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# SENATE BILL No. 392

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Expungement. Provides additional situations in which a court may expunge arrest records, and establishes certain procedures concerning expungement. Provides that law enforcement agencies may not release a limited criminal history to noncriminal justice agencies if certain petitions are filed. Provides that it is a Class B misdemeanor if an employee of a law enforcement agency violates the expungement of arrest records laws.

**Effective:** July 1, 2011.

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### Taylor

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January 11, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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## SENATE BILL No. 392



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, 2011]: Sec. 1. **(a) Whenever:**  
 3 **(1) a criminal charge filed against an individual is dismissed;**  
 4 **or**  
 5 **(2) an individual is arrested and charged with committing an**  
 6 **offense but:**  
 7 **(A) is subsequently found not guilty of committing the**  
 8 **offense; or**  
 9 **(B) following the person's conviction, the person's**  
 10 **conviction for one (1) or more offenses is reversed or**  
 11 **vacated on appeal;**  
 12 **the court having jurisdiction over the case shall, upon its own**  
 13 **motion, not later than thirty (30) days from the date the court**  
 14 **learns of the event described in subdivision (1) or (2), order the**  
 15 **state police department and every law enforcement agency having**  
 16 **records related to the arrest of the individual in relation to the**  
 17 **charge described in subdivision (1) or reversed or vacated**



1 **conviction described in subdivision (2) to expunge these records.**

2 ~~(a)~~ **(b)** Whenever:

3 (1) an individual is arrested but no criminal charges are filed  
4 against the individual; or

5 ~~(2) all a criminal charges charge~~ filed against an individual are  
6 dropped 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 **is dismissed;**

11 **(3) an individual is arrested and charged with committing an**  
12 **offense but:**

13 **(A) is subsequently found not guilty of committing the**  
14 **offense; or**

15 **(B) following the person's conviction, the person's**  
16 **conviction for one (1) or more offenses is reversed or**  
17 **vacated on appeal; or**

18 **(4) a charge, arrest, or conviction appears on an individual's**  
19 **criminal history because of identity theft, deception, or**  
20 **mistake;**

21 the individual may petition the court for expungement of the records  
22 related to the arrest

23 ~~(b)~~ **(c) This subsection does not apply if an individual has filed**  
24 **a petition under subsection (b). If the court having jurisdiction**  
25 **over the case learns that a charge, arrest, or conviction appearing**  
26 **on a person's record may be the result of identity theft, deception,**  
27 **or mistake, the court may set the matter for hearing not later than**  
28 **thirty (30) days later. If the court finds that the charge, arrest, or**  
29 **conviction is the result of identity theft, deception, or mistake, the**  
30 **court shall order the state police department and every law**  
31 **enforcement agency having records related to the arrest to**  
32 **expunge these records.**

33 **(d)** A petition for expungement of records **under subsection (b)**  
34 **must be verified and filed in the court in which the charges were filed,**  
35 **or if no criminal charges were filed, in a court with criminal**  
36 **jurisdiction in the county where the arrest occurred. The petition must**  
37 **set forth:**

38 (1) the date of the arrest;

39 (2) the charge;

40 (3) the law enforcement agency employing the arresting officer;

41 (4) any other known identifying information, such as the name of  
42 the arresting officer, case number, or court cause number;

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1 (5) the date of the petitioner's birth; and  
 2 (6) the petitioner's Social Security number.  
 3 ~~(e)~~ **(e)** A copy of the petition **described in subsection (b)** shall be  
 4 served on the law enforcement agency and the state central repository  
 5 for records.  
 6 ~~(f)~~ **(f)** Upon receipt of a petition for expungement **under subsection**  
 7 **(b)**, the law enforcement agency shall notify the court of the name and  
 8 address of each agency to which any records related to the arrest were  
 9 forwarded. The clerk shall immediately send a copy of the petition to  
 10 each of those agencies. Any agency desiring to oppose the  
 11 expungement shall file a notice of opposition with the court setting  
 12 forth reasons for resisting the expungement along with any sworn  
 13 statements from individuals who represent the agency that explain the  
 14 reasons for resisting the expungement within thirty (30) days after the  
 15 petition is filed. A copy of the notice of opposition and copies of any  
 16 sworn statements shall be served on the petitioner in accordance with  
 17 the Rules of Trial Procedure. The court shall:  
 18 (1) summarily grant the petition;  
 19 (2) set the matter for hearing; or  
 20 (3) summarily deny the petition, if the court determines that:  
 21 (A) the petition is insufficient; or  
 22 (B) based on information contained in sworn statements  
 23 submitted by individuals who represent an agency, the  
 24 petitioner is not entitled to an expungement of records.  
 25 ~~(g)~~ **(g)** If a notice of opposition is filed and the court does not  
 26 summarily grant or summarily deny the petition, the court shall set the  
 27 matter for a hearing.  
 28 ~~(h)~~ **(h)** After a hearing is held under this section, the petition shall be  
 29 granted unless the court finds:  
 30 (1) the conditions in subsection ~~(a)~~ **(b)** have not been met; **or**  
 31 ~~(2) the individual has a record of arrests other than minor traffic~~  
 32 ~~offenses; or~~  
 33 ~~(3) (2) additional criminal charges are pending against the~~  
 34 ~~individual.~~  
 35 SECTION 2. IC 35-38-5-5, AS AMENDED BY P.L.2-2005,  
 36 SECTION 124, IS AMENDED TO READ AS FOLLOWS  
 37 [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) This section does not apply  
 38 to a request to a law enforcement agency for the release or inspection  
 39 of a limited criminal history to a noncriminal justice organization or  
 40 individual whenever the subject of the request is described in  
 41 IC 10-13-3-27(a)(8) or IC 10-13-3-27(a)(12).  
 42 (b) A person may petition the state police department to limit access

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1 to the person's limited criminal history to criminal justice agencies if  
2 more than fifteen (15) years have elapsed since the date the person was  
3 discharged from probation, imprisonment, or parole (whichever is  
4 later) for the last conviction for a crime.

5 (c) When a petition is filed under subsection (b), ~~the state police~~  
6 **department a law enforcement agency** shall not release limited  
7 criminal history to noncriminal justice agencies under IC 10-13-3-27.

8 SECTION 3. IC 35-38-5-6 IS AMENDED TO READ AS  
9 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. A law enforcement  
10 officer **or an employee of a law enforcement agency** who **recklessly,**  
11 **knowingly, or intentionally** violates this chapter commits a Class B  
12 misdemeanor.

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