



January 17, 2014

HOUSE BILL No. 1155

DIGEST OF HB 1155 (Updated January 15, 2014 2:38 pm - DI 69)

Citations Affected: IC 3-8; IC 35-38.

Synopsis: Expungement. Relocates and restates certain provisions dealing with the expungement of arrest records, and deletes inconsistent language. (Under current law, there are two inconsistent procedures for expunging arrest records.) Specifies where a petition for expungement must be filed, and removes the prohibition against a waiver or reduction of the filing fee for an indigent person. Grants a defense attorney and a probation department access to expunged records if authorized by court order. Allows a court to accept filing of a subsequent petition for expungement that includes convictions not named in the original petition under certain circumstances. Provides that a court must find by a preponderance of the evidence instead of by clear and convincing evidence that all the requirements of expungement have been met to order a person's conviction records marked as expunged. Prohibits a person from waiving the right to expungement as part of a plea agreement. (The introduced version of this bill was prepared by the criminal law and sentencing policy study committee.)

Effective: July 1, 2014.

**Turner, McMillin, Shackelford,
Porter**

January 13, 2014, read first time and referred to Committee on Courts and Criminal Code.
January 16, 2014, amended, reported — Do Pass.

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January 17, 2014

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1155

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 3-8-1-5, AS AMENDED BY P.L.37-2008,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 5. (a) This section does not apply to a candidate
4 for federal office.
5 (b) As used in this section, "felony" means a conviction in any
6 jurisdiction for which the convicted person might have been
7 imprisoned for more than one (1) year. However, the term does not
8 include a conviction:
9 (1) for which the person has been pardoned; or
10 (2) that has been:
11 (A) reversed;
12 (B) vacated;
13 (C) set aside; ~~or~~
14 (D) not entered because the trial court did not accept the
15 person's guilty plea; **or**
16 (E) expunged under IC 35-38-9.

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1 (c) A person is disqualified from assuming or being a candidate for
2 an elected office if:

3 (1) the person gave or offered a bribe, threat, or reward to procure
4 the person's election, as provided in Article 2, Section 6 of the
5 Constitution of the State of Indiana;

6 (2) the person does not comply with IC 5-8-3 because of a
7 conviction for a violation of the federal laws listed in that statute;

8 (3) in a:

9 (A) jury trial, a jury publicly announces a verdict against the
10 person for a felony;

11 (B) bench trial, the court publicly announces a verdict against
12 the person for a felony; or

13 (C) guilty plea hearing, the person pleads guilty or nolo
14 contendere to a felony;

15 (4) the person has been removed from the office the candidate
16 seeks under Article 7, Section 11 or Article 7, Section 13 of the
17 Constitution of the State of Indiana;

18 (5) the person is a member of the United States armed forces on
19 active duty and prohibited by the United States Department of
20 Defense from being a candidate; or

21 (6) the person is subject to:

22 (A) 5 U.S.C. 1502 (the Little Hatch Act); or

23 (B) 5 U.S.C. 7321-7326 (the Hatch Act);

24 and would violate either federal statute by becoming or remaining
25 the candidate of a political party for nomination or election to an
26 elected office or a political party office.

27 (d) The subsequent reduction of a felony to a Class A misdemeanor
28 under IC 35-50-2-7 or IC 35-38-1-1.5 after the:

29 (1) jury has announced its verdict against the person for a felony;

30 (2) court has announced its verdict against the person for a felony;

31 or

32 (3) person has pleaded guilty or nolo contendere to a felony;

33 does not affect the operation of subsection (c).

34 SECTION 2. IC 35-38-5-1 IS REPEALED [EFFECTIVE JULY 1,
35 2014]. Sec. 1. (a) Whenever:

36 (1) an individual is arrested but no criminal charges are filed
37 against the individual; or

38 (2) all criminal charges filed against an individual are dropped
39 because:

40 (A) of a mistaken identity;

41 (B) no offense was in fact committed; or

42 (C) there was an absence of probable cause;



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

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

7 (1) the date of the arrest;

8 (2) the charge;

9 (3) the law enforcement agency employing the arresting officer;

10 (4) any other known identifying information; such as the name of
11 the arresting officer; case number; or court cause number;

12 (5) the date of the petitioner's birth; and

13 (6) the petitioner's Social Security number.

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

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

28 (1) summarily grant the petition;

29 (2) set the matter for hearing; or

30 (3) summarily deny the petition, if the court determines that:

31 (A) the petition is insufficient; or

32 (B) based on information contained in sworn statements
33 submitted by individuals who represent an agency; the
34 petitioner is not entitled to an expungement of records.

35 (e) If a notice of opposition is filed and the court does not
36 summarily grant or summarily deny the petition, the court shall set the
37 matter for a hearing:

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

40 (1) the conditions in subsection (a) have not been met;

41 (2) the individual has a record of arrests other than minor traffic
42 offenses; or



1 (3) additional criminal charges are pending against the individual.
 2 SECTION 3. IC 35-38-5-2 IS REPEALED [EFFECTIVE JULY 1,
 3 2014]. Sec. 2: If the petition for expungement is granted, the law
 4 enforcement agency shall within thirty (30) days of receipt of the court
 5 order, deliver to the individual or destroy all fingerprints, photographs,
 6 or arrest records in their possession.

7 SECTION 4. IC 35-38-5-3 IS REPEALED [EFFECTIVE JULY 1,
 8 2014]. Sec. 3: Whenever the petition of an individual under section 4
 9 of this chapter is granted, no information concerning the arrest may be
 10 placed or retained in any state central repository for criminal history
 11 information or in any other alphabetically arranged criminal history
 12 information system maintained by a local, regional, or statewide law
 13 enforcement agency. However, this chapter does not require any
 14 change or alteration in any record (such as a police blotter entry) made
 15 at the time of the arrest or in the record of any court in which the
 16 criminal charges were filed.

17 SECTION 5. IC 35-38-5-4 IS REPEALED [EFFECTIVE JULY 1,
 18 2014]. Sec. 4: If a person whose records are expunged brings an action
 19 that might be defended with the contents of such records, the defendant
 20 is presumed to have a complete defense to such an action. In order for
 21 the plaintiff to recover, he must show that the contents of the expunged
 22 records would not exonerate the defendant. The plaintiff may be
 23 required to state under oath whether he had records in the criminal
 24 justice system and whether those records were expunged. If the
 25 plaintiff denies the existence of the records, the defendant may prove
 26 their existence in any manner compatible with the law of evidence.

27 SECTION 6. IC 35-38-9-1, AS ADDED BY P.L.159-2013,
 28 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2014]: Sec. 1. (a) This section applies only to a person who
 30 has been arrested if:

31 (1) the arrest did not result in a conviction or juvenile
 32 adjudication; or

33 (2) the arrest resulted in a conviction or juvenile adjudication and
 34 the conviction or adjudication was vacated on appeal.

35 (b) Not earlier than one (1) year after the date of arrest, if the person
 36 was not convicted or adjudicated a delinquent child, or the date of the
 37 opinion vacating the conviction or adjudication becomes final, the
 38 person may petition the sentencing court (if the person was sentenced);
 39 the court in which the person was charged (if the person was charged);
 40 or any court exercising criminal jurisdiction in Indiana (if the person
 41 was not charged or convicted) to seal records contained in:

42 (1) a court's files;



1 (2) the files of the department of correction;
 2 (3) the files of the bureau of motor vehicles;
 3 (4) the files of any other person who provided treatment or
 4 services to the petitioning person under a court order; and
 5 (5) the central repository for criminal history information
 6 maintained by the state police department;
 7 that relate to the person's arrest.

8 (c) A person who files a petition to seal arrest records is not required
 9 to pay a filing fee.

10 (d) If the court finds by clear and convincing evidence that:

11 (1) the person's arrest:

12 (A) did not result in a conviction or juvenile adjudication; or

13 (B) resulted in a conviction or juvenile adjudication and the
 14 conviction or adjudication was vacated on appeal; and

15 (2) no charges are pending against the person;

16 the court shall order the arrest records described in subsection (b)
 17 sealed so that only a criminal justice agency may access the records
 18 without the order of a court.

19 (a) This section applies only to a person who has been arrested
 20 if:

21 (1) the arrest:

22 (A) did not result in a conviction or juvenile adjudication;

23 or

24 (B) resulted in a conviction or juvenile adjudication and
 25 the conviction or adjudication was vacated on appeal; and

26 (2) the person is not currently participating in a pretrial
 27 diversion program.

28 (b) Not earlier than one (1) year after the date of arrest, if the
 29 person was not convicted or adjudicated a delinquent child, or the
 30 date of the opinion vacating the conviction or adjudication becomes
 31 final (unless the prosecuting attorney agrees in writing to an
 32 earlier time), the person may petition the court for expungement
 33 of the records related to the arrest.

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

38 (1) the date of the arrest;

39 (2) the county in which the arrest occurred;

40 (3) the law enforcement agency employing the arresting
 41 officer, if known;

42 (4) any other known identifying information, such as the name



- 1 of the arresting officer, case number, or court cause number;
 2 (5) the date of the petitioner's birth; and
 3 (6) the petitioner's Social Security number.
- 4 (d) The court shall serve a copy of the petition on the
 5 prosecuting attorney.
- 6 (e) Upon receipt of a petition for expungement, the court:
 7 (1) may summarily deny the petition if the petition does not
 8 meet the requirements of this section, or if the statements
 9 contained in the petition indicate that the petitioner is not
 10 entitled to relief; and
 11 (2) shall grant the petition unless:
 12 (A) the conditions described in subsection (a) have not been
 13 met; or
 14 (B) criminal charges are pending against the person.
- 15 (f) Whenever the petition of a person under this section is
 16 granted, no information concerning the arrest may be placed or
 17 retained in any state central repository for criminal history
 18 information or in any other alphabetically arranged criminal
 19 history information system maintained by a local, regional, or
 20 statewide law enforcement agency. However, this chapter does not
 21 require any change or alteration in:
 22 (1) any internal record made by a law enforcement agency at
 23 the time of the arrest and not intended for release to the
 24 public;
 25 (2) the record of any court in which the criminal charges were
 26 filed; or
 27 (3) records that relate to a diversion or deferral program.
- 28 (g) If a person whose records are expunged brings an action that
 29 might be defended with the contents of the expunged records, the
 30 defendant is presumed to have a complete defense to the action. In
 31 order for the plaintiff to recover, the plaintiff must show that the
 32 contents of the expunged records would not exonerate the
 33 defendant. The plaintiff may be required to state under oath
 34 whether the plaintiff had records in the criminal justice system and
 35 whether those records were expunged. If the plaintiff denies the
 36 existence of the records, the defendant may prove their existence
 37 in any manner compatible with the law of evidence.
- 38 SECTION 7. IC 35-38-9-2, AS ADDED BY P.L.159-2013,
 39 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2014]: Sec. 2. (a) This section applies only to a person
 41 convicted of a misdemeanor, including a Class D felony (for a crime
 42 committed before July 1, 2014) or a Level 6 felony (for a crime



1 **committed after June 30, 2014)** reduced to a misdemeanor.

2 (b) Not earlier than five (5) years after the date of conviction (unless
3 the prosecuting attorney consents in writing to an earlier period), the
4 person convicted of the misdemeanor may petition ~~the sentencing a~~
5 court to expunge **all** conviction records, **including records** contained
6 in:

- 7 (1) a court's files;
8 (2) the files of the department of correction;
9 (3) the files of the bureau of motor vehicles; and
10 (4) the files of any other person who provided treatment or
11 services to the petitioning person under a court order;

12 that relate to the person's misdemeanor conviction.

13 (c) A person who files a petition to expunge conviction records shall
14 pay the filing fees required for filing a civil action, and the clerk shall
15 distribute the fees as in the case of a civil action. A person who files a
16 petition to expunge conviction records may not receive a waiver or
17 reduction of fees upon a showing of indigency. **file the petition in a**
18 **circuit or superior court in the county of conviction.**

19 (d) If the court finds by ~~clear and convincing~~ a **preponderance of**
20 **the** evidence that:

- 21 (1) the period required by this section has elapsed;
22 (2) no charges are pending against the person;
23 ~~(3) the person does not have an existing or pending driver's~~
24 ~~license suspension;~~
25 ~~(4) (3) the person has successfully completed the person's~~
26 ~~sentence, including any term of supervised release, paid all fines,~~
27 ~~fees, and court costs, and satisfied all other obligations any~~
28 ~~restitution obligation~~ placed on the person as part of the
29 sentence; and
30 ~~(5) (4) the person has not been convicted of a crime within the~~
31 ~~previous five (5) years (or within a shorter period agreed to by~~
32 ~~the prosecuting attorney if the prosecuting attorney has~~
33 ~~consented to a shorter period under subsection (b));~~

34 the court shall order the conviction records described in subsection (b)
35 expunged in accordance with section 6 of this chapter.

36 SECTION 8. IC 35-38-9-3, AS ADDED BY P.L.159-2013,
37 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2014]: Sec. 3. (a) Except as provided in subsection (b), this
39 section applies only to a person convicted of a Class D felony **(for a**
40 **crime committed before July 1, 2014) or a Level 6 felony (for a**
41 **crime committed after June 30, 2014)**. This section does not apply to
42 a person if the person's Class D felony **or Level 6 felony** was reduced



- 1 to a Class A misdemeanor.
- 2 (b) This section does not apply to the following:
- 3 (1) An elected official convicted of an offense while serving the
- 4 official's term or as a candidate for public office.
- 5 (2) A sex or violent offender (as defined in IC 11-8-8-5).
- 6 (3) A person convicted of a felony that resulted in bodily injury to
- 7 another person.
- 8 (4) A person convicted of perjury (IC 35-44.1-2-1) or official
- 9 misconduct (IC 35-44.1-1-1).
- 10 (5) A person convicted of an offense described in:
- 11 (A) IC 35-42-1;
- 12 (B) IC 35-42-3.5; or
- 13 (C) IC 35-42-4.
- 14 (c) Not earlier than eight (8) years after the date of conviction
- 15 (unless the prosecuting attorney consents in writing to an earlier
- 16 period), the person convicted of the Class D felony **or Level 6 felony**
- 17 may petition ~~the sentencing a~~ court to expunge **all** conviction records,
- 18 **including records** contained in:
- 19 (1) a court's files;
- 20 (2) the files of the department of correction;
- 21 (3) the files of the bureau of motor vehicles; and
- 22 (4) the files of any other person who provided treatment or
- 23 services to the petitioning person under a court order;
- 24 that relate to the person's Class D **or Level 6** felony conviction.
- 25 (d) A person who files a petition to expunge conviction records shall
- 26 ~~pay the filing fees required for filing a civil action, and the clerk shall~~
- 27 ~~distribute the fees as in the case of a civil action. A person who files a~~
- 28 ~~petition to expunge conviction records may not receive a waiver or~~
- 29 ~~reduction of fees upon a showing of indigency. file the petition in a~~
- 30 **circuit or superior court in the county of conviction.**
- 31 (e) If the court finds by ~~clear and convincing a~~ **preponderance of**
- 32 **the** evidence that:
- 33 (1) the period required by this section has elapsed;
- 34 (2) no charges are pending against the person;
- 35 ~~(3) the person does not have an existing or pending driver's~~
- 36 ~~license suspension;~~
- 37 ~~(4) (3) the person has successfully completed the person's~~
- 38 ~~sentence, including any term of supervised release, paid all fines,~~
- 39 **fees, and court costs,** and satisfied ~~all other obligations any~~
- 40 **restitution obligation** placed on the person as part of the
- 41 sentence; and
- 42 ~~(5) (4) the person has not been convicted of a crime within the~~



1 previous eight (8) years **(or within a shorter period agreed to**
 2 **by the prosecuting attorney if the prosecuting attorney has**
 3 **consented to a shorter period under subsection (c));**

4 the court shall order the conviction records described in subsection (c)
 5 expunged in accordance with section 6 of this chapter.

6 SECTION 9. IC 35-38-9-4, AS ADDED BY P.L.159-2013,
 7 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2014]: Sec. 4. (a) Except as provided in subsection (b), this
 9 section applies only to a person convicted of a felony **who may not**
 10 **seek expungement of that felony under section 3 of this chapter.**

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

12 (1) An elected official convicted of an offense while serving the
 13 official's term or as a candidate for public office.

14 (2) A sex or violent offender (as defined in IC 11-8-8-5).

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

17 (4) A person convicted of official misconduct (IC 35-44.1-1-1).

18 (5) A person convicted of an offense described in:

19 (A) IC 35-42-1;

20 (B) IC 35-42-3.5; or

21 (C) IC 35-42-4.

22 (c) Not earlier than **the later of** eight (8) years **after from the date**
 23 **of conviction, or three (3) years from** the completion of the person's
 24 sentence, ~~(including the completion of any term of supervised release~~
 25 ~~and the satisfaction of all other obligations placed on the person as part~~
 26 ~~of the sentence;~~ unless the prosecuting attorney consents in writing to
 27 an earlier period, the person convicted of the felony may petition ~~the~~
 28 ~~sentencing a~~ court to expunge **all** conviction records, **including**
 29 **records** contained in:

30 (1) a court's files;

31 (2) the files of the department of correction;

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

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

35 that relate to the person's felony conviction.

36 (d) A person who files a petition to expunge conviction records shall
 37 pay the filing fees required for filing a civil action; and the clerk shall
 38 distribute the fees as in the case of a civil action. A person who files a
 39 petition to expunge conviction records may not receive a waiver or
 40 reduction of fees upon a showing of indigency. **file the petition in a**
 41 **circuit or superior court in the county of conviction.**

42 (e) If the court finds by ~~clear and convincing~~ a **preponderance of**



- 1 **the evidence that:**
- 2 (1) the period required by this section has elapsed;
- 3 (2) no charges are pending against the person;
- 4 ~~(3) the person does not have an existing or pending driver's~~
- 5 ~~license suspension;~~
- 6 ~~(4) (3) the person has successfully completed the person's~~
- 7 ~~sentence, including any term of supervised release, paid all fines,~~
- 8 ~~fees, and court costs, and satisfied all other obligations any~~
- 9 ~~restitution obligation placed on the person as part of the~~
- 10 ~~sentence; and~~
- 11 ~~(5) (4) the person has not been convicted of a crime within the~~
- 12 ~~previous eight (8) years (or within a shorter period agreed to~~
- 13 ~~by the prosecuting attorney if the prosecuting attorney has~~
- 14 ~~consented to a shorter period under subsection (c));~~
- 15 the court may order the conviction records described in subsection (c)
- 16 marked as expunged in accordance with section 7 of this chapter. A
- 17 person whose records have been ordered marked as expunged under
- 18 this section is considered to have had the person's records expunged for
- 19 all purposes other than the disposition of the records.
- 20 SECTION 10. IC 35-38-9-5, AS ADDED BY P.L.159-2013,
- 21 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 22 JULY 1, 2014]: Sec. 5. (a) Except as provided in subsection (b), this
- 23 section applies to a person convicted of a felony, including:
- 24 (1) an elected official convicted of an offense while serving the
- 25 official's term or as a candidate for public office; and
- 26 (2) a person convicted of a felony that resulted in serious bodily
- 27 injury to another person.
- 28 (b) This section does not apply to the following:
- 29 (1) A sex or violent offender (as defined in IC 11-8-8-5).
- 30 (2) A person convicted of official misconduct (IC 35-44.1-1-1).
- 31 (3) A person convicted of an offense described in:
- 32 (A) IC 35-42-1;
- 33 (B) IC 35-42-3.5; or
- 34 (C) IC 35-42-4.
- 35 (c) Not earlier than **the later of ten (10) years after from the date**
- 36 **of conviction, or five (5) years from** the completion of the person's
- 37 sentence, ~~(including the completion of any term of supervised release~~
- 38 ~~and the satisfaction of all other obligations placed on the person as part~~
- 39 ~~of the sentence; unless the prosecuting attorney consents in writing to~~
- 40 ~~an earlier period, the person convicted of the felony may petition the~~
- 41 ~~sentencing a court to expunge all conviction records, including~~
- 42 ~~records contained in:~~



1 (1) a court's files;
 2 (2) the files of the department of correction;
 3 (3) the files of the bureau of motor vehicles; and
 4 (4) the files of any other person who provided treatment or
 5 services to the petitioning person under a court order;
 6 that relate to the person's felony conviction.

7 (d) A person who files a petition to expunge conviction records shall
 8 ~~pay the filing fees required for filing a civil action, and the clerk shall~~
 9 ~~distribute the fees as in the case of a civil action. A person who files a~~
 10 ~~petition to expunge conviction records may not receive a waiver or~~
 11 ~~reduction of fees upon a showing of indigency. **file the petition in a**~~
 12 **circuit or superior court in the county of conviction.**

13 (e) If the court finds by ~~clear and convincing~~ **a preponderance of**
 14 **the** evidence that:

- 15 (1) the period required by this section has elapsed;
 16 (2) no charges are pending against the person;
 17 ~~(3) the person does not have an existing or pending driver's~~
 18 ~~license suspension;~~
 19 ~~(4) (3) the person has successfully completed the person's~~
 20 ~~sentence, including any term of supervised release, **paid all fines,**~~
 21 **fees, and court costs,** and satisfied all other obligations ~~any~~
 22 **restitution obligation** placed on the person as part of the
 23 sentence;
 24 ~~(5) (4) the person has not been convicted of a crime within the~~
 25 ~~previous ten (10) years (or within a shorter period agreed to by~~
 26 **the prosecuting attorney if the prosecuting attorney has**
 27 **consented to a shorter period under subsection (c));** and
 28 ~~(6) (5) the prosecuting attorney has consented in writing to the~~
 29 ~~expungement of the person's criminal records;~~

30 the court may order the conviction records described in subsection (c)
 31 marked as expunged in accordance with section 7 of this chapter. A
 32 person whose records have been ordered marked as expunged under
 33 this section is considered to have had the person's records expunged for
 34 all purposes other than the disposition of the records.

35 SECTION 11. IC 35-38-9-6, AS ADDED BY P.L.159-2013,
 36 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2014]: Sec. 6. (a) If the court orders conviction records
 38 expunged under sections 2 through 3 of this chapter, the court shall do
 39 the following with respect to the specific records expunged by the
 40 court:

- 41 (1) Order:
 42 (A) the department of correction;

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- 1 (B) the bureau of motor vehicles; and
 2 (C) each:
 3 (i) law enforcement agency; and
 4 (ii) other person;
 5 who incarcerated, provided treatment for, or provided other
 6 services for the person under an order of the court;
 7 to prohibit the release of the person's records or information in the
 8 person's records to anyone without a court order, other than a law
 9 enforcement officer acting in the course of the officer's official
 10 duty.
 11 (2) Order the central repository for criminal history information
 12 maintained by the state police department to seal the person's
 13 expunged conviction records. Records sealed under this
 14 subdivision may be disclosed only to:
 15 (A) a prosecuting attorney, if:
 16 (i) authorized by a court order; and
 17 (ii) needed to carry out the official duties of the prosecuting
 18 attorney;
 19 **(B) a defense attorney, if:**
 20 **(i) authorized by a court order; and**
 21 **(ii) needed to carry out the professional duties of the**
 22 **defense attorney;**
 23 **(C) a probation department, if:**
 24 **(i) authorized by a court order; and**
 25 **(ii) necessary to prepare a presentence report; and**
 26 ~~(B)~~ **(D)** the Federal Bureau of Investigation and the
 27 Department of Homeland Security, if disclosure is required to
 28 comply with an agreement relating to the sharing of criminal
 29 history information.
 30 (3) Notify the clerk of the supreme court to seal any records in the
 31 clerk's possession that relate to the conviction.
 32 **A probation department may provide an unredacted version of a**
 33 **presentence report disclosed under subdivision (2)(C) to any**
 34 **person authorized by law to receive a presentence report.**
 35 (b) Except as provided in subsection (c), if a petition to expunge
 36 conviction records is granted under sections 2 through 3 of this chapter,
 37 the records of:
 38 (1) the sentencing court;
 39 (2) a juvenile court;
 40 (3) a court of appeals; and
 41 (4) the supreme court;
 42 concerning the person shall be permanently sealed. **However, a**



1 **petition for expungement granted under sections 2 through 3 of**
 2 **this chapter does not affect an existing or pending driver's license**
 3 **suspension.**

4 (c) If a petition to expunge conviction records is granted under
 5 sections 2 through 3 of this chapter with respect to the records of a
 6 person who is named **as an appellant or an appellee** in an opinion or
 7 memorandum decision by the supreme court or the court of appeals, the
 8 court shall:

9 (1) redact the opinion or memorandum decision as it appears on
 10 the computer gateway administered by the office of technology so
 11 that it does not include the petitioner's name (in the same manner
 12 that opinions involving juveniles are redacted); and

13 (2) provide a redacted copy of the opinion to any publisher or
 14 organization to whom the opinion or memorandum decision is
 15 provided after the date of the order of expungement.

16 The supreme court and court of appeals are not required to destroy or
 17 otherwise dispose of any existing copy of an opinion or memorandum
 18 decision that includes the petitioner's name.

19 (d) Notwithstanding subsection (b), a prosecuting attorney may
 20 submit a written application to a court that granted an expungement
 21 petition under this chapter to gain access to any records that were
 22 permanently sealed under subsection (b), if the records are relevant in
 23 a new prosecution of the person. If a prosecuting attorney who submits
 24 a written application under this subsection shows that the records are
 25 relevant for a new prosecution of the person, the court that granted the
 26 expungement petition shall:

27 (1) order the records to be unsealed; and

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

30 If a court orders records to be unsealed under this subsection, the court
 31 shall order the records to be permanently resealed at the earliest
 32 possible time after the reasons for unsealing the records cease to exist.
 33 However, if the records are admitted as evidence against the person in
 34 a new prosecution that results in the person's conviction, or are used to
 35 enhance a sentence imposed on the person in a new prosecution, the
 36 court is not required to reseat the records.

37 (e) If a person whose conviction records are expunged under
 38 **sections 5 2 through 5** of this chapter is required to register as a sex
 39 offender based on the commission of a felony which has been
 40 expunged:

41 (1) the expungement does not affect the operation of the sex
 42 offender registry web site, any person's ability to access the



1 person's records, records required to be maintained concerning
 2 sex or violent offenders, or any registration requirement imposed
 3 on the person; and

4 (2) the expunged conviction must be clearly marked as expunged
 5 on the sex offender registry web site.

6 SECTION 12. IC 35-38-9-7, AS ADDED BY P.L.159-2013,
 7 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2014]: Sec. 7. (a) This section applies only to a person who
 9 has filed a petition for expungement under section 4 or 5 of this chapter
 10 and whose records have been ordered marked as expunged.

11 (b) The court records and other public records relating to the arrest,
 12 conviction, or sentence of a person whose conviction records have been
 13 marked as expunged remain public records. However, the court shall
 14 order that the records be clearly and visibly marked or identified as
 15 being expunged. **A petition for expungement granted under sections**
 16 **4 through 5 of this chapter does not affect an existing or pending**
 17 **driver's license suspension.**

18 (c) The state police department, the bureau of motor vehicles, and
 19 any other law enforcement agency in possession of records that relate
 20 to the conviction ordered to be marked as expunged shall add an entry
 21 to the person's record of arrest, conviction, or sentence in the criminal
 22 history data base stating that the record is marked as expunged.

23 SECTION 13. IC 35-38-9-8, AS ADDED BY P.L.159-2013,
 24 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2014]: Sec. 8. (a) This section applies only to a petition to
 26 expunge conviction records under sections 2 through 5 of this chapter.
 27 This section does not apply to a petition to ~~seal~~ **expunge** arrest records
 28 under section 1 of this chapter.

29 (b) Any person may seek an expungement under sections 2 through
 30 5 of this chapter by filing a verified petition for expungement. The
 31 petition must include the following:

32 (1) The petitioner's full name and all other legal names or aliases
 33 by which the petitioner is or has been known.

34 (2) The petitioner's date of birth.

35 (3) The petitioner's addresses from the date of the offense to the
 36 date of the petition.

37 (4) **A certified copy of petitioner's records from the bureau of**
 38 **motor vehicles.**

39 (5) The petitioner shall affirm that no criminal investigation or
 40 charges are pending against the petitioner.

41 ~~(5)~~ (6) The petitioner shall affirm that the petitioner has not
 42 committed another crime within the period required for



- 1 expungement.
- 2 ~~(6)~~ (7) The petitioner shall list all convictions and the date of the
- 3 conviction, **and any appeals from the conviction and the date**
- 4 **any appellate opinion was handed down, if applicable.**
- 5 ~~(7)~~ (8) The petitioner shall affirm that the required period has
- 6 elapsed or attach a copy of the prosecuting attorney's written
- 7 consent to a shorter period.
- 8 ~~(8)~~ (9) The petitioner shall describe any other petitions that the
- 9 petitioner has filed under this chapter.
- 10 ~~(9)~~ (10) For a petition filed under section 5 of this chapter, the
- 11 petitioner shall attach a copy of the prosecuting attorney's written
- 12 consent.
- 13 ~~(10)~~ (11) The petitioner shall provide evidence that the petitioner
- 14 has ~~successfully completed all terms of the sentence previously~~
- 15 **paid all fines, fees, and court costs, and satisfied any**
- 16 **restitution obligation imposed on the person as part of the**
- 17 **sentence. imposed, including:**
- 18 (A) payment of restitution, fines, and court costs; and
- 19 (B) completion of any terms of probation, parole, or
- 20 community corrections.
- 21 (c) The petitioner may include any other information that the
- 22 petitioner believes may assist the court.
- 23 (d) The petitioner shall serve a copy of the petition upon the
- 24 prosecuting attorney in accordance with the Indiana Rules of Trial
- 25 Procedure.
- 26 (e) The prosecuting attorney shall ~~promptly forward a copy of the~~
- 27 ~~petition to the last known address of the victim, and inform the victim~~
- 28 ~~of the victim's right to be present and address the court. inform the~~
- 29 **victim of the victim's rights under IC 35-40-6 by contacting the**
- 30 **victim at the victim's last known address.**
- 31 (f) The prosecuting attorney shall reply to the petition not later than
- 32 thirty (30) days after receipt.
- 33 SECTION 14. IC 35-38-9-9, AS ADDED BY P.L.159-2013,
- 34 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 35 JULY 1, 2014]: Sec. 9. (a) If the prosecuting attorney does not object,
- 36 the court may grant the petition for expungement without a hearing.
- 37 (b) The court may summarily deny a petition, if the petition does not
- 38 meet the requirements of section 8 of this chapter, or if the statements
- 39 contained in the petition demonstrate that the petitioner is not entitled
- 40 to relief.
- 41 (c) If the prosecuting attorney objects to the petition, the court shall
- 42 set the matter for hearing not sooner than sixty (60) days after service



1 of the petition on the prosecuting attorney.

2 (d) A victim of the offense for which expungement is sought may
3 submit an oral or written statement in support of or in opposition to the
4 petition at the time of the hearing. ~~The court shall consider the victim's~~
5 ~~statement before making its determination.~~

6 (e) The petitioner must prove by ~~clear and convincing a~~
7 **preponderance of the** evidence that the facts alleged in the verified
8 petition are true.

9 (f) ~~(e)~~ The **grant or** denial of a petition is an appealable final order.

10 (g) ~~(f)~~ If the court grants the petition for expungement, the court
11 shall issue an order of expungement as described in ~~section~~ **sections 6**
12 **and 7** of this chapter.

13 (h) ~~(g)~~ This subsection applies only to a petition to expunge
14 conviction records filed under sections 2 through 5 of this chapter. This
15 subsection does not apply to a petition to ~~seal~~ **expunge** arrest records
16 under section 1 of this chapter. A petitioner may seek to expunge more
17 than one (1) conviction at the same time. The petitioner shall
18 consolidate all convictions that the petitioner wishes to expunge from
19 the same county in one (1) petition. A petitioner who wishes to
20 expunge convictions from separate counties must file a petition in each
21 county in which a conviction was entered.

22 (i) ~~(h)~~ This subsection applies only to a petition to expunge
23 conviction records filed under sections 2 through 5 of this chapter. This
24 subsection does not apply to a petition to ~~seal~~ **expunge** arrest records
25 under section 1 of this chapter. Except as provided in ~~subsection (j)~~
26 **subsections (i) and (j)**, a petitioner may file ~~only one (1)~~ **one (1)** a petition for
27 expungement **only one (1) time** during the petitioner's lifetime. For
28 purposes of this subsection, all petitions for expungement filed in
29 separate counties for offenses committed in those counties count as one
30 (1) petition if they are filed in one (1) three hundred sixty-five (365)
31 day period.

32 (j) ~~(i)~~ A petitioner whose petition for expungement has been denied,
33 ~~on the merits~~; in whole or in part, may file a subsequent petition for
34 expungement with respect to one (1) or more convictions included in
35 the initial expungement petition that were not expunged. **However, if**
36 **the petition was denied due to the court's exercise of its discretion**
37 **under section 4 or 5 of this chapter**, a subsequent petition for
38 expungement may be filed ~~not earlier than~~ **only after the elapse of**
39 **three (3) years following from the date on which the denial of a**
40 **previous expungement petition was denied. Except as provided in**
41 **subsection (j)**, a subsequent petition for expungement may not include
42 any conviction that was not included in the initial expungement



1 petition.

2 **(j) A court may permit a petitioner to file a subsequent petition**
 3 **for expungement with respect to one (1) or more convictions that**
 4 **were not included in the initial expungement petition only if the**
 5 **court finds that:**

6 **(1) the petitioner intended in good faith to comply with**
 7 **subsections (g) and (h);**

8 **(2) the petitioner's failure to comply with subsections (g) and**
 9 **(h) was due to:**

10 **(A) excusable neglect; or**

11 **(B) circumstances beyond the petitioner's control; and**

12 **(3) permitting the petitioner to file a subsequent petition for**
 13 **expungement is in the best interests of justice.**

14 SECTION 15. IC 35-38-9-10, AS ADDED BY P.L.159-2013,
 15 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2014]: Sec. 10. (a) It is unlawful discrimination for any person
 17 to:

18 (1) suspend;

19 (2) expel;

20 (3) refuse to employ;

21 (4) refuse to admit;

22 (5) refuse to grant or renew a license, permit, or certificate
 23 necessary to engage in any activity, occupation, or profession; or

24 (6) otherwise discriminate against;

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

27 (b) The civil rights of a person whose conviction has been expunged
 28 shall be restored, including the right to vote, to hold public office, to
 29 serve as a juror, and, to the extent not prohibited by federal law, to own
 30 or possess a firearm.

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

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

40 (1) may be considered by the court in determining the sentence
 41 imposed for the new offense;

42 (2) is a prior unrelated conviction for purposes of:



- 1 (A) a habitual offender enhancement; and
 2 (B) enhancing the new offense based on a prior conviction;
 3 and
 4 (3) may be admitted as evidence in the proceeding for a new
 5 offense as if the conviction had not been expunged.
 6 (e) Any person that discriminates against a person as described in
 7 subsection (a) commits a Class C infraction and may be held in
 8 contempt by the court issuing the order of expungement or by any other
 9 court of general jurisdiction. Any person may file a written motion of
 10 contempt to bring an alleged violation of this section to the attention of
 11 a court. In addition, the person is entitled to injunctive relief.
 12 (f) In any judicial or administrative proceeding alleging negligence
 13 or other fault, an order of expungement may be introduced as evidence
 14 of the person's exercise of due care in hiring, retaining, licensing,
 15 certifying, admitting to a school or program, or otherwise transacting
 16 business or engaging in activity with the person to whom the order of
 17 expungement was issued.
 18 (g) A conviction that has been expunged under this chapter is not
 19 admissible as evidence in an action for negligent hiring, admission, or
 20 licensure against a person or entity who relied on the order.
 21 **(h) A petition for expungement and an order for expungement**
 22 **are confidential.**
 23 SECTION 16. IC 35-38-9-11 IS ADDED TO THE INDIANA
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2014]: **Sec. 11. (a) A person may not waive**
 26 **the right to expungement under this chapter as part of a plea**
 27 **agreement. Any purported waiver of the right to expungement in**
 28 **a plea agreement is invalid and unenforceable as against public**
 29 **policy.**
 30 **(b) This section does not prohibit the finding of a waiver of the**
 31 **right to expungement based on a failure to comply with the**
 32 **provisions of this chapter.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1155, 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 21, after "arrest" insert ":

(A)".

Page 5, line 23, delete "(2) the arrest", begin a new line double block indented and insert:

"(B)".

Page 5, line 24, delete "." and insert "; and

(2) the person is not currently participating in a pretrial diversion program."

Page 5, line 36, delete "the charge;" and insert "**the county in which the arrest occurred;**".

Page 5, line 38, after "officer" insert ", **if known**".

Page 6, line 1, delete "A" and insert "**The court shall serve a**".

Page 6, line 1, delete "shall be served".

Page 6, line 2, delete ", the law enforcement agency that arrested the person, and" and insert ".".

Page 6, delete line 3.

Page 6, line 4, delete "law".

Page 6, delete lines 5 through 15.

Page 6, line 16, after "court" insert ":

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

(2) shall grant the petition unless:

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

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

Page 6, line 16, delete "shall:".

Page 6, delete lines 17 through 35.

Page 6, line 36, delete "(i)" and insert "**(f)**".

Page 7, line 7, delete "(j)" and insert "**(g)**".

Page 7, line 40, strike "clear and convincing" and insert "**a preponderance of the**".

Page 8, strike lines 1 through 2.

Page 8, line 3, strike "(4)" and insert "**(3)**".

Page 8, line 3, strike "successfully completed the person's



sentence,".

Page 8, line 4, strike "including any term of supervised release,".

Page 8, line 7, strike "(5)" and insert "(4)".

Page 9, line 8, strike "clear and convincing" and insert "a **preponderance of the**".

Page 9, strike lines 11 through 12.

Page 9, line 13, strike "(4)" and insert "(3)".

Page 9, line 13, strike "successfully completed the person's sentence,".

Page 9, line 14, strike "including any term of supervised release,".

Page 9, line 17, strike "(5)" and insert "(4)".

Page 9, line 17, reset in roman "crime".

Page 9, line 17, delete "felony".

Page 9, line 39, after "than" insert "**the later of**".

Page 9, line 39, strike "after" and insert "**from the date of conviction, or three (3) years from**".

Page 9, line 40, strike "(including the completion of any term of supervised" and insert ",".

Page 9, strike line 41.

Page 9, line 42, strike "as part of the sentence,".

Page 10, line 1, delete ")".

Page 10, line 16, strike "clear and convincing" and insert "a **preponderance of the**".

Page 10, strike lines 19 through 20.

Page 10, line 21, strike "(4)" and insert "(3)".

Page 10, line 21, strike "successfully completed the person's sentence,".

Page 10, line 22, strike "including any term of supervised release,".

Page 10, line 25, strike "(5)" and insert "(4)".

Page 10, line 25, reset in roman "crime".

Page 10, line 25, delete "felony".

Page 10, line 30, reset in roman "marked as".

Page 10, line 30, reset in roman "section 7".

Page 10, line 30, delete "section 6".

Page 10, line 31, reset in roman "A person whose records have been ordered marked as".

Page 10, reset in roman lines 32 through 34.

Page 11, line 8, after "than" insert "**the later of**".

Page 11, line 8, strike "after" and insert "**from the date of conviction, or five (5) years from**".

Page 11, line 9, strike "(including the completion of any term of supervised" and insert ",".



Page 11, strike line 10.

Page 11, line 11, strike "as part of the sentence,".

Page 11, line 12, delete ")".

Page 11, line 27, strike "clear and convincing" and insert "**a preponderance of the**".

Page 11, strike lines 30 through 31.

Page 11, line 32, strike "(4)" and insert "**(3)**".

Page 11, line 32, strike "successfully completed the person's sentence,".

Page 11, line 33, strike "including any term of supervised release,".

Page 11, line 36, strike "(5)" and insert "**(4)**".

Page 11, line 36, reset in roman "crime".

Page 11, line 36, delete "felony".

Page 11, line 40, strike "(6)" and insert "**(5)**".

Page 12, line 8, reset in roman "3".

Page 12, line 8, delete "4".

Page 13, line 6, reset in roman "3".

Page 13, line 6, delete "4".

Page 13, line 12, after "sealed." insert "**However, a petition for expungement granted under sections 2 through 3 of this chapter does not affect an existing or pending driver's license suspension.**".

Page 13, line 14, reset in roman "3".

Page 13, line 15, delete "4".

Page 14, line 4, strike "section" and insert "**sections**".

Page 14, line 5, strike "5" and insert "**2 through 5**".

Page 14, line 17, reset in roman "4 or".

Page 14, line 23, after "expunged." insert "**A petition for expungement granted under sections 4 through 5 of this chapter does not affect an existing or pending driver's license suspension.**".

Page 15, line 20, strike "successfully completed all terms of the sentence previously" and insert "**paid all fines, fees, and court costs, and satisfied any restitution obligation imposed on the person as part of the sentence.**".

Page 15, strike line 21.

Page 15, line 22, strike "(A) payment of restitution, fines,".

Page 15, line 22, delete "fees,".

Page 15, line 22, strike "and court costs; and".

Page 15, strike lines 23 through 24.

Page 15, line 33, delete "." and insert "**by contacting the victim at the victim's last known address.**".

Page 16, line 9, strike "clear and convincing" and insert "**a preponderance of the**".



Page 16, line 42, delete "A" and insert "**Except as provided in subsection (j), a**".

Page 17, after line 14, begin a new paragraph and insert:

"SECTION 15. IC 35-38-9-10, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) 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;
- (6) otherwise discriminate against;

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

(b) The civil rights of a person whose conviction has been expunged shall be restored, including the right to vote, to hold public office, to serve as a juror, and, to the extent not prohibited by federal law, to own or possess a firearm.

(c) 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?"

(d) 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.

(e) Any person that discriminates against a person as described in subsection (a) 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.

(f) 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.

(g) 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.

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

SECTION 16. IC 35-38-9-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 11. (a) A person may not waive the right to expungement under this chapter as part of a plea agreement. Any purported waiver of the right to expungement in a plea agreement is invalid and unenforceable as against public policy.**

(b) This section does not prohibit the finding of a waiver of the right to expungement based on a failure to comply with the provisions of this chapter."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1155 as introduced.)

MCMILLIN, Chair

Committee Vote: yeas 10, nays 2.

