

# HOUSE BILL No. 1155

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-8-1-5; IC 35-38.

**Synopsis:** Expungement. Relocates and restates certain provisions dealing with the expungement of arrest records, and deletes inconsistent language. (Under current law, there are two inconsistent procedures for expunging arrest records.) Specifies where a petition for expungement must be filed, and removes the prohibition against a waiver or reduction of the filing fee for an indigent person. Grants a defense attorney and a probation department access to expunged records if authorized by court order. Permits a court to accept filing of a subsequent petition for expungement that includes convictions not named in the original petition under certain circumstances. (The introduced version of this bill was prepared by the criminal law and sentencing policy study committee.)

**Effective:** July 1, 2014.

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**Turner, McMillin, Shackelford,  
Porter**

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January 13, 2014, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

# HOUSE BILL No. 1155



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 3-8-1-5, AS AMENDED BY P.L.37-2008,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2014]: Sec. 5. (a) This section does not apply to a candidate  
4 for federal office.  
5 (b) As used in this section, "felony" means a conviction in any  
6 jurisdiction for which the convicted person might have been  
7 imprisoned for more than one (1) year. However, the term does not  
8 include a conviction:  
9 (1) for which the person has been pardoned; or  
10 (2) that has been:  
11 (A) reversed;  
12 (B) vacated;  
13 (C) set aside; ~~or~~  
14 (D) not entered because the trial court did not accept the  
15 person's guilty plea; **or**  
16 (E) **expunged under IC 35-38-9.**



1 (c) A person is disqualified from assuming or being a candidate for  
2 an elected office if:

3 (1) the person gave or offered a bribe, threat, or reward to procure  
4 the person's election, as provided in Article 2, Section 6 of the  
5 Constitution of the State of Indiana;

6 (2) the person does not comply with IC 5-8-3 because of a  
7 conviction for a violation of the federal laws listed in that statute;

8 (3) in a:

9 (A) jury trial, a jury publicly announces a verdict against the  
10 person for a felony;

11 (B) bench trial, the court publicly announces a verdict against  
12 the person for a felony; or

13 (C) guilty plea hearing, the person pleads guilty or nolo  
14 contendere to a felony;

15 (4) the person has been removed from the office the candidate  
16 seeks under Article 7, Section 11 or Article 7, Section 13 of the  
17 Constitution of the State of Indiana;

18 (5) the person is a member of the United States armed forces on  
19 active duty and prohibited by the United States Department of  
20 Defense from being a candidate; or

21 (6) the person is subject to:

22 (A) 5 U.S.C. 1502 (the Little Hatch Act); or

23 (B) 5 U.S.C. 7321-7326 (the Hatch Act);

24 and would violate either federal statute by becoming or remaining  
25 the candidate of a political party for nomination or election to an  
26 elected office or a political party office.

27 (d) The subsequent reduction of a felony to a Class A misdemeanor  
28 under IC 35-50-2-7 or IC 35-38-1-1.5 after the:

29 (1) jury has announced its verdict against the person for a felony;

30 (2) court has announced its verdict against the person for a felony;

31 or

32 (3) person has pleaded guilty or nolo contendere to a felony;

33 does not affect the operation of subsection (c).

34 SECTION 2. IC 35-38-5-1 IS REPEALED [EFFECTIVE JULY 1,  
35 2014]. Sec. 1. (a) Whenever:

36 (1) an individual is arrested but no criminal charges are filed  
37 against the individual; or

38 (2) all criminal charges filed against an individual are dropped  
39 because:

40 (A) of a mistaken identity;

41 (B) no offense was in fact committed; or

42 (C) there was an absence of probable cause;



1 the individual may petition the court for expungement of the records  
2 related to the arrest.

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

7 (1) the date of the arrest;

8 (2) the charge;

9 (3) the law enforcement agency employing the arresting officer;

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

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

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

14 (c) A copy of the petition shall be served on the law enforcement  
15 agency and the state central repository for records:

16 (d) Upon receipt of a petition for expungement, the law enforcement  
17 agency shall notify the court of the name and address of each agency  
18 to which any records related to the arrest were forwarded. The clerk  
19 shall immediately send a copy of the petition to each of those agencies.  
20 Any agency desiring to oppose the expungement shall file a notice of  
21 opposition with the court setting forth reasons for resisting the  
22 expungement along with any sworn statements from individuals who  
23 represent the agency that explain the reasons for resisting the  
24 expungement within thirty (30) days after the petition is filed. A copy  
25 of the notice of opposition and copies of any sworn statements shall be  
26 served on the petitioner in accordance with the Rules of Trial  
27 Procedure. The court shall:

28 (1) summarily grant the petition;

29 (2) set the matter for hearing; or

30 (3) summarily deny the petition, if the court determines that:

31 (A) the petition is insufficient; or

32 (B) based on information contained in sworn statements  
33 submitted by individuals who represent an agency; the  
34 petitioner is not entitled to an expungement of records.

35 (e) If a notice of opposition is filed and the court does not  
36 summarily grant or summarily deny the petition, the court shall set the  
37 matter for a hearing:

38 (f) After a hearing is held under this section, the petition shall be  
39 granted unless the court finds:

40 (1) the conditions in subsection (a) have not been met;

41 (2) the individual has a record of arrests other than minor traffic  
42 offenses; or



1           (3) additional criminal charges are pending against the individual.  
 2           SECTION 3. IC 35-38-5-2 IS REPEALED [EFFECTIVE JULY 1,  
 3           2014]. Sec. 2: If the petition for expungement is granted, the law  
 4           enforcement agency shall within thirty (30) days of receipt of the court  
 5           order, deliver to the individual or destroy all fingerprints, photographs,  
 6           or arrest records in their possession.

7           SECTION 4. IC 35-38-5-3 IS REPEALED [EFFECTIVE JULY 1,  
 8           2014]. Sec. 3: Whenever the petition of an individual under section 1  
 9           of this chapter is granted, no information concerning the arrest may be  
 10          placed or retained in any state central repository for criminal history  
 11          information or in any other alphabetically arranged criminal history  
 12          information system maintained by a local, regional, or statewide law  
 13          enforcement agency. However, this chapter does not require any  
 14          change or alteration in any record (such as a police blotter entry) made  
 15          at the time of the arrest or in the record of any court in which the  
 16          criminal charges were filed.

17          SECTION 5. IC 35-38-5-4 IS REPEALED [EFFECTIVE JULY 1,  
 18          2014]. Sec. 4: If a person whose records are expunged brings an action  
 19          that might be defended with the contents of such records, the defendant  
 20          is presumed to have a complete defense to such an action. In order for  
 21          the plaintiff to recover, he must show that the contents of the expunged  
 22          records would not exonerate the defendant. The plaintiff may be  
 23          required to state under oath whether he had records in the criminal  
 24          justice system and whether those records were expunged. If the  
 25          plaintiff denies the existence of the records, the defendant may prove  
 26          their existence in any manner compatible with the law of evidence.

27          SECTION 6. IC 35-38-9-1, AS ADDED BY P.L.159-2013,  
 28          SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29          JULY 1, 2014]: Sec. 1. (a) This section applies only to a person who  
 30          has been arrested if:

31               (1) the arrest did not result in a conviction or juvenile  
 32               adjudication; or

33               (2) the arrest resulted in a conviction or juvenile adjudication and  
 34               the conviction or adjudication was vacated on appeal.

35               (b) Not earlier than one (1) year after the date of arrest, if the person  
 36               was not convicted or adjudicated a delinquent child, or the date of the  
 37               opinion vacating the conviction or adjudication becomes final, the  
 38               person may petition the sentencing court (if the person was sentenced);  
 39               the court in which the person was charged (if the person was charged);  
 40               or any court exercising criminal jurisdiction in Indiana (if the person  
 41               was not charged or convicted) to seal records contained in:

42               (1) a court's files;



1 (2) the files of the department of correction;  
 2 (3) the files of the bureau of motor vehicles;  
 3 (4) the files of any other person who provided treatment or  
 4 services to the petitioning person under a court order; and  
 5 (5) the central repository for criminal history information  
 6 maintained by the state police department;  
 7 that relate to the person's arrest.

8 (c) A person who files a petition to seal arrest records is not required  
 9 to pay a filing fee.

10 (d) If the court finds by clear and convincing evidence that:

11 (1) the person's arrest:

12 (A) did not result in a conviction or juvenile adjudication; or

13 (B) resulted in a conviction or juvenile adjudication and the  
 14 conviction or adjudication was vacated on appeal; and

15 (2) no charges are pending against the person;

16 the court shall order the arrest records described in subsection (b)  
 17 sealed so that only a criminal justice agency may access the records  
 18 without the order of a court.

19 (a) This section applies only to a person who has been arrested  
 20 if:

21 (1) the arrest did not result in a conviction or juvenile  
 22 adjudication; or

23 (2) the arrest resulted in a conviction or juvenile adjudication  
 24 and the conviction or adjudication was vacated on appeal.

25 (b) Not earlier than one (1) year after the date of arrest, if the  
 26 person was not convicted or adjudicated a delinquent child, or the  
 27 date of the opinion vacating the conviction or adjudication becomes  
 28 final (unless the prosecuting attorney agrees in writing to an  
 29 earlier time), the person may petition the court for expungement  
 30 of the records related to the arrest.

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

35 (1) the date of the arrest;

36 (2) the charge;

37 (3) the law enforcement agency employing the arresting  
 38 officer;

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

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

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



1           (d) A copy of the petition shall be served on the prosecuting  
2 attorney, the law enforcement agency that arrested the person, and  
3 the state central repository for records.

4           (e) Upon receipt of a petition for expungement, the law  
5 enforcement agency shall notify the court of the name and address  
6 of each agency to which any records related to the arrest were  
7 forwarded. The clerk shall immediately send a copy of the petition  
8 to each of those agencies. Any agency desiring to oppose the  
9 expungement shall file a notice of opposition with the court setting  
10 forth reasons for resisting the expungement along with any sworn  
11 statements from persons who represent the agency that explain the  
12 reasons for resisting the expungement not later than thirty (30)  
13 days after the petition is filed. A copy of the notice of opposition  
14 and copies of any sworn statements shall be served on the  
15 petitioner in accordance with the Rules of Trial Procedure. The  
16 court shall:

- 17           (1) summarily grant the petition;  
18           (2) set the matter for hearing; or  
19           (3) summarily deny the petition, if the court determines that:  
20               (A) the petition is insufficient; or  
21               (B) based on information contained in sworn statements  
22               submitted by persons who represent an agency, the  
23               petitioner is not entitled to an expungement of records.

24           (f) If a notice of opposition is filed and the court does not  
25 summarily grant or summarily deny the petition, the court shall set  
26 the matter for a hearing.

27           (g) After a hearing is held under this section, the petition shall  
28 be granted unless the court finds:

- 29               (1) the conditions in subsection (a) have not been met; or  
30               (2) criminal charges are pending against the person.

31           (h) Except as provided in subsection (i), if the petition for  
32 expungement is granted, the law enforcement agency shall, not  
33 later than thirty (30) days after receipt of the court order, deliver  
34 to the person or destroy all fingerprints, photographs, or arrest  
35 records in the agency's possession.

36           (i) Whenever the petition of a person under this section is  
37 granted, no information concerning the arrest may be placed or  
38 retained in any state central repository for criminal history  
39 information or in any other alphabetically arranged criminal  
40 history information system maintained by a local, regional, or  
41 statewide law enforcement agency. However, this chapter does not  
42 require any change or alteration in:



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

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

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

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

17 SECTION 7. IC 35-38-9-2, AS ADDED BY P.L.159-2013,  
 18 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 19 JULY 1, 2014]: Sec. 2. (a) This section applies only to a person  
 20 convicted of a misdemeanor, including a Class D felony **(for a crime  
 21 committed before July 1, 2014) or a Level 6 felony (for a crime  
 22 committed after June 30, 2014)** reduced to a misdemeanor.

23 (b) Not earlier than five (5) years after the date of conviction (unless  
 24 the prosecuting attorney consents in writing to an earlier period), the  
 25 person convicted of the misdemeanor may petition ~~the sentencing a~~  
 26 court to expunge **all** conviction records, **including records** contained  
 27 in:

28 (1) a court's files;

29 (2) the files of the department of correction;

30 (3) the files of the bureau of motor vehicles; and

31 (4) the files of any other person who provided treatment or  
 32 services to the petitioning person under a court order;

33 that relate to the person's misdemeanor conviction.

34 (c) A person who files a petition to expunge conviction records shall  
 35 pay the filing fees required for filing a civil action, and the clerk shall  
 36 distribute the fees as in the case of a civil action. A person who files a  
 37 petition to expunge conviction records may not receive a waiver or  
 38 reduction of fees upon a showing of indigency: **file the petition in a  
 39 circuit or superior court in the county of conviction.**

40 (d) If the court finds by clear and convincing evidence that:

41 (1) the period required by this section has elapsed;

42 (2) no charges are pending against the person;





1 (3) the person does not have an existing or pending driver's  
2 license suspension;

3 (4) the person has successfully completed the person's sentence,  
4 including any term of supervised release, **paid all fines, fees, and**  
5 **court costs**, and satisfied ~~all other obligations~~ **any restitution**  
6 **obligation** placed on the person as part of the sentence; and

7 (5) the person has not been convicted of a crime within the  
8 previous five (5) years **(or within a shorter period agreed to by**  
9 **the prosecuting attorney if the prosecuting attorney has**  
10 **consented to a shorter period under subsection (b))**;

11 the court shall order the conviction records described in subsection (b)  
12 expunged in accordance with section 6 of this chapter.

13 SECTION 8. IC 35-38-9-3, AS ADDED BY P.L.159-2013,  
14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2014]: Sec. 3. (a) Except as provided in subsection (b), this  
16 section applies only to a person convicted of a Class D felony **(for a**  
17 **crime committed before July 1, 2014) or a Level 6 felony (for a**  
18 **crime committed after June 30, 2014)**. This section does not apply to  
19 a person if the person's Class D felony **or Level 6 felony** was reduced  
20 to a Class A misdemeanor.

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

22 (1) An elected official convicted of an offense while serving the  
23 official's term or as a candidate for public office.

24 (2) A sex or violent offender (as defined in IC 11-8-8-5).

25 (3) A person convicted of a felony that resulted in bodily injury to  
26 another person.

27 (4) A person convicted of perjury (IC 35-44.1-2-1) or official  
28 misconduct (IC 35-44.1-1-1).

29 (5) A person convicted of an offense described in:

30 (A) IC 35-42-1;

31 (B) IC 35-42-3.5; or

32 (C) IC 35-42-4.

33 (c) Not earlier than eight (8) years after the date of conviction  
34 (unless the prosecuting attorney consents in writing to an earlier  
35 period), the person convicted of the Class D felony **or Level 6 felony**  
36 may petition ~~the sentencing a court~~ to expunge **all** conviction records,  
37 **including records** contained in:

38 (1) a court's files;

39 (2) the files of the department of correction;

40 (3) the files of the bureau of motor vehicles; and

41 (4) the files of any other person who provided treatment or  
42 services to the petitioning person under a court order;



1 that relate to the person's Class D **or Level 6** felony conviction.

2 (d) A person who files a petition to expunge conviction records shall  
 3 ~~pay the filing fees required for filing a civil action, and the clerk shall~~  
 4 ~~distribute the fees as in the case of a civil action. A person who files a~~  
 5 ~~petition to expunge conviction records may not receive a waiver or~~  
 6 ~~reduction of fees upon a showing of indigency. **file the petition in a**~~  
 7 **circuit or superior court in the county of conviction.**

8 (e) If the court finds by clear and convincing evidence that:

- 9 (1) the period required by this section has elapsed;  
 10 (2) no charges are pending against the person;  
 11 (3) the person does not have an existing or pending driver's  
 12 license suspension;  
 13 (4) the person has successfully completed the person's sentence,  
 14 including any term of supervised release, **paid all fines, fees, and**  
 15 **court costs**, and satisfied ~~all other obligations~~ **any restitution**  
 16 **obligation** placed on the person as part of the sentence; and  
 17 (5) the person has not been convicted of a ~~crime felony~~ within the  
 18 previous eight (8) years **(or within a shorter period agreed to**  
 19 **by the prosecuting attorney if the prosecuting attorney has**  
 20 **consented to a shorter period under subsection (c));**

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

23 SECTION 9. IC 35-38-9-4, AS ADDED BY P.L.159-2013,  
 24 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 25 JULY 1, 2014]: Sec. 4. (a) Except as provided in subsection (b), this  
 26 section applies only to a person convicted of a felony **who may not**  
 27 **seek expungement of that felony under section 3 of this chapter.**

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

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

39 (c) Not earlier than eight (8) years after the completion of the  
 40 person's sentence (including the completion of any term of supervised  
 41 release and the satisfaction of all other obligations placed on the person  
 42 as part of the sentence, unless the prosecuting attorney consents in



1 writing to an earlier period), the person convicted of the felony may  
 2 petition ~~the sentencing a court~~ to expunge **all** conviction records,  
 3 **including records** contained in:

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

9 that relate to the person's felony conviction.

10 (d) A person who files a petition to expunge conviction records shall  
 11 ~~pay the filing fees required for filing a civil action, and the clerk shall~~  
 12 ~~distribute the fees as in the case of a civil action. A person who files a~~  
 13 ~~petition to expunge conviction records may not receive a waiver or~~  
 14 ~~reduction of fees upon a showing of indigency. file the petition in a~~  
 15 **circuit or superior court in the county of conviction.**

16 (e) If the court finds by clear and convincing evidence that:

- 17 (1) the period required by this section has elapsed;
- 18 (2) no charges are pending against the person;
- 19 (3) the person does not have an existing or pending driver's  
 20 license suspension;
- 21 (4) the person has successfully completed the person's sentence,  
 22 including any term of supervised release, **paid all fines, fees, and**  
 23 **court costs**, and satisfied ~~all other obligations~~ **any restitution**  
 24 **obligation** placed on the person as part of the sentence; and
- 25 (5) the person has not been convicted of a ~~crime felony~~ within the  
 26 previous eight (8) years **(or within a shorter period agreed to**  
 27 **by the prosecuting attorney if the prosecuting attorney has**  
 28 **consented to a shorter period under subsection (c));**

29 the court may order the conviction records described in subsection (c)  
 30 ~~marked as expunged in accordance with section 7 section 6~~ of this  
 31 chapter. ~~A person whose records have been ordered marked as~~  
 32 ~~expunged under this section is considered to have had the person's~~  
 33 ~~records expunged for all purposes other than the disposition of the~~  
 34 ~~records.~~

35 SECTION 10. IC 35-38-9-5, AS ADDED BY P.L.159-2013,  
 36 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2014]: Sec. 5. (a) Except as provided in subsection (b), this  
 38 section applies to a person convicted of a felony, including:

- 39 (1) an elected official convicted of an offense while serving the  
 40 official's term or as a candidate for public office; and
- 41 (2) a person convicted of a felony that resulted in serious bodily  
 42 injury to another person.



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

- 2 (1) A sex or violent offender (as defined in IC 11-8-8-5).  
 3 (2) A person convicted of official misconduct (IC 35-44.1-1-1).  
 4 (3) A person convicted of an offense described in:  
 5 (A) IC 35-42-1;  
 6 (B) IC 35-42-3.5; or  
 7 (C) IC 35-42-4.

8 (c) Not earlier than ten (10) years after the completion of the  
 9 person's sentence (including the completion of any term of supervised  
 10 release and the satisfaction of all other obligations placed on the person  
 11 as part of the sentence, unless the prosecuting attorney consents in  
 12 writing to an earlier period), the person convicted of the felony may  
 13 petition ~~the sentencing a~~ court to expunge **all** conviction records,  
 14 **including records** contained in:

- 15 (1) a court's files;  
 16 (2) the files of the department of correction;  
 17 (3) the files of the bureau of motor vehicles; and  
 18 (4) the files of any other person who provided treatment or  
 19 services to the petitioning person under a court order;  
 20 that relate to the person's felony conviction.

21 (d) A person who files a petition to expunge conviction records shall  
 22 ~~pay the filing fees required for filing a civil action, and the clerk shall~~  
 23 ~~distribute the fees as in the case of a civil action. A person who files a~~  
 24 ~~petition to expunge conviction records may not receive a waiver or~~  
 25 ~~reduction of fees upon a showing of indigency. **file the petition in a**~~  
 26 **circuit or superior court in the county of conviction.**

27 (e) If the court finds by clear and convincing evidence that:

- 28 (1) the period required by this section has elapsed;  
 29 (2) no charges are pending against the person;  
 30 (3) the person does not have an existing or pending driver's  
 31 license suspension;  
 32 (4) the person has successfully completed the person's sentence,  
 33 including any term of supervised release, **paid all fines, fees, and**  
 34 **court costs**, and satisfied ~~all other obligations~~ **any restitution**  
 35 **obligation** placed on the person as part of the sentence;  
 36 (5) the person has not been convicted of a ~~crime felony~~ within the  
 37 previous ten (10) years **(or within a shorter period agreed to by**  
 38 **the prosecuting attorney if the prosecuting attorney has**  
 39 **consented to a shorter period under subsection (c));** and  
 40 (6) the prosecuting attorney has consented in writing to the  
 41 expungement of the person's criminal records;

42 the court may order the conviction records described in subsection (c)



1 marked as expunged in accordance with section 7 of this chapter. A  
 2 person whose records have been ordered marked as expunged under  
 3 this section is considered to have had the person's records expunged for  
 4 all purposes other than the disposition of the records.

5 SECTION 11. IC 35-38-9-6, AS ADDED BY P.L.159-2013,  
 6 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2014]: Sec. 6. (a) If the court orders conviction records  
 8 expunged under sections 2 through ~~3~~ 4 of this chapter, the court shall  
 9 do the following with respect to the specific records expunged by the  
 10 court:

11 (1) Order:

- 12 (A) the department of correction;  
 13 (B) the bureau of motor vehicles; and  
 14 (C) each:  
 15 (i) law enforcement agency; and  
 16 (ii) other person;

17 who incarcerated, provided treatment for, or provided other  
 18 services for the person under an order of the court;  
 19 to prohibit the release of the person's records or information in the  
 20 person's records to anyone without a court order, other than a law  
 21 enforcement officer acting in the course of the officer's official  
 22 duty.

23 (2) Order the central repository for criminal history information  
 24 maintained by the state police department to seal the person's  
 25 expunged conviction records. Records sealed under this  
 26 subdivision may be disclosed only to:

- 27 (A) a prosecuting attorney, if:  
 28 (i) authorized by a court order; and  
 29 (ii) needed to carry out the official duties of the prosecuting  
 30 attorney;  
 31 **(B) a defense attorney, if:**  
 32 **(i) authorized by a court order; and**  
 33 **(ii) needed to carry out the professional duties of the**  
 34 **defense attorney;**  
 35 **(C) a probation department, if:**  
 36 **(i) authorized by a court order; and**  
 37 **(ii) necessary to prepare a presentence report; and**

38 ~~(B)~~ **(D) the Federal Bureau of Investigation and the**  
 39 **Department of Homeland Security, if disclosure is required to**  
 40 **comply with an agreement relating to the sharing of criminal**  
 41 **history information.**

42 (3) Notify the clerk of the supreme court to seal any records in the



1 clerk's possession that relate to the conviction.

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

5 (b) Except as provided in subsection (c), if a petition to expunge  
 6 conviction records is granted under sections 2 through 3 4 of this  
 7 chapter, the records of:

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

12 concerning the person shall be permanently sealed.

13 (c) If a petition to expunge conviction records is granted under  
 14 sections 2 through 3 4 of this chapter with respect to the records of a  
 15 person who is named **as an appellant or an appellee** in an opinion or  
 16 memorandum decision by the supreme court or the court of appeals, the  
 17 court shall:

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

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

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

- 36 (1) order the records to be unsealed; and
- 37 (2) allow the prosecuting attorney who submitted the written  
 38 application to have access to the records.

39 If a court orders records to be unsealed under this subsection, the court  
 40 shall order the records to be permanently resealed at the earliest  
 41 possible time after the reasons for unsealing the records cease to exist.  
 42 However, if the records are admitted as evidence against the person in



1 a new prosecution that results in the person's conviction, or are used to  
 2 enhance a sentence imposed on the person in a new prosecution, the  
 3 court is not required to reseat the records.

4 (e) If a person whose conviction records are expunged under section  
 5 5 of this chapter is required to register as a sex offender based on the  
 6 commission of a felony which has been expunged:

7 (1) the expungement does not affect the operation of the sex  
 8 offender registry web site, any person's ability to access the  
 9 person's records, records required to be maintained concerning  
 10 sex or violent offenders, or any registration requirement imposed  
 11 on the person; and

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

14 SECTION 12. IC 35-38-9-7, AS ADDED BY P.L.159-2013,  
 15 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2014]: Sec. 7. (a) This section applies only to a person who  
 17 has filed a petition for expungement under section 4 or 5 of this chapter  
 18 and whose records have been ordered marked as expunged.

19 (b) The court records and other public records relating to the arrest,  
 20 conviction, or sentence of a person whose conviction records have been  
 21 marked as expunged remain public records. However, the court shall  
 22 order that the records be clearly and visibly marked or identified as  
 23 being expunged.

24 (c) The state police department, the bureau of motor vehicles, and  
 25 any other law enforcement agency in possession of records that relate  
 26 to the conviction ordered to be marked as expunged shall add an entry  
 27 to the person's record of arrest, conviction, or sentence in the criminal  
 28 history data base stating that the record is marked as expunged.

29 SECTION 13. IC 35-38-9-8, AS ADDED BY P.L.159-2013,  
 30 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JULY 1, 2014]: Sec. 8. (a) This section applies only to a petition to  
 32 expunge conviction records under sections 2 through 5 of this chapter.  
 33 This section does not apply to a petition to ~~seat~~ **expunge** arrest records  
 34 under section 1 of this chapter.

35 (b) Any person may seek an expungement under sections 2 through  
 36 5 of this chapter by filing a verified petition for expungement. The  
 37 petition must include the following:

38 (1) The petitioner's full name and all other legal names or aliases  
 39 by which the petitioner is or has been known.

40 (2) The petitioner's date of birth.

41 (3) The petitioner's addresses from the date of the offense to the  
 42 date of the petition.



- 1           (4) **A certified copy of petitioner's records from the bureau of**
- 2           **motor vehicles.**
- 3           (5) The petitioner shall affirm that no criminal investigation or
- 4           charges are pending against the petitioner.
- 5           (5) (6) The petitioner shall affirm that the petitioner has not
- 6           committed another crime within the period required for
- 7           expungement.
- 8           (6) (7) The petitioner shall list all convictions and the date of the
- 9           conviction, **and any appeals from the conviction and the date**
- 10          **any appellate opinion was handed down, if applicable.**
- 11          (7) (8) The petitioner shall affirm that the required period has
- 12          elapsed or attach a copy of the prosecuting attorney's written
- 13          consent to a shorter period.
- 14          (8) (9) The petitioner shall describe any other petitions that the
- 15          petitioner has filed under this chapter.
- 16          (9) (10) For a petition filed under section 5 of this chapter, the
- 17          petitioner shall attach a copy of the prosecuting attorney's written
- 18          consent.
- 19          (10) (11) The petitioner shall provide evidence that the petitioner
- 20          has successfully completed all terms of the sentence previously
- 21          imposed, including:
- 22                (A) payment of restitution, fines, **fees**, and court costs; and
- 23                (B) completion of any terms of probation, parole, or
- 24                community corrections.
- 25          (c) The petitioner may include any other information that the
- 26          petitioner believes may assist the court.
- 27          (d) The petitioner shall serve a copy of the petition upon the
- 28          prosecuting attorney in accordance with the Indiana Rules of Trial
- 29          Procedure.
- 30          (e) The prosecuting attorney shall ~~promptly forward a copy of the~~
- 31          ~~petition to the last known address of the victim. and inform the victim~~
- 32          ~~of the victim's right to be present and address the court. inform the~~
- 33          ~~victim of the victim's rights under IC 35-40-6.~~
- 34          (f) The prosecuting attorney shall reply to the petition not later than
- 35          thirty (30) days after receipt.
- 36          SECTION 14. IC 35-38-9-9, AS ADDED BY P.L.159-2013,
- 37          SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 38          JULY 1, 2014]: Sec. 9. (a) If the prosecuting attorney does not object,
- 39          the court may grant the petition for expungement without a hearing.
- 40          (b) The court may summarily deny a petition, if the petition does not
- 41          meet the requirements of section 8 of this chapter, or if the statements
- 42          contained in the petition demonstrate that the petitioner is not entitled





- 1 to relief.
- 2 (c) If the prosecuting attorney objects to the petition, the court shall
- 3 set the matter for hearing not sooner than sixty (60) days after service
- 4 of the petition on the prosecuting attorney.
- 5 (d) A victim of the offense for which expungement is sought may
- 6 submit an oral or written statement in support of or in opposition to the
- 7 petition at the time of the hearing. ~~The court shall consider the victim's~~
- 8 ~~statement before making its determination.~~
- 9 ~~(e)~~ The petitioner must prove by clear and convincing evidence that
- 10 the facts alleged in the verified petition are true.
- 11 ~~(f)~~ **(e)** The **grant or** denial of a petition is an appealable final order.
- 12 ~~(g)~~ **(f)** If the court grants the petition for expungement, the court
- 13 shall issue an order of expungement as described in ~~section~~ **sections 6**
- 14 **and 7** of this chapter.
- 15 ~~(h)~~ **(g)** This subsection applies only to a petition to expunge
- 16 conviction records filed under sections 2 through 5 of this chapter. This
- 17 subsection does not apply to a petition to ~~seal~~ **expunge** arrest records
- 18 under section 1 of this chapter. A petitioner may seek to expunge more
- 19 than one (1) conviction at the same time. The petitioner shall
- 20 consolidate all convictions that the petitioner wishes to expunge from
- 21 the same county in one (1) petition. A petitioner who wishes to
- 22 expunge convictions from separate counties must file a petition in each
- 23 county in which a conviction was entered.
- 24 ~~(i)~~ **(h)** This subsection applies only to a petition to expunge
- 25 conviction records filed under sections 2 through 5 of this chapter. This
- 26 subsection does not apply to a petition to ~~seal~~ **expunge** arrest records
- 27 under section 1 of this chapter. Except as provided in ~~subsection (j)~~
- 28 **subsections (i) and (j)**, a petitioner may file ~~only one (1)~~ **a** petition for
- 29 expungement **only one (1) time** during the petitioner's lifetime. For
- 30 purposes of this subsection, all petitions for expungement filed in
- 31 separate counties for offenses committed in those counties count as one
- 32 (1) petition if they are filed in one (1) three hundred sixty-five (365)
- 33 day period.
- 34 ~~(j)~~ **(i)** A petitioner whose petition for expungement has been denied,
- 35 ~~on the merits~~, in whole or in part, may file a subsequent petition for
- 36 expungement with respect to one (1) or more convictions included in
- 37 the initial expungement petition that were not expunged. **However, if**
- 38 **the petition was denied due to the court's exercise of its discretion**
- 39 **under section 4 or 5 of this chapter**, a subsequent petition for
- 40 expungement may be filed ~~not earlier than~~ **only after the elapse of**
- 41 three (3) years ~~following from the date on which the denial of a~~
- 42 previous expungement petition **was denied**. A subsequent petition for



1 expungement may not include any conviction that was not included in  
2 the initial expungement petition.

3 **(j) A court may permit a petitioner to file a subsequent petition**  
4 **for expungement with respect to one (1) or more convictions that**  
5 **were not included in the initial expungement petition only if the**  
6 **court finds that:**

7 **(1) the petitioner intended in good faith to comply with**  
8 **subsections (g) and (h);**

9 **(2) the petitioner's failure to comply with subsections (g) and**  
10 **(h) was due to:**

11 **(A) excusable neglect; or**

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

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

