

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 ENROLLED ACT No. 255

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 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

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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

(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:

~~(1)~~ **(A)** employment in Indiana;

~~(2)~~ **(B)** housing in Indiana;

~~(3)~~ **(C)** a license, permit, or occupational certification issued under state law; or

~~(4)~~ **(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.

SECTION 3. IC 35-38-9-3, AS AMENDED BY P.L.219-2019, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3. (a) Except as provided in subsection (b) and section 8.5 of this chapter, this section applies only to a person convicted of a Class D felony (for a crime committed before July 1,



2014) or a Level 6 felony (for a crime committed after June 30, 2014). This section does not apply to a person if the person's Class D felony or Level 6 felony was reduced to a Class A misdemeanor.

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

- (1) An elected official convicted of an offense while serving the official's term or as a candidate for public office.
- (2) A sex or violent offender (as defined in IC 11-8-8-5).
- (3) A person convicted of a felony that resulted in bodily injury to another person.
- (4) A person convicted of perjury (IC 35-44.1-2-1) or official misconduct (IC 35-44.1-1-1).
- (5) A person convicted of an offense described in:
 - (A) IC 35-42-1;
 - (B) IC 35-42-3.5; or
 - (C) IC 35-42-4.
- (6) A person convicted of two (2) or more felony offenses that:
 - (A) involved the unlawful use of a deadly weapon; and
 - (B) were not committed as part of the same episode of criminal conduct.

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

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

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

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

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

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) the person has not been convicted of a ~~crime~~ **felony** or



misdemeanor within the previous eight (8) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c));

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

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

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

- (1) An elected official convicted of an offense while serving the official's term or as a candidate for public office.
- (2) A sex or violent offender (as defined in IC 11-8-8-5).
- (3) A person convicted of a felony that resulted in serious bodily injury to another person.
- (4) A person convicted of a felony that resulted in death to another person.
- (5) A person convicted of official misconduct (IC 35-44.1-1-1).
- (6) A person convicted of an offense described in:
 - (A) IC 35-42-1;
 - (B) IC 35-42-3.5; or
 - (C) IC 35-42-4.
- (7) A person convicted of two (2) or more felony offenses that:
 - (A) involved the unlawful use of a deadly weapon; and
 - (B) were not committed as part of the same episode of criminal conduct.

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

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

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



collateral action.

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

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

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

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

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

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

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

- (1) A sex or violent offender (as defined in IC 11-8-8-5).
- (2) A person convicted of official misconduct (IC 35-44.1-1-1).
- (3) A person convicted of an offense described in:
 - (A) IC 35-42-1;
 - (B) IC 35-42-3.5; or
 - (C) IC 35-42-4.
- (4) A person convicted of two (2) or more felony offenses that:
 - (A) involved the unlawful use of a deadly weapon; and
 - (B) were not committed as part of the same episode of criminal



conduct.

(5) A person convicted of a felony that resulted in death to another person.

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

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

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

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

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

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence;
- (4) the person has not been convicted of a **crime felony or misdemeanor** within the previous ten (10) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c)); and
- (5) the prosecuting attorney has consented in writing to the expungement of the person's criminal records;

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

SECTION 6. IC 35-38-9-8, AS AMENDED BY P.L.219-2019, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8. (a) This section applies only to a petition to



expunge conviction records, including any records relating to the conviction and any records concerning a collateral action, under sections 2 through 5 of this chapter. This section does not apply to a petition to expunge records related to the arrest, criminal charge, or juvenile delinquency allegation under section 1 of this chapter.

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

- (1) The petitioner's full name and all other legal names or aliases by which the petitioner is or has been known.
- (2) The petitioner's date of birth.
- (3) The petitioner's addresses from the date of the offense to the date of the petition.
- (4) The case number or court cause number, if available.
- (5) The petitioner shall affirm that no criminal investigation or charges are pending against the petitioner.
- (6) The petitioner shall affirm that the petitioner has not committed another **crime felony or misdemeanor** within the period required for expungement.
- (7) The petitioner shall list all convictions, all collateral actions, the cause number of each conviction, if known, the date of the conviction, and any appeals from the conviction and the date any appellate opinion was handed down, if applicable.
- (8) The petitioner shall include:
 - (A) the petitioner's Social Security number;
 - (B) the petitioner's driver's license number;
 - (C) the date of the petitioner's arrest, if applicable; and
 - (D) the date on which the petitioner was convicted.
- (9) The petitioner shall affirm that the required period has elapsed or attach a copy of the prosecuting attorney's written consent to a shorter period.
- (10) The petitioner shall describe any other petitions that the petitioner has filed under this chapter.
- (11) For a petition filed under section 5 of this chapter, the petitioner shall attach a copy of the prosecuting attorney's written consent.

(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.

(e) The petitioner shall serve a copy of the petition upon the



prosecuting attorney in accordance with the Indiana Rules of Trial Procedure.

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

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

- (1) the prosecuting attorney has waived any objection to the petition; and
- (2) the court shall proceed to consider the petition under section 9 of this chapter.

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.**



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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