
HOUSE BILL No. 1709

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-5.

Synopsis: Expungement of arrest records. Provides that an individual may and a prosecuting attorney shall petition a court to expunge an individual's arrest record under certain circumstances. (Current law requires an individual to petition a court to expunge an arrest record.) Requires a court to order an arrest record be expunged if the individual is acquitted or if the court dismisses a criminal indictment or information. Allows an individual to petition the court to expunge an arrest record for an arrest that occurred before July 1, 2007. Requires the division of state court administration to develop a form for an individual to file a pro se petition to expunge an arrest record.

Effective: July 1, 2007.

Herrell, Ulmer

January 26, 2007, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1709

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 35-38-5-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Whenever:
3 (1) an individual is arrested but no criminal charges are filed
4 against the individual; ~~or~~
5 (2) all criminal charges filed against an individual are dropped
6 because:
7 (A) of a mistaken identity;
8 (B) no offense was in fact committed; or
9 (C) there was an absence of probable cause;
10 **(3) an individual's conviction has been vacated and the state**
11 **may not or will not refile charges against the individual; or**
12 **(4) a prosecution is barred because charges have not been**
13 **timely filed under IC 35-41-4-2(a);**
14 the individual may **and the prosecuting attorney shall** petition the
15 court for expungement of the records related to the arrest.
16 (b) A petition for expungement of records must be verified and filed
17 in the court in which the charges were filed, or if no criminal charges



1 were filed, in a court with criminal jurisdiction in the county where the
2 arrest occurred. The petition must set forth:

- 3 (1) the date of the arrest;
4 (2) the charge;
5 (3) the law enforcement agency employing the arresting officer;
6 (4) any other known identifying information, such as the name of
7 the arresting officer, case number, or court cause number;
8 (5) the date of the petitioner's birth; and
9 (6) the petitioner's Social Security number.

10 (c) A copy of the petition shall be served on the law enforcement
11 agency, **the individual**, and the state central repository for records.

12 (d) Upon receipt of a petition for expungement, the law enforcement
13 agency shall notify the court of the name and address of each agency
14 to which any records related to the arrest were forwarded. The clerk
15 shall immediately send a copy of the petition to each of those agencies.
16 Any agency desiring to oppose the expungement shall file a notice of
17 opposition with the court setting forth reasons for resisting the
18 expungement along with any sworn statements from individuals who
19 represent the agency that explain the reasons for resisting the
20 expungement within thirty (30) days after the petition is filed. A copy
21 of the notice of opposition and copies of any sworn statements shall be
22 served on the petitioner in accordance with the Rules of Trial
23 Procedure. The court shall:

- 24 (1) summarily grant the petition;
25 (2) set the matter for hearing; or
26 (3) summarily deny the petition, if the court determines that:
27 (A) the petition is insufficient; or
28 (B) based on information contained in sworn statements
29 submitted by individuals who represent an agency, the
30 petitioner is not entitled to an expungement of records.

31 (e) If a notice of opposition is filed and the court does not
32 summarily grant or summarily deny the petition, the court shall set the
33 matter for a hearing.

34 (f) After a hearing is held under this section, the petition shall be
35 granted unless the court finds:

- 36 (1) the conditions in subsection (a) have not been met;
37 (2) the individual has a record of arrests other than minor traffic
38 offenses; or
39 (3) additional criminal charges are pending against the individual.

40 SECTION 2. IC 35-38-5-1.5 IS ADDED TO THE INDIANA CODE
41 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 2007]: **Sec. 1.5. (a) Whenever:**

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1 (1) an individual is acquitted of a criminal charge; or
2 (2) an indictment or information is dismissed by order of the
3 court;
4 the court shall order all arrest records expunged.

5 (b) An individual who was:
6 (1) charged with a crime before July 1, 2007; and
7 (2) acquitted of the charge or had the indictment or
8 information dismissed;
9 may petition the court for expungement of the record related to the
10 arrest.

11 SECTION 3. IC 35-38-5-2 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. If:

- 13 (1) the petition for expungement is granted under section 1 of
14 this chapter; or
- 15 (2) a court orders an arrest record expunged under section 1.5
16 of this chapter;

17 the law enforcement agency shall within thirty (30) days of receipt of
18 the court order deliver to the individual or destroy all fingerprints,
19 photographs, or arrest records in their possession.

20 SECTION 4. IC 35-38-5-3 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. Whenever:

- 22 (1) the petition of an individual under section 1 of this chapter is
23 granted; or
- 24 (2) a court orders an arrest record expunged under section 1.5
25 of this chapter;

26 no information concerning the arrest may be placed or retained in any
27 state central repository for criminal history information or in any other
28 alphabetically arranged criminal history information system maintained
29 by a local, regional, or statewide law enforcement agency. However,
30 this chapter does not require any change or alteration in any record
31 (such as a police blotter entry) made at the time of the arrest or in the
32 record of any court in which the criminal charges were filed.

33 SECTION 5. IC 35-38-5-7 IS ADDED TO THE INDIANA CODE
34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
35 1, 2007]: Sec. 7. The division of state court administration shall:

- 36 (1) develop a pro se petition for an individual who files a
37 petition under this chapter; and
- 38 (2) provide the petition under subdivision (1) to the clerk of
39 each court that may receive a petition under this chapter.

40 SECTION 6. [EFFECTIVE JULY 1, 2007] IC 35-38-5-1, as
41 amended by this act, and IC 35-38-5-1.5(a), as added by this act,
42 apply only to arrests occurring after June 30, 2007.

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