

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Judiciary, to which was referred House Bill No. 1482, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 4, delete lines 9 through 42, begin a new paragraph, and insert:
- 2 "Chapter 9. Sealing and Expunging Conviction Records
- 3 Sec. 1. (a) This section applies only to a person who has been
- 4 arrested if:
- 5 (1) the arrest did not result in a conviction or juvenile
- 6 adjudication; or
- 7 (2) the arrest resulted in a conviction or juvenile adjudication
- 8 and the conviction or adjudication was vacated on appeal.
- 9 (b) Not earlier than one (1) year after the date of arrest, if the
- 10 person was not convicted or adjudicated a delinquent child, or the
- 11 date of the opinion vacating the conviction or adjudication becomes
- 12 final, the person may petition the sentencing court (if the person
- 13 was sentenced), the court in which the person was charged (if the
- 14 person was charged), or any court exercising criminal jurisdiction
- 15 in Indiana (if the person was not charged or convicted) to seal
- 16 records contained in:
- 17 (1) a court's files;
- 18 (2) the files of the department of correction;
- 19 (3) the files of the bureau of motor vehicles; and
- 20 (4) the files of any other person who provided treatment or
- 21 services to the petitioning person under a court order;

- 1 that relate to the person's arrest.
- 2 (c) A person who files a petition to seal arrest records is not
3 required to pay a filing fee.
- 4 (d) If the court finds by clear and convincing evidence that:
- 5 (1) the person's arrest:
- 6 (A) did not result in a conviction or juvenile adjudication;
7 or
8 (B) resulted in a conviction or juvenile adjudication and
9 the conviction or adjudication was vacated on appeal; and
- 10 (2) no charges are pending against the person;
- 11 the court shall order the arrest records described in subsection (b)
12 sealed so that only a criminal justice agency may access the records
13 without the order of a court.
- 14 Sec. 2. (a) This section applies only to a person convicted of a
15 misdemeanor, including a Class D felony reduced to a
16 misdemeanor.
- 17 (b) Not earlier than five (5) years after the date of conviction
18 (unless the prosecuting attorney consents in writing to an earlier
19 period), the person convicted of the misdemeanor may petition the
20 sentencing court to expunge conviction records contained in:
- 21 (1) a court's files;
22 (2) the files of the department of correction;
23 (3) the files of the bureau of motor vehicles; and
24 (4) the files of any other person who provided treatment or
25 services to the petitioning person under a court order;
26 that relate to the person's misdemeanor conviction.
- 27 (c) A person who files a petition to expunge conviction records
28 shall pay the filing fees required for filing a civil action, and the
29 clerk shall distribute the fees as in the case of a civil action. A
30 person who files a petition to expunge conviction records may not
31 receive a waiver or reduction of fees upon a showing of indigency.
- 32 (d) If the court finds by clear and convincing evidence that:
- 33 (1) the period required by this section has elapsed;
34 (2) no charges are pending against the person;
35 (3) the person does not have an existing or pending driver's
36 license suspension;
37 (4) the person has successfully completed the person's
38 sentence, including any term of supervised release, and

1 satisfied all other obligations placed on the person as part of
2 the sentence; and

3 (5) the person has not been convicted of a crime within the
4 previous five (5) years;

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

7 Sec. 3. (a) Except as provided in subsection (b), this section
8 applies only to a person convicted of a Class D felony. This section
9 does not apply to a person if the person's Class D felony was
10 reduced to a Class A misdemeanor.

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

12 (1) An elected official convicted of an offense while serving the
13 official's term or as a candidate for public office.

14 (2) A sex or violent offender (as defined in IC 11-8-8-5).

15 (3) A person convicted of a felony that resulted in bodily
16 injury to another person.

17 (4) A person convicted of perjury (IC 35-44.1-2-1) or official
18 misconduct (IC 35-44.1-1-1).

19 (5) A person convicted of an offense described in:

20 (A) IC 35-42-1;

21 (B) IC 35-42-3.5; or

22 (C) IC 35-42-4.

23 (c) Not earlier than eight (8) years after the date of conviction
24 (unless the prosecuting attorney consents in writing to an earlier
25 period), the person convicted of the Class D felony may petition the
26 sentencing court to expunge conviction records contained in:

27 (1) a court's files;

28 (2) the files of the department of correction;

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

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

32 that relate to the person's Class D felony conviction.

33 (d) A person who files a petition to expunge conviction records
34 shall pay the filing fees required for filing a civil action, and the
35 clerk shall distribute the fees as in the case of a civil action. A
36 person who files a petition to expunge conviction records may not
37 receive a waiver or reduction of fees upon a showing of indigency.

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

- 1 (1) the period required by this section has elapsed;
- 2 (2) no charges are pending against the person;
- 3 (3) the person does not have an existing or pending driver's
- 4 license suspension;
- 5 (4) the person has successfully completed the person's
- 6 sentence, including any term of supervised release, and
- 7 satisfied all other obligations placed on the person as part of
- 8 the sentence; and
- 9 (5) the person has not been convicted of a crime within the
- 10 previous eight (8) years;
- 11 the court shall order the conviction records described in subsection
- 12 (c) expunged in accordance with section 6 of this chapter.
- 13 Sec. 4. (a) Except as provided in subsection (b), this section
- 14 applies only to a person convicted of a felony.
- 15 (b) This section does not apply to the following:
- 16 (1) An elected official convicted of an offense while serving the
- 17 official's term or as a candidate for public office.
- 18 (2) A sex or violent offender (as defined in IC 11-8-8-5).
- 19 (3) A person convicted of a felony that resulted in serious
- 20 bodily injury to another person.
- 21 (4) 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 (c) Not earlier than eight (8) years after the completion of the
- 26 person's sentence (including the completion of any term of
- 27 supervised release and the satisfaction of all other obligations
- 28 placed on the person as part of the sentence, unless the prosecuting
- 29 attorney consents in writing to an earlier period), the person
- 30 convicted of the felony may petition the sentencing court to
- 31 expunge conviction records contained in:
- 32 (1) a court's files;
- 33 (2) the files of the department of correction;
- 34 (3) the files of the bureau of motor vehicles; and
- 35 (4) the files of any other person who provided treatment or
- 36 services to the petitioning person under a court order;
- 37 that relate to the person's felony conviction.
- 38 (d) A person who files a petition to expunge conviction records

1 shall pay the filing fees required for filing a civil action, and the
 2 clerk shall distribute the fees as in the case of a civil action. A
 3 person who files a petition to expunge conviction records may not
 4 receive a waiver or reduction of fees upon a showing of indigency.

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

- 6 (1) the period required by this section has elapsed;
- 7 (2) no charges are pending against the person;
- 8 (3) the person does not have an existing or pending driver's
 9 license suspension;
- 10 (4) the person has successfully completed the person's
 11 sentence, including any term of supervised release, and
 12 satisfied all other obligations placed on the person as part of
 13 the sentence; and
- 14 (5) the person has not been convicted of a crime within the
 15 previous eight (8) years;

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

22 Sec. 5. (a) Except as provided in subsection (b), this section
 23 applies to a person convicted of a felony, including:

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

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

- 29 (1) A sex or violent offender (as defined in IC 11-8-8-5).
- 30 (2) A person convicted of an offense described in:
 - 31 (A) IC 35-42-1;
 - 32 (B) IC 35-42-3.5; or
 - 33 (C) IC 35-42-4.

34 (c) Not earlier than ten (10) years after the completion of the
 35 person's sentence (including the completion of any term of
 36 supervised release and the satisfaction of all other obligations
 37 placed on the person as part of the sentence, unless the prosecuting
 38 attorney consents in writing to an earlier period), the person

1 convicted of the felony may petition the sentencing court to
2 expunge conviction records contained in:

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

8 that relate to the person's felony conviction.

9 (d) A person who files a petition to expunge conviction records
10 shall pay the filing fees required for filing a civil action, and the
11 clerk shall distribute the fees as in the case of a civil action. A
12 person who files a petition to expunge conviction records may not
13 receive a waiver or reduction of fees upon a showing of indigency.

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

- 15 (1) the period required by this section has elapsed;
- 16 (2) no charges are pending against the person;
- 17 (3) the person does not have an existing or pending driver's
18 license suspension;
- 19 (4) the person has successfully completed the person's
20 sentence, including any term of supervised release, and
21 satisfied all other obligations placed on the person as part of
22 the sentence;
- 23 (5) the person has not been convicted of a crime within the
24 previous ten (10) years; and
- 25 (6) the prosecuting attorney has consented in writing to the
26 expungement of the person's criminal records;

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

33 Sec. 6. (a) If the court orders conviction records expunged under
34 sections 2 through 3 of this chapter, the court shall do the following
35 with respect to the specific records expunged by the court:

- 36 (1) Order:
 - 37 (A) the department of correction;
 - 38 (B) the bureau of motor vehicles; and

- 1 **(C) each:**
 2 **(i) law enforcement agency; and**
 3 **(ii) other person;**
 4 **who incarcerated, provided treatment for, or provided**
 5 **other services for the person under an order of the court;**
 6 **to prohibit the release of the person's records or information**
 7 **in the person's records to anyone without a court order, other**
 8 **than a law enforcement officer acting in the course of the**
 9 **officer's official duty.**
- 10 **(2) Order the central repository for criminal history**
 11 **information maintained by the state police department to seal**
 12 **the person's expunged conviction records. Records sealed**
 13 **under this subdivision may be disclosed only to:**
- 14 **(A) a prosecuting attorney if:**
 15 **(i) authorized by a court order; and**
 16 **(ii) needed to carry out the official duties of the**
 17 **prosecuting attorney; and**
- 18 **(B) the Federal Bureau of Investigation and the**
 19 **Department of Homeland Security, if disclosure is required**
 20 **to comply with an agreement relating to the sharing of**
 21 **criminal history information.**
- 22 **(3) Notify the clerk of the supreme court to seal any records**
 23 **in the clerk's possession that relate to the conviction.**
- 24 **(b) Except as provided in subsection (c), if a petition to expunge**
 25 **conviction records is granted under sections 2 through 3 of this**
 26 **chapter, the records of:**
- 27 **(1) the sentencing court;**
 28 **(2) a juvenile court;**
 29 **(3) a court of appeals; and**
 30 **(4) the supreme court;**
- 31 **concerning the person shall be permanently sealed.**
- 32 **(c) If a petition to expunge conviction records is granted under**
 33 **sections 2 through 3 of this chapter with respect to the records of**
 34 **a person who is named in an opinion or memorandum decision by**
 35 **the supreme court or the court of appeals, the court shall:**
- 36 **(1) redact the opinion or memorandum decision as it appears**
 37 **on the computer gateway administered by the office of**
 38 **technology so that it does not include the petitioner's name (in**

1 the same manner that opinions involving juveniles are
2 redacted); and

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

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

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

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

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

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

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

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

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

1 ~~Adopted 3/28/2013. This petition applies only to petitions under sections 2 through 5~~
 2 of this chapter and whose records have been ordered marked as
 3 expunged.

4 (b) The court records and other public records relating to the
 5 arrest, conviction, or sentence of a person whose conviction records
 6 have been marked as expunged remain public records. However,
 7 the court shall order that the records be clearly and visibly marked
 8 or identified as being expunged.

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

15 Sec. 8. (a) This section applies only to a petition to expunge
 16 conviction records under sections 2 through 5 of this chapter. This
 17 section does not apply to a petition to seal arrest records under
 18 section 1 of this chapter.

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

22 (1) The petitioner's full name and all other legal names or
 23 aliases by which the petitioner is or has been known.

24 (2) The petitioner's date of birth.

25 (3) The petitioner's addresses from the date of the offense to
 26 the date of the petition.

27 (4) The petitioner shall affirm that no criminal investigation
 28 or charges are pending against the petitioner.

29 (5) The petitioner shall affirm that the petitioner has not
 30 committed another crime within the period required for
 31 expungement.

32 (6) The petitioner shall list all convictions and the date of the
 33 conviction.

34 (7) The petitioner shall affirm that the required period has
 35 elapsed or attach a copy of the prosecuting attorney's written
 36 consent to a shorter period.

37 (8) The petitioner shall describe any other petitions that the
 38 petitioner has filed under this chapter.

- 1 **(9) For a petition filed under section 5 of this chapter, the**
- 2 **petitioner shall attach a copy of the prosecuting attorney's**
- 3 **written consent.**
- 4 **(10) The petitioner shall provide evidence that the petitioner**
- 5 **has successfully completed all terms of the sentence previously**
- 6 **imposed, including:**
 - 7 **(A) payment of restitution, fines, and court costs; and**
 - 8 **(B) completion of any terms of probation, parole, or**
 - 9 **community corrections.**
- 10 **(c) The petitioner may include any other information that the**
- 11 **petitioner believes may assist the court.**
- 12 **(d) The petitioner shall serve a copy of the petition upon the**
- 13 **prosecuting attorney in accordance with the Indiana Rules of Trial**
- 14 **Procedure.**
- 15 **(e) The prosecuting attorney shall promptly forward a copy of**
- 16 **the petition to the last known address of the victim and inform the**
- 17 **victim of the victim's right to be present and address the court.**
- 18 **(f) The prosecuting attorney shall reply to the petition not later**
- 19 **than thirty (30) days after receipt.**
- 20 **Sec. 9. (a) If the prosecuting attorney does not object, the court**
- 21 **may grant the petition for expungement without a hearing.**
- 22 **(b) The court may summarily deny a petition, if the petition**
- 23 **does not meet the requirements of section 8 of this chapter, or if the**
- 24 **statements contained in the petition demonstrate that the petitioner**
- 25 **is not entitled to relief.**
- 26 **(c) If the prosecuting attorney objects to the petition, the court**
- 27 **shall set the matter for hearing not sooner than sixty (60) days**
- 28 **after service of the petition on the prosecuting attorney.**
- 29 **(d) A victim of the offense for which expungement is sought may**
- 30 **submit an oral or written statement in support of or in opposition**
- 31 **to the petition at the time of the hearing. The court shall consider**
- 32 **the victim's statement before making its determination.**
- 33 **(e) The petitioner must prove by clear and convincing evidence**
- 34 **that the facts alleged in the verified petition are true.**
- 35 **(f) The denial of a petition is an appealable final order.**
- 36 **(g) If the court grants the petition for expungement, the court**
- 37 **shall issue an order of expungement as described in section 6 of this**
- 38 **chapter.**

1 **(h) This subsection applies only to a petition to expunge**
2 **conviction records filed under sections 2 through 5 of this chapter.**
3 **This subsection does not apply to a petition to seal arrest records**
4 **under section 1 of this chapter. A petitioner may seek to expunge**
5 **more than one (1) conviction at the same time. The petitioner shall**
6 **consolidate all convictions that the petitioner wishes to expunge**
7 **from the same county in one (1) petition. A petitioner who wishes**
8 **to expunge convictions from separate counties must file a petition**
9 **in each county in which a conviction was entered.**

10 **(i) This subsection applies only to a petition to expunge**
11 **conviction records filed under sections 2 through 5 of this chapter.**
12 **This subsection does not apply to a petition to seal arrest records**
13 **under section 1 of this chapter. Except as provided in subsection**
14 **(j), a petitioner may file only one (1) petition for expungement**
15 **during the petitioner's lifetime. For purposes of this subsection, all**
16 **petitions for expungement filed in separate counties for offenses**
17 **committed in those counties count as one (1) petition if they are**
18 **filed in one (1) three hundred sixty-five (365) day period.**

19 **(j) A petitioner whose petition for expungement has been denied**
20 **on the merits, in whole or in part, may file a subsequent petition**
21 **for expungement with respect to one (1) or more convictions**
22 **included in the initial expungement petition that were not**
23 **expunged. A subsequent petition for expungement may be filed not**
24 **earlier than three (3) years following the denial of a previous**
25 **expungement petition. A subsequent petition for expungement may**
26 **not include any conviction that was not included in the initial**
27 **expungement petition.**

28 **Sec. 10. (a) It is unlawful discrimination for any person to:**

29 **(1) suspend;**

30 **(2) expel;**

31 **(3) refuse to employ;**

32 **(4) refuse to admit;**

33 **(5) refuse to grant or renew a license, permit, or certificate**
34 **necessary to engage in any activity, occupation, or profession;**

35 **or**

36 **(6) otherwise discriminate against;**

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

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

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

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

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

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

17 (A) a habitual offender enhancement; and

18 (B) enhancing the new offense based on a prior conviction;
19 and

20 (3) may be admitted as evidence in the proceeding for a new
21 offense as if the conviction had not been expunged.

22 (e) Any person that discriminates against a person as described
23 in subsection (a) commits a Class C infraction and may be held in
24 contempt by the court issuing the order of expungement or by any
25 other court of general jurisdiction. Any person may file a written
26 motion of contempt to bring an alleged violation of this section to
27 the attention of a court. In addition, the person is entitled to
28 injunctive relief.

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

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

- 1 Delete pages 5 through 8.
- 2 Page 9, delete lines 1 through 11.
- 3 Page 9, line 12, delete "AS AMENDED BY P.L.69-2012," and
- 4 insert "AS AMENDED BY SEA 85-2013, SECTION 145,".
- 5 Page 9, line 13, delete "SECTION 6,".
- 6 Page 10, line 4, delete "IC 35-44-2-1 IC 35-44.1-2-1" and insert
- 7 "IC 35-44.1-2-1 (or IC 35-44-2-1 before its repeal)".
- 8 Page 10, line 5, delete "IC 35-44-1-2. IC 35-44.1-1-1." and insert
- 9 "IC 35-44.1-1-1 (or IC 35-44-1-2 before its repeal)".
- 10 Renumber all SECTIONS consecutively.
(Reference is to HB 1482 as reprinted February 5, 2013.)

and when so amended that said bill do pass.

Committee Vote: Yeas 6, Nays 2.

Steele

Chairperson