



Reprinted
February 3, 2015

HOUSE BILL No. 1302

DIGEST OF HB 1302 (Updated February 2, 2015 5:10 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.
February 2, 2015, read second time, amended, ordered engrossed.

HB 1302—LS 6735/DI 106



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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:**

24 (A) the name of the arresting officer;

25 (B) case number or court cause number;

26 (C) **any aliases or other names used by the petitioner;**

27 (D) **the petitioner's driver's license number; and**

28 (E) **a list of each criminal charge and its disposition, if**
 29 **applicable;**

30 ~~(5)~~ **(6) the date of the petitioner's birth; and**

31 ~~(6)~~ **(7) the petitioner's Social Security number.**

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

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

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

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

40 (2) shall grant the petition unless:

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



- 1 (B) criminal charges are pending against the person.
- 2 (f) Whenever the petition of a person under this section is granted:
- 3 (1) no information concerning the arrest, **criminal charges,**
- 4 **juvenile delinquency allegation, vacated conviction, or**
- 5 **vacated juvenile delinquency adjudication** may be placed or
- 6 retained in any state central repository for criminal history
- 7 information or in any other alphabetically arranged criminal
- 8 history information system maintained by a local, regional, or
- 9 statewide law enforcement agency;
- 10 (2) the clerk of the supreme court shall seal or redact any
- 11 records in the clerk's possession that relate to the arrest,
- 12 **criminal charges, juvenile delinquency allegation, vacated**
- 13 **conviction, or vacated juvenile delinquency adjudication;**
- 14 (3) the records of:
- 15 (A) the sentencing court;
- 16 (B) a juvenile court;
- 17 (C) a court of appeals; and
- 18 (D) the supreme court;
- 19 concerning the person shall be redacted or permanently
- 20 sealed; and
- 21 (4) with respect to the records of a person who is named as an
- 22 appellant or an appellee in an opinion or memorandum
- 23 decision by the supreme court or the court of appeals, the
- 24 court shall:
- 25 (A) redact the opinion or memorandum decision as it
- 26 appears on the computer gateway administered by the
- 27 office of technology so that it does not include the
- 28 petitioner's name (in the same manner that opinions
- 29 involving juveniles are redacted); and
- 30 (B) provide a redacted copy of the opinion to any publisher
- 31 or organization to whom the opinion or memorandum
- 32 decision is provided after the date of the order of
- 33 expungement.
- 34 The supreme court and the court of appeals are not required
- 35 to redact, destroy, or otherwise dispose of any existing copy of
- 36 an opinion or memorandum decision that includes the
- 37 petitioner's name.
- 38 (g) If the court issues an order granting a petition for
- 39 expungement under this section, the order must include the
- 40 information described in subsection (c).
- 41 (h) ~~However,~~ This chapter does not require any change or alteration
- 42 in:



- 1 (1) any internal record made by a law enforcement agency at the
 2 time of the arrest and not intended for release to the public; **or**
 3 ~~(2) the record of any court in which the criminal charges were~~
 4 ~~filed; or~~
 5 ~~(3) (2) records that relate to a diversion or deferral program.~~

6 ~~(g) (i)~~ If a person whose records are expunged brings an action that
 7 might be defended with the contents of the expunged records, the
 8 defendant is presumed to have a complete defense to the action. In
 9 order for the plaintiff to recover, the plaintiff must show that the
 10 contents of the expunged records would not exonerate the defendant.
 11 The plaintiff may be required to state under oath whether the plaintiff
 12 had records in the criminal justice system and whether those records
 13 were expunged. If the plaintiff denies the existence of the records, the
 14 defendant may prove their existence in any manner compatible with the
 15 law of evidence.

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

23 (b) Any person may seek an expungement under sections 2 through
 24 5 of this chapter by filing a verified petition for expungement. The
 25 petition must include the following:

- 26 (1) The petitioner's full name and all other legal names or aliases
 27 by which the petitioner is or has been known.
 28 (2) The petitioner's date of birth.
 29 (3) The petitioner's addresses from the date of the offense to the
 30 date of the petition.
 31 **(4) The case number or court cause number.**
 32 ~~(4) (5) A certified~~ copy of petitioner's records from the bureau of
 33 motor vehicles.
 34 ~~(5) (6)~~ The petitioner shall affirm that no criminal investigation
 35 or charges are pending against the petitioner.
 36 ~~(6) (7)~~ The petitioner shall affirm that the petitioner has not
 37 committed another crime within the period required for
 38 expungement.
 39 ~~(7) (8)~~ The petitioner shall list all convictions and the date of the
 40 conviction, and any appeals from the conviction and the date any
 41 appellate opinion was handed down, if applicable.
 42 ~~(8) (9)~~ The petitioner shall affirm that the required period has



1 elapsed or attach a copy of the prosecuting attorney's written
2 consent to a shorter period.

3 ~~(9)~~ **(10)** The petitioner shall describe any other petitions that the
4 petitioner has filed under this chapter.

5 ~~(10)~~ **(11)** For a petition filed under section 5 of this chapter, the
6 petitioner shall attach a copy of the prosecuting attorney's written
7 consent.

8 ~~(11)~~ The petitioner shall provide evidence that the petitioner has
9 paid all fines, fees, and court costs, and satisfied any restitution
10 obligation imposed on the person as part of the sentence.

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

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

15 ~~(d)~~ **(e)** The petitioner shall serve a copy of the petition upon the
16 prosecuting attorney in accordance with the Indiana Rules of Trial
17 Procedure.

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

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

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

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

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

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

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



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

4 **(g) The order granting the petition for expungement described**
 5 **in sections 6 and 7 of this chapter must include the information**
 6 **described in section 8(b) of this chapter.**

7 ~~(g)~~ **(h)** This subsection applies only to a petition to expunge
 8 conviction records filed under sections 2 through 5 of this chapter. This
 9 subsection does not apply to a petition to expunge **arrest records**
 10 **related to the arrest, criminal charge, or juvenile delinquency**
 11 **allegation** under section 1 of this chapter. A petitioner may seek to
 12 expunge more than one (1) conviction at the same time. The petitioner
 13 shall consolidate all convictions that the petitioner wishes to expunge
 14 from the same county in one (1) petition. A petitioner who wishes to
 15 expunge convictions from separate counties must file a petition in each
 16 county in which a conviction was entered.

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

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

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



1 (1) the petitioner intended in good faith to comply with
 2 subsections ~~(g)~~ (h) and ~~(h)~~; (i);

3 (2) the petitioner's failure to comply with subsections ~~(g)~~ (h) and
 4 ~~(h)~~ (i) was due to:

5 (A) excusable neglect; or

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

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

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

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

15 (1) suspend;

16 (2) expel;

17 (3) refuse to employ;

18 (4) refuse to admit;

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

21 (6) otherwise discriminate against;

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

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

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

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

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

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

39 (A) a habitual offender enhancement; and

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

41 and

42 (3) may be admitted as evidence in the proceeding for a new



1 offense as if the conviction had not been expunged.

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

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

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

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

19 SECTION 5. IC 35-38-9-12 IS ADDED TO THE INDIANA CODE
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
21 1, 2015]: **Sec. 12. A hearing on a petition for expungement shall be**
22 **held in open court. If:**

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

24 (2) an order for expungement is issued;

25 **by the court, the petition and the order for expungement become**
26 **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.



HOUSE MOTION

Mr. Speaker: I move that House Bill 1302 be amended to read as follows:

Page 2, delete lines 23 through 24, begin a new line block indented and insert:

~~"(4)~~ **(5)** any other known identifying information, such as:
(A) the name of the arresting officer;
(B) case number or court cause number;
(C) any aliases or other names used by the petitioner;
(D) the petitioner's driver's license number; and
(E) a list of each criminal charge and its disposition, if applicable;".

Page 3, between lines 32 and 33, begin a new paragraph and insert:

"(g) If the court issues an order granting a petition for expungement under this section, the order must include the information described in subsection (c)."

Page 3, line 33, delete "(g)" and insert "**(h)**".

Page 3, line 40, delete "(h)" and insert "**(i)**".

Page 4, between lines 22 and 23, begin a new line block indented and insert:

"(4) The case number or court cause number."

Page 4, line 23, strike "(4)" and insert "**(5)**".

Page 4, line 25, strike "(5)" and insert "**(6)**".

Page 4, line 27, strike "(6)" and insert "**(7)**".

Page 4, line 30, strike "(7)" and insert "**(8)**".

Page 4, line 33, strike "(8)" and insert "**(9)**".

Page 4, line 36, strike "(9)" and insert "**(10)**".

Page 4, line 38, strike "(10)" and insert "**(11)**".

Page 5, between lines 36 and 37, begin a new paragraph and insert:

"(g) The order granting the petition for expungement described in sections 6 and 7 of this chapter must include the information described in section 8(b) of this chapter."

Page 5, line 37, strike "(g)" and insert "**(h)**".

Page 6, line 5, strike "(h)" and insert "**(i)**".

Page 6, line 9, strike "(i)" and insert "**(j)**".

Page 6, line 9, strike "(j)," and insert "**(k),"**".

Page 6, line 15, strike "(i)" and insert "**(j)**".

Page 6, line 23, strike "(j)," and insert "**(k),"**".

Page 6, line 26, strike "(j)" and insert "**(k)**".

Page 6, line 31, strike "(g)" and insert "**(h)**".

Page 6, line 31, strike "(h);" and insert "**(i);"**".



Page 6, line 32, strike "(g)" and insert "**(h)**".

Page 6, line 32, strike "(h)" and insert "**(i)**".

(Reference is to HB 1302 as printed January 30, 2015.)

MCMILLIN

