

SENATE BILL No. 416

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-5.

Synopsis: Expungement of records. Provides that a person may petition a court for expungement of criminal records relating to an arrest and conviction for a Class D felony if the person has not committed another offense during the ten years immediately following the person's conviction for the Class D felony. Allows the court to: (1) expunge the person's criminal records relating to the Class D felony; or (2) set aside the judgment of conviction for the Class D felony and enter a judgment of conviction as a Class A misdemeanor. Makes conforming amendments.

Effective: July 1, 1998.

Randolph

January 13, 1998, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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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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SENATE BILL No. 416



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; **or**
11 **(3) an individual has:**
12 **(A) been convicted of a Class D felony; and**
13 **(B) not committed another offense during the ten (10)**
14 **years immediately following the individual's conviction for**
15 **the Class D felony;**
16 the individual may petition the court for expungement of the records
17 related to the arrest **and conviction.**



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

5 (1) the date of the arrest;

6 (2) the charge;

7 **(3) the disposition;**

8 ~~(3)~~ **(4)** the law enforcement agency employing the arresting
 9 officer;

10 ~~(4)~~ **(5)** any other known identifying information, such as the name
 11 of the arresting officer, case number, or court cause number;

12 ~~(5)~~ **(6)** the date of the petitioner's birth; and

13 ~~(6)~~ **(7)** the petitioner's Social Security number.

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

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

28 (1) summarily grant the petition;

29 (2) set the matter for hearing; or

30 (3) summarily deny the petition, if the court determines that:

31 (A) the petition is insufficient; or

32 (B) based on information contained in sworn statements
 33 submitted by individuals who represent an agency, the
 34 petitioner is not entitled to an expungement of records.

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

38 (f) **Except as provided in subsection (g)**, after a hearing is held
 39 under this section, the petition shall be granted unless the court finds:

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

41 (2) the individual has a record of arrests **or convictions** other than
 42 **for** minor traffic offenses; or

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1 (3) additional criminal charges are pending against the individual.

2 (g) **If a petitioner requests expungement of records relating to**
 3 **a Class D felony conviction under section 1(a)(3) of this chapter,**
 4 **after a hearing is held under this section the court may expunge the**
 5 **petitioner's records or set aside the judgment of conviction for the**
 6 **Class D felony and enter a judgment of conviction as a Class A**
 7 **misdemeanor.**

8 SECTION 2. IC 35-38-5-2 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. If the petition for
 10 expungement is granted, the law enforcement agency shall within thirty
 11 (30) days of receipt of the court order, deliver to the individual or
 12 destroy all fingerprints, photographs, or arrest records **relating to the:**

13 (1) **arrest, indictment, information, or other formal criminal**
 14 **charges; and**

15 (2) **disposition, including sentencing and correctional system**
 16 **intake, transfer, and release;**

17 in their possession.

18 SECTION 3. IC 35-38-5-3 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. Whenever the
 20 petition of an individual under section 1 of this chapter is granted, no
 21 information concerning the arrest **or conviction** may be placed or
 22 retained in any state central repository for criminal history information
 23 or in any other alphabetically arranged criminal history information
 24 system maintained by a local, regional, or statewide law enforcement
 25 agency. However, this chapter does not require any change or alteration
 26 in any record (such as a police blotter entry) made at the time of the
 27 arrest or in the record of any court in which the criminal charges were
 28 filed.

29 SECTION 4. IC 35-38-5-5 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) **In addition to a**
 31 **person's right to petition for expungement of records relating to an**
 32 **arrest or conviction under section 1 of this chapter,** a person may
 33 petition the state police department to limit access to his limited
 34 criminal history to criminal justice agencies if more than fifteen (15)
 35 years have elapsed since the date the person was discharged from
 36 probation, imprisonment, or parole (whichever is later) for the last
 37 conviction for a crime.

38 (b) When a petition is filed under subsection (a), the state police
 39 department shall not release limited criminal history to noncriminal
 40 justice agencies under IC 5-2-5-5.



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