
HOUSE BILL No. 1164

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-8.

Synopsis: Expunging certain felony conviction records. Allows a sentencing court to expunge the records of certain felony convictions committed before a person was 25 years of age if 20 years have passed since: (1) the completion of the person's sentence; and (2) the satisfaction of any other obligations imposed on the person as a part of the sentence.

Effective: July 1, 2006.

Summers

January 9, 2006, read first time and referred to Committee on Judiciary.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

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HOUSE BILL No. 1164



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-38-8 IS ADDED TO THE INDIANA CODE AS
 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2006]:
 4 **Chapter 8. Expungement of Conviction Records**
 5 **Sec. 1. This chapter applies to all records, including juvenile**
 6 **records, created as a result of allegations that a person committed**
 7 **a felony before the person became twenty-five (25) years of age.**
 8 **Sec. 2. (a) Except as provided in subsection (b), twenty (20)**
 9 **years after the date a person completes the person's sentence and**
 10 **satisfies any other obligations imposed on the person as a part of**
 11 **the sentence, the person may petition a sentencing court to remove**
 12 **from:**
 13 **(1) a court's files;**
 14 **(2) the files of the department of correction; and**
 15 **(3) the files of any other person who provided treatment or**
 16 **services to the petitioning person under a court order;**
 17 **the records concerning the person's involvement in criminal or**



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juvenile court proceedings.

(b) A person convicted of a sex crime under IC 35-42-4 before or after the person became twenty-five (25) years of age may not petition a court under subsection (a).

Sec. 3. In considering whether to grant an expungement petition under this chapter, the court may review the following:

- (1) Whether the person has been rehabilitated to the court's satisfaction.
- (2) Any other mitigating factors, including the following:
 - (A) Job performance.
 - (B) Job retention.
 - (C) Community service.
 - (D) Fulfillment of family and child support obligations.
 - (E) Completion of restitution to the victim.

Sec. 4. The court may not grant the expungement petition if the person has been convicted of:

- (1) any felony, including murder; or
- (2) a Class A misdemeanor;

that the person committed on or after the day the person became twenty-five (25) years of age.

Sec. 5. If the court grants the expungement petition of a person under this chapter, the court shall do the following:

- (1) Order:
 - (A) the department of correction; and
 - (B) each:
 - (i) law enforcement agency; and
 - (ii) other person;
 - who incarcerated, provided treatment for, or provided other services for the person under an order of the court; to prohibit the release of the person's records or information in the person's records to anyone without a court order.
- (2) Order any:
 - (A) state;
 - (B) regional; or
 - (C) local;
 - central repository for criminal history information to send the person's records to the court.
- (3) Seal any court records related to the allegation on which a felony conviction referred to in section 1 of this chapter was based and any proceeding related to the allegation.
- (4) Notify the clerk of the supreme court to seal any records in the clerk's possession concerning:

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1 (A) the allegation described in subdivision (3); or
 2 (B) any proceeding related to the allegation;
 3 if an appeal was taken.
 4 **Sec. 6. If an expungement petition of a person is granted under**
 5 **this chapter, information concerning the person's arrest or**
 6 **conviction may not be placed or retained in any state central**
 7 **repository for criminal history information.**
 8 **Sec. 7. If an expungement petition of a person is granted under**
 9 **this chapter, the records of:**
 10 (1) the sentencing court;
 11 (2) a juvenile court;
 12 (3) a court of appeals; and
 13 (4) the supreme court;
 14 **concerning the person shall be permanently sealed. Other records**
 15 **concerning the person may be given to the person or destroyed.**
 16 **Sec. 8. (a) If a person whose records are expunged under this**
 17 **chapter brings a civil action that might be defended with the**
 18 **contents of the records, the defendant is presumed to have a**
 19 **complete defense to the action.**
 20 (b) **For the plaintiff to recover in an action described in**
 21 **subsection (a), the plaintiff must show that the contents of the**
 22 **expunged records would not exonerate the defendant.**
 23 (c) **In an action described in subsection (a), the plaintiff may be**
 24 **required to state under oath whether:**
 25 (1) the plaintiff had records in the criminal justice system;
 26 and
 27 (2) those records were expunged.
 28 (d) **In an action described in subsection (a), if the plaintiff denies**
 29 **the existence of the records, the defendant may prove the existence**
 30 **of the records in any manner compatible with the law of evidence.**
 31 **Sec. 9. If a court orders a person's records to be expunged under**
 32 **this chapter, the person shall be treated for all purposes as if the**
 33 **person had not been arrested for or convicted of the felony**
 34 **recorded in the expunged records.**
 35 **SECTION 2. [EFFECTIVE JULY 1, 2006] IC 35-38-8, as added**
 36 **by this act, applies to all felonies regardless of when the offense was**
 37 **committed.**

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