

HOUSE BILL No. 1370

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38.

Synopsis: Deletion of criminal records. Establishes a procedure for a court to order the deletion of certain criminal records.

Effective: July 1, 2018.

Young J

January 16, 2018, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1370

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-38-9-10, AS AMENDED BY P.L.142-2015,
2 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 10. (a) This section does not apply to a person to
4 whom sealed records may be disclosed under section 6(a)(2) of this
5 chapter.
6 (b) It is unlawful discrimination for any person to:
7 (1) suspend;
8 (2) expel;
9 (3) refuse to employ;
10 (4) refuse to admit;
11 (5) refuse to grant or renew a license, permit, or certificate
12 necessary to engage in any activity, occupation, or profession; or
13 (6) otherwise discriminate against;
14 any person because of a conviction or arrest record expunged or sealed
15 under this chapter.
16 (c) Except as provided in section 6(f) of this chapter, the civil rights
17 of a person whose conviction has been expunged shall be fully restored,



1 including the right to vote, to hold public office, to be a proper person
2 under IC 35-47-1-7(2), and to serve as a juror.

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

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

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

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

15 (A) a habitual offender enhancement; and

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

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

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

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

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

35 (i) An expungement case, and all documents filed in the case,
36 becomes confidential when the court issues the order granting the
37 petition. However, until the court issues the order granting the petition,
38 documents filed in the case are not confidential, and any hearing held
39 in the case shall be open.

40 SECTION 2. IC 35-38-11 IS ADDED TO THE INDIANA CODE
41 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2018]:



1 **Chapter 11. Deletion of Arrest and Conviction Records**

2 **Sec. 1. The following definitions apply throughout this chapter:**

3 **(1) "Delete" or "deletion" means:**

4 **(A) to erase all copies of a record from an electronic data**
 5 **base, including any backup system; and**

6 **(B) to physically destroy all copies of a paper record.**

7 **(2) "Expiration of the statute of limitations" means that the**
 8 **statute of limitations for the offense has expired and a person**
 9 **may not be charged with the offense.**

10 **Sec. 2. A person may petition a court for deletion of the person's**
 11 **arrest, criminal charge, and conviction records if one (1) or more**
 12 **of the following apply:**

13 **(1) The person:**

14 **(A) was arrested for an offense;**

15 **(B) was not charged with the offense; and**

16 **(C) may not now be prosecuted for the offense due to the**
 17 **expiration of the statute of limitations.**

18 **(2) The:**

19 **(A) person was arrested for an offense;**

20 **(B) person was charged with the offense;**

21 **(C) charge was dismissed without prejudice; and**

22 **(D) state may not now prosecute the person for the offense**
 23 **due to the expiration of the statute of limitations.**

24 **(3) The:**

25 **(A) person was arrested for an offense;**

26 **(B) person was charged with the offense; and**

27 **(C) charge was dismissed with prejudice.**

28 **(4) The person was:**

29 **(A) arrested for an offense;**

30 **(B) charged with the offense; and**

31 **(C) found not guilty of:**

32 **(i) the offense; or**

33 **(ii) a lesser included offense.**

34 **(5) The prosecuting attorney agrees in writing to the deletion**
 35 **of the person's records.**

36 **Sec. 3. (a) A person described in section 2 of this chapter may**
 37 **petition the court for deletion of the records related to the person's**
 38 **arrest, criminal charge, and conviction.**

39 **(b) A petition for deletion of records must be verified and filed**
 40 **in a circuit or superior court in the county where the conviction**
 41 **occurred, where criminal charges were filed, or if no criminal**
 42 **charges were filed and there was no conviction, in the county**



1 where the arrest occurred. The petition must set forth:

- 2 (1) the date of the arrest, criminal charges, or conviction (if
3 applicable);
4 (2) the county in which the arrest occurred, the county in
5 which the information or indictment was filed, and the county
6 in which the conviction occurred, if applicable;
7 (3) the law enforcement agency employing the arresting
8 officer, if known;
9 (4) the court in which the criminal charges were filed or the
10 conviction entered, if applicable;
11 (5) any other known identifying information, such as:
12 (A) the name of the arresting officer;
13 (B) the case number or court cause number;
14 (C) any aliases or other names used by the petitioner;
15 (D) the petitioner's driver's license number; and
16 (E) a list of each arrest and criminal charge and its
17 disposition, if applicable;
18 (6) the date of the petitioner's birth; and
19 (7) the petitioner's Social Security number.

20 A person who files a petition under this section is not required to
21 pay a filing fee.

22 (c) The court shall serve a copy of the petition on the
23 prosecuting attorney.

24 (d) The court may summarily deny the petition if the petition
25 does not meet the requirements of this section, or if the statements
26 contained in the petition indicate that the petitioner is not entitled
27 to relief.

28 (e) If the prosecuting attorney objects to the petition, the
29 prosecuting attorney shall file the reasons for objecting to the
30 petition with the court and serve a copy of the objections on the
31 petitioner at the time the prosecuting attorney objects to the
32 petition. The court shall set the matter for hearing not sooner than
33 sixty (60) days after service of the petition on the prosecuting
34 attorney.

35 (f) If the petitioner establishes by a preponderance of the
36 evidence that the petitioner is entitled to deletion under section 2
37 of this chapter, the court shall grant the petition.

38 (g) If the petition of a person under this chapter is granted, the
39 court shall order that:

- 40 (1) no information concerning the arrest, criminal charge, or
41 conviction may be placed or retained in any state central
42 repository for criminal history information or in any other



- 1 **alphabetically arranged criminal history information system**
 2 **maintained by a local, regional, or statewide law enforcement**
 3 **agency;**
 4 **(2) any information concerning the arrest, criminal charge, or**
 5 **conviction that is currently stored in any state central**
 6 **repository for criminal history information or in any other**
 7 **alphabetically arranged criminal history information system**
 8 **maintained by a local, regional, or statewide law enforcement**
 9 **agency shall be deleted;**
 10 **(3) the records of the sentencing court concerning the person's**
 11 **arrest, criminal charge, or conviction be deleted or redacted;**
 12 **(4) the bureau of motor vehicles delete or redact any records**
 13 **in possession of the bureau that relate to the person's arrest,**
 14 **criminal charge, or conviction; and**
 15 **(5) the department of correction, another correctional facility,**
 16 **and any person who incarcerated, provided treatment for, or**
 17 **provided other services for the person under an order of the**
 18 **court delete or redact any records in their possession that**
 19 **relate to the person's arrest, criminal charge, or conviction in**
 20 **that entity or person's possession.**
- 21 **(h) If the court issues an order granting a petition for deletion**
 22 **under this chapter, the order must include the information**
 23 **described in subsection (b).**
- 24 **(i) This chapter does not require any change or alteration in:**
 25 **(1) any internal record made by a law enforcement agency at**
 26 **the time of the arrest and not intended for release to the**
 27 **public; or**
 28 **(2) records that relate to a diversion or deferral program.**
- 29 **(j) If a person whose records are deleted brings an action that**
 30 **might be defended with the contents of the deleted records, the**
 31 **defendant is presumed to have a complete defense to the action. In**
 32 **order for the plaintiff to recover, the plaintiff must show that the**
 33 **contents of the deleted records would not exonerate the defendant.**
 34 **The plaintiff may be required to state under oath whether the**
 35 **plaintiff had records in the criminal justice system and whether**
 36 **those records were deleted. If the plaintiff denies the existence of**
 37 **the records, the defendant may prove their existence in any**
 38 **manner compatible with the law of evidence.**
- 39 **(k) The grant or denial of a petition for deletion is an appealable**
 40 **final order.**
- 41 **Sec. 4. (a) It is unlawful discrimination for any person to:**
 42 **(1) suspend;**



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

8 any person because of a record ordered deleted under this chapter.

9 (b) The civil rights of a person whose conviction has been
 10 deleted shall be fully restored, including the right to vote, to hold
 11 public office, to be a proper person under IC 35-47-1-7(2), and to
 12 serve as a juror.

13 (c) A person whose conviction record is deleted shall be treated
 14 as if the person had never been convicted of the offense.

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

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

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

31 (g) A deletion case, and all documents filed in the case, becomes
 32 confidential when the court issues the order granting the petition.
 33 However, until the court issues the order granting the petition,
 34 documents filed in the case are not confidential, and any hearing
 35 held in the case shall be open.

36 Sec. 5. (a) A person may not waive the right to deletion under
 37 this chapter as part of a plea agreement. Any purported waiver of
 38 the right to deletion in a plea agreement is invalid and
 39 unenforceable as against public policy.

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

