



Reprinted  
April 9, 2019

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## ENGROSSED SENATE BILL No. 235

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DIGEST OF SB 235 (Updated April 8, 2019 5:57 pm - DI 131)

**Citations Affected:** IC 5-2; 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  
(Continued next page)

**Effective:** July 1, 2019.

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**Freeman, Young M, Buck,  
Randolph Lonnie M**

(HOUSE SPONSORS — YOUNG J, STEUERWALD)

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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.

April 8, 2019, read second time, amended, ordered engrossed.

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ES 235—LS 6674/DI 131



## Digest Continued

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. Requires an IDACS coordinator to remove the name of a respondent from the Indiana protective order registry when the IDACS coordinator receives notice from the county clerk that the protective order against the respondent has been dismissed.

**ES 235—LS 6674/DI 131**



Reprinted  
April 9, 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

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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 5-2-9-9 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2019]: **Sec. 9. When an IDACS coordinator receives notice from a**  
4 **county clerk that a protective order has been dismissed, the IDACS**  
5 **coordinator shall remove the name of the respondent from the**  
6 **registry.**

7 SECTION 2. IC 34-26-7.5 IS ADDED TO THE INDIANA CODE  
8 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
9 JULY 1, 2019]:

10 **Chapter 7.5. Petitions to Expunge Protection Orders**

11 **Sec. 1. This chapter applies to a person named as the subject of**  
12 **a protection order, and if one (1) of the following applies:**

13 **(1) A protection order was issued to the plaintiff, but is**  
14 **subsequently terminated due to the:**

15 **(A) dismissal of the petition before a court hearing on the**  
16 **protection order;**

17 **(B) denial of the protection order upon the order of the**

ES 235—LS 6674/DI 131



- 1 court; or  
 2 (C) failure of the plaintiff to appear to the court hearing on  
 3 the protection order.  
 4 (2) A protection order was reversed or vacated by an  
 5 appellate court.  
 6 **Sec. 2. The following definitions apply throughout this chapter:**  
 7 (1) "Protection order" means an Indiana civil protection  
 8 order under IC 34-26-5. The term includes an order for  
 9 protection and an order for protection ex parte.  
 10 (2) "Subject of a protection order" means the person against  
 11 whom a protection order was issued.  
 12 (3) "Plaintiff" means the person for whom a protection order  
 13 was issued.  
 14 (4) "Expungement" means the sealing of protection order  
 15 court records from public inspection, but not from a law  
 16 enforcement agency or the court.  
 17 **Sec. 3. (a) At any time after a court dismisses or denies an order**  
 18 **for protection following issuance of an order for protection ex**  
 19 **parte, as described in section 1(1) of this chapter, the subject of the**  
 20 **protection order may petition to expunge the protection order:**  
 21 (1) with the court that issued or denied the protection order;  
 22 and  
 23 (2) in the cause the protection order was issued under.  
 24 (b) A petition seeking to expunge a protection order must be  
 25 filed under seal, verified, and include the following information:  
 26 (1) The petitioner's full name.  
 27 (2) The petitioner's date of birth.  
 28 (3) The petitioner's address.  
 29 (4) The case number or court cause number, if available.  
 30 (5) The petitioner's Social Security number.  
 31 (6) The petitioner's driver's license number.  
 32 (7) The date of the order for protection or order for  
 33 protection ex parte, if applicable.  
 34 (8) A description of why the petitioner is entitled to relief,  
 35 including all relevant dates.  
 36 (9) Certified copies of the following, if applicable:  
 37 (A) The order for protection.  
 38 (B) The order for protection ex parte.  
 39 (C) The order denying an order for protection.  
 40 (D) The opinion from the appellate court reversing or  
 41 vacating an order for protection or an order for protection  
 42 ex parte.



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

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

6 (1) redact the petitioner's:

7 (A) date of birth;

8 (B) Social Security number; and

9 (C) driver's license number;

10 from the petition;

11 (2) serve a copy of the redacted petition under subdivision (1)  
12 on the plaintiff who originally sought the protection order;  
13 and

14 (3) set the matter for hearing.

15 The plaintiff who originally sought the protection order is entitled  
16 to appear at the hearing.

17 (b) If:

18 (1) the plaintiff who originally sought the protection order  
19 waives in writing the right to appear at the hearing; and

20 (2) the petition conclusively indicates that the petitioner is  
21 entitled to relief;

22 the court may issue an order to expunge a protection order without  
23 holding a hearing.

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

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

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

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

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

38 (b) If an appellate court reverses or vacates a protection order,  
39 and the protection order is then expunged, the appellate court  
40 shall:

41 (1) redact the opinion or memorandum decision as it appears  
42 on the computer gateway administered by the office of



1           technology so that it does not include the name of the subject  
2           of the protection order (in the same manner that opinions  
3           involving juveniles are redacted); and

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

7           The supreme court and the court of appeals are not required to  
8           redact, destroy, or otherwise dispose of any existing copy of an  
9           opinion or memorandum decision that includes the name of the  
10          subject of the protection order.

11          Sec. 7. A petitioner whose record is expunged under this  
12          chapter:

13           (1) shall be treated as if the protection order had never been  
14           filed; and

15           (2) may answer truthfully to a question from the petitioner's  
16           employer or prospective employer that a petition or order of  
17           protection has never been filed against the petitioner.

18          SECTION 3. IC 35-31.5-2-46.5 IS ADDED TO THE INDIANA  
19          CODE AS A NEW SECTION TO READ AS FOLLOWS  
20          [EFFECTIVE JULY 1, 2019]: Sec. 46.5. "Collateral action", for  
21          purposes of IC 35-38-9, has the meaning set forth in IC 35-38-9-0.5.

22          SECTION 4. IC 35-31.5-2-121, AS ADDED BY P.L.114-2012,  
23          SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
24          JULY 1, 2019]: Sec. 121. "Episode of criminal conduct", for purposes  
25          of IC 35-38-9 and IC 35-50-1-2, has the meaning set forth in  
26          IC 35-50-1-2(b).

27          SECTION 5. IC 35-38-9-0.5 IS ADDED TO THE INDIANA CODE  
28          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
29          1, 2019]: Sec. 0.5. As used in this chapter, "collateral action" means  
30          an action or proceeding, including an administrative proceeding,  
31          that is factually or legally related to an arrest, a criminal charge,  
32          a juvenile delinquency allegation, a conviction, or a juvenile  
33          delinquency adjudication. The term includes a proceeding or  
34          action concerning a seizure, a civil forfeiture, and a petition for  
35          specialized driving privileges.

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

40           (1) An internal record made by a:

41           (A) law enforcement agency; or

42           (B) public defender agency;



1           **that is not intended for release to the public.**

2           **(2) A nonpublic record that relates to a diversion or deferral**  
3           **program.**

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

6           **(b) Except as provided in subsection (c), the changes in this**  
7           **chapter made in SEA 235-2019 as enacted in the 2019 session of the**  
8           **general assembly apply only to an expungement order granted**  
9           **after June 30, 2019.**

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

15          SECTION 7. IC 35-38-9-1, AS AMENDED BY P.L.142-2015,  
16          SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17          JULY 1, 2019]: Sec. 1. (a) This section applies only to a person who  
18          has been arrested, charged with an offense, or alleged to be a  
19          delinquent child, if:

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

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

22               (B) resulted in a conviction or juvenile adjudication and the  
23               conviction or adjudication was **expunged under sections 2**  
24               **through 5 of this chapter, or was later** vacated; ~~on appeal;~~  
25               and

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

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

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



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





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



1 SECTION 8. IC 35-38-9-2, AS AMENDED BY P.L.95-2017,  
 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2019]: Sec. 2. (a) Except as provided in subsection (b) and  
 4 section 8.5 of this chapter, this section applies only to a person  
 5 convicted of a misdemeanor, including a Class D felony (for a crime  
 6 committed before July 1, 2014) or a Level 6 felony (for a crime  
 7 committed after June 30, 2014) reduced to a misdemeanor.

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

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

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

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

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

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

18 (1) a court's files;

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

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

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

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

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

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

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

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

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

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

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



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

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

- 10 (1) An elected official convicted of an offense while serving the  
 11 official's term or as a candidate for public office.  
 12 (2) A sex or violent offender (as defined in IC 11-8-8-5).  
 13 (3) A person convicted of a felony that resulted in bodily injury to  
 14 another person.  
 15 (4) A person convicted of perjury (IC 35-44.1-2-1) or official  
 16 misconduct (IC 35-44.1-1-1).  
 17 (5) A person convicted of an offense described in:  
 18 (A) IC 35-42-1;  
 19 (B) IC 35-42-3.5; or  
 20 (C) IC 35-42-4.  
 21 (6) A person convicted of two (2) or more felony offenses that:  
 22 (A) involved the unlawful use of a deadly weapon; and  
 23 (B) were not committed as part of the same episode of criminal  
 24 conduct.

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

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

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

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

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

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



- 1 (2) no charges are pending against the person;
- 2 (3) the person has paid all fines, fees, and court costs, and
- 3 satisfied any restitution obligation placed on the person as part of
- 4 the sentence; and
- 5 (4) the person has not been convicted of a crime within the
- 6 previous eight (8) years (or within a shorter period agreed to by
- 7 the prosecuting attorney if the prosecuting attorney has consented
- 8 to a shorter period under subsection (c));
- 9 the court shall order the conviction records described in subsection (c),
- 10 **including any records relating to the conviction and any records**
- 11 **concerning a collateral action**, expunged in accordance with section
- 12 6 of this chapter.
- 13 SECTION 10. IC 35-38-9-4, AS AMENDED BY P.L.142-2015,
- 14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 15 JULY 1, 2019]: Sec. 4. (a) Except as provided in subsection (b) and
- 16 section 8.5 of this chapter, this section applies only to a person
- 17 convicted of a felony who may not seek expungement of that felony
- 18 under section 3 of this chapter.
- 19 (b) This section does not apply to the following:
- 20 (1) An elected official convicted of an offense while serving the
- 21 official's term or as a candidate for public office.
- 22 (2) A sex or violent offender (as defined in IC 11-8-8-5).
- 23 (3) A person convicted of a felony that resulted in serious bodily
- 24 injury to another person.
- 25 **(4) A person convicted of a felony that resulted in death to**
- 26 **another person.**
- 27 ~~(4)~~ **(5)** A person convicted of official misconduct
- 28 (IC 35-44.1-1-1).
- 29 ~~(5)~~ **(6)** A person convicted of an offense described in:
- 30 (A) IC 35-42-1;
- 31 (B) IC 35-42-3.5; or
- 32 (C) IC 35-42-4.
- 33 ~~(6)~~ **(7)** A person convicted of two (2) or more felony offenses that:
- 34 (A) involved the unlawful use of a deadly weapon; and
- 35 (B) were not committed as part of the same episode of criminal
- 36 conduct.
- 37 (c) Not earlier than the later of eight (8) years from the date of
- 38 conviction, or three (3) years from the completion of the person's
- 39 sentence, unless the prosecuting attorney consents in writing to an
- 40 earlier period, the person convicted of the felony may petition a court
- 41 to expunge all conviction records, including records contained in:
- 42 (1) a court's files;



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

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

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

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

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

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

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

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

28 SECTION 11. IC 35-38-9-5, AS AMENDED BY P.L.142-2015,  
 29 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 30 JULY 1, 2019]: Sec. 5. (a) Except as provided in subsection (b) and  
 31 section 8.5 of this chapter, this section applies to a person convicted of  
 32 a felony, including:

33 (1) an elected official convicted of an offense while serving the  
 34 official's term or as a candidate for public office; and

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

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

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

39 (2) A person convicted of official misconduct (IC 35-44.1-1-1).

40 (3) A person convicted of an offense described in:

41 (A) IC 35-42-1;

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



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



1 SECTION 12. IC 35-38-9-6, AS AMENDED BY P.L.198-2016,  
 2 SECTION 671, IS AMENDED TO READ AS FOLLOWS  
 3 [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) If the court orders conviction  
 4 records, **including any records relating to the conviction and any**  
 5 **records concerning a collateral action**, expunged under sections 2  
 6 through 3 of this chapter, the court shall do the following with respect  
 7 to the specific records expunged by the court:

8 (1) Order:

9 (A) the department of correction;

10 (B) the bureau of motor vehicles; and

11 (C) each:

12 (i) law enforcement agency; and

13 (ii) other person;

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

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

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

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

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

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

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

30 **This subdivision does not require the state police department**  
 31 **to seal any record the state police department does not have**  
 32 **legal authority to seal.**

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

35 (A) a prosecuting attorney, if:

36 (i) authorized by a court order; and

37 (ii) needed to carry out the official duties of the prosecuting  
 38 attorney;

39 (B) a defense attorney, if:

40 (i) authorized by a court order; and

41 (ii) needed to carry out the professional duties of the defense  
 42 attorney;



1 (C) a probation department, if:  
 2 (i) authorized by a court order; and  
 3 (ii) necessary to prepare a presentence report;  
 4 (D) the Federal Bureau of Investigation and the Department of  
 5 Homeland Security, if disclosure is required to comply with an  
 6 agreement relating to the sharing of criminal history  
 7 information;  
 8 (E) the:  
 9 (i) supreme court;  
 10 (ii) members of the state board of law examiners;  
 11 (iii) executive director of the state board of law examiners;  
 12 and  
 13 (iv) employees of the state board of law examiners, in  
 14 accordance with rules adopted by the state board of law  
 15 examiners;  
 16 for the purpose of determining whether an applicant possesses  
 17 the necessary good moral character for admission to the bar;  
 18 (F) a person required to access expunged records to comply  
 19 with the Secure and Fair Enforcement for Mortgage Licensing  
 20 Act (12 U.S.C. 5101 et seq.) or regulations adopted under the  
 21 Secure and Fair Enforcement for Mortgage Licensing Act; and  
 22 (G) the bureau of motor vehicles, the Federal Motor Carrier  
 23 Administration, and the Commercial Drivers License  
 24 Information System (CDLIS), if disclosure is required to  
 25 comply with federal law relating to reporting a conviction for  
 26 a violation of a traffic control law.  
 27 ~~(2)~~ **(4)** Notify the clerk of the supreme court to seal any records in  
 28 the clerk's possession that relate to the conviction, **including any**  
 29 **records concerning a collateral action.**  
 30 A probation department may provide an unredacted version of a  
 31 presentence report disclosed under subdivision ~~(2)~~~~(C)~~ **(3)(C)** to any  
 32 person authorized by law to receive a presentence report.  
 33 (b) Except as provided in subsection (c), if a petition to expunge  
 34 conviction records, **including any records relating to the conviction**  
 35 **and any records concerning a collateral action**, is granted under  
 36 sections 2 through 3 of this chapter, the records of:  
 37 (1) the sentencing court;  
 38 **(2) a court that conducted a collateral action;**  
 39 ~~(2)~~ **(3)** a juvenile court;  
 40 ~~(3)~~ **(4)** a court of appeals; and  
 41 ~~(4)~~ **(5)** the supreme court;  
 42 concerning the person shall be permanently sealed. However, a petition





1 for expungement granted under sections 2 through 3 of this chapter  
2 does not affect an existing or pending driver's license suspension.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

22 SECTION 13. IC 35-38-9-7, AS AMENDED BY P.L.198-2016,  
 23 SECTION 672, IS AMENDED TO READ AS FOLLOWS  
 24 [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) This section applies only to  
 25 a person who has filed a petition for expungement under section 4 or  
 26 5 of this chapter and whose records have been ordered marked as  
 27 expunged.

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

36 (c) The state police department, the bureau of motor vehicles, and  
 37 any other law enforcement agency in possession of records that relate  
 38 to the conviction, **including any records concerning a collateral**  
 39 **action**, ordered to be marked as expunged shall add an entry to the  
 40 person's record of arrest, conviction, or sentence in the criminal history  
 41 data base stating that the record is marked as expunged. Nothing in this  
 42 chapter prevents the bureau of motor vehicles from reporting



1 information about a conviction for a violation of a traffic control law  
 2 to the Commercial Drivers License Information System (CDLIS), in  
 3 accordance with federal law, even if the conviction has been expunged  
 4 under section 4 or 5 of this chapter.

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

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

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

22 (b) Any person may seek an expungement under sections 2 through  
 23 5 of this chapter by filing a verified petition for expungement. The  
 24 petition must include the following:

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



1 (C) the date of the petitioner's arrest, if applicable; and  
2 (D) the date on which the petitioner was convicted.  
3 (9) The petitioner shall affirm that the required period has elapsed  
4 or attach a copy of the prosecuting attorney's written consent to a  
5 shorter period.  
6 (10) The petitioner shall describe any other petitions that the  
7 petitioner has filed under this chapter.  
8 (11) For a petition filed under section 5 of this chapter, the  
9 petitioner shall attach a copy of the prosecuting attorney's written  
10 consent.  
11 (c) The petitioner may include any other information that the  
12 petitioner believes may assist the court.  
13 (d) A person who files a petition under this section is required to  
14 pay the filing fee required in civil cases. The court may reduce or waive  
15 this fee if the person is indigent.  
16 (e) The petitioner shall serve a copy of the petition upon the  
17 prosecuting attorney in accordance with the Indiana Rules of Trial  
18 Procedure.  
19 (f) The prosecuting attorney shall inform the victim of the victim's  
20 rights under IC 35-40-6 by contacting the victim at the victim's last  
21 known address. However, if a court has no discretion in granting an  
22 expungement petition under this chapter, the prosecuting attorney is  
23 not required to inform the victim of the victim's rights under this  
24 subsection.  
25 (g) The prosecuting attorney shall reply to the petition not later than  
26 thirty (30) days after receipt. If the prosecuting attorney fails to timely  
27 reply to the petition:  
28 (1) the prosecuting attorney has waived any objection to the  
29 petition; and  
30 (2) the court shall proceed to consider the petition under section  
31 9 of this chapter.  
32 SECTION 15. IC 35-38-9-9, AS AMENDED BY P.L.142-2015,  
33 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
34 JULY 1, 2019]: Sec. 9. (a) If the prosecuting attorney does not object,  
35 or has waived objection to the petition under section 8 of this chapter,  
36 the court may grant the petition for expungement without a hearing.  
37 (b) The court may summarily deny a petition, if the petition does not  
38 meet the requirements of section 8 of this chapter, or if the statements  
39 contained in the petition demonstrate that the petitioner is not entitled  
40 to relief.  
41 (c) If the prosecuting attorney objects to the petition, the prosecuting  
42 attorney shall file the reasons for objecting to the petition with the court



1 and serve a copy of the objections on the petitioner at the time the  
2 prosecuting attorney objects to the petition. The court shall set the  
3 matter for hearing not sooner than sixty (60) days after service of the  
4 petition on the prosecuting attorney.

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

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

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

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

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

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

37 (j) A petitioner whose petition for expungement has been denied, in  
38 whole or in part, may refile that petition for expungement, in whole or  
39 in part, with respect to one (1) or more convictions included in the  
40 initial expungement petition that were not expunged. However, if the  
41 petition was denied due to the court's exercise of its discretion under  
42 section 4 or 5 of this chapter, a petition for expungement may be refiled



1 only after the elapse of three (3) years from the date on which the  
 2 previous expungement petition was denied. Except as provided in  
 3 subsection (k), a refiled petition for expungement may not include any  
 4 conviction that was not included in the initial expungement petition.

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

8 (1) the petitioner intended in good faith to comply with  
 9 subsections (h) and (i);

10 (2) the petitioner's failure to comply with subsections (h) and (i)  
 11 was due to:

12 (A) excusable neglect; or

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

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

16 **(l) If:**

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

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

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

33 SECTION 16. IC 35-38-9-10, AS AMENDED BY P.L.142-2015,  
 34 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2019]: Sec. 10. (a) This section does not apply to a person to  
 36 whom sealed records may be disclosed under section ~~6(a)(2)~~ **6(a)(3)** of  
 37 this chapter.

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

39 (1) suspend;

40 (2) expel;

41 (3) refuse to employ;

42 (4) refuse to admit;



1 (5) refuse to grant or renew a license, permit, or certificate  
 2 necessary to engage in any activity, occupation, or profession; or  
 3 (6) otherwise discriminate against;  
 4 any person because of a conviction or arrest record expunged or sealed  
 5 under this chapter.

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

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

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

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

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

22 (A) a habitual offender enhancement; and

23 (B) enhancing the new offense based on a prior conviction;  
 24 and

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

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

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

39 (h) A conviction, **including any records relating to the conviction**  
 40 **and any records concerning a collateral action**, that has been  
 41 expunged under this chapter is not admissible as evidence in an action  
 42 for negligent hiring, admission, or licensure against a person or entity



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





## 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.

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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

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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.

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#### HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 235 be amended to read as follows:

Page 1, delete lines 1 through 4, begin a new paragraph and insert:

**"SECTION 1. IC 5-2-9-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. When an IDACS coordinator receives notice from a county clerk that a protective order has been dismissed, the IDACS coordinator shall remove the name of the respondent from the registry.**

ES 235—LS 6674/DI 131



SECTION 2. IC 34-26-7.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

**Chapter 7.5. Petitions to Expunge Protection Orders**

**Sec. 1. This chapter applies to a person named as the subject of a protection order, and if one (1) of the following applies:**

(1) A protection order was issued to the plaintiff, but is subsequently terminated due to the:

(A) dismissal of the petition before a court hearing on the protection order;

(B) denial of the protection order upon the order of the court; or

(C) failure of the plaintiff to appear to the court hearing on the protection order.

(2) A protection order was reversed or vacated by an appellate court.

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

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

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

(3) "Plaintiff" means the person for whom a protection order was issued.

(4) "Expungement" means the sealing of protection order court records from public inspection, but not from a law enforcement agency or the court.

**Sec. 3. (a) At any time after a court dismisses or denies AN order for protection following issuance of an order for protection ex parte, as described in section 1(1) of this chapter, the subject of the protection order may petition to expunge the protection order:**

(1) with the court that issued or denied the protection order; and

(2) in the cause the protection order was issued under.

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

(1) The petitioner's full name.

(2) The petitioner's date of birth.

(3) The petitioner's address.

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

(5) The petitioner's Social Security number.

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





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

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

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

(A) The order for protection.

(B) The order for protection ex parte.

(C) The order denying an order for protection.

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

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

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

(1) redact the petitioner's:

(A) date of birth;

(B) Social Security number; and

(C) driver's license number;

from the petition;

(2) serve a copy of the redacted petition under subdivision (1) on the plaintiff who originally sought the protection order; and

(3) set the matter for hearing.

The plaintiff who originally sought the protection order is entitled to appear at the hearing.

(b) If:

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

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

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

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

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

Sec. 6. (a) If a court orders a protection order expunged under this chapter, the court shall do the following with respect to the



**specific records expunged by the court:**

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

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

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

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

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

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

**Sec. 7. A petitioner whose record is expunged under this chapter:**

**(1) shall be treated as if the protection order had never been filed; and**

**(2) may answer truthfully to a question from the petitioner's employer or prospective employer that a petition or order of protection has never been filed against the petitioner."**

Page 19, delete lines 19 through 42.

Delete pages 20 through 21.

Renumber all SECTIONS consecutively.

(Reference is to ESB 235 as printed April 5, 2019.)

YOUNG J

