

HOUSE BILL No. 1336

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.

Summers

January 11, 2012, read first time and referred to Committee on Courts and Criminal Code.

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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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HOUSE BILL No. 1336



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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