

## Indiana Enacts Broad Criminal Records Expungement Law

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Indiana Governor Mike Pence has signed into law legislation permitting individuals arrested or convicted of certain crimes to have those records expunged. In addition, the new law (House Enrolled Act 1482) prohibits an employer from discriminating against any person because a conviction or arrest record was expunged and restricts an employer's ability to request information from applicants regarding criminal convictions. The law becomes effective July 1, 2013.

### Applicability

Under the new law, individuals who are convicted of a misdemeanor or a class D felony may apply to have their records expunged after five years, or eight years in the case of class D felony, as long as they have not been charged with, or committed, other crimes within the past five or eight years, have successfully completed their sentence, do not have a pending or existing driver's license suspension, and pay a filing fee. Similarly, individuals who are convicted of more serious felonies may apply to have their convictions expunged after eight or ten years, depending on the nature of the felony. In certain cases, consent from the prosecutor is required for expungement.

Individuals convicted of sexual and violent crimes, such as murder and manslaughter, are never eligible to have their criminal records expunged.

The release of expunged criminal records, other than to law enforcement officials acting in their official capacity, is prohibited without a court order.

### Non-Discrimination

The new law prohibits any person from suspending, refusing to employ, or discriminating against any person because an arrest or conviction was expunged. In any application for employment, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests. The law permits the following question, "Have you ever been arrested for or convicted of a crime that has not been expunged by a court?"

A violation of the non-discrimination provision is a Class C infraction, and violators may be held in contempt of court. Any person may file a contempt motion to notify a court of an alleged violation, and injunctive relief may be awarded.

### Admissibility of Orders of Expungement

In any proceeding alleging negligence, an order of expungement may be introduced as evidence of due care in hiring, retaining, licensing, certifying, or otherwise transacting business with the person to whom the order of expungement was issued. A conviction that has been expunged is not admissible as evidence in an action for negligent hiring against a person or entity that relied on the order.

Indiana employers should review their non-discrimination policies and employment applications to determine whether revisions are necessary to ensure compliance with the new law.

If you have any questions about the new law or reviewing policies and employment applications, please contact Michael W. Padgett, at (317) 489-6930 or PadgettM@jacksonlewis.com, or the Jackson Lewis attorney with whom you regularly work.

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