

SENATE BILL No. 291

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2-121; IC 35-38.

Synopsis: Expungements. Provides that the court shall order the central repository for criminal history information maintained by the state police department to seal a person's expunged conviction records for a misdemeanor or Class D and Level 6 felony conviction including information related to: (1) an arrest or offense in which no conviction was entered and that was committed as part of the same episode of criminal conduct as the case ordered expunged; and (2) any other references to matters related to the case that was ordered expunged. Establishes a method for a person to expunge a protective order.

Effective: July 1, 2018.

Young M

January 4, 2018, read first time and referred to Committee on Corrections and Criminal Law.



Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 291

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 35-31.5-2-121, AS ADDED BY P.L.114-2012,
2 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 121. "Episode of criminal conduct", for purposes
4 of **IC 35-38-9-6** and IC 35-50-1-2, has the meaning set forth in
5 IC 35-50-1-2(b).

6 SECTION 2. IC 35-38-9-6, AS AMENDED BY P.L.198-2016,
7 SECTION 671, IS AMENDED TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2018]: Sec. 6. (a) If the court orders conviction
9 records expunged under sections 2 through 3 of this chapter, the court
10 shall do the following with respect to the specific records expunged by
11 the court:

- 12 (1) Order:
 - 13 (A) the department of correction;
 - 14 (B) the bureau of motor vehicles; and
 - 15 (C) each:
 - 16 (i) law enforcement agency; and
 - 17 (ii) other person;



1 who incarcerated, provided treatment for, or provided other
 2 services for the person under an order of the court;
 3 to prohibit the release of the person's records or information in the
 4 person's records to anyone without a court order, other than a law
 5 enforcement officer acting in the course of the officer's official
 6 duty.

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

10 **(A) an arrest or offense:**

11 **(i) in which no conviction was entered; and**

12 **(ii) that was committed as part of the same episode of**
 13 **criminal conduct (as defined in IC 35-50-1-2(b)) as the**
 14 **case ordered expunged; and**

15 **(B) any other references to matters related to the case that**
 16 **was ordered expunged.**

17 **(3) Records sealed under this subdivision (2) may be disclosed**
 18 **only to:**

19 (A) a prosecuting attorney, if:

20 (i) authorized by a court order; and

21 (ii) needed to carry out the official duties of the prosecuting
 22 attorney;

23 (B) a defense attorney, if:

24 (i) authorized by a court order; and

25 (ii) needed to carry out the professional duties of the defense
 26 attorney;

27 (C) a probation department, if:

28 (i) authorized by a court order; and

29 (ii) necessary to prepare a presentence report;

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

34 (E) the:

35 (i) supreme court;

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

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

38 and

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

42 for the purpose of determining whether an applicant possesses



1 the necessary good moral character for admission to the bar;
 2 (F) a person required to access expunged records to comply
 3 with the Secure and Fair Enforcement for Mortgage Licensing
 4 Act (12 U.S.C. 5101 et seq.) or regulations adopted under the
 5 Secure and Fair Enforcement for Mortgage Licensing Act; and
 6 (G) the bureau of motor vehicles, the Federal Motor Carrier
 7 Administration, and the Commercial Drivers License
 8 Information System (CDLIS), if disclosure is required to
 9 comply with federal law relating to reporting a conviction for
 10 a violation of a traffic control law.

11 ~~(3)~~ (4) Notify the clerk of the supreme court to seal any records in
 12 the clerk's possession that relate to the conviction.

13 A probation department may provide an unredacted version of a
 14 presentence report disclosed under subdivision ~~(2)(C)~~ (3)(C) to any
 15 person authorized by law to receive a presentence report.

16 (b) Except as provided in subsection (c), if a petition to expunge
 17 conviction records is granted under sections 2 through 3 of this chapter,
 18 the records of:

- 19 (1) the sentencing court;
 20 (2) a juvenile court;
 21 (3) a court of appeals; and
 22 (4) the supreme court;

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

26 (c) If a petition to expunge conviction records is granted under
 27 sections 2 through 3 of this chapter with respect to the records of a
 28 person who is named as an appellant or an appellee in an opinion or
 29 memorandum decision by the supreme court or the court of appeals, the
 30 court shall:

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

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

41 (d) Notwithstanding subsection (b), a prosecuting attorney may
 42 submit a written application to a court that granted an expungement



1 petition under this chapter to gain access to any records that were
 2 permanently sealed under subsection (b), if the records are relevant in
 3 a new prosecution of the person. If a prosecuting attorney who submits
 4 a written application under this subsection shows that the records are
 5 relevant for a new prosecution of the person, the court that granted the
 6 expungement petition shall:

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

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

17 (e) If a person whose conviction records are expunged under
 18 sections 2 through 5 of this chapter is required to register as a sex
 19 offender based on the commission of a felony which has been
 20 expunged:

- 21 (1) the expungement does not affect the operation of the sex
 22 offender registry web site, any person's ability to access the
 23 person's records, records required to be maintained concerning
 24 sex or violent offenders, or any registration requirement imposed
 25 on the person; and
- 26 (2) the expunged conviction must be clearly marked as expunged
 27 on the sex offender registry web site.

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

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

35 SECTION 3. IC 35-38-9-10, AS AMENDED BY P.L.142-2015,
 36 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2018]: Sec. 10. (a) This section does not apply to a person to
 38 whom sealed records may be disclosed under section ~~6(a)(2)~~ **6(a)(3)** of
 39 this chapter.

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

- 41 (1) suspend;
- 42 (2) expel;



1 (3) refuse to employ;

2 (4) refuse to admit;

3 (5) refuse to grant or renew a license, permit, or certificate
4 necessary to engage in any activity, occupation, or profession; or

5 (6) otherwise discriminate against;

6 any person because of a conviction or arrest record expunged or sealed
7 under this chapter.

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

12 (d) In any application for employment, a license, or other right or
13 privilege, a person may be questioned about a previous criminal record
14 only in terms that exclude expunged convictions or arrests, such as:
15 "Have you ever been arrested for or convicted of a crime that has not
16 been expunged by a court?"

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

21 (1) may be considered by the court in determining the sentence
22 imposed for the new offense;

23 (2) is a prior unrelated conviction for purposes of:

24 (A) a habitual offender enhancement; and

25 (B) enhancing the new offense based on a prior conviction;
26 and

27 (3) may be admitted as evidence in the proceeding for a new
28 offense as if the conviction had not been expunged.

29 (f) Any person that discriminates against a person as described in
30 subsection (b) commits a Class C infraction and may be held in
31 contempt by the court issuing the order of expungement or by any other
32 court of general jurisdiction. Any person may file a written motion of
33 contempt to bring an alleged violation of this section to the attention of
34 a court. In addition, the person is entitled to injunctive relief.

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

41 (h) A conviction that has been expunged under this chapter is not
42 admissible as evidence in an action for negligent hiring, admission, or



1 licensure against a person or entity who relied on the order.

2 (i) An expungement case, and all documents filed in the case,
3 becomes confidential when the court issues the order granting the
4 petition. However, until the court issues the order granting the petition,
5 documents filed in the case are not confidential, and any hearing held
6 in the case shall be open.

7 SECTION 4. IC 35-38-9.5 IS ADDED TO THE INDIANA CODE
8 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2018]:

10 **Chapter 9.5. Expungement of Unfounded Protection Orders**

11 **Sec. 1. This chapter applies to a person named as the subject of**
12 **a protection order, if a court granted:**

13 (1) an order for protection ex parte and subsequently denied
14 a petition for an order for protection; or

15 (2) an order for protection or an order for protection ex parte
16 and an appellate court reversed or vacated the order for
17 protection or the order for protection ex parte.

18 **Sec. 2. The following definitions apply throughout this chapter:**

19 (1) "Protection order" means an Indiana civil protection
20 order under IC 34-26-5. The term includes a protection order
21 and a protection order ex parte.

22 (2) "Subject of a protection order" means the person against
23 whom a protection order was issued.

24 **Sec. 3. (a) At any time after:**

25 (1) a court terminates or denies an order for protection
26 following issuance of an order for protection ex parte, as
27 described in section 1(1) of this chapter; or

28 (2) the opinion reversing or vacating an order of protection
29 becomes final, as described in section 1(2) of this chapter;

30 the subject of a protection order may petition to expunge a
31 protection order in the court that issued or denied the protection
32 order.

33 (b) A petition seeking to expunge a protection order must
34 include the following information:

35 (1) The petitioner's full name.

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

37 (3) The petitioner's address.

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

39 (5) The petitioner's Social Security number.

40 (6) The petitioner's driver's license number.

41 (7) The date of the order of protection or order of protection
42 ex parte, if applicable.



1 (8) A description of why the petitioner is entitled to relief,
2 including all relevant dates.

3 (9) Certified copies of the following, if applicable:

4 (A) The order of protection ex parte.

5 (B) The order of protection.

6 (C) The order denying an order for protection.

7 (D) The opinion from the appellate court reversing or
8 vacating an order for protection or an order for protection
9 ex parte.

10 (c) The petition may include any other information that the
11 petitioner believes may assist the court.

12 Sec. 4. (a) Unless the petition is incomplete, or the petition
13 conclusively indicates that the petitioner is not entitled to relief, the
14 court shall:

15 (1) serve a copy of the petition on the person who originally
16 sought the protection order; and

17 (2) set the matter for hearing.

18 The person who originally sought the protection order is entitled
19 to appear at the hearing.

20 (b) If:

21 (1) the person who originally sought the protection order
22 waives in writing the right to appear at the hearing; and

23 (2) the petition conclusively indicates that the petitioner is
24 entitled to relief;

25 the court may issue an order to expunge a protection order without
26 holding a hearing.

27 (c) The grant or denial of a petition for expungement is a final
28 appealable order.

29 Sec. 5. The petitioner bears the burden of proof in a proceeding
30 to expunge a protection order.

31 Sec. 6. (a) If a court orders a protection order expunged under
32 this chapter, the court shall do the following with respect to the
33 specific records expunged by the court:

34 (1) Order the division of state court administration to remove
35 the protection order from the Indiana protective order
36 registry established under IC 5-2-9-5.5.

37 (2) Order the state police department to remove the
38 protection order from the Indiana data and communication
39 system (IDACS) computer described in IC 10-13-3-35.

40 (3) Redact or permanently seal the court's own records
41 relating to the protection order.

42 (b) If an appellate court reverses or vacates a protection order,



1 and the protection order is then expunged, the appellate court
2 shall:

3 (1) redact the opinion or memorandum decision as it appears
4 on the computer gateway administered by the office of
5 technology so that it does not include the name of the subject
6 of the protection order (in the same manner that opinions
7 involving juveniles are redacted); and

8 (2) provide a redacted copy of the opinion to any publisher or
9 organization to whom the opinion or memorandum decision
10 is provided after the date of the order of expungement.

11 The supreme court and the court of appeals are not required to
12 redact, destroy, or otherwise dispose of any existing copy of an
13 opinion or memorandum decision that includes the name of the
14 subject of the protection order.

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

