

**EXPUNGEMENT 2015  
I.C. 35-38-9  
  
DIGEST FOR JUDGES**

CONTACT:  
**Libby Milliken**  
[libby.milliken@courts.in.gov](mailto:libby.milliken@courts.in.gov)  
 Direct: 317-234-8760  
 30 S. Meridian St., Suite 500  
 Indianapolis, IN 46204  
 Main: 317-232-2542  
 Fax: 317-233-6586

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What convictions/persons are INELIGIBLE for remedy (effective July 1, 2015)?

<u>Persons</u> not eligible to petition for expungement of <u>convictions</u> :	<u>Felony Offenses</u> the convictions for which are not eligible to be expunged:
<ul style="list-style-type: none"> <li>Persons who have been convicted of <b>two (2) or more unrelated</b> felony offenses that involved the <b>use of a deadly weapon</b>.<sup>1</sup></li> <li><b>Note:</b> while <b>sex or violent offenders</b> and <b>persons convicted of official misconduct</b> are prohibited from petitioning to expunge felony convictions<sup>2</sup>, no prohibition exists with respect to misdemeanor convictions.</li> </ul>	<ul style="list-style-type: none"> <li>Felony convictions for offenses described in I.C. § 35-42-1 (<b>Homicide</b>)</li> <li>Felony convictions for offenses described in I.C. § 35-42-3.5 (<b>Human and Sexual Trafficking</b>)</li> <li>Felony convictions for offenses described in I.C. § 35-42-4 (<b>Sex Crimes</b>)</li> <li>Felony convictions for the offense of <b>Official Misconduct</b> under I.C. § 35-44.1-1-1</li> </ul>

## Disqualifying conditions and waiting periods by section:

Type of Petition/Count:	Disqualifying conditions:	Waiting period:
<p>Section 1: Arrest, No Conviction</p> <p>Petitions filed under <b>I.C. § 35-38-9-1</b></p>	<ul style="list-style-type: none"> <li>• Criminal charges currently pending;<sup>3</sup> or</li> <li>• Current participation in a pre-trial diversion program.<sup>4</sup></li> </ul>	<p><b>One (1) year</b> following the date of:</p> <ul style="list-style-type: none"> <li>• arrest;</li> <li>• criminal charge;</li> <li>• juvenile delinquency allegation;</li> <li>• vacation of conviction by appellate court</li> </ul> <p><b>whichever is later.</b></p> <ul style="list-style-type: none"> <li>• Prosecutor may consent to shorter waiting period<sup>5</sup></li> </ul>
<p>Section 2: Misdemeanors <i>(includes Class D/Level 6 felonies alternatively sentenced as misdemeanors)</i></p> <p>Petition or Count filed under <b>I.C. § 35-38-9-2</b></p>	<ul style="list-style-type: none"> <li>• A person convicted of <b>2 or more unrelated</b> felony convictions involving use of a <b>deadly weapon</b><sup>6</sup></li> </ul>	<p>After date of conviction:</p> <ul style="list-style-type: none"> <li>• <b>Five (5) years</b></li> <li>• Prosecutor may consent in writing to earlier period<sup>7</sup></li> </ul>
<p>Section 3: Class D/Level 6 Felonies – No Bodily Injury:</p> <p>Petition or count filed under <b>I.C. § 35-38-9-3</b></p>	<ul style="list-style-type: none"> <li>• Person convicted of <b>felony that resulted in bodily injury</b><sup>8</sup></li> <li>• Person convicted of <b>2 or more</b> unrelated felony convictions involving use of a <b>deadly weapon</b>.<sup>9</sup></li> <li>• <b>Elected official</b> convicted of an offense <b>while serving the official's term or while a candidate</b> for public office.<sup>10</sup></li> <li>• A <b>sex or violent offender</b> as defined in I.C. §11-8-8-5.<sup>11</sup></li> <li>• Person convicted of perjury or <b>official misconduct</b><sup>12</sup></li> <li>• Person convicted of an offense described in I.C. § 35-42-1 (<b>Homicide</b>), I.C. § 35-42-3.5 (<b>Human and Sexual Trafficking</b>), and I.C. § 35-42-4 (<b>Sex Crimes</b>)<sup>13</sup></li> </ul>	<p>After date of conviction:</p> <ul style="list-style-type: none"> <li>• <b>Eight (8) years</b></li> <li>• Prosecutor may consent in writing to earlier period<sup>14</sup></li> </ul>

Type of Petition/Count:	Disqualifying conditions:	Waiting period:
Section 4: Felonies – No Serious Bodily Injury Petition or count filed under I.C. § 35-38-9-4	<ul style="list-style-type: none"> <li>Person convicted of <b><i>felony that resulted in serious bodily injury</i></b><sup>15</sup></li> <li>Person convicted of <b>2 or more</b> unrelated felony convictions involving use of a <b><i>deadly weapon</i></b>.<sup>16</sup></li> <li><b><i>Elected official</i></b> convicted of an offense <b><i>while serving the official's term</i></b> or <b><i>while a candidate</i></b> for public office.<sup>17</sup></li> <li>A <b><i>sex or violent offender</i></b> as defined in I.C. §11-8-8-5.<sup>18</sup></li> <li>Person convicted of perjury or <b><i>official misconduct</i></b>.<sup>19</sup></li> <li>Person convicted of an offense described in I.C. § 35-42-1 (<b><i>Homicide</i></b>), I.C. § 35-42-3.5 (<b><i>Human and Sexual Trafficking</i></b>), and I.C. § 35-42-4 (<b><i>Sex Crimes</i></b>).<sup>20</sup></li> </ul>	<b><i>Whichever is later:</i></b> <ul style="list-style-type: none"> <li>From date of <b><i>conviction</i></b> – <b><i>eight (8)</i></b> years</li> <li>From <b><i>completion of sentence</i></b> – <b><i>three (3)</i></b> years<sup>21</sup></li> <li>Prosecutor may consent in writing to earlier period<sup>22</sup></li> </ul>
Section 5: Remaining, Non-excluded Felonies Petition or count filed under I.C. § 35-38-9-5	<ul style="list-style-type: none"> <li>Person convicted of <b>2 or more unrelated</b> felony convictions involving use of a <b><i>deadly weapon</i></b>.<sup>23</sup></li> <li>Person convicted of perjury or <b><i>official misconduct</i></b><sup>24</sup></li> <li>A <b><i>sex or violent offender</i></b> as defined in I.C. §11-8-8-5.<sup>25</sup></li> <li>Person convicted of an offense described in I.C. § 35-42-1 (<b><i>Homicide</i></b>), I.C. § 35-42-3.5 (<b><i>Human and Sexual Trafficking</i></b>), and I.C. § 35-42-4 (<b><i>Sex Crimes</i></b>)<sup>26</sup></li> <li>Prosecutor <b><i>does not consent</i></b> in writing to expungement of the conviction</li> </ul>	<b><i>Whichever is later:</i></b> <ul style="list-style-type: none"> <li>From date of <b><i>conviction</i></b> – <b><i>ten (10)</i></b> years</li> <li>From <b><i>completion of sentence</i></b> – <b><i>five (5)</i></b> years</li> </ul>

### Findings required:

Type of Petition/Count:	Findings required:
Section 1: Arrest, No Conviction Petitions filed under I.C. § 35-38-9-1	<b><i>Shall grant</i></b> if: <sup>27</sup> <ul style="list-style-type: none"> <li><b>Person was arrested, charged with an offense, or alleged to be juvenile delinquent</b></li> <li><b>The arrest, criminal charge, or delinquency allegation:</b> <ul style="list-style-type: none"> <li>Did not result in conviction/juvenile adjudication, <i>OR</i></li> <li>Resulted in a conviction/juvenile adjudication that was vacated on appeal;</li> </ul> </li> </ul>

Type of Petition/Count:	Findings required:
	<ul style="list-style-type: none"> <li>• <b>One (1) year has passed since:</b><sup>28</sup> <ul style="list-style-type: none"> <li>o the later of the date of arrest, criminal charge or juvenile delinquency allegation, <i>OR</i></li> <li>o the date the opinion vacating the conviction or juvenile adjudication became final, <i>OR</i></li> <li>o One (1) year has not passed, but the prosecuting attorney has agreed in writing to an earlier time;</li> </ul> </li> <li>• <b>The person is not currently participating in a pre-trial diversion program;</b></li> <li>• <b>Criminal charges are not pending against the person.</b></li> </ul> <p><b>Note:</b> The <i>order</i> should clearly state that the <i>records are to be expunged pursuant to I.C. § 35-38-9-1(f)</i>. This will instruct the clerk and all agencies who are required to act upon the order as to how they are to handle the records in their possession.</p>
<p>Section 2: Misdemeanors Petition or Count filed under I.C. § 35-38-9-2</p> <ul style="list-style-type: none"> <li>• <b><i>includes Class D/Level 6 felonies alternatively sentenced as misdemeanors</i></b></li> </ul>	<p><b><i>Shall grant</i></b> if found by <b><i>preponderance of the evidence</i></b>:<sup>29</sup></p> <ul style="list-style-type: none"> <li>• <b>That petitioner was convicted of an offense that was sentenced as a misdemeanor;</b></li> <li>• <b>That petitioner has not been convicted of two (2) or more unrelated felonies that involved the use of a deadly weapon;</b></li> <li>• <b>That five (5) years have elapsed since the date of petitioner’s conviction</b> <ul style="list-style-type: none"> <li>o <i>OR</i> That five (5) years have not elapsed since the date of petitioner’s conviction, but the prosecuting attorney has agreed in writing to a shorter time period;</li> </ul> </li> <li>• <b>That no charges are pending against the petitioner;</b></li> <li>• <b>That petitioner has paid all fines, fees, and court costs and satisfied any restitution obligation placed on the petitioner as part of the sentence;</b></li> <li>• <b>That petitioner has not been convicted of a crime within the previous five (5) years</b> <ul style="list-style-type: none"> <li>o <i>OR</i> That petitioner has not been convicted of a crime within the time period agreed upon in writing by the prosecuting attorney.</li> </ul> </li> </ul> <p><b>Note:</b> The <i>order</i> should clearly state that the <i>records are to be expunged pursuant to I.C. § 35-38-9-6</i>. This will instruct the clerk and all agencies who are required to act upon the order as to how they are to handle the records in their possession.</p>

Type of Petition/Count:	Findings required:
<p>Section 3: Class D/Level 6 Felonies – No Bodily Injury: Petition or count filed under I.C. § 35-38-9-3</p>	<p><b><i>Shall grant</i></b> if found by <b><i>preponderance of the evidence</i></b>:<sup>30</sup></p> <ul style="list-style-type: none"> <li>• That petitioner was convicted of a felony offense that did not result in <u>bodily injury</u> to another person;</li> <li>• That the act for which the petitioner was convicted does not otherwise fall under I.C. § 35-38-9-3(b);</li> <li>• That eight (8) years have elapsed since the date of petitioner’s conviction <ul style="list-style-type: none"> <li>○ OR That eight (8) years have not elapsed since the date of petitioner’s conviction, but the prosecuting attorney has agreed in writing to a shorter time period;</li> </ul> </li> <li>• That no charges are pending against the petitioner;</li> <li>• That petitioner has paid all fines, fees, and court costs and satisfied any restitution obligation placed on the petitioner as part of the sentence;</li> <li>• That petitioner has not been convicted of a crime within the previous eight (8) years <ul style="list-style-type: none"> <li>○ OR That petitioner has not been convicted of a crime within the time period agreed upon in writing by the prosecuting attorney.</li> </ul> </li> </ul> <p><b>Note:</b> The <i>order</i> should clearly state that the <i>records are to be expunged pursuant to I.C. § 35-38-9-6</i>. This will instruct the clerk and all agencies who are required to act upon the order as to how they are to handle the records in their possession.</p>
<p>Section 4: Felonies – No Serious Bodily Injury Petition or count filed under I.C. § 35-38-9-4</p>	<p><b><i>May grant</i></b> if found by <b><i>preponderance of the evidence</i></b>:<sup>31</sup></p> <ul style="list-style-type: none"> <li>• That petitioner was convicted of a felony offense that did not result in <u>serious bodily injury</u> to another person;</li> <li>• That the act for which the petitioner was convicted does not otherwise fall under I.C. § 35-38-9-4(b);</li> <li>• That eight (8) years have elapsed since the date of petitioner’s conviction</li> </ul>

Type of Petition/Count:	Findings required:
	<ul style="list-style-type: none"> <li>○ OR That three (3) years have elapsed since the date on which petitioner completed the sentence</li> <li>○ OR That the waiting period required under I.C. § 35-38-9-4(c) has not elapsed, but the prosecuting attorney has agreed in writing to a shorter time period;</li> <li>● <b>That no charges are pending against the petitioner;</b></li> <li>● <b>That petitioner has paid all fines, fees, and court costs and satisfied any restitution obligation placed on the petitioner as part of the sentence;</b></li> <li>● <b>That petitioner has not been convicted of a crime within the previous eight (8) years</b> <ul style="list-style-type: none"> <li>○ OR That petitioner has not been convicted of a crime within the time period agreed upon in writing by the prosecuting attorney.</li> </ul> </li> </ul> <p><b>Note:</b> The <i>order</i> should clearly state that the <i>records are to be expunged pursuant to I.C. § 35-38-9-7</i>. This will instruct the clerk and all agencies who are required to act upon the order as to how they are to handle the records in their possession.</p>
<p>Section 5: Remaining, Non-excluded Felonies Petition or count filed under <b>I.C. § 35-38-9-5</b></p>	<p><b><u>May grant</u></b> if found by <b><i>preponderance of the evidence</i></b>:<sup>32</sup></p> <ul style="list-style-type: none"> <li>● <b>That petitioner was convicted of a felony offense that does not fall under I.C. § 35-38-9-5(b);</b></li> <li>● <b>That ten (10) years have elapsed since the date of petitioner’s conviction</b> <ul style="list-style-type: none"> <li>○ OR That five (5) years have elapsed since the date on which petitioner completed the sentence</li> <li>○ OR That the waiting period required under I.C. § 35-38-9-5(c) has not elapsed, but the prosecuting attorney has agreed in writing to a shorter time period;</li> </ul> </li> <li>● <b>That no charges are pending against the petitioner;</b></li> <li>● <b>That petitioner has paid all fines, fees, and court costs and satisfied any restitution obligation placed on the petitioner as part of the sentence;</b></li> <li>● <b>That petitioner has not been convicted of a crime within the previous ten (10) years</b></li> </ul>

Type of Petition/Count:	Findings required:
	<ul style="list-style-type: none"> <li>○ OR That petitioner has not been convicted of a crime within the time period agreed upon in writing by the prosecuting attorney;</li> <li>● <b>That the prosecuting attorney has consented in writing to the expungement of the person’s criminal records.</b></li> </ul> <p><b>Note:</b> The <i>order</i> should clearly state that the <i>records are to be expunged pursuant to I.C. § 35-38-9-7</i>. This will instruct the clerk and all agencies who are required to act upon the order as to how they are to handle the records in their possession.</p>

### Expungement Orders – I.C. 35-38-9 (effective July 1, 2015):

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
<p>“Section 1” Orders (IC 35-38-9-1(f))</p>	<ul style="list-style-type: none"> <li>● Only pertains to “Section 1” petitions (Arrests, criminal charges, juvenile adjudications without convictions)</li> </ul>	<p><b>What will the expungement order accomplish?</b></p> <ul style="list-style-type: none"> <li>● <b>Criminal History Information</b> -- <i>Removal of information</i> concerning: <ul style="list-style-type: none"> <li>○ arrest,</li> <li>○ criminal charges,</li> <li>○ Juvenile delinquency allegation,</li> <li>○ Vacated conviction</li> <li>○ Vacated juvenile delinquency allegation</li> </ul> from “alphabetically arranged criminal history information system” maintained by Indiana State Police and/or local law enforcement agency<sup>33</sup> </li> <li>● <b>Trial Court Records</b> -- Records of the following courts shall be <i>redacted or permanently sealed</i>:<sup>34</sup> <ul style="list-style-type: none"> <li>○ sentencing court,</li> <li>○ juvenile court,</li> <li>○ court of appeals, and</li> </ul> </li> </ul>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<ul style="list-style-type: none"> <li>○ supreme court</li> <li>● <b>Appellate Court Records<sup>35</sup> – redaction or sealing required:</b> <ul style="list-style-type: none"> <li>○ Records in clerk’s possession must be redacted or sealed</li> <li>○ Opinions or memorandum decisions that appear on computer gateway must be redacted to remove petitioner’s name</li> </ul> </li> <li>● <b>No change</b> or alteration required in: <ul style="list-style-type: none"> <li>○ Internal records of law enforcement agency;</li> <li>○ Records that relate to a deferral program<sup>36</sup></li> </ul> </li> </ul> <p><b>Descriptive Content of Order:</b></p> <ul style="list-style-type: none"> <li>● Order must include the information described in I.C. § 35-38-9-1(c).<sup>37</sup></li> <li>● <b>Essential information:</b> <ul style="list-style-type: none"> <li>○ date of the arrest, criminal charges, or juvenile delinquency allegation;</li> <li>○ date of conviction (if applicable);</li> <li>○ case number or court cause number;</li> <li>○ county of arrest, filing of information or indictment, or filing of juvenile delinquency allegation;</li> <li>○ law enforcement agency of arresting officer,</li> <li>○ name of the arresting officer;</li> <li>○ court in which the charges or allegations were filed;</li> <li>○ Petitioner: <ul style="list-style-type: none"> <li>▪ name, aliases or other names;</li> <li>▪ DOB;</li> <li>▪ SSN;</li> <li>▪ driver's license number;</li> <li>▪ a list of each criminal charge and its disposition</li> </ul> </li> </ul> </li> </ul> <p><b>Practice Notes:</b></p> <ul style="list-style-type: none"> <li>● Expungement <b><i>granted:</i></b> <ul style="list-style-type: none"> <li>○ expungement case file and all records under the expungement cause number become a <u>confidential case file</u> under A.R. 9(G)(1)(a).</li> </ul> </li> </ul>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<ul style="list-style-type: none"> <li>○ Order should be distributed on <u>green paper</u>.</li> <li>● Expungement <b><i>denied</i></b>: <ul style="list-style-type: none"> <li>○ expungement case file and all records under the expungement cause number remain publicly accessible.</li> <li>○ Order should be distributed on white paper.</li> </ul> </li> </ul>
<p>“Section 6” Orders (IC 35-38-9-6)</p>	<ul style="list-style-type: none"> <li>● <b>“Section 2” convictions</b> <ul style="list-style-type: none"> <li>○ Misdemeanor</li> <li>○ D Felonies (and level 6 felonies) reduced to Misdemeanors</li> </ul> </li> <li>● <b>“Section 3” convictions</b> <ul style="list-style-type: none"> <li>○ D Felonies (and level 6 felonies) with <b><i>no bodily injury</i></b></li> </ul> </li> <li>● Order on a petition that addresses convictions under multiple cause numbers may contain both a “Section 6” order and a “Section 7” order</li> <li>● <b>Note:</b> this order addresses the handling of the <b>conviction case records only</b>. Handing of the expungement case file is addressed by I.C. § 35-38-9-10(i).</li> </ul>	<p><b>What will the expungement order accomplish:</b></p> <ul style="list-style-type: none"> <li>● <b>Records in possession of</b> <ul style="list-style-type: none"> <li>➢ <b>Indiana DOC;</b></li> <li>➢ <b>Indiana BMV;</b></li> <li>➢ <b>Law enforcement agency who incarcerated, provided treatment or services;</b></li> <li>➢ <b>Other person who provided treatment services:</b><sup>38</sup></li> </ul> </li> <li>○ release to anyone without court order is prohibited;</li> <li>○ <b>exception:</b> law enforcement officer acting in the course of official duty.</li> <li>○ <b>BMV exception:</b> BMV may report information about a conviction for a violation of a traffic control law to the CDLIS.<sup>39</sup></li> <li>● <b>Records in possession of ISP Central Records Depository:</b><sup>40</sup> <ul style="list-style-type: none"> <li>○ Expunged conviction records must be <b><i>sealed</i></b>.</li> <li>○ <b><i>May be disclosed</i></b> to: <ul style="list-style-type: none"> <li>▪ <u>Prosecutor and/or defense attorney</u> if: <ul style="list-style-type: none"> <li>● Court order; and</li> <li>● Necessary to professional duties</li> </ul> </li> <li>▪ <u>Probation department</u> if: <ul style="list-style-type: none"> <li>● Court order; and</li> <li>● Necessary to prepare presentence report</li> </ul> </li> <li>▪ <u>FBI and DHS</u></li> <li>▪ <u>Supreme Court, ISBLE</u> (executive director and employees) for purpose of determining if applicant to bar has good moral character</li> </ul> </li> </ul> </li> </ul>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<ul style="list-style-type: none"> <li>▪ Person complying with Secure and Fair Enforcement Mortgage Licensing Act (<b>12 U.S.C. 5101 et seq.</b>)</li> <li>▪ Indiana BMV, the Federal Motor Carrier Administration, and the Commercial Drivers License Information System (CDLIS) when disclosure is required under IC 9-24-6-2(d)</li> </ul> <ul style="list-style-type: none"> <li>• <b>Trial Court’s File and Records:</b> <sup>41</sup> <ul style="list-style-type: none"> <li>○ “permanently sealed”</li> <li>○ <b><i>No one outside of court administrative personnel gets access</i></b> without first obtaining a court order.</li> <li>○ <b><i>Exception: Prosecutor</i></b> may submit written application to court<sup>42</sup></li> <li>○ Court’s <b><i>paper file should be clearly marked “EXPUNGED PER IC 35-38-9-6, Permanently Sealed”</i></b>, so court staff will know that the file may not be given to anyone without court order.</li> <li>○ Court case records <b><i>should not appear</i></b> on public access website.</li> </ul> </li> <li>• <b>Appellate Court’s File and Records:</b><sup>43</sup> <ul style="list-style-type: none"> <li>○ Petitioner’s name is redacted from the opinion or memorandum decision as it appears on the computer gateway; and</li> <li>○ Redacted copy of opinion is provided to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement.</li> <li>○ The supreme court and court of appeals are not required to destroy or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner's name.</li> </ul> </li> </ul> <p><b>Descriptive content of order:</b></p> <ul style="list-style-type: none"> <li>• Order <b>must</b> contain information described in <b>section 8(b)</b>.<sup>44</sup></li> <li>• Essential information: <ul style="list-style-type: none"> <li>○ Petitioner: <ul style="list-style-type: none"> <li>▪ full name, other legal names or aliases;</li> </ul> </li> </ul> </li> </ul>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<ul style="list-style-type: none"> <li>▪ DOB;</li> <li>▪ SSN;</li> <li>▪ driver's license number;</li> <li>▪ addresses (from the date of the offense to the date of the petition)</li> <li>○ For each conviction: <ul style="list-style-type: none"> <li>▪ the cause number or case number;</li> <li>▪ date of arrest;</li> <li>▪ location of arrest (city and county)</li> <li>▪ date of conviction;</li> <li>▪ If applicable, appellate cause number and the date of appellate decision</li> </ul> </li> </ul> <p><b>Practice Notes:</b></p> <ul style="list-style-type: none"> <li>• Expungement <b><i>granted:</i></b> <ul style="list-style-type: none"> <li>○ expungement (XP) case file and all records under the expungement cause number become a <u>confidential case file</u> under A.R. 9(G)(1)(a).</li> <li>○ Order should be distributed on <u>green paper</u>.</li> </ul> </li> <li>• Expungement <b><i>denied:</i></b> <ul style="list-style-type: none"> <li>○ expungement (XP) case file and all records under the expungement cause number remain publicly accessible.</li> <li>○ order should be distributed on white paper.</li> </ul> </li> </ul> <p><b>Collateral Impact of Expungement Order:</b></p> <ul style="list-style-type: none"> <li>• Existing or pending <b><i>driver's license suspension</i></b> will not be affected.<sup>45</sup></li> <li>• <b><i>Sex Offender Registry:</i></b><sup>46</sup> <ul style="list-style-type: none"> <li>○ sex offender registration requirement or any person's ability to access the person's records is not affected.</li> <li>○ expunged convictions must be clearly marked as “expunged” on the sex offender registry web site.</li> </ul> </li> <li>• <b><i>Right to possess firearm</i></b> under Indiana Law:<sup>47</sup></li> </ul>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
<p>“Section 7” Orders (IC 35-38-9-7)</p>	<ul style="list-style-type: none"> <li>• <b>“Section 4” convictions</b> <ul style="list-style-type: none"> <li>○ D felonies (and level 6 felonies) with bodily injury</li> <li>○ Other felonies – no serious bodily injury</li> </ul> </li> <li>• <b>“Section 5” convictions</b> <ul style="list-style-type: none"> <li>○ Remaining non-excluded felonies<sup>48</sup></li> </ul> </li> <li>• Order on a petition that addresses convictions under multiple cause numbers may contain both a “Section 6” order and a “Section 7” order</li> </ul>	<p>○ The right of a person convicted of a crime of domestic violence to possess a firearm may be restored <u>only</u> in accordance with IC 35-47-4-7</p> <p><b>What will the expungement order accomplish:</b></p> <ul style="list-style-type: none"> <li>• <b><i>Court records remain public record, but should be clearly marked EXPUNGED:</i></b><sup>49</sup> <ul style="list-style-type: none"> <li>○ The court’s paper file and the paper copies of the judgment of conviction, sentencing order, probation order, and abstract of judgment should be clearly marked “EXPUNGED PER IC 35-38-9-7.”</li> <li>○ All electronic records available via a public access website must be clearly marked expunged.</li> </ul> </li> <li>• <b><i>Any public records related to arrest, conviction or sentence must be clearly marked EXPUNGED.</i></b><sup>50</sup></li> <li>• <b><i>Records that relate to the conviction that are in the possession of:</i></b> <ul style="list-style-type: none"> <li>➤ <b><i>Indiana State Police</i></b></li> <li>➤ <b><i>Bureau of Motor Vehicles</i></b></li> <li>➤ <b><i>Any Law Enforcement Agency</i></b><sup>51</sup></li> </ul> </li> <li>○ Records shall be marked expunged; and</li> <li>○ entry shall be added to the person's record of arrest, conviction, or sentence in the criminal history data base stating that the record is marked as expunged</li> </ul> <p><b>Descriptive content of order:</b></p> <ul style="list-style-type: none"> <li>• Order <b><i>must</i></b> contain information described in <b><i>section 8(b)</i></b>.<sup>52</sup></li> <li>• Essential information: <ul style="list-style-type: none"> <li>○ Petitioner: <ul style="list-style-type: none"> <li>▪ full name, other legal names or aliases;</li> <li>▪ DOB;</li> <li>▪ SSN;</li> </ul> </li> </ul> </li> </ul>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<ul style="list-style-type: none"> <li>▪ driver's license number;</li> <li>▪ addresses (from the date of the offense to the date of the petition)</li> <li>○ For each conviction: <ul style="list-style-type: none"> <li>▪ the cause number or case number;</li> <li>▪ date of arrest;</li> <li>▪ location of arrest (city and county)</li> <li>▪ date of conviction;</li> <li>▪ If applicable, appellate cause number and the date of appellate decision</li> </ul> </li> </ul> <p><b>Collateral Impact of Order:</b></p> <ul style="list-style-type: none"> <li>• Expungement order does not affect an existing or pending driver's license suspension.<sup>53</sup></li> <li>• Expungement order does not prevent the Indiana BMV from reporting conviction information to the Commercial Drivers License Information System (CDLIS) in compliance with IC 9-24-6-2(d)<sup>54</sup></li> </ul>

### Statutory Procedure:

Procedural steps:	Substantive Requirements:
<p>ARRESTS - Requirements for petition:</p> <p><b>(Note: no filing fee required.)</b></p>	<ul style="list-style-type: none"> <li>• Petition must be <b>verified</b>.</li> <li>• Information pertaining to <b>petitioner</b>: <ul style="list-style-type: none"> <li>○ DOB;</li> <li>○ SSN;</li> <li>○ Driver's license number; and</li> <li>○ Aliases or other names used by petitioner.</li> </ul> </li> <li>• Information pertaining to <b>each arrest or charging event</b>, when known:</li> </ul>

Procedural steps:	Substantive Requirements:
	<ul style="list-style-type: none"> <li>○ <b>Date of arrest</b>, criminal charges, or juvenile delinquency allegation;</li> <li>○ <b>County</b> in which arrest occurred or where charges or allegations were filed;</li> <li>○ <b>Law enforcement agency</b> employing the arresting officer;</li> <li>○ <b>Court</b> which charges or allegations were filed;</li> <li>○ Case or <b>cause number</b>;</li> <li>○ List of <b>each criminal charge filed and its disposition</b>.</li> </ul>
<p>CONVICTIONS -- Requirements for petition:</p> <p><b>(Note: <i>civil filing fee</i> required, but may be waived in the case of indigency.)</b></p>	<p>Petitioner may file <b>only one petition</b> in a lifetime.<sup>55</sup></p> <ul style="list-style-type: none"> <li>● to be considered “one petition,” petitions filed in separate counties must be filed within one 365 day period.</li> </ul> <p><b>Mechanics of Petition:</b><sup>56</sup></p> <ul style="list-style-type: none"> <li>● Petition may expunge more than one conviction at the same time;</li> <li>● Petitioner <b>shall</b> consolidate all convictions from the same county in one (1) petition; and</li> <li>● To address convictions from separate counties, one petition must be filed in each county.</li> </ul> <p><b>Substance of Petition:</b></p> <ul style="list-style-type: none"> <li>● Petition must be <b>verified</b><sup>57</sup>.</li> <li>● Petitioner must <b>describe any other petitions</b> that have been filed under this <b>chapter</b>.</li> <li>● Information pertaining to <b>petitioner</b><sup>58</sup>: <ul style="list-style-type: none"> <li>○ <b>full name</b>, other legal names, or aliases;</li> <li>○ <b>DOB</b>;</li> <li>○ <b>SSN</b>;</li> <li>○ <b>Driver’s license number</b>;</li> <li>○ <b>Addresses</b> from date of commission of first offense to date of petition;</li> <li>○ List of <b>all convictions</b>: <ul style="list-style-type: none"> <li>▪ <b>Cause number</b>,</li> <li>▪ <b>Date of conviction</b>,</li> <li>▪ <b>Date of appellate opinion</b>, if applicable.</li> </ul> </li> <li>○ <b>Affirmation</b>:</li> </ul> </li> </ul>

Procedural steps:	Substantive Requirements:
	<ul style="list-style-type: none"> <li>▪ that no criminal investigation or charges are pending;</li> <li>• Information pertaining to <b>each conviction</b>: <ul style="list-style-type: none"> <li>○ Case or <b>cause number</b>;</li> <li>○ Date of <b>arrest</b>;</li> <li>○ Date of <b>conviction</b>;</li> <li>○ <b>Affirmations</b>: <ul style="list-style-type: none"> <li>▪ that petitioner has not committed a crime within the required waiting period<sup>59</sup>; and</li> <li>▪ that required waiting period has elapsed<sup>60</sup> (unless a copy of prosecuting attorney’s written consent to shorter period is attached).</li> </ul> </li> </ul> </li> </ul>
Service:	<ul style="list-style-type: none"> <li>• <b>Section 1 Petitions</b> (addressing arrests that did not result in convictions) <ul style="list-style-type: none"> <li>○ The <b>court shall serve</b> a copy of the petition on the prosecuting attorney.<sup>61</sup></li> </ul> </li> <li>• <b>Section 2, 3, 4, and 5 Petitions</b> (addressing convictions): <ul style="list-style-type: none"> <li>○ The petitioner shall serve a copy of the petition upon the prosecuting attorney in accordance with the Indiana Rules of Trial Procedure.<sup>62</sup></li> </ul> </li> </ul>
Prosecutor’s duties: (Petitions that address convictions)	<ul style="list-style-type: none"> <li>• <b>Response to Petition:</b><sup>63</sup> <ul style="list-style-type: none"> <li>○ Not later than thirty (30) days after receipt.</li> <li>○ If no timely reply: <ul style="list-style-type: none"> <li>▪ Objections to the petition are waived; and</li> <li>▪ Court <b>shall</b> proceed to consider the petition pursuant to section 9.</li> </ul> </li> <li>○ If prosecutor objects:<sup>64</sup> <ul style="list-style-type: none"> <li>▪ Prosecutor <b>shall file the reasons for objecting</b> with the court and serve a copy of the objections on the petitioner.</li> </ul> </li> </ul> </li> <li>• <b>Victim contact:</b><sup>65</sup> <ul style="list-style-type: none"> <li>○ The prosecuting attorney shall inform the victim of the victim’s rights pursuant to I.C. § 35-40-6 <b>only when the petition involved convictions that are to be expunged under section 4 and 5.</b></li> </ul> </li> </ul>

Procedural steps:	Substantive Requirements:
Hearing: (Petitions that address convictions)	<ul style="list-style-type: none"> <li>• <b>Petition does not meet the requirements of section 8, or facts contained in petition demonstrate that petitioner is not entitled to relief:</b> <sup>66</sup> <ul style="list-style-type: none"> <li>○ Court <b>may</b> summarily deny the petition.</li> </ul> </li> <li>• <b>No response/objection from prosecutor:</b> <sup>67</sup> <ul style="list-style-type: none"> <li>○ Court <b>may</b> grant petition without a hearing.</li> </ul> </li> <li>• <b>Objection by prosecutor:</b> <sup>68</sup> <ul style="list-style-type: none"> <li>○ Prosecutor must file a written response;</li> <li>○ The court <b>shall</b> set a <b>hearing no sooner than sixty (60) days after service</b> of the petition on the prosecutor.</li> </ul> </li> <li>• <b>Hearing:</b> <ul style="list-style-type: none"> <li>○ Burden of proof: <b>by preponderance of the evidence.</b> <sup>69</sup></li> <li>○ <b>Victim</b> may submit an oral or written statement. <sup>70</sup></li> </ul> </li> </ul>
Refiling: <ul style="list-style-type: none"> <li>• after denial, and</li> <li>• amended petitions</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Petitions denied:</b> <sup>71</sup> <ul style="list-style-type: none"> <li>○ Petition denied for reason other than the court’s exercise of discretion: petitioner may refile with respect to one (1) or more <b>convictions included in original petition</b></li> <li>○ Petition filed pursuant to <b>sections 4 or 5</b> and <b>denied due the court’s exercise of its discretion:</b> Petitioner may refile only after the <b>elapse of three (3) years.</b></li> </ul> </li> <li>• <b>Amended petitions:</b> <sup>72</sup> <ul style="list-style-type: none"> <li>○ Court <b>may</b> permit petitioner to file with respect to <b>convictions not included in the original petition only</b> if the court finds:               <ul style="list-style-type: none"> <li>▪ That petitioner intended in good faith to comply with subsections (h) and (i);</li> <li>▪ That petitioner’s failure was due to:                   <ul style="list-style-type: none"> <li>• excusable neglect; or</li> <li>• circumstances beyond petitioner’s control; and</li> </ul> </li> <li>• Permitting the petitioner to do so is in the best interests of justice.</li> </ul> </li> </ul> </li> </ul>
Distribution of Orders:	Parties: <ol style="list-style-type: none"> <li>1. <b>Petitioner/Petitioner’s Attorney</b></li> <li>2. <b>County Prosecutor's Office</b></li> </ol>

Procedural steps:	Substantive Requirements:
	<p>Entities who are in possession of records related to the expunged cases:</p> <ol style="list-style-type: none"> <li>1. <b>County Clerk</b></li> <li>2. <b>County Sheriff's Dept.</b></li> <li>3. <b>All local service providers who are in possession of records related to expunged cases.</b></li> <li>4. <b>All local law enforcement agencies who are in possession of records related to expunged cases.</b></li> <li>5. <b>Attorney for and local law enforcement entity required to act under order (Required under TR 4.6(A)(4))</b></li> <li>6. <b>Indiana State Police</b>  Attn: Records Division  100 N Senate Ave., Room N301 (East)  Indianapolis, IN 46204  <a href="mailto:Expungement@isp.in.gov">Expungement@isp.in.gov</a></li> <li>7. <b>Office of the Indiana Attorney General (Required by TR 4.6(A)(3))</b>  Indiana Government Center South, 5th Floor  302 W. Washington Street  Indianapolis, IN 46204</li> </ol> <p>Entities that MAY possess records related to expunged cases:</p> <ol style="list-style-type: none"> <li>8. <b>Indiana Supreme Court</b>  STAD – Court Technology  30 S. Meridian Street, Ste. 500  Indianapolis, Indiana 46204</li> </ol>

Procedural steps:	Substantive Requirements:
	<p>* [only if a NO CONTACT ORDER was issued in one or more of the expunged cases as a condition of BOND or PROBATION.]</p> <p><b>9. Clerk of the Appellate Courts</b>  216 State House  200 West Washington Street  Indianapolis, IN 46204  * [only if one or more of the expunged cases was appealed.]</p> <p><b>12. Indiana Bureau of Motor Vehicles</b>  IGC North, Room 402  100 North Senate Avenue  Indianapolis, IN 46204  <a href="mailto:courtdocuments@bmv.in.gov">courtdocuments@bmv.in.gov</a>  * [only if Petitioner's Official Driver Record contains entries related to any of the expunged cases]</p> <p><b>13. Indiana Department of Correction</b>  Attn: Records Division  302 W. Washington Street, Room E-334  Indianapolis, IN 46204  <a href="mailto:rshort@idoc.in.gov">rshort@idoc.in.gov</a>  * [only if 1) Petitioner had a conviction in any of the expunged cases, and 2) Petitioner was sentenced to executed time in the DOC]</p>

<sup>1</sup> See I.C. § 35-38-9-2(b), I.C. § 35-38-9-3(b)(6), I.C. § 35-38-9-4(b)(6), and I.C. § 35-38-9-5(b)(4). Note: these offenders are eligible to petition for expungement of records that pertain to an arrest that did not result in conviction or juvenile adjudication.

<sup>2</sup> See I.C. § 35-38-9-3(b)(2) and (b)(4); I.C. § 35-38-9-4(b)(2) and (b)(4); and I.C. § 35-38-9-5(b)(1) and (b)(2).

<sup>3</sup> I.C. § 35-38-9-1(e)(2)(b):

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Upon receipt of a petition for expungement, the court:

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(2) shall grant the petition unless:

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(B) criminal charges are pending against the person.

<sup>4</sup> **I.C. § 35-38-9-1(a)(2):**

This section applies only to a person who has been arrested, charged with an offense, or alleged to be a delinquent child, if:

\*\*\*

(2) the person is not currently participating in a pretrial diversion program.

<sup>5</sup> **I.C. § 35-38-9-1(b):**

Not earlier than one (1) year after the date of arrest, **criminal charge, or juvenile delinquency allegation (whichever is later)**, if the person was not convicted or adjudicated a delinquent child, or the date of the opinion vacating the conviction or adjudication becomes final (unless the prosecuting attorney agrees in writing to an earlier time), the person may petition the court for expungement of the records related to the arrest, **criminal charge, or juvenile delinquency allegation**.

<sup>6</sup> **I.C. § 35-38-9-2(b):**

This section does not apply to a person convicted of two (2) or more felony offenses that:

(1) involved the unlawful use of a deadly weapon; and

(2) were not committed as part of the same episode of criminal conduct.

<sup>7</sup> **I.C. § 35-38-9-2(c):**

(c) Not earlier than five (5) years after the date of conviction (unless the prosecuting attorney consents in writing to an earlier period), the person convicted of the misdemeanor may petition a court to expunge all conviction records, including records contained in:

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<sup>8</sup> **I.C. § 35-38-9-3(b)(3):**

This section does not apply to the following:

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

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<sup>9</sup> **I.C. § 35-38-9-3(b)(6):**

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

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- (6) A person convicted of two (2) or more felony offenses that:
- (A) involved the unlawful use of a deadly weapon; and
  - (B) were not committed as part of the same episode of criminal conduct.

<sup>10</sup> **I.C. § 35-38-9-3(b)(1):**

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

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

<sup>11</sup> **I.C. § 35-38-9-3(b)(2):**

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

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

**I.C. § 11-8-8-5** "Sex or violent offender" defined:

(a) Except as provided in [section 22](#) of this chapter, as used in this chapter, "sex or violent offender" means a person convicted of any of the following offenses:

- (1) Rape ([IC 35-42-4-1](#)).
- (2) Criminal deviate conduct ([IC 35-42-4-2](#)) (before its repeal).
- (3) Child molesting ([IC 35-42-4-3](#)).
- (4) Child exploitation ([IC 35-42-4-4\(b\)](#)).
- (5) Vicarious sexual gratification (including performing sexual conduct in the presence of a minor) ([IC 35-42-4-5](#)).
- (6) Child solicitation ([IC 35-42-4-6](#)).
- (7) Child seduction ([IC 35-42-4-7](#)).
- (8) Sexual misconduct with a minor ([IC 35-42-4-9](#)) as a Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a crime committed after June 30, 2014), unless:
  - (A) the person is convicted of sexual misconduct with a minor as a Class C felony (for a crime committed before July 1, 2014) or a Level 5 felony (for a crime committed after June 30, 2014);
  - (B) the person is not more than:
    - (i) four (4) years older than the victim if the offense was committed after June 30, 2007; or
    - (ii) five (5) years older than the victim if the offense was committed before July 1, 2007; and
  - (C) the sentencing court finds that the person should not be required to register as a sex offender.
- (9) Incest ([IC 35-46-1-3](#)).
- (10) Sexual battery ([IC 35-42-4-8](#)).
- (11) Kidnapping ([IC 35-42-3-2](#)), if the victim is less than eighteen (18) years of age, and the person who kidnapped the victim is not the victim's parent or guardian.
- (12) Criminal confinement ([IC 35-42-3-3](#)), if the victim is less than eighteen (18) years of age, and the person who confined or removed the victim is not the victim's parent or guardian.

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- (13) Possession of child pornography ([IC 35-42-4-4\(c\)](#)).
  - (14) Promoting prostitution ([IC 35-45-4-4](#)) as a Class B felony (for a crime committed before July 1, 2014) or a Level 4 felony (for a crime committed after June 30, 2014).
  - (15) Promotion of human trafficking ([IC 35-42-3.5-1\(a\)\(2\)](#)) if the victim is less than eighteen (18) years of age.
  - (16) Sexual trafficking of a minor ([IC 35-42-3.5-1\(c\)](#)).
  - (17) Human trafficking ([IC 35-42-3.5-1\(d\)\(3\)](#)) if the victim is less than eighteen (18) years of age.
  - (18) Murder ([IC 35-42-1-1](#)).
  - (19) Voluntary manslaughter ([IC 35-42-1-3](#)).
  - (20) Sexual misconduct by a service provider with a detained or supervised child ([IC 35-44.1-3-10\(c\)](#)).
  - (21) An attempt or conspiracy to commit a crime listed in subdivisions (1) through (20).
  - (22) A crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in subdivisions (1) through (21).
- (b) The term includes:
- (1) a person who is required to register as a sex or violent offender in any jurisdiction; and
  - (2) a child who has committed a delinquent act and who:
    - (A) is at least fourteen (14) years of age;
    - (B) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility (as defined in [IC 31-9-2-115](#)), or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and
    - (C) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.
- (c) In making a determination under subsection (b)(2)(C), the court shall consider expert testimony concerning whether a child is likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

<sup>12</sup> **I.C. § 35-38-9-3(b)(4):**

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

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- (1) A person convicted of perjury ([IC 35-44.1-2-1](#)) or official misconduct ([IC 35-44.1-1-1](#)).

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**I.C. § 35-44.1-2-1 (Perjury):**

- (a) A person who:
- (1) makes a false, material statement under oath or affirmation, knowing the statement to be false or not believing it to be true; or
  - (2) has knowingly made two (2) or more material statements, in a proceeding before a court or grand jury, which are inconsistent to the degree that one (1) of them is necessarily false;
- commits perjury, a Level 6 felony.
- (b) In a prosecution under subsection (a)(2):
- (1) the indictment or information need not specify which statement is actually false; and

- 
- (2) the falsity of a statement may be established sufficiently for conviction by proof that the defendant made irreconcilably contradictory statements which are material to the point in question.

(Note: this section was first effective on July 1, 2012)

**I.C. § 35-44.1-1-1 (Official Misconduct):**

A public servant who knowingly or intentionally:

- (1) commits an offense in the performance of the public servant's official duties;
- (2) solicits, accepts, or agrees to accept from an appointee or employee any property other than what the public servant is authorized by law to accept as a condition of continued employment;
- (3) acquires or divests himself or herself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so based on information obtained by virtue of the public servant's office that official action that has not been made public is contemplated; or
- (4) fails to deliver public records and property in the public servant's custody to the public servant's successor in office when that successor qualifies; commits official misconduct, a Level 6 felony.

(Note: this section was first effective on July 1, 2012)

<sup>13</sup> **I.C. § 35-38-9-3(b)(5):**

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

\*\*\*

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

- (A) IC 35-42-1;
- (B) IC 35-42-3.5; or
- (C) C 35-42-4.

<sup>14</sup> **I.C. § 35-38-9-3(c):**

Not earlier than eight (8) years after the date of conviction (unless the prosecuting attorney consents in writing to an earlier period), the person convicted of the Class D felony or Level 6 felony may petition a court to expunge all conviction records, including records contained in:

\*\*\*

<sup>15</sup> **I.C. § 35-38-9-4(b)(3):**

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

\*\*\*

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

\*\*\*

<sup>16</sup> **I.C. § 35-38-9-4(b)(6):**

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

\*\*\*

(6) A person convicted of two (2) or more felony offenses that:

- 
- (A) involved the unlawful use of a deadly weapon; and
  - (B) were not committed as part of the same episode of criminal conduct.

**<sup>17</sup> I.C. § 35-38-9-4(b)(1):**

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

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

**<sup>18</sup> I.C. § 35-38-9-4(b)(2):**

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

\*\*\*

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

\*\*\*

**<sup>19</sup> I.C. § 35-38-9-4(b)(4):**

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

\*\*\*

- (4) A person convicted of official misconduct (IC 35-44.1-1-1).

\*\*\*

**<sup>20</sup> I.C. § 35-38-9-4(b)(5):**

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

\*\*\*

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

(C) IC 35-42-1;

(D) IC 35-42-3.5; or

(E) IC 35-42-4.

\*\*\*

**<sup>21</sup> I.C. § 35-38-9-4(c):**

Not earlier than the later of eight (8) years from the date of conviction, or three (3) years from the completion of the person's sentence, unless the prosecuting attorney consents in writing to an earlier period, the person convicted of the felony may petition a court to expunge all conviction records, including records contained in:

\*\*\*

**<sup>22</sup> I.C. § 35-38-9-2(c):**

(c) Not earlier than five (5) years after the date of conviction (unless the prosecuting attorney consents in writing to an earlier period), the person convicted of the misdemeanor may petition a court to expunge all conviction records, including records contained in:

\*\*\*

---

<sup>23</sup> **I.C. § 35-38-9-5(b)(4):**

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

\*\*\*

- (4) A person convicted of two (2) or more felony offenses that:
- (A) involved the unlawful use of a deadly weapon; and
  - (B) were not committed as part of the same episode of criminal conduct.

<sup>24</sup> **I.C. § 35-38-9-5(b)(2):**

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

\*\*\*

- (2) A person convicted of official misconduct (IC 35-44.1-1-1).

\*\*\*

<sup>25</sup> **I.C. § 35-38-9-5(b)(1):**

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

\*\*\*

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

\*\*\*

<sup>26</sup> **I.C. § 35-38-9-5(b)(3):**

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

\*\*\*

- (3) A person convicted of an offense described in:
- (F) IC 35-42-1;
  - (G) IC 35-42-3.5; or
  - (H) IC 35-42-4.

\*\*\*

<sup>27</sup> **I.C. § 35-38-9-1(e)(2):**

Upon receipt of a petition for expungement, the court:

\*\*\*

- (2) shall grant the petition unless:
- (A) the conditions described in subsection (a) have not been met; or
  - (B) criminal charges are pending against the person.

**I.C. § 35-38-9-1(a):**

This section applies only to a person who has been arrested, charged with an offense, or alleged to be a delinquent child, if:

- (1) the arrest, criminal charge, or juvenile delinquency allegation:

- 
- (A) did not result in a conviction or juvenile adjudication; or
  - (B) resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal; and
- (2) the person is not currently participating in a pretrial diversion program.

**<sup>28</sup>I.C. § 35-38-9-1(b):**

Not earlier than one (1) year after the date of arrest, criminal charge, or juvenile delinquency allegation (whichever is later), if the person was not convicted or adjudicated a delinquent child, or the date of the opinion vacating the conviction or adjudication becomes final (unless the prosecuting attorney agrees in writing to an earlier time), the person may petition the court for expungement of the records related to the arrest, criminal charge, or juvenile delinquency allegation.

**<sup>29</sup>I.C. § 35-38-9-2(e):**

If the court finds by a preponderance of the evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) the person has not been convicted of a crime within the previous five (5) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c));

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

**<sup>30</sup>I.C. § 35-38-9-3(e):**

If the court finds by a preponderance of the evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) the person has not been convicted of a crime within the previous eight (8) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c));

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

**<sup>31</sup>I.C. § 35-38-9-4(e):**

If the court finds by a preponderance of the evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) the person has not been convicted of a crime within the previous eight (8) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c));

---

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

**<sup>32</sup> I.C. § 35-38-9-5(e):**

If the court finds by a preponderance of the evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person has paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence; and
- (4) the person has not been convicted of a crime within the previous ten (10) years (or within a shorter period agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period under subsection (c));

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

**<sup>33</sup> I.C. § 35-38-9-1(f)(1):**

Whenever the petition of a person under this section is granted:

- (1) no information concerning the arrest, criminal charges, juvenile delinquency allegation, vacated conviction, or vacated juvenile delinquency adjudication may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency;

\*\*\*

**<sup>34</sup> I.C. § 35-38-9-1(f)(3):**

Whenever the petition of a person under this section is granted:

\*\*\*

- (3) the records of:
  - (A) the sentencing court;
  - (B) a juvenile court;
  - (C) a court of appeals; and
  - (D) the supreme court;concerning the person shall be redacted or permanently sealed; and

\*\*\*

**<sup>35</sup> I.C. § 35-38-9-1(f)(4):**

Whenever the petition of a person under this section is granted:

\*\*\*

- 
- (4) with respect to the records of a person who is named as an appellant or an appellee in an opinion or memorandum decision by the supreme court or the court of appeals, the court shall:
- (A) redact the opinion or memorandum decision as it appears on the computer gateway administered by the office of technology so that it does not include the petitioner's name (in the same manner that opinions involving juveniles are redacted); and
  - (B) provide a redacted copy of the opinion to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement.

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

<sup>36</sup> **I.C. § 35-38-9-1(h):**

- (h) However, This chapter does not require any change or alteration in:
- (1) any internal record made by a law enforcement agency at the time of the arrest and not intended for release to the public; or
  - (2) records that relate to a diversion or deferral program.

<sup>37</sup> **I.C. § 35-38-9-1(g):**

If the court issues an order granting a petition for expungement under this section, the order must include the information described in subsection (c).

**I.C. § 35-38-9-1(c):**

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

- (1) the date of the arrest, criminal charges, or juvenile delinquency allegation, and conviction (if applicable);
- (2) the county in which the arrest occurred, the county in which the information or indictment was filed, and the county in which the juvenile delinquency allegation was filed, if applicable;
- (3) the law enforcement agency employing the arresting officer, if known;
- (4) the court in which the criminal charges or juvenile delinquency allegation was filed, if applicable;
- (5) any other known identifying information, such as:
  - (A) the name of the arresting officer;
  - (B) case number or court cause number;
  - (C) any aliases or other names used by the petitioner;
  - (D) the petitioner's driver's license number; and
  - (E) a list of each criminal charge and its disposition, if applicable;
- (6) the date of the petitioner's birth; and
- (7) the petitioner's Social Security number.

<sup>38</sup> **I.C. § 35-38-9-6(a)(1):**

Order:

- (A) the department of correction;
- (B) the bureau of motor vehicles; and

- 
- (C) each:
    - (i) law enforcement agency; and
    - (ii) other person;

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

\*\*\*

<sup>39</sup> **I.C. § 35-38-9-7(c) (second sentence in paragraph):**

*“Nothing in this chapter (emphasis added) prevents the bureau of motor vehicles from reporting information about a conviction for a violation of a traffic control law to the Commercial Drivers License Information System (CDLIS), in accordance with IC 9-24-6-2(d), even if the conviction has been expunged under section 4 or 5 of this chapter.”*

<sup>40</sup> **I.C. § 35-38-9-6(a)(2):**

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

\*\*\*

- (2) Order the central repository for criminal history information maintained by the state police department to seal the person's expunged conviction records. Records sealed under this subdivision may be disclosed only to:
  - (A) a prosecuting attorney, if:
    - (i) authorized by a court order; and
    - (ii) needed to carry out the official duties of the prosecuting attorney;
  - (B) a defense attorney, if:
    - (i) authorized by a court order; and
    - (ii) needed to carry out the professional duties of the defense attorney;
  - (C) a probation department, if:
    - (i) authorized by a court order; and
    - (ii) necessary to prepare a presentence report; and
  - (D) the Federal Bureau of Investigation and the Department of Homeland Security, if disclosure is required to comply with an agreement relating to the sharing of criminal history information;
  - (E) the:
    - (i) supreme court;
    - (ii) members of the state board of law examiners;
    - (iii) executive director of the state board of law examiners; and
    - (iv) employees of the state board of law examiners, in accordance with rules adopted by the state board of law examiners; for the purpose of determining whether an applicant possesses the necessary good moral character for admission to the bar; and

- 
- (F) a person required to access expunged records to comply with the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.) or regulations adopted under the Secure and Fair Enforcement for Mortgage Licensing Act.
  - (G) the bureau of motor vehicles, the Federal Motor Carrier Administration, and the Commercial Drivers License Information System (CDLIS), if disclosure is required to comply with IC 9-24-6-2(d) relating to reporting a conviction for a violation of a traffic control law.

\*\*\*

**<sup>41</sup> I.C. § 35-38-9-6(b):**

Except as provided in subsection (c), if a petition to expunge conviction records is granted under sections 2 through 3 of this chapter, the records of:

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

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

**<sup>42</sup> I.C. § 35-38-9-6(d):**

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

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

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

**<sup>43</sup> I.C. § 35-38-9-6(c)**

If a petition to expunge conviction records is granted under sections 2 through 3 of this chapter with respect to the records of a person who is named as an appellant or an appellee in an opinion or memorandum decision by the supreme court or the court of appeals, the court shall:

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

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

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**<sup>44</sup> I.C. § 35-38-9-6(g)**

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

**I.C. § 35-38-9-8(b):**

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

- (1) The petitioner's full name and all other legal names or aliases by which the petitioner is or has been known.
- (2) The petitioner's date of birth.
- (3) The petitioner's addresses from the date of the offense to the date of the petition.
- (4) The case number or court cause number, if available.
- (5) The petitioner shall affirm that no criminal investigation or charges are pending against the petitioner.
- (6) The petitioner shall affirm that the petitioner has not committed another crime within the period required for expungement.
- (7) The petitioner shall list all convictions, the cause number of each conviction, if known, and the date of the conviction, and any appeals from the conviction and the date any appellate opinion was handed down, if applicable.
- (8) The petitioner shall include:
  - (A) the petitioner's Social Security number;
  - (B) the petitioner's driver's license number;
  - (C) the date of the petitioner's arrest, if applicable; and
  - (D) the date on which the petitioner was convicted.
- (9) The petitioner shall affirm that the required period has elapsed or attach a copy of the prosecuting attorney's written consent to a shorter period.
- (10) The petitioner shall describe any other petitions that the petitioner has filed under this chapter.
- (11) For a petition filed under section 5 of this chapter, the petitioner shall attach a copy of the prosecuting attorney's written consent.

**<sup>45</sup> I.C. § 35-38-9-6(b):**

. . . However, a petition for expungement granted under sections 2 through 3 of this chapter does not affect an existing or pending driver's license suspension.

**<sup>46</sup> I.C. § 35-38-9-6(e):**

If a person whose conviction records are expunged under sections 2 through 5 of this chapter is required to register as a sex offender based on the commission of a felony which has been expunged:

- (1) the expungement does not affect the operation of the sex offender registry web site, any person's ability to access the person's records, records required to be maintained concerning sex or violent offenders, or any registration requirement imposed on the person; and
- (2) the expunged conviction must be clearly marked as expunged on the sex offender registry web site.

**<sup>47</sup> I.C. § 35-38-9-6(f):**

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

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<sup>48</sup> **I.C. § 35-38-9-5(b):**

This section does not apply to the following:

- (1) A sex or violent offender (as defined in IC 11-8-8-5).
- (2) A person convicted of official misconduct (IC 35-44.1-1-1).
- (3) A person convicted of an offense described in:
  - (A) IC 35-42-1;
  - (B) IC 35-42-3.5; or
  - (C) IC 35-42-4.

<sup>49</sup> **I.C. § 35-38-9-7(b):**

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

<sup>50</sup> **I.C. § 35-38-9-7(b).**

<sup>51</sup> **I.C. § 35-38-9-7(c):**

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

<sup>52</sup> **I.C. 35-38-9-7(d):**

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

**I.C. § 35-38-9-8(b):**

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

- (1) The petitioner's full name and all other legal names or aliases by which the petitioner is or has been known.
- (2) The petitioner's date of birth.
- (3) The petitioner's addresses from the date of the offense to the date of the petition.
- (4) The case number or court cause number, if available.
- (5) The petitioner shall affirm that no criminal investigation or charges are pending against the petitioner.
- (6) The petitioner shall affirm that the petitioner has not committed another crime within the period required for expungement.
- (7) The petitioner shall list all convictions, the cause number of each conviction, if known, and the date of the conviction, and any appeals from the conviction and the date any appellate opinion was handed down, if applicable.
- (8) The petitioner shall include:
  - (A) the petitioner's Social Security number;

- 
- (B) the petitioner's driver's license number;
  - (C) the date of the petitioner's arrest, if applicable; and
  - (D) the date on which the petitioner was convicted.
- (9) The petitioner shall affirm that the required period has elapsed or attach a copy of the prosecuting attorney's written consent to a shorter period.
- (10) The petitioner shall describe any other petitions that the petitioner has filed under this chapter.
- (11) For a petition filed under section 5 of this chapter, the petitioner shall attach a copy of the prosecuting attorney's written consent.

**<sup>53</sup> I.C. § 35-38-9(b):**

. . . A petition for expungement granted under sections 4 through 5 of this chapter does not affect an existing or pending driver's license suspension.

**<sup>54</sup> I.C. § 35-38-9-7(c):**

. . . Nothing in this chapter prevents the bureau of motor vehicles from reporting information about a conviction for a violation of a traffic control law to the Commercial Drivers License Information System (CDLIS), in accordance with IC 9-24-6-2(d), even if the conviction has been expunged under section 4 or 5 of this chapter.

**<sup>55</sup> I.C. § 35-38-9-9(i):**

This subsection applies only to a petition to expunge conviction records filed under sections 2 through 5 of this chapter. This subsection does not apply to a petition to expunge records related to the arrest, criminal charge, or juvenile delinquency allegation under section 1 of this chapter. Except as provided in subsections (j) and (k), a petitioner may file a petition for expungement only one (1) time during the petitioner's lifetime. For purposes of this subsection, all petitions for expungement filed in separate counties for offenses committed in those counties count as one (1) petition if they are filed in one (1) three hundred sixty-five (365) day period.

**<sup>56</sup> I.C. § 35-38-9-9(h):**

This subsection applies only to a petition to expunge conviction records filed under sections 2 through 5 of this chapter. This subsection does not apply to a petition to expunge records related to the arrest, criminal charge, or juvenile delinquency allegation under section 1 of this chapter. A petitioner may seek to expunge more than one (1) conviction at the same time. The petitioner shall consolidate all convictions that the petitioner wishes to expunge from the same county in one (1) petition. A petitioner who wishes to expunge convictions from separate counties must file a petition in each county in which a conviction was entered.

**<sup>57</sup> I.C. § 35-38-9-8(b):**

Any person may seek an expungement under sections 2 through 5 of this chapter by filing a verified petition for expungement.

**<sup>58</sup> I.C. § 35-38-9-8(b).**

**<sup>59</sup> I.C. § 35-38-9-8(b)(6):**

The petitioner shall affirm that the petitioner has not committed another crime within the period required for expungement.

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**<sup>60</sup> I.C. § 35-38-9-(b)(9):**

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

**<sup>61</sup> I.C. § 35-38-9-1(d):**

The court shall serve a copy of the petition on the prosecuting attorney.

**<sup>62</sup> I.C. § 35-38-9-8(e):**

The petitioner shall serve a copy of the petition upon the prosecuting attorney in accordance with the Indiana Rules of Trial Procedure.

**<sup>63</sup> I.C. § 35-38-9-8(g):**

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

- (1) the prosecuting attorney has waived any objection to the petition; and
- (2) the court shall proceed to consider the petition under section 9 of this chapter.

**<sup>64</sup> I.C. § 35-38-9-9(c):**

If the prosecuting attorney objects to the petition, the prosecuting attorney shall file the reasons for objecting to the petition with the court and serve a copy of the objections on the petitioner at the time the prosecuting attorney objects to the petition. The court shall set the matter for hearing not sooner than sixty (60) days after service of the petition on the prosecuting attorney.

**<sup>65</sup> I.C. § 35-38-9-8(f):**

The prosecuting attorney shall inform the victim of the victim's rights under IC 35-40-6 by contacting the victim at the victim's last known address. However, if a court has no discretion in granting an expungement petition under this chapter, the prosecuting attorney is not required to inform the victim of the victim's rights under this subsection.

**<sup>66</sup> I.C. § 35-38-9-9(b):**

The court may summarily deny a petition, if the petition does not meet the requirements of section 8 of this chapter, or if the statements contained in the petition demonstrate that the petitioner is not entitled to relief.

**<sup>67</sup> I.C. § 35-38-9-9(a):**

If the prosecuting attorney does not object, or has waived objection to the petition under section 8 of this chapter, the court may grant the petition for expungement without a hearing.

**<sup>68</sup> I.C. § 35-38-9-9(c).**

**<sup>69</sup> I.C. § 35-38-9-9(d):**

...The petitioner must prove by a preponderance of the evidence that the facts alleged in the verified petition are true.

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<sup>70</sup> **I.C. § 35-38-9-9(d):**

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

<sup>71</sup> **I.C. § 35-38-9-9(j):**

A petitioner whose petition for expungement has been denied, in whole or in part, may **refile that** petition for expungement, **in whole or in part**, with respect to one (1) or more convictions included in the initial expungement petition that were not expunged. However, if the petition was denied due to the court's exercise of its discretion under section 4 or 5 of this chapter, a petition for expungement may be **refiled** only after the elapse of three (3) years from the date on which the previous expungement petition was denied. Except as provided in subsection **(k)**, a **refiled** petition for expungement may not include any conviction that was not included in the initial expungement petition.

<sup>72</sup> **I.C. § 35-38-9-9(k):**

A court may permit a petitioner to file **an amended** petition for expungement with respect to one (1) or more convictions that were not included in the initial expungement petition only if the court finds that:

- (1) the petitioner intended in good faith to comply with subsections **(h)** and **(i)**;
- (2) the petitioner's failure to comply with subsections **(h)** and **(i)** was due to:
  - (A) excusable neglect; or
  - (B) circumstances beyond the petitioner's control; and
- (3) permitting the petitioner to file a subsequent petition for expungement is in the best interests of justice.