



Reprinted
February 17, 2017

SENATE BILL No. 169

DIGEST OF SB 169 (Updated February 16, 2017 2:22 pm - DI 106)

Citations Affected: IC 35-38.

Synopsis: Expungement. Prohibits a sex or violent offender from expunging a misdemeanor conviction. Provides that arrest records may be expunged if a related conviction is expunged or if the person has completed a diversion program. Permits the expungement of civil forfeiture records if a related arrest or conviction is expunged. Establishes a procedure for the expungement of civil protection orders, and allows the expungement of a civil protection order if: (1) the protection order is granted ex parte and the court subsequently denies the petition for a (regular) protection order following a hearing; or (2) an appellate court reverses or vacates the protection order.

Effective: July 1, 2017.

**Young M, Koch, Alting,
Randolph Lonnie M**

January 4, 2017, read first time and referred to Committee on Corrections and Criminal Law.
February 9, 2017, reported favorably — Do Pass.
February 16, 2017, read second time, amended, ordered engrossed.

SB 169—LS 6649/DI 106



Reprinted
February 17, 2017

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

SENATE BILL No. 169

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 35-38-9-1, AS AMENDED BY P.L.142-2015,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 1. (a) This section applies only to a person who
4 has been arrested, charged with an offense, or alleged to be a
5 delinquent child, if:
6 (1) the arrest, criminal charge, or juvenile delinquency allegation:
7 (A) did not result in a conviction or juvenile adjudication; or
8 (B) resulted in a conviction or juvenile adjudication and the
9 conviction or adjudication was **expunged or was** vacated on
10 appeal; and
11 (2) the person is not currently participating in a pretrial diversion
12 program.
13 (b) Not earlier than one (1) year after the date:
14 (1) of arrest, criminal charge, or juvenile delinquency allegation
15 (whichever is later), if the person:
16 (A) was not convicted or adjudicated a delinquent child; **and**
17 (B) **did not participate in a pretrial diversion program;**

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- 1 **(2) the person completes a pretrial diversion program;**
 2 **(3) an order granting expungement becomes final;** or
 3 **(4) the date of the opinion vacating the conviction or adjudication**
 4 **becomes final; (unless the prosecuting attorney agrees in writing**
 5 **to an earlier time);**

6 the person may petition the court for expungement of the records
 7 related to the arrest, criminal charge, or juvenile delinquency
 8 allegation. **However, a person may petition the court for**
 9 **expungement at an earlier time if the prosecuting attorney agrees**
 10 **in writing to an earlier time.**

11 (c) A petition for expungement of records must be verified and filed
 12 in a circuit or superior court in the county where the criminal charges
 13 or juvenile delinquency allegation was filed, or if no criminal charges
 14 or juvenile delinquency allegation was filed, in the county where the
 15 arrest occurred. The petition must set forth:

- 16 (1) the date of the arrest, criminal charges, or juvenile
 17 delinquency allegation, and conviction (if applicable);
 18 (2) the county in which the arrest occurred, the county in which
 19 the information or indictment was filed, and the county in which
 20 the juvenile delinquency allegation was filed, if applicable;
 21 (3) the law enforcement agency employing the arresting officer,
 22 if known;
 23 (4) the court in which the criminal charges or juvenile
 24 delinquency allegation was filed, if applicable;
 25 (5) any other known identifying information, such as:
 26 (A) the name of the arresting officer;
 27 (B) case number or court cause number;
 28 (C) any aliases or other names used by the petitioner;
 29 (D) the petitioner's driver's license number; and
 30 (E) a list of each criminal charge and its disposition, if
 31 applicable;
 32 (6) the date of the petitioner's birth; and
 33 (7) the petitioner's Social Security number.

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

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

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

- 39 (1) may summarily deny the petition if the petition does not meet
 40 the requirements of this section, or if the statements contained in
 41 the petition indicate that the petitioner is not entitled to relief; and
 42 (2) shall grant the petition unless:



- 1 (A) the conditions described in subsection (a) have not been
 2 met; or
 3 (B) criminal charges are pending against the person.
- 4 (f) Whenever the petition of a person under this section is granted:
 5 (1) no information concerning the arrest, criminal charges,
 6 juvenile delinquency allegation, vacated conviction, or vacated
 7 juvenile delinquency adjudication **(including information from**
 8 **a related seizure or civil forfeiture action that identifies the**
 9 **petitioner)** may be placed or retained in any state central
 10 repository for criminal history information or in any other
 11 alphabetically arranged criminal history information system
 12 maintained by a local, regional, or statewide law enforcement
 13 agency;
 14 (2) the clerk of the supreme court shall seal or redact any records
 15 in the clerk's possession that relate to the arrest, criminal charges,
 16 juvenile delinquency allegation, vacated conviction, or vacated
 17 juvenile delinquency adjudication;
 18 (3) the records of:
 19 (A) the sentencing court;
 20 **(B) a court that conducted a civil forfeiture proceeding**
 21 **with respect to property seized in connection with the**
 22 **arrest, criminal charges, juvenile delinquency allegation,**
 23 **vacated conviction, or vacated juvenile delinquency**
 24 **adjudication;**
 25 ~~(B)~~ (C) a juvenile court;
 26 ~~(C)~~ (D) a court of appeals; and
 27 ~~(D)~~ (E) the supreme court;
 28 concerning the person shall be redacted or permanently sealed;
 29 and
 30 (4) with respect to the records of a person who is named as an
 31 appellant or an appellee in an opinion or memorandum decision
 32 by the supreme court or the court of appeals, **or who is identified**
 33 **as the owner of property seized in a civil forfeiture action,** the
 34 court shall:
 35 (A) redact the opinion or memorandum decision as it appears
 36 on the computer gateway administered by the office of
 37 technology so that it does not include the petitioner's name (in
 38 the same manner that opinions involving juveniles are
 39 redacted); and
 40 (B) provide a redacted copy of the opinion to any publisher or
 41 organization to whom the opinion or memorandum decision is
 42 provided after the date of the order of expungement.



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

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

8 (h) This chapter does not require any change or alteration in:
9 (1) any internal record made by a law enforcement agency at the
10 time of the arrest and not intended for release to the public; or
11 (2) **nonpublic** records that relate to a diversion or deferral
12 program.

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

23 SECTION 2. IC 35-38-9-2, AS AMENDED BY P.L.142-2015,
24 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2017]: Sec. 2. (a) Except as provided in subsection (b) and
26 section 8.5 of this chapter, this section applies only to a person
27 convicted of a misdemeanor, including a Class D felony (for a crime
28 committed before July 1, 2014) or a Level 6 felony (for a crime
29 committed after June 30, 2014) reduced to a misdemeanor.

30 (b) This section does not apply to **the following**:
31 (1) A person convicted of two (2) or more felony offenses that:
32 (†) (A) involved the unlawful use of a deadly weapon; and
33 (‡) (B) were not committed as part of the same episode of
34 criminal conduct.

35 (2) **A sex or violent offender (as defined in IC 11-8-8-5).**
36 (c) Not earlier than five (5) years after the date of conviction (unless
37 the prosecuting attorney consents in writing to an earlier period), the
38 person convicted of the misdemeanor may petition a court to expunge
39 all ~~conviction~~ records, including records contained in:

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



1 (4) the files of any other person who provided treatment or
 2 services to the petitioning person under a court order;
 3 that relate to the person's misdemeanor conviction, **including records**
 4 **of a civil forfeiture.**

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

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

9 (1) the period required by this section has elapsed;

10 (2) no charges are pending against the person;

11 (3) the person has paid all fines, fees, and court costs, and
 12 satisfied any restitution obligation placed on the person as part of
 13 the sentence; and

14 (4) the person has not been convicted of a crime within the
 15 previous five (5) years (or within a shorter period agreed to by the
 16 prosecuting attorney if the prosecuting attorney has consented to
 17 a shorter period under subsection (c));

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

20 SECTION 3. IC 35-38-9-3, AS AMENDED BY P.L.142-2015,
 21 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2017]: Sec. 3. (a) Except as provided in subsection (b) and
 23 section 8.5 of this chapter, this section applies only to a person
 24 convicted of a Class D felony (for a crime committed before July 1,
 25 2014) or a Level 6 felony (for a crime committed after June 30, 2014).
 26 This section does not apply to a person if the person's Class D felony
 27 or Level 6 felony was reduced to a Class A misdemeanor.

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

29 (1) An elected official convicted of an offense while serving the
 30 official's term or as a candidate for public office.

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

32 (3) A person convicted of a felony that resulted in bodily injury to
 33 another person.

34 (4) A person convicted of perjury (IC 35-44.1-2-1) or official
 35 misconduct (IC 35-44.1-1-1).

36 (5) A person convicted of an offense described in:

37 (A) IC 35-42-1;

38 (B) IC 35-42-3.5; or

39 (C) IC 35-42-4.

40 (6) A person convicted of two (2) or more felony offenses that:

41 (A) involved the unlawful use of a deadly weapon; and

42 (B) were not committed as part of the same episode of criminal



1 conduct.

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

- 7 (1) a court's files;
8 (2) the files of the department of correction;
9 (3) the files of the bureau of motor vehicles; and
10 (4) the files of any other person who provided treatment or
11 services to the petitioning person under a court order;
12 that relate to the person's Class D or Level 6 felony conviction,
13 **including records of a civil forfeiture.**

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

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

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

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

29 SECTION 4. IC 35-38-9-4, AS AMENDED BY P.L.142-2015,
30 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2017]: Sec. 4. (a) Except as provided in subsection (b) and
32 section 8.5 of this chapter, this section applies only to a person
33 convicted of a felony who may not seek expungement of that felony
34 under section 3 of this chapter.

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

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



- 1 (A) IC 35-42-1;
 2 (B) IC 35-42-3.5; or
 3 (C) IC 35-42-4.
- 4 (6) A person convicted of two (2) or more felony offenses that:
 5 (A) involved the unlawful use of a deadly weapon; and
 6 (B) were not committed as part of the same episode of criminal
 7 conduct.
- 8 (c) Not earlier than the later of eight (8) years from the date of
 9 conviction, or three (3) years from the completion of the person's
 10 sentence, unless the prosecuting attorney consents in writing to an
 11 earlier period, the person convicted of the felony may petition a court
 12 to expunge all conviction records, including records contained in:
 13 (1) a court's files **(including a court that conducted a civil**
 14 **forfeiture proceeding that relates to the conviction);**
 15 (2) the files of the department of correction;
 16 (3) the files of the bureau of motor vehicles; and
 17 (4) the files of any other person who provided treatment or
 18 services to the petitioning person under a court order;
 19 that relate to the person's felony conviction, **including records of a**
 20 **civil forfeiture.**
- 21 (d) A person who files a petition to expunge conviction records shall
 22 file the petition in a circuit or superior court in the county of
 23 conviction.
- 24 (e) If the court finds by a preponderance of the evidence that:
 25 (1) the period required by this section has elapsed;
 26 (2) no charges are pending against the person;
 27 (3) the person has paid all fines, fees, and court costs, and
 28 satisfied any restitution obligation placed on the person as part of
 29 the sentence; and
 30 (4) the person has not been convicted of a crime within the
 31 previous eight (8) years (or within a shorter period agreed to by
 32 the prosecuting attorney if the prosecuting attorney has consented
 33 to a shorter period under subsection (c));
 34 the court may order the conviction records described in subsection (c)
 35 marked as expunged in accordance with section 7 of this chapter. A
 36 person whose records have been ordered marked as expunged under
 37 this section is considered to have had the person's records expunged for
 38 all purposes other than the disposition of the records.
- 39 SECTION 5. IC 35-38-9-5, AS AMENDED BY P.L.142-2015,
 40 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2017]: Sec. 5. (a) Except as provided in subsection (b) and
 42 section 8.5 of this chapter, this section applies to a person convicted of



- 1 a felony, including:
- 2 (1) an elected official convicted of an offense while serving the
- 3 official's term or as a candidate for public office; and
- 4 (2) a person convicted of a felony that resulted in serious bodily
- 5 injury to another person.
- 6 (b) This section does not apply to the following:
- 7 (1) A sex or violent offender (as defined in IC 11-8-8-5).
- 8 (2) A person convicted of official misconduct (IC 35-44.1-1-1).
- 9 (3) A person convicted of an offense described in:
- 10 (A) IC 35-42-1;
- 11 (B) IC 35-42-3.5; or
- 12 (C) IC 35-42-4.
- 13 (4) A person convicted of two (2) or more felony offenses that:
- 14 (A) involved the unlawful use of a deadly weapon; and
- 15 (B) were not committed as part of the same episode of criminal
- 16 conduct.
- 17 (c) Not earlier than the later of ten (10) years from the date of
- 18 conviction, or five (5) years from the completion of the person's
- 19 sentence, unless the prosecuting attorney consents in writing to an
- 20 earlier period, the person convicted of the felony may petition a court
- 21 to expunge all ~~conviction~~ records, including records contained in:
- 22 (1) a court's files;
- 23 (2) the files of the department of correction;
- 24 (3) the files of the bureau of motor vehicles; and
- 25 (4) the files of any other person who provided treatment or
- 26 services to the petitioning person under a court order;
- 27 that relate to the person's felony conviction, **including records of a**
- 28 **civil forfeiture.**
- 29 (d) A person who files a petition to expunge conviction records shall
- 30 file the petition in a circuit or superior court in the county of
- 31 conviction.
- 32 (e) If the court finds by a preponderance of the evidence that:
- 33 (1) the period required by this section has elapsed;
- 34 (2) no charges are pending against the person;
- 35 (3) the person has paid all fines, fees, and court costs, and
- 36 satisfied any restitution obligation placed on the person as part of
- 37 the sentence;
- 38 (4) the person has not been convicted of a crime within the
- 39 previous ten (10) years (or within a shorter period agreed to by the
- 40 prosecuting attorney if the prosecuting attorney has consented to
- 41 a shorter period under subsection (c)); and
- 42 (5) the prosecuting attorney has consented in writing to the



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

7 SECTION 6. IC 35-38-9-6, AS AMENDED BY P.L.198-2016,
 8 SECTION 671, IS AMENDED TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2017]: Sec. 6. (a) If the court orders conviction
 10 records expunged under sections 2 through 3 of this chapter, the court
 11 shall do the following with respect to the specific records expunged by
 12 the court:

13 (1) Order:

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

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

25 (2) Order the central repository for criminal history information
 26 maintained by the state police department to seal the person's
 27 expunged conviction records, **including records related to**
 28 **charges on which no conviction was entered and any other**
 29 **references to any matters related to the case ordered**
 30 **expunged.** Records sealed under this subdivision may be
 31 disclosed only to:

- 32 (A) a prosecuting attorney, if:
 33 (i) authorized by a court order; and
 34 (ii) needed to carry out the official duties of the prosecuting
 35 attorney;
 36 (B) a defense attorney, if:
 37 (i) authorized by a court order; and
 38 (ii) needed to carry out the professional duties of the defense
 39 attorney;
 40 (C) a probation department, if:
 41 (i) authorized by a court order; and
 42 (ii) necessary to prepare a presentence report;



1 (D) the Federal Bureau of Investigation and the Department of
 2 Homeland Security, if disclosure is required to comply with an
 3 agreement relating to the sharing of criminal history
 4 information;

5 (E) the:

6 (i) supreme court;

7 (ii) members of the state board of law examiners;

8 (iii) executive director of the state board of law examiners;
 9 and

10 (iv) employees of the state board of law examiners, in
 11 accordance with rules adopted by the state board of law
 12 examiners;

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

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

19 (G) the bureau of motor vehicles, the Federal Motor Carrier
 20 Administration, and the Commercial Drivers License
 21 Information System (CDLIS), if disclosure is required to
 22 comply with federal law relating to reporting a conviction for
 23 a violation of a traffic control law.

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

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

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

32 (1) the sentencing court;

33 **(2) a court that conducted a civil forfeiture proceeding with
 34 respect to property seized in connection with the conviction;**

35 ~~(3)~~ (3) a juvenile court;

36 ~~(4)~~ (4) a court of appeals; and

37 ~~(5)~~ (5) the supreme court;

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

41 (c) If a petition to expunge conviction records is granted under
 42 sections 2 through 3 of this chapter with respect to the records of a



1 person who is named as an appellant or an appellee in an opinion or
2 memorandum decision by the supreme court or the court of appeals, **or**
3 **who is identified as the owner of property seized in a civil**
4 **forfeiture action**, the court shall:

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

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

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

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

23 (1) order the records to be unsealed; and

24 (2) allow the prosecuting attorney who submitted the written
25 application to have access to the records.

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

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

37 (1) the expungement does not affect the operation of the sex
38 offender registry web site, any person's ability to access the
39 person's records, records required to be maintained concerning
40 sex or violent offenders, or any registration requirement imposed
41 on the person; and

42 (2) the expunged conviction **records** must be clearly marked as



- 1 expunged on the sex offender registry web site.
- 2 (f) Expungement of a crime of domestic violence under section 2 of
3 this chapter does not restore a person's right to possess a firearm. The
4 right of a person convicted of a crime of domestic violence to possess
5 a firearm may be restored only in accordance with IC 35-47-4-7.
- 6 (g) If the court issues an order granting a petition for expungement
7 under sections 2 through 3 of this chapter, the court shall include in its
8 order the information described in section 8(b) of this chapter.
- 9 SECTION 7. IC 35-38-9-7, AS AMENDED BY P.L.198-2016,
10 SECTION 672, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 7. (a) This section applies only to
11 a person who has filed a petition for expungement under section 4 or
12 5 of this chapter and whose records have been ordered marked as
13 expunged.
14
- 15 (b) The court records and other public records (**including civil
16 forfeiture records**) relating to the arrest, conviction, or sentence of a
17 person whose conviction records have been marked as expunged
18 remain public records. However, the court shall order that the records
19 be clearly and visibly marked or identified as being expunged. A
20 petition for expungement granted under sections 4 through 5 of this
21 chapter does not affect an existing or pending driver's license
22 suspension.
- 23 (c) The state police department, the bureau of motor vehicles, and
24 any other law enforcement agency in possession of records that relate
25 to the conviction ordered to be marked as expunged shall add an entry
26 to the person's record of arrest, conviction, or sentence in the criminal
27 history data base stating that the record is marked as expunged.
28 Nothing in this chapter prevents the bureau of motor vehicles from
29 reporting information about a conviction for a violation of a traffic
30 control law to the Commercial Drivers License Information System
31 (CDLIS), in accordance with federal law, even if the conviction has
32 been expunged under section 4 or 5 of this chapter.
- 33 (d) If the court issues an order granting a petition for expungement
34 under section 4 or 5 of this chapter, the court shall include in its order
35 the information described in section 8(b) of this chapter.
- 36 SECTION 8. IC 35-38-9-8, AS AMENDED BY P.L.142-2015,
37 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2017]: Sec. 8. (a) This section applies only to a petition to
39 expunge conviction records under sections 2 through 5 of this chapter.
40 This section does not apply to a petition to expunge records related to
41 the arrest, criminal charge, or juvenile delinquency allegation under
42 section 1 of this chapter.



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

4 (1) The petitioner's full name and all other legal names or aliases
5 by which the petitioner is or has been known.

6 (2) The petitioner's date of birth.

7 (3) The petitioner's addresses from the date of the offense to the
8 date of the petition.

9 (4) The case number or court cause number, if available.

10 (5) The petitioner shall affirm that no criminal investigation or
11 charges are pending against the petitioner.

12 (6) The petitioner shall affirm that the petitioner has not
13 committed another crime within the period required for
14 expungement.

15 (7) The petitioner shall list all convictions, **all civil forfeitures**,
16 the cause number of each conviction, if known, the date of the
17 conviction, and any appeals from the conviction and the date any
18 appellate opinion was handed down, if applicable.

19 (8) The petitioner shall include:

20 (A) the petitioner's Social Security number;

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

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

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

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

27 (10) The petitioner shall describe any other petitions that the
28 petitioner has filed under this chapter.

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

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

34 (d) 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 waive
36 this fee if the person is indigent.

37 (e) 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 (f) The prosecuting attorney shall inform the victim of the victim's
41 rights under IC 35-40-6 by contacting the victim at the victim's last
42 known address. However, if a court has no discretion in granting an



1 expungement petition under this chapter, the prosecuting attorney is
 2 not required to inform the victim of the victim's rights under this
 3 subsection.

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

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

9 (2) the court shall proceed to consider the petition under section
 10 9 of this chapter.

11 SECTION 9. IC 35-38-10 IS ADDED TO THE INDIANA CODE
 12 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2017]: **Chapter 10. Expungement of Unfounded Protection
 14 Orders**

15 **Sec. 1. This chapter applies to a person named as the subject of
 16 a protection order, if a court granted:**

17 (1) an order for protection ex parte and subsequently denied
 18 a petition for an order for protection; or

19 (2) an order for protection or an order for protection ex parte
 20 and an appellate court reversed or vacated the order for
 21 protection or order for protection ex parte.

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

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

26 (2) "Subject of a protection order" means the person against
 27 whom a protection order was issued.

28 **Sec. 3. (a) At any time after:**

29 (1) a court denies an order for protection following issuance
 30 of an order for protection ex parte, as described in section
 31 1(1) of this chapter; or

32 (2) the opinion reversing or vacating an order of protection
 33 becomes final, as described in section 1(2) of this chapter;

34 the subject of a protection order may bring an action in the court
 35 that granted the protection order to expunge the protection order.

36 (b) A petition seeking to expunge a protection order must
 37 include the following information:

38 (1) The petitioner's full name.

39 (2) The petitioner's date of birth.

40 (3) The petitioner's address.

41 (4) The case number or court cause number, if available.

42 (5) The petitioner shall include:



- 1 (A) the petitioner's Social Security number;
- 2 (B) the petitioner's driver's license number; and
- 3 (C) the date of the order of protection or order of
- 4 protection ex parte, if applicable.
- 5 (6) The petitioner shall describe why the petitioner is entitled
- 6 to relief, including all relevant dates. The petitioner shall
- 7 attach to the petition certified copies of the following, if
- 8 applicable:
- 9 (A) The order of protection ex parte.
- 10 (B) The order of protection.
- 11 (C) The order denying an order for protection.
- 12 (D) The opinion from the appellate court reversing or
- 13 vacating an order for protection or order for protection ex
- 14 parte.
- 15 (c) The petitioner may include any other information that the
- 16 petitioner believes may assist the court.
- 17 (d) A person who files a petition under this section is required
- 18 to pay the filing fee required in civil cases. The court may reduce
- 19 or waive this fee if the person is indigent.
- 20 Sec. 4. (a) Unless the petition is incomplete, or it appears
- 21 conclusively from the petition that the petitioner is not entitled to
- 22 relief, the court shall:
- 23 (1) serve a copy of the petition on the person who originally
- 24 sought the protection order; and
- 25 (2) set the matter for hearing.
- 26 The person who originally sought the protection order is entitled
- 27 to appear at the hearing.
- 28 (b) If:
- 29 (1) the person who originally sought the protection order
- 30 waives in writing the right to appear at the hearing; and
- 31 (2) it conclusively appears from the petition that the petitioner
- 32 is entitled to relief;
- 33 the court may issue an order to expunge a protection order without
- 34 holding a hearing.
- 35 (c) The grant or denial of a petition for expungement is a final
- 36 appealable order.
- 37 Sec. 5. The petitioner bears the burden of proof in a proceeding
- 38 to expunge a protection order.
- 39 Sec. 6. (a) If a court orders a protection order expunged under
- 40 this chapter, the court shall do the following with respect to the
- 41 specific records expunged by the court:
- 42 (1) Order the division of state court administration to remove



1 the protection order from the Indiana protective order
2 registry established under IC 5-2-9-5.5.

3 (2) Order the state police department to remove the
4 protection order from the Indiana data and communication
5 system (IDACS) computer described in IC 10-13-3-35.

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

8 (b) If an appellate court reverses or vacates a protection order,
9 and the protection order is then expunged, the appellate court
10 shall:

11 (1) redact the opinion or memorandum decision as it appears
12 on the computer gateway administered by the office of
13 technology so that it does not include the name of the subject
14 of the protection order (in the same manner that opinions
15 involving juveniles are redacted); and

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

19 The supreme court and the court of appeals are not required to
20 redact, destroy, or otherwise dispose of any existing copy of an
21 opinion or memorandum decision that includes the name of the
22 subject of the protection order.

23 (c) An expungement case, and all documents filed in the case,
24 become confidential when the court issues the order granting the
25 petition. However, until the court issues the order granting the
26 petition, documents filed in the case are not confidential, and any
27 hearing held in the case shall be open.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 169, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 169 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 9, Nays 0

SENATE MOTION

Madam President: I move that Senate Bill 169 be amended to read as follows:

Page 9, line 27, delete "." and insert ", **including records related to charges on which no conviction was entered and any other references to any matters related to the case ordered expunged.**".

(Reference is to SB 169 as printed February 10, 2017.)

YOUNG M

SENATE MOTION

Madam President: I move that Senate Bill 169 be amended to read as follows:

Page 14, after line 7, begin a new paragraph and insert:

"SECTION 9. IC 35-38-10 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Chapter 10. Expungement of Unfounded Protection Orders**

Sec. 1. This chapter applies to a person named as the subject of a protection order, if a court granted:

- (1) an order for protection ex parte and subsequently denied a petition for an order for protection; or**
- (2) an order for protection or an order for protection ex parte and an appellate court reversed or vacated the order for protection or order for protection ex parte.**

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 a protection order and a protection order ex parte.

(2) "Subject of a protection order" means the person against whom a protection order was issued.

Sec. 3. (a) At any time after:

(1) a court denies an order for protection following issuance of an order for protection ex parte, as described in section 1(1) of this chapter; or

(2) the opinion reversing or vacating an order of protection becomes final, as described in section 1(2) of this chapter;

the subject of a protection order may bring an action in the court that granted the protection order to expunge the protection order.

(b) A petition seeking to expunge a protection order must 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 shall include:

(A) the petitioner's Social Security number;

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

(C) the date of the order of protection or order of protection ex parte, if applicable.

(6) The petitioner shall describe why the petitioner is entitled to relief, including all relevant dates. The petitioner shall attach to the petition certified copies of the following, if applicable:

(A) The order of protection ex parte.

(B) The order of protection.

(C) The order denying an order for protection.

(D) The opinion from the appellate court reversing or vacating an order for protection or order for protection ex parte.

(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.

Sec. 4. (a) Unless the petition is incomplete, or it appears conclusively from the petition that the petitioner is not entitled to relief, the court shall:

(1) serve a copy of the petition on the person who originally



sought the protection order; and

(2) set the matter for hearing.

The person who originally sought the protection order is entitled to appear at the hearing.

(b) If:

(1) the person who originally sought the protection order waives in writing the right to appear at the hearing; and

(2) it conclusively appears from the petition that the petitioner is entitled to relief;

the court may issue an order to expunge a protection order without holding a hearing.

(c) The grant or denial of a petition for expungement is a final appealable order.

Sec. 5. The petitioner bears the burden of proof in a proceeding to expunge a protection order.

Sec. 6. (a) If a court orders a protection order expunged under this chapter, the court shall do the following with respect to the specific records expunged by the court:

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

(2) Order the state police department to remove the protection order from the Indiana data and communication system (IDACS) computer described in IC 10-13-3-35.

(3) 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.

(c) An expungement case, and all documents filed in the case,



become 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.

(Reference is to SB 169 as printed February 10, 2017.)

YOUNG M

