

# HOUSE BILL No. 1599

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Redaction of appellate decisions. Requires the redaction or sealing of certain records relating to a person who has been arrested if the arrest did not lead to a conviction or if the conviction has been vacated.

**Effective:** July 1, 2015.

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## Summers

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January 22, 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. 1599

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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 if:  
5                 (1) the arrest:  
6                         (A) did not result in a conviction or juvenile adjudication; or  
7                         (B) resulted in a conviction or juvenile adjudication and the  
8                         conviction or adjudication was vacated on appeal; and  
9                 (2) the person is not currently participating in a pretrial diversion  
10                 program.  
11                 (b) Not earlier than one (1) year after the date of arrest, if the person  
12                 was not convicted or adjudicated a delinquent child, or the date of the  
13                 opinion vacating the conviction or adjudication becomes final (unless  
14                 the prosecuting attorney agrees in writing to an earlier time), the person  
15                 may petition the court for expungement of the records related to the



1 arrest, **vacated conviction, or vacated juvenile adjudication.**

2 (c) A petition for expungement of records must be verified and filed  
3 in the court in which the charges were filed, or if no criminal charges  
4 were filed, in a court with criminal jurisdiction in the county where the  
5 arrest occurred. The petition must set forth:

6 (1) the date of the arrest, **conviction, or juvenile adjudication,**  
7 **if applicable;**

8 (2) the county in which the arrest, **conviction, or juvenile**  
9 **adjudication** occurred;

10 (3) the law enforcement agency employing the arresting officer,  
11 if known;

12 (4) any other known identifying information, such as the name of  
13 the arresting officer, case number, or court cause number;

14 (5) the date of the petitioner's birth; and

15 (6) the petitioner's Social Security number.

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

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

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

22 (2) shall grant the petition unless:

23 (A) the conditions described in subsection (a) have not been  
24 met; or

25 (B) criminal charges are pending against the person.

26 (f) Whenever the petition of a person under this section is granted:

27 (1) no information concerning the arrest, **vacated conviction, or**  
28 **vacated juvenile adjudication** may be placed or retained in any  
29 state central repository for criminal history information or in any  
30 other alphabetically arranged criminal history information system  
31 maintained by a local, regional, or statewide law enforcement  
32 agency;

33 (2) **the clerk of the supreme court shall seal or redact any**  
34 **records in the clerk's possession that relate to the vacated**  
35 **conviction or vacated juvenile adjudication;**

36 (3) **the records of:**

37 (A) **the sentencing court;**

38 (B) **a juvenile court;**

39 (C) **a court of appeals; and**

40 (D) **the supreme court;**

41 **concerning the person shall be redacted or permanently**  
42 **sealed; and**



1           **(4) with respect to the records of a person who is named as an**  
 2           **appellant or an appellee in an opinion or memorandum**  
 3           **decision by the supreme court or the court of appeals, the**  
 4           **court shall:**

5           **(A) redact the opinion or memorandum decision as it**  
 6           **appears on the computer gateway administered by the**  
 7           **office of technology so that it does not include the**  
 8           **petitioner's name (in the same manner that opinions**  
 9           **involving juveniles are redacted); and**

10           **(B) provide a redacted copy of the opinion to any publisher**  
 11           **or organization to whom the opinion or memorandum**  
 12           **decision is provided after the date of the order of**  
 13           **expungement.**

14           **The supreme court and court of appeals are not required to**  
 15           **redact, destroy, or otherwise dispose of any copy of an opinion**  
 16           **or memorandum decision that includes the petitioner's name.**

17           ~~(g)~~ **However,** This chapter does not require any change or alteration  
 18           in:

19           (1) any internal record made by a law enforcement agency at the  
 20           time of the arrest and not intended for release to the public;

21           (2) the record of any court in which the criminal charges were  
 22           filed; or

23           (3) records that relate to a diversion or deferral program.

24           ~~(g)~~ **(h)** If a person whose records are expunged brings an action that  
 25           might be defended with the contents of the expunged records, the  
 26           defendant is presumed to have a complete defense to the action. In  
 27           order for the plaintiff to recover, the plaintiff must show that the  
 28           contents of the expunged records would not exonerate the defendant.  
 29           The plaintiff may be required to state under oath whether the plaintiff  
 30           had records in the criminal justice system and whether those records  
 31           were expunged. If the plaintiff denies the existence of the records, the  
 32           defendant may prove their existence in any manner compatible with the  
 33           law of evidence.

34           SECTION 2. IC 35-38-9-6, AS AMENDED BY P.L.181-2014,  
 35           SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36           JULY 1, 2015]: Sec. 6. (a) If the court orders conviction records  
 37           expunged under sections 2 through 3 of this chapter, the court shall do  
 38           the following with respect to the specific records expunged by the  
 39           court:

40           (1) Order:

41           (A) the department of correction;

42           (B) the bureau of motor vehicles; and



- 1 (C) each:  
 2 (i) law enforcement agency; and  
 3 (ii) other person;  
 4 who incarcerated, provided treatment for, or provided other  
 5 services for the person under an order of the court;  
 6 to prohibit the release of the person's records or information in the  
 7 person's records to anyone without a court order, other than a law  
 8 enforcement officer acting in the course of the officer's official  
 9 duty.  
 10 (2) Order the central repository for criminal history information  
 11 maintained by the state police department to seal the person's  
 12 expunged conviction records. Records sealed under this  
 13 subdivision may be disclosed only to:  
 14 (A) a prosecuting attorney, if:  
 15 (i) authorized by a court order; and  
 16 (ii) needed to carry out the official duties of the prosecuting  
 17 attorney;  
 18 (B) a defense attorney, if:  
 19 (i) authorized by a court order; and  
 20 (ii) needed to carry out the professional duties of the defense  
 21 attorney;  
 22 (C) a probation department, if:  
 23 (i) authorized by a court order; and  
 24 (ii) necessary to prepare a presentence report;  
 25 (D) the Federal Bureau of Investigation and the Department of  
 26 Homeland Security, if disclosure is required to comply with an  
 27 agreement relating to the sharing of criminal history  
 28 information;  
 29 (E) the:  
 30 (i) supreme court;  
 31 (ii) members of the state board of law examiners;  
 32 (iii) executive director of the state board of law examiners;  
 33 and  
 34 (iv) employees of the state board of law examiners, in  
 35 accordance with rules adopted by the state board of law  
 36 examiners;  
 37 for the purpose of determining whether an applicant possesses  
 38 the necessary good moral character for admission to the bar;  
 39 and  
 40 (F) a person required to access expunged records to comply  
 41 with the Secure and Fair Enforcement for Mortgage Licensing  
 42 Act (12 U.S.C. 5101 et seq.) or regulations adopted under the



1 Secure and Fair Enforcement for Mortgage Licensing Act.

2 (3) Notify the clerk of the supreme court to seal **or redact** any  
3 records in the clerk's possession that relate to the conviction.

4 A probation department may provide an unredacted version of a  
5 presentence report disclosed under subdivision (2)(C) to any person  
6 authorized by law to receive a presentence report.

7 (b) Except as provided in subsection (c), if a petition to expunge  
8 conviction records is granted under sections 2 through 3 of this chapter,  
9 the records of:

- 10 (1) the sentencing court;  
11 (2) a juvenile court;  
12 (3) a court of appeals; and  
13 (4) the supreme court;

14 concerning the person shall be permanently sealed. However, a petition  
15 for expungement granted under sections 2 through 3 of this chapter  
16 does not affect an existing or pending driver's license suspension.

17 (c) If a petition to expunge conviction records is granted under  
18 sections 2 through 3 of this chapter with respect to the records of a  
19 person who is named as an appellant or an appellee in an opinion or  
20 memorandum decision by the supreme court or the court of appeals, the  
21 court shall:

- 22 (1) redact the opinion or memorandum decision as it appears on  
23 the computer gateway administered by the office of technology so  
24 that it does not include the petitioner's name (in the same manner  
25 that opinions involving juveniles are redacted); and  
26 (2) provide a redacted copy of the opinion to any publisher or  
27 organization to whom the opinion or memorandum decision is  
28 provided after the date of the order of expungement.

29 The supreme court and court of appeals are not required to destroy or  
30 otherwise dispose of any existing copy of an opinion or memorandum  
31 decision that includes the petitioner's name.

32 (d) Notwithstanding subsection (b), a prosecuting attorney may  
33 submit a written application to a court that granted an expungement  
34 petition under this chapter to gain access to any records that were  
35 permanently sealed under subsection (b), if the records are relevant in  
36 a new prosecution of the person. If a prosecuting attorney who submits  
37 a written application under this subsection shows that the records are  
38 relevant for a new prosecution of the person, the court that granted the  
39 expungement petition shall:

- 40 (1) order the records to be unsealed; and  
41 (2) allow the prosecuting attorney who submitted the written  
42 application to have access to the records.



1 If a court orders records to be unsealed under this subsection, the court  
2 shall order the records to be permanently resealed at the earliest  
3 possible time after the reasons for unsealing the records cease to exist.  
4 However, if the records are admitted as evidence against the person in  
5 a new prosecution that results in the person's conviction, or are used to  
6 enhance a sentence imposed on the person in a new prosecution, the  
7 court is not required to reseat the records.

8 (e) If a person whose conviction records are expunged under  
9 sections 2 through 5 of this chapter is required to register as a sex  
10 offender based on the commission of a felony which has been  
11 expunged:

12 (1) the expungement does not affect the operation of the sex  
13 offender registry web site, any person's ability to access the  
14 person's records, records required to be maintained concerning  
15 sex or violent offenders, or any registration requirement imposed  
16 on the person; and

17 (2) the expunged conviction must be clearly marked as expunged  
18 on the sex offender registry web site.

19 (f) Expungement of a crime of domestic violence under section 2 of  
20 this chapter does not restore a person's right to possess a firearm. The  
21 right of a person convicted of a crime of domestic violence to possess  
22 a firearm may be restored only in accordance with IC 35-47-4-7.

