

2014 CRIMINAL REFORM AND TRAFFIC LEGISLATION

July 14, 2014

Trial Court Personnel Conference

Criminal Reform Legislation

- Reform started 2010 and ran to 2014 sessions
- General penal code reform enacted in HEA 1006 in 2013, to be effective July 1, 2014
- HB 1006-2014 and other legislation in 2014 regular session made changes to 2013 law
- 2014 Technical Corrections session in June made changes to 2014 law, in HEA 1488

2013 and 2014 H.E.A. 1006's

- **Effective 7-01-14**
- Switch from 5 levels of felonies to 7 levels of felony to allow more flexibility in punishment levels
- Misdemeanors unchanged
- Not many changes in crime definitions
- Sentence suspension, modification, and diversion provisions liberalized

Proportionality Reductions

- More flexibility, a general reduction of severity of punishment for property and drug crimes
- Examples:
 - Theft reduced from felony to A misdemeanor for amounts under \$750
 - Dealing in cocaine, less than 1 gram – was a B felony, now a Level 5 felony

Technical Correction Increase

- June 17, 2014 “Technical Correction” session changed Level 1 child molesting with sexual intercourse or “other sexual conduct”
- formerly, as an A felony, maximum for child molesting with sexual intercourse or deviate sexual conduct with a child under 12 and a defendant 21 or older was 50 years, or for child molesting resulting in serious bodily injury or death
- under new law (see chart), maximum for a Level 1 felony is 40 years – legislators did not like this lower felony for Level 1 child molesting, and so Level 1 child molesting was given a special maximum of 50 years in the special “technical corrections” session

Savings Statute – 1st Half

- **I.C. 1-1-5.5-21.** -(a) A SECTION of P.L.158-2013 or HEA 1006-2014 does not affect: (1) penalties incurred; (2) crimes committed; or (3) proceedings begun; before the effective date of that SECTION of P.L.158-2013 or HEA 1006-2014. Those penalties, crimes, and proceedings continue and shall be imposed and enforced under prior law as if that SECTION of P.L.158-2013 or HEA 1006-2014 had not been enacted.

Savings Statute – 2nd Half

- **I.C. 1-1-5.5-21.** (b) The general assembly does not intend the doctrine of amelioration (see *Vicory v. State*, 400 N.E.2d 1380 (Ind. 1980)) to apply to any SECTION of P.L. 158-2013 or HEA 1006-2014.

Felony Classifications

- 5 level system in effect since 1976 – murder, A, B, C, and D felonies
- Replaced in HEA 1006-2013 by 7 level system – murder, Levels 1, 2 (high and low A equivalents), 3, 4 (high and low B equivalents), 5 (C equivalent), and 6 (D equivalent)
- For sentencing range comparison, see handout chart
- More flexibility for sentence proportionality

Earning Sentence Credit

I.C. 35-50-6-3.1

- Under former system offender earns one day “credit time” for each day served in jail
- When credit time plus time served equals imposed sentence, offender goes on parole – so 50% of sentence is served
- New: murder and Levels 1-5 offender earns one day of “credit time” for three days served – so 75% of sentence is served under new law
- New: misdemeanors and level 6 keep day for day “credit time”

Sentence Credit for Probation Home Detention

- For a crime committed prior to July 1, 2014, a person confined on home detention as a condition of probation earns credit for time served, Ind. Code 35-38-2.5-5, and also for credit time. *Peterink v. State*, 982 N.E.2d 1009 (Ind. 2013) (summarily affirming on transfer the Court of Appeals decision, found at 971 N.E.2d 735 (Ind. Ct. App. 2012), that a probationer is entitled under ambiguous statutes to receive credit time for home detention as condition of probation).
- For a crime committed on or after July 1, 2014, Ind. Code 35-38-2.5-5 expressly provides that a person on home detention as a condition of probation earns credit for time served and one day of credit time for each day of home detention.

Sentence Credit for Home Detention in Community Corr'n's

- For a crime committed prior to July 1, 2014, a person placed in community corrections earns credit time, including for home detention, *Arthur v. State*, 950 N.E.2d 343 (Ind. Ct. App. 2011), *transfer denied*, and also earns credit for time served, *Purcell v. State*, 721 N.E.2d 220 (Ind. 1999).
- For a crime committed on or after July 1, 2014, statute expressly indicates that a person placed in community corrections program, including home detention, earns credit for time served and credit time. Ind. Code 35-38-2.6-6.
- Not clear whether one day of credit time is earned for every day of home detention or instead every three days of home detention. Compare subsections (b) and (c) in 35-38-2.6-6.

Probation and Comm'y Corr'ns Credit Application Issue

- It is not certain what the home detention “good time credit” and “credit for time served” apply to.
- Do they shorten the period of home detention? Or do they instead reduce the time a person serves in prison or jail if the home detention is revoked? Or do they do both?
- An issue for the Court of Appeals?

Habitual Offenders

- Habitual offender: 6 to 20 yrs for murder to Level 4 felony, 2 to 6 yrs for Level 5 or 6.
- Former habitual is advisory to 3 x advisory – so for C 4 to 12 yrs, for D 1.5 to 4.5 yrs.
- Made entirely nonsuspendible in new law.
- Repeal July 1 of habitual substance offender,
- But 2014 enacts “habitual vehicular substance offender” 1 to 8 year sentence enhancement in HB 1279 effective Jan. 1, 2015.

Suspending Sentences

- All sentences were fully suspendible under HEA 1006-2013 except for sex offenses.
- 2014 - murder and Level 1 felonies were made nonsuspendible (minimum to be served).
- 2014 - “minimum” sentence for Levels 2 and 3 to be served if a prior conviction, but
- Exception for Level 2 and 3 drug offenses, which are suspendible even with priors.

HEA 1279-HVSO

(January 2015)

- A person is a habitual vehicular substance offender if the person has accumulated:
 - 4 unrelated vehicular substance offense convictions within any period of time; or
 - 3 unrelated vehicular substance offense convictions within a 10 year period
- Sentence to an additional fixed term of 1-8 years
- Somewhat replaces the repealed HSO enhancement, with respect to vehicular offenses only
- HSO gone as of July 1 - note 6 month gap

Sentence Modification

I.C. 35-38-1-17

- Judge can modify at any time without prosecutor consent (former law after 365 days judge needed prosecutor consent).
- Worst sex offenders cannot have.
- Only one modification petition a year.
- Victim notice only if a hearing to be held or modification to be granted.
- Cannot waive right to seek in a plea bargain.

More Sentence Modification

I.C. 35-38-1-17

- The court may suspend a sentence for a felony permitted under IC 35-50-2-2.2.
- The court may deny a request to modify without making written findings and conclusions.
- No hearing needed before reducing or suspending a sentence if: (1) prosecutor files agreement to modify, and (2) convicted person files a waiver of the right to be present when the order to reduce or suspend the sentence is considered.

Level 6 Sentence as A Misdemeanor

- Judge has discretion to sentence a Level 6 felony as a Class A misdemeanor
- Same restrictions as for sentencing a D felony as an A misdemeanor:
 - No D or 6 to an A within prior 3 years
 - Not for domestic battery as D or 6
 - Not for child pornography
- I.C. 35-50-2-7(c)

D or 6 Felony “Conversion”

- I.C. 35-50-2-7 adds discretion to “convert” a D or Level 6 conviction to an A misdemeanor if
 - not a sex or violent offender
 - the felony did not result in bodily injury
 - no perjury or official misconduct conviction
 - 3 years since sentence completed and all terms satisfied
 - no new felony conviction
 - no charges pending

Prosecutor Felony Diversion

I.C. 33-39-1-8

- Prosecutor diversion programs authorized for Levels 6 and 5 felonies.
- Formerly pros'r programs authorized for misdemeanors only.
- Same procedure for felonies under new law as for misds – agreement form, filed with court.
- User fee, treatment, restitution, and other conditions may be required.

Juvenile Court Jurisdiction

- Juvenile court given jurisdiction over manufacturing or distributing coke, meth, schedules if child has a prior adjudication.

Sentencing Statements

- Statutory requirement that judge provide a statement of reasons for a felony sentence, I.C. 35-38-1-1.3, is changed to provide the statement is not required if advisory sentence is imposed.
- Caselaw may nonetheless require a statement even when advisory is ordered. *See Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), clarified upon reh'g, 875 N.E.2d 218.

Theft

- New – **A misdemeanor** if property taken has value under \$750, unless a firearm, or prior theft or conversion conviction
- **Level 6** if \$750 to under \$50,000, or a firearm, or a prior theft or conversion conviction
- **Level 5** if \$50,000 or more; or a “valuable metal” [related to transportation or public safety] or [from a hospital, telecom provider, utility, or “key facility” and absence creates substantial risk to a person]

2014 Drug Crime Enhancer

I.C. 35-48-1-16.5

- Prior non-marijuana dealing conviction, or
- Committed with possession of firearm, or
- School bus, or
- Within 500 feet of school or park when person under 18 reasonably expected to be present
- Drug to one under 18 and 3 years junior, or
- Manufactured or financed the drug, or
- In presence of one under 18, knowing present and able to see or hear

Drug Crime Enhancers - Changes

- Old - Drug-free zones on school bus or within 1000 feet of park, school, “family housing complex,” or “youth program center”
- New - School bus, or within 500 feet of school or park when person under 18 reasonably expected to be present

500 Foot Zone Defense

I.C. 35-48-4-16

- If defendant delivered in 500 foot school or park zone when person under 18 was reasonably expected to be present ,
- defense to prove that in fact no one under 18 who was less than 3 years younger than defendant was present,
- Or defense to prove law enforcement requested or suggested defendant be in the school or park zone.

Coke or Meth Dealing

- Formerly dealing is B felony under 3 grams, A felony 3 grams or more
- New: Level 5 under 1 gram, Level 4 1 to under 5 grams or under 1 gram + enhancer, Level 3 5 to under 10 grams or under 5 grams + enhancer, Level 2 for 10 grams or 5 to under 10 grams with enhancer.
- New - no conviction if unless evidence beyond just weight of the drug on intent to deal

Schedule I, II, III Dealing

- Formerly dealing any amount is B felony, A felony if to person under 18 3 years junior, school bus, 1000 feet of school, park, housing complex, youth facility
- New: Level 5 under 1 gram, Level 4 1 to under 5 grams or under 1 gram + enhancer, Level 3 5 to under 10 grams or under 5 grams + enhancer, Level 2 for 10 grams or 5 to under 10 grams with enhancer.

Marijuana Dealing

- Formerly: an A misd, a D if dealt to a minor or if 30 grams to 10 pounds or if a prior conviction of marijuana offense, and a C if 10 pounds or over or within 1000 feet of protected zone.
- New - Remains an A misdemeanor.
- Level 6 if a prior conviction and under 30 grams or no prior and 30 grams to under 10 pounds.
- Level 5 if a prior and 30 grams to under 10 pounds or no prior and 10 pounds or more or if sale of any amount is to a minor .

New Dealing Evidence Limit

- New - there can be a dealing conviction “only if there is evidence in addition to the weight of the drug that the person intended to manufacture, finance the manufacture of, deliver, or finance the delivery of the drug.”
- This added at the very end of the 2014 session.

Coke and Meth Possession

- Former law: a D, up to a C if 3 grams or more or a firearm, a B under 3 grams and on school bus or within 1000 feet of park, school, family housing complex, or youth program; an A if more than 3 grams and on school bus or within 1000 feet of park, school, family housing complex, or youth program.
- New: Level 6, up to Level 5 if 5 to -10 grams or less than 5 plus enhancing circumstance, up to Level 4 if 10 to -28 grams or 5 to -10 grams with enhancing circumstance, up to Level 3 if 28 grams or 10 to -28 grams with enhancing circumstance.

Marijuana Possession

- Formerly: an A misdemeanor 30 grams or less, and a D if more than 30 grams or with a prior marijuana conviction.
- 2014 change: a B misdemeanor for any amount, raised to an A misdemeanor if a prior drug conviction, and Level 6 felony if a prior drug conviction and at least 30 grams possessed

Operating While Intoxicated

- OWI offense levels not increased.
- Misdemeanors the same.
- D felony will become a Level 6.
- B felony (death & prior or suspended) Level 4
- License suspension policies will change under this year's HB 1279, effective Jan. 1, 2015: minimum suspension periods are repealed but maximum suspension limits are unchanged

Motor Vehicle Issues

HEA 1279 Effective Jan. 1, 2015

- Changes do not apply to crimes that happened prior to effective date
- Amelioration Doctrine not intended to apply
- Overriding effect:
 - eliminate most mandatory suspensions
 - grant broad discretion to the Court regarding driving privilege conditions and duration

HEA 1279 continued

- Removes many mandatory driving privilege suspensions
- Leaves some restrictions in place, but allows for SDP
 - Habitual Truant, non-support, fuel theft, drugs
- Establishes restrictions, but allows for SDP for some offense

HEA 1279 continued

- **BIG changes to OWI-related suspensions**
- No mandatory suspensions, except “drug driving”
- Allows use of SDP
- Puts interlock/treatment + disulfiram condition on some SDP situations

HEA 1279 continued

- Some changes to Driving While Suspended laws
- Huge rewrite of Leaving Scene of Accident laws - IC 9-26-1
- Change to window tint law
- Requires DOTox to adopt rules for certifying interlock devices

HEA 1279 - HTV

- Makes DWS and ONL “minor” HTV qualifiers
- Imposes 2-year limit on BMV to make determination
- Adds IC 9-30-10-6.5 - If the court finds by clear and convincing evidence the person is HTV under IC 9-30-10-4 the court:
 - shall order that the person is a HTV; and
 - shall order the BMV to suspend license
 - MAY order that the person is eligible for SDP
- IC 35-38-1-32 - New required advisement at sentencing, regarding HTV qualifying offenses

HEA 1279 - SDP

- IC § 9-30-16 is new
- Allows Court to grant Specialized Driving Privileges (SDP):
 - When imposing suspension of privileges (3), or
 - By granting a petition filed by a person suspended by BMV (4)
- Process is to “stay” the suspension and grant SDP
- Minimum of 180 days (1 year for serious injury)
- Privileges/restrictions are determined by the Court
 - Interlock, certain hours, certain routes, etc.

SPECIALIZED DRIVING PRIVILEGES

- Ineligible for specialized driving privileges:
 - Person who has never had a valid Indiana driver's license (1)(a)(1)
 - Person who holds a CDL (1)(a)(2)
 - Person who has refused to submit to a chemical test (1)(a)(3)
 - Suspension is for conviction of an offense that includes element of causing death (2)(b)
 - Person who has previously been granted specialized driving privileges and has > 1 conviction for violating the conditions of specialized driving privileges (3)(d)
- Eligible:
 - Person who held operator, public passenger/chauffeur license at time of criminal conviction
 - Person who held a CDL at the time of offense, no longer holds CDL, and subsequently was issued a qualifying license

SPECIALIZED DRIVING PRIVILEGES

- Court may suspend the person's driving privileges for period up to the maximum period of incarceration for the offense (180 minimum).
- Suspension may begin before the conviction.
- Multiple suspensions that are part of the same episode shall be served concurrently.
- Court can modify or revoke driving privileges or order the BMV to lift the stay of suspension if the person is convicted of knowingly or intentionally violating a condition imposed by the court
- Must maintain proof of FUTURE responsibility during period of SDP
- Must carry copy of order or have it in vehicle being driven
- Must produce order upon request of police officer

Vehicle Window Tint Stops

- HB 1279 limits police stops for tint window violations.
- Effective Jan. 1, 2015.
- 9-19-19-4 will be amended to say that police can still stop for apparent tint violations.
- But police cannot inspect, search, or detain a vehicle or its contents or drivers or passengers solely because of the tint violation.

Resources

- Chart of all new offenses with penalty levels is in Criminal Benchbook section of JTAC's online INcite site– accessible with INcite user name and password (same as used for protective orders)
- Instructions for new offenses are being rewritten in a new edition. Use old instructions edition for pre-July 1 crimes. New edition target is November – if an instruction needed earlier for a case contact Mike McMahon at Judicial Center, (317) 232-1313, mike.mcmahon@courts.in.gov

2014 COURT EMPLOYEE CONFERENCE

“Expungement” Statute
Indiana Code 35-38-9



State Court Administration

H.E.A. 1155

Effective March 26, 2014
(upon passage)

It amends:

- ▶ I.C. 3-8
- ▶ I.C. 35-38-5 (repeal)
- ▶ I.C. 35-38-9



Indiana Code 35-38-9



The screenshot shows a 'Court Records' page from RECORDSAREA.com. A large, rounded square button with a brown border and the word 'delete' in black italicized font is overlaid on the top left of the page. The page content includes a header with the RECORDSAREA logo and the text 'Court Records'. Below the header, there are several sections of information:

Party Name
JOHN SMITH

Case ID
47233864

Case Search Key
HR-1108177

Full Case Number
M-1041-HR-1108177

Registration Hold Flag
N

Case ID
47233864

Judicial Officer Name
None

Filing Date
Nov 20 2001

Court Details

Court ID	Court Name	Court Mailing Address	Court Mailing City
135	Tucson Municipal Court	P.O. Box 27210	Tucson
Court Mailing State	Court Mailing ZIP Code	Court Physical Address	Court Physical City
AZ	85726-7210	103 E Alameda	Tucson
Court Physical State	Court Physical ZIP Code	Court Contact Phone Number	Court Contact Name
AZ	85701-1203	(520)791-4216	Tucson City Court
Court E-Mail Address	Court Web Page		

Crimes
none found

Event Details

Case ID	Party ID	Event Date	Event Description
47233864	11906517	Nov 20 2001	DVHR: ISSUE HARASSMENT INJUNC

- ▶ This is not a traditional expungement
- ▶ No court records are deleted or destroyed under I.C. 35-38-9



Indiana Code 35-38-9

- ▶ The statute categorizes the method of “expungement” based on the type of criminal case.
- ▶ The results of each category are different too.

THIS IS COMPLICATED



Indiana Code 35-38-9

Categories

- ▶ Category 1: Arrest Records/Juvenile Adjudications
I.C. 35-38-9-1
- ▶ Category 2: Misdemeanors and Class D/Level 6 felonies reduced to a misdemeanor I.C. 35-38-9-2
- ▶ Category 3: Class D/Level 6 felonies I.C. 35-38-9-3
- ▶ Category 4: Felonies above Class D/Level 6 not involving serious bodily injury I.C. 35-38-9-4
- ▶ Category 5: Felonies committed by public official or resulting in serious bodily injury I.C. 35-38-9-5



H.E.A. 1155 Indiana Code 35-38-9-1

Category 1: Arrest Records, Juvenile Adjudications and Pretrial Diversions

No earlier than:

- ▶ 1 year after date of arrest (if not convicted or adjudicated)
- ▶ Prosecuting Attorney may agree to shorter waiting period
- ▶ Or the date of opinion vacating the conviction
- ▶ Or the date the conviction/adjudication became final



H.E.A. 1155 Indiana Code 35-38-9-1

Arrest Records, Juvenile Adjudications and Pretrial Diversions cont.

Where to file?

- ▶ In the court where charges were filed or if no criminal charges were filed then in a court with criminal jurisdiction in the county where the arrest occurred.

H.E.A. 1155 Indiana Code 35-38-9-1

Arrest Records, Juvenile Adjudications and Pretrial Diversions cont.

- ▶ File petition in existing criminal or juvenile case
- ▶ If there is no existing case, open a new MC - Miscellaneous Criminal case
- ▶ No filing fee
- ▶ All petitions for expungement and orders for expungement filed under I.C. 35-38-9 are confidential. They must be filed on green paper.

H.E.A. 1155 Indiana Code 35-38-9-1

Category 1 Petition Contents

- ▶ Must be verified
- ▶ Date of arrest
- ▶ County where arrest occurred
- ▶ Law enforcement agency that employed arresting officer if known
- ▶ Petitioner's date of birth and social security number
- ▶ Any other known identifying info such as case number, name of arresting officer

H.E.A. 1155 Indiana Code 35-38-9-1

Arrest Records, Juvenile Adjudications and Pretrial Diversions cont.

- ▶ No time limits
- ▶ No limits to number of petitions that can be filed under IC 35-38-9-1
- ▶ Notice to prosecuting attorney is required
- ▶ No hearing required by the statute



H.E.A. 1155 Indiana Code 35-38-9-1

Arrest Records, Juvenile Adjudications and Pretrial Diversions cont.

No information concerning the arrest may be placed/retained in any state regional or local central repository for criminal history information. This does not require any change or alteration to:

- ▶ Any internal record made by a law enforcement agency at the time of arrest and not intended for release to the public
- ▶ The records of any court in which the criminal charge was filed or
- ▶ Records that relate to a diversion or deferral program

Indiana Code 35-38-9-2

Category 2: Misdemeanor and
D Felonies/Level 6 Felonies
reduced to Misdemeanors

Waiting Period:

- ▶ At least 5 years after date of conviction unless prosecuting attorney consents in writing to an earlier period

H.E.A. 1155 Indiana Code 35-38-9-2

Category 2: Misdemeanor and D Felonies/Level 6 Felonies reduced to Misdemeanors

- ▶ Petitioner must serve copy of petition to the prosecuting attorney
- ▶ Prosecuting attorney must respond not less than 30 days after receipt
- ▶ Prosecuting attorney must notify victim of victim's rights under I.C. 35-40-6 at victim's last known address
- ▶ Victim may submit oral or written statement in support/opposition of petition

Indiana Code 35-38-9-2

Category 2: Misdemeanor and D Felonies/Level 6 Felonies reduced to Misdemeanors

- ▶ Court may grant petition without a hearing if no objection from prosecuting attorney
- ▶ If prosecuting attorney does object, court must set matter for hearing no sooner than 60 days after service on prosecuting attorney

Indiana Code 35-38-9-2

Category 2: Misdemeanor and
D Felonies/Level 6 Felonies
reduced to Misdemeanors

These records are sealed if petition is
granted:

- ▶ Court records including those of the Court of Appeals or Supreme Court
- ▶ Conviction records in state police central repository



Indiana Code 35-38-9-2

Category 2: Misdemeanor and D Felonies/Level 6 Felonies reduced to Misdemeanors

- ▶ If possible, only send court order granting an expungement to Court of Appeals/Supreme Court if the conviction was appealed
- ▶ The DOC, BMV, each law enforcement agency and any person who provided services to petition under court order is prohibited from releasing these records without a court order

H.E.A. 1155 Indiana Code 35-38-9-2

Category 2: Misdemeanor and D Felonies/Level 6 Felonies reduced to Misdemeanors

Who can access the court's records if sealed?

- ▶ A law enforcement officer acting in the course of his/her official duty
- ▶ A prosecuting attorney who submits a written application to the court if he/she can show the records are relevant to a new prosecution of the petitioner
- ▶ A defense attorney provided the defense attorney is authorized by court order and shows these records are needed to carry out official duties

H.E.A. 1155 Indiana Code 35-38-9-2

Category 2: Misdemeanor and D Felonies/Level 6 Felonies reduced to Misdemeanors

Who can access the court's records if sealed?

- ▶ A probation department provided it is authorized by court order and shows these records are needed to prepare a presentence report. The probation department may provide an unredacted presentence report to any person authorized by law.
- ▶ The members, executive director and employees of the state board of law examiners for the purpose of determining a bar applicant's moral character for admission to the bar
- ▶ The public may request access to sealed court records using the procedures in Admin. R. 9(I) which requires a petition, notice and hearing.

Indiana Code 35-38-9-3

Category 3: Class D or Level 6 Felonies

- ▶ All class D/level 6 felonies other than those reduced to Class A misdemeanors
- ▶ Waiting period is 8 years after date of conviction unless prosecuting attorney consents in writing to an earlier period
- ▶ Certain people cannot request an expungement under I.C. 35-38-9-3

H.E.A. 1155 Indiana Code 35-38-9-3

Category 3: Class D or Level 6 Felonies

- ▶ Petitioner must serve copy of petition to the prosecuting attorney
- ▶ Prosecuting attorney must respond not less than 30 days after receipt
- ▶ Prosecuting attorney must notify victim of victim's rights under I.C. 35-40-6 at victim's last known address
- ▶ Victim may submit oral or written statement in support/opposition of petition

Indiana Code 35-38-9-3

Category 3: Class D or Level 6 Felonies

- ▶ Court may grant petition without a hearing if no objection from prosecuting attorney
- ▶ If prosecuting attorney does object, court must set matter for hearing no sooner than 60 days after service on prosecuting attorney

Indiana Code 35-38-9-3

Category 3: Class D or Level 6 Felonies

These records are sealed if petition is granted:

- ▶ Court records including those of the Court of Appeals or Supreme Court
- ▶ Conviction records in state police central repository
- ▶ The DOC, BMV, each law enforcement agency and any person who provided services to petition under court order is prohibited from releasing these records without a court order.

H.E.A. 1155 Indiana Code 35-38-9-2

Category 3: Class D or Level 6 Felonies

Who can access the court's records if sealed?

- ▶ A law enforcement officer acting in the course of his/her official duty
- ▶ A prosecuting attorney who submits a written application to the court if he/she can show the records are relevant to a new prosecution of the petitioner
- ▶ A defense attorney provided the defense attorney is authorized by court order and shows these records are needed to carry out official duties

H.E.A. 1155 Indiana Code 35-38-9-2

Category 3: Class D or Level 6 Felonies, cont.

Who can access the court's records if sealed?

- ▶ A probation department provided it is authorized by court order and shows these records are needed to prepare a presentence report. The probation department may provide an unredacted presentence report to any person authorized by law.
- ▶ The members, executive director and employees of the state board of law examiners for the purpose of determining a bar applicant's moral character for admission to the bar
- ▶ The public may request access to sealed court records using the procedures in Admin. R. 9(I) which requires a petition, notice and hearing.

H.E.A. 1155 Indiana Code 35-38-9-4

Category 4:
Felonies above D/Level 6 not
involving serious bodily injury

Waiting period:

- ▶ At least 8 years after date of conviction or 3 years from the completion of petitioner's sentence
- ▶ An earlier period is allowed if prosecuting attorney consents in writing

H.E.A. 1155 Indiana Code 35-38-9-4

Category 4: Felonies above D/Level 6 not involving serious bodily injury

- ▶ Petitioner must serve copy of petition to the prosecuting attorney
- ▶ Prosecuting attorney must respond not less than 30 days after receipt
- ▶ Prosecuting attorney must notify victim of victim's rights under I.C. 35-40-6 at victim's last known address
- ▶ Victim may submit oral or written statement in support/opposition of petition

Indiana Code 35-38-9-4

Category 4:

Felonies above D/Level 6 not involving serious bodily injury

- ▶ Court may grant petition without a hearing if no objection from prosecuting attorney
- ▶ If prosecuting attorney does object, court must set matter for hearing no sooner than 60 days after service on prosecuting attorney

Indiana Code 35-38-9-4

Category 4:

Felonies above D/Level 6
not involving serious bodily
injury

If petition is granted:

- ▶ The court records and other public records relating to the arrest, conviction, or sentence will be clearly and visibly marked or identified as expunged; however, they remain public records and will remain on public access I.C. 35-38-9-7(b)
- ▶ The state police, BMV and other law enforcement agencies will mark their records as expunged

Indiana Code 35-38-9-4

Category 4:

Felonies above D/Level 6 not involving serious bodily injury

Who has access to the “expunged” records?

- ▶ Everyone. If the records were public prior to the “expungement”, they remain public



Indiana Code 35-38-9-5

Category 5: Felonies committed by public official or involving serious bodily injury

- ▶ All felony convictions not included in the other categories except
- ▶ Sex or violent offenders, persons convicted of official misconduct or persons convicted of homicide, human/sexual trafficking crimes or sex crimes

H.E.A. 1155 Indiana Code 35-38-9-5

Category 5: Felonies committed by public official or involving serious bodily injury

Waiting period:

- ▶ Not earlier than 10 years from date of conviction or 5 years from date of completion of petitioner's sentence
- ▶ An earlier period is allowed if prosecuting attorney consents in writing

H.E.A. 1155 Indiana Code 35-38-9-5

Category 5: Felonies committed by public official or involving serious bodily injury

- ▶ Petitioner must serve copy of petition to the prosecuting attorney
- ▶ Prosecuting attorney must respond not less than 30 days after receipt
- ▶ Prosecuting attorney must notify victim of victim's rights under I.C. 35-40-6 at victim's last known address
- ▶ Victim may submit oral or written statement in support/opposition of petition

Indiana Code 35-38-9-5

Category 5: Felonies committed by public official or involving serious bodily injury

- ▶ Prosecuting Attorney must consent in writing to the expungement of the petitioner's criminal records I.C. 35-38-9-5(e)
- ▶ Court may grant petition without a hearing if no objection from prosecuting attorney
- ▶ If prosecuting attorney does object, court must set matter for hearing no sooner than 60 days after service on prosecuting attorney

Indiana Code 35-38-9-5

Category 5: Felonies
committed by public official or
involving serious bodily injury

If petition is granted:

- ▶ The court records and other public records relating to the arrest, conviction, or sentence will be clearly and visibly marked or identified as expunged however they remain public records and will remain on public access. I.C. 35-38-9-7(b)
- ▶ The state police, BMV and other law enforcement agencies will mark their records as expunged

Indiana Code 35-38-9-5

Category 5: Felonies
committed by public official
or involving serious bodily
injury

Who has access to the “expunged”
records?

- ▶ Everyone. If the records were public prior to the “expungement”, they remain public





Indiana Code 35-38-9

Categories 2, 3, 4 and 5: Filing Information

- ▶ Petition is filed in a circuit/superior court in the county of conviction
- ▶ The evidentiary standard (preponderance of the evidence) requires the petition to be filed as a civil action
- ▶ Open a MI - Miscellaneous Civil case for the petition
- ▶ No filing fees

Indiana Code 35-38-9

Categories 2, 3, 4 and 5:
Filing Information cont.

If the petition is granted, does the MI case get sealed/"expunged"?

Or does Ind. Admin. R. 9(G)(1)(g) apply to the MI case?

▶ At this point no.

Indiana Code 35-38-9

Categories 2, 3, 4 and 5: Filing Information cont.

- ▶ Only 1 petition for expungement may be filed during petitioner's lifetime
- ▶ Subsequent petitions may be allowed for conviction not included in initial petition if court finds good faith, excusable neglect and best interests of justice
- ▶ Expungement petitions filed in separate counties count as 1 petition if they are filed within one 365 day period
- ▶ All petitions for expungement filed in same county must be consolidated

Indiana Code 35-38-9-8

Categories 2, 3, 4 and 5: Petition Contents

- ▶ This does not apply to petition to seal arrest records under I.C. 35-38-9-1

Petition must be verified and include:

- ▶ Petitioner's full name and all other legal names or aliases by which the petitioner is or has been known
- ▶ Petitioner's date of birth
- ▶ Petitioner's addresses from the date of the offense to the date of the petition

Indiana Code 35-38-9-8

Categories 2, 3, 4 and 5: Petition Contents cont.

- ▶ A certified copy of petitioner's BMV record
- ▶ An affirmation that no criminal investigation or charges are pending against the petitioner
- ▶ An affirmation that the petitioner has not committed another crime within the period required for expungement
- ▶ A list of all convictions and the date of the conviction and any appeals from the conviction and date of appellate opinion if applicable
- ▶ An affirmation that the required period has elapsed or attach a copy of the prosecuting attorney's written consent to a shorter period

Indiana Code 35-38-9-8

Categories 2, 3, 4 and 5: Petition Contents cont.

- ▶ A list of any other petitions that the petitioner has filed under I.C. 35-38-9
- ▶ For petitions filed under I.C. 35-38-9-5 the petitioner shall attach a copy of the prosecuting attorney's written consent
- ▶ The petitioner shall provide evidence that the petitioner paid all fines, fees and court costs and satisfied any restitution obligation imposed as part of the sentence and
- ▶ Any other information that the petitioner believes may assist the court



Indiana Code 35-38-9

Categories 2, 3, 4 and 5: If “Expungement” Petition is Granted

- ▶ Petitioner’s civil rights are restored
 - ▶ It becomes unlawful discrimination for any person to refuse to employ etc. due to a conviction or arrest record that has been expunged or sealed.
- I.C. 35-38-9-10(a) and (b)

Indiana Code 35-38-9

Categories 2, 3, 4 and 5: If “Expungement” Petition is Granted

- ▶ No affect on Indiana’s Sex Offender Registry other than the expunged conviction must be clearly marked as expunged
- ▶ No affect on an existing or pending driver’s license suspension
- ▶ Expungement of a crime of domestic violence does not restore petitioner’s right to possess a firearm.

Indiana Code 35-38-9

Categories 2, 3, 4 and 5: If “Expungement” Petition is Denied

- ▶ If petition is denied, the petitioner can appeal
- ▶ If the petition is granted, the prosecutor can appeal
- ▶ If petition denied in whole or part, a subsequent petition may be filed with respect to any conviction included in initial petition but if denial was due to court discretion under 35-38-9-4 or 35-38-9-5 then a subsequent petition may not be filed earlier than 3 years following denial. This subsequent petition cannot include any conviction not included in initial expungement petition (there are exceptions)



Indiana Code 35-38-9-10

Consequences of Unlawfully Using A Record Expunged

- ▶ It becomes unlawful discrimination (a Class C infraction) to suspend, expel, refuse to employ, refuse to admit, refuse to grant/renew a license/permit/certificate needed to engage in any activity/occupation/profession or discriminate in any other way because of the sealed/expunged record

Indiana Code 35-38-9-10

Consequences of Unlawfully Using A Record Expunged cont.

- ▶ A person who feels he or she has been discriminated against by the unlawful use of an “expunged” conviction record may file a written motion of contempt with the court that authorized the expungement. Injunctive relief is also available

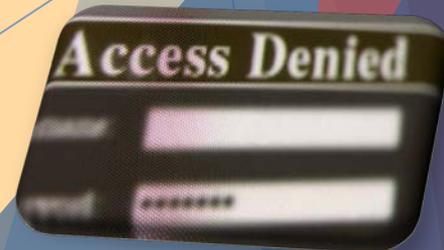
Indiana Code 35-38-9

Model Petitions and Orders

- ▶ Model petitions are available for all categories
- ▶ Model orders are available for all categories
- ▶ A court may develop its own forms

And Don't Forget:

- ▶ It is possible to expunge (and this is a traditional expungement where records are destroyed) certain juvenile records under I.C. 31-39-8-1 *et. seq.*
- ▶ It is also possible to restrict access to certain infraction records under I.C. 34-28-5-15





Angie
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Payne

Jeff
Wiese

Tom
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Libby
Milliken

▶ Jeff Wiese, Director, Trial Court Management 317-232-2542

▶ Administrative Manual web link:

<http://www.in.gov/judiciary/admin/2492.htm>

▶ Forms web link: <http://www.in.gov/judiciary/2706.htm>

HELP

HELP!