



Indiana Public Defender Council

GUIDE TO EXPUNGEMENT IN INDIANA

2022

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Guide to Expungement in Indiana

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I. GENERALLY

Contained within this manual are the various methods of expunging court records available under Indiana law.

The primary method of expunging records of felony or misdemeanor convictions, arrests, or collateral actions is contained in Ind. Code § 35-38-9. This statute is covered in length in this manual in § II-VI, starting on page 2.

If you need to expunge a protective order, they can be expunged in a limited set of circumstances, which is discussed in this manual in § VII, starting on page 21.

While Juvenile Delinquency allegations that do not result in a delinquency determination may be expunged under Ind. Code § 35-38-9-1, discussed in this manual in § II, starting on page 2, the Juvenile code provides for its own method of expungement for delinquency findings discussed in this manual in § VIII, starting on page 24.

Parents who were parties to CHINS/TPR cases may be eligible to expunge those cases as discussed in this manual in § IX, starting on page 30.

Indiana also provides a method for destruction of DNA evidence and removal of a person's DNA profile from the CODIS database, which is discussed in this manual in § X, starting on page 36.

Certain infractions, such as traffic infractions, may be eligible for expungement in a limited set of circumstances, as discussed in this manual in § XI, starting on page 37.

Finally, there is a statute in Indiana allowing a person to have their limited criminal history record sealed from disclosure after 15 years have passed since the person's last conviction, as discussed in this manual in § XII, starting on page 40.

A. **Waiver of Expungement in a Plea Agreement is Invalid**

A person may not waive the right to expungement under Ind. Code § 35-38-9 as part of a plea agreement.¹ Any such waiver of the right to expungement in a plea agreement is invalid and unenforceable as against public policy.²

¹ Ind. Code § 35-38-9-11(a).

² Id.

II. NON-CONVICTION RECORDS

Ind. Code § 35-38-9-1 applies if a person has been arrested, charged with an offense, or alleged to be a delinquent child AND the arrest, criminal charge, or juvenile delinquency allegation did not result in a conviction or juvenile adjudication even if the arrest, criminal charge, or juvenile delinquency allegation resulted in an adjudication for an infraction, or the resulting conviction or juvenile adjudication was vacated.³ For relative information related to the procedural aspects of filing a petition under this section and the effects of an expungement under this section see § IV on page 9 and § V on page 14, respectively.

A. Automatic Expungement

The court is required to automatically issue an expungement order, subject to certain exceptions, if: (1) all pending charges or delinquency allegations against a person are dismissed; (2) the person is acquitted or the conviction or true finding is vacated; (3) one year has passed since allegations were filed against a juvenile and the State is not pursuing the case; or (4) the person is arrested for a crime and no charges have been filed within 180 days. Ind. Code § 35-38-9-1(b). An expungement order that is issued based on non-prosecution goes into effect immediately; an expungement order issued based on dismissal, acquittal or no true finding on all charges may not go into effect earlier than 60 days from the date of the dismissal, acquittal, or no true finding. However, upon motion by the prosecuting attorney, if the court finds that specific facts exist in the particular case which justify a delay, the court may delay implementation of an expungement order based on dismissal or acquittal for up to one year from the date of the dismissal, acquittal, or no true finding.

For persons arrested after June 30, 2022, 180 days have elapsed since the date of the arrest, and no charges are pending against the person, the prosecuting attorney must notify a judge exercising criminal jurisdiction in the county (or a designated judge, if applicable) of these facts. Upon receipt of the notification, the judge must immediately order the expungement of all records related to the arrest. Ind. Code § 35-38-9-1(c).

B. When Expungement Petition may be Filed

The person may file a petition 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.⁴ If the person was convicted or adjudicated delinquent, but the conviction or juvenile adjudication was vacated on appeal, then the person may file a petition not earlier than one (1) year after the date of the opinion vacating the conviction or juvenile adjudication (unless the prosecuting attorney agrees in writing to an earlier time).⁵

C. Pretrial Diversion Participants Ineligible

D. The petitioner must not be currently participating in a pretrial diversion program unless the prosecuting attorney authorizes the person to petition for an expungement under this section.⁶ Judicial Discretion

If the petitioner meets all the statutory requirements contained within Ind. Code § 35-38-9-1, then the court has no discretion and must grant the petition.⁷ However, the court may deny the petition if criminal charges are currently pending against the person.⁸

³ Ind. Code § 35-38-9-1(a).

⁴ Ind. Code § 35-38-9-1(d).

⁵ Id.

⁶ Ind. Code § 35-38-9-1(a)(2).

⁷ Ind. Code § 35-38-9-1(g)(2).

⁸ Ind. Code § 35-38-9-1(g)(2)(B).

III. CONVICTIONS

Almost any offense is eligible for expungement under Ind. Code § 35-38-9. As discussed below in the sections on procedure and effects of expungement, the statutory section under which the expungement petition is filed becomes important. Expunging Misdemeanors under Ind. Code § 35-38-9-2 offers the greatest benefits with the least number of requirements, whereas the catch-all under Ind. Code § 35-38-9-5 offers the least benefits with the greatest number of requirements. For relative information related to the procedural aspects of filing a petition under this section and the effects of an expungement under this section see § IV on page 9 and § V on page 14, respectively.

Offense	Waiting Period (from Conviction)	Court Discretion	Statute (Ind. Code §)
Misdemeanors (or Class D or Level 6 Felonies reduced to a Misdemeanor)	5 Years	N/A	35-38-9-2
Class D or Level 6 Felony	8 Years	N/A	35-38-9-3
Other non-excluded Felonies	8 Years	Yes	35-38-9-4
Any other Felony not allowed in previous sections.	10 Years	Yes	35-38-9-5

A. Qualifications

1. Offenses

Most offenses are capable of being expunged under the various sections available in Ind. Code § 35-38-9.

However, there are some offenses, discussed below, that may not be expunged under any section.

ABSOLUTE BAR TO EXPUNGEMENT

The statute does not just preclude expungement of the disqualifying offenses listed in the relevant statutes, it precludes expungement of ANY conviction, related or not, under the relevant section.

Burton v. State, 71 N.E.3d 24 (Ind. Ct. App. 2017) (although defendant sought to expunge his class D felonies for theft and fraud, his earlier rape conviction disqualified him from any expungement, because he is a “Sex or violent offender”).

a. Disqualifying Offenses

Certain persons are disqualified from seeking expungement under any of the available means under Ind. Code § 35-38-9. Those include:

- Sex and Violent Offenders (as defined in Ind. Code § 11-8-8-5).⁹
- A person convicted of two 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.¹⁰
- A person convicted of an offense described in: (A) Ind. Code § 35-42-1; (B) Ind. Code § 35-42-3.5; or (C) Ind. Code § 35-42-4.¹¹
- A person convicted of official misconduct (Ind. Code § 35-44.1-1-1).¹²
- A person convicted of a felony that resulted in the death to another person.¹³

b. Class D or Level 6 Felonies not Eligible for Expungement

Expungement of Class D or Level 6 felonies under Ind. Code § 35-38-9-3 does not include: (1) an elected official convicted of an offense while serving the official's term or as a candidate for public office; (2) a person convicted of a felony that resulted in bodily injury to another person; or (3) A person convicted of perjury.¹⁴

c. Other Felonies not Eligible for Expungement

Expungement of other felonies under Ind. Code § 35-38-9-4 does not include: (1) an elected official convicted of an offense while serving the official's term or as a candidate for public office; or (2) a person convicted of a felony that resulted in bodily injury to another person; or (3) a person

BODILY INJURY NOTE

The felony that a person is actually convicted of must have resulted in bodily injury to a person in order to exclude a person from qualification under the statute. Facts from the same incident that do not result in a felony conviction cannot be taken into consideration when determining whether a person is disqualified from expungement.

Trout v. State, 28 N.E.3d 267 (Ind. Ct. App. 2015) (although defendant shot and injured another party in the same incident that led to his Class D felony convictions for criminal recklessness with a deadly weapon and pointing a firearm, the only charge related to the shooting and bodily injury was attempted murder, which defendant was acquitted of following a jury trial; thus, none of his convictions resulted in bodily injury entitling him to expungement of his conviction).

⁹ See Ind. Code § 35-38-9-2(b)(2), Ind. Code § 35-38-9-3(b)(2), Ind. Code § 35-38-9-4(b)(2), and Ind. Code § 35-38-9-5(b)(2).

¹⁰ See Ind. Code § 35-38-9-2(b)(1), Ind. Code § 35-38-9-3(b)(6), Ind. Code § 35-38-9-4(b)(6), and Ind. Code § 35-38-9-5(b)(4).

¹¹ See Ind. Code § 35-38-9-3(b)(5), Ind. Code § 35-38-9-4(b)(5), and Ind. Code § 35-38-9-5(b)(3).

¹² See Ind. Code § 35-38-9-3(b)(4), Ind. Code § 35-38-9-4(b)(4), and Ind. Code § 35-38-9-5(b)(2).

¹³ See Ind. Code § 35-38-9-4(b)(4) and Ind. Code § 35-38-9-5(b)(5).

¹⁴ Ind. Code § 35-38-9-3(b).

convicted of a felony that resulted in death to another person.¹⁵

d. All other Felonies

Any other felony not capable of being expunged by the other sections may be filed under Ind. Code § 35-38-9-5. Although any non-excluded offense is included, the petitioner must have the consent of the prosecutor before expungement may be granted.¹⁶

e. Pre-1977 Convictions

If the offense for which the person was convicted is a misdemeanor at the time the person files the petition for expungement, the person may file the petition for expungement under Ind. Code § 35-38-9-2.¹⁷

If the offense for which the person was convicted is a level 6 felony at the time the person files the petition for expungement and is not substantially similar to an offense described in Ind. Code § 35-38-9-3(b), the person may file the petition under Ind. Code § 35-38-9-3.¹⁸

If the person may not seek expungement under Ind. Code § 35-38-9-3 and the offense the person seeks to expunge is not substantially similar to an offense described in Ind. Code § 35-38-9-4(b), the person may file a petition under Ind. Code § 35-38-9-4.¹⁹

If the offense for which the person was convicted is a felony at the time of filing the petition, including a felony described in Ind. Code § 35-38-9-5(a) and is not substantially similar to an offense described in Ind. Code § 35-38-9-5(b), the person may file a petition under Ind. Code § 35-38-9-5.²⁰

f. Collateral Actions

Effective July 1, 2019, expungements now include collateral actions. A collateral action means an action or proceeding, including an administrative proceeding that is factually or legally related to an arrest, a criminal charge, a juvenile delinquency allegation, a conviction, or a juvenile delinquency adjudication and includes a proceeding or action concerning a seizure, civil forfeiture, and a petition for specialized driving privileges.²¹

¹⁵ Ind. Code § 35-38-9-4(b).

¹⁶ Ind. Code § 35-38-9-5(e)(5).

¹⁷ Ind. Code § 35-38-9-8.5(b).

¹⁸ Ind. Code § 35-38-9-8.5(c).

¹⁹ Ind. Code § 35-38-9-8.5(d).

²⁰ Ind. Code § 35-38-9-8.5(e).

²¹ Ind. Code § 35-38-9-0.5.

School suspensions are not arrests or convictions and thus are not eligible for expungement.²²

2. Pending Charges

A person is not allowed to seek expungement if there are any charges pending at the time of filing the petition.²³

However, a post-filing criminal charge is not a bar to an expungement determination, as long as the pending charges were filed after the filing of the expungement petition.²⁴

3. Payment of Fines

In order to qualify, a person must have paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as a part of the sentence.²⁵

Borel v. State, 44 N.E.3d 791 (Ind. Ct. App. 2015) (abuse of discretion by finding that petitioner had not paid court costs because insufficient evidence showed such costs were imposed or remained unpaid as a typed docket sheet was silent on the subject and an unsigned handwritten note of indeterminate origin did not show such costs were imposed, and clerk was unable to find any documents showing fees were owed or had been paid).

4. Waiting Period

The period from the date of the last conviction (whether the present offense or not) to the time that a person can file for expungement varies based on the offense of conviction.

- Misdemeanors and Class D and Level 6 Felonies reduced to a Misdemeanor – 5 years beginning on the date of the felony conviction and not on the date the felony was converted to a misdemeanor.²⁶
- Minor Class D and Level 6 Felonies – 8 years.²⁷
- Less serious Felony convictions – 8 years (or 3 years from the completion of the person's sentence).²⁸
- Any other Felony – 10 years (or 5 years from the completion of the person's sentence).²⁹

²² DeCola v. State, 113 N.E.3d 252 (Ind. Ct. App. 2018).

²³ Ind. Code § 35-38-9-2(e)(2), Ind. Code § 35-38-9-3(e)(2), Ind. Code § 35-38-9-4(e)(2), and Ind. Code § 35-38-9-5(e)(2).

²⁴ T.A. v. State, 62 N.E.3d 436 (Ind. Ct. App. 2016).

²⁵ Ind. Code § 35-38-9-2(e)(3), Ind. Code § 35-38-9-3(e)(3), Ind. Code § 35-38-9-4(e)(3), and Ind. Code § 35-38-9-5(e)(3).

²⁶ Ind. Code § 35-38-9-2(c) and Ind. Code § 35-38-9-2(e)(4).

²⁷ Ind. Code § 35-38-9-3(c) and Ind. Code § 35-38-9-3(e)(4).

²⁸ Ind. Code § 35-38-9-4(c) and Ind. Code § 35-38-9-4(e)(4).

²⁹ Ind. Code § 35-38-9-5(c) and Ind. Code § 35-38-9-5(e)(4).

a. Prosecutor may consent to shortened period

The petitioner may contact the prosecutor's office to obtain consent to file for expungement in a shortened period than allowed above.³⁰ This consent must be in writing and attached to the petition.³¹

5. Court's Discretion

If the petitioner was convicted of a Misdemeanor (or a Class D or Level 6 felony reduced to a Misdemeanor) under Ind. Code § 35-38-9-2 or a minor Class D or Level 6 felony under Ind. Code § 35-38-9-3 and meets all of the requirements under the statute, then the court shall grant the petition and does not have any discretion to deny the petition.

However, if the petitioner was convicted of a less serious Felony under Ind. Code § 35-38-9-4 or any other Felony under Ind. Code § 35-38-9-5, then the court may exercise discretion in granting or denying the petition. However, because the legislature intended to give individuals who have been convicted of certain crimes a second chance, the statute should be liberally construed to advance the remedy for which it was enacted.³²

Cline v. State, 61 N.E.3d 360 (Ind. Ct. App. 2015) (trial court abused its discretion in denying expungement petition where, besides meeting all the statutory factors, petitioner had been consistently employed, obtained an associate's degree, a CPR license, and a ServeSafe certification, and was promoted to management only to be fired because her employer subsequently learned of her criminal record; in denying petition, trial court cited factors that are not statutory bars to expungement, such as type of offenses, including dealing in methamphetamine, that the court referred to as "a pain in my ass" and the fact that only five (5) years have elapsed since the defendant completed probation, where the statute requires only three (3) years).

W.R. v. State, 87 N.E.3d 30 (Ind. Ct. App. 2017) (distinguishing Cline, trial court did not abuse discretion in denying expungement petition because, unlike Cline, petitioner committed a new crime after he was convicted of the two crimes that he asked the trial court to expunge; also, unlike Cline, the trial court was not combative in its speech and did not misconstrue the convictions to be expunged).

Because Indiana's Permissive Expungement Statute excludes from eligibility persons convicted of certain offenses but vests in the court discretion to either grant or deny a petition, a trial court should engage in a two-step process when considering a petition for expungement. First, the court must determine whether the conviction is eligible for expungement and the petitioner has met the requirements. Ind. Code §§ 35-38-9-4(b), -4(e). If the conviction is ineligible, the inquiry ends there. But if the court determines that the conviction is eligible for expungement, it must then collect enough information to determine whether it should grant or deny the petition. In issuing its decision, a trial court may consider a broad array of information, including the nature and circumstances of the crime and the character of the offender. Allen v. State, 159 N.E.3d 580 (Ind. 2020).

In Allen, a conviction for Class B felony conspiracy to commit burglary was eligible for expungement even though the facts incidental to Allen's conviction involved serious bodily injury. A person may be eligible for expungement unless the felony for which he stands convicted "resulted in serious bodily injury to another person." I.C. § 35-38-9-4(b)(3). That the facts of the incident leading to the conviction show serious bodily injury is not enough to exclude a person from eligibility for expungement. See Trout v. State, 28 N.E.3d 267 (Ind. Ct. App. 2015). Significant evidence supported Allen's expungement petition: testimony about his role as a committed father, husband, and provider; letters of recommendation from family, friends, and coworkers; and support from the victims themselves. But the trial court did not articulate its reasons for denying his expungement petition. It may have entirely failed to consider the evidence favoring expungement based on a mistaken belief that Allen was ineligible for expungement. Thus, the Court reversed the trial court's order denying the petition for expungement and remanded with instructions for the court to reconsider its decision consistent with this opinion.

6. Victim Impact Statement

The prosecuting attorney must inform the victim at their last known address of their rights under Ind. Code § 35-40-6.³³ The prosecutor is not required to inform the victim if the court

³⁰ See Ind. Code § 35-38-9-2(c), Ind. Code § 35-38-9-3(c), Ind. Code § 35-38-9-4(c), and Ind. Code § 35-38-9-5(c).

³¹ Id.

³² See Taylor v. State, 7 N.E.3d 362, 367 (Ind. Ct. App. 2014) and Brown v. State, 947 N.E.2d 486, 490 (Ind. Ct. App. 2011).

³³ Ind. Code § 35-38-9-8(f).

does not have any discretion in ruling on the petition.³⁴ The victim is then entitled to give an oral or written statement at the hearing on the petition.³⁵

Given the use of the word “shall” in Ind. Code § 35-38-9-2 and Ind. Code § 35-38-9-3, it is unambiguous that expungement is required if all statutory requirements are met, even if a victim opposes expungement.³⁶

Expungement petitioners do not have the right to cross-examine victims who provide victim statements as authorized by the statute.³⁷

7. Subsequent Conviction

By participating in a pretrial diversion, a person admits to committing an offense which, if the time period required by statute has not elapsed, makes the defendant ineligible for expungement.³⁸

³⁴ Id.

³⁵ Ind. Code § 35-38-9-9(d).

³⁶ See Taylor v. State, 7 N.E.3d 362 (Ind. Ct. App. 2014); Marshall v. State, 52 N.E.3d 41 (Ind. Ct. App. 2016); and Mallory v. State, 15 N.E.3d 112 (Ind. Ct. App. 2014).

³⁷ Keene v. State, 2019 Ind. App. LEXIS 22 (Ind. Ct. App. 2019).

³⁸ Marshall v. State, 52 N.E.3d 41 (Ind. Ct. App. 2016).

IV. PROCEDURE FOR EXPUNGEMENT

The grant or denial of a petition for expungement is an appealable final order.³⁹

A. When

A person may file for expungement under Ind. Code § 35-38-9-2, Ind. Code § 35-38-9-3, Ind. Code § 35-38-9-4, and Ind. Code § 35-38-9-5 only one time during the petitioner's lifetime, with all petitions for expungement filed in separate counties for offenses committed in those counties counting as one petition if they are filed in a three hundred sixty-five-day period.⁴⁰

1. Refiling

A petitioner whose petition for expungement has been denied, in whole or in part, may refile that petition for expungement with respect to one or more convictions included in the initial expungement petition that were not expunged.⁴¹ However, if the petition was denied due to the court's exercise of its discretion under Ind. Code § 35-38-9-4 or Ind. Code § 35-38-9-5, 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.⁴² A refiled petition for expungement may not include any conviction that was not included in the initial expungement petition.⁴³

A court may permit a petitioner to file an amended petition for expungement with respect to one or more convictions that were not included in the initial expungement petition only if the court finds: 1) that the petitioner intended in good faith to comply with this statute; 2) the petitioner's failure to comply with the statute was due to excusable neglect or 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.⁴⁴

2. Amended Statute – Retroactivity

The version of the expungement statute in effect at the time of the filing of the expungement petition is controlling.⁴⁵

³⁹ Ind. Code § 35-38-9-9(e).

⁴⁰ Ind. Code § 35-38-9-9(i).

⁴¹ Ind. Code § 35-38-9-9(j).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Ind. Code § 35-38-9-9(k).

⁴⁵ *Alden v. State*, 10 N.E.3d 1028, 1030-31 (Ind. Ct. App. 2014).

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A person whose petition for expungement was granted prior to July 1, 2019, may file a petition for a supplemental order of expungement under Ind. Code § 35-38-9-9 to obtain the benefit of changes in SEA 235-2019 as enacted in the 2019 session, if applicable.⁴⁶

Ind Code § 35-38-9-9.5, effective March 18, 2020, specifies the procedure to expunge records of a collateral action entered in a different county than the county which issued the expungement order.

3. Earlier with Permission

The petitioner may contact the prosecutor's office to obtain consent to file for expungement in a shortened period than allowed above.⁴⁷ This consent must be in writing and attached to the petition.⁴⁸

B. Venue

A petitioner may seek to expunge more than one conviction at the same time by consolidating all convictions that the petitioner wishes to expunge from the same county in one petition.⁴⁹ A petitioner who wishes to expunge convictions from separate counties must file a petition in each county in which a conviction was entered.⁵⁰

1. Non-Conviction Records

If criminal charges or a juvenile delinquency allegation is filed, then the petition must be filed in the county where the criminal charges or juvenile delinquency allegation was filed.⁵¹

If no criminal charges or a juvenile delinquency allegation were filed, then the petition must be filed in the county where the arrest occurred.⁵²

2. Conviction Records

A petition to expunge conviction records should be filed in a circuit or superior court in the county of conviction.⁵³

C. Filing Fee

There is no filing fee required for petitions filed under Ind. Code § 35-38-9-1.⁵⁴

⁴⁶ Ind. Code § 35-38-9-0.6.

⁴⁷ See Ind. Code § 35-38-9-2(c), Ind. Code § 35-38-9-3(c), Ind. Code § 35-38-9-4(c), and Ind. Code § 35-38-9-5(c).

⁴⁸ Id.

⁴⁹ Ind. Code § 35-38-9-9(h).

⁵⁰ Id.

⁵¹ Ind. Code § 35-38-9-1(c).

⁵² Id.

⁵³ See Ind. Code § 35-38-9-2(d); Ind. Code § 35-38-9-3(d); Ind. Code § 35-38-9-4(d); and Ind. Code § 35-38-9-5(d).

⁵⁴ Ind. Code § 35-38-9-1(c).

A person filing a petition under Ind. Code § 35-38-9-2, Ind. Code § 35-38-9-3, Ind. Code § 35-38-9-4, or Ind. Code § 35-38-9-5 is required to pay the filing fee required in civil cases, which may be reduced or waived if the person is indigent.⁵⁵

D. Petition Contents

1. Non-Conviction Records

Petition for expungement under Ind. Code § 35-38-9-1 must contain, at a minimum, the following information:⁵⁶

- Date of the arrest, criminal charges, or juvenile delinquency allegation, and conviction (if applicable);
- County in which the arrest occurred, county in which the information or indictment was filed, and the county in which the juvenile delinquency allegation was filed, if applicable;
- Law enforcement agency employing the arresting officer, if known;
- Court in which the criminal charges or juvenile delinquency allegation was filed, if applicable;
- Any other known identifying information, such as: (i) name of the arresting officer; (ii) case number or court case number; (iii) any aliases or other names used by the petitioner; (iv) petitioner's driver's license number; and (v) list of each criminal charge and its disposition, if applicable;
- Date of the petitioner's birth; and
- Petitioner's Social Security Number.

2. Conviction Records

Petitions for expungement under Ind. Code § 35-38-9-2, Ind. Code § 35-38-9-3, Ind. Code § 35-38-9-4, and Ind. Code § 35-38-9-5 must contain, at a minimum, the following information:⁵⁷

- Petitioner's full name and all other legal names or aliases by which the petitioner has been known;
- Petitioner's date of birth;
- Petitioner's addresses from the date of the offense to the date of the petition;
- Case number or court cause number, if available;
- Petitioner shall affirm that no criminal investigation or charges are pending against the petitioner;
- Petitioner shall affirm that the petitioner has not committed another crime within the period required for expungement;

⁵⁵ Ind. Code § 35-38-9-8(d).

⁵⁶ Ind. Code § 35-38-9-1(c).

⁵⁷ Ind. Code § 35-38-9-8(b).

- Petitioner shall list all convictions, all collateral actions, the cause number of each conviction, if known, the date of the conviction, and any appeals from the conviction and the date any appellate opinion was handed down, if applicable;
- The petitioner shall include their Social Security Number, Driver's License Number, date of arrest, if applicable, and the date on which the petitioner was convicted;
- Petitioner shall affirm that the required period has elapsed or attach a copy of the prosecuting attorney's written consent to a shorter period;
- Petitioner shall describe any other petitions that the petitioner has filed under this chapter; and
- If the petitioner filed under Ind. Code § 35-38-9-5, then they must include a copy of the prosecutor's written consent.

Petitioner may include any other information that they believe may assist the court in ruling on the petition.⁵⁸

E. Prosecutor's Reply

The prosecuting attorney is required to reply to the petition no later than thirty (30) days after receipt.⁵⁹ Failure to reply timely to the petition waives any objection the State may have to the petition and the court shall proceed to consider the petition pursuant to Ind. Code § 35-38-9-9.⁶⁰

If the prosecutor objects to the expungement, the court **MUST** set the matter for a hearing.⁶¹

F. Court's Duties in Deciding Petitions

1. Non-Conviction Records

Upon receipt of a petition, the court may summarily deny the petition if the petition does not meet the requirements of Ind. Code § 35-38-9-1 or if the statements contained in the petition indicate that the petitioner is not entitled to relief.⁶²

The court shall grant the petition unless the petitioner currently has pending charges or has not met the statutory requirements.⁶³

2. Conviction Records

If the prosecuting attorney does not object or has waived objection to the petition, the court may grant the petition for expungement without a hearing.⁶⁴

⁵⁸ Ind. Code § 35-38-9-8(c).

⁵⁹ Ind. Code § 35-38-9-8(g).

⁶⁰ Id.

⁶¹ Key v. State, 48 N.E.3d 333 (Ind. Ct. App. 2015).

⁶² Ind. Code § 35-38-9-1(e)(1).

⁶³ Ind. Code § 35-38-9-1(e)(2).

⁶⁴ Ind. Code § 35-38-9-9(a).

The court may summarily deny a petition if it does not meet the requirements of Ind. Code § 35-38-9-8 or the statements contained in the petition demonstrate that the petitioner is not entitled to relief.⁶⁵

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.⁶⁶ The court shall set the matter for a hearing not sooner than sixty (60) days after service of the petition on the prosecuting attorney.⁶⁷

G. Sample Motions

Appendix A – Verified Motion for Fee Waiver for Expungement/Sealing

Appendix B – Verified Petition for Expungement/Sealing of Arrest Records under Ind. Code § 35-38-9-1.

Appendix C – Verified Petition for Expungement/Sealing of Conviction Records under Ind. Code § § 35-38-9-2; 35-38-9-3; 35-38-9-4; and 35-38-9-5.

⁶⁵ Ind. Code § 35-38-9-9(b).

⁶⁶ Ind. Code § 35-38-9-9(c).

⁶⁷ Id.

V. EFFECT OF EXPUNGEMENT

A. Non-Conviction

Once a petition is granted under Ind. Code § 35-38-9-1, or if an expungement order is issued without a petition under Ind. Code § 35-38-9-1 (b) or (c):

- No information concerning the arrest, criminal charges, juvenile delinquency allegation, vacated conviction, or vacated juvenile delinquency adjudication (including information from a collateral action that identifies the petitioner) may be placed or retained in any state central repository for criminal history information or in any other criminal history information system maintained by a local, regional, or statewide law enforcement agency;⁶⁸
- The clerk of the supreme court shall seal or redact any records in the clerk's possession that relates to the arrest, criminal charges, juvenile delinquency allegation, vacated conviction, or vacated juvenile delinquency adjudication;⁶⁹
- Records of the sentencing court, a juvenile court, court that conducted a collateral action, court of appeals, and the supreme court shall be redacted or permanently sealed;⁷⁰ and
- With respect to any records in which the person is named as an appellant or an appellee in an opinion or memorandum decision by the supreme court or the court of appeals or who is identified in a collateral action, the court shall redact the opinion or memorandum as it appears so that it does not include the petitioner's name and 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.⁷¹

Granting of a petition under Ind. Code § 35-38-9-1 does not require any change or alteration in any internal record made by a law enforcement agency or public defender agency at the time of the arrest and not intended for release to the public; or records that relate to a diversion or deferral program or a disciplinary record or proceeding as it relates to licensing, certification, or public entity.⁷²

B. Misdemeanor⁷³ and minor Class D and Level 6 Felony⁷⁴ Convictions

Upon granting the expungement petition, the court shall order the department of corrections; the bureau of motor vehicles; and each law enforcement agency and other person who incarcerated, prosecuted, 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

⁶⁸ Ind. Code § 35-38-9-1(h)(1).

⁶⁹ Ind. Code § 35-38-9-1(h)(2).

⁷⁰ Ind. Code § 35-38-9-1(h)(3).

⁷¹ Ind. Code § 35-38-9-1(h)(4).

⁷² Ind. Code § 35-38-9-0.6.

⁷³ Ind. Code § 35-38-9-2

⁷⁴ Ind. Code § 35-38-9-3

anyone without a court order, other than a law enforcement officer acting in the course of the officer's official duties.⁷⁵ Law Enforcement Officer includes prosecutors.⁷⁶

The court shall also notify the clerk of the supreme court to seal any records in the clerk's possession that relates to the conviction.⁷⁷

1. Central Repository

The court shall order the central repository for criminal history information maintained by the state police department to seal the person's expunged conviction records.⁷⁸

Records sealed may be disclosed only to:⁷⁹

- Prosecuting Attorney, if authorized by a court order and needed to carry out the official duties of the prosecuting attorney;
- Defense Attorney, if authorized by a court order and needed to carry out the official duties of the defense attorney;
- Probation Department, if authorized by a court order and necessary to prepare a presentence report;
 - A probation department may provide an unredacted version of a presentence report disclosed here to any person authorized by law to receive a presentence report.
- FBI and Department of Homeland Security, if disclosure is required to comply with an agreement relating to the sharing of criminal history information;
- Supreme Court, members of the state board of law examiners, executive director of the state board of law examiners, and 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;
- 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; and
- Bureau of motor vehicles, the Federal Motor Carrier Administration, and the Commercial Driver's License Information System (CDLIS), if disclosure is required to comply with federal law relating to reporting a conviction for a violation of a traffic control law.

⁷⁵ Ind. Code § 35-38-9-6(a)(1).

⁷⁶ Ind. Code § 35-31.5-2-185(a)(1)

⁷⁷ Ind. Code § 35-38-9-6(a)(3).

⁷⁸ Ind. Code § 35-38-9-6(a)(2).

⁷⁹ Id.

2. Court Records

If the petition is granted, the court shall order the records of the sentencing court; juvenile court; appellate court; court that conducted a collateral action; and the supreme court concerning the person to be permanently sealed.⁷⁹

3. Driver's License Suspension

A petition for expungement that is granted does not affect an existing or pending driver's license suspension.⁸⁰

4. Appellate Court Records

If the person for whom expungement is granted is named as an appellant or an appellee in an opinion or memorandum decision by the supreme court or court of appeals, the court shall 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; and 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.⁸¹

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.⁸²

5. Prosecutor

Notwithstanding Ind. Code § 35-38-9-6(b)(2)(a), a prosecuting attorney may submit a written application to a court that granted an expungement petition to gain access to any records that were permanently sealed if the records are relevant in a new prosecution of the person.⁸³ If a court orders records unsealed under this section, 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.⁸⁴ 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.⁸⁵

⁷⁹ Ind. Code § 35-38-9-6(b).

⁸⁰ Ind. Code § 35-38-9-6(b).

⁸¹ Ind. Code § 35-38-9-6(c).

⁸² Id.

⁸³ Ind. Code § 35-38-9-6(d).

⁸⁴ Id.

⁸⁵ Id.

6. Domestic Violence

Expungement of a crime of domestic violence does not restore a person's right to possess a firearm.⁸⁶ The right of a person convicted of a crime of domestic violence to possess a firearm may be restored only in accordance with Ind. Code § 35-47-4-7.⁸⁷

C. Serious⁸⁸ and less serious⁸⁹ felony convictions

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 expunged.⁹⁰

State police, bureau of motor vehicles, and any other law enforcement agency in possession of records that relate to the conviction order to be marked as expunged shall add an entry to the person's record of arrest, conviction, or sentence in the criminal history database stating that the record is marked as expunged.⁹¹

D. Sex Offender Registry

If a person whose conviction records are expunged is required to register as a sex offender based on the commission of a felony which has been expunged, 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. The expunged conviction must be clearly marked as expunged on the sex offender registry website.⁹²

E. Expungement has no Effect on Driver's License Suspensions

A petition for expungement that is granted does not affect an existing or pending driver's license suspension.⁹³

⁸⁶ Ind. Code § 35-38-9-6(f).

⁸⁷ Id.

⁸⁸ Ind. Code § 35-38-9-4.

⁸⁹ Ind. Code § 35-38-9-5.

⁹⁰ Ind. Code § 35-38-9-7(b).

⁹¹ Ind. Code § 35-38-9-7(c).

⁹² Ind. Code § 35-38-9-6(e).

⁹³ Ind. Code § 35-38-9-6(b).

F. Gun rights

Expungement of a crime of domestic violence does not restore a person's right to possess a firearm.⁹⁵ The right of a person convicted of a crime of domestic violence to possess a firearm may be restored only in accordance with Ind. Code § 35-47-4-7.⁹⁶

G. Civil Rights

The civil rights of a person whose conviction has been expunged shall be fully restored, including the right to vote, to hold public office, to be a proper person under Ind. Code § 35-47-1-7(2), and to serve on a jury.⁹⁷

H. Post-Conviction Relief

Although the expungement statute does not specifically mention PCR records, PCR case is the same as the final result of a vacation from a direct appeal, and thus are expungable upon expungement of the underlying case.⁹⁸

⁹⁵ Ind. Code § 35-38-9-6(f).

⁹⁶ Id.

⁹⁷ Ind. Code § 35-38-9-10(c).

⁹⁸ B.S. v. State, 95 N.E.3d 177 (Ind. Ct. App. 2018).

VI. DISCRIMINATION AND FUTURE USE OF RECORDS

It is unlawful discrimination for any person to: (1) suspend; (2) expel; (3) refuse to employ; (4) refuse to admit; (5) refuse to grant or renew a license, permit, or certificate necessary to engage in any activity, occupation, or profession; or (6) otherwise discriminate against any person because of a conviction or arrest record expunged or sealed under Ind. Code § 35-38-9.⁹⁷

A defendant may file a petition for contempt following a discrimination incident, which may be filed in either the court that granted the petition for expungement or any court of general jurisdiction.⁹⁸

A. Excluded from Statute

Pursuant to Ind. Code § 35-38-9-10(a), the following is exempt from the anti-discrimination provisions contained in Ind. Code § 35-38-9-10:⁹⁹

- Prosecuting Attorney, if authorized by a court order and needed to carry out the official duties of the prosecuting attorney;
- Defense Attorney, if authorized by a court order and needed to carry out the official duties of the defense attorney;
- Probation Department, if authorized by a court order and necessary to prepare a presentence report;
 - A probation department may provide an unredacted version of a presentence report disclosed here to any person authorized by law to receive a presentence report.
- FBI and Department of Homeland Security, if disclosure is required to comply with an agreement relating to the sharing of criminal history information;
- Supreme Court, members of the state board of law examiners, executive director of the state board of law examiners, and 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;
- 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; and
- Bureau of motor vehicles, the Federal Motor Carrier Administration, and the Commercial Driver's License Information System (CDLIS), if disclosure is required to comply with federal law relating to reporting a conviction for a violation of a traffic control law.

⁹⁷ Ind. Code § 35-38-9-10(b).

⁹⁸ Sealing of Records of H.M. v. State (In re The Expungement), 65 N.E.3d 1054 (Ind. Ct. App. 2016).

⁹⁹ Id.

B. Hiring Decisions

Ind. Code § 35-38-9-10(b) makes it illegal for an employer to make a hiring decision based upon the expunged convictions. This section does not apply to persons seeking employment with a law enforcement agency or a probation or community corrections department, including volunteer employment ¹⁰⁰.

C. Employment Questions

In any application for employment, a license, or other right or privilege, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests. This section does not apply to persons seeking employment with a law enforcement agency or a probation or community corrections department, including volunteer employment.
¹⁰¹

D. Future Charges

Upon a subsequent arrest or conviction for an unrelated offense, the prior expunged conviction:¹⁰²

- May be considered by the court in determining the sentence imposed for the new offense;
- Is a prior unrelated conviction for purposes of a habitual offender enhancement and enhancing the new offense based on a prior conviction; and
- May be admitted as evidence in the proceeding for a new offense as if the conviction had not been expunged.

¹⁰⁰ Ind. Code § 35-38-9-10(a).

¹⁰¹ Ind. Code § 35-38-9-10(d).

¹⁰² Ind. Code § 35-38-9-10(e).

VII. PROTECTION ORDERS

These rules apply if a person named of the subject of a protection order, if a court granted:¹⁰³

- An order for protection was issued, but is subsequently terminated due to the: (A) dismissal of the petition before a court hearing on the protection order; (B) denial of the protection order upon the order of the court; or (C) failure of the plaintiff to appear to the court hearing on the protection order.
- An order for protection was reversed or vacated by an appellate court.

A. When Petition may be Filed

A person may petition to expunge the protection order a court issued under this chapter at any time after: (1) a court dismisses or denies an order for protection following issuance of an order for protection ex; or (2) the opinion reversing or vacating an order for protection becomes final.¹⁰⁴

B. Contents of Petition

A petition to expunge a protection order must be filed under seal, verified, and include the following information:¹⁰⁵

- Petitioner's full name, date of birth, address, social security number, driver's license number;
- Case number or court cause number, if available;
- Date of the order for protection or order for protection ex parte, if applicable;
- Description of why the petitioner is entitled to relief, including all relevant dates;
- Certified copies, if applicable, of the order for protection, order for protection ex parte, order denying the order for protection, or the opinion from the appellate court reversing or vacating an order for protection or an order for protection ex parte;

The petition may include any other information that the petitioner believes may assist the court.¹⁰⁶

C. Procedure and Court's Duties

The court shall order the protection order expunged if the petitioner proves by a preponderance of the evidence that the petitioner is entitled to relief.¹⁰⁷

1. Hearing required

Unless the petition is incomplete or conclusively indicates that the petitioner is not entitled to relief, the court shall redact the petitioner's date of birth, social security number, and driver's

¹⁰³ Ind. Code § 34-26-7.5-1.

¹⁰⁴ Ind. Code § 34-26-7.5-3(a).

¹⁰⁵ Ind. Code § 34-26-7.5-3(b).

¹⁰⁶ Ind. Code § 34-26-7.5-3(c).

¹⁰⁷ Ind. Code § 34-26-7.5-5.

license number from the petition, serve a copy of the redacted petition on the person who originally sought the protection order and set the matter for a hearing.¹⁰⁸

The person who originally sought the protection order is entitled to appear at the hearing.¹⁰⁹ If the person who originally sought the protection order waives in writing the right to appear at the hearing and the petition conclusively indicates that the petitioner is entitled to relief, the court may issue an order to expunge a protection order without holding a hearing.¹¹⁰

2. Appealable Order

The grant or denial of a petition for expungement is a final appealable order.¹¹¹

3. Burden of Proof

The petitioner bears the burden of proof in a proceeding to expunge a protection order.¹¹² The court shall order the protection order expunged if the petitioner proves by a preponderance of the evidence that the petitioner is entitled to relief.¹¹³

D. Effect of Expungement

If a court orders a protection order expunged under this chapter, the court shall redact or permanently seal the court's own records relating to the protection order and order the office of judicial administration to remove the protection order from the Indiana protective order registry established under Ind. Code § 5-2-9-5.5.¹¹⁴

If an appellate court reverses or vacates a protection order, and the protection order is then expunged, the appellate court shall 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 name of the subject of the protection order and 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.¹¹⁵

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 name of the subject of the protection order.¹¹⁶

¹⁰⁸ Ind. Code § 34-26-7.5-4(a).

¹⁰⁹ Id.

¹¹⁰ Ind. Code § 34-26-7.5-4(b).

¹¹¹ Ind. Code § 34-26-7.5-4(c).

¹¹² Ind. Code § 34-26-7.5-5.

¹¹³ Id.

¹¹⁴ Ind. Code § 34-26-7.5-6(a).

¹¹⁵ Ind. Code § 34-26-7.5-6(b).

¹¹⁶ Id.

A petitioner whose record is expunged under this chapter shall be treated as if the protection order had never been filed; and may answer truthfully to a question from the petitioner's employer or prospective employer that a petition or order of protection has never been filed against the petitioner.¹¹⁷

¹¹⁷ Ind. Code § 34-26-7.5-7.

VIII. JUVENILE EXPUNGEMENT

The following content is taken from IPDC's Juvenile Delinquency Manual, 2017 Edition, Chapter 3 § VII. The method for expungement under the juvenile code is different than the methods provided under Ind. Code § 35-38-9.

There are draft petitions available in **Appendix D**.

Also available in **Appendix E** is Marion County specific expungement forms.

A. EXPUNGEMENT OF JUVENILE RECORDS PURSUANT TO JUVENILE CODE

Pursuant to Ind. Code § 31-39-8, records created as a result of allegations that a child is a delinquent child may be expunged.

1. Venue

The juvenile court in the county of the original action has exclusive original jurisdiction over petitions to expunge records of a child alleged to be a delinquent child or a child in need of services.¹¹⁸

2. Standing for Expungement Request

Pursuant to Ind. Code § 31-39-8-2, any person may petition a juvenile court at any time to remove from:

- (1) The court's files;
- (2) The files of law enforcement agencies; and
- (3) The files of any other person who has provided services to a child under a court order;

Those records pertaining to the person's involvement in juvenile court proceedings.

3. Petition for Expungement

Pursuant to Ind. Code § 31-39-8-3(a), a person may initiate a petition for expungement of records of a child alleged to be a delinquent child by filing a verified petition that sets forth the following:

- (1) The allegations and date of adjudication, if applicable, of the juvenile delinquency allegations.
- (2) The court in which juvenile delinquency allegations or petitions were filed.
- (3) The law enforcement agency that employs the charging officer, if known.
- (4) The case number or court cause number.
- (5) Date of birth of the petitioner.
- (6) Petitioner's Social Security number.

¹¹⁸ Ind. Code § 31-39-8-1.

(7) All juvenile delinquency or child in need of services adjudications and criminal convictions occurring after the adjudication of the action sought to be expunged.

(8) All pending actions under Ind. Code § 31-34 or Ind. Code § 31-37 or criminal charges.

There is a sample expungement petition in the Juvenile Delinquency Benchbook that may be used as a petition for expungement under Ind. Code § 31-39-8. A copy of the form is included in **Appendix D**.

4. Cost

There is no statutory provision of a filing fee for a petition for expungement pursuant to Ind. Code § 31-39-8.

5. Service

The petition for expungement shall be served on the prosecuting attorney.¹¹⁹

6. Hearing may be Required

The prosecuting attorney or DCS has 30 days to reply or otherwise object to the petition.¹²⁰

If the prosecutor or DCS timely files an objection to the petition, the matter shall be set to a hearing.¹²¹

If no objection is filed, the court may set the petition for a hearing or rule on the petition without a hearing.¹²²

7. Factors to Be Considered for Expungement

Pursuant to Ind. Code § 31-39-8-3(e), in considering whether to grant the petition, the juvenile court may review:

- (1) The best interests of the child;
- (2) The age of the person during the person's contact with the juvenile court or law enforcement agency;
- (3) The nature of any allegations;
- (4) Whether there was an informal adjustment or an adjudication;
- (5) The disposition of the case;
- (6) The manner in which the person participated in any court ordered or supervised services;

¹¹⁹ Ind. Code § 31-39-8-3(c).

¹²⁰ Ind. Code § 31-39-8-3(c).

¹²¹ Ind. Code § 31-39-8-3(d).

¹²² Ind. Code § 31-39-8-3(d).

- (7) The time during which the person has been without contact with the juvenile court or with any law enforcement agency;
- (8) Whether the person acquired a criminal record; and
- (9) The person's current status.

PRACTICE POINTER: If the court sets the matter for a hearing, you may consider presenting the following as evidence to support the petition for expungement: (1) Report card; (2) High school diploma/proof of GED; (3) Pay stub; (4) Proof of rent/mortgage payment; (5) Reference letters; (6) College acceptance or class schedule; (7) Testimony from family or friends; and (8) Reasons why the client wants or needs the record expunged.

8. No Partial or Conditional Expungement

Owens v. State, 544 N.E.2d 1375, 1379 (Ind. 1989) (no procedures exist for partial or conditional expungement of juvenile records).

9. Expungement of Law Enforcement Records and Person Providing Treatment to Child

If the trial court grants the expungement petition, it shall order each law enforcement agency and each person who provided treatment for the child under an order of the court to send that person's records to the court.¹²³

PRACTICE POINTER: It is important to be familiar with all of the paperwork generated through the juvenile delinquency proceeding so that all references to the child will be destroyed. Records include file cards, police officer notes, computer entries, and any other records maintained by law enforcement agencies or service providers.

10. Method of Expungement

The records may be destroyed or given to the person to whom the records pertain.¹²⁴

Data from the records shall be maintained by the court on a secure data base that does not enable identification of the offender to the public or another person not having legal or statutory authority to access the records.¹²⁵

The records maintained in the data base may be used only for statistical analysis, research and financial auditing purposes.¹²⁶

¹²³ Ind. Code § 31-39-8-5.

¹²⁴ Ind. Code § 31-39-8-6.

¹²⁵ Ind. Code § 31-39-8-6(b).

¹²⁶ Ind. Code § 31-39-8-6(c).

11. Use of Expunged Records in Civil Action

If a person whose records are expunged brings an action that might be defended with the contents of the records, the defendant is presumed to have a completed defense to the action. For the plaintiff to recover, the plaintiff must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether the plaintiff had records in the juvenile justice system and whether those records were expunged. If the plaintiff denies the existence of records, the defendant may prove the existence of the records in any manner compatible with the law of evidence.¹²⁷

12. Subsequent Petitions Following Denial

There is no statutory limitation on how many times a person can petition for expungement pursuant to Ind. Code § 31-39-8.

B. EXPUNGEMENT AND SEALING OF JUVENILE COURT RECORDS PURSUANT TO CRIMINAL CODE

A juvenile may expunge his or her juvenile delinquency allegation under the criminal code only if it did not result in an adjudication pursuant to Ind. Code § 35-38-9-1(a). See § II on page 2 for more information on this.

C. TAKING, STORING, DESTRUCTION AND EXPUNGEMENT OF FINGERPRINT AND PHOTOGRAPH RECORDS

If a person whose records are expunged brings an action that might be defended with the contents of the expunged records, the defendant is presumed to have a completed defense to the action. In order for the plaintiff to recover, the plaintiff must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether the plaintiff had records in the criminal or juvenile justice system and whether those records were expunged. If the plaintiff denies the existence of records, the defendant may prove the existence of the records in any manner compatible with the law of evidence.¹²⁸

1. Limitations on Taking and Filing of Fingerprints or Photographs

Pursuant to Ind. Code § 31-39-5-1(a), a law enforcement agency may take and file the fingerprints or photographs of a child if:

- (1) The child is taken into custody for an act that would be a felony if committed by an adult; and
- (2) The child was at least fourteen (14) years of age when the act was allegedly committed.

¹²⁷ Ind. Code § 31-39-8-7.

¹²⁸ Ind. Code § 35-38-9-1(j).

2. Juvenile Court May Limit Fingerprinting and Photographing

A juvenile court may, by general order, limit fingerprinting and photographing of children to situations in which children are charged with specified offenses.¹²⁹

3. Notice of Rights When Taking Fingerprints and Photographs

At the time a law enforcement agency takes a child's fingerprints or photographs, the law enforcement agency shall give written notice to the child and the child's parent, guardian, or custodian of the child's rights under Ind. Code § 31-39-5-4 [destruction of fingerprints and photographs]. The agency shall comply with any request for destruction or surrender of the records not later than sixty (60) days of the request.¹³⁰

4. Fingerprint and Photographs Record Are Confidential and Must Be Stored Separately from Adult Records

Fingerprint and photograph files of children shall be separated from those of adults. These files are subject to the confidentiality provisions of Ind. Code § 31-39-3 [confidentiality of law enforcement records].¹³¹

J.B. v. State, 868 N.E.2d 1197, 1200-01 (Ind. Ct. App. 2007) (juvenile fingerprint and photograph records must be stored, including in a computerized system, such that persons authorized to access adult records, but not juvenile records will not be able to access the latter while accessing the former).

D. DESTRUCTION AND EXPUNGEMENT OF FINGERPRINTS AND PHOTOGRAPHS

1. Destruction of Fingerprints and Photographs Held by Law Enforcement Agency

Pursuant to Ind. Code § 31-39-5-4(a), upon written request of the child or the child's parent, guardian, or custodian, a law enforcement agency shall destroy or deliver to the child any of the child's fingerprints or photographs taken under Ind. Code § 31-39-5-1 that are within that agency's possession if:

- (1) The child was taken into custody and no petition was filed against the child;
- (2) The petition was dismissed because of mistaken identity;
- (3) The petition was dismissed because no delinquent act was actually committed; or
- (4) The petition was dismissed for lack of probable cause.

¹²⁹ Ind. Code § 31-39-5-1(b).

¹³⁰ Ind. Code § 31-39-5-5.

¹³¹ Ind. Code § 31-39-5-2.

a. No Required Destruction if Prior Arrests or Other Charge Pending

If the child has a record of prior arrests or if another charge is pending against the child, the law enforcement agency does not have to destroy the child's fingerprints or photographs.¹³²

b. Requested Destruction Must Occur Within 60 Days of Request

At the time a law enforcement agency takes a child's fingerprints or photographs, the law enforcement agency shall give written notice to the child and the child's parent, guardian, or custodian of the child's rights under Ind. Code § 31-39-5-4. The agency shall comply with any request for destruction or surrender of records not later than sixty (60) days of the request.¹³³

2. Destruction of Fingerprints and Photographs Forwarded to Another Law Enforcement Agency

Any law enforcement agency that has forwarded copies of fingerprints or photographs that the law enforcement agency must destroy under Ind. Code § 31-39-5-4 to any agency of the United States, of any other state, or of this state, shall request in writing that all copies be returned for destruction or for presentation to the child.¹³⁴

3. Expungement of Record of Fingerprints and Photographs

Whenever fingerprints or photographs are expunged from the files of a law enforcement agency under Ind. Code § 31-39-5-4, the law enforcement agency may retain no other information on the incident. However, this section does not require alteration of any law enforcement record, such as a blotter entry made at the time of arrest, or of any record in the juvenile court.¹³⁵

¹³² Ind. Code § 31-39-5-4(b).

¹³³ Ind. Code § 31-39-5-5.

¹³⁴ Ind. Code § 31-39-5-6.

¹³⁵ Ind. Code § 31-39-5-7.

IX. CHINS/TPR EXPUNGEMENT

A. Definitions

1. “Expunge” or “Expungement”

As used in Ind. Code § 31-33-27, “expunge” or “expungement” means: (1) the removal or deletion of all information maintained by the department concerning a report, assessment, or determination under Ind. Code 31-33 relating to an incident or condition of child abuse or neglect; and (2) the destruction or delivery of the information to a person to whom the information pertains.¹³⁶

2. “Information”

As used in Ind. Code § 31-33-27, “information” includes all files and records created or maintained by the department. The term includes the original and copies of documents, correspondence, messages, photographs, videotapes, audio recordings, audiovisual recordings, and any other material contained in electronic, paper, or digital form or in other media.¹³⁷

B. Expungement of CHINS

1. Petition for Expungement

Pursuant to Ind. Code § 31-39-8-3(a), a person may initiate a petition for expungement of records of a child in need of services by filing a verified petition that sets forth the following:

- (1) The allegations and date of adjudication, if applicable, of the juvenile delinquency allegations.
- (2) The court in which juvenile delinquency allegations or petitions were filed.
- (3) The law enforcement agency that employs the charging officer, if known.
- (4) The case number or court cause number.
- (5) Date of birth of the petitioner.
- (6) Petitioner’s Social Security number.
- (7) All juvenile delinquency or child in need of services adjudications and criminal convictions occurring after the adjudication of the action sought to be expunged.
- (8) All pending actions under Ind. Code § 31-34 or Ind. Code § 31-37 or criminal charges.

¹³⁶ Ind. Code § 31-33-27-1.

¹³⁷ Ind. Code § 31-33-27-2.

2. Cost

There is no statutory provision of a filing fee for a petition for expungement pursuant to Ind. Code § 31-39-8.

3. Service

The petition for expungement shall be served on the prosecuting attorney.¹³⁸

4. Hearing may be Required

The prosecuting attorney or DCS has 30 days to reply or otherwise object to the petition.¹³⁹

If the prosecutor or DCS timely files an objection to the petition, the matter shall be set to a hearing.¹⁴⁰

If no objection is filed, the court may set the petition for a hearing or rule on the petition without a hearing.¹⁴¹

5. Factors to Be Considered for Expungement

Pursuant to Ind. Code § 31-39-8-3(e), in considering whether to grant the petition, the juvenile court may review:

- (1) The best interests of the child;
- (2) The age of the person during the person's contact with the juvenile court or law enforcement agency;
- (3) The nature of any allegations;
- (4) Whether there was an informal adjustment or an adjudication;
- (5) The disposition of the case;
- (6) The manner in which the person participated in any court ordered or supervised services;
- (7) The time during which the person has been without contact with the juvenile court or with any law enforcement agency;
- (8) Whether the person acquired a criminal record; and
- (9) The person's current status.

¹³⁸ Ind. Code § 31-39-8-3(c).

¹³⁹ Ind. Code § 31-39-8-3(c).

¹⁴⁰ Ind. Code § 31-39-8-3(d).

¹⁴¹ Ind. Code § 31-39-8-3(d).

6. Use of Expunged Records in Civil Action

If a person whose records are expunged brings an action that might be defended with the contents of the records, the defendant is presumed to have a completed defense to the action. For the plaintiff to recover, the plaintiff must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether the plaintiff had records in the juvenile justice system and whether those records were expunged. If the plaintiff denies the existence of records, the defendant may prove the existence of the records in any manner compatible with the law of evidence.¹⁴²

7. Subsequent Petitions Following Denial

There is no statutory limitation on how many times a person can petition for expungement pursuant to Ind. Code § 31-39-8.

C. Expungement of unsubstantiated assessment report

1. Expungement of Unsubstantiated Report from DCS Records When Child Turns 24 Years Old

The department shall expunge child abuse and neglect information not later than twenty-four (24) years after the date of the birth of the youngest child named in the department's assessment report as an alleged victim of child abuse or neglect, if the department approved the assessment as unsubstantiated.¹⁴³

2. Expungement of Unsubstantiated Report Possible at Other Times

The department may, upon the request of an interested person, expunge information relating to an unsubstantiated assessment of child abuse or neglect at any time, if the department determines that the probative value of the information does not justify its retention in the records of the department.¹⁴⁴

D. Expungement of Assessment Report If No True Finding

The department shall expunge child abuse and neglect information not later than twenty-four (24) years after the date of the birth of the youngest child named in the department's assessment report as an alleged victim of child abuse or neglect, if the court in a child in need of services case entered a final judgment based on a finding that child abuse or neglect did not occur.¹⁴⁵

¹⁴² Ind. Code § 31-39-8-7.

¹⁴³ Ind. Code § 31-33-27-3(a)(1).

¹⁴⁴ Ind. Code § 31-33-27-3(b).

¹⁴⁵ Ind. Code § 31-33-27-3(a)(2).

E. Expungement of substantiated reports from the child protection index

1. Immediate Amendment or Expungement Due to Inaccurate Report

The department shall immediately amend or expunge from the index a substantiated report containing an inaccuracy arising from an administrative or a clerical error.¹⁴⁶

2. Expungement Within 10 Days

The department shall expunge child abuse or neglect information relating to a substantiated report not later than the time specified for expungement of the report from the child protection index under Ind. Code § 31-33-26-15.¹⁴⁷

Pursuant to Ind. Code § 31-33-26-15(a)(1), the department shall expunge a substantiated report contained within the index not later than ten (10) working days after any of the following occurs:

- (1) A court having jurisdiction over a child in need of services proceeding determines that child abuse or neglect has not occurred.
- (2) An administrative hearing officer under Ind. Code § 31-33-26 finds that the child abuse or neglect report is unsubstantiated.
- (3) A court having juvenile jurisdiction enters an order for expungement of the report under Ind. Code § 31-33-27-5.

3. Amendment of Substantiated Report to Delete Name of Alleged Perpetrator

The department shall amend information relating to a substantiated report by deleting the name of a person as an alleged perpetrator if: (a) a court having jurisdiction over a child in need of services proceeding; or (b) an administrative hearing officer under Ind. Code 31-33-26-9; finds that the person was not a perpetrator of the child abuse or neglect that occurred.¹⁴⁸

The department shall amend a substantiated report contained in the index by deleting the name of an alleged perpetrator if: (1) a court having jurisdiction over a child in need of services proceeding; or (2) an administrative hearing officer under Ind. Code 31-33-26; finds that the person was not a perpetrator of the child abuse or neglect that occurred.¹⁴⁹

F. Expungement of Substantiated Child Abuse or Neglect Report

Ind. Code § 31-33-27-5 applies to information relating to substantiated reports in any records of the department.¹⁵⁰

¹⁴⁶ Ind. Code § 31-33-26-14.

¹⁴⁷ Ind. Code § 31-33-27-4(a).

¹⁴⁸ Ind. Code § 31-33-27-4(b).

¹⁴⁹ Ind. Code § 31-33-26-15(b).

¹⁵⁰ Ind. Code § 31-33-27-5(a).

1. Perpetrator May Request an Expungement

An individual identified as a perpetrator of child abuse or neglect in a substantiated report may file a petition with a court exercising juvenile jurisdiction in the county in which the individual resides, requesting that the court order the department to expunge the substantiated report and related information.¹⁵¹

2. Expungement Petition

The petitioner shall: (1) name the department as respondent in the petition; and (2) serve the department with a copy of the petition and a summons.¹⁵²

3. Court Shall Hold a Hearing on the Expungement Petition

The court shall hold a hearing on the petition and any response filed by the department, unless a hearing is waived by agreement of the parties.¹⁵³

4. Considerations in Granting the Petition

Pursuant to Ind. Code § 31-33-27-5(e), in considering whether to grant a petition filed under Ind. Code § 31-33-27-5, the court may review:

- (1) The factors listed in Ind. Code § 31-39-8-3 in relation to the petitioner, if the substantiated report was the subject of a juvenile court case; and
- (2) Any facts relating to the petitioner's current status, activities, employment, contacts with children, or other circumstances relevant to consideration of whether the petition should be granted.

5. Factors by Clear and Convincing Evidence

Pursuant to Ind. Code § 31-33-27-5(f), the court may grant the petition if the court finds, by clear and convincing evidence, that:

- (1) There is little likelihood that the petitioner will be a future perpetrator of child abuse or neglect; and
- (2) The information has insufficient current probative value to justify its retention in records of the department for future reference.

NOTE: The second prong may be hard to prove because Ind. Code § 31-33-26 requires DCS to maintain a database of perpetrators of child abuse and neglect and similar in order to make it available to certain people and entities, like child care providers, which may be prohibited

¹⁵¹ Ind. Code § 31-33-27-5(b).

¹⁵² Ind. Code § 31-33-27-5(c).

¹⁵³ Ind. Code § 31-33-27-5(d).

from employing or utilizing the services of a person known and reported as a substantiated perpetrator of child abuse.¹⁵⁴

G. Use of Expunged Records in Civil Action

Pursuant to § Ind. Code 31-33-27-6, if the department expunges child abuse or neglect information under Ind. Code § 31-33-27:

- (1) At the request of a perpetrator named in an assessment report;
- (2) At or after the time for expungement specified in Ind. Code § 31-33-27-4(a); or
- (3) Under a court order under Ind. Code § 31-33-27-5;

Ind. Code § 31-39-8-7 applies to any civil action brought against the department or any other agency, entity, or individual, if the content of the expunged information may be relevant to any issue in the civil action.

¹⁵⁴ G.E. v. Ind. Dep't of Child Servs. (In re L.E.), 29 N.E.3d 769 (Ind. Ct. App. 2015).

X. DESTRUCTION OF DNA PROFILE FROM DATABASE

A person may request removal of his DNA profile from the Indiana database if certain conditions are met under Ind. Code § 10-13-6-18. Removal from the Indiana database also requires Indiana to have the DNA profile removed from any national databases as well.¹⁵⁵

A. Qualification

The first way a person may qualify to have their DNA profile removed is if the conviction on which the authority for inclusion in the Indiana DNA database was founded has been reversed and the case has been dismissed.¹⁵⁶

The second way a person may qualify to have their DNA profile removed is if it was included on the basis of a person's arrest for one or more felonies and: (A) the person was acquitted of all the felony charges or all the felonies were converted to misdemeanors; (B) all felony charges were dismissed; or (C) 365 days have elapsed since the person's arrest and no charges have been filed.¹⁵⁷

B. Procedure

All information in the DNA database pertaining to a person requesting removal shall be removed and all samples from the person shall be destroyed upon receipt of a letter or form requesting removal and a certified copy of a court order establishing a basis for removal.¹⁵⁸

See **Appendix F** for a form that can be mailed into the State Police to achieve this measure.

¹⁵⁵ Ind. Code § 10-13-6-18(e).

¹⁵⁶ Ind. Code § 10-13-6-18(a)(1).

¹⁵⁷ Ind. Code § 10-13-6-18(a)(2).

¹⁵⁸ Ind. Code § 10-13-6-18(b).

XI. INFRACTIONS

A. Automatic Limitation of Disclosure

The court in which the action was filed shall order the clerk and 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 a person alleged to have violated a statute defining an infraction: (1) is not prosecuted or if the action against the person is dismissed; (2) is adjudged not to have committed the infraction; or (3) is adjudged to have committed the infraction and the adjudication is subsequently vacated.¹⁵⁹

This rule does NOT apply to a person who participated in a deferral program.¹⁶⁰

If a court fails to order the clerk and the operator of any state, regional, or local case management system to restrict disclosure of information related to the infraction under Ind. Code § 34-28-5-15(a), the person may petition the court to restrict disclosure of the records related to the infraction to a noncriminal justice organization or an individual.¹⁶¹

B. Petition to Limit Disclosure of Infraction Records

If a person whose prosecution for an infraction has been deferred or who has found to have violated a statute defining an infraction has satisfied the condition of the deferral program or the judgement imposed for the violation, the person may petition the court to prohibit disclosure of information related to the infraction to a noncriminal justice organization.¹⁶²

1. When Petition May Be Filed

Petition may not be filed earlier than five (5) years since the date the person satisfied the judgement or conditions of the deferral program or judgement imposed for the violation.¹⁶³

C. Contents of Petition

A petition filed either under Ind. Code § 34-28-5-15(b) or Ind. Code § 34-28-5-15(c) must contain:¹⁶⁴

- Date of violation;
- Violation or alleged violation;
- Date the action was dismissed, if applicable;
- Date of judgement, if applicable;
- Date the adjudication was vacated, if applicable;

¹⁵⁹ Ind. Code § 34-28-5-15(a).

¹⁶⁰ Ind. Code § 34-28-5-15(a).

¹⁶¹ Ind. Code § 34-28-5-15(c).

¹⁶² Ind. Code § 34-28-5-15(b).

¹⁶³ *Id.*

¹⁶⁴ Ind. Code § 34-28-5-15(f).

- Basis on which the adjudication was vacated, if applicable;
- Date the judgement is satisfied or the conditions of the deferral program were met, if applicable;
- Law enforcement agency employing the officer who issued the complaint, if applicable;
- Any other known identifying information, such as name of the officer, case number, or court cause number;
- Date of the petitioner's birth; and
- Last four digits of the petitioner's social security number or petitioner's driver's license number, state identification card number, or photo exempt identification card number.

D. Venue

A petition filed either under Ind. Code § 34-28-5-15(b) or Ind. Code § 34-28-5-15(c) must be filed in: (1) the court in which the action was filed; (2) court in which the trial was held; or (3) court finding or having jurisdiction over the violation.¹⁶⁵

E. Timing of Petition

A petition filed either under Ind. Code § 34-28-5-15(b) or Ind. Code § 34-28-5-15(c) may not be filed earlier than:¹⁶⁶

- 30 days if the person is adjudged not to have committed the infraction;
- 365 days after the order vacating the adjudication is final, if there is no appeal or the appeal is terminated before the entry of an opinion or a memorandum decision or the opinion or memorandum decision vacating the adjudication is certified, if the person's adjudication is vacated;
- 2 years if the person is not prosecuted;
- 30 days after the action is dismissed, if a new action is not filed; or
- 5 years if the person participated in a deferral program or is found to have violated the statute defining the infraction, not earlier than five (5) years from the date the judgement for the violation is satisfied or the conditions in the deferral program are met.

F. Prosecutor's Duties

A copy of the petition filed under Ind. Code § 34-28-5-15(b) or Ind. Code § 34-28-5-15(c) must be served on the prosecutor.¹⁶⁷

If the prosecutor wishes to oppose the petition, they must file a notice of opposition with the court setting forth the reasons for opposing the petition within 30 days after the petition is filed.¹⁶⁸

¹⁶⁵ Ind. Code § 34-28-5-15(d).

¹⁶⁶ Ind. Code § 34-28-5-15(e).

¹⁶⁷ Ind. Code § 34-28-5-15(g).

¹⁶⁸ Ind. Code § 34-28-5-15(h).

G. Court's Duties

After receiving a petition under Ind. Code § 34-28-5-15(b) or Ind. Code § 34-28-5-15(c), the court may:¹⁶⁹

- Summarily grant the petition;
- Set the matter for a hearing; or
- Summarily deny the petition, if the court determines that the petition is insufficient or based on documentary evidence submitted to the court, the petitioner is not entitled to have access to the petitioner's records restricted.

If notice of opposition is filed under Ind. Code § 34-28-5-15(h), and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.¹⁷⁰

After a hearing is held under Ind. Code § 34-28-5-15(j), the court shall grant the petition filed if the person is entitled to relief under the relevant section.¹⁷¹

If the court grants a petition filed under Ind. Code § 34-28-5-15(b) or Ind. Code § 34-28-5-15(c), 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.¹⁷²

¹⁶⁹ Ind. Code § 34-28-5-15(i).

¹⁷⁰ Ind. Code § 34-28-5-15(j).

¹⁷¹ Ind. Code § 34-28-5-15(k).

¹⁷² Ind. Code § 34-28-5-15(l).

XII. 15- YEAR STATUTE

A person may petition the state police department (ISP) to limit access to the person's limited criminal history to criminal justice agencies if more than fifteen (15) years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime.¹⁷³

When a petition is filed, the State Police department (ISP) shall not release limited criminal history to noncriminal justice agencies under Ind. Code § 10-13-3-27.¹⁷⁴

¹⁷³ Ind. Code § 35-38-5-5(b).

¹⁷⁴ Ind. Code § 35-38-5-5(c).



Indiana Public Defender Council

APPENDIX A

Motion for Fee Waiver

STATE OF INDIANA) IN THE SUPERIOR / CIRCUIT COURT
) SS:
 COUNTY OF _____) CAUSE NO. _____
)
 STATE OF INDIANA,)
 v.)
 _____,)
 Petitioner.)

VERIFIED MOTION FOR FEE WAIVER FOR EXPUNGEMENT / SEALING

Petitioner, _____, pro se/by counsel, now states:

1. I wish to file this action and I believe that I have a case with merit.
2. I cannot pay any of the filing fees or other costs of this action because I do not have sufficient income or resources.
3. I live with these family members _____
4. Our family's income is __ per month. (Totalled from below)

(Income received each month, before taxes)

Wages (\$ _____ per hour X _____ hours per month)	\$ _____
Unemployment Compensation	\$ _____
AFDC / TANF Benefits	\$ _____
SSI / SSD Benefits	\$ _____
Child Support Received	\$ _____
Other	\$ _____
+	
Total =	\$ _____

5. We have \$ _____ in the bank.
6. Our expenses total \$ _____ per month. (Totalled from below)

(Expenses spent each month)

Housing (Rent, Contract, or Mortgage)	\$ _____
Utilities (Gas, Electric, Water, Phone, etc.)	\$ _____
Food	\$ _____
Child Care	\$ _____
Medical Bills	\$ _____
Transportation	\$ _____
Insurance (car, medical, and or property)	\$ _____
Child Support	\$ _____
Other (Please Describe):	\$ _____
+	
Total =	\$ _____

I request that this Court waive all costs of this action and allow me to proceed without the payment of any filing fees or other costs. I affirm under the penalties of perjury that the foregoing representations are true.

 Signature

STATE OF INDIANA	) IN THE	SUPERIOR / CIRCUIT COURT
	) SS:	
COUNTY OF _____	) CAUSE NO.	_____
)	
STATE OF INDIANA,)	
v.)	
_____)	
Petitioner.)	

ORDER ON FEE WAIVER

The Petitioner has filed a Verified Motion for Fee Waiver, which the Court has read and finds should be granted.

IT IS THEREFEFORE ORDERED that Petitioner may file this case:

_____ without the pre-payment of any filing fees, costs, security, bond, or other expenses: or
 _____ upon the pre-payment of \$_____ which is a portion of the filing fee set by statute.

Such sum must be paid by the Petitioner to the Clerk within the next 20 days.

The Court will determine whether any additional costs are to be paid at a preliminary or final hearing in this case.

Date

Judge

Distribution:

_____ County Prosecutor



Indiana Public Defender Council

APPENDIX B

STATE OF INDIANA	) IN THE	_____ COURT No. _____
	) SS:	
COUNTY OF _____	) CAUSE NO.	_____
)	
STATE OF INDIANA,	)	<i>Petition should be filed under an</i>
	)	<i>XP cause number, IC 35-38-9-1(c)</i>
v.	)	No Filing Fees are required
)	
_____,)	
Petitioner.)	

VERIFIED PETITION FOR EXPUNGEMENT/SEALING OF ARREST RECORDS
Ind. Code § 35-38-9-1

Petitioner, _____ by counsel/pro se, respectfully moves the Court to seal Petitioner's arrest record pursuant to Ind. Code § 35-38-9-1.

Petitioner affirms under the penalties of perjury:

1. Petitioner's full name is:

2. Petitioner has BMTP CFFO LOPXO VOEFS UIF GPMMPX JOH OBNFT/BMJBTFT:

3. Petitioner's date of birth is:

4. Petitioner's Social Security Number is:

5. Petitioner's Indiana Driver's License # is:

6. Petitioner's addresses from the date of the arrest to the date of this Petition are:

7. The law enforcement agency(s) that arrested the petitioner for all arrests seeking to be sealed and or convictions seeking to be expunged contained within this petition include:

8. No current criminal charges or investigations are pending against Petitioner and Petitioner is not currently participating in a pretrial diversion program. Ind. Code § 35-38-9-(b)(5).
9. Petitioner has served a copy of this Verified Petition for Expungement upon the Prosecuting Attorney in accordance with the Indiana Rules of Trial Procedure.
10. As a result of the cases noted in this petition, Petitioner received services or treatment from the following providers under court order:

11. Petitioner certifies that at least one year has passed since the date of arrest or the date the conviction or finding of adjudication as a delinquent child was vacated on appeal, OR, the prosecuting attorney has provided written consent for a shorter elapsed time period, which is evidenced as an exhibit to this Verified Petition.

Petitioner's original cause number, offense(s), and on or about the date of arrest / dismissal, and result of the charge are detailed below:

[illegible]

WHEREFORE, Petitioner respectfully requests this Court to seal the arrest records contained in: the Court's files; the files of the Indiana Department of Correction; the files of the Indiana Bureau of Motor Vehicles; the files of any other person who provided treatment or services to Petitioner under a court order; the central repository for criminal history information maintained by the Indiana State Police that relate to the Petitioner's arrest, and all other just and proper relief.

I affirm under the penalties of perjury that the foregoing representations are true.

Signature of Petitioner	Printed Name of Petitioner
--------------------------------	-----------------------------------

CERTIFICATE OF SERVICE

I certify that on the same date contemporaneous with the filing of this petition a true and complete copy of this Verified Petition for Expungement was served on the following via hand delivery:

State of Indiana, _____, County Prosecuting Attorney

Or this petition was served by first class, United States mail, postage prepaid or by other means set forth in Trial Rule 6E and or on a different date, specifically _____.

Signature of Petitioner	Printed Name of Petitioner
--------------------------------	-----------------------------------

STATE OF INDIANA	) IN THE	_____ COURT No. _____
	) SS:	
COUNTY OF _____	) CAUSE NO.	_____
)	
STATE OF INDIANA,)	
v.)	
)	
_____)	
Petitioner.)	

**FINDINGS AND ORDER ON PETITIONER'S VERIFIED PETITION FOR
EXPUNGEMENT/SEALING**

Petitioner, _____, pro se/by counsel, filed his/her Verified

Petition for Expungement/Sealing on _____, 20_____.

The State of Indiana, by counsel, filed its Response to Petitioner's Verified Petition for

Expungement/Sealing on _____, 20_____.

Petitioner's petition seeks relief as provided by I.C. 35-38-9 for expungement / sealing of his or

her arrest and or conviction record.

FINDINGS

The Court now finds by a preponderance of the evidence:

1. Petitioner's Verified Petition for Sealing / Expungement complies with the requirements of I.C. 35-38-9-1.
2. Petitioner's date of birth is _____.
3. Petitioner's social security number is _____.
4. Petitioner's Indiana driver's license number is _____.
5. The period required by I.C. 35-38-9-1(b) has elapsed or a shorter period has been agreed to by the Prosecuting Attorney.

ORDER

It is therefore ORDERED, ADJUDGED, and DECREED that Petitioner's Petition to Expunge/Seal Arrest Record is GRANTED. Petitioner's records for the arrest shall not 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.

Changes or alterations are not required in any internal record made by a law enforcement agency at the time of the arrest and not intended for release to the public, the record of any court in which the juvenile charges were filed or records that relate to a diversion or deferral program.

The clerk of the supreme court shall seal or redact any records in the clerk's possession that relate to the arrest, criminal charges, juvenile delinquency allegation, vacated conviction, or vacated juvenile delinquency adjudication; 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

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.

The Clerk shall send a copy of this Order to all parties of record or their attorneys and the following agencies: Indiana State Police Central Repository for Criminal History and The law enforcement agency that arrested the Petitioner:

and organizations where Petitioner received services or treatment under court order in relation to this arrest:

With respect to Petitioner's I.C. 35-38-9-1 Arrest records noted below the arrest records to be expunged pursuant to this order include the following:

Petitioner I.C. 35-38-9-1 Arrest Record

<u>CAUSE NUMBER</u>	<u>OFFENSE(S)</u>	<u>ARREST</u>	<u>DISMISSAL</u>
<u>CAUSE NUMBER</u>	<u>OFFENSE(S)</u>	<u>ARREST</u>	<u>DISMISSAL</u>
<u>CAUSE NUMBER</u>	<u>OFFENSE(S)</u>	<u>ARREST</u>	<u>DISMISSAL</u>
<u>CAUSE NUMBER</u>	<u>OFFENSE(S)</u>	<u>ARREST</u>	<u>DISMISSAL</u>
<u>CAUSE NUMBER</u>	<u>OFFENSE(S)</u>	<u>ARREST</u>	<u>DISMISSAL</u>
<u>CAUSE NUMBER</u>	<u>OFFENSE(S)</u>	<u>ARREST</u>	<u>DISMISSAL</u>
<u>CAUSE NUMBER</u>	<u>OFFENSE(S)</u>	<u>ARREST</u>	<u>DISMISSAL</u>
<u>CAUSE NUMBER</u>	<u>OFFENSE(S)</u>	<u>ARREST</u>	<u>DISMISSAL</u>

SO ORDERED this _____ day of _____, 20_____.

JUDGE _____

PROOF OF NOTICE Notice to be given by: ____ Court ____ Clerk ____ Other:

A copy of the entry was served either by mail to the address of record, deposited in the attorney's distribution box, or personally distributed to the following persons:

State of Indiana

Petitioner:

Date of notice:

Initial of person who notified parties: ____ Court ____ Clerk ____ Other

Distribution to: _____ County Clerk, Probation Department, Sheriff

Law Enforcement:

Services and Treatment Providers:



Indiana Public Defender Council

APPENDIX C

STATE OF INDIANA	) IN THE	_____ COURT No. _____
	) SS:	
COUNTY OF _____	) CAUSE NO.	_____
)	
STATE OF INDIANA,)	
	)	<i>Petition should be filed under an</i>
v.	)	<i>XP cause number, IC 35-38-9-1(c)</i>
	)	civil filing fees are required
	)	unless reduced or waived by
_____,	)	the court IC 35-38-9-8(d)
Petitioner.)	

VERIFIED PETITION FOR EXPUNGEMENT/SEALING OF
CONVICTION RECORDS UNDER I.C. 35-38-9-2, 35-38-9-3, 35-38-9-4, AND 35-38-9-5
INCLUSIVE

Petitioner affirms under the penalties of perjury:

1. Petitioner's full name is:

2. Petitioner has also been known under the following names/aliases:

3. Petitioner's date of birth is:

4. Petitioner's Social Security Number is:

5. Petitioner's Indiana Driver's License # is:

6. Petitioner's addresses from the date of the arrest to the date of this Petition are:

7. The law enforcement agency(s) that arrested the petitioner for all arrests seeking to be sealed and or convictions seeking to be expunged contained within this petition include:

8. No current criminal charges or investigations are pending against Petitioner and Petitioner is not currently participating in a pretrial diversion program. IC 35-38-9-(b)(5).
9. Petitioner has not committed another crime within the time periods referenced as required by IC 35-38-9-8(b)(6) below under I.C. 35-38-9-2(c), 35-38-9-3(c), 35-38-9-4(c), 35-38-9-5(c) or the lesser period of time agreed upon by the Prosecuting Attorney.
10. Petitioner has successfully paid all fines, fees, and court costs, and satisfied any restitution obligation imposed on the person as part of the sentence if applicable for any and all criminal arrest(s) and or charge(s) contained within this petition for which a sealing and or expungement is sought.
11. Petitioner has served a copy of this Verified Petition for Expungement upon the Prosecuting Attorney in accordance with the Indiana Rules of Trial Procedure.
12. The case(s) including any collateral actions:

13. As a result of the cases noted in this petition, Petitioner received services or treatment from the following providers under court order:

14. Petitioner's original cause number, including any collateral actions, offense(s), and on or about the date of conviction, and result of the charge are detailed below:

[illegible]

moves the Court to expunge Petitioner's Felony records pursuant to I.C. 35-38-9-4 and or I.C. 35-38-9-5.

Petitioner certifies that for all I.C. 35-38-9-4 cases for which expungement is being sought, at least eight (8) years have passed since the most recent date of the conviction(s), or at least three (3) years from the completion of the Petitioner's sentence, whichever is later OR the prosecuting attorney has provided written consent for a shorter elapsed time period, which is evidenced as an exhibit to this Verified Petition.

Petitioner certifies that for all I.C. 35-38-9-5 cases for which expungement is being sought, at least ten (10) years have passed since the most recent date of the conviction(s), or at least five (5) years from the completion of the Petitioner's sentence, whichever is later OR the prosecuting attorney has provided written consent for a shorter elapsed time period, which is evidenced as an exhibit to this Verified Petition. Prosecutor has also provided written consent for the granting of this expungement.

Petitioner's IC section for which expungement is being sought, including any collateral actions, original cause number, offense(s), and on or about the date of conviction and arrest, are detailed below:

[illegible]

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

WHEREFORE, Petitioner respectfully requests this Court to seal the criminal records contained in: the Court's files; the files of the Indiana Department of Correction; the files of the Indiana Bureau of Motor Vehicles; the files of any other person who provided treatment or services to Petitioner under a court order; the central repository for criminal history information maintained by the Indiana State Police that relate to the Petitioner's arrest, and all other just and proper relief.

I affirm under the penalties of perjury that the foregoing representations are true.

Signature of Petitioner

Printed Name of Petitioner

CERTIFICATE OF SERVICE

I certify that on the same date contemporaneous with the filing of this petition a true and complete copy of this Verified Petition for Expungement was served on the following via hand delivery:

State of Indiana, _____, County Prosecuting Attorney

Or this petition was served by first class, United States mail, postage prepaid or by other means set forth in Trial Rule 6E and or on a different date,

specifically _____.

Signature of Petitioner

Printed Name of Petitioner

STATE OF INDIANA	) IN THE	_____ COURT No. _____
	) SS:	
COUNTY OF _____	) CAUSE NO.	_____
)	
STATE OF INDIANA,)	
v.)	
)	
_____)	
Petitioner.)	

**FINDINGS AND ORDER ON PETITIONER’S VERIFIED PETITION FOR
EXPUNGEMENT/SEALING**

Petitioner, _____, pro se/by counsel, filed his/her Verified

Petition for Expungement/Sealing on _____, 20_____.

The State of Indiana, by counsel, filed its Response to Petitioner’s Verified Petition for

Expungement/Sealing on _____, 20_____.

Petitioner’s petition seeks relief as provided by I.C. 35-38-9 for expungement / sealing of his

conviction record.

FINDINGS

The Court now finds by a preponderance of the evidence:

1. Petitioner's Verified Petition for Sealing / Expungement complies with the requirements of I.C. 35-38-9-8.
2. Petitioner's date of birth is .
3. Petitioner's social security number is .
4. Petitioner's Indiana driver's license number is .
5. Except as provided in I.C. 35-38-9-1 and IC 35-38-9-9(j) and (k) Petitioner has only filed one (1) Verified Petition for Expungement in his or her lifetime.
6. The periods required by I.C. 35-38-9-2(c), 35-38-9-3(c), 35-38-9-4(c), and 35-38-9-5(c) has elapsed or a shorter period has been agreed to by the Prosecuting Attorney.
7. No charges or criminal investigations are pending against Petitioner;
8. Petitioner has paid all fines, fees and court costs and satisfied any restitution obligation imposed as a part of the sentence on all cause numbers for which expungement / sealing is sought; and
9. Petitioner has not committed or been convicted of a crime within the time periods referenced below under I.C. 35-38-9-2(c), 35-38-9-3(e)(4), 35-38-9-4(e)(4), 35-38-9-5(e)(4) or the lesser period of time agreed upon by the Prosecuting Attorney.

ORDER

It is therefore ORDERED, ADJUDGED, and DECREED that Petitioner's Petition to Expunge/Seal Arrest Record is GRANTED. Petitioner's records shall be sealed / expunged as follows. With respect to Petitioner's I.C. 35-38-9-2 and 35-38-9-3 Conviction records noted below the conviction records, including any collateral actions, to be expunged pursuant to this order include the following:

Petitioner I.C. 35-38-9-2 and 35-38-9-3 Conviction Record

[illegible]

Petitioner's conviction records shall be expunged in accordance with I.C. 35-38-9-6. This Court Order is confidential pursuant to IC 35-38-9-10(i). It is, therefore, ordered as follows:

1. The following agencies and entities are hereby prohibited from releasing Petitioner's records or information in Petitioner's records to anyone without a court order, other than a law enforcement officer acting in the course of the officer's official duty:

- a. The Indiana Department of Correction;
- b. The Indiana Bureau of Motor Vehicles;
- c. Each law enforcement agency, person, or entity who incarcerated, provided treatment for, or provided other services for the person under an order of the court; and

2. It is therefore Ordered that all local, regional, or statewide law enforcement agencies, including the Indiana State Police Central Repository for Criminal History Information, seal Petitioner's expunged conviction records, including but not limited to convictions in this cause, counts that were dismissed, counts where there was a finding of not guilty, and any reference to an arrest are prohibited from disclosing said records to anyone except:

- A. a prosecuting attorney if authorized by a court order and needed to carry out its official duties;

B. a defense attorney if authorized by a court order and needed to carry out its official duties;

C. a probation department if authorized by a court order and necessary to prepare a presentence report;

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 supreme court; members, employees, and the executive director of 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 regulation adopted pursuant to said statute.

3. The Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court, is ordered to seal any records in the clerk's possession that relate to the expunged conviction records including but not limited to convictions in this cause, counts that were dismissed in this cause, counts where there was a finding of not guilty in this cause and any reference to an arrest in this cause

4. Except as provided in I.C. 35-38-9-6(c) and notwithstanding I.C. 35-38-9-6(d), the records of the sentencing court, a juvenile court, the Court of Appeals of Indiana, and the Indiana Supreme Court concerning Petitioner represented shall be permanently sealed.

5. If any of the expunged conviction records were appealed, the Clerk shall also send a copy of this Order to the Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court.

6. The Indiana Supreme Court and the Court of Appeals of Indiana shall redact the name of the petitioner in any opinion or memorandum decision, so that it does not include the Petitioner's name, and provide a redacted copy of such opinion or memorandum decision to any publisher or organization that publishes the opinion or memorandum decision as required by I.C. 35-38-9-6(c).

7. If Petitioner is obligated to register as a sex offender based on the commission of the felony which has been expunged, such registration obligation is not altered by this order nor does this order affect the operation of the sex offender registry web site, any person's ability to access the petitioner's records, records required to be maintained concerning sex or violent offenders, however the expunged conviction(s) must be clearly marked as expunged on the sex offender registry web site.

8. Petitioner shall be treated as if Petitioner had never been convicted of the offense. However, upon subsequent arrest or conviction for an unrelated offense, the expunged conviction: (1) may be considered by the Court in determining the sentence imposed for the new offense; (2) is a prior unrelated conviction for the purposes of a habitual offender enhancement and enhancing the new offense based on a prior conviction; and (3) may be admitted as evidence in the proceeding for a new offense as if the conviction had not been expunged.

With respect to Petitioner's I.C. 35-38-9-4 and 35-38-9-5 Conviction records noted below the conviction records to be expunged, including any collateral actions pursuant to this order include the following:

Petitioner I.C. 35-38-9-4 and 35-38-9-5 Conviction Record

[illegible]

Petitioner's conviction records shall be expunged in accordance with I.C. 35-38-9-7. This Court Order is confidential pursuant to IC 35-38-9-10(i). It is, therefore, ordered as follows:

1. The court records and other public records relating to the arrest, conviction, or sentence of Petitioner shall remain public records, but that the records shall be clearly and visibly marked or identified as being "Expunged."
2. The following agencies and entities in possession of records that relate to the conviction ordered to be marked as "Expunged" shall add an entry to Petitioner's record of arrest, conviction, or sentence in the criminal history database stating that the records are marked as "Expunged:
 - a. The Indiana Department of Correction;
 - b. The Indiana Bureau of Motor Vehicles;
 - c. Each law enforcement agency, person, or entity who incarcerated, provided treatment for, or provided other services for the person under an order of the court; and
3. Petitioner shall be treated as if Petitioner had never been convicted of the offense. However, upon subsequent arrest or conviction for an unrelated offense, the expunged conviction: (1) may be considered by the Court in determining the sentence imposed for the new offense; (2) is a prior unrelated conviction for the purposes of a habitual offender enhancement and enhancing the new offense based on a prior conviction; and (3) may be admitted as evidence in the proceeding for a new offense as if the conviction had not been expunged.
4. Petitioner's civil rights shall be restored, including the right to vote, to hold public office, to serve as a juror.
5. This Court Order is confidential pursuant to I.C. 35-38-9-10(i)

6. The Clerk shall send a copy of this Order to all parties of record or their attorneys and the following agencies:

- a. The Indiana Department of Correction;
- b. The Indiana Bureau of Motor Vehicles;
- c. Each law enforcement agency, person, or entity who incarcerated, provided treatment for, or provided other services for the person under an order of the court. These agencies include:

Law Enforcement:

Services and Treatment Providers:

SO ORDERED this _____ day of _____, 20____.

JUDGE _____

PROOF OF NOTICE Notice to be given by: ____ Court ____ Clerk ____ Other:

A copy of the entry was served either by mail to the address of record, deposited in the attorney's distribution box, or personally distributed to the following persons:

State of Indiana:

Petitioner:

Date of notice:

Initial of person who notified parties: ____ Court ____ Clerk ____ Other

Distribution to: _____	County Clerk, Probation Department, Sheriff
Indiana State Police Records Division	Office of the Indiana Attorney General
Indiana Bureau of Motor Vehicles	Indiana Department of Correction
Clerk of the Appellate Courts	Odyssey Case Management System

Law Enforcement:

Services and Treatment Providers:

APPENDIX D

Verified Petition for Expungement of Juvenile Delinquency Records

STATE OF INDIANA)
)SS:
 _ COUNTY) CAUSE NO:

IN THE MATTER OF
 THE EXPUNGEMENT OF JUVENILE
 DELINQUENCY RECORDS OF :

**VERIFIED PETITION FOR EXPUNGEMENT OF JUVENILE DELINQUENCY
 RECORDS**

I, _ , state the following in support of this Verified Petition for
 Expungement of Juvenile Delinquency Records filed pursuant to IC 31-39-8:

1. I was arrested for or charged with the following delinquent acts that I am seeking to expunge:

[LIST OFFENSE]	[DATE OF ADJUDICATION]	[CASE/CAUSE NUMBER]

2. The allegation(s)/petition(s) were filed in the _ Court.

3. The law enforcement agency employing the charging officer is _ , if known.

4. I was born on _ .

5. My Social Security Number is _ .

6. [Check one of the following.]

_ I have had NO other juvenile delinquency, child in need of services, or adult cases or charges AFTER the case(s) I am trying to expunge.

_ I have had other juvenile delinquency, child in need of services, or adult cases or charges AFTER the case(s) I am trying to expunge as follows:

[LIST OFFENSE]	[CASE/CAUSE NUMBER]

Wherefore, I respectfully request the Court order that all records, paper or electronic, be removed from the files of the Court, all law enforcement agencies, and/or all service providers involved in my case[s].

I also request that all paper records be destroyed and that electronic data from those records be maintained by the Court on a secure database that does not enable my identification to the public or another person not having legal or statutory authority to access said records.

I affirm under penalties of perjury that the above information is true to the best of my knowledge and belief.

Respectfully submitted,

Printed name

Signature

Date

I hereby certify that on [DATE], a true and accurate copy of this document was served upon each party or attorney of record herein and to the Prosecuting Attorney of
- County.

Signature

APPENDIX E

Verified Petition for Expungement of Juvenile Delinquency (MARION COUNTY ONLY)



MARION COUNTY PUBLIC DEFENDER AGENCY

2605 E. 25th STREET, SUITE 100

INDIANAPOLIS, INDIANA 46218

PHONE (317) 327-8207 FAX (317) 327-3806

ROBERT J. HILL
Public Defender

JUVENILE EXPUNGEMENT PACKET

It is possible to have your juvenile court record expunged. What does it mean to have your record expunged? This means you can get your juvenile arrest history and delinquency history deleted.

If you get an expungement the court will destroy your juvenile records or give them to you. This may help you when applying for jobs, the military, housing or college.

You can request expungement at any time. This packet will tell you how to apply for expungement and includes the form that you fill out to start the process.

The court will not grant an expungement for everyone who asks. But this packet will give you helpful tips to improve your chance of success.



MARION COUNTY PUBLIC DEFENDER AGENCY

2605 E. 25th STREET, SUITE 100

INDIANAPOLIS, INDIANA 46218

PHONE (317) 327-8207 FAX (317) 327-3806

ROBERT J. HILL
Public Defender

FREQUENTLY ASKED QUESTIONS

What is the first step?

Fill out the Application for Expungement of Records form. This form is on the last page of this packet. Turn in your form to the Marion County Juvenile Clerk's Office on the 3rd Floor of the Juvenile Justice Center at 2451 N. Keystone Ave. Indianapolis, IN.

What happens next?

The court will review your application. Sometimes the court will grant your expungement without a court hearing. If this happens you will get a letter in the mail telling you that your expungement is granted. If the court wants to hear from you in person before deciding whether or not to expunge your records, you will get a letter in the mail telling you when your court date is. It is very important that you show up on at the Juvenile Justice Center on this court date.

Do I need a lawyer?

You do not have to have a lawyer, but you can hire one to represent you if you want.

I can't afford a lawyer. Can I get a court-appointed lawyer?

Yes, the court can appoint a court-appointed lawyer for you. This person is called a Public Defender.

How much does it cost?

There is cost no for expungement.

Why should I expunge my records?

You may want to apply for a job, the military, college, housing or just put a bad decision behind you. Youth make mistakes and the law allows you an opportunity to ask the court to expunge your record.



MARION COUNTY PUBLIC DEFENDER AGENCY

2605 E. W^{'''} STREET, SUITE 100

INDIANAPOLIS, INDIANA 46218

PHONE (317) 327-8207 FAX (317) 327-3806

ROBERT J. HILL
Public Defender

Once the judge orders my records expunged, how long does it take for my records to be destroyed or given to me?

The court must order the police and any one that worked with you because of your connection to the police or court to send their records to the court. Typically, it takes 6-8 weeks for all the records.

Can I apply again if my expungement is denied?

Yes, there is no limit in the Juvenile law on how many times you can apply .

How old do I have to be to apply?

There is no specific age you have to be to apply. However, the court is more likely to grant your request if you are 18 or older.

Can I apply if I am on probation?

Yes, but it is unlikely that the court will expunge your juvenile record if you are still on probation.

What should I bring to the court hearing?

Anything that you think might be helpful. Some examples include: high school diploma, proof of GED, letter from your employer, letter from a character reference, letter from a military recruiter, or any awards you may have received. You may also bring people who can tell the court about you and the good things you are doing with your life.

What if I lose the application or it gets torn or dirty, can I get another copy?

You may get another one from the Clerk's Office or the Public Defender Agency, Juvenile Division.



MARION COUNTY PUBLIC DEFENDER AGENCY

2605 E. 25TH STREET, SUITE 100

INDIANAPOLIS, INDIANA 46218

PHONE (317) 327-8207 FAX (317) 327-3806

ROBERT J. HILL
Public Defender

HELPFUL TIPS

Bring things that are helpful to show the court at your expungement hearing. For example:

- Report card
- High school diploma
- Proof of GED
- Pay stub
- Reference letter from your employer, teacher, pastor, mentor or coach
- Awards you have earned
- College acceptance letter or class schedule
- Things you think help show the judge you are making better choices and doing well
- People who can tell the court about you and the good things you are doing with your life

Be prepared to tell the judge why you want your record expunged. There is no right or wrong answer. But the judge will want to know why this is important to you.

Dress appropriately. If you own or can borrow a suit or other dress clothes, this is the time to come to court looking your best.



Marion County Clerk's Office
Juvenile Division
2451 N. Keystone
Indianapolis, IN 46218
317-327-8300

APPLICATION FOR EXPUNGEMENT OF RECORDS

Name: _____

Address: _____

Birth day: _____ Birth place: _____ SSN: _____

Phone: _____ Marital Status: ☐ Single ☐ Married ☐ Divorced

How long have you resided in Indianapolis? _____ If you have lived outside of Marion County,
list name of City, County, State and length of residency for each location: _____

Have you served in the Armed Forces? ☐ Yes ☐ No If yes, please indicate which branch, date of service
and type of discharge: _____

Work Experience: Current Employer: _____
Date of employment: _____ Job Title: _____

Education History: Did you graduate from High School or obtain a GED? ☐ Yes ☐ No

If you did not graduate or obtain a GED, please indicate reason: _____

Did you attend College? ☐ Yes ☐ No Name of College: _____
Dates Attended: _____ Type of Degree Earned: _____

Arrest History

Have you ever been arrested outside of Marion County as a Juvenile? ☐ Yes ☐ No
If you answered Yes, please indicate where, dates and reason for referral: _____

Have you ever been arrested inside or outside of Marion County since you turned 18? ☐ Yes ☐ No
If you answered Yes, please indicate where, dates, and results of those arrests: _____

Have you ever been arrested for a traffic offense? ☐ Yes ☐ No

Do you currently have a valid driver's license? ☐ Yes ☐ No

Please state briefly (be specific) your reason for this court to expunge your record(s): _____

I affirm that the above information is true and correct to the best of my knowledge:

Date

Signature

PLEASE NOTE: THIS APPLICATION IS ONLY FOR EXPUNGEMENT OF JUVENILE ARRESTS IN MARION COUNTY; IF YOU HAVE JUVENILE ARRESTS IN OTHER COUNTIES YOU MUST APPLY TO EACH COUNTY INDIVIDUALLY.



Indiana Public Defender Council

APPENDIX F

Request for Removal from the DNA Database

Request for Removal from the DNA Database

Your DNA sample has been collected in accordance with state law (IC 10-13-6) for inclusion in the Combined DNA Index System (CODIS). CODIS is a national computer data base used by law enforcement to create leads for unsolved crimes.

In accordance with IC 10-13-6-18(c), a person whose DNA profile has been included in the Indiana DNA data base on the basis of the person's arrest for one (1) or more felonies may request removal of the profile from the DNA data base on the grounds that:

- 1) all of the person's felony convictions have been reversed and the cases dismissed; or
- 2) the person was acquitted of all the felony charges, or all of the felonies were converted to misdemeanors under IC 35-38-1-1.5 or IC 35-50-2-7; or
- 3) all felony charges against the person were dismissed.

A person to whom IC 10-13-6-18(c) applies may request DNA removal by obtaining a certified copy of a court order evidencing a basis for removal described in subdivisions (1) through (3) and transmitting the certified copy of the order with a copy of this completed form to the Indiana State Police.

In accordance with IC 10-13-6-18(d), a person whose DNA profile has been included in the Indiana DNA data base on the basis of the person's arrest for one (1) or more felonies may request removal of the profile from the DNA data base on the grounds that three hundred sixty-five (365) days have elapsed since the person's arrest and no felony charges have been filed against the person.

A person to whom IC 10-13-6-18(d) applies must submit this completed form to the prosecuting attorney of the county in which the person was arrested.

NOTE: You do not qualify to have your DNA profile removed from CODIS if you have additional felony convictions that are not subject to IC 10-13-6-18(c)(1).

I, _____, Date of Birth _____, had my DNA sample

Print full name (First, Middle, Last) (MM/DD/YYYY)

collected upon arrest on or about the date of _____ in _____ County.

(MM/DD/YYYY) Indiana County of arrest

I request that my DNA profile be removed from the Combined DNA Index System (CODIS) and any remaining sample destroyed for the reason selected below.

- ☐ All of my felony convictions have been reversed and the cases dismissed.
- ☐ I was acquitted of all felony charges or all felonies were converted to misdemeanors.
- ☐ All felony charges against me were dismissed.
- ☐ 365 days have elapsed since my arrest and no felony charges have been filed against me.

I declare under penalty of law that the above is true and correct.

Signature of person requesting removal

Date



Indiana Public Defender Council

APPENDIX G

Sample Follow Up Letter to Record-Keeping Agencies

LETTERHEAD

DATE

Indiana State Central Repository
100 N. Senate Avenue N301
Indianapolis, IN 46204

INSERT OTHER POLICE AGENCIES IF
APPLICABLE

INSERT IND. BUREAU OF MOTOR VEHICLES IF APPLICABLE INSERT IND. DEPT OF CORRECTIONS IF
APPLICABLE

Re: Expungement Petitions
 CLIENT NAME
DOB: CLIENT DOB
SS#: CLIENTSS#
Cause Nbr.s CLIENT CAUSE NUMBER(S)

Dear Sir or madam:

Please find enclosed a copy of two Orders granting my client's petitions to expunge in the above captioned matters. Please take all steps necessary to ensure that any record of Mr/Ms. CLIENTLASTNAME arrest or charges are expunged and removed from any public access. Please contact me immediately if you have any issues or concerns with the form of the Court's Orders.

Best regards,

ATTORNEY NAME

Encls: (##)

APPENDIX H

Sample Admin Rule 9 Form for Expungement Petition(s)

STATE OF INDIANA) IN THE _____ COURT
)SS: _____, ROOM _____
COUNTY OF _____) CAUSE NO.: _____

IN RE THE PETITION FOR)
EXPUNGEMENT OF CONVICTION)
RECORDS OF:)
_____,)
Petitioner.)

**Administrative Rule 9(G)(5) Notice of Exclusion
of Confidential Information from Public Access
(FILED WITH TRIAL COURT CLERK)**

Contemporaneous with the filing of this notice, _____ has filed
confidential information on green paper in accordance with Administrative Rule 9(G)(6).

Pursuant to Administrative Rule 9(G)(5), _____, provides this notice that the
confidential information contained on that green paper is to remain excluded from public access in
accordance with **Administrative Rule 9(G)(2)(f)**:

- **Confidential Information Form listing Petitioner's full Social Security Number**

NOT PUBLIC RECORD

Confidential Information Form

[THIS FORM MUST BE PRINTED OF GREEN PAPER]

1 XP CAUSE NUMBER: _____

2 PETITIONER'S NAME: _____

3 PETITIONER'S FULL SOCIAL SECURITY NUMBER:

4 _____

NOT PUBLIC RECORD