



April 5, 2019

ENGROSSED

SENATE BILL No. 235

DIGEST OF SB 235 (Updated April 3, 2019 1:20 pm - DI 131)

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. Specifies that an amendment affecting the information required to be expunged, marked as expunged, or otherwise sealed or restricted does not apply to an expungement order granted before the effective date of the amendment. Sets forth a procedure for a person to file a petition for a supplemental order of expungement. 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. 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, Buck,
Randolph Lonnie M

(HOUSE SPONSORS — YOUNG J, STEUERWALD)

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

January 16, 2019, amended, reported favorably — Do Pass.

January 29, 2019, read second time, amended, ordered engrossed.

January 30, 2019, engrossed.

January 31, 2019, read third time, passed. Yeas 46, nays 3.

HOUSE ACTION

February 26, 2019, read first time and referred to Committee on Courts and Criminal Code.

April 4, 2019, amended, reported — Do Pass.

ES 235—LS 6674/DI 131



April 5, 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.

ENGROSSED 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,**

ES 235—LS 6674/DI 131



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. (a) 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 (3) A disciplinary record or proceeding as it relates to a
 17 licensing, certification, or public entity.

18 (b) Except as provided in subsection (c), the changes in this
 19 chapter made in SEA 235-2019 as enacted in the 2019 session of the
 20 general assembly apply only to an expungement order granted
 21 after June 30, 2019.

22 (c) A person whose petition for expungement was granted
 23 before July 1, 2019, may file a petition for a supplemental order of
 24 expungement under section 9 of this chapter to obtain the benefit
 25 of changes in SEA 235-2019 as enacted in the 2019 session of the
 26 general assembly, if applicable.

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

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

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

34 (B) resulted in a conviction or juvenile adjudication and the
 35 conviction or adjudication was **expunged under sections 2**

36 **through 5 of this chapter, or was later** vacated; ~~on appeal;~~
 37 and

38 (2) the person is not currently participating in a pretrial diversion
 39 program.

40 (b) Not earlier than one (1) year after the date of arrest, criminal
 41 charge, or juvenile delinquency allegation (whichever is later), if the
 42 person was not convicted or adjudicated a delinquent child, or ~~the date~~



1 of the opinion vacating the conviction or adjudication becomes final,
 2 (unless the prosecuting attorney agrees in writing to an earlier time);
 3 the person may petition the court for expungement of the records
 4 related to the arrest, criminal charge, or juvenile delinquency
 5 allegation. **However, a person may petition the court for**
 6 **expungement at an earlier time if the prosecuting attorney agrees**
 7 **in writing to an earlier time.**

8 (c) A petition for expungement of records must be verified and filed
 9 in a circuit or superior court in the county where the criminal charges
 10 or juvenile delinquency allegation was filed, or if no criminal charges
 11 or juvenile delinquency allegation was filed, in the county where the
 12 arrest occurred. The petition must set forth:

- 13 (1) the date of the arrest, criminal charges, or juvenile
 14 delinquency allegation, and conviction (if applicable);
- 15 (2) the county in which the arrest occurred, the county in which
 16 the information or indictment was filed, and the county in which
 17 the juvenile delinquency allegation was filed, if applicable;
- 18 (3) the law enforcement agency employing the arresting officer,
 19 if known;
- 20 (4) the court in which the criminal charges or juvenile
 21 delinquency allegation was filed, if applicable;
- 22 (5) any other known identifying information, such as:
 23 (A) the name of the arresting officer;
 24 (B) case number or court cause number;
 25 (C) any aliases or other names used by the petitioner;
 26 (D) the petitioner's driver's license number; and
 27 (E) a list of each criminal charge and its disposition, if
 28 applicable;
- 29 (6) the date of the petitioner's birth; and
- 30 (7) the petitioner's Social Security number.

31 A person who files a petition under this section is not required to pay
 32 a filing fee.

33 (d) The court shall serve a copy of the petition on the prosecuting
 34 attorney.

35 (e) Upon receipt of a petition for expungement, the court:

- 36 (1) may summarily deny the petition if the petition does not meet
 37 the requirements of this section, or if the statements contained in
 38 the petition indicate that the petitioner is not entitled to relief; and
- 39 (2) shall grant the petition unless:
 40 (A) the conditions described in subsection (a) have not been
 41 met; or
 42 (B) criminal charges are pending against the person.



- 1 (f) Whenever the petition of a person under this section is granted:
 2 (1) no information concerning the arrest, criminal charges,
 3 juvenile delinquency allegation, vacated conviction, or vacated
 4 juvenile delinquency adjudication **(including information from**
 5 **a collateral action that identifies the petitioner)**, may be placed
 6 or retained in any state central repository for criminal history
 7 information or in any other alphabetically arranged criminal
 8 history information system maintained by a local, regional, or
 9 statewide law enforcement agency;
 10 (2) the clerk of the supreme court shall seal or redact any records
 11 in the clerk's possession that relate to the arrest, criminal charges,
 12 juvenile delinquency allegation, vacated conviction, or vacated
 13 juvenile delinquency adjudication;
 14 (3) the records of:
 15 (A) the sentencing court;
 16 **(B) a court that conducted a collateral action;**
 17 ~~(B)~~ (C) a juvenile court;
 18 ~~(C)~~ **(D)** a court of appeals; and
 19 ~~(D)~~ **(E)** the supreme court;
 20 concerning the person shall be redacted or permanently sealed;
 21 and
 22 (4) with respect to the records of a person who is named as an
 23 appellant or an appellee in an opinion or memorandum decision
 24 by the supreme court or the court of appeals, **or who is identified**
 25 **in a collateral action**, the court shall:
 26 (A) redact the opinion or memorandum decision as it appears
 27 on the computer gateway administered by the office of
 28 technology so that it does not include the petitioner's name (in
 29 the same manner that opinions involving juveniles are
 30 redacted); and
 31 (B) provide a redacted copy of the opinion to any publisher or
 32 organization to whom the opinion or memorandum decision is
 33 provided after the date of the order of expungement.
 34 The supreme court and the court of appeals are not required to
 35 redact, destroy, or otherwise dispose of any existing copy of an
 36 opinion or memorandum decision that includes the petitioner's
 37 name.
 38 (g) If the court issues an order granting a petition for expungement
 39 under this section, the order must include the information described in
 40 subsection (c).
 41 ~~(h)~~ **This chapter does not require any change or alteration in:**
 42 ~~(i)~~ **any internal record made by a law enforcement agency at the**



1 time of the arrest and not intended for release to the public; or
 2 (2) records that relate to a diversion or deferral program.

3 (†) (h) If a person whose records are expunged brings an action that
 4 might be defended with the contents of the expunged records, the
 5 defendant is presumed to have a complete defense to the action. In
 6 order for the plaintiff to recover, the plaintiff must show that the
 7 contents of the expunged records would not exonerate the defendant.
 8 The plaintiff may be required to state under oath whether the plaintiff
 9 had records in the criminal justice system and whether those records
 10 were expunged. If the plaintiff denies the existence of the records, the
 11 defendant may prove their existence in any manner compatible with the
 12 law of evidence.

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

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

- 21 (1) 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 (2) A sex or violent offender (as defined in IC 11-8-8-5).

26 (c) Not earlier than five (5) years after the date of conviction (unless
 27 the prosecuting attorney consents in writing to an earlier period), the
 28 person convicted of the misdemeanor may petition a court to expunge
 29 all conviction records, including 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 misdemeanor conviction, **including records**
 36 **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 five (5) years (or within a shorter period agreed to by the
 7 prosecuting attorney if the prosecuting attorney has consented to
 8 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 8. IC 35-38-9-3, AS AMENDED BY P.L.142-2015,
 14 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2019]: Sec. 3. (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 Class D felony (for a crime committed before July 1,
 18 2014) or a Level 6 felony (for a crime committed after June 30, 2014).
 19 This section does not apply to a person if the person's Class D felony
 20 or Level 6 felony was reduced to a Class A misdemeanor.

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

- 22 (1) An elected official convicted of an offense while serving the
 23 official's term or as a candidate for public office.
 24 (2) A sex or violent offender (as defined in IC 11-8-8-5).
 25 (3) A person convicted of a felony that resulted in bodily injury to
 26 another person.
 27 (4) A person convicted of perjury (IC 35-44.1-2-1) or official
 28 misconduct (IC 35-44.1-1-1).
 29 (5) 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) 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 eight (8) years after the date of conviction
 38 (unless the prosecuting attorney consents in writing to an earlier
 39 period), the person convicted of the Class D felony or Level 6 felony
 40 may petition a court to expunge all conviction records, including
 41 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 Class D or Level 6 felony conviction,
 6 **including records of a 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 shall order the conviction records described in subsection (c),
 22 **including any records relating to the conviction and any records**
 23 **concerning a collateral action**, expunged in accordance with section
 24 6 of this chapter.

25 SECTION 9. IC 35-38-9-4, AS AMENDED BY P.L.142-2015,
 26 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2019]: Sec. 4. (a) Except as provided in subsection (b) and
 28 section 8.5 of this chapter, this section applies only to a person
 29 convicted of a felony who may not seek expungement of that felony
 30 under section 3 of this chapter.

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

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

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

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

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

39 ~~(4)~~ **(5)** A person convicted of official misconduct
 40 (IC 35-44.1-1-1).

41 ~~(5)~~ **(6)** A person convicted of an offense described in:

42 (A) IC 35-42-1;



- 1 (B) IC 35-42-3.5; or
 2 (C) IC 35-42-4.
 3 ~~(6)~~ (7) A person convicted of two (2) or more felony offenses that:
 4 (A) involved the unlawful use of a deadly weapon; and
 5 (B) were not committed as part of the same episode of criminal
 6 conduct.
- 7 (c) Not earlier than the later of eight (8) years from the date of
 8 conviction, or three (3) years from the completion of the person's
 9 sentence, unless the prosecuting attorney consents in writing to an
 10 earlier period, the person convicted of the felony may petition a court
 11 to expunge all conviction records, including records contained in:
 12 (1) a court's files;
 13 (2) the files of the department of correction;
 14 (3) the files of the bureau of motor vehicles; and
 15 (4) the files of any other person who provided treatment or
 16 services to the petitioning person under a court order;
 17 that relate to the person's felony conviction, **including records of a**
 18 **collateral action.**
- 19 (d) A person who files a petition to expunge conviction records,
 20 **including any records relating to the conviction and any records**
 21 **concerning a collateral action**, shall file the petition in a circuit or
 22 superior court in the county of conviction.
- 23 (e) If the court finds by a preponderance of the evidence that:
 24 (1) the period required by this section has elapsed;
 25 (2) no charges are pending against the person;
 26 (3) the person has paid all fines, fees, and court costs, and
 27 satisfied any restitution obligation placed on the person as part of
 28 the sentence; and
 29 (4) the person has not been convicted of a crime within the
 30 previous eight (8) years (or within a shorter period agreed to by
 31 the prosecuting attorney if the prosecuting attorney has consented
 32 to a shorter period under subsection (c));
 33 the court may order the conviction records described in subsection (c),
 34 **including any records relating to the conviction and any records**
 35 **concerning a collateral action**, marked as expunged in accordance
 36 with section 7 of this chapter. A person whose records have been
 37 ordered marked as expunged under this section is considered to have
 38 had the person's records expunged for all purposes other than the
 39 disposition of the records.
- 40 SECTION 10. IC 35-38-9-5, AS AMENDED BY P.L.142-2015,
 41 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2019]: Sec. 5. (a) Except as provided in subsection (b) and



1 section 8.5 of this chapter, this section applies to a person convicted of
2 a felony, including:

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

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

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

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

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

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

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

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

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

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



1 previous ten (10) years (or within a shorter period agreed to by the
 2 prosecuting attorney if the prosecuting attorney has consented to
 3 a shorter period under subsection (c)); and

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

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

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

20 (1) Order:

21 (A) the department of correction;

22 (B) the bureau of motor vehicles; and

23 (C) each:

24 (i) law enforcement agency; and

25 (ii) other person;

26 who incarcerated, **prosecuted**, provided treatment for, or
 27 provided other services for the person under an order of the
 28 court;

29 to prohibit the release of the person's records or information in the
 30 person's records to anyone without a court order, other than a law
 31 enforcement officer acting in the course of the officer's official
 32 duty.

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

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

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

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

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

42 **This subdivision does not require the state police department**



1 **to seal any record the state police department does not have**
 2 **legal authority to seal.**

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

5 (A) a prosecuting attorney, if:

6 (i) authorized by a court order; and

7 (ii) needed to carry out the official duties of the prosecuting
 8 attorney;

9 (B) a defense attorney, if:

10 (i) authorized by a court order; and

11 (ii) needed to carry out the professional duties of the defense
 12 attorney;

13 (C) a probation department, if:

14 (i) authorized by a court order; and

15 (ii) necessary to prepare a presentence report;

16 (D) the Federal Bureau of Investigation and the Department of
 17 Homeland Security, if disclosure is required to comply with an
 18 agreement relating to the sharing of criminal history
 19 information;

20 (E) the:

21 (i) supreme court;

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

23 (iii) executive director of the state board of law examiners;
 24 and

25 (iv) employees of the state board of law examiners, in
 26 accordance with rules adopted by the state board of law
 27 examiners;

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

30 (F) a person required to access expunged records to comply
 31 with the Secure and Fair Enforcement for Mortgage Licensing
 32 Act (12 U.S.C. 5101 et seq.) or regulations adopted under the

33 Secure and Fair Enforcement for Mortgage Licensing Act; and

34 (G) the bureau of motor vehicles, the Federal Motor Carrier
 35 Administration, and the Commercial Drivers License
 36 Information System (CDLIS), if disclosure is required to
 37 comply with federal law relating to reporting a conviction for
 38 a violation of a traffic control law.

39 ~~(3)~~ **(4)** Notify the clerk of the supreme court to seal any records in
 40 the clerk's possession that relate to the conviction, **including any**
 41 **records concerning a collateral action.**

42 A probation department may provide an unredacted version of a



1 presentence report disclosed under subdivision ~~(2)(C)~~ **(3)(C)** to any
 2 person authorized by law to receive a presentence report.

3 (b) Except as provided in subsection (c), if a petition to expunge
 4 conviction records, **including any records relating to the conviction**
 5 **and any records concerning a collateral action**, is granted under
 6 sections 2 through 3 of this chapter, the records of:

- 7 (1) the sentencing court;
 8 **(2) a court that conducted a collateral action;**
 9 ~~(2) (3)~~ a juvenile court;
 10 ~~(3) (4)~~ a court of appeals; and
 11 ~~(4) (5)~~ the supreme court;

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

15 (c) If a petition to expunge conviction records, **including any**
 16 **records relating to the conviction and any records concerning a**
 17 **collateral action**, is granted under sections 2 through 3 of this chapter
 18 with respect to the records of a person who is named as an appellant or
 19 an appellee in an opinion or memorandum decision by the supreme
 20 court or the court of appeals, **or who is identified in a collateral**
 21 **action**, the court shall:

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

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

32 (d) Notwithstanding subsection (b), a prosecuting attorney may
 33 submit a written application to a court that granted an expungement
 34 petition under this chapter to gain access to any records that were
 35 permanently sealed under subsection (b), if the records are relevant in
 36 a new prosecution of the person. If a prosecuting attorney who submits
 37 a written application under this subsection shows that the records are
 38 relevant for a new prosecution of the person, the court that granted the
 39 expungement petition shall:

- 40 (1) order the records to be unsealed; and
 41 (2) allow the prosecuting attorney who submitted the written
 42 application to have access to the records.



1 If a court orders records to be unsealed under this subsection, the court
 2 shall order the records to be permanently resealed at the earliest
 3 possible time after the reasons for unsealing the records cease to exist.
 4 However, if the records are admitted as evidence against the person in
 5 a new prosecution that results in the person's conviction, or are used to
 6 enhance a sentence imposed on the person in a new prosecution, the
 7 court is not required to reseat the records.

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

13 (1) the expungement does not affect the operation of the sex
 14 offender registry web site, any person's ability to access the
 15 person's records, records required to be maintained concerning
 16 sex or violent offenders, or any registration requirement imposed
 17 on the person; and

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

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

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

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

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

40 (b) The court records and other public records relating to the arrest,
 41 conviction, or sentence of a person whose conviction records,
 42 **including any records relating to the conviction and any records**



1 **concerning a collateral action**, have been marked as expunged remain
 2 public records. However, the court shall order that the records be
 3 clearly and visibly marked or identified as being expunged. A petition
 4 for expungement granted under sections 4 through 5 of this chapter
 5 does not affect an existing or pending driver's license suspension.

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

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

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

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

34 (b) Any person may seek an expungement under sections 2 through
 35 5 of this chapter by filing a verified petition for expungement. The
 36 petition must include the following:

- 37 (1) The petitioner's full name and all other legal names or aliases
- 38 by which the petitioner is or has been known.
- 39 (2) The petitioner's date of birth.
- 40 (3) The petitioner's addresses from the date of the offense to the
- 41 date of the petition.
- 42 (4) The case number or court cause number, if available.



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



- 1 9 of this chapter.
- 2 SECTION 14. IC 35-38-9-9, AS AMENDED BY P.L.142-2015,
3 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2019]: Sec. 9. (a) If the prosecuting attorney does not object,
5 or has waived objection to the petition under section 8 of this chapter,
6 the court may grant the petition for expungement without a hearing.
- 7 (b) The court may summarily deny a petition, if the petition does not
8 meet the requirements of section 8 of this chapter, or if the statements
9 contained in the petition demonstrate that the petitioner is not entitled
10 to relief.
- 11 (c) If the prosecuting attorney objects to the petition, the prosecuting
12 attorney shall file the reasons for objecting to the petition with the court
13 and serve a copy of the objections on the petitioner at the time the
14 prosecuting attorney objects to the petition. The court shall set the
15 matter for hearing not sooner than sixty (60) days after service of the
16 petition on the prosecuting attorney.
- 17 (d) A victim of the offense for which expungement is sought may
18 submit an oral or written statement in support of or in opposition to the
19 petition at the time of the hearing. The petitioner must prove by a
20 preponderance of the evidence that the facts alleged in the verified
21 petition are true.
- 22 (e) The grant or denial of a petition is an appealable final order.
- 23 (f) If the court grants the petition for expungement, the court shall
24 issue an order of expungement as described in sections 6 and 7 of this
25 chapter.
- 26 (g) The order granting the petition for expungement described in
27 sections 6 and 7 of this chapter must include the information described
28 in section 8(b) of this chapter.
- 29 (h) This subsection applies only to a petition to expunge conviction
30 records filed under sections 2 through 5 of this chapter. This subsection
31 does not apply to a petition to expunge records related to the arrest,
32 criminal charge, or juvenile delinquency allegation under section 1 of
33 this chapter. A petitioner may seek to expunge more than one (1)
34 conviction at the same time. The petitioner shall consolidate all
35 convictions that the petitioner wishes to expunge from the same county
36 in one (1) petition. A petitioner who wishes to expunge convictions
37 from separate counties must file a petition in each county in which a
38 conviction was entered.
- 39 (i) This subsection applies only to a petition to expunge conviction
40 records filed under sections 2 through 5 of this chapter. This subsection
41 does not apply to a petition to expunge records related to the arrest,
42 criminal charge, or juvenile delinquency allegation under section 1 of



1 this chapter. Except as provided in subsections (j) and (k), a petitioner
 2 may file a petition for expungement only one (1) time during the
 3 petitioner's lifetime. For purposes of this subsection, all petitions for
 4 expungement filed in separate counties for offenses committed in those
 5 counties count as one (1) petition if they are filed in one (1) three
 6 hundred sixty-five (365) day period.

7 (j) A petitioner whose petition for expungement has been denied, in
 8 whole or in part, may refile that petition for expungement, in whole or
 9 in part, with respect to one (1) or more convictions included in the
 10 initial expungement petition that were not expunged. However, if the
 11 petition was denied due to the court's exercise of its discretion under
 12 section 4 or 5 of this chapter, a petition for expungement may be refiled
 13 only after the elapse of three (3) years from the date on which the
 14 previous expungement petition was denied. Except as provided in
 15 subsection (k), a refiled petition for expungement may not include any
 16 conviction that was not included in the initial expungement petition.

17 (k) A court may permit a petitioner to file an amended petition for
 18 expungement with respect to one (1) or more convictions that were not
 19 included in the initial expungement petition only if the court finds that:

- 20 (1) the petitioner intended in good faith to comply with
 21 subsections (h) and (i);
 22 (2) the petitioner's failure to comply with subsections (h) and (i)
 23 was due to:

24 (A) excusable neglect; or

25 (B) circumstances beyond the petitioner's control; and

- 26 (3) permitting the petitioner to file a subsequent petition for
 27 expungement is in the best interests of justice.

28 (l) If:

29 (1) the information required to be expunged, marked as
 30 expunged, or otherwise sealed or restricted under this chapter
 31 changes as the result of an amendment to this chapter; and

32 (2) a person whose petition for expungement was granted
 33 before the effective date of the amendment wishes to obtain
 34 the benefits of that amendment;

35 the person may file a petition for a supplemental order of
 36 expungement with the court that granted the petition for
 37 expungement. A petition for a supplemental order of expungement
 38 must include a copy of the expungement order, succinctly set forth
 39 the relief the petitioner seeks, and include any other information
 40 required by the court. If the court finds that the person was
 41 granted an order for expungement before the effective date of the
 42 amendment and is otherwise entitled to relief, the court shall issue



1 **a supplemental order for expungement consistent with the**
 2 **amendment.**

3 SECTION 15. IC 35-38-9-10, AS AMENDED BY P.L.142-2015,
 4 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2019]: Sec. 10. (a) This section does not apply to a person to
 6 whom sealed records may be disclosed under section ~~6(a)(2)~~ **6(a)(3)** of
 7 this chapter.

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

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

16 any person because of a conviction or arrest record expunged or sealed
 17 under this chapter.

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

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

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

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

39 (f) Any person that discriminates against a person as described in
 40 subsection (b) commits a Class C infraction and may be held in
 41 contempt by the court issuing the order of expungement or by any other
 42 court of general jurisdiction. Any person may file a written motion of



1 contempt to bring an alleged violation of this section to the attention of
2 a court. In addition, the person is entitled to injunctive relief.

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

9 (h) A conviction, **including any records relating to the conviction**
10 **and any records concerning a collateral action**, that has been
11 expunged under this chapter is not admissible as evidence in an action
12 for negligent hiring, admission, or licensure against a person or entity
13 who relied on the order.

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

19 SECTION 16. IC 35-38-9.5 IS ADDED TO THE INDIANA CODE
20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2019]:

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

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

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

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

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

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

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



1 the subject of the protection order may petition to expunge the
 2 protection order in the court that issued or denied the protection
 3 order.

4 (b) A petition seeking to expunge a protection order must be
 5 filed under seal, verified, and include the following information:

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

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

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

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

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

38 (b) If:

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



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

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

5 Sec. 5. The petitioner bears the burden of proof in a proceeding
6 to expunge a protection order. The court shall order the protection
7 order expunged if the petitioner proves by a preponderance of the
8 evidence that the petitioner is entitled to relief.

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

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

15 (2) Redact or permanently seal the court's own records
16 relating to the protection order.

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

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

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

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

SENATE MOTION

Madam President: I move that Senate Bill 235 be amended to read as follows:

Page 17, line 30, after "be" insert "**filed under seal,**".

Page 17, line 31, delete "verified" and insert "**verified,**".

Page 18, line 32, after "order." insert "**The court shall order the protection order expunged if the petitioner proves by a preponderance of the evidence that the petitioner is entitled to relief.**".

(Reference is to SB 235 as printed January 17, 2019.)

FREEMAN

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 235, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 8, after "Sec. 0.6." insert "(a)".

Page 2, between lines 15 and 16, begin a new line block indented and insert:

"(3) A disciplinary record or proceeding as it relates to a licensing, certification, or public entity.

(b) Except as provided in subsection (c), the changes in this



chapter made in SEA 235-2019 as enacted in the 2019 session of the general assembly apply only to an expungement order granted after June 30, 2019.

(c) A person whose petition for expungement was granted before July 1, 2019, may file a petition for a supplemental order of expungement under section 9 of this chapter to obtain the benefit of changes in SEA 235-2019 as enacted in the 2019 session of the general assembly, if applicable."

Page 2, line 24, after "expunged" insert **"under sections 2 through 5 of this chapter,"**.

Page 10, between lines 29 and 30, begin a new line block indented and insert:

"This subdivision does not require the state police department to seal any record the state police department does not have legal authority to seal."

Page 14, line 33, delete "civil forfeitures," and insert **"collateral actions,"**.

Page 15, between lines 28 and 29, begin a new paragraph and insert:
"SECTION 14. IC 35-38-9-9, AS AMENDED BY P.L.142-2015, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) If the prosecuting attorney does not object, or has waived objection to the petition under section 8 of this chapter, the court may grant the petition for expungement without a hearing.

(b) The court may summarily deny a petition, if the petition does not meet the requirements of section 8 of this chapter, or if the statements contained in the petition demonstrate that the petitioner is not entitled to relief.

(c) If the prosecuting attorney objects to the petition, the prosecuting attorney shall file the reasons for objecting to the petition with the court and serve a copy of the objections on the petitioner at the time the prosecuting attorney objects to the petition. The court shall set the matter for hearing not sooner than sixty (60) days after service of the petition on the prosecuting attorney.

(d) A victim of the offense for which expungement is sought may submit an oral or written statement in support of or in opposition to the petition at the time of the hearing. The petitioner must prove by a preponderance of the evidence that the facts alleged in the verified petition are true.

(e) The grant or denial of a petition is an appealable final order.

(f) If the court grants the petition for expungement, the court shall issue an order of expungement as described in sections 6 and 7 of this chapter.



(g) The order granting the petition for expungement described in sections 6 and 7 of this chapter must include the information described in section 8(b) of this chapter.

(h) This subsection applies only to a petition to expunge conviction records filed under sections 2 through 5 of this chapter. This subsection does not apply to a petition to expunge records related to the arrest, criminal charge, or juvenile delinquency allegation under section 1 of this chapter. A petitioner may seek to expunge more than one (1) conviction at the same time. The petitioner shall consolidate all convictions that the petitioner wishes to expunge from the same county in one (1) petition. A petitioner who wishes to expunge convictions from separate counties must file a petition in each county in which a conviction was entered.

(i) This subsection applies only to a petition to expunge conviction records filed under sections 2 through 5 of this chapter. This subsection does not apply to a petition to expunge records related to the arrest, criminal charge, or juvenile delinquency allegation under section 1 of this chapter. Except as provided in subsections (j) and (k), a petitioner may file a petition for expungement only one (1) time during the petitioner's lifetime. For purposes of this subsection, all petitions for expungement filed in separate counties for offenses committed in those counties count as one (1) petition if they are filed in one (1) three hundred sixty-five (365) day period.

(j) A petitioner whose petition for expungement has been denied, in whole or in part, may refile that petition for expungement, in whole or in part, with respect to one (1) or more convictions included in the initial expungement petition that were not expunged. However, if the petition was denied due to the court's exercise of its discretion under section 4 or 5 of this chapter, a petition for expungement may be refiled only after the elapse of three (3) years from the date on which the previous expungement petition was denied. Except as provided in subsection (k), a refiled petition for expungement may not include any conviction that was not included in the initial expungement petition.

(k) A court may permit a petitioner to file an amended petition for expungement with respect to one (1) or more convictions that were not included in the initial expungement petition only if the court finds that:

- (1) the petitioner intended in good faith to comply with subsections (h) and (i);
- (2) the petitioner's failure to comply with subsections (h) and (i) was due to:
 - (A) excusable neglect; or
 - (B) circumstances beyond the petitioner's control; and



(3) permitting the petitioner to file a subsequent petition for expungement is in the best interests of justice.

(l) If:

(1) the information required to be expunged, marked as expunged, or otherwise sealed or restricted under this chapter changes as the result of an amendment to this chapter; and

(2) a person whose petition for expungement was granted before the effective date of the amendment wishes to obtain the benefits of that amendment;

the person may file a petition for a supplemental order of expungement with the court that granted the petition for expungement. A petition for a supplemental order of expungement must include a copy of the expungement order, succinctly set forth the relief the petitioner seeks, and include any other information required by the court. If the court finds that the person was granted an order for expungement before the effective date of the amendment and is otherwise entitled to relief, the court shall issue a supplemental order for expungement consistent with the amendment."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 235 as reprinted January 30, 2019.)

MCNAMARA

Committee Vote: yeas 8, nays 3.

