



January 30, 2015

HOUSE BILL No. 1302

DIGEST OF HB 1302 (Updated January 28, 2015 4:13 pm - DI 69)

Citations Affected: IC 35-38.

Synopsis: Expungement. Provides that expungement provisions concerning an arrest that does not lead to a conviction also apply to criminal charges or juvenile delinquency allegations that do not lead to a conviction. Specifies that a person who files for expungement of an arrest, charge, or juvenile delinquency adjudication that did not lead to a conviction or juvenile delinquency adjudication may file the petition in a circuit or superior court. Specifies that a person who files a petition for expungement may not be required to pay a filing fee. Removes a requirement that bureau of motor vehicles records must be certified. Provides that, if a court has no discretion in granting an expungement petition, the prosecuting attorney is not required to inform the victim of the victim's rights. Provides that: (1) a hearing on a petition for expungement shall be held in open court; and (2) the petition and the order for expungement become confidential if the petition is granted and the order is issued by the court.

Effective: July 1, 2015.

McMillin, Pierce, Summers

January 13, 2015, read first time and referred to Committee on Courts and Criminal Code.
January 29, 2015, amended, reported — Do Pass.

HB 1302—LS 6735/DI 106



January 30, 2015

First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1302

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 35-38-9-1, AS AMENDED BY P.L.181-2014,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 1. (a) This section applies only to a person who
4 has been arrested, **charged with an offense, or alleged to be a**
5 **delinquent child, if:**
6 (1) the arrest, **criminal charge, or juvenile delinquency**
7 **allegation:**
8 (A) did not result in a conviction or juvenile adjudication; or
9 (B) resulted in a conviction or juvenile adjudication and the
10 conviction or adjudication was vacated on appeal; and
11 (2) the person is not currently participating in a pretrial diversion
12 program.
13 (b) Not earlier than one (1) year after the date of arrest, **criminal**
14 **charge, or juvenile delinquency allegation (whichever is latest),** if
15 the person was not convicted or adjudicated a delinquent child, or the

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1 date of the opinion vacating the conviction or adjudication becomes
 2 final (unless the prosecuting attorney agrees in writing to an earlier
 3 time), the person may petition the court for expungement of the records
 4 related to the arrest, **criminal charge, or juvenile delinquency**
 5 **allegation.**

6 (c) A petition for expungement of records must be verified and filed
 7 in ~~the court in which the charges were filed; or if no criminal charges~~
 8 ~~were filed; in a court with criminal jurisdiction~~ **a circuit or superior**
 9 **court** in the county where ~~the criminal charges or juvenile~~
 10 ~~delinquency allegation was filed, or if no criminal charges or~~
 11 ~~juvenile delinquency allegation was filed, in the county where the~~
 12 arrest occurred. The petition must set forth:

13 (1) the date of the arrest, **criminal charges, or juvenile**
 14 **delinquency allegation, and conviction (if applicable);**

15 (2) the county in which the arrest occurred, **the county in which**
 16 **the information or indictment was filed, and the county in**
 17 **which the juvenile delinquency allegation was filed, if**
 18 **applicable;**

19 (3) the law enforcement agency employing the arresting officer,
 20 if known;

21 **(4) the court in which the criminal charges or juvenile**
 22 **delinquency allegation was filed, if applicable;**

23 ~~(4) (5) any other known identifying information, such as the name~~
 24 ~~of the arresting officer, case number, or court cause number;~~

25 ~~(5) (6) the date of the petitioner's birth; and~~

26 ~~(6) (7) the petitioner's Social Security number.~~

27 **A person who files a petition under this section is not required to**
 28 **pay a filing fee.**

29 (d) The court shall serve a copy of the petition on the prosecuting
 30 attorney.

31 (e) Upon receipt of a petition for expungement, the court:

32 (1) may summarily deny the petition if the petition does not meet
 33 the requirements of this section, or if the statements contained in
 34 the petition indicate that the petitioner is not entitled to relief; and

35 (2) shall grant the petition unless:

36 (A) the conditions described in subsection (a) have not been
 37 met; or

38 (B) criminal charges are pending against the person.

39 (f) Whenever the petition of a person under this section is granted:

40 **(1) no information concerning the arrest, criminal charges,**
 41 **juvenile delinquency allegation, vacated conviction, or**
 42 **vacated juvenile delinquency adjudication may be placed or**



1 retained in any state central repository for criminal history
 2 information or in any other alphabetically arranged criminal
 3 history information system maintained by a local, regional, or
 4 statewide law enforcement agency;

5 **(2) the clerk of the supreme court shall seal or redact any**
 6 **records in the clerk's possession that relate to the arrest,**
 7 **criminal charges, juvenile delinquency allegation, vacated**
 8 **conviction, or vacated juvenile delinquency adjudication;**

9 **(3) the records of:**

10 **(A) the sentencing court;**

11 **(B) a juvenile court;**

12 **(C) a court of appeals; and**

13 **(D) the supreme court;**

14 **concerning the person shall be redacted or permanently**
 15 **sealed; and**

16 **(4) with respect to the records of a person who is named as an**
 17 **appellant or an appellee in an opinion or memorandum**
 18 **decision by the supreme court or the court of appeals, the**
 19 **court shall:**

20 **(A) redact the opinion or memorandum decision as it**
 21 **appears on the computer gateway administered by the**
 22 **office of technology so that it does not include the**
 23 **petitioner's name (in the same manner that opinions**
 24 **involving juveniles are redacted); and**

25 **(B) provide a redacted copy of the opinion to any publisher**
 26 **or organization to whom the opinion or memorandum**
 27 **decision is provided after the date of the order of**
 28 **expungement.**

29 **The supreme court and the court of appeals are not required**
 30 **to redact, destroy, or otherwise dispose of any existing copy of**
 31 **an opinion or memorandum decision that includes the**
 32 **petitioner's name.**

33 **(g) However,** This chapter does not require any change or alteration
 34 **in:**

35 **(1) any internal record made by a law enforcement agency at the**
 36 **time of the arrest and not intended for release to the public; or**

37 **(2) the record of any court in which the criminal charges were**
 38 **filed; or**

39 **(3) (2) records that relate to a diversion or deferral program.**

40 **(g) (h) If a person whose records are expunged brings an action that**
 41 **might be defended with the contents of the expunged records, the**
 42 **defendant is presumed to have a complete defense to the action. In**



1 order for the plaintiff to recover, the plaintiff must show that the
 2 contents of the expunged records would not exonerate the defendant.
 3 The plaintiff may be required to state under oath whether the plaintiff
 4 had records in the criminal justice system and whether those records
 5 were expunged. If the plaintiff denies the existence of the records, the
 6 defendant may prove their existence in any manner compatible with the
 7 law of evidence.

8 SECTION 2. IC 35-38-9-8, AS AMENDED BY P.L.181-2014,
 9 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2015]: Sec. 8. (a) This section applies only to a petition to
 11 expunge conviction records under sections 2 through 5 of this chapter.
 12 This section does not apply to a petition to expunge ~~arrest~~ records
 13 **related to the arrest, criminal charge, or juvenile delinquency**
 14 **allegation** under section 1 of this chapter.

15 (b) Any person may seek an expungement under sections 2 through
 16 5 of this chapter by filing a verified petition for expungement. The
 17 petition must include the following:

- 18 (1) The petitioner's full name and all other legal names or aliases
 19 by which the petitioner is or has been known.
- 20 (2) The petitioner's date of birth.
- 21 (3) The petitioner's addresses from the date of the offense to the
 22 date of the petition.
- 23 (4) A ~~certified~~ copy of petitioner's records from the bureau of
 24 motor vehicles.
- 25 (5) The petitioner shall affirm that no criminal investigation or
 26 charges are pending against the petitioner.
- 27 (6) The petitioner shall affirm that the petitioner has not
 28 committed another crime within the period required for
 29 expungement.
- 30 (7) The petitioner shall list all convictions and the date of the
 31 conviction, and any appeals from the conviction and the date any
 32 appellate opinion was handed down, if applicable.
- 33 (8) The petitioner shall affirm that the required period has elapsed
 34 or attach a copy of the prosecuting attorney's written consent to a
 35 shorter period.
- 36 (9) The petitioner shall describe any other petitions that the
 37 petitioner has filed under this chapter.
- 38 (10) For a petition filed under section 5 of this chapter, the
 39 petitioner shall attach a copy of the prosecuting attorney's written
 40 consent.
- 41 ~~(11) The petitioner shall provide evidence that the petitioner has~~
 42 ~~paid all fines, fees, and court costs, and satisfied any restitution~~



1 ~~obligation imposed on the person as part of the sentence.~~

2 (c) The petitioner may include any other information that the
3 petitioner believes may assist the court.

4 **(d) A person who files a petition under this section is not
5 required to pay a filing fee.**

6 ~~(d)~~ (e) The petitioner shall serve a copy of the petition upon the
7 prosecuting attorney in accordance with the Indiana Rules of Trial
8 Procedure.

9 ~~(e)~~ (f) The prosecuting attorney shall inform the victim of the
10 victim's rights under IC 35-40-6 by contacting the victim at the victim's
11 last known address. **However, if a court has no discretion in
12 granting an expungement petition under this chapter, the
13 prosecuting attorney is not required to inform the victim of the
14 victim's rights under this subsection.**

15 ~~(f)~~ (g) The prosecuting attorney shall reply to the petition not later
16 than thirty (30) days after receipt.

17 SECTION 3. IC 35-38-9-9, AS AMENDED BY P.L.181-2014,
18 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2015]: Sec. 9. (a) If the prosecuting attorney does not object,
20 the court may grant the petition for expungement without a hearing.

21 (b) The court may summarily deny a petition, if the petition does not
22 meet the requirements of section 8 of this chapter, or if the statements
23 contained in the petition demonstrate that the petitioner is not entitled
24 to relief.

25 (c) If the prosecuting attorney objects to the petition, the court shall
26 set the matter for hearing not sooner than sixty (60) days after service
27 of the petition on the prosecuting attorney.

28 (d) A victim of the offense for which expungement is sought may
29 submit an oral or written statement in support of or in opposition to the
30 petition at the time of the hearing. The petitioner must prove by a
31 preponderance of the evidence that the facts alleged in the verified
32 petition are true.

33 (e) The grant or denial of a petition is an appealable final order.

34 (f) If the court grants the petition for expungement, the court shall
35 issue an order of expungement as described in sections 6 and 7 of this
36 chapter.

37 (g) This subsection applies only to a petition to expunge conviction
38 records filed under sections 2 through 5 of this chapter. This subsection
39 does not apply to a petition to expunge ~~arrest~~ records **related to the
40 arrest, criminal charge, or juvenile delinquency allegation** under
41 section 1 of this chapter. A petitioner may seek to expunge more than
42 one (1) conviction at the same time. The petitioner shall consolidate all



1 convictions that the petitioner wishes to expunge from the same county
 2 in one (1) petition. A petitioner who wishes to expunge convictions
 3 from separate counties must file a petition in each county in which a
 4 conviction was entered.

5 (h) This subsection applies only to a petition to expunge conviction
 6 records filed under sections 2 through 5 of this chapter. This subsection
 7 does not apply to a petition to expunge ~~arrest~~ records **related to the**
 8 **arrest, criminal charge, or juvenile delinquency allegation** under
 9 section 1 of this chapter. Except as provided in subsections (i) and (j),
 10 a petitioner may file a petition for expungement only one (1) time
 11 during the petitioner's lifetime. For purposes of this subsection, all
 12 petitions for expungement filed in separate counties for offenses
 13 committed in those counties count as one (1) petition if they are filed
 14 in one (1) three hundred sixty-five (365) day period.

15 (i) A petitioner whose petition for expungement has been denied, in
 16 whole or in part, may ~~file a subsequent refile~~ that petition for
 17 expungement, **in whole or in part**, with respect to one (1) or more
 18 convictions included in the initial expungement petition that were not
 19 expunged. However, if the petition was denied due to the court's
 20 exercise of its discretion under section 4 or 5 of this chapter, a
 21 ~~subsequent~~ petition for expungement may be ~~filed~~ **refiled** only after the
 22 elapse of three (3) years from the date on which the previous
 23 expungement petition was denied. Except as provided in subsection (j),
 24 a ~~subsequent refiled~~ petition for expungement may not include any
 25 conviction that was not included in the initial expungement petition.

26 (j) A court may permit a petitioner to file a ~~subsequent~~ **an amended**
 27 petition for expungement with respect to one (1) or more convictions
 28 that were not included in the initial expungement petition only if the
 29 court finds that:

- 30 (1) the petitioner intended in good faith to comply with
- 31 subsections (g) and (h);
- 32 (2) the petitioner's failure to comply with subsections (g) and (h)
- 33 was due to:
 - 34 (A) excusable neglect; or
 - 35 (B) circumstances beyond the petitioner's control; and
- 36 (3) permitting the petitioner to file a subsequent petition for
- 37 expungement is in the best interests of justice.

38 SECTION 4. IC 35-38-9-10, AS AMENDED BY P.L.181-2014,
 39 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2015]: Sec. 10. (a) This section does not apply to a person to
 41 whom sealed records may be disclosed under section 6(a)(2) of this
 42 chapter.



- 1 (b) It is unlawful discrimination for any person to:
2 (1) suspend;
3 (2) expel;
4 (3) refuse to employ;
5 (4) refuse to admit;
6 (5) refuse to grant or renew a license, permit, or certificate
7 necessary to engage in any activity, occupation, or profession; or
8 (6) otherwise discriminate against;
9 any person because of a conviction or arrest record expunged or sealed
10 under this chapter.
- 11 (c) The civil rights of a person whose conviction has been expunged
12 shall be restored, including the right to vote, to hold public office, and
13 to serve as a juror.
- 14 (d) In any application for employment, a license, or other right or
15 privilege, a person may be questioned about a previous criminal record
16 only in terms that exclude expunged convictions or arrests, such as:
17 "Have you ever been arrested for or convicted of a crime that has not
18 been expunged by a court?"
- 19 (e) A person whose record is expunged shall be treated as if the
20 person had never been convicted of the offense. However, upon a
21 subsequent arrest or conviction for an unrelated offense, the prior
22 expunged conviction:
23 (1) may be considered by the court in determining the sentence
24 imposed for the new offense;
25 (2) is a prior unrelated conviction for purposes of:
26 (A) a habitual offender enhancement; and
27 (B) enhancing the new offense based on a prior conviction;
28 and
29 (3) may be admitted as evidence in the proceeding for a new
30 offense as if the conviction had not been expunged.
- 31 (f) Any person that discriminates against a person as described in
32 subsection (b) commits a Class C infraction and may be held in
33 contempt by the court issuing the order of expungement or by any other
34 court of general jurisdiction. Any person may file a written motion of
35 contempt to bring an alleged violation of this section to the attention of
36 a court. In addition, the person is entitled to injunctive relief.
- 37 (g) In any judicial or administrative proceeding alleging negligence
38 or other fault, an order of expungement may be introduced as evidence
39 of the person's exercise of due care in hiring, retaining, licensing,
40 certifying, admitting to a school or program, or otherwise transacting
41 business or engaging in activity with the person to whom the order of
42 expungement was issued.



1 (h) A conviction that has been expunged under this chapter is not
2 admissible as evidence in an action for negligent hiring, admission, or
3 licensure against a person or entity who relied on the order.

4 ~~(i) A petition for expungement and an order for expungement are~~
5 ~~confidential.~~

6 SECTION 5. IC 35-38-9-12 IS ADDED TO THE INDIANA CODE
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2015]: **Sec. 12. A hearing on a petition for expungement shall be**
9 **held in open court. If:**

10 (1) a petition for expungement is granted; and

11 (2) an order for expungement is issued;

12 **by the court, the petition and the order for expungement become**
13 **confidential.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1302, 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 5, line 11, after "address." insert "**However, if a court has no discretion in granting an expungement petition under this chapter, the prosecuting attorney is not required to inform the victim of the victim's rights under this subsection.**".

Page 6, after line 34, begin a new paragraph and insert:

"SECTION 4. IC 35-38-9-10, AS AMENDED BY P.L.181-2014, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) This section does not apply to a person to whom sealed records may be disclosed under section 6(a)(2) of this chapter.

(b) It is unlawful discrimination for any person to:

- (1) suspend;
- (2) expel;
- (3) refuse to employ;
- (4) refuse to admit;
- (5) refuse to grant or renew a license, permit, or certificate necessary to engage in any activity, occupation, or profession; or
- (6) otherwise discriminate against;

any person because of a conviction or arrest record expunged or sealed under this chapter.

(c) The civil rights of a person whose conviction has been expunged shall be restored, including the right to vote, to hold public office, and to serve as a juror.

(d) In any application for employment, a license, or other right or privilege, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests, such as: "Have you ever been arrested for or convicted of a crime that has not been expunged by a court?"

(e) A person whose record is expunged shall be treated as if the person had never been convicted of the offense. However, upon a subsequent arrest or conviction for an unrelated offense, the prior expunged conviction:

- (1) may be considered by the court in determining the sentence imposed for the new offense;
- (2) is a prior unrelated conviction for purposes of:
 - (A) a habitual offender enhancement; and



(B) enhancing the new offense based on a prior conviction;
and

(3) may be admitted as evidence in the proceeding for a new offense as if the conviction had not been expunged.

(f) Any person that discriminates against a person as described in subsection (b) commits a Class C infraction and may be held in contempt by the court issuing the order of expungement or by any other court of general jurisdiction. Any person may file a written motion of contempt to bring an alleged violation of this section to the attention of a court. In addition, the person is entitled to injunctive relief.

(g) In any judicial or administrative proceeding alleging negligence or other fault, an order of expungement may be introduced as evidence of the person's exercise of due care in hiring, retaining, licensing, certifying, admitting to a school or program, or otherwise transacting business or engaging in activity with the person to whom the order of expungement was issued.

(h) A conviction that has been expunged under this chapter is not admissible as evidence in an action for negligent hiring, admission, or licensure against a person or entity who relied on the order.

(i) ~~A petition for expungement and an order for expungement are confidential.~~

SECTION 5. IC 35-38-9-12 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2015]: **Sec. 12. A hearing on a petition for expungement shall be held in open court. If:**

(1) a petition for expungement is granted; and

(2) an order for expungement is issued;

by the court, the petition and the order for expungement become confidential."

and when so amended that said bill do pass.

(Reference is to HB 1302 as introduced.)

WASHBURNE

Committee Vote: yeas 12, nays 0.

