

HOUSE BILL No. 1618

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2-121; IC 35-38-9.

Synopsis: Expungement. Provides that the court shall order the central repository for criminal history information maintained by the state police department to seal a person's expunged conviction records for a misdemeanor or Class D and Level 6 felony conviction including information related to: (1) an arrest or offense in which no conviction was entered and that was committed as part of the same episode of criminal conduct as the case ordered expunged; and (2) any other references to matters related to the case that was ordered expunged.

Effective: July 1, 2019.

Cherry

January 22, 2019, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1618

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 35-31.5-2-121, AS ADDED BY P.L.114-2012,
2 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 121. "Episode of criminal conduct", for purposes
4 of **IC 35-38-9-6** and IC 35-50-1-2, has the meaning set forth in
5 IC 35-50-1-2(b).

6 SECTION 2. IC 35-38-9-6, AS AMENDED BY P.L.198-2016,
7 SECTION 671, IS AMENDED TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) If the court orders conviction
9 records expunged under sections 2 through 3 of this chapter, the court
10 shall do the following with respect to the specific records expunged by
11 the court:

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



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

7 (2) Order the central repository for criminal history information
 8 maintained by the state police department to seal the person's
 9 expunged conviction records, **including information related to:**

10 **(A) an arrest or offense:**

11 **(i) in which no conviction was entered; and**

12 **(ii) that was committed as part of the same episode of**
 13 **criminal conduct (as defined in IC 35-50-1-2(b)) as the**
 14 **case ordered expunged; and**

15 **(B) any other references to matters related to the case that**
 16 **was ordered expunged.**

17 **(3) Records sealed under this subdivision (2) may be disclosed**
 18 **only to:**

19 **(A) a prosecuting attorney, if:**

20 **(i) authorized by a court order; and**

21 **(ii) needed to carry out the official duties of the prosecuting**
 22 **attorney;**

23 **(B) a defense attorney, if:**

24 **(i) authorized by a court order; and**

25 **(ii) needed to carry out the professional duties of the defense**
 26 **attorney;**

27 **(C) a probation department, if:**

28 **(i) authorized by a court order; and**

29 **(ii) necessary to prepare a presentence report;**

30 **(D) the Federal Bureau of Investigation and the Department of**
 31 **Homeland Security, if disclosure is required to comply with an**
 32 **agreement relating to the sharing of criminal history**
 33 **information;**

34 **(E) the:**

35 **(i) supreme court;**

36 **(ii) members of the state board of law examiners;**

37 **(iii) executive director of the state board of law examiners;**
 38 **and**

39 **(iv) employees of the state board of law examiners, in**
 40 **accordance with rules adopted by the state board of law**
 41 **examiners;**

42 **for the purpose of determining whether an applicant possesses**



the necessary good moral character for admission to the bar;
 (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 federal law relating to reporting a conviction for
 a violation of a traffic control law.

~~(3)~~ (4) 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)~~ (3)(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 3. IC 35-38-9-10, AS AMENDED BY P.L.142-2015, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) This section does not apply to a person to whom sealed records may be disclosed under section ~~6(a)(2)~~ **6(a)(3)** 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



1 licensure against a person or entity who relied on the order.
2 (i) An expungement case, and all documents filed in the case,
3 becomes confidential when the court issues the order granting the
4 petition. However, until the court issues the order granting the petition,
5 documents filed in the case are not confidential, and any hearing held
6 in the case shall be open.

