

# SENATE BILL No. 123

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Access to expunged records. Provides that law enforcement officers lacking a court order may access expunged information or records only when acting in an: (1) enforcement; or (2) investigative; capacity.

**Effective:** July 1, 2019.

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## Taylor G

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

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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.

## SENATE BILL No. 123

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.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 expunged under sections 2 through 3 of this chapter, the court  
5 shall do the following with respect to the specific records expunged by  
6 the court:  
7 (1) Order:  
8 (A) the department of correction;  
9 (B) the bureau of motor vehicles; and  
10 (C) each:  
11 (i) law enforcement agency; and  
12 (ii) other person;  
13 who incarcerated, provided treatment for, or provided other  
14 services for the person under an order of the court;  
15 to prohibit the release of the person's records or information in the  
16 person's records to anyone without a court order, other than a law  
17 enforcement officer acting in ~~the course of the officer's official~~



1 ~~duty.~~ **an enforcement or investigative capacity.**

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

6 (A) a prosecuting attorney, if:

7 (i) authorized by a court order; and

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

10 (B) a defense attorney, if:

11 (i) authorized by a court order; and

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

14 (C) a probation department, if:

15 (i) authorized by a court order; and

16 (ii) necessary to prepare a presentence report;

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

21 (E) the:

22 (i) supreme court;

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

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

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

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

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

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

40 (3) Notify the clerk of the supreme court to seal any records in the  
41 clerk's possession that 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. However, a petition  
11 for expungement granted under sections 2 through 3 of this chapter  
12 does not affect an existing or pending driver's license suspension.

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

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

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

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

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

39 If a court orders records to be unsealed under this subsection, the court  
40 shall order the records to be permanently resealed at the earliest  
41 possible time after the reasons for unsealing the records cease to exist.  
42 However, if the records are admitted as evidence against the person in



1 a new prosecution that results in the person's conviction, or are used to  
2 enhance a sentence imposed on the person in a new prosecution, the  
3 court is not required to reseat the records.

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

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

13 (2) the expunged conviction must be clearly marked as expunged  
14 on the sex offender registry web site.

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

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

