

HOUSE BILL No. 1406

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-39-8; IC 33-24-6-3.

Synopsis: Expungement of juvenile records. Provides that the office of judicial administration shall maintain data bases required under current law for secure storage of electronic juvenile court documents and data regarding expunged juvenile court records. Provides that an individual is not required to pay a fee to file a petition for expungement of the juvenile court records and law enforcement records of a child alleged to be a delinquent child or child in need of services. Requires a law enforcement agency to destroy any retained copies, in any format, of records sent to a court under an order granting expungement of the records. Creates a process for automatic review and expungement of an individual's juvenile delinquency record after a certain period of time. Requires: (1) a law enforcement agency, at the time the law enforcement agency creates a law enforcement record regarding a child accused of a delinquent act; and (2) the clerk of a juvenile court to which a child is referred; to give written notice to the child and the child's parent, guardian, or custodian describing the process to petition for expungement of the child's law enforcement records and juvenile court records, respectively, and written notice of the requirements for automatic expungement of the child's law enforcement records and juvenile court records. Makes conforming amendments.

Effective: July 1, 2020.

Shackleford

January 15, 2020, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1406

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

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

1 SECTION 1. IC 31-39-8-1.2 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2020]: **Sec. 1.2. The following definitions apply throughout this**
4 **chapter:**

5 (1) "Expunge" means to permanently destroy or delete
6 records or documents, including any physical and electronic
7 copies or images of the records or documents.

8 (2) "Juvenile court record", with respect to an individual
9 alleged to be, or adjudicated as, a child in need of services or
10 a delinquent child, includes the following:

11 (A) Any document that pertains to the individual or to a
12 specific incident or proceeding involving the individual and
13 that:

- 14 (i) is filed in or maintained by a juvenile court; or
- 15 (ii) is made available to or maintained by a probation
16 officer.

17 (B) Any document, video or audio tape, photograph, or



- 1 exhibit that:
- 2 (i) pertains to the individual or to a specific incident or
- 3 proceeding involving the individual; and
- 4 (ii) is admitted into evidence at a juvenile court hearing.
- 5 (C) Any document, transcript, record, report, or other
- 6 evidence, in any format, that:
- 7 (i) pertains to the individual or to a specific incident or
- 8 proceeding involving the individual;
- 9 (ii) is prepared, maintained, or released by a municipal,
- 10 county, or state agency or department; and
- 11 (iii) indicates involvement of the individual with a
- 12 juvenile court.
- 13 (3) "Law enforcement record" includes records of arrest,
- 14 police reports, forensic evidence, DNA, fingerprints,
- 15 probation adjustments, issued notices to appear, and any
- 16 other records or documents that:
- 17 (A) are maintained by a law enforcement agency; and
- 18 (B) relate to:
- 19 (i) an individual suspected of committing an offense; or
- 20 (ii) evidence of an individual's interaction with law
- 21 enforcement.

22 SECTION 2. IC 31-39-8-2, AS AMENDED BY P.L.86-2017,

23 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

24 JULY 1, 2020]: Sec. 2. (a) Any person may petition a juvenile court at

25 any time to remove from:

- 26 (1) the court's files;
- 27 (2) the files of law enforcement agencies; and
- 28 (3) the files of any other person who has provided services to a
- 29 child under a court order;

30 those records pertaining to the person's involvement in juvenile court

31 proceedings.

32 (b) Under this section, electronic records shall be removed to a

33 secure data base ~~to which~~ **maintained by the office of judicial**

34 **administration. The data base must prevent access to the electronic**

35 **records** by the public or another person not having legal or statutory

36 authority to access the records. ~~is not granted access to the data base.~~

37 SECTION 3. IC 31-39-8-3, AS AMENDED BY P.L.86-2017,

38 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

39 JULY 1, 2020]: Sec. 3. (a) A person may initiate a petition for the

40 expungement of **juvenile court records and law enforcement records**

41 of a child alleged to be a delinquent child or a child in need of services

42 by filing a verified petition in the juvenile court in the county of the



1 original action. The petition must set forth the following, **if known to**
 2 **the petitioner:**

3 (1) The allegations and date of adjudication, if applicable, of the
 4 juvenile delinquency or child in need of services adjudications.

5 (2) The court in which juvenile delinquency or child in need of
 6 services allegations or petitions were filed.

7 (3) The law enforcement agency that employs the charging
 8 officer, if known.

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

10 (5) Date of birth of the petitioner.

11 (6) Petitioner's Social Security number.

12 (7) All juvenile delinquency or child in need of services
 13 adjudications and criminal convictions occurring after the
 14 adjudication of the action sought to be expunged.

15 (8) All pending actions under IC 31-34 or IC 31-37 or criminal
 16 charges.

17 **(b) A juvenile court may not charge a filing fee for the filing of**
 18 **a petition under subsection (a).**

19 ~~(b)~~ **(c) The court in which a petition described in is filed under**
 20 **subsection (a) shall be served serve the petition on:**

21 (1) the prosecuting attorney; or

22 (2) in the case of a child in need of services case, the department
 23 of child services.

24 ~~(c)~~ **(d)** The prosecuting attorney or department of child services has
 25 thirty (30) days in which to reply or otherwise object to the petition.
 26 The court may reduce the time in which a response must be filed for a
 27 show of good cause or within its discretion after a hearing is held.

28 ~~(d)~~ **(e)** If the prosecuting attorney or department of child services
 29 timely files an objection to the petition, the matter shall be set for a
 30 hearing. If no objection is filed, the court may set the petition for a
 31 hearing or rule on the petition without a hearing.

32 ~~(e)~~ **(f)** In considering whether to grant the petition, the juvenile court
 33 may review:

34 (1) the best interests of the child;

35 (2) the age of the person during the person's contact with the
 36 juvenile court or law enforcement agency;

37 (3) the nature of any allegations;

38 (4) whether there was an informal adjustment or an adjudication;

39 (5) the disposition of the case;

40 (6) the manner in which the person participated in any court
 41 ordered or supervised services;

42 (7) the time during which the person has been without contact



1 with the juvenile court or with any law enforcement agency;
 2 (8) whether the person acquired a criminal record; and
 3 (9) the person's current status.

4 SECTION 4. IC 31-39-8-5 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. (a) If the court grants
 6 ~~the~~ **an expungement petition filed under this chapter**, the court shall
 7 order each law enforcement agency and each person who provided
 8 treatment for the child under an order of the court to send that person's
 9 records to the court.

10 (b) **Immediately after sending records to a court under**
 11 **subsection (a), a law enforcement agency shall destroy or delete**
 12 **any copies of the records, in any format, remaining in the**
 13 **possession of the law enforcement agency.**

14 SECTION 5. IC 31-39-8-6, AS AMENDED BY P.L.86-2017,
 15 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2020]: Sec. 6. (a) Subject to subsections (b) and (c), ~~the~~
 17 records **received by a court under section 5 of this chapter** shall be
 18 destroyed upon a grant of an expungement petition by the court.

19 (b) Data from ~~the~~ records **in destroyed under** subsection (a) shall
 20 be maintained by the ~~court~~ **on office of judicial administration in**
 21 a secure data base that does not enable identification of the offender to
 22 the public or another person not having legal or statutory authority to
 23 access the records.

24 (c) The records maintained in the data base under subsection (b)
 25 may be used only for statistical analysis, research, and financial
 26 auditing purposes.

27 SECTION 6. IC 31-39-8-8 IS ADDED TO THE INDIANA CODE
 28 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 29 1, 2020]: Sec. 8. (a) **At the time a law enforcement agency creates**
 30 **a law enforcement record regarding a child accused of a delinquent**
 31 **act, the law enforcement agency shall give written notice to the**
 32 **child and the child's parent, guardian, or custodian describing:**

33 (1) **the process to petition for expungement of the child's law**
 34 **enforcement records under section 3 of this chapter; and**

35 (2) **the requirements for automatic expungement under**
 36 **sections 9 and 10 of this chapter.**

37 (b) **At the time a child is referred to a juvenile court, the clerk**
 38 **of the court shall give written notice to the child and the child's**
 39 **parent, guardian, or custodian describing:**

40 (1) **the process to petition for expungement of the child's**
 41 **juvenile court records under section 3 of this chapter; and**

42 (2) **the requirements for automatic expungement under**



1 **sections 9 and 10 of this chapter.**

2 SECTION 7. IC 31-39-8-9 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2020]: **Sec. 9. (a) Juvenile court records and law enforcement**
5 **records related to an individual's juvenile delinquency**
6 **adjudication are subject to review and expungement under this**
7 **section if the juvenile delinquency allegation:**

8 **(1) did not result in adjudication of the individual as a**
9 **delinquent child;**

10 **(2) resulted in a delinquency adjudication that was vacated on**
11 **appeal; or**

12 **(3) resulted in an adjudication of the individual as a**
13 **delinquent child for an act that would be a misdemeanor if**
14 **committed by an adult.**

15 **(b) On the later of the following dates, the office of judicial**
16 **administration shall send to the court that adjudicated the**
17 **delinquency proceeding of an individual described in subsection (a)**
18 **notice that the individual's records are subject to review under this**
19 **section:**

20 **(1) One (1) year after:**

21 **(A) the date:**

22 **(i) of the individual's arrest; or**

23 **(ii) on which the individual was charged with the**
24 **delinquent act;**

25 **if the proceeding did not result in adjudication of the**
26 **individual as a delinquent child; or**

27 **(B) the date on which an opinion vacating the individual's**
28 **adjudication as a delinquent child becomes final.**

29 **(2) The date on which the individual becomes eighteen (18)**
30 **years of age.**

31 **(c) Not later than ninety (90) days after receiving notice under**
32 **subsection (b), a court shall:**

33 **(1) review the juvenile court records of the individual who is**
34 **the subject of the notice; and**

35 **(2) if the court finds that the individual meets the**
36 **requirements under subsection (a) and is not, at the time of**
37 **the review under this subsection, on probation or**
38 **participating in a program of informal adjustment:**

39 **(A) order the expungement of all of the records related to**
40 **the court's adjudication of the individual's delinquency**
41 **proceeding; and**

42 **(B) order each law enforcement agency, and each person**



1 who provided treatment for the individual under an order
2 of the court, to send to the court any records that are:

- 3 (i) related to the delinquency allegation that was the
4 subject of the delinquency proceeding; and
5 (ii) in the possession of the law enforcement agency or
6 person.

7 (d) Subject to subsection (f), records received by the court under
8 subsection (c) shall be destroyed.

9 (e) Immediately after sending records to a court under
10 subsection (c), a law enforcement agency shall destroy or delete
11 any copies of the records, in any format, remaining in the
12 possession of the law enforcement agency.

13 (f) Data from the records received by a court under subsection
14 (c) shall be maintained by the office of judicial administration in a
15 secure data base that does not enable identification of the subject
16 of any of the records. Records maintained by the office of judicial
17 administration under this subsection may be used only for
18 statistical analysis, research, and financial auditing purposes.

19 (g) An individual's eligibility or ineligibility for expungement
20 under this section does not affect the ability of the individual to
21 petition for expungement of the individual's juvenile court records
22 under section 3 of this chapter or for expungement of the
23 individual's law enforcement records under IC 35-38-9.

24 SECTION 8. IC 31-39-8-10 IS ADDED TO THE INDIANA CODE
25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
26 1, 2020]: Sec. 10. (a) Juvenile court records and law enforcement
27 records related to an individual's juvenile delinquency
28 adjudication are subject to review and expungement under this
29 section if the individual:

- 30 (1) has a juvenile adjudication for an offense that would be a
31 Level 4, Level 5, or Level 6 felony if committed by an adult;
32 and
33 (2) has no felony convictions.

34 (b) On the later of the following dates, the office of judicial
35 administration shall send to the court that adjudicated the
36 delinquency proceeding of an individual described in subsection (a)
37 notice that the individual's records are subject to review under this
38 section:

- 39 (1) Three (3) years after the date of the individual's most
40 recent juvenile adjudication.
41 (2) The date on which the individual becomes twenty-one (21)
42 years of age.



1 (c) Not later than ninety (90) days after receiving notice under
2 subsection (b), a court shall:

3 (1) review the juvenile court records of the individual who is
4 the subject of the notice; and

5 (2) if the court finds that the individual meets the
6 requirements under subsection (a) and is not, at the time of
7 the review under this subsection, on probation or
8 participating in a program of informal adjustment:

9 (A) order the expungement of all of the records related to
10 the court's adjudication of the individual's delinquency
11 proceeding; and

12 (B) order each law enforcement agency, and each person
13 who provided treatment for the individual under an order
14 of the court, to send to the court any records that are:

15 (i) related to the delinquency allegation that was the
16 subject of the delinquency proceeding; and

17 (ii) in the possession of the law enforcement agency or
18 person.

19 (d) Subject to subsection (f), records received by the court under
20 subsection (c) shall be destroyed.

21 (e) Immediately after sending records to a court under
22 subsection (c), a law enforcement agency shall destroy or delete
23 any copies of the records, in any format, remaining in the
24 possession of the law enforcement agency.

25 (f) Data from the records received by a court under subsection
26 (c) shall be maintained by the office of judicial administration in a
27 secure data base that does not enable identification of the subject
28 of any of the records. Records maintained by the office of judicial
29 administration under this subsection may be used only for
30 statistical analysis, research, and financial auditing purposes.

31 (g) An individual's eligibility or ineligibility for expungement
32 under this section does not affect the ability of the individual to
33 petition for expungement of the individual's juvenile court records
34 under section 3 of this chapter or for expungement of the
35 individual's law enforcement records under IC 35-38-9.

36 SECTION 9. IC 33-24-6-3, AS AMENDED BY P.L.207-2019,
37 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2020]: Sec. 3. (a) The office of judicial administration shall
39 do the following:

40 (1) Examine the administrative and business methods and systems
41 employed in the offices of the clerks of court and other offices
42 related to and serving the courts and make recommendations for



- 1 necessary improvement.
- 2 (2) Collect and compile statistical data and other information on
- 3 the judicial work of the courts in Indiana. All justices of the
- 4 supreme court, judges of the court of appeals, judges of all trial
- 5 courts, and any city or town courts, whether having general or
- 6 special jurisdiction, court clerks, court reporters, and other
- 7 officers and employees of the courts shall, upon notice by the
- 8 chief administrative officer and in compliance with procedures
- 9 prescribed by the chief administrative officer, furnish the chief
- 10 administrative officer the information as is requested concerning
- 11 the nature and volume of judicial business. The information must
- 12 include the following:
- 13 (A) The volume, condition, and type of business conducted by
- 14 the courts.
- 15 (B) The methods of procedure in the courts.
- 16 (C) The work accomplished by the courts.
- 17 (D) The receipt and expenditure of public money by and for
- 18 the operation of the courts.
- 19 (E) The methods of disposition or termination of cases.
- 20 (3) Prepare and publish reports, not less than one (1) or more than
- 21 two (2) times per year, on the nature and volume of judicial work
- 22 performed by the courts as determined by the information
- 23 required in subdivision (2).
- 24 (4) Serve the judicial nominating commission and the judicial
- 25 qualifications commission in the performance by the commissions
- 26 of their statutory and constitutional functions.
- 27 (5) Administer the civil legal aid fund as required by IC 33-24-12.
- 28 (6) Administer the court technology fund established by section
- 29 12 of this chapter.
- 30 (7) By December 31, 2013, develop and implement a standard
- 31 protocol for sending and receiving court data:
- 32 (A) between the protective order registry, established by
- 33 IC 5-2-9-5.5, and county court case management systems;
- 34 (B) at the option of the county prosecuting attorney, for:
- 35 (i) a prosecuting attorney's case management system;
- 36 (ii) a county court case management system; and
- 37 (iii) a county court case management system developed and
- 38 operated by the office of judicial administration;
- 39 to interface with the electronic traffic tickets, as defined by
- 40 IC 9-30-3-2.5; and
- 41 (C) between county court case management systems and the
- 42 case management system developed and operated by the office



- 1 of judicial administration.
 2 The standard protocol developed and implemented under this
 3 subdivision shall permit private sector vendors, including vendors
 4 providing service to a local system and vendors accessing the
 5 system for information, to send and receive court information on
 6 an equitable basis and at an equitable cost.
- 7 (8) Establish and administer an electronic system for receiving
 8 information that relates to certain individuals who may be
 9 prohibited from possessing a firearm and transmitting this
 10 information to the Federal Bureau of Investigation for inclusion
 11 in the NICS.
- 12 (9) Establish and administer an electronic system for receiving
 13 drug related felony conviction information from courts. The office
 14 of judicial administration shall notify NPLeX of each drug related
 15 felony entered after June 30, 2012, and do the following:
- 16 (A) Provide NPLeX with the following information:
- 17 (i) The convicted individual's full name.
 18 (ii) The convicted individual's date of birth.
 19 (iii) The convicted individual's driver's license number, state
 20 personal identification number, or other unique number, if
 21 available.
 22 (iv) The date the individual was convicted of the felony.
- 23 Upon receipt of the information from the office of judicial
 24 administration, a stop sale alert must be generated through
 25 NPLeX for each individual reported under this clause.
- 26 (B) Notify NPLeX if the felony of an individual reported under
 27 clause (A) has been:
- 28 (i) set aside;
 29 (ii) reversed;
 30 (iii) expunged; or
 31 (iv) vacated.
- 32 Upon receipt of information under this clause, NPLeX shall
 33 remove the stop sale alert issued under clause (A) for the
 34 individual.
- 35 (10) Staff the judicial technology oversight committee established
 36 by IC 33-23-17-2.
- 37 (11) After July 1, 2018, establish and administer an electronic
 38 system for receiving from courts felony conviction information for
 39 each felony described in IC 20-28-5-8(c). The office of judicial
 40 administration shall notify the department of education at least
 41 one (1) time each week of each felony described in
 42 IC 20-28-5-8(c) entered after July 1, 2018, and do the following:



- 1 (A) Provide the department of education with the following
2 information:
3 (i) The convicted individual's full name.
4 (ii) The convicted individual's date of birth.
5 (iii) The convicted individual's driver's license number, state
6 personal identification number, or other unique number, if
7 available.
8 (iv) The date the individual was convicted of the felony.
9 (B) Notify the department of education if the felony of an
10 individual reported under clause (A) has been:
11 (i) set aside;
12 (ii) reversed; or
13 (iii) vacated.
14 (12) Perform legal and administrative duties for the justices as
15 determined by the justices.
16 (13) Provide staff support for the judicial conference of Indiana
17 established in IC 33-38-9.
18 (14) Work with the United States Department of Veterans Affairs
19 to identify and address the needs of veterans in the court system.
20 **(15) Maintain the data bases required under IC 31-39-8.**
21 (b) All forms to be used in gathering data must be approved by the
22 supreme court and shall be distributed to all judges and clerks before
23 the start of each period for which reports are required.
24 (c) The office of judicial administration may adopt rules to
25 implement this section.

