



February 28, 2020

**ENGROSSED
SENATE BILL No. 47**

DIGEST OF SB 47 (Updated February 26, 2020 3:34 pm - DI 131)

Citations Affected: IC 35-38.

Synopsis: Expungement issues. Provides that if a court reduces a Class D or Level 6 felony to a misdemeanor, the five-year waiting period for expungement begins on the date of the felony conviction and not on the date the felony was converted to a misdemeanor. Provides that, if a person whose records have been expunged seeks employment with a law enforcement agency or a probation or community corrections department, the law enforcement agency or the probation or community corrections department may: (1) inquire about the person's expunged records; and (2) refuse to employ the person. Specifies the procedure to expunge records of a collateral action entered in a different county than the county which issued the expungement order.

Effective: Upon passage; July 1, 2020.

**Freeman, Koch, Bohacek,
Randolph Lonnie M, Boots**
(HOUSE SPONSOR — YOUNG J)

January 6, 2020, read first time and referred to Committee on Corrections and Criminal Law.

January 16, 2020, amended, reported favorably — Do Pass.

January 23, 2020, read second time, ordered engrossed. Engrossed.

January 27, 2020, read third time, passed. Yeas 47, nays 3.

HOUSE ACTION

February 4, 2020, read first time and referred to Committee on Courts and Criminal Code.

February 27, 2020, amended, reported — Do Pass.

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February 28, 2020

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 47

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 35-38-9-2, AS AMENDED BY P.L.219-2019,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 2. (a) Except as provided in subsection (b)
4 and section 8.5 of this chapter, this section applies only to a person
5 convicted of a misdemeanor, including a Class D felony (for a crime
6 committed before July 1, 2014) or a Level 6 felony (for a crime
7 committed after June 30, 2014) reduced to a misdemeanor.
8 (b) This section does not apply to the following:
9 (1) A person convicted of two (2) or more felony offenses that:
10 (A) involved the unlawful use of a deadly weapon; and
11 (B) were not committed as part of the same episode of criminal
12 conduct.
13 (2) A sex or violent offender (as defined in IC 11-8-8-5).
14 (c) Not earlier than five (5) years after the date of conviction (unless
15 the prosecuting attorney consents in writing to an earlier period) **for**
16 **the misdemeanor or the felony reduced to a misdemeanor pursuant**
17 **to IC 35-38-1-1.5 or IC 35-50-2-7**, the person convicted of the

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1 misdemeanor **or the felony reduced to a misdemeanor** may petition
 2 a court to expunge all conviction records, including records contained
 3 in:

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

9 that relate to the person's misdemeanor conviction, including records
 10 of a collateral action.

11 (d) A person who files a petition to expunge conviction records,
 12 including any records relating to the conviction and any records
 13 concerning a collateral action, shall file the petition in a circuit or
 14 superior court in the county of conviction.

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

- 16 (1) the period required by this section has elapsed;
- 17 (2) no charges are pending against the person;
- 18 (3) the person has paid all fines, fees, and court costs, and
 19 satisfied any restitution obligation placed on the person as part of
 20 the sentence; and
- 21 (4) the person has not been convicted of a crime within the
 22 previous five (5) years (or within a shorter period agreed to by the
 23 prosecuting attorney if the prosecuting attorney has consented to
 24 a shorter period under subsection (c));

25 the court shall order the conviction records described in subsection (c),
 26 including any records relating to the conviction and any records
 27 concerning a collateral action, expunged in accordance with section 6
 28 of this chapter.

29 SECTION 2. IC 35-38-9-9.5 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 2020]: **Sec. 9.5. (a) This section applies to a collateral action
 32 adjudicated or conducted in a county other than the county in
 33 which a court granted an expungement.**

34 **(b) Upon receipt of a request to expunge records related to a
 35 collateral action and a properly certified expungement order, a
 36 circuit or superior court in the county in which the collateral
 37 action occurred shall:**

- 38 (1) **notify the prosecuting attorney of the county in which the
 39 court is located of the request to expunge records related to a
 40 collateral action and set the matter for hearing; or**
- 41 (2) **if it conclusively appears from the court's records that the
 42 person is entitled to expungement as described in subsection**



1 (c), order the records expunged without a hearing.

2 (c) The circuit or superior court in the county in which the
3 collateral action was adjudicated or conducted shall order records
4 of the collateral action expunged (for an expungement granted
5 under sections 1 through 3 of this chapter) or marked as expunged
6 (for an expungement granted under sections 4 through 5 of this
7 chapter), unless the court finds that the collateral action does not
8 relate to the expunged arrest or conviction.

9 (d) A request to expunge records of a collateral action may be
10 made at any time after the original expungement order is issued.

11 (e) A request to expunge records shall be filed under the cause
12 number of the collateral action, if applicable. A person who
13 requests expungement of records of a collateral action under this
14 section is not required to pay a filing fee, even if the request is filed
15 under a new cause of action.

16 SECTION 3. IC 35-38-9-10, AS AMENDED BY P.L.219-2019,
17 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2020]: Sec. 10. (a) This section does not apply to a person to
19 whom sealed records may be disclosed under section 6(a)(3) of this
20 chapter. **With respect to a person seeking employment with a law
21 enforcement agency or a probation or community corrections
22 department, including volunteer employment, subsections (b), (d),
23 (e), and (f) do not apply to the law enforcement agency or the
24 probation or community corrections department.**

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

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

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

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

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



- 1 been expunged by a court?".
- 2 (e) A person whose record is expunged shall be treated as if the
- 3 person had never been convicted of the offense. However, upon a
- 4 subsequent arrest or conviction for an unrelated offense, the prior
- 5 expunged conviction:
- 6 (1) may be considered by the court in determining the sentence
- 7 imposed for the new offense;
- 8 (2) is a prior unrelated conviction for purposes of:
- 9 (A) a habitual offender enhancement; and
- 10 (B) enhancing the new offense based on a prior conviction;
- 11 and
- 12 (3) may be admitted as evidence in the proceeding for a new
- 13 offense as if the conviction had not been expunged.
- 14 (f) Any person that discriminates against a person as described in
- 15 subsection (b) commits a Class C infraction and may be held in
- 16 contempt by the court issuing the order of expungement or by any other
- 17 court of general jurisdiction. Any person may file a written motion of
- 18 contempt to bring an alleged violation of this section to the attention of
- 19 a court. In addition, the person is entitled to injunctive relief.
- 20 (g) In any judicial or administrative proceeding alleging negligence
- 21 or other fault, an order of expungement may be introduced as evidence
- 22 of the person's exercise of due care in hiring, retaining, licensing,
- 23 certifying, admitting to a school or program, or otherwise transacting
- 24 business or engaging in activity with the person to whom the order of
- 25 expungement was issued.
- 26 (h) A conviction, including any records relating to the conviction
- 27 and any records concerning a collateral action, that has been expunged
- 28 under this chapter is not admissible as evidence in an action for
- 29 negligent hiring, admission, or licensure against a person or entity who
- 30 relied on the order.
- 31 (i) An expungement case, and all documents filed in the case,
- 32 becomes confidential when the court issues the order granting the
- 33 petition. However, until the court issues the order granting the petition,
- 34 documents filed in the case are not confidential, and any hearing held
- 35 in the case shall be open.
- 36 **SECTION 4. An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 47, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 24-4-18-1, AS AMENDED BY P.L.112-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. (a) As used in this chapter, "criminal history information" means information:

(1) concerning:

(A) a criminal conviction in Indiana; or

(B) an Indiana civil protection order under IC 34-26-5; and

(2) available in records kept by a clerk of a circuit, superior, city, or town court with jurisdiction in Indiana.

(b) The term consists of the following:

(1) Identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges.

(2) **Protection order records (as defined in IC 34-26-7.5-2).**

(2) (3) Information, including a photograph, regarding a sex or violent offender (as defined in IC 11-8-8-5) obtained through sex or violent offender registration under IC 11-8-8.

(3) (4) Any disposition, including sentencing, and correctional system intake, transfer, and release.

(4) (5) A photograph of the person who is the subject of the information described in subdivisions (1) through (3): **this subsection.**

(c) The term includes fingerprint information described in IC 10-13-3-24(f).

SECTION 2. IC 34-6-2-121.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 121.7. "Protection order records", for purposes of IC 34-26-7.5, has the meaning set forth in IC 34-26-7.5-2.**

SECTION 3. IC 34-26-5-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 22. (a) Except as provided in subsection (b), if a court denies a petition for an order of protection filed under this chapter, the court shall order the petition expunged within sixty (60) days**



of the date that the court denied the petition.

(b) If a petition for an order of protection was filed under this chapter before July 1, 2020, and a court denied the petition, the subject of the petition may request that the court expunge the original petition. This subsection does not preclude the subject from seeking expungement under IC 34-26-7.5.

(c) If the court determines that the court denied the petition for an order of protection described in subsection (b), the court shall grant the request and order the petition expunged within sixty (60) days of the date that the request was filed.

(d) An expungement ordered under this section shall be treated for all purposes as an expungement granted under IC 34-26-7.5.

SECTION 4. IC 34-26-7.5-1, AS ADDED BY P.L.219-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. **(a)** This chapter applies to a person named as the subject of a protection order, and if one (1) of the following applies:

(1) A protection order was issued to the plaintiff, but is subsequently terminated due to the:

(A) dismissal of the petition before a court hearing on the protection order;

(B) denial of the protection order upon the order of the court; or

(C) failure of the plaintiff to appear to the court hearing on the protection order.

(2) A protection order was reversed or vacated by an appellate court.

(3) A petition for a protection order was filed but the court did not grant the petition.

(b) The provisions in this chapter are in addition to and supplement the expungement provisions in IC 34-26-5-22.

SECTION 5. IC 34-26-7.5-2, AS ADDED BY P.L.219-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. The following definitions apply throughout this chapter:

(1) "Protection order" means an Indiana civil protection order under IC 34-26-5. The term includes an order for protection and an order for protection ex parte.

(2) "Protection order records" means an Indiana civil protection order under IC 34-26-5 and all records that relate to the protection order, including the petition for the protection order.

~~(2)~~ **(3) "Subject of a protection order" means the person against**



whom a protection order was issued.

~~(3)~~ (4) "Plaintiff" means the person for whom a protection order was issued.

~~(4)~~ (5) "Expungement" means the sealing of protection order ~~court~~ records from public inspection, but not from a law enforcement agency or the court.

SECTION 6. IC 34-26-7.5-3, AS ADDED BY P.L.219-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. (a) At any time after a court dismisses or denies an order for protection following issuance of an order for protection ex parte, as described in section 1(1) of this chapter, the subject of the protection order may petition to expunge ~~the~~ protection order **records**:

- (1) with the court that issued or denied the protection order; and
- (2) in the cause the protection order was issued under.

(b) A petition seeking to expunge a protection order **records** must be filed under seal, verified, and include the following information:

- (1) The petitioner's full name.
- (2) The petitioner's date of birth.
- (3) The petitioner's address.
- (4) The case number or court cause number, if available.
- (5) The petitioner's Social Security number.
- (6) The petitioner's driver's license number.
- (7) The date of the order for protection or order for protection ex parte, if applicable.
- (8) A description of why the petitioner is entitled to relief, including all relevant dates.
- (9) Certified copies of the following, if applicable:
 - (A) The order for protection.
 - (B) The order for protection ex parte.
 - (C) The order denying an order for protection.
 - (D) The opinion from the appellate court reversing or vacating an order for protection or an order for protection ex parte.

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

SECTION 7. IC 34-26-7.5-5, AS ADDED BY P.L.219-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. The petitioner bears the burden of proof in a proceeding to expunge a protection order **records**. The court shall order the protection order **records** expunged if the petitioner proves by a preponderance of the evidence that the petitioner is entitled to relief.

SECTION 8. IC 34-26-7.5-6, AS ADDED BY P.L.219-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2020]: Sec. 6. (a) If a court orders a protection order **records** expunged under this chapter **or under IC 34-26-5-22**, the court shall do the following with respect to the specific records expunged by the court:

(1) Order the office of judicial administration to remove the protection order from the Indiana protective order registry established under IC 5-2-9-5.5.

(2) Redact or permanently seal the court's own records relating to the protection order.

(b) If an appellate court reverses or vacates a protection order, and the protection order is then expunged, the appellate 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 name of the subject of the protection order (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 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 name of the subject of the protection order.

SECTION 9. IC 34-26-7.5-7, AS ADDED BY P.L.219-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 7. A petitioner whose ~~record~~ **is protection order records are** expunged under this chapter **or under IC 34-26-5-22**:

(1) shall be treated as if the protection order **and petition for protection order** had never been filed; and

(2) may answer truthfully to a question from the petitioner's employer or prospective employer that a petition or order of protection has never been filed against the petitioner."

Page 2, between lines 28 and 29, begin a new paragraph and insert:

"SECTION 11. IC 35-38-9-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2020]: **Sec. 9.5. (a) This section applies to a collateral action adjudicated or conducted in a county other than the county in which a court granted an expungement.**

(b) Upon receipt of a request to expunge records related to a collateral action and a properly certified expungement order, a circuit or superior court in the county in which the collateral action occurred shall:



- (1) notify the prosecuting attorney of the county in which the court is located of the request to expunge records related to a collateral action and set the matter for hearing; or
- (2) if it conclusively appears from the court's records that the person is entitled to expungement as described in subsection (c), order the records expunged without a hearing.

(c) The circuit or superior court in the county in which the collateral action was adjudicated or conducted shall order records of the collateral action expunged (for an expungement granted under sections 1 through 3 of this chapter) or marked as expunged (for an expungement granted under sections 4 through 5 of this chapter), unless the court finds that the collateral action does not relate to the expunged arrest or conviction.

(d) A request to expunge records of a collateral action may be made at any time after the original expungement order is issued.

(e) A request to expunge records shall be filed under the cause number of the collateral action, if applicable. A person who requests expungement of records of a collateral action under this section is not required to pay a filing fee, even if the request is filed under a new cause of action.

SECTION 12. IC 35-38-9-10, AS AMENDED BY P.L.219-2019, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 10. (a) This section does not apply to a person to whom sealed records may be disclosed under section 6(a)(3) of this chapter. **With respect to a person seeking employment with a law enforcement agency, including volunteer employment, subsections (b), (d), (e), and (f) do not apply to the law enforcement agency.**

(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, including any records relating to the conviction and any records concerning a collateral action, 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."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.



(Reference is to SB 47 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 47, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 4.

Page 5, delete lines 1 through 6.

Page 5, delete lines 7 through 42, begin a new paragraph and insert:

"SECTION 1. IC 35-38-9-2, AS AMENDED BY P.L.219-2019, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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 the following:

- (1) 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.

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

(c) Not earlier than five (5) years after the date of conviction (unless the prosecuting attorney consents in writing to an earlier period) **for the misdemeanor or the felony reduced to a misdemeanor pursuant to IC 35-38-1-1.5 or IC 35-50-2-7**, the person convicted of the misdemeanor **or the felony reduced to a 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;

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that relate to the person's misdemeanor conviction, including records of a collateral action.

(d) A person who files a petition to expunge conviction records, including any records relating to the conviction and any records concerning a collateral action, 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 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 (c));

the court shall order the conviction records described in subsection (c), including any records relating to the conviction and any records concerning a collateral action, expunged in accordance with section 6 of this chapter."

Page 6, delete lines 1 through 9.

Page 7, line 2, delete "agency," and insert "**agency or a probation or community corrections department,**".

Page 7, line 3, delete "agency." and insert "**agency or the probation or community corrections department.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 47 as printed January 17, 2020.)

MCNAMARA

Committee Vote: yeas 10, nays 1.

