HOUSE BILL No. 1289

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-8.

Synopsis: Expungement of criminal offenses records. Allows a sentencing court to expunge the records of certain felony convictions committed before a person was 25 years of age if five years have passed since: (1) the completion of the person's sentence; and (2) the satisfaction of any other obligations imposed on the person as a part of the sentence. Allows a law enforcement agency, prosecuting attorney, or court to gain access to permanently sealed records under certain circumstances.

Effective: July 1, 2011.

Smith M

January 12, 2011, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

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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HOUSE BILL No. 1289

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:

SECTION 1. IC 35-38-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 8. Expungement of Conviction Records

Sec. 1. This chapter applies to all:

(1) felonies, regardless of when a felony was committed; and

(2) records, including juvenile records, created as a result of an allegation that a person committed a felony before the person became twenty-five (25) years of age.

Sec. 2. Five (5) years after the date a person completes the person's sentence and satisfies any other obligations imposed on the person as a part of the sentence, the person may petition a sentencing court to expunge from:

(1) a court's files;

(2) the files of the department of correction; and

(3) the files of any other person who provided treatment or services to the petitioning person under a court order;

the records concerning the person's involvement in criminal or juvenile court proceedings.

Sec. 3. In considering whether to grant an expungement petition under this chapter, the court may review the following:

(1) Whether the person has been rehabilitated to the court's satisfaction.

(2) Any other mitigating factors, including the following:

(A) Job performance.

(B) Job retention.

(C) Community service.

(D) Fulfillment of family and child support obligations.

(E) Completion of restitution to the victim.

Sec. 4. The court may not grant an expungement petition if the person has been convicted of any felony, including murder that the person committed on or after the day the person became twenty-five (25) years of age.

Sec. 5. If the court grants the expungement petition of a person under this chapter, the court shall do the following:

(1) Order:

(A) the department of correction; and

(B) each:

(i) law enforcement agency; and

(ii) other person;

who incarcerated, provided treatment for, or provided other services for the person under an order of the court; to prohibit the release of the person's records or information in the person's records to anyone without a court order.

(2) Order any:

(A) state;

(B) regional; or

(C) local;

central repository for criminal history information to send the person's records to the court.

(3) Seal any court records related to the allegation referred to in section 1 of this chapter on which a felony conviction was based and any proceeding related to the allegation.

(4) Notify the clerk of the supreme court to seal any records in the clerk's possession concerning:

(A) the allegation described in subdivision (3); or

(B) any proceeding related to the allegation;

if an appeal was taken.

Sec. 6. If an expungement petition of a person is granted under

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this chapter, information concerning the person's arrest or conviction may not be placed or retained in any state central repository for criminal history information.

Sec. 7. (a) If an expungement petition of a person is granted under this chapter, the records of:

(1) the sentencing court;

(2) a juvenile court;

(3) a court of appeals; and

(4) the supreme court;

concerning the person shall be permanently sealed. Other records concerning the person may be given to the person or destroyed.

(b) Notwithstanding subsection (a), a law enforcement agency, prosecuting attorney, or court may submit a written application to a court that granted an expungement petition under this chapter to gain access to any records that were permanently sealed under subsection (a). If a person who submits a written application under this subsection shows good cause for unsealing the records described in subsection (a), the court that granted the expungement petition shall:

(1) order the records to be unsealed; and

(2) allow the person who submitted the written application to have access to the records.

If a court orders records to be unsealed under this subsection, the court shall order the records to be permanently resealed at the earliest possible time after the reasons for unsealing the records cease to exist.

Sec. 8. (a) If a person whose records are expunged under this chapter brings a civil action that might be defended with the contents of the records, the defendant is presumed to have a complete defense to the action.

(b) For the plaintiff to recover in an action described in subsection (a), the plaintiff must show that the contents of the expunged records would not exonerate the defendant.

(c) In an action described in subsection (a), the plaintiff may be required to state under oath whether:

(1) the plaintiff had records in the criminal justice system; and

(2) those records were expunged.

(d) In an action described in subsection (a), if the plaintiff denies the existence of the records, the defendant may prove the existence of the records in any manner compatible with the law of evidence.

Sec. 9. If a court orders a person's records to be expunged under

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this chapter, the person shall be treated for all purposes as if the person had not been arrested for or convicted of the felony recorded in the expunged records.

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