



February 20, 2015

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## SENATE BILL No. 287

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DIGEST OF SB 287 (Updated February 17, 2015 12:47 pm - DI 106)

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

**Synopsis:** Expungement. Provides that expungement provisions concerning an arrest that does not lead to a conviction also apply to criminal charges or juvenile delinquency allegations that do not lead to a conviction or juvenile delinquency adjudication. Provides that a person who files for the expungement of an arrest, criminal charge, or juvenile delinquency allegation that did not lead to a conviction or juvenile delinquency adjudication is not required to pay a filing fee. Specifies that a person who files a petition for expungement is not required to pay a filing fee. Removes a requirement that the petitioner submit bureau of motor vehicles records. Requires that additional identifying information must be included in a petition for expungement and order granting an expungement. Specifies the procedure for expunging pre-1977 convictions. Specifies that the restoration of civil rights due to expunging a conviction does not affect the right to possess a firearm under federal law.

**Effective:** July 1, 2015.

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### Young R Michael

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January 8, 2015, read first time and referred to Committee on Corrections & Criminal Law.  
February 19, 2015, reported favorably — Do Pass.

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SB 287—LS 6665/DI 106





February 20, 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. 287

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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, **charged with an offense, or alleged to be a**  
5 **delinquent child**, if:  
6 (1) the arrest, **charge, or juvenile allegation**:  
7 (A) did not result in a conviction or juvenile adjudication; or  
8 (B) resulted in a conviction or juvenile adjudication and the  
9 conviction or adjudication was vacated on appeal; and  
10 (2) the person is not currently participating in a pretrial diversion  
11 program.  
12 (b) Not earlier than one (1) year after the date of arrest, **criminal**  
13 **charge, or juvenile allegation (whichever is later)**, if the person was  
14 not convicted or adjudicated a delinquent child, or the date of the  
15 opinion vacating the conviction or adjudication becomes final (unless  
16 the prosecuting attorney agrees in writing to an earlier time), the person

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1 may petition the court for expungement of the records related to the  
2 arrest, **charge, or juvenile allegation.**

3 (c) 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, **charge, or juvenile allegation, and**  
8 **conviction (if applicable);**

9 (2) the county in which the arrest occurred, **the county in which**  
10 **the information or indictment was filed, and the county in**  
11 **which the juvenile allegation was filed, if applicable;**

12 (3) the law enforcement agency employing the arresting officer,  
13 if known;

14 **(4) the court in which the charge or juvenile allegation was**  
15 **filed, if applicable;**

16 ~~(4)~~ **(5) any other known identifying information, such as:**

17 (A) the name of the arresting officer;

18 (B) case number; or

19 (C) court cause number;

20 **(D) any aliases or other names used by the petitioner;**

21 **(E) the petitioner's driver's license number; and**

22 **(F) a list of each criminal charge and its disposition, if**  
23 **applicable;**

24 ~~(5)~~ **(6) the date of the petitioner's birth; and**

25 ~~(6)~~ **(7) the petitioner's Social Security number.**

26 **A person who files a petition under this section is not required to**  
27 **pay a filing fee.**

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

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

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

34 (2) shall grant the petition unless:

35 (A) the conditions described in subsection (a) have not been  
36 met; or

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

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

39 **(1) no information concerning the arrest, vacated conviction, or**  
40 **vacated juvenile adjudication may be placed or retained in any**  
41 **state central repository for criminal history information or in any**  
42 **other alphabetically arranged criminal history information system**



1 maintained by a local, regional, or statewide law enforcement  
2 agency;

3 **(2) the clerk of the supreme court shall seal or redact any**  
4 **records in the clerk's possession that relate to the arrest,**  
5 **vacated conviction, or vacated juvenile adjudication;**

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

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

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

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

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

11 **concerning the person shall be redacted or permanently**  
12 **sealed; and**

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

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

22 **(B) provide a redacted copy of the opinion or**  
23 **memorandum decision to any publisher or organization to**  
24 **whom the opinion or memorandum decision is provided**  
25 **after the date of the order of expungement.**

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

30 **(g) If the court issues an order granting a petition for**  
31 **expungement under this section, the court shall include in its order**  
32 **the information described in subsection (c).**

33 **(h) ~~However,~~ This chapter does not require any change or alteration**  
34 **in:**

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

37 **(2) the record of any court in which the criminal charges were**  
38 **filed; or**

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

40 **(g) (i) If a person whose records are expunged brings an action that**  
41 **might be defended with the contents of the expunged records, the**  
42 **defendant is presumed to have a complete defense to the action. In**



1 order for the plaintiff to recover, the plaintiff must show that the  
 2 contents of the expunged records would not exonerate the defendant.  
 3 The plaintiff may be required to state under oath whether the plaintiff  
 4 had records in the criminal justice system and whether those records  
 5 were expunged. If the plaintiff denies the existence of the records, the  
 6 defendant may prove their existence in any manner compatible with the  
 7 law of evidence.

8 SECTION 2. IC 35-38-9-2, AS AMENDED BY P.L.181-2014,  
 9 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10 JULY 1, 2015]: Sec. 2. (a) **Except as provided in section 8.5 of this**  
 11 **chapter**, this section applies only to a person convicted of a  
 12 misdemeanor, including a Class D felony (for a crime committed  
 13 before July 1, 2014) or a Level 6 felony (for a crime committed after  
 14 June 30, 2014) reduced to a misdemeanor.

15 (b) Not earlier than five (5) years after the date of conviction (unless  
 16 the prosecuting attorney consents in writing to an earlier period), the  
 17 person convicted of the misdemeanor may petition a court to expunge  
 18 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 misdemeanor conviction.

25 (c) 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 (d) 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; and
- 34 (4) the person has not been convicted of a crime within the  
 35 previous five (5) 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 (b));

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

40 SECTION 3. IC 35-38-9-3, AS AMENDED BY P.L.181-2014,  
 41 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 JULY 1, 2015]: Sec. 3. (a) Except as provided in subsection (b) **and**



1 **section 8.5 of this chapter**, this section applies only to a person  
 2 convicted of a Class D felony (for a crime committed before July 1,  
 3 2014) or a Level 6 felony (for a crime committed after June 30, 2014).  
 4 This section does not apply to a person if the person's Class D felony  
 5 or Level 6 felony was reduced to a Class A misdemeanor.

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

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

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

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

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

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

15 (A) IC 35-42-1;

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

17 (C) IC 35-42-4.

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

23 (1) a court's files;

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

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

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

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

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

32 (e) If the court finds by a preponderance of the evidence that:

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

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

35 (3) the person has paid all fines, fees, and court costs, and  
 36 satisfied any restitution obligation placed on the person as part of  
 37 the sentence; and

38 (4) the person has not been convicted of a crime within the  
 39 previous eight (8) years (or within a shorter period agreed to by  
 40 the prosecuting attorney if the prosecuting attorney has consented  
 41 to a shorter period under subsection (c));

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



1 expunged in accordance with section 6 of this chapter.

2 SECTION 4. IC 35-38-9-4, AS AMENDED BY P.L.181-2014,  
3 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2015]: Sec. 4. (a) Except as provided in subsection (b) **and**  
5 **section 8.5 of this chapter**, this section applies only to a person  
6 convicted of a felony who may not seek expungement of that felony  
7 under section 3 of this chapter.

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

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

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

12 (3) A person convicted of a felony that resulted in serious bodily  
13 injury to another person.

14 (4) A person convicted of official misconduct (IC 35-44.1-1-1).

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

16 (A) IC 35-42-1;

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

18 (C) IC 35-42-4.

19 (c) Not earlier than the later of eight (8) years from the date of  
20 conviction, or three (3) years from the completion of the person's  
21 sentence, unless the prosecuting attorney consents in writing to an  
22 earlier period, the person convicted of the felony may petition a court  
23 to expunge all conviction records, including records contained in:

24 (1) a court's files;

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

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

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

29 that relate to the person's felony conviction.

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

33 (e) If the court finds by a preponderance of the evidence that:

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

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

36 (3) the person has paid all fines, fees, and court costs, and  
37 satisfied any restitution obligation placed on the person as part of  
38 the sentence; and

39 (4) the person has not been convicted of a crime within the  
40 previous eight (8) years (or within a shorter period agreed to by  
41 the prosecuting attorney if the prosecuting attorney has consented  
42 to a shorter period under subsection (c));



1 the court may order the conviction records described in subsection (c)  
 2 marked as expunged in accordance with section 7 of this chapter. A  
 3 person whose records have been ordered marked as expunged under  
 4 this section is considered to have had the person's records expunged for  
 5 all purposes other than the disposition of the records.

6 SECTION 5. IC 35-38-9-5, AS AMENDED BY P.L.181-2014,  
 7 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2015]: Sec. 5. (a) Except as provided in subsection (b) **and**  
 9 **section 8.5 of this chapter**, this section applies to a person convicted  
 10 of a felony, including:

11 (1) an elected official convicted of an offense while serving the  
 12 official's term or as a candidate for public office; and

13 (2) a person convicted of a felony that resulted in serious bodily  
 14 injury to another person.

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

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

17 (2) A person convicted of official misconduct (IC 35-44.1-1-1).

18 (3) A person convicted of an offense described in:

19 (A) IC 35-42-1;

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

21 (C) IC 35-42-4.

22 (c) Not earlier than the later of ten (10) years from the date of  
 23 conviction, or five (5) years from the completion of the person's  
 24 sentence, unless the prosecuting attorney consents in writing to an  
 25 earlier period, the person convicted of the felony may petition a court  
 26 to expunge all conviction records, including records contained in:

27 (1) a court's files;

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

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

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

32 that relate to the person's felony conviction.

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

36 (e) If the court finds by a preponderance of the evidence that:

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

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

39 (3) the person has paid all fines, fees, and court costs, and  
 40 satisfied any restitution obligation placed on the person as part of  
 41 the sentence;

42 (4) the person has not been convicted of a crime within the



1 previous ten (10) years (or within a shorter period agreed to by the  
 2 prosecuting attorney if the prosecuting attorney has consented to  
 3 a shorter period under subsection (c)); and

4 (5) the prosecuting attorney has consented in writing to the  
 5 expungement of the person's criminal records;

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

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

17 (1) Order:

18 (A) the department of correction;

19 (B) the bureau of motor vehicles; and

20 (C) each:

21 (i) law enforcement agency; and

22 (ii) other person;

23 who incarcerated, provided treatment for, or provided other  
 24 services for the person under an order of the court;

25 to prohibit the release of the person's records or information in the  
 26 person's records to anyone without a court order, other than a law  
 27 enforcement officer acting in the course of the officer's official  
 28 duty.

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

33 (A) a prosecuting attorney, if:

34 (i) authorized by a court order; and

35 (ii) needed to carry out the official duties of the prosecuting  
 36 attorney;

37 (B) a defense attorney, if:

38 (i) authorized by a court order; and

39 (ii) needed to carry out the professional duties of the defense  
 40 attorney;

41 (C) a probation department, if:

42 (i) authorized by a court order; and



- 1 (ii) necessary to prepare a presentence report;  
 2 (D) the Federal Bureau of Investigation and the Department of  
 3 Homeland Security, if disclosure is required to comply with an  
 4 agreement relating to the sharing of criminal history  
 5 information;  
 6 (E) the:  
 7 (i) supreme court;  
 8 (ii) members of the state board of law examiners;  
 9 (iii) executive director of the state board of law examiners;  
 10 and  
 11 (iv) employees of the state board of law examiners, in  
 12 accordance with rules adopted by the state board of law  
 13 examiners;  
 14 for the purpose of determining whether an applicant possesses  
 15 the necessary good moral character for admission to the bar;  
 16 and  
 17 (F) a person required to access expunged records to comply  
 18 with the Secure and Fair Enforcement for Mortgage Licensing  
 19 Act (12 U.S.C. 5101 et seq.) or regulations adopted under the  
 20 Secure and Fair Enforcement for Mortgage Licensing Act.  
 21 (3) Notify the clerk of the supreme court to seal any records in the  
 22 clerk's possession that relate to the conviction.  
 23 A probation department may provide an unredacted version of a  
 24 presentence report disclosed under subdivision (2)(C) to any person  
 25 authorized by law to receive a presentence report.  
 26 (b) Except as provided in subsection (c), if a petition to expunge  
 27 conviction records is granted under sections 2 through 3 of this chapter,  
 28 the records of:  
 29 (1) the sentencing court;  
 30 (2) a juvenile court;  
 31 (3) a court of appeals; and  
 32 (4) the supreme court;  
 33 concerning the person shall be permanently sealed. However, a petition  
 34 for expungement granted under sections 2 through 3 of this chapter  
 35 does not affect an existing or pending driver's license suspension.  
 36 (c) If a petition to expunge conviction records is granted under  
 37 sections 2 through 3 of this chapter with respect to the records of a  
 38 person who is named as an appellant or an appellee in an opinion or  
 39 memorandum decision by the supreme court or the court of appeals, the  
 40 court shall:  
 41 (1) redact the opinion or memorandum decision as it appears on  
 42 the computer gateway administered by the office of technology so



1 that it does not include the petitioner's name (in the same manner  
2 that opinions involving juveniles are redacted); and

3 (2) provide a redacted copy of the opinion to any publisher or  
4 organization to whom the opinion or memorandum decision is  
5 provided after the date of the order of expungement.

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

9 (d) Notwithstanding subsection (b), a prosecuting attorney may  
10 submit a written application to a court that granted an expungement  
11 petition under this chapter to gain access to any records that were  
12 permanently sealed under subsection (b), if the records are relevant in  
13 a new prosecution of the person. If a prosecuting attorney who submits  
14 a written application under this subsection shows that the records are  
15 relevant for a new prosecution of the person, the court that granted the  
16 expungement petition shall:

17 (1) order the records to be unsealed; and

18 (2) allow the prosecuting attorney who submitted the written  
19 application to have access to the records.

20 If a court orders records to be unsealed under this subsection, the court  
21 shall order the records to be permanently resealed at the earliest  
22 possible time after the reasons for unsealing the records cease to exist.  
23 However, if the records are admitted as evidence against the person in  
24 a new prosecution that results in the person's conviction, or are used to  
25 enhance a sentence imposed on the person in a new prosecution, the  
26 court is not required to reseat the records.

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

31 (1) the expungement does not affect the operation of the sex  
32 offender registry web site, any person's ability to access the  
33 person's records, records required to be maintained concerning  
34 sex or violent offenders, or any registration requirement imposed  
35 on the person; and

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

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

42 (g) **If the court issues an order granting a petition for**



1 **expungement under sections 2 through 3 of this chapter, the court**  
 2 **shall include in its order the information described in section 8(b)**  
 3 **of this chapter.**

4 SECTION 7. IC 35-38-9-7, AS AMENDED BY P.L.181-2014,  
 5 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 2015]: Sec. 7. (a) This section applies only to a person who  
 7 has filed a petition for expungement under section 4 or 5 of this chapter  
 8 and whose records have been ordered marked as expunged.

9 (b) The court records and other public records relating to the arrest,  
 10 conviction, or sentence of a person whose conviction records have been  
 11 marked as expunged remain public records. However, the court shall  
 12 order that the records be clearly and visibly marked or identified as  
 13 being expunged. A petition for expungement granted under sections 4  
 14 through 5 of this chapter does not affect an existing or pending driver's  
 15 license suspension.

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

21 **(d) If the court issues an order granting a petition for**  
 22 **expungement under section 4 or 5 of this chapter, the court shall**  
 23 **include in its order the information described in section 8(b) of this**  
 24 **chapter.**

25 SECTION 8. IC 35-38-9-8, AS AMENDED BY P.L.181-2014,  
 26 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 27 JULY 1, 2015]: Sec. 8. (a) This section applies only to a petition to  
 28 expunge conviction records under sections 2 through 5 of this chapter.  
 29 This section does not apply to a petition to expunge ~~arrest~~ records  
 30 **related to the arrest, criminal charge, or juvenile allegation** under  
 31 section 1 of this chapter.

32 (b) Any person may seek an expungement under sections 2 through  
 33 5 of this chapter by filing a verified petition for expungement. The  
 34 petition must include the following:

- 35 (1) The petitioner's full name and all other legal names or aliases  
 36 by which the petitioner is or has been known.
- 37 (2) The petitioner's date of birth.
- 38 (3) The petitioner's addresses from the date of the offense to the  
 39 date of the petition.
- 40 ~~(4) A certified copy of petitioner's records from the bureau of~~  
 41 ~~motor vehicles.~~
- 42 ~~(5)~~ (4) The petitioner shall affirm that no criminal investigation



1 or charges are pending against the petitioner.

2 ~~(6)~~ (5) The petitioner shall affirm that the petitioner has not  
3 committed another crime within the period required for  
4 expungement.

5 ~~(7)~~ (6) The petitioner shall list all convictions, **the cause number**  
6 **from each conviction, and** the date of the conviction, and any  
7 appeals from the conviction and the date any appellate opinion  
8 was handed down, if applicable.

9 **(7) The petitioner shall include:**

10 **(A) the petitioner's Social Security number;**

11 **(B) the petitioner's driver's license number;**

12 **(C) the date of the petitioner's arrest, if applicable; and**

13 **(D) the date on which the petitioner was convicted.**

14 (8) The petitioner shall affirm that the required period has elapsed  
15 or attach a copy of the prosecuting attorney's written consent to a  
16 shorter period.

17 (9) The petitioner shall describe any other petitions that the  
18 petitioner has filed under this chapter.

19 (10) For a petition filed under section 5 of this chapter, the  
20 petitioner shall attach a copy of the prosecuting attorney's written  
21 consent.

22 (11) The petitioner shall provide evidence that the petitioner has  
23 paid all fines, fees, and court costs, and satisfied any restitution  
24 obligation imposed on the person as part of the sentence.

25 (c) The petitioner may include any other information that the  
26 petitioner believes may assist the court. **The petitioner shall include**  
27 **any other necessary information required by the court.**

28 **(d) A person who files a petition under this section is not**  
29 **required to pay a filing fee.**

30 ~~(d)~~ (e) The petitioner shall serve a copy of the petition upon the  
31 prosecuting attorney in accordance with the Indiana Rules of Trial  
32 Procedure.

33 ~~(e)~~ (f) The prosecuting attorney shall inform the victim of the  
34 victim's rights under IC 35-40-6 by contacting the victim at the victim's  
35 last known address.

36 ~~(f)~~ (g) The prosecuting attorney shall reply to the petition not later  
37 than thirty (30) days after receipt. **If the prosecuting attorney fails to**  
38 **timely reply to the petition:**

39 **(1) the prosecuting attorney has waived any objection to the**  
40 **petition; and**

41 **(2) the court shall proceed to consider the petition under**  
42 **section 9 of this chapter.**



1 SECTION 9. IC 35-38-9-8.5 IS ADDED TO THE INDIANA CODE  
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 3 1, 2015]: **Sec. 8.5. (a) This section applies only to a person seeking  
 4 to expunge an Indiana offense punishable by an indeterminate  
 5 sentence under a law other than IC 35-50.**

6 **(b) If the offense for which the person was convicted is a  
 7 misdemeanor at the time the person files the petition for  
 8 expungement, the person may file the petition for expungement  
 9 under section 2 of this chapter.**

10 **(c) If the offense for which the person was convicted:**

11 **(1) is a Level 6 felony at the time the person files the petition  
 12 for expungement; and**

13 **(2) is not substantially similar to an offense described in  
 14 section 3(b) of this chapter;**

15 **the person may file the petition under section 3 of this chapter.**

16 **(d) If:**

17 **(1) the person to whom this chapter applies may not seek  
 18 expungement under section 3 of this chapter; and**

19 **(2) the offense the person seeks to expunge is not substantially  
 20 similar to an offense described in section 4(b) of this chapter;**

21 **the person may file the petition under section 4 of this chapter.**

22 **(e) If the offense for which the person was convicted:**

23 **(1) is a felony at the time of filing the petition, including a  
 24 felony described in section 5(a) of this chapter; and**

25 **(2) is not substantially similar to an offense described in  
 26 section 5(b) of this chapter;**

27 **the person may file the petition under section 5 of this chapter.**

28 SECTION 10. IC 35-38-9-9, AS AMENDED BY P.L.181-2014,  
 29 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 30 JULY 1, 2015]: **Sec. 9. (a) If the prosecuting attorney does not object,  
 31 or has waived objection to the petition under section 8 of this  
 32 chapter, the court may grant the petition for expungement without a  
 33 hearing.**

34 **(b) The court may summarily deny a petition, if the petition does not  
 35 meet the requirements of section 8 of this chapter, or if the statements  
 36 contained in the petition demonstrate that the petitioner is not entitled  
 37 to relief.**

38 **(c) If the prosecuting attorney objects to the petition, the court shall  
 39 set the matter for hearing not sooner than sixty (60) days after service  
 40 of the petition on the prosecuting attorney.**

41 **(d) A victim of the offense for which expungement is sought may  
 42 submit an oral or written statement in support of or in opposition to the**



1 petition at the time of the hearing. The petitioner must prove by a  
2 preponderance of the evidence that the facts alleged in the verified  
3 petition are true.

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

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

8 (g) This subsection applies only to a petition to expunge conviction  
9 records filed under sections 2 through 5 of this chapter. This subsection  
10 does not apply to a petition to expunge ~~arrest~~ records **related to the**  
11 **arrest, criminal charge, or juvenile allegation** under section 1 of this  
12 chapter. A petitioner may seek to expunge more than one (1) conviction  
13 at the same time. The petitioner shall consolidate all convictions that  
14 the petitioner wishes to expunge from the same county in one (1)  
15 petition. A petitioner who wishes to expunge convictions from separate  
16 counties must file a petition in each county in which a conviction was  
17 entered.

18 (h) This subsection applies only to a petition to expunge conviction  
19 records filed under sections 2 through 5 of this chapter. This subsection  
20 does not apply to a petition to expunge ~~arrest~~ records **related to the**  
21 **arrest, criminal charge, or juvenile allegation** under section 1 of this  
22 chapter. Except as provided in subsections (i) and (j), a petitioner may  
23 file a petition for expungement only one (1) time during the petitioner's  
24 lifetime. For purposes of this subsection, all petitions for expungement  
25 filed in separate counties for offenses committed in those counties  
26 count as one (1) petition if they are filed in one (1) three hundred  
27 sixty-five (365) day period.

28 (i) A petitioner whose petition for expungement has been denied, in  
29 whole or in part, may file a subsequent petition for expungement with  
30 respect to one (1) or more convictions included in the initial  
31 expungement petition that were not expunged. However, if the petition  
32 was denied due to the court's exercise of its discretion under section 4  
33 or 5 of this chapter, a subsequent petition for expungement may be  
34 filed only after the elapse of three (3) years from the date on which the  
35 previous expungement petition was denied. Except as provided in  
36 subsection (j), a subsequent petition for expungement may not include  
37 any conviction that was not included in the initial expungement  
38 petition.

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

42 (1) the petitioner intended in good faith to comply with



1 subsections (g) and (h);

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

4 (A) excusable neglect; or

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

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

8 SECTION 11. IC 35-38-9-10, AS AMENDED BY P.L.181-2014,  
9 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10 JULY 1, 2015]: Sec. 10. (a) This section does not apply to a person to  
11 whom sealed records may be disclosed under section 6(a)(2) of this  
12 chapter.

13 (b) It is unlawful discrimination for any person to:

14 (1) suspend;

15 (2) expel;

16 (3) refuse to employ;

17 (4) refuse to admit;

18 (5) refuse to grant or renew a license, permit, or certificate  
19 necessary to engage in any activity, occupation, or profession; or

20 (6) otherwise discriminate against;

21 any person because of a conviction or arrest record expunged or sealed  
22 under this chapter.

23 (c) The civil rights of a person whose conviction has been expunged  
24 shall be restored, including the right to vote, to hold public office, and  
25 to serve as a juror. **However, an expungement granted under this**  
26 **chapter does not restore a person's right to possess a firearm under**  
27 **federal law if federal law does not permit the person to possess a**  
28 **firearm.**

29 (d) In any application for employment, a license, or other right or  
30 privilege, a person may be questioned about a previous criminal record  
31 only in terms that exclude expunged convictions or arrests, such as:  
32 "Have you ever been arrested for or convicted of a crime that has not  
33 been expunged by a court?"

34 (e) A person whose record is expunged shall be treated as if the  
35 person had never been convicted of the offense. However, upon a  
36 subsequent arrest or conviction for an unrelated offense, the prior  
37 expunged conviction:

38 (1) may be considered by the court in determining the sentence  
39 imposed for the new offense;

40 (2) is a prior unrelated conviction for purposes of:

41 (A) a habitual offender enhancement; and

42 (B) enhancing the new offense based on a prior conviction;



- 1                   and  
2                   (3) may be admitted as evidence in the proceeding for a new  
3                   offense as if the conviction had not been expunged.  
4                   (f) Any person that discriminates against a person as described in  
5                   subsection (b) commits a Class C infraction and may be held in  
6                   contempt by the court issuing the order of expungement or by any other  
7                   court of general jurisdiction. Any person may file a written motion of  
8                   contempt to bring an alleged violation of this section to the attention of  
9                   a court. In addition, the person is entitled to injunctive relief.  
10                  (g) In any judicial or administrative proceeding alleging negligence  
11                  or other fault, an order of expungement may be introduced as evidence  
12                  of the person's exercise of due care in hiring, retaining, licensing,  
13                  certifying, admitting to a school or program, or otherwise transacting  
14                  business or engaging in activity with the person to whom the order of  
15                  expungement was issued.  
16                  (h) A conviction that has been expunged under this chapter is not  
17                  admissible as evidence in an action for negligent hiring, admission, or  
18                  licensure against a person or entity who relied on the order.  
19                  (i) **A petition for An expungement case, and all documents filed**  
20                  **in the case, becomes confidential when the court issues the order**  
21                  **granting the petition. and an order for expungement are confidential.**



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections & Criminal Law, to which was referred Senate Bill No. 287, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 287 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 5, Nays 2

