



January 30, 2015

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## SENATE BILL No. 164

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DIGEST OF SB 164 (Updated January 27, 2015 2:19 pm - DI 106)

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

**Synopsis:** Crimes involving deadly weapons. Provides that a person convicted of: (1) two or more felony offenses involving the unlawful use of a deadly weapon; (2) that were not committed as part of the same episode of criminal conduct; may not have the person's convictions expunged.

**Effective:** July 1, 2015.

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**Miller Patricia, Crider,  
Young R Michael, Schneider, Waltz**

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January 6, 2015, read first time and referred to Committee on Rules & Legislative Procedure.

January 14, 2015, amended; reassigned to Committee on Corrections & Criminal Law.

January 29, 2015, amended, reported favorably — Do Pass.

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SB 164—LS 6528/DI 13





January 30, 2015

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. 164

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 35-38-9-2, AS AMENDED BY P.L.181-2014,  
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2015]: Sec. 2. (a) **Except as provided in subsection (b)**, this  
4 section applies only to a person convicted of a misdemeanor, including  
5 a Class D felony (for a crime committed before July 1, 2014) or a Level  
6 6 felony (for a crime committed after June 30, 2014) reduced to a  
7 misdemeanor.

8 **(b) This section does not apply to a person convicted of two (2)**  
9 **or more felony offenses that:**

10 **(1) involved the unlawful use of a deadly weapon; and**  
11 **(2) were not committed as part of the same episode of**  
12 **criminal conduct.**

13 ~~(b)~~ (c) Not earlier than five (5) years after the date of conviction  
14 (unless the prosecuting attorney consents in writing to an earlier  
15 period), the person convicted of the misdemeanor may petition a court  
16 to expunge all conviction records, including records contained in:

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1 (1) a court's files;  
 2 (2) the files of the department of correction;  
 3 (3) the files of the bureau of motor vehicles; and  
 4 (4) the files of any other person who provided treatment or  
 5 services to the petitioning person under a court order;  
 6 that relate to the person's misdemeanor conviction.

7 ~~(c)~~ **(d)** A person who files a petition to expunge conviction records  
 8 shall file the petition in a circuit or superior court in the county of  
 9 conviction.

10 ~~(d)~~ **(e)** If the court finds by a preponderance of the evidence that:

- 11 (1) the period required by this section has elapsed;  
 12 (2) no charges are pending against the person;  
 13 (3) the person has paid all fines, fees, and court costs, and  
 14 satisfied any restitution obligation placed on the person as part of  
 15 the sentence; and  
 16 (4) the person has not been convicted of a crime within the  
 17 previous five (5) years (or within a shorter period agreed to by the  
 18 prosecuting attorney if the prosecuting attorney has consented to  
 19 a shorter period under subsection ~~(b)~~; **(c)**);

20 the court shall order the conviction records described in subsection ~~(b)~~  
 21 **(c)** expunged in accordance with section 6 of this chapter.

22 SECTION 2. IC 35-38-9-3, AS AMENDED BY P.L.181-2014,  
 23 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2015]: Sec. 3. (a) Except as provided in subsection (b), this  
 25 section applies only to a person convicted of a Class D felony (for a  
 26 crime committed before July 1, 2014) or a Level 6 felony (for a crime  
 27 committed after June 30, 2014). This section does not apply to a person  
 28 if the person's Class D felony or Level 6 felony was reduced to a Class  
 29 A misdemeanor.

30 (b) This section does not apply to the following:

- 31 (1) An elected official convicted of an offense while serving the  
 32 official's term or as a candidate for public office.  
 33 (2) A sex or violent offender (as defined in IC 11-8-8-5).  
 34 (3) A person convicted of a felony that resulted in bodily injury to  
 35 another person.  
 36 (4) A person convicted of perjury (IC 35-44.1-2-1) or official  
 37 misconduct (IC 35-44.1-1-1).  
 38 (5) A person convicted of an offense described in:  
 39 (A) IC 35-42-1;  
 40 (B) IC 35-42-3.5; or  
 41 (C) IC 35-42-4.

42 **(6) A person convicted of two (2) or more felony offenses that:**



1                   **(A) involved the unlawful use of a deadly weapon; and**  
 2                   **(B) were not committed as part of the same episode of**  
 3                   **criminal conduct.**

4           (c) Not earlier than eight (8) years after the date of conviction  
 5 (unless the prosecuting attorney consents in writing to an earlier  
 6 period), the person convicted of the Class D felony or Level 6 felony  
 7 may petition a court to expunge all conviction records, including  
 8 records contained in:

- 9                   (1) a court's files;  
 10                   (2) the files of the department of correction;  
 11                   (3) the files of the bureau of motor vehicles; and  
 12                   (4) the files of any other person who provided treatment or  
 13 services to the petitioning person under a court order;  
 14 that relate to the person's Class D or Level 6 felony conviction.

15           (d) A person who files a petition to expunge conviction records shall  
 16 file the petition in a circuit or superior court in the county of  
 17 conviction.

- 18           (e) If the court finds by a preponderance of the evidence that:  
 19                   (1) the period required by this section has elapsed;  
 20                   (2) no charges are pending against the person;  
 21                   (3) the person has paid all fines, fees, and court costs, and  
 22 satisfied any restitution obligation placed on the person as part of  
 23 the sentence; and  
 24                   (4) the person has not been convicted of a crime within the  
 25 previous eight (8) years (or within a shorter period agreed to by  
 26 the prosecuting attorney if the prosecuting attorney has consented  
 27 to a shorter period under subsection (c));

28 the court shall order the conviction records described in subsection (c)  
 29 expunged in accordance with section 6 of this chapter.

30           SECTION 3. IC 35-38-9-4, AS AMENDED BY P.L.181-2014,  
 31 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JULY 1, 2015]: Sec. 4. (a) Except as provided in subsection (b), this  
 33 section applies only to a person convicted of a felony who may not seek  
 34 expungement of that felony under section 3 of this chapter.

- 35           (b) This section does not apply to the following:  
 36                   (1) An elected official convicted of an offense while serving the  
 37 official's term or as a candidate for public office.  
 38                   (2) A sex or violent offender (as defined in IC 11-8-8-5).  
 39                   (3) A person convicted of a felony that resulted in serious bodily  
 40 injury to another person.  
 41                   (4) A person convicted of official misconduct (IC 35-44.1-1-1).  
 42                   (5) A person convicted of an offense described in:



- 1 (A) IC 35-42-1;  
 2 (B) IC 35-42-3.5; or  
 3 (C) IC 35-42-4.
- 4 **(6) A person convicted of two (2) or more felony offenses that:**  
 5 **(A) involved the unlawful use of a deadly weapon; and**  
 6 **(B) were not committed as part of the same episode of**  
 7 **criminal conduct.**
- 8 (c) Not earlier than the later of eight (8) years from the date of  
 9 conviction, or three (3) years from the completion of the person's  
 10 sentence, unless the prosecuting attorney consents in writing to an  
 11 earlier period, the person convicted of the felony may petition a court  
 12 to expunge all conviction records, including records contained in:  
 13 (1) a court's files;  
 14 (2) the files of the department of correction;  
 15 (3) the files of the bureau of motor vehicles; and  
 16 (4) the files of any other person who provided treatment or  
 17 services to the petitioning person under a court order;  
 18 that relate to the person's felony conviction.
- 19 (d) A person who files a petition to expunge conviction records shall  
 20 file the petition in a circuit or superior court in the county of  
 21 conviction.
- 22 (e) If the court finds by a preponderance of the evidence that:  
 23 (1) the period required by this section has elapsed;  
 24 (2) no charges are pending against the person;  
 25 (3) the person has paid all fines, fees, and court costs, and  
 26 satisfied any restitution obligation placed on the person as part of  
 27 the sentence; and  
 28 (4) the person has not been convicted of a crime within the  
 29 previous eight (8) years (or within a shorter period agreed to by  
 30 the prosecuting attorney if the prosecuting attorney has consented  
 31 to a shorter period under subsection (c));  
 32 the court may order the conviction records described in subsection (c)  
 33 marked as expunged in accordance with section 7 of this chapter. A  
 34 person whose records have been ordered marked as expunged under  
 35 this section is considered to have had the person's records expunged for  
 36 all purposes other than the disposition of the records.
- 37 SECTION 4. IC 35-38-9-5, AS AMENDED BY P.L.181-2014,  
 38 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2015]: Sec. 5. (a) Except as provided in subsection (b), this  
 40 section applies to a person convicted of a felony, including:  
 41 (1) an elected official convicted of an offense while serving the  
 42 official's term or as a candidate for public office; and



- 1 (2) a person convicted of a felony that resulted in serious bodily  
 2 injury to another person.
- 3 (b) This section does not apply to the following:
- 4 (1) A sex or violent offender (as defined in IC 11-8-8-5).  
 5 (2) A person convicted of official misconduct (IC 35-44.1-1-1).  
 6 (3) A person convicted of an offense described in:  
 7 (A) IC 35-42-1;  
 8 (B) IC 35-42-3.5; or  
 9 (C) IC 35-42-4.
- 10 **(4) A person convicted of two (2) or more felony offenses that:**  
 11 **(A) involved the unlawful use of a deadly weapon; and**  
 12 **(B) were not committed as part of the same episode of**  
 13 **criminal conduct.**
- 14 (c) Not earlier than the later of ten (10) years from the date of  
 15 conviction, or five (5) years from the completion of the person's  
 16 sentence, unless the prosecuting attorney consents in writing to an  
 17 earlier period, the person convicted of the felony may petition a court  
 18 to expunge all conviction records, including records contained in:  
 19 (1) a court's files;  
 20 (2) the files of the department of correction;  
 21 (3) the files of the bureau of motor vehicles; and  
 22 (4) the files of any other person who provided treatment or  
 23 services to the petitioning person under a court order;  
 24 that relate to the person's felony conviction.
- 25 (d) A person who files a petition to expunge conviction records shall  
 26 file the petition in a circuit or superior court in the county of  
 27 conviction.
- 28 (e) If the court finds by a preponderance of the evidence that:  
 29 (1) the period required by this section has elapsed;  
 30 (2) no charges are pending against the person;  
 31 (3) the person has paid all fines, fees, and court costs, and  
 32 satisfied any restitution obligation placed on the person as part of  
 33 the sentence;  
 34 (4) the person has not been convicted of a crime within the  
 35 previous ten (10) years (or within a shorter period agreed to by the  
 36 prosecuting attorney if the prosecuting attorney has consented to  
 37 a shorter period under subsection (c)); and  
 38 (5) the prosecuting attorney has consented in writing to the  
 39 expungement of the person's criminal records;  
 40 the court may order the conviction records described in subsection (c)  
 41 marked as expunged in accordance with section 7 of this chapter. A  
 42 person whose records have been ordered marked as expunged under



1 this section is considered to have had the person's records expunged for  
2 all purposes other than the disposition of the records.





## COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 164, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Corrections & Criminal Law.

(Reference is to SB 164 as introduced.)

LONG, Chairperson

## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 164, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 9, delete "offenses involving the unlawful possession or use of a" and insert: "**felony offenses that:**

- (1) involved the unlawful use of a deadly weapon; and**
- (2) were not committed as part of the same episode of criminal conduct."**

Page 1, delete line 10.

Page 2, line 40, delete "offenses involving" and insert "**felony offenses that:**

- (A) involved the unlawful use of a deadly weapon; and**
- (B) were not committed as part of the same episode of criminal conduct."**

Page 2, delete line 41.

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Page 3, line 42, delete "offenses involving" and insert "**felony offenses that:**

**(A) involved the unlawful use of a deadly weapon; and  
(B) were not committed as part of the same episode of criminal conduct."**

Page 4, delete line 1.

Page 5, line 4, delete "offenses involving" and insert "**felony offenses that:**

**(A) involved the unlawful use of a deadly weapon; and  
(B) were not committed as part of the same episode of criminal conduct."**

Page 5, delete line 5.

and when so amended that said bill do pass.

(Reference is to SB 164 as printed January 15, 2015.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 7, Nays 2.

