

First Regular Session of the 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.

## HOUSE ENROLLED ACT No. 1302

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

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 35-38-9-1, AS AMENDED BY P.L.181-2014, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) This section applies only to a person who has been arrested, **charged with an offense, or alleged to be a delinquent child**, if:

(1) the arrest, **criminal charge, or juvenile delinquency allegation**:

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

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

(2) the person is not currently participating in a pretrial diversion program.

(b) Not earlier than one (1) year after the date of arrest, **criminal charge, or juvenile delinquency allegation (whichever is later)**, if the person was not convicted or adjudicated a delinquent child, or the date of the opinion vacating the conviction or adjudication becomes final (unless the prosecuting attorney agrees in writing to an earlier time), the person may petition the court for expungement of the records related to the arrest, **criminal charge, or juvenile delinquency allegation**.

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(c) A petition for expungement of records must be verified and filed in the court in which the charges were filed; or if no criminal charges were filed, in a court with criminal jurisdiction a circuit or superior court in the county where the criminal charges or juvenile delinquency allegation was filed, or if no criminal charges or juvenile delinquency allegation was filed, in the county where the arrest occurred. The petition must set forth:

- (1) the date of the arrest, **criminal charges, or juvenile delinquency allegation, and conviction (if applicable);**
- (2) the county in which the arrest occurred, **the county in which the information or indictment was filed, and the county in which the juvenile delinquency allegation was filed, if applicable;**
- (3) the law enforcement agency employing the arresting officer, if known;
- (4) **the court in which the criminal charges or juvenile delinquency allegation was filed, if applicable;**
- ~~(4)~~ (5) any other known identifying information, such as:
  - (A) the name of the arresting officer;
  - (B) case number or court cause number;
  - (C) **any aliases or other names used by the petitioner;**
  - (D) **the petitioner's driver's license number; and**
  - (E) **a list of each criminal charge and its disposition, if applicable;**
- ~~(5)~~ (6) the date of the petitioner's birth; and
- ~~(6)~~ (7) the petitioner's Social Security number.

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

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

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

- (1) may summarily deny the petition if the petition does not meet the requirements of this section, or if the statements contained in the petition indicate that the petitioner is not entitled to relief; and
- (2) shall grant the petition unless:
  - (A) the conditions described in subsection (a) have not been met; or
  - (B) criminal charges are pending against the person.

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

- (1) no information concerning the arrest, **criminal charges, juvenile delinquency allegation, vacated conviction, or vacated juvenile delinquency adjudication** may be placed or



retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency;

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

**(3) the records of:**

**(A) the sentencing court;**

**(B) a juvenile court;**

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

**(D) the supreme court;**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

that relate to the person's misdemeanor conviction.

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

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

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) the person has not been convicted of a crime within the



previous five (5) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection ~~(b)~~; **(c)**); the court shall order the conviction records described in subsection ~~(b)~~ **(c)** expunged in accordance with section 6 of this chapter.

SECTION 3. IC 35-38-9-3, AS AMENDED BY P.L.181-2014, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) Except as provided in subsection (b) **and section 8.5 of this chapter**, this section applies only to a person convicted of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014). This section does not apply to a person if the person's Class D felony or Level 6 felony was reduced to a Class A misdemeanor.

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

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

**(6) A person convicted of two (2) or more felony offenses that:**  
**(A) involved the unlawful use of a deadly weapon; and**  
**(B) were not committed as part of the same episode of criminal conduct.**

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

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

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



conviction.

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

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) the person has not been convicted of a crime within the previous eight (8) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c));

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

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

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

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

**(6) A person convicted of two (2) or more felony offenses that:**  
**(A) involved the unlawful use of a deadly weapon; and**  
**(B) were not committed as part of the same episode of criminal conduct.**

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

- (1) a court's files;
- (2) the files of the department of correction;
- (3) the files of the bureau of motor vehicles; and



(4) the files of any other person who provided treatment or services to the petitioning person under a court order; that relate to the person's felony conviction.

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

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

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) the person has not been convicted of a crime within the previous eight (8) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c));

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

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

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

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

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

- (4) **A person convicted of two (2) or more felony offenses that:**
  - (A) **involved the unlawful use of a deadly weapon; and**
  - (B) **were not committed as part of the same episode of criminal conduct.**

(c) Not earlier than the later of ten (10) years from the date of



conviction, or five (5) years from the completion of the person's sentence, unless the prosecuting attorney consents in writing to an earlier period, the person convicted of the felony may petition a court to expunge all conviction records, including records contained in:

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

that relate to the person's felony conviction.

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

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

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence;
- (4) the person has not been convicted of a crime within the previous ten (10) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c)); and
- (5) the prosecuting attorney has consented in writing to the expungement of the person's criminal records;

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

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

- (1) Order:
  - (A) the department of correction;
  - (B) the bureau of motor vehicles; and
  - (C) each:
    - (i) law enforcement agency; and
    - (ii) other person;





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

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

- (A) a prosecuting attorney, if:
  - (i) authorized by a court order; and
  - (ii) needed to carry out the official duties of the prosecuting attorney;
- (B) a defense attorney, if:
  - (i) authorized by a court order; and
  - (ii) needed to carry out the professional duties of the defense attorney;
- (C) a probation department, if:
  - (i) authorized by a court order; and
  - (ii) necessary to prepare a presentence report;
- (D) the Federal Bureau of Investigation and the Department of Homeland Security, if disclosure is required to comply with an agreement relating to the sharing of criminal history information;
- (E) the:
  - (i) supreme court;
  - (ii) members of the state board of law examiners;
  - (iii) executive director of the state board of law examiners; and
  - (iv) employees of the state board of law examiners, in accordance with rules adopted by the state board of law examiners;

for the purpose of determining whether an applicant possesses the necessary good moral character for admission to the bar; **and**

(F) a person required to access expunged records to comply with the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.) or regulations adopted under the Secure and Fair Enforcement for Mortgage Licensing Act; **and**

**(G) the bureau of motor vehicles, the Federal Motor Carrier Administration, and the Commercial Drivers**



**License Information System (CDLIS), if disclosure is required to comply with IC 9-24-6-2(d) relating to reporting a conviction for a violation of a traffic control law.**

(3) Notify the clerk of the supreme court to seal any records in the clerk's possession that relate to the conviction.

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

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

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

concerning the person shall be permanently sealed. However, a petition for expungement granted under sections 2 through 3 of this chapter does not affect an existing or pending driver's license suspension.

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

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

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

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



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

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

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

- (1) the expungement does not affect the operation of the sex offender registry web site, any person's ability to access the person's records, records required to be maintained concerning sex or violent offenders, or any registration requirement imposed on the person; and
- (2) the expunged conviction must be clearly marked as expunged on the sex offender registry web site.

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

**(g) If the court issues an order granting a petition for expungement under sections 2 through 3 of this chapter, the court shall include in its order the information described in section 8(b) of this chapter.**

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

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

(c) The state police department, the bureau of motor vehicles, and



any other law enforcement agency in possession of records that relate to the conviction ordered to be marked as expunged shall add an entry to the person's record of arrest, conviction, or sentence in the criminal history data base stating that the record is marked as expunged. **Nothing in this chapter prevents the bureau of motor vehicles from reporting information about a conviction for a violation of a traffic control law to the Commercial Drivers License Information System (CDLIS), in accordance with IC 9-24-6-2(d), even if the conviction has been expunged under section 4 or 5 of this chapter.**

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

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

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

- (1) The petitioner's full name and all other legal names or aliases by which the petitioner is or has been known.
- (2) The petitioner's date of birth.
- (3) The petitioner's addresses from the date of the offense to the date of the petition.
- (4) The case number or court cause number, if available.**
- ~~(4) A certified copy of petitioner's records from the bureau of motor vehicles.~~
- (5) The petitioner shall affirm that no criminal investigation or charges are pending against the petitioner.
- (6) The petitioner shall affirm that the petitioner has not committed another crime within the period required for expungement.
- (7) The petitioner shall list all convictions, **the cause number of each conviction, if known, and** the date of the conviction, and any appeals from the conviction and the date any appellate opinion was handed down, if applicable.
- (8) The petitioner shall include:**
  - (A) the petitioner's Social Security number;**



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

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

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

~~(8)~~ **(9)** The petitioner shall affirm that the required period has elapsed or attach a copy of the prosecuting attorney's written consent to a shorter period.

~~(9)~~ **(10)** The petitioner shall describe any other petitions that the petitioner has filed under this chapter.

~~(10)~~ **(11)** For a petition filed under section 5 of this chapter, the petitioner shall attach a copy of the prosecuting attorney's written consent.

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

(c) The petitioner may include any other information that the petitioner believes may assist the court.

**(d) A person who files a petition under this section is required to pay the filing fee required in civil cases. The court may reduce or waive this fee if the person is indigent.**

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

~~(e)~~ **(f)** The prosecuting attorney shall inform the victim of the victim's rights under IC 35-40-6 by contacting the victim at the victim's last known address. **However, if a court has no discretion in granting an expungement petition under this chapter, the prosecuting attorney is not required to inform the victim of the victim's rights under this subsection.**

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

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

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

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

**(b) If the offense for which the person was convicted is a misdemeanor at the time the person files the petition for**



expungement, the person may file the petition for expungement under section 2 of this chapter.

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

- (1) is a Level 6 felony at the time the person files the petition for expungement; and
- (2) is not substantially similar to an offense described in section 3(b) of this chapter;

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

(d) If:

- (1) the person to whom this chapter applies may not seek expungement under section 3 of this chapter; and
- (2) the offense the person seeks to expunge is not substantially similar to an offense described in section 4(b) of this chapter;

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

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

- (1) is a felony at the time of filing the petition, including a felony described in section 5(a) of this chapter; and
- (2) is not substantially similar to an offense described in section 5(b) of this chapter;

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

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

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

(c) If the prosecuting attorney objects to the petition, **the prosecuting attorney shall file the reasons for objecting to the petition with the court and serve a copy of the objections on the petitioner at the time the prosecuting attorney objects to the petition.** The court shall set the matter for hearing not sooner than sixty (60) days after service of the petition on the prosecuting attorney.

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

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



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

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

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

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

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

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



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

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

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

- (1) suspend;
- (2) expel;
- (3) refuse to employ;
- (4) refuse to admit;
- (5) refuse to grant or renew a license, permit, or certificate necessary to engage in any activity, occupation, or profession; or
- (6) otherwise discriminate against;

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

(c) **Except as provided in section 6(f) of this chapter**, the civil rights of a person whose conviction has been expunged shall be **fully** restored, including the right to vote, to hold public office, **to be a proper person under IC 35-47-1-7(2)**, and to serve as a juror.

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

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

- (1) may be considered by the court in determining the sentence imposed for the new offense;
- (2) is a prior unrelated conviction for purposes of:
  - (A) a habitual offender enhancement; and
  - (B) enhancing the new offense based on a prior conviction;
 and





(3) may be admitted as evidence in the proceeding for a new offense as if the conviction had not been expunged.

(f) Any person that discriminates against a person as described in subsection (b) commits a Class C infraction and may be held in contempt by the court issuing the order of expungement or by any other court of general jurisdiction. Any person may file a written motion of contempt to bring an alleged violation of this section to the attention of a court. In addition, the person is entitled to injunctive relief.

(g) In any judicial or administrative proceeding alleging negligence or other fault, an order of expungement may be introduced as evidence of the person's exercise of due care in hiring, retaining, licensing, certifying, admitting to a school or program, or otherwise transacting business or engaging in activity with the person to whom the order of expungement was issued.

(h) A conviction that has been expunged under this chapter is not admissible as evidence in an action for negligent hiring, admission, or licensure against a person or entity who relied on the order.

**(i) An expungement case, and all documents filed in the case, becomes confidential when the court issues the order granting the petition. However, until the court issues the order granting the petition, documents filed in the case are not confidential, and any hearing held in the case shall be open. A petition for expungement and an order for expungement are confidential.**



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Speaker of the House of Representatives

\_\_\_\_\_

President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**HEA 1302 — Concur**

