

January 27, 1998

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## HOUSE BILL No. 1281

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DIGEST OF HB1281 (Updated January 22, 1998 1:48 pm - DI 51)

**Citations Affected:** IC 35-38-5-1.

**Synopsis:** Expungement of arrest records. Allows an individual to petition a court for expungement of the records related to the individual's arrest if: (1) all criminal charges filed against the individual are dropped because of an involuntary dismissal or a directed verdict in favor of the individual; or (2) the individual is arrested and charged with committing a criminal offense and is subsequently found not guilty of committing the offense.

**Effective:** July 1, 1998.

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**Keeler**

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January 13, 1998, read first time and referred to Committee on Courts and Criminal Code.  
January 26, 1998, reported — Do Pass.

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HB 1281—LS 6035/DI 69



January 27, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

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## HOUSE BILL No. 1281

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, AS AMENDED BY P.L.159-1994,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 1998]: Sec. 1. (a) Whenever:  
4 (1) an individual is arrested but no criminal charges are filed  
5 against the individual; ~~or~~  
6 (2) all criminal charges filed against an individual are dropped  
7 because:  
8 (A) of a mistaken identity;  
9 (B) no offense was in fact committed; or  
10 (C) there was an absence of probable cause;  
11 **(3) all criminal charges filed against an individual are**  
12 **dropped because of:**  
13 **(A) an involuntary dismissal; or**  
14 **(B) a directed verdict;**  
15 **in favor of the individual; or**  
16 **(4) an individual is:**  
17 **(A) arrested and charged with committing an offense; and**

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1                   **(B) subsequently found not guilty of committing the**  
 2                   **offense;**

3 the individual may petition the court for expungement of the records  
 4 related to the arrest.

5           (b) A petition for expungement of records must be verified and filed  
 6 in the court in which the charges were filed, or if no criminal charges  
 7 were filed, in a court with criminal jurisdiction in the county where the  
 8 arrest occurred. The petition must set forth:

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

16           (c) A copy of the petition shall be served on the law enforcement  
 17 agency and the state central repository for records.

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

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

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

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

- 42                   (1) the conditions in subsection (a) have not been met;

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- 1 (2) the individual has a record of arrests other than minor traffic
- 2 offenses; or
- 3 (3) additional criminal charges are pending against the individual.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1281, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

DVORAK, Chair

Committee Vote: yeas 10, nays 3.

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