

# SENATE BILL No. 325

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38.

**Synopsis:** Arrest and conviction records. Adds prosecuting attorneys to the list of entities that are to be served with a petition to expunge arrest records. Adds requirements for a person to petition to restrict access to conviction records. Changes requirements for a court to grant a petition to restrict access to conviction records. Relocates a section regarding restricted access of arrest records to a new chapter.

**Effective:** July 1, 2012.

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January 9, 2012, read first time and referred to Committee on Judiciary.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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# SENATE BILL No. 325



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, 2012]: 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 the individual may petition the court for expungement of the records  
 11 related to the arrest.  
 12 (b) A petition for expungement of records must be verified and filed  
 13 in the court in which the charges were filed, or if no criminal charges  
 14 were filed, in a court with criminal jurisdiction in the county where the  
 15 arrest occurred. The petition must set forth:  
 16 (1) the date of the arrest;  
 17 (2) the charge;



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

6 (c) A copy of the petition shall be served on the law enforcement  
 7 agency, **the prosecuting attorney**, and the state central repository for  
 8 records.

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

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

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

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

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

37 SECTION 2. IC 35-38-5-5.5 IS REPEALED [EFFECTIVE JULY  
 38 1, 2012]. ~~Sec. 5-5: (a) If a person charged with a crime:~~

- 39 ~~(1) is not prosecuted or if charges against the person are~~  
 40 ~~dismissed;~~  
 41 ~~(2) is acquitted of all criminal charges; or~~  
 42 ~~(3) is convicted of the crime and the conviction is subsequently~~

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1           vacated;  
 2           the person may petition a court to restrict disclosure of the records  
 3           related to the arrest to a noncriminal justice organization or an  
 4           individual.

5           (b) A petition under subsection (a) must be verified and filed in:  
 6           (1) the court in which the charges against the person were filed;  
 7           for a person described in subsection (a)(1); or  
 8           (2) the court in which the trial was held; for a person described in  
 9           subsection (a)(2) or (a)(3).

10          (c) A petition under subsection (a) must be filed not earlier than:  
 11          (1) if the person is acquitted; thirty (30) days after the person is  
 12          acquitted;

13          (2) if the person's conviction is vacated; three hundred sixty-five  
 14          (365) days after:

15                (A) the order vacating the person's conviction is final; if there  
 16                is no appeal or the appeal is terminated before entry of an  
 17                opinion or memorandum decision; or

18                (B) the opinion or memorandum decision vacating the person's  
 19                conviction is certified; or

20          (3) if the person is not prosecuted; thirty (30) days after charges  
 21          are dismissed; if the charges are not refiled.

22          (d) A petition under subsection (a) must set forth:

23                (1) the date of the arrest;

24                (2) the charge;

25                (3) the date charges were dismissed; if applicable;

26                (4) the date of conviction or acquittal; if applicable;

27                (5) the date the conviction was vacated; if applicable;

28                (6) the basis on which the conviction was vacated; if applicable;

29                (7) the law enforcement agency employing the arresting officer;

30                (8) any other known identifying information; such as the name of  
 31                the arresting officer; case number; or court cause number;

32                (9) the date of the petitioner's birth; and

33                (10) the petitioner's Social Security number.

34          (e) A copy of a petition under subsection (a) shall be served on the  
 35          prosecuting attorney and the state central repository for records.

36          (f) If the prosecuting attorney wishes to oppose a petition under  
 37          subsection (a); the prosecuting attorney shall, not later than thirty (30)  
 38          days after the petition is filed; file a notice of opposition with the court  
 39          setting forth reasons for opposing the petition. The prosecuting attorney  
 40          shall attach to the notice of opposition a certified copy of any  
 41          documentary evidence showing that the petitioner is not entitled to  
 42          relief. A copy of the notice of opposition and copies of any



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1 documentary evidence shall be served on the petitioner in accordance  
2 with the Indiana Rules of Trial Procedure. The court may:

- 3 (1) summarily grant the petition;  
4 (2) set the matter for hearing; or  
5 (3) summarily deny the petition, if the court determines that:  
6 (A) the petition is insufficient; or  
7 (B) based on documentary evidence submitted by the  
8 prosecuting attorney, the petitioner is not entitled to have  
9 access to the petitioner's arrest records restricted.

10 (g) If a notice of opposition is filed under subsection (f) and the  
11 court does not summarily grant or summarily deny the petition, the  
12 court shall set the matter for a hearing.

13 (h) After a hearing is held under subsection (g), the court shall grant  
14 the petition filed under subsection (a), unless the petitioner is being  
15 reprosecuted on charges related to the original conviction:

16 (i) If the court grants a petition filed under subsection (a), the court  
17 shall order the state police department not to disclose or permit  
18 disclosure of the petitioner's limited criminal history information to a  
19 noncriminal justice organization or an individual under IC 10-13-3-27.

20 SECTION 3. IC 35-38-8-3, AS ADDED BY P.L.194-2011,  
21 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
22 JULY 1, 2012]: Sec. 3. (a) Eight (8) years after the date a person  
23 completes the person's sentence and satisfies any other obligations  
24 imposed on the person as a part of the sentence, the person may  
25 petition a sentencing court to order the state police department, **the law**  
26 **enforcement agency involved in the person's arrest, the department**  
27 **of correction, and the state central repository for records** to restrict  
28 access to the records concerning the person's arrest. ~~and involvement~~  
29 ~~in criminal or juvenile court proceedings.~~

30 (b) **A petition under subsection (a) must be verified and filed in**  
31 **the court in which the charges against the person were filed.**

32 (c) **A petition under subsection (a) must set forth:**

- 33 (1) **the conviction;**  
34 (2) **the date of the conviction;**  
35 (3) **the date the person completed the person's sentence and**  
36 **satisfied any other obligations imposed on the person as part**  
37 **of the sentence;**  
38 (4) **the law enforcement agency employing the arresting**  
39 **officer;**  
40 (5) **any other known identifying information, such as the name**  
41 **of the arresting officer, case number, or court cause number;**  
42 (6) **the date of the petitioner's birth; and**



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1           (7) the petitioner's Social Security number.

2           (d) A copy of a petition under subsection (a) shall be served on  
3 the state police department, the law enforcement agency involved  
4 in the person's arrest, the prosecuting attorney who prosecuted the  
5 person's case, the department of correction, and the state central  
6 repository for records.

7           (e) Upon receipt of a petition for restriction of access to  
8 conviction records in a criminal or juvenile court proceeding, the  
9 law enforcement agency described in subsection (d) shall notify the  
10 court of the name and address of each agency to which any records  
11 related to the conviction were forwarded. The court shall  
12 immediately send a copy of the petition to each of those agencies  
13 and any agencies that the court had contacted or notified in which  
14 any records related to the conviction were forwarded. If the  
15 prosecuting attorney or any notified agency desires to oppose a  
16 petition under subsection (a), the prosecuting attorney or agency  
17 shall file a notice of opposition with the court setting forth reasons  
18 for opposing the petition, within thirty (30) days after the petition  
19 is filed. The prosecuting attorney or notified agency shall also  
20 attach to the notice of opposition a certified copy of any  
21 documentary evidence indicating that the petitioner is not entitled  
22 to relief. A copy of the notice of opposition and copies of any  
23 documentary evidence shall be served on the petitioner in  
24 accordance with the Rules of Trial Procedure.

25           (f) The court may:  
26           (1) summarily grant a petition;  
27           (2) set the matter for hearing; or  
28           (3) summarily deny the petition, if the court determines that:  
29           (A) the petition is insufficient; or  
30           (B) based on documentary information submitted by the  
31 prosecuting attorney or notified agency, the petitioner is  
32 not entitled to have the petitioner's conviction records  
33 restricted.

34           (g) If a notice of opposition is filed under subsection (e) and the  
35 court does not summarily grant or summarily deny the petition,  
36 the court shall set the matter for a hearing.

37           SECTION 4. IC 35-38-8-4, AS ADDED BY P.L.194-2011,  
38 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
39 JULY 1, 2012]: Sec. 4. The court shall grant a petition under this  
40 chapter if **unless** the court finds:

41           (1) the requirements of section 3(a) and 3(b) of this chapter  
42 have not been met;

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1 (2) **except for minor traffic offenses, the person has a record**  
 2 **of arrests;**

3 (3) **there are pending criminal charges against the person;**

4 (†) (4) the person is

5 (A) ~~not a sex or violent offender or~~

6 (B) a sex or violent offender, but the ~~offender's court may~~  
 7 **grant the petition if the court finds that the person's** status  
 8 as a sex or violent offender is solely due to the offender's  
 9 conviction for sexual misconduct with a minor (IC 35-42-4-9)  
 10 and the offender proved that the defense described in  
 11 IC 35-42-4-9(e) applies to the offender;

12 (‡) (5) the person was:

13 (A) convicted of a misdemeanor or a Class D felony that did  
 14 ~~not~~ result in injury to a person; or

15 (B) adjudicated a delinquent child for committing an offense  
 16 that, if committed by an adult, would be a misdemeanor or  
 17 Class D felony ~~not resulting that did not result~~ in injury to a  
 18 person;

19 (‡) (6) eight (8) years have ~~not~~ passed since the person completed  
 20 the person's sentence and satisfied any other obligation imposed  
 21 on the person as part of the sentence; and

22 (†) (7) the person has ~~not~~ been convicted of a felony, **except for**  
 23 **a Class D felony that was reduced to a Class A misdemeanor**  
 24 **under IC 35-50-2-7(b)**, since the person completed the person's  
 25 sentence and satisfied any other obligation imposed on the person  
 26 as part of the sentence.

27 SECTION 5. IC 35-38-8-5, AS ADDED BY P.L.194-2011,  
 28 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29 JULY 1, 2012]: Sec. 5. If the court grants the petition of a person under  
 30 this chapter, the court shall do the following:

31 (1) Order:

32 (A) the department of correction; and

33 (B) each:

34 (i) law enforcement agency; ~~and~~

35 (ii) other person; **and**

36 **(iii) agency;**

37 who incarcerated, provided treatment for, or provided other  
 38 services for the person under an order of the court;

39 to prohibit the release of the person's records or information  
 40 relating to the misdemeanor, nonviolent Class D felony, or  
 41 juvenile adjudication described in section 2 of this chapter, in the  
 42 person's records to a noncriminal justice agency without a court

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1 order.

2 (2) Order any:

3 (A) state;

4 (B) regional; or

5 (C) local;

6 central repository for criminal history information to prohibit the  
7 release of the person's records or information relating to the  
8 misdemeanor, nonviolent Class D felony, or juvenile adjudication  
9 described in section 2 of this chapter, in the person's records to a  
10 noncriminal justice agency without a court order.

11 SECTION 6. IC 35-38-9 IS ADDED TO THE INDIANA CODE AS  
12 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
13 1, 2012]:

14 **Chapter 9. Restricted Disclosure of Arrest Records**

15 **Sec. 1. (a) If a person charged with a crime:**

16 (1) is not prosecuted or if all charges against the person are  
17 dismissed;

18 (2) is acquitted of all criminal charges; or

19 (3) is convicted of the crime and the conviction on all charges  
20 is subsequently vacated;

21 the person may petition a court to restrict disclosure of the records  
22 related to the arrest to a noncriminal justice organization or an  
23 individual.

24 (b) A petition under subsection (a) must be verified and filed in:

25 (1) the court in which the charges against the person were  
26 filed, for a person described in subsection (a)(1); or

27 (2) the court in which the trial was held, for a person  
28 described in subsection (a)(2) or (a)(3).

29 (c) A petition under subsection (a) must be filed not earlier than:

30 (1) if the person is acquitted, thirty (30) days after the person  
31 is acquitted;

32 (2) if the person's conviction is vacated, three hundred  
33 sixty-five (365) days after:

34 (A) the order vacating the person's conviction is final, if  
35 there is no appeal or the appeal is terminated before entry  
36 of an opinion or memorandum decision; or

37 (B) the opinion or memorandum decision vacating the  
38 person's conviction is certified; or

39 (3) if the person is not prosecuted, thirty (30) days after  
40 charges are dismissed, if the charges are not refiled.

41 (d) A petition under subsection (a) must set forth:

42 (1) the date of the arrest;

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- 1           (2) the charge;
- 2           (3) the date charges were dismissed, if applicable;
- 3           (4) the date of conviction or acquittal, if applicable;
- 4           (5) the date the conviction was vacated, if applicable;
- 5           (6) the basis on which the conviction was vacated, if
- 6           applicable;
- 7           (7) the law enforcement agency employing the arresting
- 8           officer;
- 9           (8) any other known identifying information, such as the name
- 10          of the arresting officer, case number, or court cause number;
- 11          (9) the date of the petitioner's birth; and
- 12          (10) the petitioner's Social Security number.
- 13          (e) A copy of a petition under subsection (a) shall be served on
- 14          the prosecuting attorney of the jurisdiction in which the petitioner
- 15          under subsection (a) was charged with a crime and the state central
- 16          repository for records.
- 17          (f) If the prosecuting attorney described in subsection (e) wishes
- 18          to oppose a petition under subsection (a), the prosecuting attorney
- 19          shall, not later than thirty (30) days after the petition is filed, file
- 20          a notice of opposition with the court setting forth reasons for
- 21          opposing the petition. The prosecuting attorney shall attach to the
- 22          notice of opposition a certified copy of any documentary evidence
- 23          showing that the petitioner is not entitled to relief. A copy of the
- 24          notice of opposition and copies of any documentary evidence shall
- 25          be served on the petitioner in accordance with the Indiana Rules of
- 26          Trial Procedure. The court may:
- 27                (1) summarily grant the petition;
- 28                (2) set the matter for hearing; or
- 29                (3) summarily deny the petition, if the court determines that:
- 30                    (A) the petition is insufficient; or
- 31                    (B) based on documentary evidence submitted by the
- 32                    prosecuting attorney, the petitioner is not entitled to have
- 33                    access to the petitioner's arrest records restricted.
- 34          (g) If a notice of opposition is filed under subsection (f) and the
- 35          court does not summarily grant or summarily deny the petition,
- 36          the court shall set the matter for a hearing.
- 37          (h) After a hearing is held under subsection (g), the court shall
- 38          grant the petition filed under subsection (a), unless:
- 39                (1) the conditions set forth in subsection (a)(1) through (a)(3)
- 40                have not been met; or
- 41                (2) the petitioner is being reprosecuted on charges related to
- 42                the original conviction.

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1           **(i) If the court grants a petition filed under subsection (a), the**  
2           **court shall order the state police department not to disclose or**  
3           **permit disclosure of the petitioner's limited criminal history**  
4           **information to a noncriminal justice organization or an individual**  
5           **under IC 10-13-3-27.**

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