
**CLERK & COURT RECORDS:
ACCESS & MAINTENANCE**

THE “EXPUNGEMENT” STATUTES

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On July 1, 2013, I.C. 35-38-9 replaced:

- I.C. 35-38-5-5.5 (which restricted the disclosure of certain criminal records when a person was not convicted or the conviction was vacated) and
- I.C. 35-38-8 (which restricted access to certain misdemeanor and non-violent Class D felony conviction records).

I.C. 35-38-9 was amended in the 2014 legislative session. The 2014 changes were effective March 26, 2014.

IC 35-38-9 was also amended in the 2015 legislative session by P.L. 142 - 2015 (H.E.A. 1302). The 2015 changes were effective July 1, 2015.

Below are links to digest materials for trial court judges, court staff and clerks that provide guidance on the 2015 amendments to the Expungement statute ([I.C. 35-38-9](#)).

- [Expungement- Digest for Judges](#)
- [Expungement - Digest for Court Staff and Clerks](#)
- [Expungement - Digest on Orders](#)

Although the title of this law indicates some conviction records will be expunged, this is not a traditional expungement where records are destroyed. Instead, I.C. 35-38-9 provides a method to seal some arrest and conviction records and restrict the use of other conviction records. **No court records are deleted or destroyed under I.C. 35-38-9.**

Other Methods to Expunge or Restrict Access to Court Records

EXPUNGEMENT OF JUVENILE RECORDS

[I.C. 31-39-8-1](#), *et seq.*

Records created as a result of an allegation that a child is a delinquent or a child in need of services may be expunged under I.C. 31-39-8-1, *et seq.* A person may petition the juvenile court to remove from the court’s files, the files of any law enforcement agency and the files of any other person who has provided services to a

child under court order, those records pertaining to the child's involvement in juvenile court proceedings. If the court grants the expungement, the statute directs that the court order each law enforcement agency and each person who provided treatment for the child to send that person's record to the court. The records then may either be destroyed or given to the person to whom the record pertains.

Expungement orders entered in juvenile cases are confidential under [Admin. R. 9\(G\)\(1\)\(g\)](#) just as they are in adult criminal proceedings.

PROCEEDINGS TO RESTRICT DISCLOSURE WHEN A PERSON IS NOT CONVICTED OF AN INFRACTION OR THE INFRACTION CONVICTION IS VACATED - [I.C. 34-28-5-15](#)

Automatic Proceedings

A court is required to act automatically in certain infraction cases. This requirement does not apply to individuals whose prosecution for an infraction has been deferred.

The court must take action to assist an individual charged with committing an infraction who:

- is not prosecuted or the charges are dismissed;
- is adjudged not to have committed the infraction, or
- is adjudged to have committed the infraction and the adjudication is subsequently vacated.

The judge in the court where the action was filed must order the clerk and the operator of any state, regional or local case management system, not to disclose or permit disclosure of information related to the infraction to a noncriminal justice organization or an individual.

If There Should Have Been Automatic Proceedings But The Court Failed To Act

If the court should have automatically ordered the clerk not to disclose information related to the infraction but failed to do so, an individual may file a verified petition requesting non-disclosure.

This petition may not be filed earlier than:

- 30 days after date of the judgment if the person was found not to have committed the infraction;

- 365 days after the order vacating the person's adjudication is final or 365 days after the opinion or memorandum decision vacating the adjudication is certified;
- 2 years after the alleged conduct or violation occurred if the person is not prosecuted;
- 30 days after the action is dismissed, provided a new action is not filed

Special Provisions For Individuals Who Complete A Deferral Program Or Who Have Satisfied All Terms Of the Infraction Violation Judgment

Individuals who have:

- successfully complete a deferral program or
- have satisfied the terms of the judgment imposed for the infraction violation may file a verified petition with the court to prohibit disclosure of information related to the infraction to a noncriminal justice organization or an individual.
- This petition may not be filed earlier than five (5) years after the individual whose prosecution for an infraction has been deferred; or who was found to have violated a statute defining an infraction; has satisfied the conditions of the deferral program or the judgment imposed for the violation.

If granted, the court shall order the clerk and the operator of any state, regional, or local case management system not to disclose or permit disclosure of information related to the infraction to a noncriminal justice organization or an individual.

PRACTICE TIPS

Petitions filed under I.C. 34-28-5-15 must be timely filed either in the court where the charges were brought or where a trial was held or the court having jurisdiction over the violation for a person who entered a deferral program.

The petition should be filed under the case number of the original case, but if the prosecution was dropped before a case number was assigned, the petition should be assigned an MC case type. No filing fee is required. If an MC is required, make sure to cross reference case numbers in the CCS for the MC and the original case.

A copy of the petition must be served on the prosecuting attorney who has thirty days to file a notice in opposition.

The court may:

- summarily grant the petition;
- set the matter for a hearing, or
- summarily deny the petition, if the court finds the petition is insufficient or based on documentary evidence submitted to the court that shows the petitioner is not entitled to have his or her records restricted.

The judge must set the matter for a hearing if a notice of opposition is filed and the court does not summarily grant or deny the petition.

FORMER STATUTES REPEALED:

- **AUTOMATIC RESTRICTION OF INFRACTION RECORDS AFTER 5 YEARS** - [I.C. 34-28-5-16](#) repealed effective July 1, 2013 by P. L. 112-2013 and 205-2013
- **EXPUNGEMENT OF ADULT ARREST RECORDS** - [I.C. 35-38-5-1](#) repealed effective July 1, 2013 by P. L. 181-2014
- **RESTRICTING DISCLOSURE OF CRIMINAL RECORDS WHEN PERSON IS NOT CONVICTED OR CONVICTION IS VACATED** - [I.C. 35-38-5-5.5](#) repealed effective July 1, 2013 by P. L. 181-2014
- **PROCEEDINGS TO RESTRICT ACCESS TO CONVICTION RECORDS FOR MISDEMEANOR AND NON-VIOLENT CLASS D FELONY CONVICTIONS** - [I.C. 35-38-8](#) repealed effective July 1, 2013 by P. L. 181-2014

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