

SENATE BILL No. 21

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, 2017.

Randolph Lonnie M

January 3, 2017, read first time and referred to Committee on Judiciary.



First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

SENATE BILL No. 21

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.142-2015,
2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 9. (a) If the prosecuting attorney does not object,
4 or has waived objection to the petition under section 8 of this chapter,
5 the court may grant the petition for expungement without a hearing.
6 (b) The court may summarily deny a petition, if the petition does not
7 meet the requirements of section 8 of this chapter, or if the statements
8 contained in the petition demonstrate that the petitioner is not entitled
9 to relief.
10 (c) If the prosecuting attorney objects to the petition, **the**
11 **prosecuting attorney shall file the reasons for objecting to the**
12 **petition with the court and serve a copy of the objections on the**
13 **petitioner at the time the prosecuting attorney objects to the**
14 **petition.**
15 (d) **If the court determines there is just cause to the objections**
16 **filed under subsection (c),** the prosecuting attorney shall file the
17 reasons for objecting to the petition with the court and serve a copy of



1 the objections on the petitioner at the time the prosecuting attorney
2 objects to the petition. The court shall set the matter for hearing not
3 sooner than sixty (60) days after service of the petition on the
4 prosecuting attorney.

5 ~~(d)~~ (e) A victim of the offense for which expungement is sought
6 may submit an oral or written statement in support of or in opposition
7 to the petition at the time of the hearing. The petitioner must prove by
8 a preponderance of the evidence that the facts alleged in the verified
9 petition are true.

10 ~~(e)~~ (f) The grant or denial of a petition is an appealable final order.

11 ~~(f)~~ (g) If the court grants the petition for expungement, the court
12 shall issue an order of expungement as described in sections 6 and 7 of
13 this chapter.

14 ~~(g)~~ (h) The order granting the petition for expungement described
15 in sections 6 and 7 of this chapter must include the information
16 described in section 8(b) of this chapter.

17 ~~(h)~~ (i) This subsection applies only to a petition to expunge
18 conviction records filed under sections 2 through 5 of this chapter. This
19 subsection does not apply to a petition to expunge records related to the
20 arrest, criminal charge, or juvenile delinquency allegation under
21 section 1 of this chapter. A petitioner may seek to expunge more than
22 one (1) conviction at the same time. The petitioner shall consolidate all
23 convictions that the petitioner wishes to expunge from the same county
24 in one (1) petition. A petitioner who wishes to expunge convictions
25 from separate counties must file a petition in each county in which a
26 conviction was entered.

27 ~~(i)~~ (j) This subsection applies only to a petition to expunge
28 conviction records filed under sections 2 through 5 of this chapter. This
29 subsection does not apply to a petition to expunge records related to the
30 arrest, criminal charge, or juvenile delinquency allegation under
31 section 1 of this chapter. Except as provided in subsections ~~(j)~~ (k) and
32 ~~(k)~~ (l), a petitioner may file a petition for expungement only one (1)
33 time during the petitioner's lifetime. For purposes of this subsection, all
34 petitions for expungement filed in separate counties for offenses
35 committed in those counties count as one (1) petition if they are filed
36 in one (1) three hundred sixty-five (365) day period.

37 ~~(j)~~ (k) A petitioner whose petition for expungement has been
38 denied, in whole or in part, may refile that petition for expungement,
39 in whole or in part, with respect to one (1) or more convictions
40 included in the initial expungement petition that were not expunged.
41 However, if the petition was denied due to the court's exercise of its
42 discretion under section 4 or 5 of this chapter, a petition for



1 expungement may be refiled only after the elapse of three (3) years
2 from the date on which the previous expungement petition was denied.
3 Except as provided in subsection ~~(k)~~, **(l)**, a refiled petition for
4 expungement may not include any conviction that was not included in
5 the initial expungement petition.

6 ~~(k)~~ **(l)** A court may permit a petitioner to file an amended petition
7 for expungement with respect to one (1) or more convictions that were
8 not included in the initial expungement petition only if the court finds
9 that:

- 10 (1) the petitioner intended in good faith to comply with
11 subsections ~~(h)~~ **(i)** and ~~(i)~~ **(j)**;
12 (2) the petitioner's failure to comply with subsections ~~(h)~~ **(i)** and
13 ~~(i)~~ **(j)** was due to:
14 (A) excusable neglect; or
15 (B) circumstances beyond the petitioner's control; and
16 (3) permitting the petitioner to file a subsequent petition for
17 expungement is in the best interests of justice.

