

SENATE BILL No. 173

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2; IC 35-38-11.

Synopsis: Expungement of addiction related convictions. Establishes a procedure to permit a person: (1) with an addiction disorder related conviction; and (2) who has completed a high intensity residential treatment program; to have the person's addiction disorder related conviction expunged.

Effective: July 1, 2019.

Crider

January 3, 2019, read first time and referred to Committee on Judiciary.



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. 173

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 35-31.5-2-3.8 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2019]: **Sec. 3.8. "Addiction disorder related**
4 **conviction", for purposes of IC 35-38-11, has the meaning set forth**
5 **in IC 35-38-11-2.**

6 SECTION 2. IC 35-31.5-2-152.3 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2019]: **Sec. 152.3. "High intensity residential**
9 **treatment program", for purposes of IC 35-38-11, has the meaning**
10 **set forth in IC 35-38-11-2.**

11 SECTION 3. IC 35-38-11 IS ADDED TO THE INDIANA CODE
12 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2019]:

14 **Chapter 11. Expungement of Addiction Disorder Related**
15 **Convictions**

16 **Sec. 1. (a) Except as provided in subsection (b), this chapter**
17 **applies only to a person with an addiction disorder related**



- 1 conviction.
- 2 (b) This chapter does not apply to a person convicted of:
- 3 (1) murder;
- 4 (2) voluntary manslaughter; or
- 5 (3) a sex offense.
- 6 **Sec. 2. The following definitions apply throughout this chapter:**
- 7 (1) "Addiction disorder" means a diagnosable chronic
- 8 substance use disorder of sufficient duration to meet
- 9 diagnostic criteria in the most recent edition of the Diagnostic
- 10 and Statistical Manual of Mental Disorders published by the
- 11 American Psychiatric Association.
- 12 (2) "Addiction disorder related conviction" means a
- 13 conviction:
- 14 (A) in which the unlawful possession, distribution,
- 15 cultivation, or manufacture of a controlled substance is a
- 16 material element of the offense;
- 17 (B) in which intoxication or impairment by means of
- 18 alcohol or a controlled substance is a material element of
- 19 the offense; or
- 20 (C) for an offense motivated, in whole or in part, by an
- 21 addiction disorder.
- 22 The term includes a conviction for an offense committed with
- 23 the purpose of obtaining money to purchase a controlled
- 24 substance.
- 25 (3) "High intensity residential treatment program" means an
- 26 inpatient residential treatment program for treatment of
- 27 mental health and addiction disorders that:
- 28 (A) is certified by the division of mental health and
- 29 addiction as providing evidence based mental health and
- 30 addiction treatment services;
- 31 (B) provides twenty-four (24) hour inpatient care for a
- 32 patient in a residential treatment facility with licensed
- 33 therapists;
- 34 (C) requires the patient to reside in the residential
- 35 treatment facility for at least twenty-eight (28) days; and
- 36 (D) provides follow-up treatment in a transitional facility
- 37 or on an outpatient basis for at least six (6) months
- 38 following the patient's discharge from the residential
- 39 facility.
- 40 (4) "Sex offense" has the meaning set forth in IC 11-8-8-5.2.
- 41 **Sec. 3. (a) A person who has successfully completed a high**
- 42 **intensity residential treatment program, including successful**



1 completion of at least six (6) months of follow-up treatment
 2 following the person's discharge from the residential treatment
 3 facility, may petition a court to expunge the person's addiction
 4 disorder related conviction records, including records contained
 5 in:

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

11 that relate to the person's addiction disorder related conviction.

12 (b) A person who files a petition to expunge addiction disorder
 13 related conviction records shall file the petition in the sentencing
 14 court in the county of conviction.

15 (c) If the court finds by a preponderance of the evidence that:

- 16 (1) the person was convicted of an offense described in section
 17 2(2) of this chapter;
- 18 (2) the person has successfully completed a high intensity
 19 residential treatment program; and
- 20 (3) the person has not been charged with another offense;

21 the court may order the addiction disorder related conviction
 22 records described in subsection (a) expunged in accordance with
 23 section 4 of this chapter. The court may order the expungement of
 24 some or all of the person's addiction disorder related convictions.

25 Sec. 4. (a) If a court orders a person's addiction disorder related
 26 conviction records expunged under section 3 of this chapter, the
 27 court shall do the following with respect to the specific records
 28 expunged by the court:

29 (1) Order:

- 30 (A) the department of correction;
- 31 (B) the bureau of motor vehicles; and
- 32 (C) each:

- 33 (i) law enforcement agency; and
- 34 (ii) other person;

35 that incarcerated, provided treatment for, or provided
 36 other services for the person under an order of a court;
 37 to prohibit the release of the person's records or information
 38 in the person's records to anyone without a court order, other
 39 than a law enforcement officer acting in the course of the
 40 officer's official duty.

41 (2) Order the central repository for criminal history
 42 information maintained by the state police department to seal



1 the person's expunged conviction records. Records sealed
 2 under this subdivision may be disclosed only to:

3 (A) a prosecuting attorney, if:

- 4 (i) authorized by a court order; and
 5 (ii) needed to carry out the official duties of the
 6 prosecuting attorney;

7 (B) a defense attorney, if:

- 8 (i) authorized by a court order; and
 9 (ii) needed to carry out the professional duties of the
 10 defense attorney;

11 (C) a probation department, if:

- 12 (i) authorized by a court order; and
 13 (ii) necessary to prepare a presentence report;

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

18 (E) the:

- 19 (i) supreme court;
 20 (ii) members of the state board of law examiners;
 21 (iii) executive director of the state board of law
 22 examiners; and
 23 (iv) employees of the state board of law examiners, in
 24 accordance with rules adopted by the state board of law
 25 examiners;

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

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

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

39 (3) Notify the clerk of the supreme court to seal any records
 40 in the clerk's possession that relate to the conviction.

41 A probation department may provide an unredacted version of a
 42 presentence report disclosed under subdivision (2)(C) to any



1 person authorized by law to receive a presentence report.

2 (b) Except as provided in subsection (c), if a petition to expunge
3 a person's addiction disorder related conviction records is granted
4 under section 3 of this chapter, the records of:

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

9 concerning the person's addiction disorder related conviction shall
10 be permanently sealed. However, a petition for expungement
11 granted under section 3 of this chapter does not affect an existing
12 or pending driver's license suspension.

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

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

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

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

- 39 (1) order the records to be unsealed; and
40 (2) allow the prosecuting attorney who submitted the written
41 application to have access to the records.

42 If a court orders records to be unsealed under this subsection, the



1 court shall order the records to be permanently resealed at the
 2 earliest possible time after the reasons for unsealing the records
 3 cease to exist. However, if the records are admitted as evidence
 4 against the person in a new prosecution that results in the person's
 5 conviction, or are used to enhance a sentence imposed on the
 6 person in a new prosecution, the court is not required to reseat the
 7 records.

8 (e) If a person whose addiction disorder related conviction
 9 records are expunged under section 3 of this chapter is required to
 10 register as a sex offender based on the commission of a felony that
 11 has been expunged:

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

17 (2) the expunged conviction must be clearly marked as
 18 expunged on the sex offender registry Internet web site.

19 (f) Expungement of a crime of domestic violence under section
 20 3 of this chapter does not restore a person's right to possess a
 21 firearm. The right of a person convicted of a crime of domestic
 22 violence to possess a firearm may be restored only in accordance
 23 with IC 35-47-4-7.

24 (g) If the court issues an order granting a petition for
 25 expungement under section 3 of this chapter, the court shall
 26 include in its order the information described in section 5(a) of this
 27 chapter.

28 **Sec. 5. (a)** A person may seek an expungement under section 3
 29 of this chapter by filing a verified petition for expungement. The
 30 petition must include the following:

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

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

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

36 (4) The name and address of the high intensity residential
 37 treatment program.

38 (5) The case number or court cause number, if available.

39 (6) The petitioner shall affirm that no criminal investigation
 40 or charges are pending against the petitioner.

41 (7) The petitioner shall affirm that the petitioner has not
 42 committed another crime within the period required for



1 expungement.

2 (8) The petitioner shall affirm that the petitioner has
3 successfully completed a high intensity residential treatment
4 program.

5 (9) The petitioner shall list all convictions, the cause number
6 of each conviction, if known, the date of the conviction, and
7 any appeals from the conviction and the date any appellate
8 opinion was handed down, if applicable.

9 (10) The petitioner shall separately list the addiction disorder
10 related convictions that the petitioner wishes expunged, with
11 a concise explanation of why these convictions are addiction
12 disorder related convictions.

13 (11) The petitioner shall include:

14 (A) the petitioner's Social Security number;

15 (B) the petitioner's driver's license number;

16 (C) the date of the petitioner's arrest, if applicable; and

17 (D) the date of the petitioner's addiction disorder related
18 conviction.

19 (b) The petitioner may include any other information that the
20 petitioner believes may assist the court.

21 (c) A person who files a petition under this section is required to
22 pay the filing fee required in civil cases. The court may reduce or
23 waive this fee if the person is indigent.

24 (d) The petitioner shall serve a copy of the petition upon the
25 prosecuting attorney in accordance with the Indiana Rules of Trial
26 Procedure.

27 (e) The prosecuting attorney shall inform each victim of the
28 offense for which expungement is sought of the victim's rights
29 under IC 35-40-6 by contacting the victim at the victim's last
30 known address.

31 (f) The prosecuting attorney shall reply to the petition not later
32 than thirty (30) days after receipt. If the prosecuting attorney fails
33 to timely reply to the petition:

34 (1) the prosecuting attorney has waived any objection to the
35 petition; and

36 (2) the court shall proceed to consider the petition under
37 section 6 of this chapter.

38 Sec. 6. (a) If the prosecuting attorney does not object or has
39 waived objection to the petition under section 5 of this chapter, the
40 court may grant a petition for expungement under section 3 of this
41 chapter without a hearing.

42 (b) The court may summarily deny a petition for expungement



1 under section 3 of this chapter if the petition does not meet the
 2 requirements of section 5 of this chapter, or if the statements
 3 contained in the petition demonstrate that the petitioner is not
 4 entitled to relief.

5 (c) If the prosecuting attorney objects to the petition, the
 6 prosecuting attorney shall file the reasons for objecting to the
 7 petition with the court and serve a copy of the objections on the
 8 petitioner at the time the prosecuting attorney objects to the
 9 petition. The court shall set the matter for hearing not sooner than
 10 thirty (30) days after service of the petition on the prosecuting
 11 attorney.

12 (d) A victim of the offense for which expungement is sought may
 13 submit an oral or written statement in support of or in opposition
 14 to the petition at the time of the hearing.

15 (e) At the hearing, the petitioner must prove by a
 16 preponderance of the evidence that the facts alleged in the verified
 17 petition are true.

18 **Sec. 7. The grant or denial of a petition under this chapter is an
 19 appealable final order.**

20 **Sec. 8. A petitioner may seek to expunge more than one (1)
 21 addiction disorder related conviction under this chapter at the
 22 same time. The petitioner shall consolidate all addiction disorder
 23 related convictions that the petitioner wishes to expunge from the
 24 same county in one (1) petition. A petitioner who wishes to expunge
 25 convictions from separate counties must file a petition in each
 26 county in which a conviction was entered.**

27 **Sec. 9. (a) Except as provided in subsection (e), it is unlawful
 28 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 record expunged under this
 38 chapter.**

39 (b) Except as provided in section 4(f) of this chapter, the civil
 40 rights of a person whose conviction has been expunged under this
 41 chapter shall be fully restored, including the right to vote, to hold
 42 public office, to be a proper person under IC 35-47-1-7(2), and to



- 1 serve as a juror.
- 2 (c) A person whose record is expunged under this chapter shall
3 be treated as if the person had never been convicted of the offense.
4 However, upon a subsequent arrest or conviction for an unrelated
5 offense, the prior expunged conviction:
- 6 (1) may be considered by the court in determining the
7 sentence imposed for the new offense;
- 8 (2) is a prior unrelated conviction for purposes of:
- 9 (A) a habitual offender enhancement; and
10 (B) enhancing the new offense based on a prior conviction;
11 and
- 12 (3) may be admitted as evidence in the proceeding for a new
13 offense as if the conviction had not been expunged.
- 14 (d) Except as provided in subsection (e), a person that
15 discriminates against a person as described in subsection (a)
16 commits a Class C infraction and may be held in contempt by the
17 court issuing the order of expungement or by any other court of
18 general jurisdiction.
- 19 (e) Subsection (d) does not apply to a person to whom sealed
20 records may be disclosed under section 4(a)(2) of this chapter.
- 21 (f) Any person may file a written motion of contempt to bring an
22 alleged violation of this section to the attention of a court. In
23 addition, the person is entitled to injunctive relief.
- 24 (g) In a judicial or administrative proceeding alleging
25 negligence or other fault, an order of expungement may be
26 introduced as evidence of a person's exercise of due care in hiring,
27 retaining, licensing, certifying, admitting to a school or program,
28 or otherwise transacting business or engaging in activity with a
29 person to whom an order of expungement was issued under this
30 chapter.
- 31 (h) A conviction that has been expunged under this chapter is
32 not admissible as evidence in an action for negligent hiring,
33 admission, or licensure against a person that relied on the order.
- 34 (i) An expungement case under this chapter, and all documents
35 filed in the case, become confidential when the court issues an
36 order granting the petition. However, until the court issues an
37 order granting the petition, documents filed in the case are not
38 confidential, and any hearing held in the case shall be open.
- 39 Sec. 10. (a) A person may not waive the right to expungement
40 under this chapter as part of a plea agreement. Any purported
41 waiver of the right to expungement under this chapter in a plea
42 agreement is invalid and unenforceable as against public policy.



1 **(b) This section does not prohibit the finding of a waiver of the**
2 **right to expungement under this chapter based on a failure to**
3 **comply with the provisions of this chapter.**

4 **Sec. 11. The remedies provided by this chapter are in addition**
5 **to, and separate from, any other expungement remedies provided**
6 **by law.**

