

## **IC 35-38-5**

### Chapter 5. Expungement of Arrest Records

#### **IC 35-38-5-1**

##### **Petition; grounds; verification; filing; contents; service; notice of opposition; hearing**

Sec. 1. (a) Whenever:

- (1) an individual is arrested but no criminal charges are filed against the individual; or
- (2) all criminal charges filed against an individual are dropped because:
  - (A) of a mistaken identity;
  - (B) no offense was in fact committed; or
  - (C) there was an absence of probable cause;

the individual may petition the court for expungement of the records related to the arrest.

(b) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:

- (1) the date of the arrest;
- (2) the charge;
- (3) the law enforcement agency employing the arresting officer;
- (4) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;
- (5) the date of the petitioner's birth; and
- (6) the petitioner's Social Security number.

(c) A copy of the petition shall be served on the law enforcement agency and the state central repository for records.

(d) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk shall immediately send a copy of the petition to each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals who represent the agency that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Trial Procedure. The court shall:

- (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 information contained in sworn statements submitted by individuals who represent an agency, the petitioner is not entitled to an expungement of records.

(e) If a notice of opposition is filed and the court does not summarily grant or summarily deny the petition, the court shall set

the matter for a hearing.

(f) After a hearing is held under this section, the petition shall be granted unless the court finds:

- (1) the conditions in subsection (a) have not been met;
- (2) the individual has a record of arrests other than minor traffic offenses; or
- (3) additional criminal charges are pending against the individual.

*As added by P.L.311-1983, SEC.3. Amended by P.L.295-1989, SEC.1; P.L.159-1994, SEC.1.*

#### **IC 35-38-5-2**

##### **Delivery of records to individual or destruction**

Sec. 2. If the petition for expungement is granted, the law enforcement agency shall within thirty (30) days of receipt of the court order, deliver to the individual or destroy all fingerprints, photographs, or arrest records in their possession.

*As added by P.L.311-1983, SEC.3.*

#### **IC 35-38-5-3**

##### **Effect of grant of petition**

Sec. 3. Whenever the petition of an individual under section 1 of this chapter is granted, no information concerning the arrest may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency. However, this chapter does not require any change or alteration in any record (such as a police blotter entry) made at the time of the arrest or in the record of any court in which the criminal charges were filed.

*As added by P.L.311-1983, SEC.3.*

#### **IC 35-38-5-4**

##### **Action by person whose records are expunged that might be defended with contents of such records**

Sec. 4. If a person whose records are expunged brings an action that might be defended with the contents of such records, the defendant is presumed to have a complete defense to such an action. In order for the plaintiff to recover, he must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether he had records in the criminal justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove their existence in any manner compatible with the law of evidence.

*As added by P.L.311-1983, SEC.3.*

#### **IC 35-38-5-5**

##### **Petition to limit access to limited criminal history of person discharged from probation, imprisonment, or parole**

Sec. 5. (a) This section does not apply to a request to a law enforcement agency for the release or inspection of a limited criminal history to a noncriminal justice organization or individual whenever the subject of the request is described in IC 10-13-3-27(a)(8) or IC 10-13-3-27(a)(12).

(b) A person may petition the state police department to limit access to the person's limited criminal history to criminal justice agencies if more than fifteen (15) years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime.

(c) When a petition is filed under subsection (b), the state police department shall not release limited criminal history to noncriminal justice agencies under IC 10-13-3-27.

*As added by P.L.311-1983, SEC.3. Amended by P.L.56-1998, SEC.18; P.L.10-1999, SEC.3; P.L.2-2003, SEC.92; P.L.2-2005, SEC.124.*

### **IC 35-38-5-5.5**

#### **Restricted disclosure of arrest records; petition; hearing**

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.

*As added by P.L.194-2011, SEC.1.*

### **IC 35-38-5-6**

#### **Violation of chapter**

Sec. 6. A law enforcement officer who violates this chapter commits a Class B misdemeanor.

*As added by P.L.311-1983, SEC.3.*