

HOUSE BILL No. 1198

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38.

Synopsis: Criminal history. Provides that the same procedures apply to the adjudication of a petition to restrict disclosure of certain arrest and other records that is filed under IC 35-38-5-5.5 or under IC 35-38-8. Makes it a Class B misdemeanor to knowingly or intentionally disclose, without a court order, records restricted under these laws, and provides that petitions to restrict disclosure are confidential.

Effective: July 1, 2012.

Turner

January 9, 2012, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1198



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 35-38-5-5.5, AS ADDED BY P.L.194-2011,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 5.5. (a) If a person charged with a crime:
4 (1) is not prosecuted or if charges against the person are
5 dismissed;
6 (2) is acquitted of all criminal charges; or
7 (3) is convicted of the crime and the conviction is subsequently
8 vacated;
9 the person may petition a court to restrict disclosure of the records
10 related to the arrest to a noncriminal justice organization or an
11 individual.
12 (b) A petition under subsection (a) must be verified and filed in:
13 (1) the court in which the charges against the person were filed,
14 for a person described in subsection (a)(1); or
15 (2) the court in which the trial was held, for a person described in
16 subsection (a)(2) or (a)(3).
17 (c) A petition under subsection (a) must be filed not earlier than:



- 1 (1) if the person is acquitted, thirty (30) days after the person is
 2 acquitted;
- 3 (2) if the person's conviction is vacated, three hundred sixty-five
 4 (365) days after:
- 5 (A) the order vacating the person's conviction is final, if there
 6 is no appeal or the appeal is terminated before entry of an
 7 opinion or memorandum decision; or
- 8 (B) the opinion or memorandum decision vacating the person's
 9 conviction is certified; or
- 10 (3) if the person is not prosecuted, thirty (30) days after charges
 11 are dismissed, if the charges are not refiled.
- 12 (d) A petition under subsection (a) must set forth:
- 13 (1) the date of the arrest;
- 14 (2) the charge;
- 15 (3) the date charges were dismissed, if applicable;
- 16 (4) the date of conviction or acquittal, if applicable;
- 17 (5) the date the conviction was vacated, if applicable;
- 18 (6) the basis on which the conviction was vacated, if applicable;
- 19 (7) the law enforcement agency employing the arresting officer;
- 20 (8) any other known identifying information, such as the name of
 21 the arresting officer, case number, or court cause number;
- 22 (9) the date of the petitioner's birth; ~~and~~
- 23 (10) the petitioner's Social Security number; **and**
- 24 **(11) the name and address of any noncriminal justice agency**
 25 **with records the petitioner is seeking to have restricted under**
 26 **this section.**
- 27 (e) A copy of a petition under subsection (a) shall be served on the
 28 prosecuting attorney and the state central repository for records.
- 29 (f) If the prosecuting attorney wishes to oppose a petition under
 30 subsection (a), the prosecuting attorney shall, not later than thirty (30)
 31 days after the petition is filed, file a notice of opposition with the court
 32 setting forth reasons for opposing the petition. The prosecuting attorney
 33 shall attach to the notice of opposition a certified copy of any
 34 documentary evidence showing that the petitioner is not entitled to
 35 relief. A copy of the notice of opposition and copies of any
 36 documentary evidence shall be served on the petitioner in accordance
 37 with the Indiana Rules of Trial Procedure. The court may:
- 38 (1) summarily grant the petition;
- 39 (2) set the matter for hearing; or
- 40 (3) summarily deny the petition, if the court determines that:
- 41 (A) the petition is insufficient; or
- 42 (B) based on documentary evidence submitted by the

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- 1 prosecuting attorney, the petitioner is not entitled to have
 2 access to the petitioner's arrest records restricted.
- 3 (g) If a notice of opposition is filed under subsection (f) and the
 4 court does not summarily grant or summarily deny the petition, the
 5 court shall set the matter for a hearing.
- 6 (h) After a hearing is held under subsection (g), the court shall grant
 7 the petition filed under subsection (a), unless the petitioner is being
 8 prosecuted on charges related to the original conviction.
- 9 (i) If the court grants a petition filed under subsection (a), the court
 10 shall **do the following:**
- 11 (1) Order the state police department not to disclose or permit
 12 disclosure of the petitioner's limited criminal history information
 13 to a noncriminal justice organization or an individual under
 14 IC 10-13-3-27.
- 15 (2) Order any:
- 16 (A) noncriminal justice agency identified in the petition;
 17 (B) law enforcement agency or other person who:
 18 (i) arrested;
 19 (ii) incarcerated;
 20 (iii) provided treatment for; or
 21 (iv) provided other services for the person under an
 22 order of the court; or
 23 (C) criminal records repository;
 24 to prohibit the release without a court order of the person's
 25 records or other information relating to the person's arrest,
 26 charge, conviction (including a juvenile adjudication), or
 27 treatment to a noncriminal justice agency.
- 28 (j) If a court orders a person's records to be restricted under
 29 this chapter, the person may legally state on an application for
 30 employment or any other document that the person has not been
 31 arrested for or convicted of the felony or misdemeanor recorded
 32 in the restricted records.
- 33 (k) A person who, without a court order that requires
 34 disclosure, knowingly or intentionally discloses or permits the
 35 disclosure of records to a noncriminal justice agency that have
 36 been restricted under this section commits a Class B misdemeanor.
- 37 (l) A petition filed under subsection (a) is confidential.
- 38 SECTION 2. IC 35-38-8-3.5 IS ADDED TO THE INDIANA CODE
 39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 40 1, 2012]: **Sec. 3.5. (a) A petition under section 3 of this chapter must
 41 set forth:**
 42 (1) the date of the arrest;

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- 1 (2) the charge;
 2 (3) the date of the conviction;
 3 (4) the date the person completed the person's sentence and
 4 satisfied any other obligations imposed on the person as part
 5 of the person's sentence;
 6 (5) the law enforcement agency employing the arresting
 7 officer;
 8 (6) any other known identifying information, such as the name
 9 of the arresting officer, case number, or court cause number;
 10 (7) the date of the petitioner's birth;
 11 (8) the petitioner's Social Security number; and
 12 (9) the name and address of any agency with records the
 13 petitioner is seeking to have restricted to noncriminal justice
 14 agencies.

15 (b) A copy of a petition described in section 3 of this chapter
 16 shall be served on the prosecuting attorney and the state central
 17 repository for records.

18 (c) If the prosecuting attorney wishes to oppose a petition under
 19 section 3 of this chapter, the prosecuting attorney shall, not later
 20 than thirty (30) days after the petition is filed, file a notice of
 21 opposition with the court setting forth reasons for opposing the
 22 petition. The prosecuting attorney shall attach to the notice of
 23 opposition a certified copy of any documentary evidence showing
 24 that the petitioner is not entitled to relief. A copy of the notice of
 25 opposition and copies of any documentary evidence shall be served
 26 on the petitioner in accordance with the Indiana Rules of Trial
 27 Procedure.

28 (d) A petition filed under this chapter is confidential.

29 SECTION 3. IC 35-38-8-5, AS ADDED BY P.L.194-2011,
 30 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2012]: Sec. 5. If the court grants the petition of a person under
 32 this chapter, the court shall do the following:

- 33 (†) Order:
 34 (A) the department of correction; and
 35 (B) each:
 36 (i) law enforcement agency; and
 37 (ii) other person;
 38 who incarcerated, provided treatment for, or provided other
 39 services for the person under an order of the court;
 40 (1) Order the state police department to prohibit the release of
 41 the person's records or information relating to the misdemeanor,
 42 nonviolent Class D felony, or juvenile adjudication described in

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1 section 2 of this chapter, in the person's records to a noncriminal
2 justice agency without a court order.

3 **(2) Order any:**

4 **(A) noncriminal justice agency identified in the petition;**

5 **(B) law enforcement agency or other person who:**

6 **(i) arrested;**

7 **(ii) incarcerated;**

8 **(iii) provided treatment for; or**

9 **(iv) provided other services for the person under an
10 order of the court; or**

11 **(C) criminal records repository;**

12 **to prohibit the release without a court order of the person's
13 records or information in the person's records relating to the
14 misdemeanor, nonviolent Class D felony, or juvenile
15 adjudication described in section 2 of this chapter, to a
16 noncriminal justice agency.**

17 **(2) Order any:**

18 **(A) state;**

19 **(B) regional; or**

20 **(C) local;**

21 central repository for criminal history information to prohibit the
22 release of the person's records or information relating to the
23 misdemeanor, nonviolent Class D felony, or juvenile adjudication
24 described in section 2 of this chapter, in the person's records to a
25 noncriminal justice agency without a court order.

26 SECTION 4. IC 35-38-8-8 IS ADDED TO THE INDIANA CODE
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
28 1, 2012]: **Sec. 8. A person who, without a court order that requires
29 disclosure, knowingly or intentionally discloses or permits the
30 disclosure of records to a noncriminal justice agency that have
31 been restricted under this chapter commits a Class B
32 misdemeanor.**

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