

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 182

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

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

SECTION 1. IC 35-38-9-1, AS AMENDED BY P.L.219-2019, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. (a) This section applies only to a person who has been arrested, charged with an offense, or alleged to be a delinquent child, if:

- (1) the arrest, criminal charge, or juvenile delinquency allegation:
 - (A) did not result in a conviction or juvenile adjudication, **even if the arrest, criminal charge, or juvenile delinquency allegation resulted in an adjudication for an infraction**; or
 - (B) resulted in a conviction or juvenile adjudication and the conviction or adjudication was expunged under sections 2 through 5 of this chapter, or was later vacated; and
- (2) the person is not currently participating in a pretrial diversion program, **unless the prosecuting attorney authorizes the person to petition for an expungement under this section.**

(b) This subsection applies to a person charged with an offense or alleged to be a delinquent child after June 30, 2022. If:

- (1) a court dismisses all:
 - (A) criminal charges; or
 - (B) juvenile delinquency allegations;
- filed and pending against a person;**

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(2) one (1) year has passed since juvenile delinquency allegations were filed against a child, and:

(A) there is no disposition; and

(B) the state is not actively prosecuting the allegations; or

(3) in a:

(A) criminal trial a defendant is acquitted of all charges, or the defendant's conviction is later vacated; or

(B) juvenile proceeding the court finds all allegations not true, or the juvenile's true finding is later vacated;

the court shall immediately order all records related to the criminal charges or juvenile delinquency allegations expunged. An expungement order that is issued based on nonprosecution under subdivision (2) goes into effect immediately. An expungement order issued under subdivision (1) or (3) may not go into effect earlier than sixty (60) days from the date of the dismissal, acquittal, or no true finding. However, upon motion by the prosecuting attorney, if the court finds that specific facts exist in the particular case which justify a delay, the court may delay implementation of an expungement order under subdivision (1) or (3) for up to one (1) year from the date of the dismissal, acquittal, or no true finding.

(c) This subsection applies to a person arrested after June 30, 2022. If:

(1) a person is arrested;

(2) one hundred eighty (180) days have elapsed since the date of the arrest; and

(3) no charges are pending against the person;

the prosecuting attorney shall notify a judge exercising criminal jurisdiction in the county (or a designated judge, if applicable) of these facts. Upon receipt of the notification, the judge shall immediately order the expungement of all records related to the arrest.

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

(e) A petition for expungement of records must be verified and filed in a circuit or superior court in the county where the criminal charges or juvenile delinquency allegation was filed, or if no criminal



charges or juvenile delinquency allegation was filed, in the county where the arrest occurred. The petition must set forth:

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

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

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

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

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

~~(f)~~ **(h)** Whenever the petition of a person under this section is granted, **or if an expungement order is issued without a petition under subsection (b) or (c):**

- (1) no information concerning the arrest, criminal charges, juvenile delinquency allegation, vacated conviction, or vacated juvenile delinquency adjudication (including information from a collateral action that identifies the petitioner), may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or



statewide law enforcement agency;

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

(3) the records of:

- (A) the sentencing court;
- (B) a court that conducted a collateral action;
- (C) a juvenile court;
- (D) a court of appeals; and
- (E) the supreme court;

concerning the person shall be redacted or permanently sealed; and

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

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

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

~~(g)~~ **(i)** If the court issues an order granting a petition for expungement under this section, **or issues an order for expungement without a petition under subsection (b) or (c)**, the order must include the information described in ~~subsection (c)~~: **subsection (e)**.

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



compatible with the law of evidence.

SECTION 2. IC 35-38-9-6, AS AMENDED BY P.L.219-2019, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 6. (a) If the court orders conviction records, including any records relating to the conviction and any records concerning a collateral action, expunged under sections 2 through 3 of this chapter, the court shall do the following with respect to the specific records expunged by the court:

(1) Order:

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

who incarcerated, prosecuted, provided treatment for, or provided other services for the person under an order of the court;

to prohibit the release of the person's records or information in the person's records to anyone without a court order, other than a law enforcement officer acting in the course of the officer's official duty.

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

- (A) an arrest or offense:
 - (i) in which no conviction was entered; and
 - (ii) that was committed as part of the same episode of criminal conduct as the case ordered expunged; and
- (B) any other references to any matters related to the case ordered expunged, including in a collateral action.

This subdivision does not require the state police department to seal any record the state police department does not have legal authority to seal.

(3) Records sealed under subdivision (2) may be disclosed only to:

- (A) a prosecuting attorney, if:
 - (i) authorized by a court order; and
 - (ii) needed to carry out the official duties of the prosecuting attorney;
- (B) a defense attorney, if:
 - (i) authorized by a court order; and
 - (ii) needed to carry out the professional duties of the defense



attorney;

(C) a probation department, if:

(i) authorized by a court order; and

(ii) necessary to prepare a presentence report;

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

(E) the:

(i) supreme court;

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

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

and

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

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

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

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

(4) Notify the clerk of the supreme court to seal any records in the clerk's possession that relate to the conviction, including any records concerning a collateral action.

A probation department may provide an unredacted version of a presentence report disclosed under subdivision (3)(C) to any person authorized by law to receive a presentence report.

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

(1) the sentencing court;

(2) a court that conducted a collateral action;

(3) a juvenile court;

(4) a court of appeals; and

(5) the supreme court;

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

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

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

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

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

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

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

(e) If a person whose conviction records, including any records relating to the conviction and any records concerning a collateral action, are expunged under sections 2 through 5 of this chapter is required to register as a sex offender based on the commission of a



felony which has been expunged:

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

(2) the expunged conviction records must be clearly marked as expunged on the sex offender registry web site.

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

(g) If a court issues an order granting a petition for expungement under sections 2 through 3 of this chapter, the court shall also order any related records described in section ~~1(f)~~ **1(h)** of this chapter sealed or redacted in the manner described in section 1 of this chapter, unless the records described in section ~~1(f)~~ **1(h)** of this chapter have been ordered sealed and redacted under this section.

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

SECTION 3. IC 35-38-9-7, AS AMENDED BY P.L.219-2019, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 7. (a) This section applies only to a person who has filed a petition for expungement under section 4 or 5 of this chapter and whose records have been ordered marked as expunged.

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

(c) The state police department, the bureau of motor vehicles, and any other law enforcement agency in possession of records that relate to the conviction, including any records concerning a collateral action, ordered to be marked as expunged shall add an entry to the person's record of arrest, conviction, or sentence in the criminal history data base stating that the record is marked as expunged. Nothing in this chapter prevents the bureau of motor vehicles from reporting information about a conviction for a violation of a traffic control law



to the Commercial Drivers License Information System (CDLIS), in accordance with federal law, even if the conviction has been expunged under section 4 or 5 of this chapter.

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

(e) If a court issues an order granting a petition for expungement under sections 4 through 5 of this chapter, the court shall also order any related records described in section ~~1(f)~~ **1(h)** of this chapter marked as expunged, unless the records described in section ~~1(f)~~ **1(h)** of this chapter have been ordered marked as expunged under this section.

SECTION 4. IC 35-38-9-10, AS AMENDED BY P.L.55-2020, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: 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 or a probation or community corrections department, including volunteer employment, subsections (b), (d), (e), and (f) do not apply to the law enforcement agency or the probation or community corrections department.

(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~~ **an expungement** order. ~~granting the petition.~~ However, until the court issues ~~the~~ **an expungement** order, ~~granting the petition,~~ documents filed in the case are not confidential, and any hearing held in the case shall be open.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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