

HOUSE BILL No. 1373

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-32-2-10; IC 33-37-5-2; IC 35-38-9.

Synopsis: Circuit court clerks. Requires payment of a fee for filing a petition with a court for expungement of a person's record of arrest or conviction. Requires a person who requests a circuit court clerk to send an additional mailing by registered or certified mail to provide: (1) an addressed envelope with postage prepaid; (2) the United States Postal Service forms for registered or certified mail; and (3) the United States Postal Service fee for service by registered or certified mail. Provides that any fees collected by the circuit court clerk for preparing a transcript or copy of a record are deposited in the clerk's records perpetuation fund (instead of the county general fund).

Effective: July 1, 2015.

Richardson

January 14, 2015, read first time and referred to Committee on Courts and Criminal Code.



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. 1373

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 33-32-2-10, AS ADDED BY P.L.78-2014,
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 10. (a) This section applies whenever the clerk is
4 required to send by registered or certified mail a document filed with
5 a court.
6 (b) The initial mailing of the document by registered or certified
7 mail sent:
8 (1) to each party who is required to receive the mailing; and
9 (2) to only one (1) of the party's addresses;
10 shall be paid out of court costs and fees collected under IC 33-37.
11 (c) If a person requests the clerk to send ~~a any~~ mailing by registered
12 or certified mail after the initial mailing described in subsection (b), the
13 person shall ~~pay the cost of the mailing; provide the clerk with the~~
14 **following:**
15 (1) **An envelope with sufficient postage affixed, addressed to**



1 the recipient with the address of the clerk's office as the
2 return address.

3 **(2) The United States Postal Service forms for registered or**
4 **certified mail. If return receipt is requested, the forms must**
5 **be completed so that the clerk's office receives the return**
6 **receipt.**

7 **(3) The United States Postal Service fee for the appropriate**
8 **service by registered or certified mail and return receipt, if**
9 **requested.**

10 **The clerk may not collect any additional fee for sending a mailing.**

11 (d) In a county where court postage costs are paid by the clerk's
12 office, the amount collected by the clerk for additional mailings by
13 registered or certified mail shall be deposited into the clerk's record
14 perpetuation fund established under IC 33-37-5-2. In a county where
15 court postage costs are paid out of the county general fund, the amount
16 collected by the clerk for additional mailings by registered or certified
17 mail shall be returned to the county general fund.

18 SECTION 2. IC 33-37-5-2, AS AMENDED BY P.L.128-2012,
19 SECTION 180, IS AMENDED TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) Each clerk shall establish a
21 clerk's record perpetuation fund. The clerk shall deposit all the
22 following in the fund:

23 (1) Revenue received by the clerk for transmitting documents by
24 facsimile machine to a person under IC 5-14-3.

25 (2) Document storage fees required under section 20 of this
26 chapter.

27 (3) The late payment fees imposed under section 22 of this
28 chapter that are authorized for deposit in the clerk's record
29 perpetuation fund under IC 33-37-7-2.

30 (4) The fees required under IC 29-1-7-3.1 for deposit of a will.

31 (5) Automated record keeping fees deposited in the fund under
32 IC 33-37-7-2(m).

33 **(6) Fees for preparing a transcript or copy of any record**
34 **under section 1 of this chapter.**

35 (b) The clerk may use any money in the fund for the following
36 purposes:

37 (1) The preservation of records.

38 (2) The improvement of record keeping systems and equipment.

39 (3) Case management system.

40 SECTION 3. IC 35-38-9-1, AS AMENDED BY P.L.181-2014,
41 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2015]: Sec. 1. (a) This section applies only to a person who



- 1 has been arrested if:
- 2 (1) the arrest:
- 3 (A) did not result in a conviction or juvenile adjudication; or
- 4 (B) resulted in a conviction or juvenile adjudication and the
- 5 conviction or adjudication was vacated on appeal; and
- 6 (2) the person is not currently participating in a pretrial diversion
- 7 program.
- 8 (b) Not earlier than one (1) year after the date of arrest, if the person
- 9 was not convicted or adjudicated a delinquent child, or the date of the
- 10 opinion vacating the conviction or adjudication becomes final (unless
- 11 the prosecuting attorney agrees in writing to an earlier time), the person
- 12 may petition the court for expungement of the records related to the
- 13 arrest.
- 14 (c) A petition for expungement of records must be verified and filed
- 15 in the court in which the charges were filed, or if no criminal charges
- 16 were filed, in a court with criminal jurisdiction in the county where the
- 17 arrest occurred. The petition must set forth:
- 18 (1) the date of the arrest;
- 19 (2) the county in which the arrest occurred;
- 20 (3) the law enforcement agency employing the arresting officer,
- 21 if known;
- 22 (4) any other known identifying information, such as the name of
- 23 the arresting officer, case number, or court cause number;
- 24 (5) the date of the petitioner's birth; and
- 25 (6) the petitioner's Social Security number.
- 26 **(d) The petitioner shall pay the filing fees required for filing a**
- 27 **civil action, and the clerk shall distribute the fees as in the case of**
- 28 **a civil action.**
- 29 ~~(e)~~ (e) The court shall serve a copy of the petition on the
- 30 prosecuting attorney.
- 31 ~~(f)~~ (f) 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 ~~(g)~~ (g) Whenever the petition of a person under this section is
- 40 granted, no information concerning the arrest may be placed or retained
- 41 in any state central repository for criminal history information or in any
- 42 other alphabetically arranged criminal history information system



1 maintained by a local, regional, or statewide law enforcement agency.

2 However, this chapter does not require any change or alteration in:

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

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

18 SECTION 4. IC 35-38-9-8, AS AMENDED BY P.L.181-2014,
 19 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2015]: Sec. 8. (a) This section applies only to a petition to
 21 expunge conviction records under sections 2 through 5 of this chapter.
 22 This section does not apply to a petition to expunge arrest records
 23 under section 1 of this chapter.

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

- 27 (1) The petitioner's full name and all other legal names or aliases
- 28 by which the petitioner is or has been known.
- 29 (2) The petitioner's date of birth.
- 30 (3) The petitioner's addresses from the date of the offense to the
- 31 date of the petition.
- 32 (4) A certified copy of petitioner's records from the bureau of
- 33 motor vehicles.
- 34 (5) The petitioner shall affirm that no criminal investigation or
- 35 charges are pending against the petitioner.
- 36 (6) The petitioner shall affirm that the petitioner has not
- 37 committed another crime within the period required for
- 38 expungement.
- 39 (7) 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) The petitioner shall affirm that the required period has elapsed



- 1 or attach a copy of the prosecuting attorney's written consent to a
2 shorter period.
- 3 (9) The petitioner shall describe any other petitions that the
4 petitioner has filed under this chapter.
- 5 (10) 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) The petitioner shall pay the filing fees required for filing a**
14 **civil action, and the clerk shall distribute the fees as in the case of**
15 **a civil action.**
- 16 ~~(d)~~ (e) The petitioner shall serve a copy of the petition upon the
17 prosecuting attorney in accordance with the Indiana Rules of Trial
18 Procedure.
- 19 ~~(e)~~ (f) The prosecuting attorney shall inform the victim of the
20 victim's rights under IC 35-40-6 by contacting the victim at the victim's
21 last known address.
- 22 ~~(f)~~ (g) The prosecuting attorney shall reply to the petition not later
23 than thirty (30) days after receipt.

