



January 22, 2016

SENATE BILL No. 267

DIGEST OF SB 267 (Updated January 19, 2016 12:41 pm - DI 106)

Citations Affected: IC 35-38.

Synopsis: Employers and expungement. Specifies that the prohibition against questioning a person applying for: (1) employment; (2) a license; or (3) another right or privilege; concerning an expunged arrest or conviction also applies during an interview. Provides that a person who unlawfully questions an applicant about an expunged criminal record commits a Class C infraction, and increases the penalty to a Class B infraction for a subsequent violation. Limits the number of violations that may be charged to: (1) one violation against a person without a prior adjudication; and (2) not more than one violation per month against a person with one or more prior adjudications; regardless of the number of individual violations the person may have committed. Requires the BMV to expunge certain records of a person who was: (1) arrested but not convicted; (2) charged but not convicted; or (3) convicted if the conviction was overturned.

Effective: July 1, 2016.

Taylor, Young R Michael

January 7, 2016, read first time and referred to Committee on Corrections & Criminal Law.
January 21, 2016, amended, reported favorably — Do Pass.

SB 267—LS 6184/DI 106



January 22, 2016

Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

SENATE BILL No. 267

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, 2016]: 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 vacated on appeal; and
10 (2) the person is not currently participating in a pretrial diversion
11 program.
12 (b) Not earlier than one (1) year after the date of arrest, criminal
13 charge, or juvenile delinquency allegation (whichever is later), if the
14 person was not convicted or adjudicated a delinquent child, or the date
15 of the opinion vacating the conviction or adjudication becomes final
16 (unless the prosecuting attorney agrees in writing to an earlier time),
17 the person may petition the court for expungement of the records

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- 1 related to the arrest, criminal charge, or juvenile delinquency
 2 allegation.
- 3 (c) A petition for expungement of records must be verified and filed
 4 in a circuit or superior court in the county where the criminal charges
 5 or juvenile delinquency allegation was filed, or if no criminal charges
 6 or juvenile delinquency allegation was filed, in the county where the
 7 arrest occurred. The petition must set forth:
- 8 (1) the date of the arrest, criminal charges, or juvenile
 9 delinquency allegation, and conviction (if applicable);
 - 10 (2) the county in which the arrest occurred, the county in which
 11 the information or indictment was filed, and the county in which
 12 the juvenile delinquency allegation was filed, if applicable;
 - 13 (3) the law enforcement agency employing the arresting officer,
 14 if known;
 - 15 (4) the court in which the criminal charges or juvenile
 16 delinquency allegation was filed, if applicable;
 - 17 (5) any other known identifying information, such as:
 - 18 (A) the name of the arresting officer;
 - 19 (B) case number or court cause number;
 - 20 (C) any aliases or other names used by the petitioner;
 - 21 (D) the petitioner's driver's license number; and
 - 22 (E) a list of each criminal charge and its disposition, if
 23 applicable;
 - 24 (6) the date of the petitioner's birth; and
 - 25 (7) the petitioner's Social Security number.
- 26 A person who files a petition under this section is not required to pay
 27 a filing fee.
- 28 (d) The court shall serve a copy of the petition on the prosecuting
 29 attorney.
- 30 (e) Upon receipt of a petition for expungement, the court:
- 31 (1) may summarily deny the petition if the petition does not meet
 32 the requirements of this section, or if the statements contained in
 33 the petition indicate that the petitioner is not entitled to relief; and
 - 34 (2) shall grant the petition unless:
 - 35 (A) the conditions described in subsection (a) have not been
 36 met; or
 - 37 (B) criminal charges are pending against the person.
- 38 (f) Whenever the petition of a person under this section is granted:
- 39 (1) no information concerning the arrest, criminal charges,
 40 juvenile delinquency allegation, vacated conviction, or vacated
 41 juvenile delinquency adjudication may be placed or retained in
 42 any state central repository for criminal history information or in



- 1 any other alphabetically arranged criminal history information
 2 system maintained by **the bureau of motor vehicles** or a local,
 3 regional, or statewide law enforcement agency;
- 4 (2) the clerk of the supreme court shall seal or redact any records
 5 in the clerk's possession that relate to the arrest, criminal charges,
 6 juvenile delinquency allegation, vacated conviction, or vacated
 7 juvenile delinquency adjudication;
- 8 (3) the records of:
- 9 (A) the sentencing court;
 10 (B) a juvenile court;
 11 (C) a court of appeals; and
 12 (D) the supreme court;
- 13 concerning the person shall be redacted or permanently sealed;
 14 and
- 15 (4) with respect to the records of a person who is named as an
 16 appellant or an appellee in an opinion or memorandum decision
 17 by the supreme court or the court of appeals, the court shall:
- 18 (A) redact the opinion or memorandum decision as it appears
 19 on the computer gateway administered by the office of
 20 technology so that it does not include the petitioner's name (in
 21 the same manner that opinions involving juveniles are
 22 redacted); and
- 23 (B) provide a redacted copy of the opinion to any publisher or
 24 organization to whom the opinion or memorandum decision is
 25 provided after the date of the order of expungement.
- 26 The supreme court and the court of appeals are not required to
 27 redact, destroy, or otherwise dispose of any existing copy of an
 28 opinion or memorandum decision that includes the petitioner's
 29 name.
- 30 (g) If the court issues an order granting a petition for expungement
 31 under this section, the order must include the information described in
 32 subsection (c).
- 33 (h) This chapter does not require any change or alteration in:
- 34 (1) any internal record made by a law enforcement agency at the
 35 time of the arrest and not intended for release to the public; or
 36 (2) records that relate to a diversion or deferral program.
- 37 (i) If a person whose records are expunged brings an action that
 38 might be defended with the contents of the expunged records, the
 39 defendant is presumed to have a complete defense to the action. In
 40 order for the plaintiff to recover, the plaintiff must show that the
 41 contents of the expunged records would not exonerate the defendant.
 42 The plaintiff may be required to state under oath whether the plaintiff



1 had records in the criminal justice system and whether those records
 2 were expunged. If the plaintiff denies the existence of the records, the
 3 defendant may prove their existence in any manner compatible with the
 4 law of evidence.

5 SECTION 2. IC 35-38-9-10, AS AMENDED BY P.L.142-2015,
 6 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2016]: Sec. 10. (a) This section does not apply to a person to
 8 whom sealed records may be disclosed under section 6(a)(2) of this
 9 chapter.

10 (b) It is unlawful discrimination for any person to:

- 11 (1) suspend;
- 12 (2) expel;
- 13 (3) refuse to employ;
- 14 (4) refuse to admit;
- 15 (5) refuse to grant or renew a license, permit, or certificate
 16 necessary to engage in any activity, occupation, or profession; or
- 17 (6) otherwise discriminate against;

18 any person because of a conviction or arrest record expunged or sealed
 19 under this chapter.

20 (c) Except as provided in section 6(f) of this chapter, the civil rights
 21 of a person whose conviction has been expunged shall be fully restored,
 22 including the right to vote, to hold public office, to be a proper person
 23 under IC 35-47-1-7(2), and to serve as a juror.

24 (d) In any **interview or** application for employment, a license, or
 25 other right or privilege, a person may be questioned about a previous
 26 criminal record only in terms that exclude expunged convictions or
 27 arrests, such as: "Have you ever been arrested for or convicted of a
 28 crime that has not been expunged by a court?".

29 (e) A person whose record is expunged shall be treated as if the
 30 person had never been convicted of the offense. However, upon a
 31 subsequent arrest or conviction for an unrelated offense, the prior
 32 expunged conviction:

- 33 (1) may be considered by the court in determining the sentence
 34 imposed for the new offense;
- 35 (2) is a prior unrelated conviction for purposes of:
 36 (A) a habitual offender enhancement; and
 37 (B) enhancing the new offense based on a prior conviction;
 38 and
- 39 (3) may be admitted as evidence in the proceeding for a new
 40 offense as if the conviction had not been expunged.

41 (f) Any person that discriminates against a person as described in
 42 subsection (b) commits a Class C infraction and may be held in



1 contempt by the court issuing the order of expungement or by any other
 2 court of general jurisdiction. Any person may file a written motion of
 3 contempt to bring an alleged violation of this section to the attention of
 4 a court. In addition, the person is entitled to injunctive relief.

5 (g) In any judicial or administrative proceeding alleging negligence
 6 or other fault, an order of expungement may be introduced as evidence
 7 of the person's exercise of due care in hiring, retaining, licensing,
 8 certifying, admitting to a school or program, or otherwise transacting
 9 business or engaging in activity with the person to whom the order of
 10 expungement was issued.

11 (h) A conviction that has been expunged under this chapter is not
 12 admissible as evidence in an action for negligent hiring, admission, or
 13 licensure against a person or entity who relied on the order.

14 (i) An expungement case, and all documents filed in the case,
 15 becomes confidential when the court issues the order granting the
 16 petition. However, until the court issues the order granting the petition,
 17 documents filed in the case are not confidential, and any hearing held
 18 in the case shall be open.

19 **(j) A person who unlawfully questions an applicant about an**
 20 **expunged criminal record in violation of subsection (d) commits a**
 21 **Class C infraction. However, the offense is a Class B infraction if**
 22 **the person has a previous adjudication for a violation of subsection**
 23 **(d). A prosecuting attorney may file:**

24 **(1) only one (1) action against a person for a violation of**
 25 **subsection (d) if the person does not have a previous**
 26 **adjudication for a violation of subsection (d); and**

27 **(2) if the person has a previous adjudication for a violation of**
 28 **subsection (d), not more than one (1) additional action per**
 29 **calendar month against the person;**

30 **regardless of the number of individual violations that the person**
 31 **may have committed.**



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 267, 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 35-38-9-1, AS AMENDED BY P.L.142-2015, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: 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; or
 - (B) resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal; and
- (2) the person is not currently participating in a pretrial diversion program.

(b) 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 date of the opinion vacating the conviction or adjudication becomes final (unless the prosecuting attorney agrees in writing to an earlier time), the person may petition the court for expungement of the records related to the arrest, criminal charge, or juvenile delinquency allegation.

(c) 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) The court shall serve a copy of the petition on the prosecuting attorney.

(e) 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) Whenever the petition of a person under this section is granted:

(1) no information concerning the arrest, criminal charges, juvenile delinquency allegation, vacated conviction, or vacated juvenile delinquency adjudication 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 **the bureau of motor vehicles** or 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 juvenile court;
- (C) a court of appeals; and
- (D) 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, 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) If the court issues an order granting a petition for expungement under this section, the order must include the information described in subsection (c).

(h) This chapter does not require any change or alteration in:

- (1) any internal record made by a law enforcement agency at the time of the arrest and not intended for release to the public; or
- (2) records that relate to a diversion or deferral program.

(i) 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 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."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 267 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 8, Nays 1.

