



January 17, 2019

SENATE BILL No. 235

DIGEST OF SB 235 (Updated January 15, 2019 1:14 pm - DI 106)

Citations Affected: IC 34-26; IC 35-31.5; IC 35-38.

Synopsis: Expungements. Defines "collateral action" as an action that is factually or legally related to an arrest, a criminal charge, a delinquency allegation, a criminal conviction, or a delinquency adjudication. Specifies that certain information relating to: (1) an arrest; and (2) a collateral action is required to be sealed or marked expunged if a petition for expungement is granted. Provides that a person convicted of a felony that resulted in death to another person may not seek expungement of that felony. Strikes and relocates a provision relating to certain nonpublic records maintained by a law enforcement agency, and specifies that this provision also applies to records maintained by a public defender agency. Provides that records ordered expunged or marked as expunged when a court grants a petition for expungement include certain records relating to arrests and charges, if not otherwise ordered expunged or marked as expunged. Establishes a method for a person to expunge a protection order if the petition for a protection order is dismissed or denied.

Effective: July 1, 2019.

Freeman, Young M

January 3, 2019, read first time and referred to Committee on Corrections and Criminal Law.
January 16, 2019, amended, reported favorably — Do Pass.

SB 235—LS 6674/DI 131



January 17, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 235

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 34-26-5-22 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2019]: **Sec. 22. An order for protection may be expunged in**
4 **accordance with IC 35-38-9.5.**
- 5 SECTION 2. IC 35-31.5-2-46.5 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2019]: **Sec. 46.5. "Collateral action", for**
8 **purposes of IC 35-38-9, has the meaning set forth in IC 35-38-9-0.5.**
- 9 SECTION 3. IC 35-31.5-2-121, AS ADDED BY P.L.114-2012,
10 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2019]: Sec. 121. "Episode of criminal conduct", for purposes
12 of **IC 35-38-9 and IC 35-50-1-2**, has the meaning set forth in
13 IC 35-50-1-2(b).
- 14 SECTION 4. IC 35-38-9-0.5 IS ADDED TO THE INDIANA CODE
15 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2019]: **Sec. 0.5. As used in this chapter, "collateral action" means**
17 **an action or proceeding, including an administrative proceeding,**

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1 that is factually or legally related to an arrest, a criminal charge,
 2 a juvenile delinquency allegation, a conviction, or a juvenile
 3 delinquency adjudication. The term includes a proceeding or
 4 action concerning a seizure, a civil forfeiture, and a petition for
 5 specialized driving privileges.

6 SECTION 5. IC 35-38-9-0.6 IS ADDED TO THE INDIANA CODE
 7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 8 1, 2019]: **Sec. 0.6. This chapter does not require any change or
 9 alteration in the following:**

10 (1) An internal record made by a:

11 (A) law enforcement agency; or

12 (B) public defender agency;

13 that is not intended for release to the public.

14 (2) A nonpublic record that relates to a diversion or deferral
 15 program.

16 SECTION 6. IC 35-38-9-1, AS AMENDED BY P.L.142-2015,
 17 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2019]: **Sec. 1. (a) This section applies only to a person who
 19 has been arrested, charged with an offense, or alleged to be a
 20 delinquent child, if:**

21 (1) the arrest, criminal charge, or juvenile delinquency allegation:

22 (A) did not result in a conviction or juvenile adjudication; or

23 (B) resulted in a conviction or juvenile adjudication and the
 24 conviction or adjudication was **expunged or was later**
 25 **vacated; ~~on appeal;~~ and**

26 (2) the person is not currently participating in a pretrial diversion
 27 program.

28 (b) Not earlier than one (1) year after the date of arrest, criminal
 29 charge, or juvenile delinquency allegation (whichever is later), if the
 30 person was not convicted or adjudicated a delinquent child, or ~~the date~~
 31 ~~of the opinion vacating the conviction or adjudication becomes final,~~
 32 ~~(unless the prosecuting attorney agrees in writing to an earlier time);~~
 33 the person may petition the court for expungement of the records
 34 related to the arrest, criminal charge, or juvenile delinquency
 35 allegation. **However, a person may petition the court for**
 36 **expungement at an earlier time if the prosecuting attorney agrees**
 37 **in writing to an earlier time.**

38 (c) A petition for expungement of records must be verified and filed
 39 in a circuit or superior court in the county where the criminal charges
 40 or juvenile delinquency allegation was filed, or if no criminal charges
 41 or juvenile delinquency allegation was filed, in the county where the
 42 arrest occurred. The petition must set forth:



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



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



1 SECTION 7. IC 35-38-9-2, AS AMENDED BY P.L.95-2017,
 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2019]: Sec. 2. (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 misdemeanor, including a Class D felony (for a crime
 6 committed before July 1, 2014) or a Level 6 felony (for a crime
 7 committed after June 30, 2014) reduced to a misdemeanor.

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

9 (1) A person convicted of two (2) or more felony offenses that:

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

11 (B) were not committed as part of the same episode of criminal
 12 conduct.

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

14 (c) Not earlier than five (5) years after the date of conviction (unless
 15 the prosecuting attorney consents in writing to an earlier period), the
 16 person convicted of the misdemeanor may petition a court to expunge
 17 all conviction records, including records contained in:

18 (1) a court's files;

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

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

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

23 that relate to the person's misdemeanor conviction, **including records**
 24 **of a collateral action.**

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

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

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

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

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

35 (4) the person has not been convicted of a crime within the
 36 previous five (5) years (or within a shorter period agreed to by the
 37 prosecuting attorney if the prosecuting attorney has consented to
 38 a shorter period under subsection (c));

39 the court shall order the conviction records described in subsection (c),
 40 **including any records relating to the conviction and any records**
 41 **concerning a collateral action**, expunged in accordance with section
 42 6 of this chapter.



1 SECTION 8. IC 35-38-9-3, AS AMENDED BY P.L.142-2015,
 2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2019]: 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:

18 (A) IC 35-42-1;

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

20 (C) IC 35-42-4.

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

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

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

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

30 (1) a court's files;

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

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

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

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

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

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

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



- 1 (2) no charges are pending against the person;
 2 (3) the person has paid all fines, fees, and court costs, and
 3 satisfied any restitution obligation placed on the person as part of
 4 the sentence; and
 5 (4) the person has not been convicted of a crime within the
 6 previous eight (8) years (or within a shorter period agreed to by
 7 the prosecuting attorney if the prosecuting attorney has consented
 8 to a shorter period under 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
 12 6 of this chapter.
 13 SECTION 9. IC 35-38-9-4, AS AMENDED BY P.L.142-2015,
 14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2019]: 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 ~~(4)~~ **(5)** A person convicted of official misconduct
 28 (IC 35-44.1-1-1).
 29 ~~(5)~~ **(6)** A person convicted of an offense described in:
 30 (A) IC 35-42-1;
 31 (B) IC 35-42-3.5; or
 32 (C) IC 35-42-4.
 33 ~~(6)~~ **(7)** A person convicted of two (2) or more felony offenses that:
 34 (A) involved the unlawful use of a deadly weapon; and
 35 (B) were not committed as part of the same episode of criminal
 36 conduct.
 37 (c) Not earlier than the later of eight (8) years from the date of
 38 conviction, or three (3) years from the completion of the person's
 39 sentence, unless the prosecuting attorney consents in writing to an
 40 earlier period, the person convicted of the felony may petition a court
 41 to expunge all conviction records, including records contained in:
 42 (1) a court's files;



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

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

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

- 12 (1) the period required by this section has elapsed;
 13 (2) no charges are pending against the person;
 14 (3) the person has paid all fines, fees, and court costs, and
 15 satisfied any restitution obligation placed on the person as part of
 16 the sentence; and
 17 (4) the person has not been convicted of a crime within the
 18 previous eight (8) years (or within a shorter period agreed to by
 19 the prosecuting attorney if the prosecuting attorney has consented
 20 to a shorter period under 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
 24 with section 7 of this chapter. A person whose records have been
 25 ordered marked as expunged under this section is considered to have
 26 had the person's records expunged for all purposes other than the
 27 disposition of the records.

28 SECTION 10. IC 35-38-9-5, AS AMENDED BY P.L.142-2015,
 29 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2019]: 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 within the
31 previous ten (10) years (or within a shorter period agreed to by the
32 prosecuting attorney if the prosecuting attorney has consented to
33 a shorter period under subsection (c)); and

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

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



1 SECTION 11. IC 35-38-9-6, AS AMENDED BY P.L.198-2016,
 2 SECTION 671, IS AMENDED TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) If the court orders conviction
 4 records, **including any records relating to the conviction and any**
 5 **records concerning a collateral action**, expunged under sections 2
 6 through 3 of this chapter, the court shall do the following with respect
 7 to the specific records expunged by the court:

8 (1) Order:

9 (A) the department of correction;

10 (B) the bureau of motor vehicles; and

11 (C) each:

12 (i) law enforcement agency; and

13 (ii) other person;

14 who incarcerated, **prosecuted**, provided treatment for, or
 15 provided other services for the person under an order of the
 16 court;

17 to prohibit the release of the person's records or information in the
 18 person's records to anyone without a court order, other than a law
 19 enforcement officer acting in the course of the officer's official
 20 duty.

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

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

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

26 (ii) **that was committed as part of the same episode of**
 27 **criminal conduct as the case ordered expunged; and**

28 (B) **any other references to any matters related to the case**
 29 **ordered expunged, including in a collateral action.**

30 (3) Records sealed under ~~this~~ subdivision (2) may be disclosed
 31 only to:

32 (A) a prosecuting attorney, if:

33 (i) authorized by a court order; and

34 (ii) needed to carry out the official duties of the prosecuting
 35 attorney;

36 (B) a defense attorney, if:

37 (i) authorized by a court order; and

38 (ii) needed to carry out the professional duties of the defense
 39 attorney;

40 (C) a probation department, if:

41 (i) authorized by a court order; and

42 (ii) necessary to prepare a presentence report;



1 (D) the Federal Bureau of Investigation and the Department of
 2 Homeland Security, if disclosure is required to comply with an
 3 agreement relating to the sharing of criminal history
 4 information;
 5 (E) the:
 6 (i) supreme court;
 7 (ii) members of the state board of law examiners;
 8 (iii) executive director of the state board of law examiners;
 9 and
 10 (iv) employees of the state board of law examiners, in
 11 accordance with rules adopted by the state board of law
 12 examiners;
 13 for the purpose of determining whether an applicant possesses
 14 the necessary good moral character for admission to the bar;
 15 (F) a person required to access expunged records to comply
 16 with the Secure and Fair Enforcement for Mortgage Licensing
 17 Act (12 U.S.C. 5101 et seq.) or regulations adopted under the
 18 Secure and Fair Enforcement for Mortgage Licensing Act; and
 19 (G) the bureau of motor vehicles, the Federal Motor Carrier
 20 Administration, and the Commercial Drivers License
 21 Information System (CDLIS), if disclosure is required to
 22 comply with federal law relating to reporting a conviction for
 23 a violation of a traffic control law.
 24 ~~(3)~~ **(4)** Notify the clerk of the supreme court to seal any records in
 25 the clerk's possession that relate to the conviction, **including any**
 26 **records concerning a collateral action.**
 27 A probation department may provide an unredacted version of a
 28 presentence report disclosed under subdivision ~~(2)~~~~(C)~~ **(3)**~~(C)~~ to any
 29 person authorized by law to receive a presentence report.
 30 (b) Except as provided in subsection (c), if a petition to expunge
 31 conviction records, **including any records relating to the conviction**
 32 **and any records concerning a collateral action**, is granted under
 33 sections 2 through 3 of this chapter, the records of:
 34 (1) the sentencing court;
 35 **(2) a court that conducted a collateral action;**
 36 ~~(2)~~ **(3)** a juvenile court;
 37 ~~(3)~~ **(4)** a court of appeals; and
 38 ~~(4)~~ **(5)** the supreme court;
 39 concerning the person shall be permanently sealed. However, a petition
 40 for expungement granted under sections 2 through 3 of this chapter
 41 does not affect an existing or pending driver's license suspension.
 42 (c) If a petition to expunge conviction records, **including any**



1 **records relating to the conviction and any records concerning a**
 2 **collateral action**, is granted under sections 2 through 3 of this chapter
 3 with respect to the records of a person who is named as an appellant or
 4 an appellee in an opinion or memorandum decision by the supreme
 5 court or the court of appeals, **or who is identified in a collateral**
 6 **action**, the court shall:

7 (1) redact the opinion or memorandum decision as it appears on
 8 the computer gateway administered by the office of technology so
 9 that it does not include the petitioner's name (in the same manner
 10 that opinions involving juveniles are redacted); and

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

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

17 (d) Notwithstanding subsection (b), a prosecuting attorney may
 18 submit a written application to a court that granted an expungement
 19 petition under this chapter to gain access to any records that were
 20 permanently sealed under subsection (b), if the records are relevant in
 21 a new prosecution of the person. If a prosecuting attorney who submits
 22 a written application under this subsection shows that the records are
 23 relevant for a new prosecution of the person, the court that granted the
 24 expungement petition shall:

25 (1) order the records to be unsealed; and

26 (2) allow the prosecuting attorney who submitted the written
 27 application to have access to the records.

28 If a court orders records to be unsealed under this subsection, the court
 29 shall order the records to be permanently resealed at the earliest
 30 possible time after the reasons for unsealing the records cease to exist.
 31 However, if the records are admitted as evidence against the person in
 32 a new prosecution that results in the person's conviction, or are used to
 33 enhance a sentence imposed on the person in a new prosecution, the
 34 court is not required to reseat the records.

35 (e) If a person whose conviction records, **including any records**
 36 **relating to the conviction and any records concerning a collateral**
 37 **action**, are expunged under sections 2 through 5 of this chapter is
 38 required to register as a sex offender based on the commission of a
 39 felony which has been expunged:

40 (1) the expungement does not affect the operation of the sex
 41 offender registry web site, any person's ability to access the
 42 person's records, records required to be maintained concerning



1 sex or violent offenders, or any registration requirement imposed
2 on the person; and

3 (2) the expunged conviction **records** must be clearly marked as
4 expunged on the sex offender registry web site.

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

9 **(g) If a court issues an order granting a petition for**
10 **expungement under sections 2 through 3 of this chapter, the court**
11 **shall also order any related records described in section 1(f) of this**
12 **chapter sealed or redacted in the manner described in section 1 of**
13 **this chapter, unless the records described in section 1(f) of this**
14 **chapter have been ordered sealed and redacted under this section.**

15 ~~(g)~~ **(h)** If the court issues an order granting a petition for
16 expungement under sections 2 through 3 of this chapter, the court shall
17 include in its order the information described in section 8(b) of this
18 chapter.

19 SECTION 12. IC 35-38-9-7, AS AMENDED BY P.L.198-2016,
20 SECTION 672, IS AMENDED TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) This section applies only to
22 a person who has filed a petition for expungement under section 4 or
23 5 of this chapter and whose records have been ordered marked as
24 expunged.

25 (b) The court records and other public records relating to the arrest,
26 conviction, or sentence of a person whose conviction records,
27 **including any records relating to the conviction and any records**
28 **concerning a collateral action**, have been marked as expunged remain
29 public records. However, the court shall order that the records be
30 clearly and visibly marked or identified as being expunged. A petition
31 for expungement granted under sections 4 through 5 of this chapter
32 does not affect an existing or pending driver's license suspension.

33 (c) The state police department, the bureau of motor vehicles, and
34 any other law enforcement agency in possession of records that relate
35 to the conviction, **including any records concerning a collateral**
36 **action**, ordered to be marked as expunged shall add an entry to the
37 person's record of arrest, conviction, or sentence in the criminal history
38 data base stating that the record is marked as expunged. Nothing in this
39 chapter prevents the bureau of motor vehicles from reporting
40 information about a conviction for a violation of a traffic control law
41 to the Commercial Drivers License Information System (CDLIS), in
42 accordance with federal law, even if the conviction has been expunged



1 under section 4 or 5 of this chapter.

2 (d) If the court issues an order granting a petition for expungement
3 under section 4 or 5 of this chapter, the court shall include in its order
4 the information described in section 8(b) of this chapter.

5 **(e) If a court issues an order granting a petition for**
6 **expungement under sections 4 through 5 of this chapter, the court**
7 **shall also order any related records described in section 1(f) of this**
8 **chapter marked as expunged, unless the records described in**
9 **section 1(f) of this chapter have been ordered marked as expunged**
10 **under this section.**

11 SECTION 13. IC 35-38-9-8, AS AMENDED BY P.L.142-2015,
12 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2019]: Sec. 8. (a) This section applies only to a petition to
14 expunge conviction records, **including any records relating to the**
15 **conviction and any records concerning a collateral action**, under
16 sections 2 through 5 of this chapter. This section does not apply to a
17 petition to expunge records related to the arrest, criminal charge, or
18 juvenile delinquency allegation under section 1 of this chapter.

19 (b) Any person may seek an expungement under sections 2 through
20 5 of this chapter by filing a verified petition for expungement. The
21 petition must include the following:

- 22 (1) The petitioner's full name and all other legal names or aliases
23 by which the petitioner is or has been known.
- 24 (2) The petitioner's date of birth.
- 25 (3) The petitioner's addresses from the date of the offense to the
26 date of the petition.
- 27 (4) The case number or court cause number, if available.
- 28 (5) The petitioner shall affirm that no criminal investigation or
29 charges are pending against the petitioner.
- 30 (6) The petitioner shall affirm that the petitioner has not
31 committed another crime within the period required for
32 expungement.
- 33 (7) The petitioner shall list all convictions, **all civil forfeitures**,
34 the cause number of each conviction, if known, the date of the
35 conviction, and any appeals from the conviction and the date any
36 appellate opinion was handed down, if applicable.
- 37 (8) The petitioner shall include:
 - 38 (A) the petitioner's Social Security number;
 - 39 (B) the petitioner's driver's license number;
 - 40 (C) the date of the petitioner's arrest, if applicable; and
 - 41 (D) the date on which the petitioner was convicted.
- 42 (9) The petitioner shall affirm that the required period has elapsed



1 or attach a copy of the prosecuting attorney's written consent to a
 2 shorter period.
 3 (10) The petitioner shall describe any other petitions that the
 4 petitioner has filed under this chapter.
 5 (11) For a petition filed under section 5 of this chapter, the
 6 petitioner shall attach a copy of the prosecuting attorney's written
 7 consent.
 8 (c) The petitioner may include any other information that the
 9 petitioner believes may assist the court.
 10 (d) A person who files a petition under this section is required to
 11 pay the filing fee required in civil cases. The court may reduce or waive
 12 this fee if the person is indigent.
 13 (e) The petitioner shall serve a copy of the petition upon the
 14 prosecuting attorney in accordance with the Indiana Rules of Trial
 15 Procedure.
 16 (f) The prosecuting attorney shall inform the victim of the victim's
 17 rights under IC 35-40-6 by contacting the victim at the victim's last
 18 known address. However, if a court has no discretion in granting an
 19 expungement petition under this chapter, the prosecuting attorney is
 20 not required to inform the victim of the victim's rights under this
 21 subsection.
 22 (g) The prosecuting attorney shall reply to the petition not later than
 23 thirty (30) days after receipt. If the prosecuting attorney fails to timely
 24 reply to the petition:
 25 (1) the prosecuting attorney has waived any objection to the
 26 petition; and
 27 (2) the court shall proceed to consider the petition under section
 28 9 of this chapter.
 29 SECTION 14. IC 35-38-9-10, AS AMENDED BY P.L.142-2015,
 30 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2019]: Sec. 10. (a) This section does not apply to a person to
 32 whom sealed records may be disclosed under section ~~6(a)(2)~~ **6(a)(3)** of
 33 this chapter.
 34 (b) It is unlawful discrimination for any person to:
 35 (1) suspend;
 36 (2) expel;
 37 (3) refuse to employ;
 38 (4) refuse to admit;
 39 (5) refuse to grant or renew a license, permit, or certificate
 40 necessary to engage in any activity, occupation, or profession; or
 41 (6) otherwise discriminate against;
 42 any person because of a conviction or arrest record expunged or sealed



- 1 under this chapter.
- 2 (c) Except as provided in section 6(f) of this chapter, the civil rights
3 of a person whose conviction has been expunged shall be fully restored,
4 including the right to vote, to hold public office, to be a proper person
5 under IC 35-47-1-7(2), and to serve as a juror.
- 6 (d) In any application for employment, a license, or other right or
7 privilege, a person may be questioned about a previous criminal record
8 only in terms that exclude expunged convictions or arrests, such as:
9 "Have you ever been arrested for or convicted of a crime that has not
10 been expunged by a court?"
- 11 (e) A person whose record is expunged shall be treated as if the
12 person had never been convicted of the offense. However, upon a
13 subsequent arrest or conviction for an unrelated offense, the prior
14 expunged conviction:
- 15 (1) may be considered by the court in determining the sentence
16 imposed for the new offense;
- 17 (2) is a prior unrelated conviction for purposes of:
- 18 (A) a habitual offender enhancement; and
19 (B) enhancing the new offense based on a prior conviction;
20 and
- 21 (3) may be admitted as evidence in the proceeding for a new
22 offense as if the conviction had not been expunged.
- 23 (f) Any person that discriminates against a person as described in
24 subsection (b) commits a Class C infraction and may be held in
25 contempt by the court issuing the order of expungement or by any other
26 court of general jurisdiction. Any person may file a written motion of
27 contempt to bring an alleged violation of this section to the attention of
28 a court. In addition, the person is entitled to injunctive relief.
- 29 (g) In any judicial or administrative proceeding alleging negligence
30 or other fault, an order of expungement may be introduced as evidence
31 of the person's exercise of due care in hiring, retaining, licensing,
32 certifying, admitting to a school or program, or otherwise transacting
33 business or engaging in activity with the person to whom the order of
34 expungement was issued.
- 35 (h) A conviction, **including any records relating to the conviction**
36 **and any records concerning a collateral action**, that has been
37 expunged under this chapter is not admissible as evidence in an action
38 for negligent hiring, admission, or licensure against a person or entity
39 who relied on the order.
- 40 (i) An expungement case, and all documents filed in the case,
41 becomes confidential when the court issues the order granting the
42 petition. However, until the court issues the order granting the petition,



1 documents filed in the case are not confidential, and any hearing held
2 in the case shall be open.

3 SECTION 15. IC 35-38-9.5 IS ADDED TO THE INDIANA CODE
4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2019]:

6 **Chapter 9.5. Expungement of Protection Orders**

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

9 (1) an order for protection ex parte and subsequently
10 dismissed the ex parte order or denied a petition for an order
11 for protection; or

12 (2) an order for protection or an order for protection ex parte
13 and an appellate court reversed or vacated the order for
14 protection or the order for protection ex parte.

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

16 (1) "Protection order" means an Indiana civil protection
17 order under IC 34-26-5. The term includes an order for
18 protection and an order for protection ex parte.

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

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

22 (1) a court dismisses or denies an order for protection
23 following issuance of an order for protection ex parte, as
24 described in section 1(1) of this chapter; or

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

27 the subject of the protection order may petition to expunge the
28 protection order in the court that issued or denied the protection
29 order.

30 (b) A petition seeking to expunge a protection order must be
31 verified and include the following information:

32 (1) The petitioner's full name.

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

34 (3) The petitioner's address.

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

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

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

38 (7) The date of the order for protection or order for
39 protection ex parte, if applicable.

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

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



- 1 **(A) The order for protection.**
- 2 **(B) The order for protection ex parte.**
- 3 **(C) The order denying an order for protection.**
- 4 **(D) The opinion from the appellate court reversing or**
- 5 **vacating an order for protection or an order for protection**
- 6 **ex parte.**
- 7 **(c) The petition may include any other information that the**
- 8 **petitioner believes may assist the court.**
- 9 **Sec. 4. (a) Unless the petition is incomplete, or the petition**
- 10 **conclusively indicates that the petitioner is not entitled to relief, the**
- 11 **court shall:**
- 12 **(1) redact the petitioner's:**
- 13 **(A) date of birth;**
- 14 **(B) Social Security number; and**
- 15 **(C) driver's license number;**
- 16 **from the petition;**
- 17 **(2) serve a copy of the redacted petition under subdivision (1)**
- 18 **on the person who originally sought the protection order; and**
- 19 **(3) set the matter for hearing.**
- 20 **The person who originally sought the protection order is entitled**
- 21 **to appear at the hearing.**
- 22 **(b) If:**
- 23 **(1) the person who originally sought the protection order**
- 24 **waives in writing the right to appear at the hearing; and**
- 25 **(2) the petition conclusively indicates that the petitioner is**
- 26 **entitled to relief;**
- 27 **the court may issue an order to expunge a protection order without**
- 28 **holding a hearing.**
- 29 **(c) The grant or denial of a petition for expungement is a final**
- 30 **appealable order.**
- 31 **Sec. 5. The petitioner bears the burden of proof in a proceeding**
- 32 **to expunge a protection order.**
- 33 **Sec. 6. (a) If a court orders a protection order expunged under**
- 34 **this chapter, the court shall do the following with respect to the**
- 35 **specific records expunged by the court:**
- 36 **(1) Order the office of judicial administration to remove the**
- 37 **protection order from the Indiana protective order registry**
- 38 **established under IC 5-2-9-5.5.**
- 39 **(2) Redact or permanently seal the court's own records**
- 40 **relating to the protection order.**
- 41 **(b) If an appellate court reverses or vacates a protection order,**
- 42 **and the protection order is then expunged, the appellate court**



1 **shall:**
2 **(1) redact the opinion or memorandum decision as it appears**
3 **on the computer gateway administered by the office of**
4 **technology so that it does not include the name of the subject**
5 **of the protection order (in the same manner that opinions**
6 **involving juveniles are redacted); and**
7 **(2) provide a redacted copy of the opinion to any publisher or**
8 **organization to whom the opinion or memorandum decision**
9 **is provided after the date of the order of expungement.**
10 **The supreme court and the court of appeals are not required to**
11 **redact, destroy, or otherwise dispose of any existing copy of an**
12 **opinion or memorandum decision that includes the name of the**
13 **subject of the protection order.**



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 235, 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 lines 4 and 5, begin a new paragraph and insert:

"SECTION 2. IC 35-31.5-2-46.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 46.5. "Collateral action", for purposes of IC 35-38-9, has the meaning set forth in IC 35-38-9-0.5.**"

Page 1, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 4. IC 35-38-9-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 0.5. As used in this chapter, "collateral action" means an action or proceeding, including an administrative proceeding, that is factually or legally related to an arrest, a criminal charge, a juvenile delinquency allegation, a conviction, or a juvenile delinquency adjudication. The term includes a proceeding or action concerning a seizure, a civil forfeiture, and a petition for specialized driving privileges.**

SECTION 5. IC 35-38-9-0.6 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 0.6. This chapter does not require any change or alteration in the following:**

- (1) **An internal record made by a:**
 - (A) **law enforcement agency; or**
 - (B) **public defender agency;****that is not intended for release to the public.**
- (2) **A nonpublic record that relates to a diversion or deferral program."**

Page 3, line 12, delete "related seizure or civil forfeiture" and insert "**collateral**".

Page 3, line 24, delete "civil forfeiture proceeding" and insert "**collateral action;**".

Page 3, delete lines 25 through 28.

Page 3, line 37, delete "as the owner of property seized in a civil forfeiture" and insert "**in a collateral**".

Page 4, strike lines 12 through 14.

Page 4, line 15, strike "(2)".



Page 4, line 15, delete "nonpublic".

Page 4, line 15, strike "records that relate to a diversion or deferral".

Page 4, strike line 16.

Page 4, line 17, strike "(i)" and insert "**(h)**".

Page 5, line 8, delete "civil forfeiture." and insert "**collateral action.**".

Page 5, line 11, delete "civil forfeiture related to the conviction," and insert "**collateral action,**".

Page 5, line 25, delete "civil forfeiture related to the conviction," and insert "**collateral action,**".

Page 6, line 20, delete "civil forfeiture." and insert "**collateral action.**".

Page 6, line 23, delete "civil forfeiture related to the conviction," and insert "**collateral action,**".

Page 6, line 37, delete "civil forfeiture related to the conviction," and insert "**collateral action,**".

Page 7, line 32, delete "civil forfeiture." and insert "**collateral action.**".

Page 7, line 35, delete "civil forfeiture related to the conviction," and insert "**collateral action,**".

Page 8, line 7, delete "civil forfeiture related to the conviction," and insert "**collateral action,**".

Page 9, line 3, delete "civil forfeiture." and insert "**collateral action.**".

Page 9, line 6, delete "civil forfeiture related to the conviction," and insert "**collateral action,**".

Page 9, line 22, delete "civil forfeiture related to the conviction," and insert "**collateral action,**".

Page 9, line 31, delete "civil forfeiture related to the conviction," and insert "**collateral action,**".

Page 9, line 41, after "incarcerated," insert "**prosecuted,**".

Page 10, line 13, delete "expunged." and insert "**expunged, including in a collateral action.**".

Page 11, line 10, delete "civil forfeiture related to the conviction." and insert "**collateral action.**".

Page 11, line 16, delete "civil forfeiture related to the" and insert "**collateral action,**".

Page 11, line 17, delete "conviction,".

Page 11, line 20, delete "civil forfeiture proceeding with" and insert "**collateral action;**".

Page 11, delete line 21.

Page 11, line 30, delete "civil forfeiture related to the conviction,"



and insert "**collateral action**".

Page 11, line 34, delete "as the owner of property seized in a civil forfeiture" and insert "**in a collateral**".

Page 12, line 23, delete "civil" and insert "**collateral action**".

Page 12, line 24, delete "forfeiture related to the conviction,".

Page 12, between lines 37 and 38, begin a new paragraph and insert:

"(g) If a court issues an order granting a petition for expungement under sections 2 through 3 of this chapter, the court shall also order any related records described in section 1(f) of this chapter sealed or redacted in the manner described in section 1 of this chapter, unless the records described in section 1(f) of this chapter have been ordered sealed and redacted under this section."

Page 12, line 38, strike "(g)" and insert "**(h)**".

Page 13, line 8, delete "civil forfeiture related to the conviction," and insert "**collateral action**".

Page 13, line 16, delete "civil forfeiture" and insert "**collateral action**".

Page 13, line 17, delete "related to the conviction,".

Page 13, between lines 27 and 28, begin a new paragraph and insert:

"(e) If a court issues an order granting a petition for expungement under sections 4 through 5 of this chapter, the court shall also order any related records described in section 1(f) of this chapter marked as expunged, unless the records described in section 1(f) of this chapter have been ordered marked as expunged under this section."

Page 13, line 32, delete "civil forfeiture related to" and insert "**collateral action**".

Page 13, line 33, delete "the conviction,".

Page 16, line 12, delete "civil forfeiture related to the" and insert "**collateral action**".

Page 16, line 13, delete "conviction,".

Page 16, line 27, after "subsequently" insert "**dismissed the ex parte order or**".

Page 16, line 39, delete "terminates" and insert "**dismisses**".



Page 18, delete lines 14 through 16.

Page 18, line 17, delete "(3)" and insert "(2)".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 235 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 8, Nays 0.

