

SENATE BILL No. 138

DIGEST OF INTRODUCED BILL

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

Synopsis: Prosecutorial consent with expungements. Requires a prosecuting attorney to file objections to an expungement petition with the court and serve a copy on the petitioner. Provides that the court shall set a hearing regarding the objections if the court finds there is just cause to the objections.

Effective: July 1, 2015.

Randolph

January 6, 2015, read first time and referred to Committee on Judiciary.



First Regular Session 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.

SENATE BILL No. 138



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 35-38-9-9, AS AMENDED BY P.L.181-2014,
2 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 9. (a) If the prosecuting attorney does not object,
4 the court may grant the petition for expungement without a hearing.
5 (b) The court may summarily deny a petition, if the petition does not
6 meet the requirements of section 8 of this chapter, or if the statements
7 contained in the petition demonstrate that the petitioner is not entitled
8 to relief.
9 (c) If the prosecuting attorney objects to the petition, **the**
10 **prosecuting attorney shall file the reasons for objecting to the**
11 **petition with the court and serve a copy of the objections on the**
12 **petitioner at the time the prosecuting attorney objects to the**
13 **petition.**
14 (d) **If the court determines there is just cause to the objections**
15 **filed under subsection (c),** the court shall set the matter for hearing not
16 sooner than sixty (60) days after service of the petition on the



- 1 prosecuting attorney;
- 2 ~~(d)~~ **(e)** A victim of the offense for which expungement is sought
- 3 may submit an oral or written statement in support of or in opposition
- 4 to the petition at the time of the hearing. The petitioner must prove by
- 5 a preponderance of the evidence that the facts alleged in the verified
- 6 petition are true.
- 7 ~~(e)~~ **(f)** The grant or denial of a petition is an appealable final order.
- 8 ~~(f)~~ **(g)** If the court grants the petition for expungement, the court
- 9 shall issue an order of expungement as described in sections 6 and 7 of
- 10 this chapter.
- 11 ~~(g)~~ **(h)** This subsection applies only to a petition to expunge
- 12 conviction records filed under sections 2 through 5 of this chapter. This
- 13 subsection does not apply to a petition to expunge arrest records under
- 14 section 1 of this chapter. A petitioner may seek to expunge more than
- 15 one (1) conviction at the same time. The petitioner shall consolidate all
- 16 convictions that the petitioner wishes to expunge from the same county
- 17 in one (1) petition. A petitioner who wishes to expunge convictions
- 18 from separate counties must file a petition in each county in which a
- 19 conviction was entered.
- 20 ~~(h)~~ **(i)** This subsection applies only to a petition to expunge
- 21 conviction records filed under sections 2 through 5 of this chapter. This
- 22 subsection does not apply to a petition to expunge arrest records under
- 23 section 1 of this chapter. Except as provided in subsections ~~(i)~~ **(j)** and
- 24 ~~(j)~~ **(k)**, a petitioner may file a petition for expungement only one (1)
- 25 time during the petitioner's lifetime. For purposes of this subsection, all
- 26 petitions for expungement filed in separate counties for offenses
- 27 committed in those counties count as one (1) petition if they are filed
- 28 in one (1) three hundred sixty-five (365) day period.
- 29 ~~(i)~~ **(j)** A petitioner whose petition for expungement has been denied,
- 30 in whole or in part, may file a subsequent petition for expungement
- 31 with respect to one (1) or more convictions included in the initial
- 32 expungement petition that were not expunged. However, if the petition
- 33 was denied due to the court's exercise of its discretion under section 4
- 34 or 5 of this chapter, a subsequent petition for expungement may be
- 35 filed only after the elapse of three (3) years from the date on which the
- 36 previous expungement petition was denied. Except as provided in
- 37 subsection ~~(j)~~ **(k)**, a subsequent petition for expungement may not
- 38 include any conviction that was not included in the initial expungement
- 39 petition.
- 40 ~~(j)~~ **(k)** A court may permit a petitioner to file a subsequent petition
- 41 for expungement with respect to one (1) or more convictions that were
- 42 not included in the initial expungement petition only if the court finds



1 that:

2 (1) the petitioner intended in good faith to comply with
3 subsections ~~(g)~~ **(h)** and ~~(h)~~ **(i)**;

4 (2) the petitioner's failure to comply with subsections ~~(g)~~ **(h)** and
5 ~~(h)~~ **(i)** was due to:

6 (A) excusable neglect; or

7 (B) circumstances beyond the petitioner's control; and

8 (3) permitting the petitioner to file a subsequent petition for
9 expungement is in the best interests of justice.

