

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1033 be amended to read as follows:

- 1 Page 2, line 2, after "an" insert "**infraction, an**".
- 2 Page 2, line 2, after "arrest" insert ",".
- 3 Page 2, between lines 25 and 26, begin a new paragraph and insert:
- 4 "SECTION 2. IC 34-28-5-15 IS ADDED TO THE INDIANA CODE
- 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 6 1, 2012]: **Sec. 15. (a) If a person alleged to have violated a statute**
- 7 **defining an infraction:**
- 8 (1) is not prosecuted or if the action against the person is
- 9 dismissed;
- 10 (2) is adjudged not to have committed the infraction; or
- 11 (3) is adjudged to have committed the infraction and the
- 12 adjudication is subsequently vacated;
- 13 the court in which the action was filed shall order the clerk not to
- 14 disclose or permit disclosure of information related to the
- 15 infraction to a noncriminal justice organization or an individual.
- 16 (b) If a court fails to order the court to restrict information
- 17 related to the infraction under subsection (a), the person may
- 18 petition the court to restrict disclosure of the records related to the
- 19 infraction to a noncriminal justice organization or an individual.
- 20 (c) A petition under subsection (a) must be verified and filed in:
- 21 (1) the court in which the action was filed, for a person
- 22 described in subsection (a)(1); or
- 23 (2) the court in which the trial was held, for a person
- 24 described in subsection (a)(2) or (a)(3).
- 25 (d) A petition under subsection (b) must be filed not earlier
- 26 than:
- 27 (1) if the person is adjudged to have not committed the
- 28 infraction, thirty (30) days from the date of judgment;
- 29 (2) if the person's adjudication is vacated, three hundred
- 30 sixty-five (365) days after:

- 1           (A) the order vacating the adjudication is final, if there is  
 2           no appeal or the appeal is terminated before entry of an  
 3           opinion or memorandum decision; or  
 4           (B) the opinion or memorandum decision vacating the  
 5           adjudication is certified; or  
 6           (3) if the person is not prosecuted or the action is dismissed,  
 7           thirty (30) days after the action is dismissed, if a new action is  
 8           not filed.
- 9       (e) A petition under subsection (b) must set forth:
- 10           (1) the date of the alleged violation;  
 11           (2) the violation;  
 12           (3) the date the action was dismissed, if applicable;  
 13           (4) the date of judgment, if applicable;  
 14           (5) the date the adjudication was vacated, if applicable;  
 15           (6) the basis on which the adjudication was vacated, if  
 16           applicable;  
 17           (7) the law enforcement agency employing the officer who  
 18           issued the complaint, if applicable;  
 19           (8) any other known identifying information, such as the name  
 20           of the officer, case number, or court cause number;  
 21           (9) the date of the petitioner's birth; and  
 22           (10) the petitioner's Social Security number.
- 23       (f) A copy of a petition under subsection (b) shall be served on  
 24       the prosecuting attorney.
- 25       (g) If the prosecuting attorney wishes to oppose a petition under  
 26       subsection (b), the prosecuting attorney shall, not later than thirty  
 27       (30) days after the petition is filed, file a notice of opposition with  
 28       the court setting forth reasons for opposing the petition. The  
 29       prosecuting attorney shall attach to the notice of opposition a  
 30       certified copy of any documentary evidence showing that the  
 31       petitioner is not entitled to relief. A copy of the notice of opposition  
 32       and copies of any documentary evidence shall be served on the  
 33       petitioner in accordance with the Indiana Rules of Trial Procedure.  
 34       The court may:
- 35           (1) summarily grant the petition;  
 36           (2) set the matter for hearing; or  
 37           (3) summarily deny the petition, if the court determines that:  
 38           (A) the petition is insufficient; or  
 39           (B) based on documentary evidence submitted by the  
 40           prosecuting attorney, the petitioner is not entitled to have  
 41           access to the petitioner's records restricted.
- 42       (h) If a notice of opposition is filed under subsection (g) and the  
 43       court does not summarily grant or summarily deny the petition,  
 44       the court shall set the matter for a hearing.
- 45       (i) After a hearing is held under subsection (h), the court shall  
 46       grant the petition filed under subsection (b) if the person is entitled  
 47       to relief under subsection (a).

1           **(j) If the court grants a petition filed under subsection (b), the**  
 2 **court shall order the clerk not to disclose or permit disclosure of**  
 3 **information related to the infraction to a noncriminal justice**  
 4 **organization or an individual.**

5           SECTION 3. IC 34-28-5-16 IS ADDED TO THE INDIANA CODE  
 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 7 1, 2012]: **Sec. 16. (a) This chapter applies only to a person found to**  
 8 **have committed an infraction.**

9           **(b) Five (5) years after the date a person satisfies a judgment**  
 10 **imposed on a person for the violation of an infraction, the clerk of**  
 11 **the court shall prohibit the disclosure of information related to the**  
 12 **infraction to a noncriminal justice organization or an individual.**

13           **(c) If a person whose records are restricted under this section**  
 14 **brings a civil action that might be defended with the contents of the**  
 15 **records, the defendant is presumed to have a complete defense to**  
 16 **the action.**

17           **(d) For the plaintiff to recover in an action described in**  
 18 **subsection (c), the plaintiff must show that the contents of the**  
 19 **restricted records would not exonerate the defendant.**

20           **(e) In an action described in subsection (c), the plaintiff may be**  
 21 **required to state under oath whether the disclosure of records**  
 22 **relating to an infraction has been restricted.**

23           **(f) In an action described in subsection (c), if the plaintiff denies**  
 24 **the existence of the records, the defendant may prove the existence**  
 25 **of the records in any manner compatible with the law of evidence.**

26           **(g) A person whose records have been restricted under this**  
 27 **section may legally state on an application for employment or any**  
 28 **other document that the person has not been adjudicated to have**  
 29 **committed the infraction recorded in the restricted records."**

30           Renumber all SECTIONS consecutively.

(Reference is to EHB 1033 as printed February 17, 2012.)

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Senator STEELE