

SENATE BILL No. 235

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-26-5-22; IC 35-31.5-2-121; IC 35-38.

Synopsis: Expungements. Permits the expungement of civil forfeiture records if a related arrest or conviction is expunged. Allows a person to expunge all records related to the person's expunged conviction. 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 records for a misdemeanor or Class D and Level 6 felony conviction including: (1) information related to 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 any matters related to the case ordered expunged. Provides that a person convicted of a felony that resulted in death to another person may not seek expungement of that felony. Establishes a method for a person to expunge a protection order.

Effective: July 1, 2019.

Freeman, Young M

January 3, 2019, read first time and referred to Committee on Corrections and Criminal Law.



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 35-31.5-2-121, AS ADDED BY P.L.114-2012,
6 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2019]: Sec. 121. "Episode of criminal conduct", for purposes
8 of **IC 35-38-9 and** IC 35-50-1-2, has the meaning set forth in
9 IC 35-50-1-2(b).

10 SECTION 3. IC 35-38-9-1, AS AMENDED BY P.L.142-2015,
11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2019]: Sec. 1. (a) This section applies only to a person who
13 has been arrested, charged with an offense, or alleged to be a
14 delinquent child, if:

- 15 (1) the arrest, criminal charge, or juvenile delinquency allegation:
 - 16 (A) did not result in a conviction or juvenile adjudication; or
 - 17 (B) resulted in a conviction or juvenile adjudication and the



- 1 conviction or adjudication was **expunged or was later**
 2 vacated; ~~on appeal~~; and
- 3 (2) the person is not currently participating in a pretrial diversion
 4 program.
- 5 (b) Not earlier than one (1) year after the date of arrest, criminal
 6 charge, or juvenile delinquency allegation (whichever is later), if the
 7 person was not convicted or adjudicated a delinquent child, or ~~the date~~
 8 of the opinion vacating the conviction or adjudication becomes final,
 9 ~~(unless the prosecuting attorney agrees in writing to an earlier time);~~
 10 the person may petition the court for expungement of the records
 11 related to the arrest, criminal charge, or juvenile delinquency
 12 allegation. **However, a person may petition the court for**
 13 **expungement at an earlier time if the prosecuting attorney agrees**
 14 **in writing to an earlier time.**
- 15 (c) A petition for expungement of records must be verified and filed
 16 in a circuit or superior court in the county where the criminal charges
 17 or juvenile delinquency allegation was filed, or if no criminal charges
 18 or juvenile delinquency allegation was filed, in the county where the
 19 arrest occurred. The petition must set forth:
- 20 (1) the date of the arrest, criminal charges, or juvenile
 21 delinquency allegation, and conviction (if applicable);
 22 (2) the county in which the arrest occurred, the county in which
 23 the information or indictment was filed, and the county in which
 24 the juvenile delinquency allegation was filed, if applicable;
 25 (3) the law enforcement agency employing the arresting officer,
 26 if known;
 27 (4) the court in which the criminal charges or juvenile
 28 delinquency allegation was filed, if applicable;
 29 (5) any other known identifying information, such as:
 30 (A) the name of the arresting officer;
 31 (B) case number or court cause number;
 32 (C) any aliases or other names used by the petitioner;
 33 (D) the petitioner's driver's license number; and
 34 (E) a list of each criminal charge and its disposition, if
 35 applicable;
 36 (6) the date of the petitioner's birth; and
 37 (7) the petitioner's Social Security number.
- 38 A person who files a petition under this section is not required to pay
 39 a filing fee.
- 40 (d) The court shall serve a copy of the petition on the prosecuting
 41 attorney.
- 42 (e) Upon receipt of a petition for expungement, the court:



- 1 (1) may summarily deny the petition if the petition does not meet
 2 the requirements of this section, or if the statements contained in
 3 the petition indicate that the petitioner is not entitled to relief; and
 4 (2) shall grant the petition unless:
 5 (A) the conditions described in subsection (a) have not been
 6 met; or
 7 (B) criminal charges are pending against the person.
- 8 (f) Whenever the petition of a person under this section is granted:
 9 (1) no information concerning the arrest, criminal charges,
 10 juvenile delinquency allegation, vacated conviction, or vacated
 11 juvenile delinquency adjudication **(including information from
 12 a related seizure or civil forfeiture action that identifies the
 13 petitioner)**, may be placed or retained in any state central
 14 repository for criminal history information or in any other
 15 alphabetically arranged criminal history information system
 16 maintained by a local, regional, or statewide law enforcement
 17 agency;
 18 (2) the clerk of the supreme court shall seal or redact any records
 19 in the clerk's possession that relate to the arrest, criminal charges,
 20 juvenile delinquency allegation, vacated conviction, or vacated
 21 juvenile delinquency adjudication;
 22 (3) the records of:
 23 (A) the sentencing court;
 24 **(B) a court that conducted a civil forfeiture proceeding
 25 with respect to property seized in connection with the
 26 arrest, criminal charges, juvenile delinquency allegation,
 27 vacated conviction, or vacated juvenile delinquency
 28 adjudication;**
 29 ~~(B)~~ (C) a juvenile court;
 30 ~~(C)~~ (D) a court of appeals; and
 31 ~~(D)~~ (E) the supreme court;
 32 concerning the person shall be redacted or permanently sealed;
 33 and
 34 (4) with respect to the records of a person who is named as an
 35 appellant or an appellee in an opinion or memorandum decision
 36 by the supreme court or the court of appeals, **or who is identified
 37 as the owner of property seized in a civil forfeiture action**, the
 38 court shall:
 39 (A) redact the opinion or memorandum decision as it appears
 40 on the computer gateway administered by the office of
 41 technology so that it does not include the petitioner's name (in
 42 the same manner that opinions involving juveniles are



- 1 redacted); and
 2 (B) provide a redacted copy of the opinion to any publisher or
 3 organization to whom the opinion or memorandum decision is
 4 provided after the date of the order of expungement.
 5 The supreme court and the court of appeals are not required to
 6 redact, destroy, or otherwise dispose of any existing copy of an
 7 opinion or memorandum decision that includes the petitioner's
 8 name.
 9 (g) If the court issues an order granting a petition for expungement
 10 under this section, the order must include the information described in
 11 subsection (c).
 12 (h) This chapter does not require any change or alteration in:
 13 (1) any internal record made by a law enforcement agency at the
 14 time of the arrest and not intended for release to the public; or
 15 (2) **nonpublic** records that relate to a diversion or deferral
 16 program.
 17 (i) If a person whose records are expunged brings an action that
 18 might be defended with the contents of the expunged records, the
 19 defendant is presumed to have a complete defense to the action. In
 20 order for the plaintiff to recover, the plaintiff must show that the
 21 contents of the expunged records would not exonerate the defendant.
 22 The plaintiff may be required to state under oath whether the plaintiff
 23 had records in the criminal justice system and whether those records
 24 were expunged. If the plaintiff denies the existence of the records, the
 25 defendant may prove their existence in any manner compatible with the
 26 law of evidence.
 27 SECTION 4. IC 35-38-9-2, AS AMENDED BY P.L.95-2017,
 28 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2019]: Sec. 2. (a) Except as provided in subsection (b) and
 30 section 8.5 of this chapter, this section applies only to a person
 31 convicted of a misdemeanor, including a Class D felony (for a crime
 32 committed before July 1, 2014) or a Level 6 felony (for a crime
 33 committed after June 30, 2014) reduced to a misdemeanor.
 34 (b) This section does not apply to the following:
 35 (1) A person convicted of two (2) or more felony offenses that:
 36 (A) involved the unlawful use of a deadly weapon; and
 37 (B) were not committed as part of the same episode of criminal
 38 conduct.
 39 (2) A sex or violent offender (as defined in IC 11-8-8-5).
 40 (c) Not earlier than five (5) years after the date of conviction (unless
 41 the prosecuting attorney consents in writing to an earlier period), the
 42 person convicted of the misdemeanor may petition a court to expunge



1 all conviction records, including records contained in:

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

7 that relate to the person's misdemeanor conviction, **including records**
 8 **of a civil forfeiture.**

9 (d) A person who files a petition to expunge conviction records,
 10 **including any records relating to the conviction and any records**
 11 **concerning a civil forfeiture related to the conviction**, shall file the
 12 petition in a circuit or superior court in the county of conviction.

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

- 14 (1) the period required by this section has elapsed;
 15 (2) no charges are pending against the person;
 16 (3) the person has paid all fines, fees, and court costs, and
 17 satisfied any restitution obligation placed on the person as part of
 18 the sentence; and
 19 (4) the person has not been convicted of a crime within the
 20 previous five (5) years (or within a shorter period agreed to by the
 21 prosecuting attorney if the prosecuting attorney has consented to
 22 a shorter period under subsection (c));

23 the court shall order the conviction records described in subsection (c),
 24 **including any records relating to the conviction and any records**
 25 **concerning a civil forfeiture related to the conviction**, expunged in
 26 accordance with section 6 of this chapter.

27 SECTION 5. IC 35-38-9-3, AS AMENDED BY P.L.142-2015,
 28 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2019]: Sec. 3. (a) Except as provided in subsection (b) and
 30 section 8.5 of this chapter, this section applies only to a person
 31 convicted of a Class D felony (for a crime committed before July 1,
 32 2014) or a Level 6 felony (for a crime committed after June 30, 2014).
 33 This section does not apply to a person if the person's Class D felony
 34 or Level 6 felony was reduced to a Class A misdemeanor.

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

- 36 (1) An elected official convicted of an offense while serving the
 37 official's term or as a candidate for public office.
 38 (2) A sex or violent offender (as defined in IC 11-8-8-5).
 39 (3) A person convicted of a felony that resulted in bodily injury to
 40 another person.
 41 (4) A person convicted of perjury (IC 35-44.1-2-1) or official
 42 misconduct (IC 35-44.1-1-1).



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

2 (A) IC 35-42-1;

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

4 (C) IC 35-42-4.

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

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

7 (B) were not committed as part of the same episode of criminal
8 conduct.

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

14 (1) a court's files;

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

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

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

19 that relate to the person's Class D or Level 6 felony conviction,
20 **including records of a civil forfeiture.**

21 (d) A person who files a petition to expunge conviction records,
22 **including any records relating to the conviction and any records**
23 **concerning a civil forfeiture related to the conviction,** shall file the
24 petition in a circuit or superior court in the county of conviction.

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

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

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

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

31 (4) the person has not been convicted of a crime within the
32 previous eight (8) years (or within a shorter period agreed to by
33 the prosecuting attorney if the prosecuting attorney has consented
34 to a shorter period under subsection (c));

35 the court shall order the conviction records described in subsection (c),
36 **including any records relating to the conviction and any records**
37 **concerning a civil forfeiture related to the conviction,** expunged in
38 accordance with section 6 of this chapter.

39 SECTION 6. IC 35-38-9-4, AS AMENDED BY P.L.142-2015,
40 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2019]: Sec. 4. (a) Except as provided in subsection (b) and
42 section 8.5 of this chapter, this section applies only to a person



1 convicted of a felony who may not seek expungement of that felony
2 under section 3 of this chapter.

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

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

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

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

9 **(4) A person convicted of a felony that resulted in death to
10 another person.**

11 ~~(4)~~ **(5)** A person convicted of official misconduct
12 (IC 35-44.1-1-1).

13 ~~(5)~~ **(6)** A person convicted of an offense described in:

14 (A) IC 35-42-1;

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

16 (C) IC 35-42-4.

17 ~~(6)~~ **(7)** A person convicted of two (2) or more felony offenses that:

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

19 (B) were not committed as part of the same episode of criminal
20 conduct.

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

26 (1) a court's files;

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

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

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

31 that relate to the person's felony conviction, **including records of a
32 civil forfeiture.**

33 (d) A person who files a petition to expunge conviction records,
34 **including any records relating to the conviction and any records
35 concerning a civil forfeiture related to the conviction**, shall file the
36 petition in a circuit or superior court in the county of conviction.

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

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

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

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



1 (4) the person has not been convicted of a crime within the
 2 previous eight (8) years (or within a shorter period agreed to by
 3 the prosecuting attorney if the prosecuting attorney has consented
 4 to a shorter period under subsection (c));

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

12 SECTION 7. IC 35-38-9-5, AS AMENDED BY P.L.142-2015,
 13 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2019]: Sec. 5. (a) Except as provided in subsection (b) and
 15 section 8.5 of this chapter, this section applies to a person convicted of
 16 a felony, including:

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

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

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

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

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

- 39 (1) a court's files;
 40 (2) the files of the department of correction;
 41 (3) the files of the bureau of motor vehicles; and
 42 (4) the files of any other person who provided treatment or



1 services to the petitioning person under a court order;
 2 that relate to the person's felony conviction, **including records of a**
 3 **civil forfeiture.**

4 (d) A person who files a petition to expunge conviction records,
 5 **including any records relating to the conviction and any records**
 6 **concerning a civil forfeiture related to the conviction**, shall file the
 7 petition in a circuit or superior court in the county of conviction.

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

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

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

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

14 (4) the person has not been convicted of a crime within the
 15 previous ten (10) years (or within a shorter period agreed to by the
 16 prosecuting attorney if the prosecuting attorney has consented to
 17 a shorter period under subsection (c)); and

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

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

27 SECTION 8. IC 35-38-9-6, AS AMENDED BY P.L.198-2016,
 28 SECTION 671, IS AMENDED TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) If the court orders conviction
 30 records, **including any records relating to the conviction and any**
 31 **records concerning a civil forfeiture related to the conviction**,
 32 expunged under sections 2 through 3 of this chapter, the court shall do
 33 the following with respect to the specific records expunged by the
 34 court:

35 (1) Order:

36 (A) the department of correction;

37 (B) the bureau of motor vehicles; and

38 (C) each:

39 (i) law enforcement agency; and

40 (ii) other person;

41 who incarcerated, provided treatment for, or provided other
 42 services for the person under an order of the court;



1 to prohibit the release of the person's records or information in the
 2 person's records to anyone without a court order, other than a law
 3 enforcement officer acting in the course of the officer's official
 4 duty.

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

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

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

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

12 **(B) any other references to any matters related to the case**
 13 **ordered expunged.**

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

16 (A) a prosecuting attorney, if:

17 (i) authorized by a court order; and

18 (ii) needed to carry out the official duties of the prosecuting
 19 attorney;

20 (B) a defense attorney, if:

21 (i) authorized by a court order; and

22 (ii) needed to carry out the professional duties of the defense
 23 attorney;

24 (C) a probation department, if:

25 (i) authorized by a court order; and

26 (ii) necessary to prepare a presentence report;

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

31 (E) the:

32 (i) supreme court;

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

34 (iii) executive director of the state board of law examiners;
 35 and

36 (iv) employees of the state board of law examiners, in
 37 accordance with rules adopted by the state board of law
 38 examiners;

39 for the purpose of determining whether an applicant possesses
 40 the necessary good moral character for admission to the bar;

41 (F) a person required to access expunged records to comply
 42 with the Secure and Fair Enforcement for Mortgage Licensing



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

8 ~~(3)~~ **(4)** Notify the clerk of the supreme court to seal any records in
 9 the clerk's possession that relate to the conviction, **including any**
 10 **records concerning a civil forfeiture related to the conviction.**

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

14 (b) Except as provided in subsection (c), if a petition to expunge
 15 conviction records, **including any records relating to the conviction**
 16 **and any records concerning a civil forfeiture related to the**
 17 **conviction**, is granted under sections 2 through 3 of this chapter, the
 18 records of:

19 (1) the sentencing court;

20 **(2) a court that conducted a civil forfeiture proceeding with**
 21 **respect to property seized in connection with the conviction;**

22 ~~(2)~~ **(3)** a juvenile court;

23 ~~(3)~~ **(4)** a court of appeals; and

24 ~~(4)~~ **(5)** the supreme court;

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

28 (c) If a petition to expunge conviction records, **including any**
 29 **records relating to the conviction and any records concerning a**
 30 **civil forfeiture related to the conviction**, is granted under sections 2
 31 through 3 of this chapter with respect to the records of a person who is
 32 named as an appellant or an appellee in an opinion or memorandum
 33 decision by the supreme court or the court of appeals, **or who is**
 34 **identified as the owner of property seized in a civil forfeiture**
 35 **action**, the court shall:

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

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



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

4 (d) Notwithstanding subsection (b), a prosecuting attorney may
 5 submit a written application to a court that granted an expungement
 6 petition under this chapter to gain access to any records that were
 7 permanently sealed under subsection (b), if the records are relevant in
 8 a new prosecution of the person. If a prosecuting attorney who submits
 9 a written application under this subsection shows that the records are
 10 relevant for a new prosecution of the person, the court that granted the
 11 expungement petition shall:

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

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

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

22 (e) If a person whose conviction records, **including any records**
 23 **relating to the conviction and any records concerning a civil**
 24 **forfeiture related to the conviction**, are expunged under sections 2
 25 through 5 of this chapter is required to register as a sex offender based
 26 on the commission of a felony which has been expunged:

27 (1) the expungement does not affect the operation of the sex
 28 offender registry web site, any person's ability to access the
 29 person's records, records required to be maintained concerning
 30 sex or violent offenders, or any registration requirement imposed
 31 on the person; and

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

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

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

41 SECTION 9. IC 35-38-9-7, AS AMENDED BY P.L.198-2016,
 42 SECTION 672, IS AMENDED TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) This section applies only to
 2 a person who has filed a petition for expungement under section 4 or
 3 5 of this chapter and whose records have been ordered marked as
 4 expunged.

5 (b) The court records and other public records relating to the arrest,
 6 conviction, or sentence of a person whose conviction records,
 7 **including any records relating to the conviction and any records**
 8 **concerning a civil forfeiture related to the conviction**, have been
 9 marked as expunged remain public records. However, the court shall
 10 order that the records be clearly and visibly marked or identified as
 11 being expunged. A petition for expungement granted under sections 4
 12 through 5 of this chapter does not affect an existing or pending driver's
 13 license suspension.

14 (c) The state police department, the bureau of motor vehicles, and
 15 any other law enforcement agency in possession of records that relate
 16 to the conviction, **including any records concerning a civil forfeiture**
 17 **related to the conviction**, ordered to be marked as expunged shall add
 18 an entry to the person's record of arrest, conviction, or sentence in the
 19 criminal history data base stating that the record is marked as
 20 expunged. Nothing in this chapter prevents the bureau of motor
 21 vehicles from reporting information about a conviction for a violation
 22 of a traffic control law to the Commercial Drivers License Information
 23 System (CDLIS), in accordance with federal law, even if the conviction
 24 has been expunged under section 4 or 5 of this chapter.

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

28 SECTION 10. IC 35-38-9-8, AS AMENDED BY P.L.142-2015,
 29 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2019]: Sec. 8. (a) This section applies only to a petition to
 31 expunge conviction records, **including any records relating to the**
 32 **conviction and any records concerning a civil forfeiture related to**
 33 **the conviction**, under sections 2 through 5 of this chapter. This section
 34 does not apply to a petition to expunge records related to the arrest,
 35 criminal charge, or juvenile delinquency allegation under section 1 of
 36 this chapter.

37 (b) Any person may seek an expungement under sections 2 through
 38 5 of this chapter by filing a verified petition for expungement. The
 39 petition must include the following:

- 40 (1) The petitioner's full name and all other legal names or aliases
- 41 by which the petitioner is or has been known.
- 42 (2) The petitioner's date of birth.



- 1 (3) The petitioner's addresses from the date of the offense to the
 2 date of the petition.
- 3 (4) The case number or court cause number, if available.
- 4 (5) The petitioner shall affirm that no criminal investigation or
 5 charges are pending against the petitioner.
- 6 (6) The petitioner shall affirm that the petitioner has not
 7 committed another crime within the period required for
 8 expungement.
- 9 (7) The petitioner shall list all convictions, **all civil forfeitures**,
 10 the cause number of each conviction, if known, the date of the
 11 conviction, and any appeals from the conviction and the date any
 12 appellate opinion was handed down, if applicable.
- 13 (8) The petitioner shall include:
- 14 (A) the petitioner's Social Security number;
- 15 (B) the petitioner's driver's license number;
- 16 (C) the date of the petitioner's arrest, if applicable; and
- 17 (D) the date on which the petitioner was convicted.
- 18 (9) The petitioner shall affirm that the required period has elapsed
 19 or attach a copy of the prosecuting attorney's written consent to a
 20 shorter period.
- 21 (10) The petitioner shall describe any other petitions that the
 22 petitioner has filed under this chapter.
- 23 (11) For a petition filed under section 5 of this chapter, the
 24 petitioner shall attach a copy of the prosecuting attorney's written
 25 consent.
- 26 (c) The petitioner may include any other information that the
 27 petitioner believes may assist the court.
- 28 (d) A person who files a petition under this section is required to
 29 pay the filing fee required in civil cases. The court may reduce or waive
 30 this fee if the person is indigent.
- 31 (e) The petitioner shall serve a copy of the petition upon the
 32 prosecuting attorney in accordance with the Indiana Rules of Trial
 33 Procedure.
- 34 (f) The prosecuting attorney shall inform the victim of the victim's
 35 rights under IC 35-40-6 by contacting the victim at the victim's last
 36 known address. However, if a court has no discretion in granting an
 37 expungement petition under this chapter, the prosecuting attorney is
 38 not required to inform the victim of the victim's rights under this
 39 subsection.
- 40 (g) The prosecuting attorney shall reply to the petition not later than
 41 thirty (30) days after receipt. If the prosecuting attorney fails to timely
 42 reply to the petition:



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

3 (2) the court shall proceed to consider the petition under section
4 9 of this chapter.

5 SECTION 11. 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, 2019]: Sec. 10. (a) This section does not apply to a person to
8 whom sealed records may be disclosed under section ~~6(a)(2)~~ **6(a)(3)** of
9 this 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 application for employment, a license, or other right or
25 privilege, a person may be questioned about a previous criminal record
26 only in terms that exclude expunged convictions or arrests, such as:
27 "Have you ever been arrested for or convicted of a crime that has not
28 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, **including any records relating to the conviction**
 12 **and any records concerning a civil forfeiture related to the**
 13 **conviction**, that has been expunged under this chapter is not admissible
 14 as evidence in an action for negligent hiring, admission, or licensure
 15 against a person or entity who relied on the order.

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

21 SECTION 12. IC 35-38-9.5 IS ADDED TO THE INDIANA CODE
 22 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2019]:

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

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

- 27 (1) **an order for protection ex parte and subsequently denied**
 28 **a petition for an order for protection; or**
 29 (2) **an order for protection or an order for protection ex parte**
 30 **and an appellate court reversed or vacated the order for**
 31 **protection or the order for protection ex parte.**

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

- 33 (1) **"Protection order" means an Indiana civil protection**
 34 **order under IC 34-26-5. The term includes an order for**
 35 **protection and an order for protection ex parte.**
 36 (2) **"Subject of a protection order" means the person against**
 37 **whom a protection order was issued.**

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

- 39 (1) **a court terminates or denies an order for protection**
 40 **following issuance of an order for protection ex parte, as**
 41 **described in section 1(1) of this chapter; or**
 42 (2) **the opinion reversing or vacating an order for protection**



1 becomes final, as described in section 1(2) of this chapter;
 2 the subject of the protection order may petition to expunge the
 3 protection order in the court that issued or denied the protection
 4 order.

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

- 7 (1) The petitioner's full name.
 8 (2) The petitioner's date of birth.
 9 (3) The petitioner's address.
 10 (4) The case number or court cause number, if available.
 11 (5) The petitioner's Social Security number.
 12 (6) The petitioner's driver's license number.
 13 (7) The date of the order for protection or order for
 14 protection ex parte, if applicable.
 15 (8) A description of why the petitioner is entitled to relief,
 16 including all relevant dates.
 17 (9) Certified copies of the following, if applicable:
 18 (A) The order for protection.
 19 (B) The order for protection ex parte.
 20 (C) The order denying an order for protection.
 21 (D) The opinion from the appellate court reversing or
 22 vacating an order for protection or an order for protection
 23 ex parte.

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

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

- 29 (1) redact the petitioner's:
 30 (A) date of birth;
 31 (B) Social Security number; and
 32 (C) driver's license number;
 33 from the petition;
 34 (2) serve a copy of the redacted petition under subdivision (1)
 35 on the person who originally sought the protection order; and
 36 (3) set the matter for hearing.

37 The person who originally sought the protection order is entitled
 38 to appear at the hearing.

39 (b) If:

- 40 (1) the person who originally sought the protection order
 41 waives in writing the right to appear at the hearing; and
 42 (2) the petition conclusively indicates that the petitioner is



1 entitled to relief;
2 the court may issue an order to expunge a protection order without
3 holding a hearing.

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

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

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

11 (1) Order the office of judicial administration to remove the
12 protection order from the Indiana protective order registry
13 established under IC 5-2-9-5.5.

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

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

19 (b) If an appellate court reverses or vacates a protection order,
20 and the protection order is then expunged, the appellate court
21 shall:

22 (1) redact the opinion or memorandum decision as it appears
23 on the computer gateway administered by the office of
24 technology so that it does not include the name of the subject
25 of the protection order (in the same manner that opinions
26 involving juveniles are redacted); and

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

30 The supreme court and the court of appeals are not required to
31 redact, destroy, or otherwise dispose of any existing copy of an
32 opinion or memorandum decision that includes the name of the
33 subject of the protection order.

