

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7407
BILL NUMBER: HB 1482

NOTE PREPARED: Mar 29, 2013
BILL AMENDED: Mar 28, 2013

SUBJECT: Expungement.

FIRST AUTHOR: Rep. McMillin
FIRST SPONSOR: Sen. Steele

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. *Change in Judgment of Conviction* – It allows a court to enter judgment of conviction as a Class D felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor if the defendant fulfills certain conditions.
- B. *Expungement Process* – It requires a court to seal the arrest records of a person who was arrested but not prosecuted or whose conviction was overturned on appeal. It provides that a court shall expunge records concerning misdemeanor convictions and minor Class D felony convictions under certain circumstances, and that a court may expunge records concerning certain more serious felony convictions. It specifies that misdemeanor and minor Class D felony records ordered expunged by the court are removed or sealed, and that more serious felony records ordered expunged are marked as expunged but remain public records.
- C. *Access to Expunged Records* – It permits a law enforcement officer to have access to certain expunged records without a court order.
- D. *Procedure to Expunge Records* – It establishes a procedure to expunge records, and requires payment of the civil filing fee to petition to expunge a conviction. It provides that a person may file a petition to expunge more than one conviction, and provides that a person may only petition for expungement once in the person's lifetime.
- E. *Time Frames for Petitioning for Expungement* – It provides that a petition to expunge a conviction may be filed not earlier than: (1) one year after an arrest that was not prosecuted or if a conviction was overturned on appeal; (2) five years from the date of conviction, in the case of a misdemeanor; (3) eight years from the date of conviction in the case of minor Class D felonies; (4) eight years from the

date the sentence is completed in the case of more serious felonies; and (5) ten years from the date the sentence is completed in the case of the most serious felonies.

- F. *Prosecuting Attorney's Consent* – It requires consent of the prosecutor to petition for expungement of the most serious felonies, and prohibits granting expungement in the case of sex and violent offenders and persons convicted of specified serious crimes.
- G. *Civil Rights of Ex-offender* – It provides that the civil rights of a person whose records are expunged are restored, and requires a person questioned about a previous conviction for employment or certain other purposes be asked about the previous conviction in a form such as "Have you ever been arrested for or convicted of a crime that has not been expunged by a court?" It specifies that an expunged conviction is not admissible in an action for negligent hiring, admission, or licensure.
- H. It repeals superseded provisions concerning expungement and restricted disclosure of records.

Effective Date: July 1, 2013.

Explanation of State Expenditures: *Effect on ISP Workload* – ISP expects an increase in requests for criminal histories to be expunged as the public's knowledge of this law becomes more widespread. To comply with the added petitions and court orders, ISP estimates needing three additional staff: one paralegal and two clerical persons at an estimated cost of \$131,084 in FY 2014 and \$128,084 in FY 2015. The added costs are described in the following table.

	Salary		Benefits		Health Insurance		Number		Annual Cost	
Paralegal	\$33,748	x	22.23%	+	\$11,205	x	1	=	\$52,455	
Clerical Staff	\$20,592	x	22.23%	+	\$11,205	x	2	=	\$72,749	
Annual Salaries									\$125,204	
Annual Computer Costs (\$960 x 3)									\$2,880	
One time Office Furniture Expenses \$1,000 x 3									\$3,000	
									2014 Expense	\$131,084
									2015 Expense	\$128,084

Validity or Duration of Suspended Licenses – This provision specifies that even if a criminal record is expunged and a person has had license suspension, the license suspension will not be affected. This should have no effect on the Bureau of Motor Vehicles.

Explanation of State Revenues: (Revised) *Court Fee Revenue:* Persons requesting that an arrest be expunged are not required to pay a filing fee. Persons requesting an expungement for a misdemeanor or a felony conviction must pay a filing fee whether or not the person is indigent.

If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the automated record keeping fee (\$5) are deposited into the state User Fee Fund.

Explanation of Local Expenditures: (Revised) *Summary-* The number of civil cases requesting that criminal records be expunged will likely increase. This could affect both trial courts and city courts in which misdemeanors are filed. Depending on whether an expungement petition for a felony involves a victim, the prosecuting attorney in that county would be required to contact the victim of that felony. Persons with a violent felony conviction must show consent from the prosecuting attorney to proceed with the petition for expungement.

Change in Judgment of Conviction -- The bill potentially increases the number of conversions of Class D felonies to Class A misdemeanors. Courts report that they interpret this portion of the statute to mean that the court can convert a Class D felony to a Class A misdemeanor if a plea agreement is accepted by the court within three years of the date of the sentence. Consequently, if the convicted person completes and satisfies all conditions in the sentence and petitions the court after three years and a day, the court would not be legally permitted to convert the felony. As proposed, this bill would permit the court to make this conversion even after three years have elapsed.

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$2) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per document) are charged for preparing transcripts or copies of record or certificate under seal.
- Service fee (\$10) collected from the filing party for each defendant beyond the first cited in the lawsuit.

State Agencies Affected: Department of Correction; Indiana State Police; Bureau of Motor Vehicles.

Local Agencies Affected: Prosecuting attorneys; county sheriffs; trial courts with criminal jurisdiction.

Information Sources:

Fiscal Analyst: Mark Goodpaster, 317-232-9852.