

SENATE BILL No. 88

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-23-8; IC 35-38-9-13.

Synopsis: Expungement of wrongful convictions. Provides that the court shall, on its own motion and without holding a hearing, order the expungement of a person's vacated conviction record if the person qualifies for restitution as a wrongfully incarcerated person within 60 days of receiving notice from the criminal justice institute, unless the court finds that automatic expungement would not serve the interests of justice.

Effective: July 1, 2023.

Bohacek

January 9, 2023, read first time and referred to Committee on Corrections and Criminal Law.



First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE BILL No. 88

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 5-2-23-8, AS AMENDED BY P.L.146-2022,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 8. (a) A person to whom this chapter applies may
4 seek compensation under this chapter by applying to the criminal
5 justice institute on a form and in a manner to be determined by the
6 criminal justice institute. An application must be submitted not later
7 than:
8 (1) November 1, 2021; or
9 (2) two (2) years from the date the:
10 (A) judgment vacating, reversing, or setting aside the person's
11 conviction becomes final; or
12 (B) governor pardons the person;
13 whichever is later. An applicant shall submit additional evidence to the
14 criminal justice institute upon request by the criminal justice institute.
15 (b) An applicant must demonstrate the following in any application
16 submitted to the criminal justice institute:
17 (1) The applicant's eligibility, by a preponderance of the evidence,



for compensation under this chapter as described in this chapter.

(2) The applicant's compliance with any rules promulgated or required by the criminal justice institute pursuant to section 9 of this chapter.

(c) Upon receipt of:

(1) a completed application; and

(2) any additional evidence required by the criminal justice institute;

the criminal justice institute shall evaluate, investigate, and make a determination with respect to an applicant's claim.

(d) If, at the conclusion of an investigation performed pursuant to subsection (c), the criminal justice institute determines that the applicant qualifies for compensation under this chapter, the criminal justice institute shall pay any compensation due to the applicant, subject to the requirements of subsections (e) and (f).

(e) This subsection applies to any application or compensation owed, regardless of when the application was initially submitted or a payment of the compensation was initially made. The criminal justice institute may not pay, or continue to pay, compensation to an applicant who:

(1) has received an award for restitution or damages described in section 1 of this chapter in connection with the conviction;

(2) has a pending case that might result in an award for restitution or damages described in section 1 of this chapter with respect to the conviction;

(3) has not executed the waiver described in section 4 of this chapter;

(4) is currently incarcerated in a county, city, or federal jail or prison or in an institution operated by the department of correction for a crime other than a crime for which the individual was wrongfully incarcerated; or

(5) is currently incarcerated due to the revocation of parole or probation for a crime other than a crime for which the individual was wrongfully incarcerated.

However, after a term of imprisonment described in subdivision (4) or (5) has concluded, the criminal justice institute shall resume paying compensation to the individual.

(f) The criminal justice institute may only pay compensation to the individual who was wrongfully incarcerated or, on behalf of the individual, to the individual's guardian. The criminal justice institute may not pay compensation to:

(1) the estate of;



1 (2) a fiduciary of;
2 (3) a trust on behalf of; or
3 (4) an assignee of;
4 the wrongfully incarcerated individual.

5 **(g) Upon receipt of the materials described in subsection (c), the**
6 **criminal justice institute shall provide notice to the court that the**
7 **individual to whom this chapter applies is seeking compensation**
8 **under this chapter so that the court may consider automatic**
9 **expungement of the individual's conviction record as described in**
10 **IC 35-38-9-13.**

11 SECTION 2. IC 35-38-9-13 IS ADDED TO THE INDIANA CODE
12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2023]: **Sec. 13. (a) This section applies to a person who qualifies**
14 **for compensation described in IC 5-2-23-3.**

15 **(b) The court shall, on its own motion and without holding a**
16 **hearing, order the expungement of a person's vacated conviction**
17 **record, as described in IC 5-2-23, including any records relating to**
18 **the conviction and any records concerning a collateral action,**
19 **within sixty (60) days of receiving notice under IC 5-2-23-8, unless**
20 **the court finds that automatic expungement under this section**
21 **would not serve the interests of justice.**

