

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE ENROLLED ACT No. 1155

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 3-8-1-5, AS AMENDED BY P.L.37-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) This section does not apply to a candidate for federal office.

(b) As used in this section, "felony" means a conviction in any jurisdiction for which the convicted person might have been imprisoned for more than one (1) year. However, the term does not include a conviction:

- (1) for which the person has been pardoned; or
- (2) that has been:
 - (A) reversed;
 - (B) vacated;
 - (C) set aside; ~~or~~
 - (D) not entered because the trial court did not accept the person's guilty plea; **or**
 - (E) **expunged under IC 35-38-9.**

(c) A person is disqualified from assuming or being a candidate for an elected office if:

- (1) the person gave or offered a bribe, threat, or reward to procure the person's election, as provided in Article 2, Section 6 of the Constitution of the State of Indiana;

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(2) the person does not comply with IC 5-8-3 because of a conviction for a violation of the federal laws listed in that statute;

(3) in a:

(A) jury trial, a jury publicly announces a verdict against the person for a felony;

(B) bench trial, the court publicly announces a verdict against the person for a felony; or

(C) guilty plea hearing, the person pleads guilty or nolo contendere to a felony;

(4) the person has been removed from the office the candidate seeks under Article 7, Section 11 or Article 7, Section 13 of the Constitution of the State of Indiana;

(5) the person is a member of the United States armed forces on active duty and prohibited by the United States Department of Defense from being a candidate; or

(6) the person is subject to:

(A) 5 U.S.C. 1502 (the Little Hatch Act); or

(B) 5 U.S.C. 7321-7326 (the Hatch Act);

and would violate either federal statute by becoming or remaining the candidate of a political party for nomination or election to an elected office or a political party office.

(d) The subsequent reduction of a felony to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5 after the:

(1) jury has announced its verdict against the person for a felony;

(2) court has announced its verdict against the person for a felony;

or

(3) person has pleaded guilty or nolo contendere to a felony;

does not affect the operation of subsection (c).

SECTION 2. IC 35-31.5-2-78, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 78. "Crime of domestic violence", for purposes of IC 5-2-6.1, **IC 35-38-9**, and IC 35-47-4-7, means an offense or the attempt to commit an offense that:

(1) has as an element the:

(A) use of physical force; or

(B) threatened use of a deadly weapon; and

(2) is committed against a:

(A) current or former spouse, parent, or guardian of the defendant;

(B) person with whom the defendant shared a child in common;

(C) person who was cohabiting with or had cohabited with the



defendant as a spouse, parent, or guardian; or

(D) person who was or had been similarly situated to a spouse, parent, or guardian of the defendant.

SECTION 3. IC 35-38-5-1 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 1. (a) Whenever:

(1) an individual is arrested but no criminal charges are filed against the individual; or

(2) all criminal charges filed against an individual are dropped because:

(A) of a mistaken identity;

(B) no offense was in fact committed; or

(C) there was an absence of probable cause;

the individual may petition the court for expungement of the records related to the arrest:

(b) A petition for expungement of records must be verified and filed in the court in which the charges were filed; or if no criminal charges were filed; in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:

(1) the date of the arrest;

(2) the charge;

(3) the law enforcement agency employing the arresting officer;

(4) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;

(5) the date of the petitioner's birth; and

(6) the petitioner's Social Security number.

(c) A copy of the petition shall be served on the law enforcement agency and the state central repository for records:

(d) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk shall immediately send a copy of the petition to each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals who represent the agency that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Trial Procedure. The court shall:

(1) summarily grant the petition;

(2) set the matter for hearing; or

(3) summarily deny the petition, if the court determines that:



- (A) the petition is insufficient; or
- (B) based on information contained in sworn statements submitted by individuals who represent an agency, the petitioner is not entitled to an expungement of records:

(e) If a notice of opposition is filed and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing:

(f) After a hearing is held under this section, the petition shall be granted unless the court finds:

- (1) the conditions in subsection (a) have not been met;
- (2) the individual has a record of arrests other than minor traffic offenses; or
- (3) additional criminal charges are pending against the individual.

SECTION 4. IC 35-38-5-2 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 2: If the petition for expungement is granted, the law enforcement agency shall within thirty (30) days of receipt of the court order, deliver to the individual or destroy all fingerprints, photographs, or arrest records in their possession.

SECTION 5. IC 35-38-5-3 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 3: Whenever the petition of an individual under section 1 of this chapter is granted, no information concerning the arrest may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency. However, this chapter does not require any change or alteration in any record (such as a police blotter entry) made at the time of the arrest or in the record of any court in which the criminal charges were filed.

SECTION 6. IC 35-38-5-4 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 4: If a person whose records are expunged brings an action that might be defended with the contents of such records, the defendant is presumed to have a complete defense to such an action. In order for the plaintiff to recover, he must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether he had records in the criminal justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove their existence in any manner compatible with the law of evidence.

SECTION 7. IC 35-38-9-1, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) This section applies only to a person who has been arrested if:



(1) the arrest did not result in a conviction or juvenile adjudication; or

(2) the arrest resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal.

(b) Not earlier than one (1) year after the date of arrest, if the person was not convicted or adjudicated a delinquent child, or the date of the opinion vacating the conviction or adjudication becomes final, the person may petition the sentencing court (if the person was sentenced); the court in which the person was charged (if the person was charged); or any court exercising criminal jurisdiction in Indiana (if the person was not charged or convicted) to seal records contained in:

(1) a court's files;

(2) the files of the department of correction;

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

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

(5) the central repository for criminal history information maintained by the state police department;

that relate to the person's arrest.

(c) A person who files a petition to seal arrest records is not required to pay a filing fee.

(d) If the court finds by clear and convincing evidence that:

(1) the person's arrest:

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

(B) resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal; and

(2) no charges are pending against the person;

the court shall order the arrest records described in subsection (b) sealed so that only a criminal justice agency may access the records without the order of a court.

(a) This section applies only to a person who has been arrested if:

(1) the arrest:

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

or

(B) resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal; and

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

(b) Not earlier than one (1) year after the date of arrest, if the person was not convicted or adjudicated a delinquent child, or the date of the opinion vacating the conviction or adjudication becomes



final (unless the prosecuting attorney agrees in writing to an earlier time), the person may petition the court for expungement of the records related to the arrest.

(c) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:

- (1) the date of the arrest;
- (2) the county in which the arrest occurred;
- (3) the law enforcement agency employing the arresting officer, if known;
- (4) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;
- (5) the date of the petitioner's birth; and
- (6) the petitioner's Social Security number.

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

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

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

(f) Whenever the petition of a person under this section is granted, no information concerning the arrest may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency. However, this chapter does not require any change or alteration in:

- (1) any internal record made by a law enforcement agency at the time of the arrest and not intended for release to the public;
- (2) the record of any court in which the criminal charges were filed; or
- (3) records that relate to a diversion or deferral program.

(g) If a person whose records are expunged brings an action that might be defended with the contents of the expunged records, the defendant is presumed to have a complete defense to the action. In



order for the plaintiff to recover, the plaintiff must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether the plaintiff had records in the criminal justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove their existence in any manner compatible with the law of evidence.

SECTION 8. IC 35-38-9-2, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) This section applies only to a person convicted of a misdemeanor, including a Class D felony **(for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014)** reduced to a misdemeanor.

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

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

that relate to the person's misdemeanor conviction.

(c) A person who files a petition to expunge conviction records shall ~~pay the filing fees required for filing a civil action, and the clerk shall distribute the fees as in the case of a civil action. A person who files a petition to expunge conviction records may not receive a waiver or reduction of fees upon a showing of indigency.~~ **file the petition in a circuit or superior court in the county of conviction.**

(d) If the court finds by ~~clear and convincing a~~ **preponderance of the** evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) ~~the person does not have an existing or pending driver's license suspension;~~
- ~~(4)~~ **(3)** the person has successfully completed the person's sentence, including any term of supervised release, **paid all fines, fees, and court costs,** and satisfied ~~all other obligations any~~ **restitution obligation** placed on the person as part of the sentence; and
- ~~(5)~~ **(4)** the person has not been convicted of a crime within the



previous five (5) years **(or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (b))**;

the court shall order the conviction records described in subsection (b) expunged in accordance with section 6 of this chapter.

SECTION 9. IC 35-38-9-3, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Except as provided in subsection (b), this section applies only to a person convicted of a Class D felony **(for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014)**. This section does not apply to a person if the person's Class D felony **or Level 6 felony** was reduced to a Class A misdemeanor.

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

- (1) An elected official convicted of an offense while serving the official's term or as a candidate for public office.
- (2) A sex or violent offender (as defined in IC 11-8-8-5).
- (3) A person convicted of a felony that resulted in bodily injury to another person.
- (4) A person convicted of perjury (IC 35-44.1-2-1) or official misconduct (IC 35-44.1-1-1).
- (5) A person convicted of an offense described in:
 - (A) IC 35-42-1;
 - (B) IC 35-42-3.5; or
 - (C) IC 35-42-4.

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

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

that relate to the person's Class D **or Level 6** felony conviction.

(d) A person who files a petition to expunge conviction records shall pay the filing fees required for filing a civil action, and the clerk shall distribute the fees as in the case of a civil action. A person who files a petition to expunge conviction records may not receive a waiver or reduction of fees upon a showing of indigency. **file the petition in a circuit or superior court in the county of conviction.**



(e) If the court finds by ~~clear and convincing~~ **a preponderance of the evidence** that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- ~~(3) the person does not have an existing or pending driver's license suspension;~~
- ~~(4)~~ **(3) the person has successfully completed the person's sentence, including any term of supervised release, paid all fines, fees, and court costs, and satisfied all other obligations any restitution obligation placed on the person as part of the sentence; and**
- ~~(5)~~ **(4) the person has not been convicted of a crime within the previous eight (8) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c));**

the court shall order the conviction records described in subsection (c) expunged in accordance with section 6 of this chapter.

SECTION 10. IC 35-38-9-4, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Except as provided in subsection (b), this section applies only to a person convicted of a felony **who may not seek expungement of that felony under section 3 of this chapter.**

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

- (1) An elected official convicted of an offense while serving the official's term or as a candidate for public office.
- (2) A sex or violent offender (as defined in IC 11-8-8-5).
- (3) A person convicted of a felony that resulted in serious bodily injury to another person.
- (4) A person convicted of official misconduct (IC 35-44.1-1-1).
- (5) A person convicted of an offense described in:
 - (A) IC 35-42-1;
 - (B) IC 35-42-3.5; or
 - (C) IC 35-42-4.

(c) Not earlier than **the later of eight (8) years after from the date of conviction, or three (3) years from** the completion of the person's sentence, ~~(including the completion of any term of supervised release and the satisfaction of all other obligations placed on the person as part of the sentence;~~ unless the prosecuting attorney consents in writing to an earlier period, the person convicted of the felony may petition ~~the sentencing a court to expunge all conviction records, including records~~ **a court to expunge all conviction records, including records** contained in:

- (1) a court's files;

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

that relate to the person's felony conviction.

(d) A person who files a petition to expunge conviction records shall ~~pay the filing fees required for filing a civil action, and the clerk shall distribute the fees as in the case of a civil action. A person who files a petition to expunge conviction records may not receive a waiver or reduction of fees upon a showing of indigency.~~ **file the petition in a circuit or superior court in the county of conviction.**

(e) If the court finds by ~~clear and convincing~~ **a preponderance of the** evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- ~~(3) the person does not have an existing or pending driver's license suspension;~~
- ~~(4)~~ **(3)** the person has ~~successfully completed the person's sentence, including any term of supervised release, paid all fines, fees, and court costs, and satisfied all other obligations any restitution obligation~~ placed on the person as part of the sentence; and
- ~~(5)~~ **(4)** the person has not been convicted of a crime within the previous eight (8) years **(or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c));**

the court may order the conviction records described in subsection (c) marked as expunged in accordance with section 7 of this chapter. A person whose records have been ordered marked as expunged under this section is considered to have had the person's records expunged for all purposes other than the disposition of the records.

SECTION 11. IC 35-38-9-5, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Except as provided in subsection (b), this section applies to a person convicted of a felony, including:

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

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

- (1) A sex or violent offender (as defined in IC 11-8-8-5).
- (2) A person convicted of official misconduct (IC 35-44.1-1-1).



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

- (A) IC 35-42-1;
- (B) IC 35-42-3.5; or
- (C) IC 35-42-4.

(c) Not earlier than **the later of ten (10) years after from the date of conviction, or five (5) years from** the completion of the person's sentence, ~~(including the completion of any term of supervised release and the satisfaction of all other obligations placed on the person as part of the sentence;~~ unless the prosecuting attorney consents in writing to an earlier period, the person convicted of the felony may petition ~~the sentencing a court to expunge all conviction records, including records~~ **contained in:**

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

that relate to the person's felony conviction.

(d) A person who files a petition to expunge conviction records shall ~~pay the filing fees required for filing a civil action, and the clerk shall distribute the fees as in the case of a civil action. A person who files a petition to expunge conviction records may not receive a waiver or reduction of fees upon a showing of indigency.~~ **file the petition in a circuit or superior court in the county of conviction.**

(e) If the court finds by ~~clear and convincing a preponderance of the~~ **evidence that:**

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) ~~the person does not have an existing or pending driver's license suspension;~~
- ~~(4)~~ **(3) the person has successfully completed the person's sentence, including any term of supervised release, paid all fines, fees, and court costs, and satisfied all other obligations any restitution obligation placed on the person as part of the sentence;**
- ~~(5)~~ **(4) the person has not been convicted of a crime within the previous ten (10) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c)); and**
- ~~(6)~~ **(5) the prosecuting attorney has consented in writing to the expungement of the person's criminal records;**

the court may order the conviction records described in subsection (c)



marked as expunged in accordance with section 7 of this chapter. A person whose records have been ordered marked as expunged under this section is considered to have had the person's records expunged for all purposes other than the disposition of the records.

SECTION 12. IC 35-38-9-6, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) If the court orders conviction records expunged under sections 2 through 3 of this chapter, the court shall do the following with respect to the specific records expunged by the court:

(1) Order:

- (A) the department of correction;
- (B) the bureau of motor vehicles; and
- (C) each:
 - (i) law enforcement agency; and
 - (ii) other person;

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

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

(2) Order the central repository for criminal history information maintained by the state police department to seal the person's expunged conviction records. Records sealed under this subdivision may be disclosed only to:

- (A) a prosecuting attorney, if:
 - (i) authorized by a court order; and
 - (ii) needed to carry out the official duties of the prosecuting attorney;

(B) a defense attorney, if:

- (i) authorized by a court order; and**
- (ii) needed to carry out the professional duties of the defense attorney;**

(C) a probation department, if:

- (i) authorized by a court order; and**
- (ii) necessary to prepare a presentence report; and**

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

(E) the:



- (i) supreme court;
- (ii) members of the state board of law examiners;
- (iii) executive director of the state board of law examiners; and
- (iv) employees of the state board of law examiners, in accordance with rules adopted by the state board of law examiners;

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

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

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

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

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

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

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

(c) If a petition to expunge conviction records is granted under sections 2 through 3 of this chapter with respect to the records of a person who is named **as an appellant or an appellee** in an opinion or memorandum decision by the supreme court or the court of appeals, the 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 petitioner's name (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 court of appeals are not required to destroy or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner's name.

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

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

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

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

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

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

SECTION 13. IC 35-38-9-7, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) This section applies only to a person who has filed a petition for expungement under section 4 or 5 of this



chapter and whose records have been ordered marked as expunged.

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

(c) The state police department, the bureau of motor vehicles, and any other law enforcement agency in possession of records that relate to the conviction ordered to be marked as expunged shall add an entry to the person's record of arrest, conviction, or sentence in the criminal history data base stating that the record is marked as expunged.

SECTION 14. IC 35-38-9-8, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) This section applies only to a petition to expunge conviction records under sections 2 through 5 of this chapter. This section does not apply to a petition to ~~seal~~ **expunge** arrest records under section 1 of this chapter.

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

- (1) The petitioner's full name and all other legal names or aliases by which the petitioner is or has been known.
- (2) The petitioner's date of birth.
- (3) The petitioner's addresses from the date of the offense to the date of the petition.
- (4) **A certified copy of petitioner's records from the bureau of motor vehicles.**
- (5) The petitioner shall affirm that no criminal investigation or charges are pending against the petitioner.
- ~~(5)~~ (6) The petitioner shall affirm that the petitioner has not committed another crime within the period required for expungement.
- ~~(6)~~ (7) The petitioner shall list all convictions and the date of the conviction, **and any appeals from the conviction and the date any appellate opinion was handed down, if applicable.**
- ~~(7)~~ (8) The petitioner shall affirm that the required period has elapsed or attach a copy of the prosecuting attorney's written consent to a shorter period.
- ~~(8)~~ (9) The petitioner shall describe any other petitions that the petitioner has filed under this chapter.



~~(9)~~ **(10)** For a petition filed under section 5 of this chapter, the petitioner shall attach a copy of the prosecuting attorney's written consent.

~~(10)~~ **(11)** The petitioner shall provide evidence that the petitioner has ~~successfully completed all terms of the sentence previously~~ **paid all fines, fees, and court costs, and satisfied any restitution obligation imposed on the person as part of the sentence.** ~~imposed, including:~~

~~(A) payment of restitution, fines, and court costs; and~~

~~(B) completion of any terms of probation, parole, or community corrections.~~

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

(d) The petitioner shall serve a copy of the petition upon the prosecuting attorney in accordance with the Indiana Rules of Trial Procedure.

~~(e) The prosecuting attorney shall promptly forward a copy of the petition to the last known address of the victim, and inform the victim of the victim's right to be present and address the court. Inform the victim of the victim's rights under IC 35-40-6 by contacting the victim at the victim's last known address.~~

(f) The prosecuting attorney shall reply to the petition not later than thirty (30) days after receipt.

SECTION 15. IC 35-38-9-9, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) If the prosecuting attorney does not object, 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 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 court shall consider the victim's statement before making its determination.~~

~~(e)~~ The petitioner must prove by ~~clear and convincing a~~ **preponderance of the** evidence that the facts alleged in the verified petition are true.



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

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

(~~h~~) (g) 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 ~~seal~~ **expunge** arrest records 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~~) (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 ~~seal~~ **expunge** arrest records under section 1 of this chapter. Except as provided in ~~subsection (f)~~ **subsections (i) and (j)**, a petitioner may file ~~only one (1)~~ **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~~) (i) A petitioner whose petition for expungement has been denied, ~~on the merits~~; in whole or in part, may file a subsequent petition for expungement 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 subsequent petition for expungement may be filed ~~not earlier than~~ **only after the elapse of** three (3) years ~~following from the date on which the denial of a~~ previous expungement petition **was denied. Except as provided in subsection (j)**, a subsequent petition for expungement may not include any conviction that was not included in the initial expungement petition.

(j) A court may permit a petitioner to file a subsequent 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 (g) and (h);
- (2) the petitioner's failure to comply with subsections (g) and



(h) 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.**

SECTION 16. IC 35-38-9-10, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) **This section does not apply to a person to whom sealed records may be disclosed under section 6(a)(2) of this chapter.**

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

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

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

~~(b)~~ **(c)** The civil rights of a person whose conviction has been expunged shall be restored, including the right to vote, to hold public office, **and** to serve as a juror. ~~and; to the extent not prohibited by federal law, to own or possess a firearm.~~

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

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

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

~~(e)~~ **(f)** Any person that discriminates against a person as described



in subsection ~~(a)~~ **(b)** commits a Class C infraction and may be held in contempt by the court issuing the order of expungement or by any other court of general jurisdiction. Any person may file a written motion of contempt to bring an alleged violation of this section to the attention of a court. In addition, the person is entitled to injunctive relief.

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

~~(g)~~ **(h)** A conviction that has been expunged under this chapter is not admissible as evidence in an action for negligent hiring, admission, or licensure against a person or entity who relied on the order.

(i) A petition for expungement and an order for expungement are confidential.

SECTION 17. IC 35-38-9-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11. (a) A person may not waive the right to expungement under this chapter as part of a plea agreement. Any purported waiver of the right to expungement in a plea agreement is invalid and unenforceable as against public policy.**

(b) This section does not prohibit the finding of a waiver of the right to expungement based on a failure to comply with the provisions of this chapter.

SECTION 18. IC 35-47-4-7, AS ADDED BY P.L.118-2007, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Notwithstanding IC 35-47-2, IC 35-47-2.5, the restoration of the right to serve on a jury under IC 33-28-5-18, ~~or~~ the restoration of the right to vote under IC 3-7-13-5, **or the expungement of a crime of domestic violence under IC 35-38-9**, and except as provided in subsections (b), (c), and (f), a person who has been convicted of a crime of domestic violence may not possess a firearm. ~~after the person's release from imprisonment or lawful detention.~~

(b) Not earlier than five (5) years after the date of conviction, a person who has been convicted of a crime of domestic violence may petition the court for restoration of the person's right to possess a firearm. In determining whether to restore the person's right to possess a firearm, the court shall consider the following factors:

(1) Whether the person has been subject to:

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- (A) a protective order;
 - (B) a no contact order;
 - (C) a workplace violence restraining order; or
 - (D) any other court order that prohibits the person from possessing a firearm.
- (2) Whether the person has successfully completed a substance abuse program, if applicable.
 - (3) Whether the person has successfully completed a parenting class, if applicable.
 - (4) Whether the person still presents a threat to the victim of the crime.
 - (5) Whether there is any other reason why the person should not possess a firearm, including whether the person failed to satisfy a specified condition under subsection (c) or whether the person has committed a subsequent offense.

(c) The court may condition the restoration of a person's right to possess a firearm upon the person's satisfaction of specified conditions.

(d) If the court denies a petition for restoration of the right to possess a firearm, the person may not file a second or subsequent petition until one (1) year has elapsed after the filing of the most recent petition.

(e) A person has not been convicted of a crime of domestic violence for purposes of subsection (a) ~~if the conviction has been expunged or~~ if the person has been pardoned.

(f) The right to possess a firearm shall be restored to a person whose conviction is reversed on appeal or on postconviction review at the earlier of the following:

- (1) At the time the prosecuting attorney states on the record that the charges that gave rise to the conviction will not be refiled.
- (2) Ninety (90) days after the final disposition of the appeal or the postconviction proceeding.

SECTION 19. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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