

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1211 be amended to read as follows:

- 1 Delete the title and insert the following:  
2 A BILL FOR AN ACT to amend the Indiana code concerning  
3 restricted access to criminal records.  
4 Page 1, delete lines 1 through 11, begin a new paragraph and insert:  
5 "SECTION 1. IC 35-38-5-5.5 IS ADDED TO THE INDIANA  
6 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
7 **[EFFECTIVE JULY 1, 2011]: Sec. 5.5. (a) If a person charged with**  
8 **a crime:**  
9 **(1) is not prosecuted or if charges against the person are**  
10 **dismissed;**  
11 **(2) is acquitted of all criminal charges; or**  
12 **(3) is convicted of the crime and the conviction is subsequently**  
13 **vacated;**  
14 **the person may petition a court to restrict disclosure of the records**  
15 **related to the arrest to a noncriminal justice organization or an**  
16 **individual.**  
17 **(b) A petition under subsection (a) must be verified and filed in:**  
18 **(1) the court in which the charges against the person were**  
19 **filed, for a person described in subsection (a)(1); or**  
20 **(2) the court in which the trial was held, for a person**  
21 **described in subsection (a)(2) or (a)(3).**  
22 **(c) A petition under subsection (a) must be filed not earlier than:**  
23 **(1) if the person is acquitted, thirty (30) days after the person**  
24 **is acquitted;**  
25 **(2) if the person's conviction is vacated, three hundred**  
26 **sixty-five (365) days after:**  
27 **(A) the order vacating the person's conviction is final, if**  
28 **there is no appeal or the appeal is terminated before entry**  
29 **of an opinion or memorandum decision; or**  
30 **(B) the opinion or memorandum decision vacating the**

- 1                   person's conviction is certified; or  
2                   (3) if the person is not prosecuted, thirty (30) days after  
3                   charges are dismissed, if the charges are not refiled.
- 4           (d) A petition under subsection (a) must set forth:
- 5                   (1) the date of the arrest;  
6                   (2) the charge;  
7                   (3) the date charges were dismissed, if applicable;  
8                   (4) the date of conviction or acquittal, if applicable;  
9                   (5) the date the conviction was vacated, if applicable;  
10                  (6) the basis on which the conviction was vacated, if  
11                  applicable;  
12                  (7) the law enforcement agency employing the arresting  
13                  officer;  
14                  (8) any other known identifying information, such as the name  
15                  of the arresting officer, case number, or court cause number;  
16                  (9) the date of the petitioner's birth; and  
17                  (10) the petitioner's Social Security number.
- 18           (e) A copy of a petition under subsection (a) shall be served on  
19           the prosecuting attorney and the state central repository for  
20           records.
- 21           (f) If the prosecuting attorney wishes to oppose a petition under  
22           subsection (a), the prosecuting attorney shall, not later than thirty  
23           (30) days after the petition is filed, file a notice of opposition with  
24           the court setting forth reasons for opposing the petition. The  
25           prosecuting attorney shall attach to the notice of opposition a  
26           certified copy of any documentary evidence showing that the  
27           petitioner is not entitled to relief. A copy of the notice of opposition  
28           and copies of any documentary evidence shall be served on the  
29           petitioner in accordance with the Indiana Rules of Trial Procedure.  
30           The court may:
- 31                   (1) summarily grant the petition;  
32                   (2) set the matter for hearing; or  
33                   (3) summarily deny the petition, if the court determines that:  
34                   (A) the petition is insufficient; or  
35                   (B) based on documentary evidence submitted by the  
36                   prosecuting attorney, the petitioner is not entitled to have  
37                   access to the petitioner's arrest records restricted.
- 38           (g) If a notice of opposition is filed under subsection (f) and the  
39           court does not summarily grant or summarily deny the petition,  
40           the court shall set the matter for a hearing.
- 41           (h) After a hearing is held under subsection (g), the court shall  
42           grant the petition filed under subsection (a), unless the petitioner  
43           is being reprosecuted on charges related to the original conviction.
- 44           (i) If the court grants a petition filed under subsection (a), the  
45           court shall order the state police department not to disclose or  
46           permit disclosure of the petitioner's limited criminal history  
47           information to a noncriminal justice organization or an individual

1 **under IC 10-13-3-27.**

2 SECTION 2. IC 35-38-8 IS ADDED TO THE INDIANA CODE AS  
3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2011]:

5 **Chapter 8. Restricted Access to Conviction Records**

6 **Sec. 1. This chapter does not apply to a sex or violent offender**  
7 **unless the offender's status as a sex or violent offender is solely due**  
8 **to the offender's conviction for sexual misconduct with a minor**  
9 **(IC 35-42-4-9) and the offender proves that the defense described**  
10 **in IC 35-42-4-9(e) applies to the offender.**

11 **Sec. 2. This chapter applies only to a person:**

- 12 (1) convicted of a misdemeanor or a Class D felony that did  
13 not result in injury to a person; or  
14 (2) adjudicated a delinquent child for committing an offense  
15 that, if committed by an adult, would be a misdemeanor or  
16 Class D felony that did not result in injury to a person.

17 **Sec. 3. Eight (8) years after the date a person completes the**  
18 **person's sentence and satisfies any other obligations imposed on**  
19 **the person as a part of the sentence, the person may petition a**  
20 **sentencing court to order the state police department to restrict**  
21 **access to the records concerning the person's arrest and**  
22 **involvement in criminal or juvenile court proceedings.**

23 **Sec. 4. The court shall grant a petition under this chapter if the**  
24 **court finds:**

25 (1) the person is:

- 26 (A) not a sex or violent offender; or  
27 (B) a sex or violent offender, but the offender's status as a  
28 sex or violent offender is solely due to the offender's  
29 conviction for sexual misconduct with a minor  
30 (IC 35-42-4-9) and the offender proved that the defense  
31 described in IC 35-42-4-9(e) applies to the offender;

32 (2) the person was:

- 33 (A) convicted of a misdemeanor or a Class D felony that  
34 did not result in injury to a person; or  
35 (B) adjudicated a delinquent child for committing an  
36 offense that, if committed by an adult, would be a  
37 misdemeanor or Class D felony not resulting in injury to a  
38 person;

39 (3) eight (8) years have passed since the person completed the  
40 person's sentence and satisfied any other obligation imposed  
41 on the person as part of the sentence; and

42 (4) the person has not been convicted of a felony since the  
43 person completed the person's sentence and satisfied any  
44 other obligation imposed on the person as part of the  
45 sentence.

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

- 1           **(1) Order:**  
 2           **(A) the department of correction; and**  
 3           **(B) each:**  
 4               **(i) law enforcement agency; and**  
 5               **(ii) other person;**  
 6           **who incarcerated, provided treatment for, or provided**  
 7           **other services for the person under an order of the court;**  
 8           **to prohibit the release of the person's records or information**  
 9           **relating to the misdemeanor, nonviolent Class D felony, or**  
 10           **juvenile adjudication described in section 2 of this chapter, in**  
 11           **the person's records to a noncriminal justice agency without**  
 12           **a court order.**
- 13           **(2) Order any:**  
 14               **(A) state;**  
 15               **(B) regional; or**  
 16               **(C) local;**  
 17           **central repository for criminal history information to prohibit**  
 18           **the release of the person's records or information relating to**  
 19           **the misdemeanor, nonviolent Class D felony, or juvenile**  
 20           **adjudication described in section 2 of this chapter, in the**  
 21           **person's records to a noncriminal justice agency without a**  
 22           **court order.**
- 23           **Sec. 6. (a) If a person whose records are restricted under this**  
 24           **chapter brings a civil action that might be defended with the**  
 25           **contents of the records, the defendant is presumed to have a**  
 26           **complete defense to the action.**
- 27           **(b) For the plaintiff to recover in an action described in**  
 28           **subsection (a), the plaintiff must show that the contents of the**  
 29           **restricted records would not exonerate the defendant.**
- 30           **(c) In an action described in subsection (a), the plaintiff may be**  
 31           **required to state under oath whether:**
- 32               **(1) the plaintiff had records in the criminal justice system;**  
 33               **and**  
 34               **(2) those records were restricted.**
- 35           **(d) In an action described in subsection (a), if the plaintiff denies**  
 36           **the existence of the records, the defendant may prove the existence**  
 37           **of the records in any manner compatible with the law of evidence.**
- 38           **Sec. 7. If a court orders a person's records to be restricted under**  
 39           **this chapter, the person may legally state on an application for**

1       **employment or any other document that the person has not been**  
2       **arrested for or convicted of the felony or misdemeanor recorded**  
3       **in the restricted records."**

(Reference is to EHB 1211 as printed April 13, 2011.)

---

Senator TAYLOR