



January 29, 2021

SENATE BILL No. 255

DIGEST OF SB 255 (Updated January 26, 2021 12:44 pm - DI 106)

Citations Affected: IC 24-4; IC 35-38.

Synopsis: Expungement. Specifies that a "criminal history provider" includes certain persons who regularly publish criminal history information on the internet, for purposes of the law requiring criminal history providers to periodically review their criminal history records for expunged convictions.

Effective: July 1, 2021.

Freeman, Taylor G

January 11, 2021, read first time and referred to Committee on Corrections and Criminal Law.
January 28, 2021, amended, reported favorably — Do Pass.

SB 255—LS 6852/DI 106



January 29, 2021

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 24-4-18-2, AS AMENDED BY P.L.112-2013,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 2. (a) As used in this section, "criminal history
4 provider" means a person or an organization that:
5 (1) compiles a criminal history report and either uses the report or
6 provides the report to a person or an organization other than a
7 criminal justice agency, a law enforcement agency, or another
8 criminal history provider; **or**
9 (2) **regularly publishes criminal history information on the**
10 **Internet or regularly makes criminal history information**
11 **available through the Internet.**
12 **For purposes of subdivision (2), a person publishes or makes**
13 **available criminal history information "regularly" if the person**
14 **publishes or makes available the criminal history information of at**
15 **least twelve (12) individuals in a calendar year.**
16 (b) The term does not include the following:
17 (1) A criminal justice agency.

SB 255—LS 6852/DI 106



- 1 (2) A law enforcement agency.
 2 (3) Any:
 3 (A) person connected with or employed by:
 4 (i) a newspaper or other periodical issued at regular intervals
 5 and having a general circulation; or
 6 (ii) a recognized press association or wire service;
 7 as a bona fide owner, editorial or reportorial employee, who
 8 receives income from legitimate gathering, writing, editing,
 9 and interpretation of news;
 10 (B) person connected with a licensed radio or television station
 11 as an owner or official, or as an editorial or reportorial
 12 employee who receives income from legitimate gathering,
 13 writing, editing, interpreting, announcing, or broadcasting of
 14 news; or
 15 (C) other person who gathers, records, compiles, or
 16 disseminates:
 17 (i) criminal history information; or
 18 (ii) criminal history reports;
 19 solely for journalistic, academic, governmental, or legal
 20 research purposes.
 21 (4) The clerk of a circuit, superior, city, or town court.
 22 SECTION 2. IC 24-4-18-3, AS AMENDED BY P.L.112-2013,
 23 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2021]: Sec. 3. (a) As used in this section, "criminal history
 25 report" means criminal history information that has been:
 26 (1) compiled primarily for the purposes of evaluating a particular
 27 person's eligibility for:
 28 (1) (A) employment in Indiana;
 29 (2) (B) housing in Indiana;
 30 (3) (C) a license, permit, or occupational certification issued
 31 under state law; or
 32 (4) (D) insurance, credit, or another financial service, if the
 33 insurance, credit, or financial service is to be provided to a
 34 person residing in Indiana; **or**
 35 (2) **published or made available on the Internet by a criminal**
 36 **history provider.**
 37 (b) The term does not include information compiled primarily for
 38 the purpose of journalistic, academic, governmental, or legal research.
 39 (c) The term includes information described in subsection (a) and
 40 not excluded under subsection (b), regardless of the geographical
 41 location of the person who compiled the information.
 42 SECTION 3. IC 35-38-9-3, AS AMENDED BY P.L.219-2019,



1 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 2 JULY 1, 2021]: Sec. 3. (a) Except as provided in subsection (b) and
 3 section 8.5 of this chapter, this section applies only to a person
 4 convicted of a Class D felony (for a crime committed before July 1,
 5 2014) or a Level 6 felony (for a crime committed after June 30, 2014).
 6 This section does not apply to a person if the person's Class D felony
 7 or Level 6 felony was reduced to a Class A misdemeanor.

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

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

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

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

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

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

17 (A) IC 35-42-1;

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

19 (C) IC 35-42-4.

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

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

22 (B) were not committed as part of the same episode of criminal
 23 conduct.

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

29 (1) a court's files;

30 (2) the files of the department of correction;

31 (3) the files of the bureau of motor vehicles; and

32 (4) the files of any other person who provided treatment or
 33 services to the petitioning person under a court order;

34 that relate to the person's Class D or Level 6 felony conviction,
 35 including records of a collateral action.

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

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

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

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



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

4 (4) the person has not been convicted of a **crime felony or**
 5 **misdemeanor** within the previous eight (8) years (or within a
 6 shorter period agreed to by the prosecuting attorney if the
 7 prosecuting attorney has consented to a shorter period under
 8 subsection (c));

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

13 SECTION 4. IC 35-38-9-4, AS AMENDED BY P.L.219-2019,
 14 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2021]: Sec. 4. (a) Except as provided in subsection (b) and
 16 section 8.5 of this chapter, this section applies only to a person
 17 convicted of a felony who may not seek expungement of that felony
 18 under section 3 of this chapter.

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

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

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

23 (3) A person convicted of a felony that resulted in serious bodily
 24 injury to another person.

25 (4) A person convicted of a felony that resulted in death to
 26 another person.

27 (5) A person convicted of official misconduct (IC 35-44.1-1-1).

28 (6) A person convicted of an offense described in:

29 (A) IC 35-42-1;

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

31 (C) IC 35-42-4.

32 (7) A person convicted of two (2) or more felony offenses that:

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

34 (B) were not committed as part of the same episode of criminal
 35 conduct.

36 (c) Not earlier than the later of eight (8) years from the date of
 37 conviction, or three (3) years from the completion of the person's
 38 sentence, unless the prosecuting attorney consents in writing to an
 39 earlier period, the person convicted of the felony may petition a court
 40 to expunge all conviction records, including records contained in:

41 (1) a court's files;

42 (2) the files of the department of correction;



1 (3) the files of the bureau of motor vehicles; and
 2 (4) the files of any other person who provided treatment or
 3 services to the petitioning person under a court order;
 4 that relate to the person's felony conviction, including records of a
 5 collateral action.

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

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

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

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

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

16 (4) the person has not been convicted of a **crime felony or**
 17 **misdemeanor** within the previous eight (8) years (or within a
 18 shorter period agreed to by the prosecuting attorney if the
 19 prosecuting attorney has consented to a shorter period under
 20 subsection (c));

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

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

33 (1) an elected official convicted of an offense while serving the
 34 official's term or as a candidate for public office; and

35 (2) a person convicted of a felony that resulted in serious bodily
 36 injury to another person.

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

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

39 (2) A person convicted of official misconduct (IC 35-44.1-1-1).

40 (3) A person convicted of an offense described in:

41 (A) IC 35-42-1;

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



- 1 (C) IC 35-42-4.
- 2 (4) A person convicted of two (2) or more felony offenses that:
- 3 (A) involved the unlawful use of a deadly weapon; and
- 4 (B) were not committed as part of the same episode of criminal
- 5 conduct.
- 6 (5) A person convicted of a felony that resulted in death to
- 7 another person.
- 8 (c) Not earlier than the later of ten (10) years from the date of
- 9 conviction, or five (5) 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;
- 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 felony conviction, including records of a
- 19 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;
- 30 (4) the person has not been convicted of a **crime felony or**
- 31 **misdemeanor** within the previous ten (10) years (or within a
- 32 shorter period agreed to by the prosecuting attorney if the
- 33 prosecuting attorney has consented to a shorter period under
- 34 subsection (c)); and
- 35 (5) the prosecuting attorney has consented in writing to the
- 36 expungement of the person's criminal records;
- 37 the court may order the conviction records described in subsection (c),
- 38 including any records relating to the conviction and any records
- 39 concerning a collateral action, marked as expunged in accordance with
- 40 section 7 of this chapter. A person whose records have been ordered
- 41 marked as expunged under this section is considered to have had the
- 42 person's records expunged for all purposes other than the disposition



- 1 of the records.
- 2 SECTION 6. IC 35-38-9-8, AS AMENDED BY P.L.219-2019,
3 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2021]: Sec. 8. (a) This section applies only to a petition to
5 expunge conviction records, including any records relating to the
6 conviction and any records concerning a collateral action, under
7 sections 2 through 5 of this chapter. This section does not apply to a
8 petition to expunge records related to the arrest, criminal charge, or
9 juvenile delinquency allegation under section 1 of this chapter.
- 10 (b) Any person may seek an expungement under sections 2 through
11 5 of this chapter by filing a verified petition for expungement. The
12 petition must include the following:
- 13 (1) The petitioner's full name and all other legal names or aliases
14 by which the petitioner is or has been known.
 - 15 (2) The petitioner's date of birth.
 - 16 (3) The petitioner's addresses from the date of the offense to the
17 date of the petition.
 - 18 (4) The case number or court cause number, if available.
 - 19 (5) The petitioner shall affirm that no criminal investigation or
20 charges are pending against the petitioner.
 - 21 (6) The petitioner shall affirm that the petitioner has not
22 committed another **crime felony or misdemeanor** within the
23 period required for expungement.
 - 24 (7) The petitioner shall list all convictions, all collateral actions,
25 the cause number of each conviction, if known, the date of the
26 conviction, and any appeals from the conviction and the date any
27 appellate opinion was handed down, if applicable.
 - 28 (8) The petitioner shall include:
 - 29 (A) the petitioner's Social Security number;
 - 30 (B) the petitioner's driver's license number;
 - 31 (C) the date of the petitioner's arrest, if applicable; and
 - 32 (D) the date on which the petitioner was convicted.
 - 33 (9) The petitioner shall affirm that the required period has elapsed
34 or attach a copy of the prosecuting attorney's written consent to a
35 shorter period.
 - 36 (10) The petitioner shall describe any other petitions that the
37 petitioner has filed under this chapter.
 - 38 (11) For a petition filed under section 5 of this chapter, the
39 petitioner shall attach a copy of the prosecuting attorney's written
40 consent.
- 41 (c) The petitioner may include any other information that the
42 petitioner believes may assist the court.



1 (d) A person who files a petition under this section is required to
2 pay the filing fee required in civil cases. The court may reduce or waive
3 this fee if the person is indigent.

4 (e) The petitioner shall serve a copy of the petition upon the
5 prosecuting attorney in accordance with the Indiana Rules of Trial
6 Procedure.

7 (f) The prosecuting attorney shall inform the victim of the victim's
8 rights under IC 35-40-6 by contacting the victim at the victim's last
9 known address. However, if a court has no discretion in granting an
10 expungement petition under this chapter, the prosecuting attorney is
11 not required to inform the victim of the victim's rights under this
12 subsection.

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

16 (1) the prosecuting attorney has waived any objection to the
17 petition; and

18 (2) the court shall proceed to consider the petition under section
19 9 of this chapter.

20 SECTION 7. IC 35-38-9-12 IS ADDED TO THE INDIANA CODE
21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
22 1, 2021]: **Sec. 12. A criminal history provider (as defined in**
23 **IC 24-4-18-2) that provides a criminal history report containing an**
24 **expunged conviction is subject to the penalties described in**
25 **IC 24-4-18-8.**



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 255, 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 24-4-18-2, AS AMENDED BY P.L.112-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) As used in this section, "criminal history provider" means a person or an organization that:

- (1) compiles a criminal history report and either uses the report or provides the report to a person or an organization other than a criminal justice agency, a law enforcement agency, or another criminal history provider; or
- (2) regularly publishes criminal history information on the Internet or regularly makes criminal history information available through the Internet.**

For purposes of subdivision (2), a person publishes or makes available criminal history information "regularly" if the person publishes or makes available the criminal history information of at least twelve (12) individuals in a calendar year.

(b) The term does not include the following:

- (1) A criminal justice agency.
- (2) A law enforcement agency.
- (3) Any:
 - (A) person connected with or employed by:
 - (i) a newspaper or other periodical issued at regular intervals and having a general circulation; or
 - (ii) a recognized press association or wire service; as a bona fide owner, editorial or reportorial employee, who receives income from legitimate gathering, writing, editing, and interpretation of news;
 - (B) person connected with a licensed radio or television station as an owner or official, or as an editorial or reportorial employee who receives income from legitimate gathering, writing, editing, interpreting, announcing, or broadcasting of news; or
 - (C) other person who gathers, records, compiles, or disseminates:
 - (i) criminal history information; or

SB 255—LS 6852/DI 106



(ii) criminal history reports;
solely for journalistic, academic, governmental, or legal research purposes.

(4) The clerk of a circuit, superior, city, or town court.

SECTION 2. IC 24-4-18-3, AS AMENDED BY P.L.112-2013, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3. (a) As used in this section, "criminal history report" means criminal history information that has been:

(1) compiled primarily for the purposes of evaluating a particular person's eligibility for:

- (+) (A) employment in Indiana;
- (-) (B) housing in Indiana;
- (-) (C) a license, permit, or occupational certification issued under state law; or
- (+) (D) insurance, credit, or another financial service, if the insurance, credit, or financial service is to be provided to a person residing in Indiana; or

(2) **published or made available on the Internet by a criminal history provider.**

(b) The term does not include information compiled primarily for the purpose of journalistic, academic, governmental, or legal research.

(c) The term includes information described in subsection (a) and not excluded under subsection (b), regardless of the geographical location of the person who compiled the information."

Page 2, line 30, after "felony" insert "**or misdemeanor**".

Page 3, line 41, after "felony" insert "**or misdemeanor**".

Page 5, line 12, after "felony" insert "**or misdemeanor**".

Page 6, line 3, strike "crime" and insert "**felony or misdemeanor**".

Page 6, line 3, delete "(for an expungement under section 2)".

Page 6, delete line 4.

Page 6, line 5, delete "3, 4, or 5 of this chapter)".

Page 7, after line 2, begin a new paragraph and insert:

"SECTION 7. IC 35-38-9-12 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 12. A criminal history provider (as defined in IC 24-4-18-2) that provides a criminal history report containing an expunged conviction is subject to the penalties described in IC 24-4-18-8.**"

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.



(Reference is to SB 255 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 8, Nays 1.

