agency, as if they did not exist and had never existed. Except 340
as provided in division (A)(3) of this section, no person who is 341
employed by the law enforcement agency shall knowingly release, 342
disseminate, or otherwise make the records and reports in the 343
possession of the employing law enforcement agency or any 344
information contained in them available to, or discuss any 345
information contained in them with, any person not employed by 346
the employing law enforcement agency. 347

(3) A law enforcement agency that possesses records or 348

reports pertaining to the case or related to the mistaken 349
identity apprehension, arrest, charging, or trial that are its 350
specific investigatory work product and that are excepted from 351
the definition of "official records" contained in division (D) 352
of section 2953.51 of the Revised Code, or that are the specific 353
investigatory work product of a law enforcement officer it 354
employs and that were delivered to it under division (A)(1) of 355
this section may permit another law enforcement agency to use 356
the records or reports in the investigation of another offense, 357
if the facts incident to the offense being investigated by the 358
other law enforcement agency and the facts incident to an 359
offense that is the subject of the case or the mistaken identity 360
apprehension, arrest, charging, or trial are reasonably similar. 361
The agency that provides the records and reports may provide the 362
other agency with the name of the person who is the subject of 363
the case or the mistaken identity apprehension, arrest, 364
charging, or trial, if it believes that the name of the person 365
is necessary to the conduct of the investigation by the other 366
agency. 367

No law enforcement agency, or person employed by a law 368
enforcement agency, that receives from another law enforcement 369
agency records or reports pertaining to a case or relating to a 370
mistaken identity apprehension, arrest, charging, or trial the 371
records of which have been ordered sealed or expunged pursuant 372
to division (B) or (C) of section 2953.52 of the Revised Code 373
shall use the records and reports for any purpose other than the 374
investigation of the offense for which they were obtained from 375
the other law enforcement agency, or disclose the name of the 376
person who is the subject of the records or reports except when 377
necessary for the conduct of the investigation of the offense, 378
or the prosecution of the person for committing the offense, for 379

which they were obtained from the other law enforcement agency. 380

(B) Whoever violates division (A) (1), (2), or (3) of this 381
section is guilty of divulging confidential information, a 382
misdemeanor of the fourth degree. 383

(C) ~~It~~ (1) Subject to division (C) (2) of this section, it 384
is not a violation of this section for the bureau of criminal 385
identification and investigation or any authorized employee of 386
the bureau participating in the investigation of criminal 387
activity to release, disseminate, or otherwise make available 388
to, or discuss with, a person directly employed by a law 389
enforcement agency DNA records collected in the DNA database or 390
fingerprints filed for record by the superintendent of the 391
bureau of criminal identification and investigation. 392

(2) Division (C) (1) of this section does not apply with 393
respect to DNA records or fingerprints that are covered by an 394
order to expunge official records related to a mistaken identity 395
apprehension, arrest, charging, or trial issued pursuant to 396
division (C) of section 2953.52 of the Revised Code. 397

Sec. 2953.55. (A) In any application for employment, 398
license, or any other right or privilege, any appearance as a 399
witness, or any other inquiry, a person may not be questioned 400
with respect to any record that has been sealed or expunged 401
pursuant to section 2953.52 of the Revised Code, and the record 402
shall not be used for any purpose related to employment, 403
license, any other right or privilege, or appearance as a 404
witness, including a criminal records check under section 405
109.57, 109.572, 109.578, or 109.579 of the Revised Code, a 406
determination as to whether the person is authorized to obtain 407
or possess a firearm, a determination under section 2923.125 or 408
2923.1213 of the Revised Code of eligibility for a concealed 409

handgun license, or a determination as to whether the person is 410
eligible to hold public office or to be an elector, a law 411
enforcement officer, or a school employee. If an inquiry is made 412
in violation of this section: 413

(1) Regarding an official record sealed pursuant to 414
section 2953.52 of the Revised Code, the person whose official 415
record was sealed may respond as if the arrest underlying the 416
case to which the sealed official records pertain and all other 417
proceedings in that case did not occur, and the person whose 418
official record was sealed shall not be subject to any adverse 419
action because of the arrest, the proceedings, or the person's 420
response. 421

(2) Regarding an official record expunged pursuant to 422
section 2953.52 of the Revised Code, the person whose official 423
record was expunged may respond as if the mistaken identity 424
apprehension, arrest, charging, or trial to which the expunged 425
records pertain and all other proceedings related to that 426
apprehension, arrest, charging, or trial did not occur, and the 427
person whose official record was expunged shall not be subject 428
to any adverse action because of the mistaken identity 429
apprehension, arrest, charging, or trial, the proceedings, or 430
the person's response. 431

(B) An officer or employee of the state or any of its 432
political subdivisions who knowingly releases, disseminates, or 433
makes available for any purpose involving employment, bonding, 434
licensing, or education to any person or to any department, 435
agency, or other instrumentality of the state, or of any of its 436
political subdivisions, any information or other data concerning 437
any arrest, complaint, indictment, information, trial, 438
adjudication, or correctional supervision, the records of which 439

have been sealed or expunged pursuant to section 2953.52 of the
Revised Code, is guilty of divulging confidential information, a
misdemeanor of the fourth degree.

~~(C) — It —~~ (1) Subject to division (C) (2) of this section, it
is not a violation of this section for the bureau of criminal
identification and investigation or any authorized employee of
the bureau participating in the investigation of criminal
activity to release, disseminate, or otherwise make available
to, or discuss with, a person directly employed by a law
enforcement agency DNA records collected in the DNA database or
fingerprints filed for record by the superintendent of the
bureau of criminal identification and investigation.

(2) Division (C) (1) of this section does not apply with
respect to DNA records or fingerprints that are covered by an
order to expunge official records related to a mistaken identity
apprehension, arrest, charging, or trial issued pursuant to
division (C) of section 2953.52 of the Revised Code.

Sec. 2953.61. (A) Except as provided in division (B) (1) or
(C) of this section, a person charged with two or more offenses
as a result of or in connection with the same act may not apply
to the court pursuant to section 2953.32 or 2953.52 of the
Revised Code for the sealing of the person's record in relation
to any of the charges when at least one of the charges has a
final disposition that is different from the final disposition
of the other charges until such time as the person would be able
to apply to the court and have all of the records pertaining to
all of those charges sealed pursuant to section 2953.32 or
2953.52 of the Revised Code.

(B) (1) When a person is charged with two or more offenses
as a result of or in connection with the same act and the final

disposition of one, and only one, of the charges is a conviction 470
under any section of Chapter 4507., 4510., 4511., or 4549., 471
other than section 4511.19 or 4511.194 of the Revised Code, or 472
under a municipal ordinance that is substantially similar to any 473
section other than section 4511.19 or 4511.194 of the Revised 474
Code contained in any of those chapters, and if the records 475
pertaining to all the other charges would be eligible for 476
sealing under section 2953.52 of the Revised Code in the absence 477
of that conviction, the court may order that the records 478
pertaining to all the charges be sealed. In such a case, the 479
court shall not order that only a portion of the records be 480
sealed. 481

(2) Division (B)(1) of this section does not apply if the 482
person convicted of the offenses currently holds a commercial 483
driver's license or commercial driver's license temporary 484
instruction permit. 485

(C) Divisions (A) and (B) of this section apply only with 486
respect to charges of offenses and the sealing of records 487
pertaining to the charges. They do not apply with respect to the 488
expungement of official records that relate to a mistaken 489
identity apprehension, arrest, charging, or trial as described 490
in division (A)(3)(a) or (b) of section 2953.52 of the Revised 491
Code. 492

Section 2. That existing sections 2953.51, 2953.52, 493
2953.53, 2953.54, 2953.55, and 2953.61 of the Revised Code are 494
hereby repealed. 495