

SENATE BILL No. 34

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2; IC 35-38-11.

Synopsis: Expungement of addiction related convictions. Establishes a procedure to permit a person: (1) with an addiction disorder related conviction; and (2) who has completed a high intensity residential treatment program; to expunge the person's addiction disorder related conviction.

Effective: July 1, 2023.

Crider

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. 34

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 35-31.5-2-3.7 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2023]: **Sec. 3.7. "Addiction disorder", for**
4 **purposes of IC 35-38-11, has the meaning set forth in**
5 **IC 35-38-11-2.**

6 SECTION 2. IC 35-31.5-2-3.8 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2023]: **Sec. 3.8. "Addiction disorder related**
9 **conviction", for purposes of IC 35-38-11, has the meaning set forth**
10 **in IC 35-38-11-2.**

11 SECTION 3. IC 35-31.5-2-152.3 IS ADDED TO THE INDIANA
12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2023]: **Sec. 152.3. "High intensity residential**
14 **treatment program", for purposes of IC 35-38-11, has the meaning**
15 **set forth in IC 35-38-11-2.**

16 SECTION 4. IC 35-31.5-2-297, AS ADDED BY P.L.114-2012,
17 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2023]: Sec. 297. (a) "Sex offense", for purposes of
2 IC 35-38-2-2.5, has the meaning set forth in IC 35-38-2-2.5(b).

3 **(b) "Sex offense", for purposes of IC 35-38-11, has the meaning**
4 **set forth in IC 35-38-11-2.**

5 ~~(b)~~ (c) "Sex offense", for purposes of IC 35-50-2-14, has the
6 meaning set forth in IC 35-50-2-14(a).

7 SECTION 5. IC 35-38-11 IS ADDED TO THE INDIANA CODE
8 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2023]:

10 **Chapter 11. Expungement of Addiction Disorder Related**
11 **Convictions**

12 **Sec. 1. (a) Except as provided in subsection (b), this chapter**
13 **applies only to a person with an addiction disorder related**
14 **conviction.**

15 **(b) This chapter does not apply to a person convicted of:**

- 16 **(1) murder (IC 35-42-1-1);**
17 **(2) voluntary manslaughter (IC 35-42-1-3); or**
18 **(3) a sex offense.**

19 **Sec. 2. The following definitions apply throughout this chapter:**

20 **(1) "Addiction disorder" means a diagnosable chronic**
21 **substance use disorder of sufficient duration to meet**
22 **diagnostic criteria in the most recent edition of the Diagnostic**
23 **and Statistical Manual of Mental Disorders published by the**
24 **American Psychiatric Association.**

25 **(2) "Addiction disorder related conviction" means a**
26 **conviction:**

27 **(A) in which the unlawful possession, distribution,**
28 **cultivation, or manufacture of a controlled substance is a**
29 **material element of the offense;**

30 **(B) in which intoxication or impairment by means of**
31 **alcohol or a controlled substance is a material element of**
32 **the offense; or**

33 **(C) for an offense motivated, in whole or in part, by an**
34 **addiction disorder.**

35 **The term includes a conviction for an offense committed with**
36 **the purpose of obtaining money to purchase a controlled**
37 **substance.**

38 **(3) "High intensity residential treatment program" means an**
39 **inpatient residential treatment program for treatment of**
40 **mental health and addiction disorders that:**

41 **(A) is certified by the division of mental health and**
42 **addiction as providing evidence based mental health and**



1 addiction treatment services;
 2 **(B) provides twenty-four (24) hour inpatient care for a**
 3 **patient in a residential treatment facility with licensed**
 4 **therapists;**
 5 **(C) requires the patient to reside in the residential**
 6 **treatment facility for at least twenty-eight (28) days; and**
 7 **(D) provides follow-up treatment in a transitional facility**
 8 **or on an outpatient basis for at least six (6) months**
 9 **following the patient's discharge from the residential**
 10 **facility.**

11 **(4) "Sex offense" has the meaning set forth in IC 11-8-8-5.2.**

12 **Sec. 3. (a) A person who has successfully completed a high**
 13 **intensity residential treatment program, including successful**
 14 **completion of at least six (6) months of follow-up treatment**
 15 **following the person's discharge from the residential treatment**
 16 **facility, may petition a court to expunge the person's addiction**
 17 **disorder related conviction records, including records contained**
 18 **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 that provided treatment or**
 23 **services to the petitioning person under a court order;**
 24 **that relate to the person's addiction disorder related conviction.**

25 **(b) A person who files a petition to expunge addiction disorder**
 26 **related conviction records shall file the petition in the sentencing**
 27 **court in the county of conviction.**

28 **(c) If the court finds by a preponderance of the evidence that:**

- 29 **(1) the person was convicted of an offense described in section**
 30 **2(2) of this chapter;**
- 31 **(2) the person has successfully completed a high intensity**
 32 **residential treatment program; and**
- 33 **(3) the person has not been charged with another offense;**

34 **the court may order the addiction disorder related conviction**
 35 **records described in subsection (a) expunged in accordance with**
 36 **section 4 of this chapter. The court may order the expungement of**
 37 **some or all of the person's addiction disorder related convictions.**

38 **Sec. 4. (a) If a court orders a person's addiction disorder related**
 39 **conviction records expunged under section 3 of this chapter, the**
 40 **court shall do the following with respect to the specific records**
 41 **expunged by the court:**

- 42 **(1) Order:**



- 1 (A) the department of correction;
 2 (B) the bureau of motor vehicles; and
 3 (C) each:
 4 (i) law enforcement agency; and
 5 (ii) other person;
 6 that incarcerated, provided treatment for, or provided
 7 other services for the person under an order of a court;
 8 to prohibit the release of the person's records or information
 9 in the person's records to anyone without a court order, other
 10 than a law enforcement officer acting in the course of the
 11 officer's official duty.
- 12 (2) Order the central repository for criminal history
 13 information maintained by the state police department to seal
 14 the person's expunged conviction records. Records sealed
 15 under this subdivision may be disclosed only to:
- 16 (A) a prosecuting attorney, if:
 17 (i) authorized by a court order; and
 18 (ii) needed to carry out the official duties of the
 19 prosecuting attorney;
 20 (B) a defense attorney, if:
 21 (i) authorized by a court order; and
 22 (ii) needed to carry out the professional duties of the
 23 defense attorney;
 24 (C) a probation department, if:
 25 (i) authorized by a court order; and
 26 (ii) necessary to prepare a presentence report;
 27 (D) the Federal Bureau of Investigation and the United
 28 States Department of Homeland Security, if disclosure is
 29 required to comply with an agreement relating to the
 30 sharing of criminal history information;
 31 (E) the:
 32 (i) supreme court;
 33 (ii) members of the state board of law examiners;
 34 (iii) executive director of the state board of law
 35 examiners; and
 36 (iv) employees of the state board of law examiners, in
 37 accordance with rules adopted by the state board of law
 38 examiners;
 39 for the purpose of determining whether an applicant
 40 possesses the necessary good moral character for
 41 admission to the bar;
 42 (F) a person required to access expunged records to



1 comply with the Secure and Fair Enforcement for
 2 Mortgage Licensing Act (12 U.S.C. 5101 et seq.) or
 3 regulations adopted under the Secure and Fair
 4 Enforcement for Mortgage Licensing Act; and

5 (G) the bureau of motor vehicles, the Federal Motor
 6 Carrier Safety Administration, and the Commercial
 7 Drivers License Information System (CDLIS), if disclosure
 8 is required to comply with federal law relating to reporting
 9 a conviction for a violation of a traffic control law.

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

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

15 (b) Except as provided in subsection (c), if a petition to expunge
 16 a person's addiction disorder related conviction records is granted
 17 under section 3 of this chapter, the records of:

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

22 concerning the person's addiction disorder related conviction shall
 23 be permanently sealed. However, a petition for expungement
 24 granted under section 3 of this chapter does not affect an existing
 25 or pending driver's license suspension.

26 (c) If a petition to expunge addiction disorder related conviction
 27 records is granted under section 3 of this chapter with respect to
 28 the records of a person who is named as an appellant or an
 29 appellee in an opinion or memorandum decision by the supreme
 30 court or the court of appeals, the court shall:

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

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



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

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

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

21 (e) If a person whose addiction disorder related conviction
22 records are expunged under section 3 of this chapter is required to
23 register as a sex offender based on the commission of a felony that
24 has been expunged:

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

32 (f) Expungement of a crime of domestic violence under section
33 3 of this chapter does not restore a person's right to possess a
34 firearm. The right of a person convicted of a crime of domestic
35 violence to possess a firearm may be restored only in accordance
36 with IC 35-47-4-7.

37 (g) If the court issues an order granting a petition for
38 expungement under section 3 of this chapter, the court shall
39 include in its order the information described in section 5(a) of this
40 chapter.

41 Sec. 5. (a) A person may seek an expungement under section 3
42 of this chapter by filing a verified petition for expungement. The



- 1 petition must include the following:
- 2 (1) The petitioner's full name and all other legal names or
- 3 aliases by which the petitioner is or has been known.
- 4 (2) The petitioner's date of birth.
- 5 (3) The petitioner's addresses from the date of the offense to
- 6 the date of the petition.
- 7 (4) The name and address of the high intensity residential
- 8 treatment program.
- 9 (5) The case number or court cause number, if available.
- 10 (6) The petitioner shall affirm that no criminal investigation
- 11 or charges are pending against the petitioner.
- 12 (7) The petitioner shall affirm that the petitioner has not
- 13 committed another crime within the period required for
- 14 expungement.
- 15 (8) The petitioner shall affirm that the petitioner has
- 16 successfully completed a high intensity residential treatment
- 17 program.
- 18 (9) The petitioner shall list all convictions, the cause number
- 19 of each conviction, if known, the date of the conviction, and
- 20 any appeals from the conviction and the date any appellate
- 21 opinion was handed down, if applicable.
- 22 (10) The petitioner shall separately list the addiction disorder
- 23 related convictions that the petitioner wishes expunged, with
- 24 a concise explanation of why these convictions are addiction
- 25 disorder related convictions.
- 26 (11) The petitioner shall include:
- 27 (A) the petitioner's Social Security number;
- 28 (B) the petitioner's driver's license number;
- 29 (C) the date of the petitioner's arrest, if applicable; and
- 30 (D) the date of the petitioner's addiction disorder related
- 31 conviction.
- 32 (b) The petitioner may include any other information that the
- 33 petitioner believes may assist the court.
- 34 (c) A person who files a petition under this section is required to
- 35 pay the filing fee required in civil cases. The court may reduce or
- 36 waive this fee if the person is indigent.
- 37 (d) The petitioner shall serve a copy of the petition upon the
- 38 prosecuting attorney in accordance with the Indiana Rules of Trial
- 39 Procedure.
- 40 (e) The prosecuting attorney shall inform each victim of the
- 41 offense for which expungement is sought of the victim's rights
- 42 under IC 35-40-6 by contacting the victim at the victim's last



1 known address.

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

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

7 (2) the court shall proceed to consider the petition under
8 section 6 of this chapter.

9 Sec. 6. (a) If the prosecuting attorney does not object or has
10 waived objection to the petition under section 5 of this chapter, the
11 court may grant a petition for expungement under section 3 of this
12 chapter without a hearing.

13 (b) The court may summarily deny a petition for expungement
14 under section 3 of this chapter if the petition does not meet the
15 requirements of section 5 of this chapter, or if the statements
16 contained in the petition demonstrate that the petitioner is not
17 entitled to relief.

18 (c) If the prosecuting attorney objects to the petition, the
19 prosecuting attorney shall file the reasons for objecting to the
20 petition with the court and serve a copy of the objections on the
21 petitioner at the time the prosecuting attorney objects to the
22 petition. The court shall set the matter for hearing not sooner than
23 thirty (30) days after service of the petition on the prosecuting
24 attorney.

25 (d) A victim of the offense for which expungement is sought may
26 submit an oral or written statement in support of or in opposition
27 to the petition at the time of the hearing.

28 (e) At the hearing, the petitioner must prove by a
29 preponderance of the evidence that the facts alleged in the verified
30 petition are true.

31 Sec. 7. The grant or denial of a petition under this chapter is an
32 appealable final order.

33 Sec. 8. A petitioner may seek to expunge more than one (1)
34 addiction disorder related conviction under this chapter at the
35 same time. The petitioner shall consolidate all addiction disorder
36 related convictions that the petitioner wishes to expunge from the
37 same county in one (1) petition. A petitioner who wishes to expunge
38 convictions from separate counties must file a petition in each
39 county in which a conviction was entered.

40 Sec. 9. (a) Except as provided in subsection (e), it is unlawful
41 discrimination for any person to:

42 (1) suspend;



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

8 any person because of a conviction or record expunged under this
 9 chapter.

10 (b) Except as provided in section 4(f) of this chapter, the civil
 11 rights of a person whose conviction has been expunged under this
 12 chapter shall be fully restored, including the right to vote, to hold
 13 public office, to be a proper person under IC 35-47-1-7(2), and to
 14 serve as a juror.

15 (c) A person whose record is expunged under this chapter shall
 16 be treated as if the person had never been convicted of the offense.
 17 However, upon a subsequent arrest or conviction for an unrelated
 18 offense, the prior expunged conviction:

- 19 (1) may be considered by the court in determining the
 20 sentence imposed for the new offense;
 21 (2) is a prior unrelated conviction for purposes of:
 22 (A) a habitual offender enhancement; and
 23 (B) enhancing the new offense based on a prior conviction;
 24 and
 25 (3) may be admitted as evidence in the proceeding for a new
 26 offense as if the conviction had not been expunged.

27 (d) Except as provided in subsection (e), a person that
 28 discriminates against a person as described in subsection (a)
 29 commits a Class C infraction and may be held in contempt by the
 30 court issuing the order of expungement or by any other court of
 31 general jurisdiction.

32 (e) Subsection (d) does not apply to a person to whom sealed
 33 records may be disclosed under section 4(a)(2) of this chapter.

34 (f) Any person may file a written motion of contempt to bring an
 35 alleged violation of this section to the attention of a court. In
 36 addition, the person is entitled to injunctive relief.

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



- 1 **chapter.**
2 **(h) A conviction that has been expunged under this chapter is**
3 **not admissible as evidence in an action for negligent hiring,**
4 **admission, or licensure against a person that relied on the order.**
5 **(i) An expungement case under this chapter, and all documents**
6 **filed in the case, become confidential when the court issues an**
7 **order granting the petition. However, until the court issues an**
8 **order granting the petition, documents filed in the case are not**
9 **confidential, and any hearing held in the case shall be open.**
10 **Sec. 10. (a) A person may not waive the right to expungement**
11 **under this chapter as part of a plea agreement. Any purported**
12 **waiver of the right to expungement under this chapter in a plea**
13 **agreement is invalid and unenforceable as against public policy.**
14 **(b) This section does not prohibit the finding of a waiver of the**
15 **right to expungement under this chapter based on a failure to**
16 **comply with the provisions of this chapter.**
17 **Sec. 11. The remedies provided by this chapter are in addition**
18 **to, and separate from, any other expungement remedies provided**
19 **by law.**

