

SENATE BILL No. 255

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-9.

Synopsis: Expungement. Permits expungement of expungeable felony convictions if the convicted person meets certain requirements and has not been convicted of another felony (under current law, "another crime") within a specified time period.

Effective: July 1, 2021.

Freeman

January 11, 2021, read first time and referred to Committee on Corrections and Criminal Law.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 255

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 35-38-9-3, AS AMENDED BY P.L.219-2019,
- 2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2021]: Sec. 3. (a) Except as provided in subsection (b) and
- 4 section 8.5 of this chapter, this section applies only to a person
- 5 convicted of a Class D felony (for a crime committed before July 1,
- 6 2014) or a Level 6 felony (for a crime committed after June 30, 2014).
- 7 This section does not apply to a person if the person's Class D felony
- 8 or Level 6 felony was reduced to a Class A misdemeanor.
- 9 (b) This section does not apply to the following:
- 10 (1) An elected official convicted of an offense while serving the
- 11 official's term or as a candidate for public office.
- 12 (2) A sex or violent offender (as defined in IC 11-8-8-5).
- 13 (3) A person convicted of a felony that resulted in bodily injury to
- 14 another person.
- 15 (4) A person convicted of perjury (IC 35-44.1-2-1) or official
- 16 misconduct (IC 35-44.1-1-1).
- 17 (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 eight (8) years after the date of conviction
 9 (unless the prosecuting attorney consents in writing to an earlier
 10 period), the person convicted of the Class D felony or Level 6 felony
 11 may petition a court to expunge all conviction records, including
 12 records contained in:
 13 (1) a court's files;
 14 (2) the files of the department of correction;
 15 (3) the files of the bureau of motor vehicles; and
 16 (4) the files of any other person who provided treatment or
 17 services to the petitioning person under a court order;
 18 that relate to the person's Class D or Level 6 felony conviction,
 19 including records of a collateral action.
- 20 (d) A person who files a petition to expunge conviction records,
 21 including any records relating to the conviction and any records
 22 concerning a collateral action, shall file the petition in a circuit or
 23 superior court in the county of 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 felony** 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 shall order the conviction records described in subsection (c),
 35 including any records relating to the conviction and any records
 36 concerning a collateral action, expunged in accordance with section 6
 37 of this chapter.
- 38 SECTION 2. IC 35-38-9-4, AS AMENDED BY P.L.219-2019,
 39 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2021]: Sec. 4. (a) Except as provided in subsection (b) and
 41 section 8.5 of this chapter, this section applies only to a person
 42 convicted of a felony who may not seek expungement of that felony



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



1 the prosecuting attorney if the prosecuting attorney has consented
 2 to a shorter period under subsection (c));
 3 the court may order the conviction records described in subsection (c),
 4 including any records relating to the conviction and any records
 5 concerning a collateral action, marked as expunged in accordance with
 6 section 7 of this chapter. A person whose records have been ordered
 7 marked as expunged under this section is considered to have had the
 8 person's records expunged for all purposes other than the disposition
 9 of the records.

10 SECTION 3. IC 35-38-9-5, AS AMENDED BY P.L.219-2019,
 11 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2021]: Sec. 5. (a) Except as provided in subsection (b) and
 13 section 8.5 of this chapter, this section applies to a person convicted of
 14 a felony, including:

- 15 (1) an elected official convicted of an offense while serving the
 16 official's term or as a candidate for public office; and
- 17 (2) a person convicted of a felony that resulted in serious bodily
 18 injury to another person.

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

- 20 (1) A sex or violent offender (as defined in IC 11-8-8-5).
- 21 (2) A person convicted of official misconduct (IC 35-44.1-1-1).
- 22 (3) A person convicted of an offense described in:
 23 (A) IC 35-42-1;
 24 (B) IC 35-42-3.5; or
 25 (C) IC 35-42-4.
- 26 (4) A person convicted of two (2) or more felony offenses that:
 27 (A) involved the unlawful use of a deadly weapon; and
 28 (B) were not committed as part of the same episode of criminal
 29 conduct.
- 30 (5) A person convicted of a felony that resulted in death to
 31 another person.

32 (c) Not earlier than the later of ten (10) years from the date of
 33 conviction, or five (5) years from the completion of the person's
 34 sentence, unless the prosecuting attorney consents in writing to an
 35 earlier period, the person convicted of the felony may petition a court
 36 to expunge all conviction records, including records contained in:

- 37 (1) a court's files;
- 38 (2) the files of the department of correction;
- 39 (3) the files of the bureau of motor vehicles; and
- 40 (4) the files of any other person who provided treatment or
 41 services to the petitioning person under a court order;

42 that relate to the person's felony conviction, including records of a



1 collateral action.

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

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

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

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

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

12 (4) the person has not been convicted of a **crime felony** within the
13 previous ten (10) years (or within a shorter period agreed to by the
14 prosecuting attorney if the prosecuting attorney has consented to
15 a shorter period under subsection (c)); and

16 (5) the prosecuting attorney has consented in writing to the
17 expungement of the person's criminal records;

18 the court may order the conviction records described in subsection (c),
19 including any records relating to the conviction and any records
20 concerning a collateral action, marked as expunged in accordance with
21 section 7 of this chapter. A person whose records have been ordered
22 marked as expunged under this section is considered to have had the
23 person's records expunged for all purposes other than the disposition
24 of the records.

25 SECTION 4. IC 35-38-9-8, AS AMENDED BY P.L.219-2019,
26 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2021]: Sec. 8. (a) This section applies only to a petition to
28 expunge conviction records, including any records relating to the
29 conviction and any records concerning a collateral action, under
30 sections 2 through 5 of this chapter. This section does not apply to a
31 petition to expunge records related to the arrest, criminal charge, or
32 juvenile delinquency allegation under section 1 of this chapter.

33 (b) Any person may seek an expungement under sections 2 through
34 5 of this chapter by filing a verified petition for expungement. The
35 petition must include the following:

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

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

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

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

42 (5) The petitioner shall affirm that no criminal investigation or



- 1 charges are pending against the petitioner.
- 2 (6) The petitioner shall affirm that the petitioner has not
3 committed another crime **(for an expungement under section 2**
4 **of this chapter) or felony (for an expungement under section**
5 **3, 4, or 5 of this chapter)** within the period required for
6 expungement.
- 7 (7) The petitioner shall list all convictions, all collateral actions,
8 the cause number of each conviction, if known, the date of the
9 conviction, and any appeals from the conviction and the date any
10 appellate opinion was handed down, if applicable.
- 11 (8) The petitioner shall include:
- 12 (A) the petitioner's Social Security number;
- 13 (B) the petitioner's driver's license number;
- 14 (C) the date of the petitioner's arrest, if applicable; and
- 15 (D) the date on which the petitioner was convicted.
- 16 (9) The petitioner shall affirm that the required period has elapsed
17 or attach a copy of the prosecuting attorney's written consent to a
18 shorter period.
- 19 (10) The petitioner shall describe any other petitions that the
20 petitioner has filed under this chapter.
- 21 (11) For a petition filed under section 5 of this chapter, the
22 petitioner shall attach a copy of the prosecuting attorney's written
23 consent.
- 24 (c) The petitioner may include any other information that the
25 petitioner believes may assist the court.
- 26 (d) A person who files a petition under this section is required to
27 pay the filing fee required in civil cases. The court may reduce or waive
28 this fee if the person is indigent.
- 29 (e) The petitioner shall serve a copy of the petition upon the
30 prosecuting attorney in accordance with the Indiana Rules of Trial
31 Procedure.
- 32 (f) The prosecuting attorney shall inform the victim of the victim's
33 rights under IC 35-40-6 by contacting the victim at the victim's last
34 known address. However, if a court has no discretion in granting an
35 expungement petition under this chapter, the prosecuting attorney is
36 not required to inform the victim of the victim's rights under this
37 subsection.
- 38 (g) The prosecuting attorney shall reply to the petition not later than
39 thirty (30) days after receipt. If the prosecuting attorney fails to timely
40 reply to the petition:
- 41 (1) the prosecuting attorney has waived any objection to the
42 petition; and



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

