

# HOUSE BILL No. 1541

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Expungement. Requires that expunged criminal records be destroyed or permanently deleted, rather than sealed or marked as expunged. Makes conforming amendments.

**Effective:** July 1, 2019.

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## Hatcher, Clere

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January 17, 2019, read first time and referred to Committee on Courts and Criminal Code.

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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.

# HOUSE BILL No. 1541

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 35-38-9-1, AS AMENDED BY P.L.142-2015,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2019]: Sec. 1. (a) This section applies only to a person who  
4 has been arrested, charged with an offense, or alleged to be a  
5 delinquent child, if:  
6 (1) the arrest, criminal charge, or juvenile delinquency allegation:  
7 (A) did not result in a conviction or juvenile adjudication; or  
8 (B) resulted in a conviction or juvenile adjudication and the  
9 conviction or adjudication was vacated on appeal; and  
10 (2) the person is not currently participating in a pretrial diversion  
11 program.  
12 (b) Not earlier than one (1) year after the date of arrest, criminal  
13 charge, or juvenile delinquency allegation (whichever is later), if the  
14 person was not convicted or adjudicated a delinquent child, or the date  
15 of the opinion vacating the conviction or adjudication becomes final  
16 (unless the prosecuting attorney agrees in writing to an earlier time),  
17 the person may petition the court for expungement of the records



1 related to the arrest, criminal charge, or juvenile delinquency  
2 allegation.

3 (c) A petition for expungement of records must be verified and filed  
4 in a circuit or superior court in the county where the criminal charges  
5 or juvenile delinquency allegation was filed, or if no criminal charges  
6 or juvenile delinquency allegation was filed, in the county where the  
7 arrest occurred. The petition must set forth:

8 (1) the date of the arrest, criminal charges, or juvenile  
9 delinquency allegation, and conviction (if applicable);

10 (2) the county in which the arrest occurred, the county in which  
11 the information or indictment was filed, and the county in which  
12 the juvenile delinquency allegation was filed, if applicable;

13 (3) the law enforcement agency employing the arresting officer,  
14 if known;

15 (4) the court in which the criminal charges or juvenile  
16 delinquency allegation was filed, if applicable;

17 (5) any other known identifying information, such as:

18 (A) the name of the arresting officer;

19 (B) case number or court cause number;

20 (C) any aliases or other names used by the petitioner;

21 (D) the petitioner's driver's license number; and

22 (E) a list of each criminal charge and its disposition, if  
23 applicable;

24 (6) the date of the petitioner's birth; and

25 (7) the petitioner's Social Security number.

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

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

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

31 (1) may summarily deny the petition if the petition does not meet  
32 the requirements of this section, or if the statements contained in  
33 the petition indicate that the petitioner is not entitled to relief; and

34 (2) shall grant the petition unless:

35 (A) the conditions described in subsection (a) have not been  
36 met; or

37 (B) criminal charges are pending against the person.

38 (f) Whenever the petition of a person under this section is granted:

39 (1) no information concerning the arrest, criminal charges,  
40 juvenile delinquency allegation, vacated conviction, or vacated  
41 juvenile delinquency adjudication may be placed or retained in  
42 any state central repository for criminal history information or in



1 any other alphabetically arranged criminal history information  
 2 system maintained by a local, regional, or statewide law  
 3 enforcement agency;

4 (2) the clerk of the supreme court shall ~~seal or redact~~ **destroy or**  
 5 **permanently delete** any records in the clerk's possession that  
 6 relate to the arrest, criminal charges, juvenile delinquency  
 7 allegation, vacated conviction, or vacated juvenile delinquency  
 8 adjudication;

9 (3) the records of:

- 10 (A) the sentencing court;
- 11 (B) a juvenile court;
- 12 (C) a court of appeals; and
- 13 (D) the supreme court;

14 concerning the person shall be ~~redacted or permanently sealed;~~  
 15 **destroyed or permanently deleted;** and

16 (4) with respect to the records of a person who is named as an  
 17 appellant or an appellee in an opinion or memorandum decision  
 18 by the supreme court or the court of appeals, the court shall:

19 (A) redact the opinion or memorandum decision as it appears  
 20 on the computer gateway administered by the office of  
 21 technology so that it does not include the petitioner's name (in  
 22 the same manner that opinions involving juveniles are  
 23 redacted); and

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

27 The supreme court and the court of appeals ~~are not required to~~  
 28 **shall** redact, destroy, **permanently delete**, or otherwise dispose  
 29 of any existing copy of an opinion or memorandum decision that  
 30 includes the petitioner's name.

31 (g) If the court issues an order granting a petition for expungement  
 32 under this section, the order must include the information described in  
 33 subsection (c).

34 (h) This chapter ~~does not require any change or alteration in:~~  
 35 **requires the destruction or permanent deletion of:**

36 (1) any internal record made by a law enforcement agency at the  
 37 time of the arrest and not intended for release to the public; ~~or~~  
 38 **and**

39 (2) records that relate to a diversion or deferral program.

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



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

8 SECTION 2. IC 35-38-9-4, AS AMENDED BY P.L.142-2015,  
 9 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10 JULY 1, 2019]: Sec. 4. (a) Except as provided in subsection (b) and  
 11 section 8.5 of this chapter, this section applies only to a person  
 12 convicted of a felony who may not seek expungement of that felony  
 13 under section 3 of this chapter.

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

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

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

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

39 that relate to the person's felony conviction.

40 (d) A person who files a petition to expunge conviction records shall  
 41 file the petition in a circuit or superior court in the county of  
 42 conviction.



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

- 2 (1) the period required by this section has elapsed;  
 3 (2) no charges are pending against the person;  
 4 (3) the person has paid all fines, fees, and court costs, and  
 5 satisfied any restitution obligation placed on the person as part of  
 6 the sentence; and  
 7 (4) the person has not been convicted of a crime within the  
 8 previous eight (8) years (or within a shorter period agreed to by  
 9 the prosecuting attorney if the prosecuting attorney has consented  
 10 to a shorter period under subsection (c));

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

16 SECTION 3. IC 35-38-9-5, AS AMENDED BY P.L.142-2015,  
 17 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18 JULY 1, 2019]: Sec. 5. (a) Except as provided in subsection (b) and  
 19 section 8.5 of this chapter, this section applies to a person convicted of  
 20 a felony, including:

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

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

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

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

- 41 (1) a court's files;  
 42 (2) the files of the department of correction;



1 (3) the files of the bureau of motor vehicles; and  
 2 (4) the files of any other person who provided treatment or  
 3 services to the petitioning person under a court order;  
 4 that relate to the person's felony conviction.

5 (d) A person who files a petition to expunge conviction records shall  
 6 file the petition in a circuit or superior court in the county of  
 7 conviction.

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

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

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

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

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

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

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

25 SECTION 4. IC 35-38-9-6, AS AMENDED BY P.L.198-2016,  
 26 SECTION 671, IS AMENDED TO READ AS FOLLOWS  
 27 [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) If the court orders conviction  
 28 records expunged under sections 2 through 3 of this chapter, the court  
 29 shall do the following with respect to the specific records expunged by  
 30 the court:

31 (1) Order:

32 (A) the department of correction;

33 (B) the bureau of motor vehicles; and

34 (C) each:

35 (i) law enforcement agency; and

36 (ii) other person;

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

39 to ~~prohibit the release of~~ **destroy or permanently delete** the  
 40 person's records or information in the person's records. ~~to anyone~~  
 41 ~~without a court order, other than a law enforcement officer acting~~  
 42 ~~in the course of the officer's official duty.~~



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

5 (A) a prosecuting attorney; if:

6 (i) authorized by a court order; and

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

9 (B) a defense attorney; if:

10 (i) authorized by a court order; and

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

13 (C) a probation department; if:

14 (i) authorized by a court order; and

15 (ii) necessary to prepare a presentence report;

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

20 (E) the:

21 (i) supreme court;

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

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

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

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

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

33 Secure and Fair Enforcement for Mortgage Licensing Act; and

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

39 (3) Notify the clerk of the supreme court to **seal destroy or**  
 40 **permanently delete** any records in the clerk's possession that  
 41 relate to the conviction.

42 A probation department may provide an unredacted version of a





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

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

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

10 concerning the person shall be ~~permanently sealed~~: **destroyed or**  
11 **permanently deleted**. However, a petition for expungement granted  
12 under sections 2 through 3 of this chapter does not affect an existing or  
13 pending driver's license suspension. **Nothing in this chapter prevents**  
14 **the bureau of motor vehicles from reporting information about a**  
15 **conviction for a violation of a traffic control law to the Commercial**  
16 **Drivers License Information System (CDLIS), in accordance with**  
17 **federal law.**

18 (c) If a petition to expunge conviction records is granted under  
19 sections 2 through 3 of this chapter with respect to the records of a  
20 person who is named as an appellant or an appellee in an opinion or  
21 memorandum decision by the supreme court or the court of appeals, the  
22 court shall:

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

30 The supreme court and court of appeals ~~are not required to~~ **shall**  
31 **destroy, permanently delete,** or otherwise dispose of any existing copy  
32 of an opinion or memorandum decision that includes the petitioner's  
33 name.

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

- 42 (1) order the records to be unsealed; and



- 1           (2) allow the prosecuting attorney who submitted the written  
2           application to have access to the records:  
3           If a court orders records to be unsealed under this subsection, the court  
4           shall order the records to be permanently resealed at the earliest  
5           possible time after the reasons for unsealing the records cease to exist.  
6           However, if the records are admitted as evidence against the person in  
7           a new prosecution that results in the person's conviction, or are used to  
8           enhance a sentence imposed on the person in a new prosecution, the  
9           court is not required to reseat the records.
- 10          (e) If a person whose conviction records are expunged under  
11          sections 2 through 5 of this chapter is required to register as a sex  
12          offender based on the commission of a felony which has been  
13          expunged:  
14                (1) the expungement does not affect the operation of the sex  
15                offender registry web site; any person's ability to access the  
16                person's records; records required to be maintained concerning  
17                sex or violent offenders; or any registration requirement imposed  
18                on the person; and  
19                (2) the expunged conviction must be clearly marked as expunged  
20                on the sex offender registry web site.
- 21          (f) (d) Expungement of a crime of domestic violence under section  
22          2 of this chapter does not restore a person's right to possess a firearm.  
23          The right of a person convicted of a crime of domestic violence to  
24          possess a firearm may be restored only in accordance with  
25          IC 35-47-4-7.
- 26          (g) (e) If the court issues an order granting a petition for  
27          expungement under sections 2 through 3 of this chapter, the court shall  
28          include in its order the information described in section 8(b) of this  
29          chapter.
- 30          SECTION 5. IC 35-38-9-7, AS AMENDED BY P.L.198-2016,  
31          SECTION 672, IS AMENDED TO READ AS FOLLOWS  
32          [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) This section applies only to  
33          a person who has filed a petition for expungement under section 4 or  
34          5 of this chapter and whose records have been ordered ~~marked as~~  
35          expunged.
- 36          (b) The court records and other public records relating to the arrest,  
37          conviction, or sentence of a person whose conviction records have been  
38          ~~marked as expunged remain public records. shall be destroyed or~~  
39          ~~permanently deleted.~~ However, the court shall order that the records  
40          be clearly and visibly marked or identified as being expunged. A  
41          petition for expungement granted under sections 4 through 5 of this  
42          chapter does not affect an existing or pending driver's license



1 suspension.

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

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

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

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

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

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

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

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

41 ~~(e)~~ **(d)** A person whose record is expunged shall be treated as if the  
 42 person had never been convicted of the offense. ~~However, upon a~~



1 subsequent arrest or conviction for an unrelated offense, the prior  
2 expunged conviction:

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

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

6 (A) a habitual offender enhancement; and

7 (B) enhancing the new offense based on a prior conviction;

8 and

9 (3) may be admitted as evidence in the proceeding for a new  
10 offense as if the conviction had not been expunged:

11 (f) (e) Any person that discriminates against a person as described  
12 in subsection (b) subsection (a) commits a Class C infraction and may  
13 be held in contempt by the court issuing the order of expungement or  
14 by any other court of general jurisdiction. Any person may file a written  
15 motion of contempt to bring an alleged violation of this section to the  
16 attention of a court. In addition, the person is entitled to injunctive  
17 relief.

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

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

27 (i) (h) An expungement case, and all documents filed in the case,  
28 becomes confidential when the court issues the order granting the  
29 petition. However, until the court issues the order granting the petition,  
30 documents filed in the case are not confidential, and any hearing held  
31 in the case shall be open.

