

SENATE BILL No. 182

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-30-10-5; IC 35-38-9.

Synopsis: Court procedures. Provides that the bureau of motor vehicles (BMV) may not suspend a person's driving privileges for being a habitual traffic offender if the court does not transmit a qualifying conviction to the BMV within 30 days after sentencing. Specifies that an arrest, criminal charge, or juvenile delinquency allegation that results in an adjudication for an infraction does not result in a conviction for purposes of expungement. Authorizes a person participating in a pretrial diversion program to file a petition for expungement with the authorization of the prosecuting attorney. Requires a court to automatically issue an expungement order, subject to certain exceptions, if: (1) all pending criminal charges against a person are dismissed; (2) the person is acquitted; or (3) the person is arrested and no charges have been filed within 60 days. Makes conforming amendments.

Effective: July 1, 2022.

Freeman

January 6, 2022, read first time and referred to Committee on Corrections and Criminal Law.



Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

SENATE BILL No. 182

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 9-30-10-5, AS AMENDED BY P.L.188-2015,
2 SECTION 114, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2022]: Sec. 5. (a) If it appears from the records
4 maintained by the bureau that a person's driving record makes the
5 person a habitual violator under section 4 of this chapter and a court
6 has not already found the person to be a habitual violator under section
7 6.5 of this chapter based on the same underlying violations, the bureau
8 shall mail a notice to the person's last known address that informs the
9 person that the person's driving privileges will be suspended in thirty
10 (30) days because the person is a habitual violator according to the
11 records of the bureau.

12 (b) Thirty (30) days after the bureau has mailed a notice under this
13 section, the bureau shall suspend the person's driving privileges for:

- 14 (1) except as provided in subdivision (2), ten (10) years if the
15 person is a habitual violator under section 4(a) of this chapter;
16 (2) life if the person is a habitual violator under section 4(a) of
17 this chapter and has at least two (2) violations under section



- 1 4(a)(4) through 4(a)(7) of this chapter;
 2 (3) ten (10) years if the person is a habitual violator under section
 3 4(b) of this chapter; or
 4 (4) five (5) years if the person is a habitual violator under section
 5 4(c) of this chapter.
- 6 (c) The notice must inform the person that the person may be
 7 entitled to relief under IC 9-33-2.
- 8 (d) Notwithstanding subsection (b), if:
- 9 **(1) the court does not transmit to the bureau the record of a**
 10 **qualifying conviction that makes a person a habitual violator**
 11 **under section 4 of this chapter not later than thirty (30) days**
 12 **after sentencing; or**
- 13 **(2) the bureau does not discover that a person's driving record**
 14 **makes the person a habitual violator under section 4 of this**
 15 **chapter for more than two (2) years after the bureau receives the**
 16 **person's final qualifying conviction;**
 17 the bureau shall not suspend the person's driving privileges for any
 18 period.
- 19 SECTION 2. IC 35-38-9-1, AS AMENDED BY P.L.219-2019,
 20 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2022]: Sec. 1. (a) This section applies only to a person who
 22 has been arrested, charged with an offense, or alleged to be a
 23 delinquent child, if:
- 24 (1) the arrest, criminal charge, or juvenile delinquency allegation:
 25 (A) did not result in a conviction or juvenile adjudication,
 26 **even if the arrest, criminal charge, or juvenile delinquency**
 27 **allegation resulted in an adjudication for an infraction; or**
 28 (B) resulted in a conviction or juvenile adjudication and the
 29 conviction or adjudication was expunged under sections 2
 30 through 5 of this chapter, or was later vacated; and
- 31 (2) the person is not currently participating in a pretrial diversion
 32 program, **unless the prosecuting attorney authorizes the person**
 33 **to petition for an expungement under this section.**
- 34 **(b) This subsection applies to a person charged with an offense**
 35 **or alleged to be a delinquent child after June 30, 2022. If:**
 36 **(1) a court dismisses all:**
 37 **(A) criminal charges; or**
 38 **(B) juvenile delinquency allegations;**
 39 **filed and pending against a person; or**
 40 **(2) in a:**
 41 **(A) criminal trial a defendant is acquitted of all charges; or**
 42 **(B) juvenile proceeding the court finds all allegations not**



1 true;
 2 the court shall immediately order all records related to the
 3 criminal charges or juvenile delinquency allegations expunged. An
 4 expungement order issued under this subsection may not go into
 5 effect earlier than sixty (60) days from the date of the dismissal,
 6 acquittal, or no true finding. However, upon motion by the
 7 prosecuting attorney, if the court finds that specific facts exist in
 8 the particular case which justify a delay, the court may delay
 9 implementation of the expungement order for up to one (1) year
 10 from the date of the dismissal, acquittal, or no true finding.

11 (c) This subsection applies to a person arrested after June 30,
 12 2022. If:

- 13 (1) a person is arrested;
 14 (2) sixty (60) days have elapsed since the date of the arrest;
 15 and
 16 (3) no charges are pending against the person;
 17 the prosecuting attorney shall notify a judge exercising criminal
 18 jurisdiction in the county (or a designated judge, if applicable) of
 19 these facts. Upon receipt of the notification, the judge shall
 20 immediately order the expungement of all records related to the
 21 arrest.

22 ~~(b)~~ (d) Not earlier than one (1) year after the date of arrest, criminal
 23 charge, or juvenile delinquency allegation (whichever is later), if the
 24 person was not convicted or adjudicated a delinquent child, or the
 25 opinion vacating the conviction or adjudication becomes final, the
 26 person may petition the court for expungement of the records related
 27 to the arrest, criminal charge, or juvenile delinquency allegation.
 28 However, a person may petition the court for expungement at an earlier
 29 time if the prosecuting attorney agrees in writing to an earlier time.

30 ~~(e)~~ (e) A petition for expungement of records must be verified and
 31 filed in a circuit or superior court in the county where the criminal
 32 charges or juvenile delinquency allegation was filed, or if no criminal
 33 charges or juvenile delinquency allegation was filed, in the county
 34 where the arrest occurred. The petition must set forth:

- 35 (1) the date of the arrest, criminal charges, or juvenile
 36 delinquency allegation, and conviction (if applicable);
 37 (2) the county in which the arrest occurred, the county in which
 38 the information or indictment was filed, and the county in which
 39 the juvenile delinquency allegation was filed, if applicable;
 40 (3) the law enforcement agency employing the arresting officer,
 41 if known;
 42 (4) the court in which the criminal charges or juvenile



- 1 delinquency allegation was filed, if applicable;
 2 (5) any other known identifying information, such as:
 3 (A) the name of the arresting officer;
 4 (B) case number or court cause number;
 5 (C) any aliases or other names used by the petitioner;
 6 (D) the petitioner's driver's license number; and
 7 (E) a list of each criminal charge and its disposition, if
 8 applicable;
 9 (6) the date of the petitioner's birth; and
 10 (7) the petitioner's Social Security number.

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

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

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

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

23 ~~(f)~~ (h) Whenever the petition of a person under this section is
 24 granted, **or if an expungement order is issued without a petition**
 25 **under subsection (b) or (c):**

- 26 (1) no information concerning the arrest, criminal charges,
 27 juvenile delinquency allegation, vacated conviction, or vacated
 28 juvenile delinquency adjudication (including information from a
 29 collateral action that identifies the petitioner), may be placed or
 30 retained in any state central repository for criminal history
 31 information or in any other alphabetically arranged criminal
 32 history information system maintained by a local, regional, or
 33 statewide law enforcement agency;
 34 (2) the clerk of the supreme court shall seal or redact any records
 35 in the clerk's possession that relate to the arrest, criminal charges,
 36 juvenile delinquency allegation, vacated conviction, or vacated
 37 juvenile delinquency adjudication;
 38 (3) the records of:
 39 (A) the sentencing court;
 40 (B) a court that conducted a collateral action;
 41 (C) a juvenile court;
 42 (D) a court of appeals; and



1 (E) the supreme court;
 2 concerning the person shall be redacted or permanently sealed;
 3 and

4 (4) with respect to the records of a person who is named as an
 5 appellant or an appellee in an opinion or memorandum decision
 6 by the supreme court or the court of appeals, or who is identified
 7 in a collateral action, the court shall:

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

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

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

20 ~~(g)~~ (i) If the court issues an order granting a petition for
 21 expungement under this section, **or issues an order for expungement**
 22 **without a petition under subsection (b) or (c)**, the order must include
 23 the information described in ~~subsection (c)~~: **subsection (e)**.

24 ~~(h)~~ (j) If a person whose records are expunged brings an action that
 25 might be defended with the contents of the expunged records, the
 26 defendant is presumed to have a complete defense to the action. In
 27 order for the plaintiff to recover, the plaintiff must show that the
 28 contents of the expunged records would not exonerate the defendant.
 29 The plaintiff may be required to state under oath whether the plaintiff
 30 had records in the criminal **or juvenile** justice system and whether
 31 those records were expunged. If the plaintiff denies the existence of the
 32 records, the defendant may prove their existence in any manner
 33 compatible with the law of evidence.

34 SECTION 3. IC 35-38-9-6, AS AMENDED BY P.L.219-2019,
 35 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2022]: Sec. 6. (a) If the court orders conviction records,
 37 including any records relating to the conviction and any records
 38 concerning a collateral action, expunged under sections 2 through 3 of
 39 this chapter, the court shall do the following with respect to the specific
 40 records expunged by the court:

41 (1) Order:

42 (A) the department of correction;



- 1 (B) the bureau of motor vehicles; and
 2 (C) each:
 3 (i) law enforcement agency; and
 4 (ii) other person;
 5 who incarcerated, prosecuted, provided treatment for, or
 6 provided other services for the person under an order of the
 7 court;
 8 to prohibit the release of the person's records or information in the
 9 person's records to anyone without a court order, other than a law
 10 enforcement officer acting in the course of the officer's official
 11 duty.
 12 (2) Order the central repository for criminal history information
 13 maintained by the state police department to seal the person's
 14 expunged conviction records, including information related to:
 15 (A) an arrest or offense:
 16 (i) in which no conviction was entered; and
 17 (ii) that was committed as part of the same episode of
 18 criminal conduct as the case ordered expunged; and
 19 (B) any other references to any matters related to the case
 20 ordered expunged, including in a collateral action.
 21 This subdivision does not require the state police department to
 22 seal any record the state police department does not have legal
 23 authority to seal.
 24 (3) Records sealed under subdivision (2) may be disclosed only
 25 to:
 26 (A) a prosecuting attorney, if:
 27 (i) authorized by a court order; and
 28 (ii) needed to carry out the official duties of the prosecuting
 29 attorney;
 30 (B) a defense attorney, if:
 31 (i) authorized by a court order; and
 32 (ii) needed to carry out the professional duties of the defense
 33 attorney;
 34 (C) a probation department, if:
 35 (i) authorized by a court order; and
 36 (ii) necessary to prepare a presentence report;
 37 (D) the Federal Bureau of Investigation and the Department of
 38 Homeland Security, if disclosure is required to comply with an
 39 agreement relating to the sharing of criminal history
 40 information;
 41 (E) the:
 42 (i) supreme court;



- 1 (ii) members of the state board of law examiners;
 2 (iii) executive director of the state board of law examiners;
 3 and
 4 (iv) employees of the state board of law examiners, in
 5 accordance with rules adopted by the state board of law
 6 examiners;
 7 for the purpose of determining whether an applicant possesses
 8 the necessary good moral character for admission to the bar;
 9 (F) a person required to access expunged records to comply
 10 with the Secure and Fair Enforcement for Mortgage Licensing
 11 Act (12 U.S.C. 5101 et seq.) or regulations adopted under the
 12 Secure and Fair Enforcement for Mortgage Licensing Act; and
 13 (G) the bureau of motor vehicles, the Federal Motor Carrier
 14 Administration, and the Commercial Drivers License
 15 Information System (CDLIS), if disclosure is required to
 16 comply with federal law relating to reporting a conviction for
 17 a violation of a traffic control law.
- 18 (4) Notify the clerk of the supreme court to seal any records in the
 19 clerk's possession that relate to the conviction, including any
 20 records concerning a collateral action.
- 21 A probation department may provide an unredacted version of a
 22 presentence report disclosed under subdivision (3)(C) to any person
 23 authorized by law to receive a presentence report.
- 24 (b) Except as provided in subsection (c), if a petition to expunge
 25 conviction records, including any records relating to the conviction and
 26 any records concerning a collateral action, is granted under sections 2
 27 through 3 of this chapter, the records of:
- 28 (1) the sentencing court;
 29 (2) a court that conducted a collateral action;
 30 (3) a juvenile court;
 31 (4) a court of appeals; and
 32 (5) the supreme court;
 33 concerning the person shall be permanently sealed. However, a petition
 34 for expungement granted under sections 2 through 3 of this chapter
 35 does not affect an existing or pending driver's license suspension.
- 36 (c) If a petition to expunge conviction records, including any records
 37 relating to the conviction and any records concerning a collateral
 38 action, is granted under sections 2 through 3 of this chapter with
 39 respect to the records of a person who is named as an appellant or an
 40 appellee in an opinion or memorandum decision by the supreme court
 41 or the court of appeals, or who is identified in a collateral action, the
 42 court shall:



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

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

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

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

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

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

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

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

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

39 (2) the expunged conviction records must be clearly marked as
40 expunged on the sex offender registry web site.

41 (f) Expungement of a crime of domestic violence under section 2 of
42 this chapter does not restore a person's right to possess a firearm. The



1 right of a person convicted of a crime of domestic violence to possess
2 a firearm may be restored only in accordance with IC 35-47-4-7.

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

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

12 SECTION 4. IC 35-38-9-7, AS AMENDED BY P.L.219-2019,
13 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2022]: Sec. 7. (a) This section applies only to a person who
15 has filed a petition for expungement under section 4 or 5 of this chapter
16 and whose records have been ordered marked as expunged.

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

25 (c) The state police department, the bureau of motor vehicles, and
26 any other law enforcement agency in possession of records that relate
27 to the conviction, including any records concerning a collateral action,
28 ordered to be marked as expunged shall add an entry to the person's
29 record of arrest, conviction, or sentence in the criminal history data
30 base stating that the record is marked as expunged. Nothing in this
31 chapter prevents the bureau of motor vehicles from reporting
32 information about a conviction for a violation of a traffic control law
33 to the Commercial Drivers License Information System (CDLIS), in
34 accordance with federal law, even if the conviction has been expunged
35 under section 4 or 5 of this chapter.

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

39 (e) If a court issues an order granting a petition for expungement
40 under sections 4 through 5 of this chapter, the court shall also order any
41 related records described in section ~~1(f)~~ **1(h)** of this chapter marked as
42 expunged, unless the records described in section ~~1(f)~~ **1(h)** of this



1 chapter have been ordered marked as expunged under this section.

2 SECTION 5. IC 35-38-9-10, AS AMENDED BY P.L.55-2020,
3 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2022]: Sec. 10. (a) This section does not apply to a person to
5 whom sealed records may be disclosed under section 6(a)(3) of this
6 chapter. With respect to a person seeking employment with a law
7 enforcement agency or a probation or community corrections
8 department, including volunteer employment, subsections (b), (d), (e),
9 and (f) do not apply to the law enforcement agency or the probation or
10 community corrections department.

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

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

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

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

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

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

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

42 (f) Any person that discriminates against a person as described in



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

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

12 (h) A conviction, including any records relating to the conviction
13 and any records concerning a collateral action, that has been expunged
14 under this chapter is not admissible as evidence in an action for
15 negligent hiring, admission, or licensure against a person or entity who
16 relied on the order.

17 (i) An expungement case, and all documents filed in the case,
18 becomes confidential when the court issues ~~the~~ **an expungement** order.
19 ~~granting the petition.~~ However, until the court issues ~~the~~ **an**
20 **expungement** order, ~~granting the petition,~~ documents filed in the case
21 are not confidential, and any hearing held in the case shall be open.

