

# HOUSE BILL No. 1084

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## DIGEST OF INTRODUCED BILL

**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 the individual is: (1) arrested and charged with committing an offense involving operating a vehicle while intoxicated; and (2) subsequently found not guilty of committing the offense.

**Effective:** July 1, 1998.

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**M. Young**

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January 6, 1998, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

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.

## HOUSE BILL No. 1084

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 is:**  
12 **(A) arrested and charged with committing an offense**  
13 **under IC 9-30-5; and**  
14 **(B) subsequently found not guilty of committing the**  
15 **offense;**  
16 the individual may petition the court for expungement of the records  
17 related to the arrest.

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

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

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

- 26 (1) summarily grant the 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 information contained in sworn statements  
31 submitted by individuals who represent an agency, the  
32 petitioner is not entitled to an expungement of records.

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

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

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

