Reprinted
February 5, 2013

HOUSE BILL No. 1482

DIGEST OF HB 1482 (Updated February 4, 2013 4:35 pm - DI 106)

Citations Affected: IC 35-38; IC 35-50.

Synopsis: Expungement. 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. Requires a sentencing court to expunge the records of certain nonviolent Class D felony and misdemeanor convictions, and certain delinquency adjudications, if: (1) 10 years have passed since the person's conviction; (2) the person has not committed a new offense; and (3) no new charges are pending. Allows a court to expunge the records of certain nonviolent felony convictions, and certain delinquency adjudications, if: (1) the later of 10 years have passed since the person's conviction, or five years have passed since completion of the person's sentence; (2) the person has not committed a new offense; and (3) no new charges are pending. Requires a court to restrict disclosure of certain arrest records, if the arrest: (1) did not result in a conviction; or (2) resulted in a conviction that was vacated on appeal. Allows a prosecuting attorney to gain access to sealed records under certain circumstances. Provides that if a court orders a person's records to be expunged or restricted, the person: (1) shall be treated for all purposes as if the person had not been arrested for or convicted of the felony or misdemeanor recorded in the expunged or restricted records; and (2) may legally state on an application for employment or any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the expunged records. Specifies that orders restricting or expunging records apply to the bureau of motor vehicles. Repeals superseded provisions concerning expungement and restricted disclosure of records.

Effective: July 1, 2013.

McMillin, Turner, Porter, Summers

January 22, 2013, read first time and referred to Committee on Courts and Criminal Code.
January 31, 2013, amended, reported — Do Pass.
February 4, 2013, read second time, amended, ordered engrossed.

C o p y

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

C o p y

HOUSE BILL No. 1482

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:

SECTION 1. IC 35-38-1-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1.5. (a) A court may 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 ~~within three (3) years~~ if the person fulfills certain conditions. A court may enter a 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 only if the person pleads guilty to a Class D felony that qualifies for consideration as a Class A misdemeanor under IC 35-50-2-7, and the following conditions are met:

(1) The prosecuting attorney consents.

(2) The person agrees to the conditions set by the court.

(b) For a judgment of conviction to be entered under subsection (a), the court, the prosecuting attorney, and the person must all agree to the conditions set by the court under subsection (a).

(c) The court is not required to convert a judgment of conviction

entered as a Class D felony to a Class A misdemeanor if, after a hearing, the court finds:

(1) the person has violated a condition set by the court under subsection (a); or

(2) the period that the conditions set by the court under subsection (a) are in effect expires before the person successfully completes each condition.

However, the court may not convert a judgment of conviction entered as a Class D felony to a Class A misdemeanor if the person commits a new offense before the conditions set by the court under subsection (a) expire.

(d) The court shall enter judgment of conviction as a Class A misdemeanor if the person fulfills the conditions set by the court under subsection (a).

(e) The entry of a judgment of conviction under this section does not affect the application of any statute requiring the suspension of a person's driving privileges.

(f) This section may not be construed to diminish or alter the rights of a victim (as defined in IC 35-40-4-8) in a sentencing proceeding under this chapter.

SECTION 2. IC 35-38-5-5.5 IS REPEALED [EFFECTIVE JULY 1, 2013]. ~~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~~

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~~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~~

C o p y

~~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 3. IC 35-38-8 IS REPEALED [EFFECTIVE JULY 1, 2013]. (Restricted Access to Conviction Records).

SECTION 4. IC 35-38-9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 9. Expungement of Conviction Records

Sec. 1. (a) Except as provided in subsection (b), this section applies to:

(1) a person convicted of a misdemeanor or Class D felony, if:

(A) the misdemeanor or Class D felony is not excluded under subsection (b); and

(B) at least ten (10) years have passed from the date the person was convicted of the offense;

(2) a person adjudicated as a delinquent child for committing an act that, if committed by an adult, would be a misdemeanor or Class D felony that did not result in injury to a person if at least ten (10) years have passed from the date the child was adjudicated for the delinquent act; and

(3) arrest records:

(A) for any arrest that did not result in a conviction or juvenile adjudication; or

(B) concerning an arrest that resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal;

regardless of the time that has passed since the time of the arrest.

(b) This section does not apply to the following:

(1) A sex or violent offender (as defined in IC 11-8-8-5), unless the offender was convicted of 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.

(2) A person convicted of perjury (IC 35-44.1-2-1) or official misconduct (IC 35-44.1-1-1).

(3) Records and information required by IC 11-8-8.

(c) Ten (10) years after the date a person was convicted in a case described in subsection (a)(1) through (a)(2), the person may petition a sentencing court to expunge from:

(1) a court's files;

(2) the files of the department of correction;

C o p y

(3) the files of the bureau of motor vehicles; and
(4) the files of any other person who provided treatment or services to the petitioning person under a court order;
the records concerning the person's involvement in criminal or juvenile court proceedings.

(d) If the court finds that:
(1) ten (10) years have elapsed since the person was convicted;
(2) the person has not committed a new crime in the ten (10) years since the conviction;
(3) no charges are pending against the person; and
(4) this section applies to the person;
the court shall grant the expungement petition.

(e) At any time after the arrest of a person described in subsection (a)(3), the person may petition the sentencing court (if the person was sentenced), the court in which the person was charged (if the person was charged), or any court exercising criminal jurisdiction in Indiana (if the person was not charged or convicted) to restrict disclosure of records contained in:
(1) a court's files;
(2) the files of the department of correction;
(3) the files of the bureau of motor vehicles; and
(4) the files of any other person who provided treatment or services to the petitioning person under a court order;
that relate to the person's arrest.

(f) If the court finds that:
(1) the person's arrest:
(A) did not result in a conviction or juvenile adjudication; or
(B) resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal; and
(2) no charges are pending against the person;
the court shall order disclosure of the arrest records restricted so that only a criminal justice agency may access the records.

Sec. 2. (a) Except as provided in subsection (b), this section applies to:
(1) a person convicted of a felony, if:
(A) the felony is not excluded under subsection (b); and
(B) at least:
(i) ten (10) years have passed since the person was convicted; or
(ii) five (5) years have passed since the person completed the sentence for the felony, including any other

C o p y

obligations imposed on the person as a part of the sentence;

whichever is later; or

(2) a person adjudicated as a child for committing an act that, if committed by an adult, would be a felony, if at least:

(A) ten (10) years have passed since the child was adjudicated a delinquent child for committing an act that, if committed by an adult, would be a felony; or

(B) five (5) years have passed since the child completed the disposition for the act and satisfied any other obligations imposed on the child as a part of the disposition;

whichever is later.

(b) This section does not apply to the following:

(1) A sex or violent offender (as defined in IC 11-8-8-5), unless the offender was convicted of 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.

(2) A person convicted of a felony that resulted in serious bodily injury to another person.

(3) A person convicted of perjury (IC 35-44.1-2-1) or official misconduct (IC 35-44.1-1-1).

(4) Records and information required by IC 11-8-8.

(c) After the time period described in subsection (a) has elapsed, the person may petition a sentencing court to expunge from:

(1) a court's files;

(2) the files of the department of correction;

(3) the files of the bureau of motor vehicles; and

(4) the files of any other person who provided treatment or services to the petitioning person under a court order;

the records concerning the person's involvement in criminal court proceedings.

(d) If the court finds that:

(1) the period described in subsection (a) has elapsed from the date the person completed the person's sentence and satisfied any other obligations imposed on the person as a part of the sentence;

(2) the person has not committed a new crime in the period described in subsection (a);

(3) no charges are pending against the person; and

(4) this section applies to the person;

the court may grant the expungement petition.

Sec. 3. This section does not apply to a petition to restrict

C o p y

disclosure of arrest records under section 1 of this chapter. If the court grants the expungement petition of a person under this chapter, the court shall do the following:

(1) Order:

(A) the department of correction;

(B) the bureau of motor vehicles; and

(C) 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 in the person's records to anyone without a court order.

(2) Order any:

(A) state;

(B) regional; or

(C) local;

central repository for criminal history information to send the person's records to the court.

(3) Seal any court records related to the allegation referred to in section 1 or 2 of this chapter on which a conviction was based and any proceeding related to the allegation.

(4) Notify the clerk of the supreme court to seal any records in the clerk's possession concerning:

(A) the allegation described in subdivision (3); or

(B) any proceeding related to the allegation;

if an appeal was taken.

Sec. 4. If an expungement petition of a person is granted under this chapter, information concerning the person's conviction may not be placed or retained in any state central repository for criminal history information.

Sec. 5. (a) This section does not apply to a petition to restrict disclosure of arrest records under section 1 of this chapter. If an expungement petition of a person is granted under this chapter, the records of:

(1) the sentencing court;

(2) a juvenile court;

(3) a court of appeals; and

(4) the supreme court;

concerning the person shall be permanently sealed. Other records concerning the person may be given to the person or destroyed.

(b) Notwithstanding subsection (a), a prosecuting attorney may

C o p y

submit a written application to a court that granted an expungement petition under this chapter to gain access to any records that were permanently sealed under subsection (a), if the records are relevant in a new prosecution of the person. If a prosecuting attorney who submits a written application under this subsection shows that the records are relevant for a new prosecution of the person, the court that granted the expungement petition shall:

(1) order the records to be unsealed; and

(2) allow the prosecuting attorney who submitted the written application to have access to the records.

If a court orders records to be unsealed under this subsection, the court shall order the records to be permanently resealed at the earliest possible time after the reasons for unsealing the records cease to exist. However, if the records are admitted as evidence against the person in a new prosecution or are used to enhance a sentence imposed on the person in a new prosecution, the court is not required to reseal the records.

Sec. 6. (a) If a person whose records are expunged or 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 expunged or 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 expunged or 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 expunged under this chapter, the person:

(1) shall be treated for all purposes as if the person had not been arrested for or convicted of the felony or misdemeanor recorded in the expunged records; and

(2) may legally state on an application for employment or any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the expunged records.

C o p y

Sec. 8. If a court orders a person's arrest records restricted under this chapter, the person:

(1) shall be treated for all purposes as if the person had not been arrested for the felony or misdemeanor recorded in the restricted records; and

(2) may legally state on an application for employment or any other document that the person has not been arrested for the felony or misdemeanor recorded in the restricted records.

Sec. 9. The expungement of a record under this chapter does not affect the validity or duration of an existing driver's license suspension ordered by the bureau of motor vehicles or a court.

SECTION 5. IC 35-50-2-7, AS AMENDED BY P.L.69-2012, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).

(b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:

(1) the court finds that:

(A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and

(B) the prior felony was committed less than three (3) years before the second felony was committed;

(2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3; or

(3) the offense is possession of child pornography (IC 35-42-4-4(c)).

The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.

(c) Notwithstanding subsection (a), the sentencing court may convert a Class D felony conviction to a Class A misdemeanor conviction if, after receiving a verified petition as described in subsection (d) and after conducting a hearing of which the prosecuting attorney has been notified, the court makes the following findings:

(1) The person is not a sex or violent offender (as defined in IC 11-8-8-5).

C o p y

(2) The person was not convicted of a Class D felony that resulted in bodily injury to another person.

(3) The person has not been convicted of perjury under ~~IC 35-44-2-1~~ **IC 35-44.1-2-1** or official misconduct under ~~IC 35-44-1-2.~~ **IC 35-44.1-1-1.**

(4) At least three (3) years have passed since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D felony.

(5) The person has not been convicted of a felony since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D felony.

(6) No criminal charges are pending against the person.

(d) A petition filed under subsection (c) **or (e)** must be verified and set forth:

(1) the crime the person has been convicted of;

(2) the date of the conviction;

(3) the date the person completed the person's sentence;

(4) any obligations imposed on the person as part of the sentence;

(5) the date the obligations were satisfied; and

(6) a verified statement that there are no criminal charges pending against the person.

(e) If a person whose Class D felony conviction has been converted to a Class A misdemeanor conviction under subsection (c) is convicted of a felony ~~within~~ **not later than** five (5) years after the conversion under subsection (c), a prosecuting attorney may petition a court to convert the person's Class A misdemeanor conviction back to a Class D felony conviction.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1482, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 35-38-1-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1.5. (a) A court may 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 ~~within three (3) years~~ if the person fulfills certain conditions. A court may enter a 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 only if the person pleads guilty to a Class D felony that qualifies for consideration as a Class A misdemeanor under IC 35-50-2-7, and the following conditions are met:

(1) The prosecuting attorney consents.

(2) The person agrees to the conditions set by the court.

(b) For a judgment of conviction to be entered under subsection (a), the court, the prosecuting attorney, and the person must all agree to the conditions set by the court under subsection (a).

(c) The court is not required to convert a judgment of conviction entered as a Class D felony to a Class A misdemeanor if, after a hearing, the court finds:

(1) the person has violated a condition set by the court under subsection (a); or

(2) the period that the conditions set by the court under subsection (a) are in effect expires before the person successfully completes each condition.

However, the court may not convert a judgment of conviction entered as a Class D felony to a Class A misdemeanor if the person commits a new offense before the conditions set by the court under subsection (a) expire.

(d) The court shall enter judgment of conviction as a Class A misdemeanor if the person fulfills the conditions set by the court under subsection (a).

(e) The entry of a judgment of conviction under this section does not affect the application of any statute requiring the suspension of a person's driving privileges.

C o p y

(f) This section may not be construed to diminish or alter the rights of a victim (as defined in IC 35-40-4-8) in a sentencing proceeding under this chapter.".

Page 9, line 8, delete ", but not more than eight (8) years,".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1482 as introduced.)

MCMILLIN, Chair

Committee Vote: yeas 10, nays 2.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1482 be amended to read as follows:

Page 9, between lines 8 and 9, begin a new paragraph and insert:

"**Sec. 9. The expungement of a record under this chapter does not affect the validity or duration of an existing driver's license suspension ordered by the bureau of motor vehicles or a court.**".

(Reference is to HB 1482 as printed February 1, 2013.)

MCMILLIN

C o p y