



Ohio Judicial Conference

The Voice of Ohio Judges

April 16, 2024

The Honorable Brett Hudson Hillyer
Ohio House of Representatives
77 South High Street, 11th Floor
Columbus, OH 43215

The Honorable Bill Seitz
Ohio House of Representatives
77 South High Street, 14th Floor
Columbus, OH 43215

Re: House Bill 460

Dear Representative Hillyer and Representative Seitz:

The Court Administration Committee and the Criminal Law and Procedure Committee of the Ohio Judicial Conference have reviewed House Bill 460, which creates a mechanism for the “automatic” sealing of certain criminal records in Ohio.

I would like to start by emphasizing that judges are fully supportive of efforts to streamline the sealing and expunging process, and to remove any roadblocks that are preventing Ohioans with criminal records from re-entering their communities and moving forward with their lives. The concept of automatic record sealing is an interesting one that is worth exploring further.

That said, we have concerns with the impact this bill could have on courts, particularly with regard to the financial costs that courts incur when processing applications to seal records. Factoring in staff time, copies, certified mail costs and postage, judges estimate that it can cost anywhere from \$80 to upwards of \$300 or \$400 for courts to process a single application to seal or expunge a record, made more costly by the fact that an applicant can apply to seal the records of multiple cases under a single application. Under current law, the applicant (unless indigent) must pay an application fee of \$50, which the court must remit to both the state and the local funding authority, keeping none to offset these costs. And while the legislature recently permitted courts to charge a local fee of up to \$50 for a sealing/expungement application, based on the costs described above, this is not nearly enough to cover the total costs courts incur when processing an application to seal or expunge.

House Bill 460 shifts the burden from “applying” to seal a record from the offender to BCI, and thus eliminates the ability of courts to assess a fee that, while, again, not nearly enough, does offset some of the costs courts must incur to process these applications. While well intended, we believe

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that H.B. 460 will thus exacerbate the financial burden that the expansion of record sealing and expungement has placed on courts, and we hope that you will take this into account as the bill moves through the legislative process.

Additionally, we have concerns that the new process created in H.B. 460 omits a key determinant that courts now employ under existing law. Currently, when a person seeks to have records sealed or expunged, the court must consider a number of factors that would not apply to offenders under H.B. 460, including, among others, "whether the applicant has been rehabilitated to the satisfaction of the court." *R.C. 2953.32 (D)(1)(e)*. Under H.B. 460, no such consideration is made. Instead, the only relevant factors are whether the person has been convicted of eligible offenses and the requisite time has passed, and whether the prosecution objects based on whether the prosecutor believes the person is not eligible, whether outstanding restitution is still owed, and whether the prosecutor believes the person is continuing to engage in criminal activity¹. This is problematic for two reasons: 1) Under the bill, there is no consideration at all as to whether the offender has been rehabilitated; and 2) This effectively creates two different routes for records to be expunged (automatically through the process created in the bill, and upon their own application) with differing standards for each. Offenders who apply on their own for sealing are subject to more stringent review than those eligible for automatic sealing under the bill, and we suggest that this would result in uneven and inconsistent application of Ohio's record-sealing/expungement policies.

Finally, the bill could result in challenges under Marsy's Law. Under existing law, victims have a right to be present and heard at sealing and expungement hearings, and the court must consider any objections raised by the victim. *R.C. 2953.32(C) and (D)(1)(e)*. House Bill 460 affords no such opportunity to victims.

Again, I would like to reiterate that judges do not oppose efforts to make sealing and expunging more accessible to those who have shown that they have been rehabilitated and deserve a second chance. We are happy to work with the sponsors to address the concerns we are raising, and to make this bill one that works without placing additional burdens on our courts.

Thank you, as always, for considering the concerns of Ohio's judges.

Sincerely,



Paul E. Pfeifer
Executive Director

CC: Rep. Cindy Abrams, Chair, House Criminal Justice Committee
Rep. Richard Brown, Ranking Member, House Criminal Justice Committee

¹ And additionally, is there a mechanism for an offender to rebut or challenge this "belief"?