

# HOUSE BILL No. 1223

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-9-6.

**Synopsis:** Expungement and schools. Allows disclosure of expunged records to a school in connection with the employment of a person likely to have contact with a student.

**Effective:** July 1, 2021.

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## Mayfield, Young J

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January 14, 2021, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## HOUSE BILL No. 1223

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 35-38-9-6, AS AMENDED BY P.L.219-2019,  
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2021]: Sec. 6. (a) If the court orders conviction records,  
4 including any records relating to the conviction and any records  
5 concerning a collateral action, expunged under sections 2 through 3 of  
6 this chapter, the court shall do the following with respect to the specific  
7 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



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

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

7 (A) an arrest or offense:

8 (i) in which no conviction was entered; and

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

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

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

16 (3) Records sealed under subdivision (2) may be disclosed only  
 17 to:

18 (A) a prosecuting attorney, if:

19 (i) authorized by a court order; and

20 (ii) needed to carry out the official duties of the prosecuting  
 21 attorney;

22 (B) a defense attorney, if:

23 (i) authorized by a court order; and

24 (ii) needed to carry out the professional duties of the defense  
 25 attorney;

26 (C) a probation department, if:

27 (i) authorized by a court order; and

28 (ii) necessary to prepare a presentence report;

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

33 (E) the:

34 (i) supreme court;

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

36 (iii) executive director of the state board of law examiners;  
 37 and

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

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



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

10 **(H) a school (as defined in IC 22-4-2-37), for the purpose of**  
 11 **determining whether to:**

12 **(i) employ a person seeking employment, including**  
 13 **volunteer employment, with the school; or**

14 **(ii) grant access or admission to the school to a**  
 15 **contractor;**

16 **if the applicant or contractor is likely to have contact with**  
 17 **a student enrolled in the school, regardless of the student's**  
 18 **age.**

19 (4) Notify the clerk of the supreme court to seal any records in the  
 20 clerk's possession that relate to the conviction, including any  
 21 records concerning a collateral action.

22 A probation department may provide an unredacted version of a  
 23 presentence report disclosed under subdivision (3)(C) to any person  
 24 authorized by law to receive a presentence report.

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

29 (1) the sentencing court;

30 (2) a court that conducted a collateral action;

31 (3) a juvenile court;

32 (4) a court of appeals; and

33 (5) the supreme court;

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

37 (c) If a petition to expunge conviction records, including any records  
 38 relating to the conviction and any records concerning a collateral  
 39 action, is granted under sections 2 through 3 of this chapter with  
 40 respect to the records of a person who is named as an appellant or an  
 41 appellee in an opinion or memorandum decision by the supreme court  
 42 or the court of appeals, or who is identified in a collateral action, the



1 court shall:

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

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

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

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

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

30 (e) If a person whose conviction records, including any records  
 31 relating to the conviction and any records concerning a collateral  
 32 action, are expunged under sections 2 through 5 of this chapter is  
 33 required to register as a sex offender based on the commission of a  
 34 felony which has been expunged:

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

42 (f) Expungement of a crime of domestic violence under section 2 of



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

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

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

