

# HOUSE BILL No. 1302

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-9.

**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.

**Effective:** July 1, 2015.

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## McMillin

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January 13, 2015, read first time and referred to Committee on Courts and Criminal Code.

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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



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 **(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.

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

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

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

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

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

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

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

34           (g) This subsection applies only to a petition to expunge conviction  
35 records filed under sections 2 through 5 of this chapter. This subsection  
36 does not apply to a petition to expunge ~~arrest~~ records **related to the**  
37 **arrest, criminal charge, or juvenile delinquency allegation** under  
38 section 1 of this chapter. A petitioner may seek to expunge more than  
39 one (1) conviction at the same time. The petitioner shall consolidate all  
40 convictions that the petitioner wishes to expunge from the same county  
41 in one (1) petition. A petitioner who wishes to expunge convictions  
42 from separate counties must file a petition in each county in which a



1 conviction was entered.

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

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

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

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

