SENATE MOTION

MADAM PRESIDENT:

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

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana code concerning restricted access to criminal records.

Page 1, delete lines 1 through 11, begin a new paragraph and insert:

"SECTION 1. IC 35-38-5-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 5.5. (a) If a person charged with a crime:**

(1) is not prosecuted or if charges against the person are dismissed;

(2) is acquitted of all criminal charges; or

(3) is convicted of the crime and the conviction is subsequently vacated;

the person may petition a court to restrict disclosure of the records related to the arrest to a noncriminal justice organization or an individual.

(b) A petition under subsection (a) must be verified and filed in:

(1) the court in which the charges against the person were filed, for a person described in subsection (a)(1); or

(2) the court in which the trial was held, for a person described in subsection (a)(2) or (a)(3).

(c) A petition under subsection (a) must be filed not earlier than:

(1) if the person is acquitted, thirty (30) days after the person is acquitted;

(2) if the person's conviction is vacated, three hundred sixty-five (365) days after:

(A) the order vacating the person's conviction is final, if there is no appeal or the appeal is terminated before entry of an opinion or memorandum decision; or

(B) the opinion or memorandum decision vacating the

person's conviction is certified; or

(3) if the person is not prosecuted, thirty (30) days after charges are dismissed, if the charges are not refiled.

(d) A petition under subsection (a) must set forth:

(1) the date of the arrest;

(2) the charge;

(3) the date charges were dismissed, if applicable;

(4) the date of conviction or acquittal, if applicable;

(5) the date the conviction was vacated, if applicable;

(6) the basis on which the conviction was vacated, if applicable;

(7) the law enforcement agency employing the arresting officer;

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

(9) the date of the petitioner's birth; and

(10) the petitioner's Social Security number.

(e) A copy of a petition under subsection (a) shall be served on the prosecuting attorney and the state central repository for records.

(f) If the prosecuting attorney wishes to oppose a petition under subsection (a), the prosecuting attorney shall, not later than thirty (30) days after the petition is filed, file a notice of opposition with the court setting forth reasons for opposing the petition. The prosecuting attorney shall attach to the notice of opposition a certified copy of any documentary evidence showing that the petitioner is not entitled to relief. A copy of the notice of opposition and copies of any documentary evidence shall be served on the petitioner in accordance with the Indiana Rules of Trial Procedure. The court may:

(1) summarily grant the petition;

(2) set the matter for hearing; or

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

(A) the petition is insufficient; or

(B) based on documentary evidence submitted by the prosecuting attorney, the petitioner is not entitled to have access to the petitioner's arrest records restricted.

(g) If a notice of opposition is filed under subsection (f) and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

(h) After a hearing is held under subsection (g), the court shall grant the petition filed under subsection (a), unless the petitioner is being reprosecuted on charges related to the original conviction.

(i) If the court grants a petition filed under subsection (a), the court shall order the state police department not to disclose or permit disclosure of the petitioner's limited criminal history information to a noncriminal justice organization or an individual

under IC 10-13-3-27.

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

Chapter 8. Restricted Access to Conviction Records

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

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

(1) convicted of a misdemeanor or a Class D felony that did not result in injury to a person; or

(2) adjudicated a delinquent child for committing an offense that, if committed by an adult, would be a misdemeanor or Class D felony that did not result in injury to a person.

Sec. 3. Eight (8) 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 order the state police department to restrict access to the records concerning the person's arrest and involvement in criminal or juvenile court proceedings.

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

(1) the person is:

(A) not a sex or violent offender; or

(B) a sex or violent offender, but the offender's status as a sex or violent offender is solely due to the offender's conviction for sexual misconduct with a minor (IC 35-42-4-9) and the offender proved that the defense described in IC 35-42-4-9(e) applies to the offender;

(2) the person was:

(A) convicted of a misdemeanor or a Class D felony that did not result in injury to a person; or

(B) adjudicated a delinquent child for committing an offense that, if committed by an adult, would be a misdemeanor or Class D felony not resulting in injury to a person;

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

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

Sec. 5. If the court grants the 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 relating to the misdemeanor, nonviolent Class D felony, or juvenile adjudication described in section 2 of this chapter, in the person's records to a noncriminal justice agency without a court order.
(2) Order any:
(A) state;
(B) regional; or
(C) local;
central repository for criminal history information to prohibit the release of the person's records or information relating to the misdemeanor, nonviolent Class D felony, or juvenile adjudication described in section 2 of this chapter, in the person's records to a noncriminal justice agency without a court order.

Sec. 6. (a) If a person whose records are restricted 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 restricted 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 restricted.

(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. 7. If a court orders a person's records to be restricted under 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.)

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Senator TAYLOR