

PROPOSED AMENDMENT

SB 115 # 2

DIGEST

Court records. Provides that sealed records may be disclosed to a school for the purpose of determining whether to: (1) employ a person seeking employment, including volunteer employment, with the school, or to continue a person's employment, including volunteer employment, at the school; or (2) grant access or admission to the school to an applicant contractor or a contractor if the applicant or contractor is likely to have contact with a student enrolled in the school, regardless of the student's age.

- 1 Page 17, after line 7, begin a new paragraph and insert:
2 "SECTION 9. IC 35-38-9-6, AS AMENDED BY P.L.219-2019,
3 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2022]: Sec. 6. (a) If the court orders conviction records,
5 including any records relating to the conviction and any records
6 concerning a collateral action, expunged under sections 2 through 3 of
7 this chapter, the court shall do the following with respect to the specific
8 records expunged by the court:
9 (1) Order:
10 (A) the department of correction;
11 (B) the bureau of motor vehicles; and
12 (C) each:
13 (i) law enforcement agency; and
14 (ii) other person;
15 who incarcerated, prosecuted, provided treatment for, or
16 provided other services for the person under an order of the
17 court;
18 to prohibit the release of the person's records or information in the
19 person's records to anyone without a court order, other than a law
20 enforcement officer acting in the course of the officer's official
21 duty.
22 (2) Order the central repository for criminal history information
23 maintained by the state police department to seal the person's
24 expunged conviction records, including information related to:
25 (A) an arrest or offense:

- 1 (i) in which no conviction was entered; and
 2 (ii) that was committed as part of the same episode of
 3 criminal conduct as the case ordered expunged; and
 4 (B) any other references to any matters related to the case
 5 ordered expunged, including in a collateral action.

6 This subdivision does not require the state police department to
 7 seal any record the state police department does not have legal
 8 authority to seal.

9 (3) Records sealed under subdivision (2) may be disclosed only
 10 to:

- 11 (A) a prosecuting attorney, if:
 12 (i) authorized by a court order; and
 13 (ii) needed to carry out the official duties of the prosecuting
 14 attorney;
 15 (B) a defense attorney, if:
 16 (i) authorized by a court order; and
 17 (ii) needed to carry out the professional duties of the defense
 18 attorney;
 19 (C) a probation department, if:
 20 (i) authorized by a court order; and
 21 (ii) necessary to prepare a presentence report;
 22 (D) the Federal Bureau of Investigation and the Department of
 23 Homeland Security, if disclosure is required to comply with an
 24 agreement relating to the sharing of criminal history
 25 information;
 26 (E) the:
 27 (i) supreme court;
 28 (ii) members of the state board of law examiners;
 29 (iii) executive director of the state board of law examiners;
 30 and
 31 (iv) employees of the state board of law examiners, in
 32 accordance with rules adopted by the state board of law
 33 examiners;
 34 for the purpose of determining whether an applicant possesses
 35 the necessary good moral character for admission to the bar;
 36 (F) a person required to access expunged records to comply
 37 with the Secure and Fair Enforcement for Mortgage Licensing
 38 Act (12 U.S.C. 5101 et seq.) or regulations adopted under the
 39 Secure and Fair Enforcement for Mortgage Licensing Act; ~~and~~
 40 (G) the bureau of motor vehicles, the Federal Motor Carrier

1 Administration, and the Commercial Drivers License
 2 Information System (CDLIS), if disclosure is required to
 3 comply with federal law relating to reporting a conviction for
 4 a violation of a traffic control law; **and**

5 **(H) a school (as defined in IC 22-4-2-37), for the purpose of**
 6 **determining whether to:**

7 **(i) employ a person seeking employment, including**
 8 **volunteer employment, with the school or to continue a**
 9 **person's employment, including volunteer employment,**
 10 **at the school; or**

11 **(ii) grant access or admission to the school to an**
 12 **applicant contractor or a contractor if the applicant or**
 13 **contractor is likely to have contact with a student**
 14 **enrolled in the school, regardless of the student's age.**

15 (4) Notify the clerk of the supreme court to seal any records in the
 16 clerk's possession that relate to the conviction, including any
 17 records concerning a collateral action.

18 A probation department may provide an unredacted version of a
 19 presentence report disclosed under subdivision (3)(C) to any person
 20 authorized by law to receive a presentence report.

21 (b) Except as provided in subsection (c), if a petition to expunge
 22 conviction records, including any records relating to the conviction and
 23 any records concerning a collateral action, is granted under sections 2
 24 through 3 of this chapter, the records of:

- 25 (1) the sentencing court;
- 26 (2) a court that conducted a collateral action;
- 27 (3) a juvenile court;
- 28 (4) a court of appeals; and
- 29 (5) the supreme court;

30 concerning the person shall be permanently sealed. However, a petition
 31 for expungement granted under sections 2 through 3 of this chapter
 32 does not affect an existing or pending driver's license suspension.

33 (c) If a petition to expunge conviction records, including any records
 34 relating to the conviction and any records concerning a collateral
 35 action, is granted under sections 2 through 3 of this chapter with
 36 respect to the records of a person who is named as an appellant or an
 37 appellee in an opinion or memorandum decision by the supreme court
 38 or the court of appeals, or who is identified in a collateral action, the
 39 court shall:

- 40 (1) redact the opinion or memorandum decision as it appears on

1 the computer gateway administered by the office of technology so
2 that it does not include the petitioner's name (in the same manner
3 that opinions involving juveniles are redacted); and

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

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

10 (d) Notwithstanding subsection (b), a prosecuting attorney may
11 submit a written application to a court that granted an expungement
12 petition under this chapter to gain access to any records that were
13 permanently sealed under subsection (b), if the records are relevant in
14 a new prosecution of the person. If a prosecuting attorney who submits
15 a written application under this subsection shows that the records are
16 relevant for a new prosecution of the person, the court that granted the
17 expungement 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 court
22 shall order the records to be permanently resealed at the earliest
23 possible time after the reasons for unsealing the records cease to exist.

24 However, if the records are admitted as evidence against the person in
25 a new prosecution that results in the person's conviction, or are used to
26 enhance a sentence imposed on the person in a new prosecution, the
27 court is not required to reseat the records.

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

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

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

40 (f) Expungement of a crime of domestic violence under section 2 of

1 this chapter does not restore a person's right to possess a firearm. The
2 right of a person convicted of a crime of domestic violence to possess
3 a firearm may be restored only in accordance with IC 35-47-4-7.

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

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

(Reference is to SB 115 as reprinted February 1, 2022.)