

**EXPUNGEMENT 2015  
I.C. 35-38-9**

**Digest for Court Staff and Clerks**

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

Type of Petition:	Type of criminal cases eligible:	Handling for Filing:
Arrest, No Conviction	Arrest, <b>criminal charges</b> , or delinquent child allegations that: <ul style="list-style-type: none"> <li>• <u>did not result</u> in conviction or juvenile</li> </ul>	<b>Per Chapter 44 of the Trial Court Administration Manual:</b> <ul style="list-style-type: none"> <li>○ Petition must be verified.<sup>5</sup></li> <li>○ Petition is to be filed:<sup>6</sup></li> </ul>

Type of Petition:	Type of criminal cases eligible:	Handling for Filing:
Petitions filed under IC 35-38-9-1	<p>adjudication<sup>1</sup>; or</p> <ul style="list-style-type: none"> <li>resulting conviction or juvenile adjudication <u>was vacated on appeal</u><sup>2</sup></li> </ul> <p>To be eligible for relief, petitioner must not be currently participating in a pre-trial diversion program.<sup>3</sup></p> <p><b>Waiting period:</b>  <b>One (1) year</b> following the date of:</p> <ol style="list-style-type: none"> <li>arrest;</li> <li>criminal charge;</li> <li>juvenile delinquency allegation;</li> <li>vacation of conviction by appellate court<sup>4</sup></li> </ol> <p><b>whichever is later.</b></p> <ol style="list-style-type: none"> <li>Prosecutor may consent to shorter waiting period</li> </ol>	<ul style="list-style-type: none"> <li>in a circuit or superior court in the county where the criminal charges or juvenile delinquency allegation was filed, or</li> <li>If no criminal charges or delinquency allegation was filed, in the county where the arrest occurred.</li> </ul> <ul style="list-style-type: none"> <li><b>New cause number required:</b> <ul style="list-style-type: none"> <li>Expungement case should be filed under new cause number using <b>new XP case type</b><sup>7</sup></li> <li>No filing fee<sup>8</sup></li> </ul> </li> <li>One petition may address multiple arrests or charging incidents, but an “arrest, no conviction” petition may not also include arrests that resulted in convictions.<sup>9</sup></li> <li><b>Confidentiality of XP case records:</b><sup>10</sup>the petition, case file, and all documents filed in the case are <b>open to public until the order granting</b> the expungement is issued.           <ul style="list-style-type: none"> <li>Because the petition must contain <b>petitioner’s SSN</b>, petition should consist of following documents:               <ul style="list-style-type: none"> <li>» Petition (white paper with petitioner’s SSN redacted)</li> <li>» Confidential information form containing petitioner’s SSN (<b>green paper</b>)</li> <li>» AR 9(G)(1) Notice (white paper)</li> </ul> </li> </ul> </li> </ul>
<p><b>Convictions</b></p> <p>Petitions filed under:</p> <ul style="list-style-type: none"> <li>IC 35-38-9-2,</li> <li>IC 35-38-9-3,</li> <li>IC 35-38-9-4, and</li> <li>IC 35-38-9-5.</li> </ul>	<p><b>“Section 2”:</b> misdemeanors and D felonies (level 6 felonies) alternatively sentenced as misdemeanors</p> <ol style="list-style-type: none"> <li>35-38-9-8.5(b): offense punishable under law other than I.C. 35-50 that would be a misdemeanor at time of filing petition<sup>11</sup></li> </ol> <ul style="list-style-type: none"> <li><b>Waiting period: 5 years</b> after date of conviction</li> </ul> <p><b>“Section 3”:</b> D felonies (level 6 felonies) not</p>	<p><b>Per Chapter 44 of the Trial Court Administration Manual:</b></p> <ul style="list-style-type: none"> <li>Petition must be verified.<sup>15</sup></li> <li>Petition is to be filed in the circuit or superior court in the county of conviction.<sup>16</sup></li> <li><b>New cause number required:</b> <ul style="list-style-type: none"> <li>Expungement case should be filed under new cause number utilizing <b>new “XP” case type</b>.<sup>17</sup> (single petition may address convictions entered under multiple criminal cause numbers)</li> </ul> </li> </ul>

Type of Petition:	Type of criminal cases eligible:	Handling for Filing:
	<p>resulting in bodily injury</p> <ul style="list-style-type: none"> <li>○ 35-38-9-8.5(c): offense punishable under law other than I.C. 35-50 that would be a level 6 felony at time of filing petition and not excluded by I.C. § 35-38-9-3(b)<sup>12</sup></li> <li>○ <b>Waiting period: 8 years</b> after date of conviction</li> </ul> <p><b>“Section 4”:</b> other non-excluded felonies not resulting in serious bodily injury</p> <ul style="list-style-type: none"> <li>○ 35-38-9-8.5(d): offense punishable under law other than I.C. 35-50 that cannot be expunged under section 3 and is not excluded by I.C. § 35-38-9-4(b)<sup>13</sup></li> <li>○ <b>Waiting period:</b> <ul style="list-style-type: none"> <li>▪ <b>8 years</b> after date of conviction; or</li> <li>▪ <b>3 years</b> after completion of sentence</li> </ul> </li> </ul> <p><b>“Section 5”:</b> remaining non-excluded felonies with consent of the prosecutor bodily injury</p> <ul style="list-style-type: none"> <li>○ 35-38-9-8.5(c): offense punishable under law other than I.C. 35-50 that is a felony and is not excluded by I.C. § 35-38-9-5(b)<sup>14</sup></li> <li>○ <b>Waiting period:</b> <ul style="list-style-type: none"> <li>▪ <b>10 years</b> after date of conviction; or</li> <li>▪ <b>8 years</b> after completion of sentence</li> </ul> </li> <li>○ <b>Consent from prosecutor</b> is required</li> </ul>	<ul style="list-style-type: none"> <li>○ <b>Filing fee</b> for civil cases is required.<sup>18</sup> <ul style="list-style-type: none"> <li>▪ Can be waived upon a showing of indigency.</li> </ul> </li> <li>○ One petition, per county – all convictions entered in same county must be included in same petition<sup>19</sup></li> <li>○ <b>Confidentiality of the XP case:</b> the petition, case file, and all documents filed in the <b>case are open to public until the order granting</b> the expungement is issued<sup>20</sup>. <ul style="list-style-type: none"> <li>▪ Because the petition must contain petitioner’s SSN, petition should consist of following documents: <ul style="list-style-type: none"> <li>» Petition (white paper with petitioner’s SSN redacted)</li> <li>» Green confidential information form containing petitioner’s SSN</li> <li>» AR 9(G)(1) Notice (white paper)</li> </ul> </li> </ul> </li> </ul>

**Note:** Expungement/Sealing remedies provided under I.C. 35-38-5-5.5 and I.C. 35-38-8 no longer exist. Both of these statutes have been repealed effective July 1, 2013. This means that adult criminal records are never deleted or destroyed.

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

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
<p>“Section 1” Orders (IC 35-38-9-1(f))</p>	<ul style="list-style-type: none"> <li>○ Only pertains to “Section 1” petitions (Arrests, criminal charges, juvenile adjudications without convictions)</li> </ul>	<p><b>What will the expungement order accomplish?</b></p> <ul style="list-style-type: none"> <li>○ <b>Criminal History Information</b> -- <i>Removal of information</i> concerning: <ul style="list-style-type: none"> <li>▪ arrest,</li> <li>▪ criminal charges,</li> <li>▪ Juvenile delinquency allegation,</li> <li>▪ Vacated conviction</li> <li>▪ Vacated juvenile delinquency allegation</li> </ul>                     from “alphabetically arranged criminal history information system” maintained by Indiana State Police and/or local law enforcement agency<sup>21</sup> </li> <li>○ <b>Trial Court Records</b> -- Records of the following courts shall be <b>redacted or permanently sealed</b>:<sup>22</sup> <ul style="list-style-type: none"> <li>▪ sentencing court,</li> <li>▪ juvenile court,</li> <li>▪ court of appeals, and</li> <li>▪ supreme court</li> </ul> </li> <li>○ <b>Appellate Court Records</b><sup>23</sup> – <i>redaction or sealing required</i>: <ul style="list-style-type: none"> <li>▪ Records in clerk’s possession must be redacted or sealed</li> <li>▪ Opinions or memorandum decisions that appear on computer gateway must be redacted to remove petitioner’s name</li> </ul> </li> <li>○ <b>No change</b> or alteration required in: <ul style="list-style-type: none"> <li>▪ Internal records of law enforcement agency;</li> <li>▪ Records that relate to a deferral program<sup>24</sup></li> </ul> </li> </ul> <p><b>Descriptive Content of Order:</b></p> <ul style="list-style-type: none"> <li>○ Order must include the information described in I.C. § 35-38-9-1(c).<sup>25</sup></li> <li>○ <b>Essential information:</b> <ol style="list-style-type: none"> <li>1) date of the arrest, criminal charges, or juvenile delinquency allegation;</li> <li>2) date of conviction (if applicable);</li> <li>3) case number or court cause number;</li> </ol> </li> </ul>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<p>4) county of arrest, filing of information or indictment, or filing of juvenile delinquency allegation;</p> <p>5) law enforcement agency of arresting officer,</p> <p>6) name of the arresting officer;</p> <p>7) court in which the charges or allegations were filed;</p> <p><b>8) Petitioner:</b></p> <ul style="list-style-type: none"> <li>▪ name, aliases or other names;</li> <li>▪ DOB;</li> <li>▪ SSN;</li> <li>▪ driver's license number;</li> <li>▪ a list of each criminal charge and its disposition</li> </ul> <p><b>Practice Notes:</b></p> <ul style="list-style-type: none"> <li>○ Expungement <b><i>granted:</i></b> <ul style="list-style-type: none"> <li>▪ expungement case file and all records under the expungement cause number become a <u>confidential case file</u> under A.R. 9(G)(1)(a).</li> <li>▪ Order should be distributed on <u>green paper</u>.</li> </ul> </li> <li>○ Expungement <b><i>denied:</i></b> <ul style="list-style-type: none"> <li>▪ expungement case file and all records under the expungement cause number remain publicly accessible.</li> <li>▪ Order should be distributed on white paper.</li> </ul> </li> </ul>
<p>“Section 6” Orders (IC 35-38-9-6)</p>	<ul style="list-style-type: none"> <li>• <b>“Section 2” convictions</b> <ul style="list-style-type: none"> <li>○ Misdemeanor</li> <li>○ D Felonies (and level 6 felonies) reduced to Misdemeanors</li> </ul> </li> <li>• <b>“Section 3” convictions</b> <ul style="list-style-type: none"> <li>○ D Felonies (and level 6 felonies) with <b>no bodily injury</b></li> </ul> </li> <li>• Order on a petition that</li> </ul>	<p><b>What will the expungement order accomplish:</b></p> <ul style="list-style-type: none"> <li>○ <b>Records in possession of</b> <ul style="list-style-type: none"> <li>➤ <b>Indiana DOC;</b></li> <li>➤ <b>Indiana BMV;</b></li> <li>➤ <b>Law enforcement agency who incarcerated, provided treatment or services;</b></li> <li>➤ <b>Other person who provided treatment services:</b><sup>26</sup></li> </ul> </li> <li>▪ release to anyone without court order is prohibited;</li> <li>▪ <b>exception:</b> law enforcement officer acting in the course of official duty.</li> </ul>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
	<p>addresses convictions under multiple cause numbers may contain both a “Section 6” order and a “Section 7” order</p> <ul style="list-style-type: none"> <li>• <b>Note:</b> this order addresses the handling of the <b>conviction case records only</b>. Handling of the expungement case file is addressed by I.C. § 35-38-9-10(i).</li> </ul>	<ul style="list-style-type: none"> <li>○ <b>Records in possession of ISP Central Records Depository:</b><sup>27</sup> <ul style="list-style-type: none"> <li>▪ Expunged conviction records must be <b><i>sealed</i></b>.</li> <li>▪ <b><i>May be disclosed</i></b> to: <ul style="list-style-type: none"> <li>» <u>Prosecutor and/or defense attorney</u> if: <ul style="list-style-type: none"> <li>• Court order; and</li> <li>• Necessary to professional duties</li> </ul> </li> <li>» <u>Probation department</u> if: <ul style="list-style-type: none"> <li>• Court order; and</li> <li>• Necessary to prepare presentence report <ul style="list-style-type: none"> <li>» <u>FBI and DHS</u></li> <li>» <u>Supreme Court</u>, ISBLE (executive director and employees) for purpose of determining if applicant to bar has good moral character</li> <li>» Person complying with Secure and Fair Enforcement Mortgage Licensing Act (<b>12 U.S.C. 5101 et seq.</b>)</li> <li>» Indiana BMV, the Federal Motor Carrier Administration, and the Commercial Drivers License Information System (CDLIS) when disclosure is required under IC 9-24-6-2(d)</li> </ul> </li> </ul> </li> </ul> </li> </ul> </li> <li>○ <b>Trial Court’s File and Records:</b><sup>28</sup> <ul style="list-style-type: none"> <li>▪ “permanently sealed”</li> <li>▪ <b><i>No one outside of court administrative personnel gets access</i></b> without first obtaining a court order.</li> <li>▪ <b><u>Exception:</u></b> <u>Prosecutor</u> may submit written application to court<sup>29</sup></li> <li>▪ Court’s paper file should be clearly marked “EXPUNGED PER IC 35-38-9-6, Permanently Sealed”, <b>so court staff</b> will know that the file may not be given to anyone without court order.</li> <li>▪ Court case records <b><i>should not appear</i></b> on public access website.</li> </ul> </li> <li>○ <b>Appellate Court’s File and Records:</b><sup>30</sup> <ul style="list-style-type: none"> <li>▪ Petitioner’s name is redacted from the opinion or memorandum</li> </ul> </li> </ul>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<p>decision as it appears on the computer gateway; and</p> <ul style="list-style-type: none"> <li>▪ Redacted copy of opinion is provided to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement.</li> <li>▪ The supreme court and court of appeals are not required to destroy or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner's name.</li> </ul> <p><b>Descriptive content of order:</b></p> <ul style="list-style-type: none"> <li>○ Order <b>must</b> contain information described in <b>section 8(b)</b>.<sup>31</sup></li> <li>○ Essential information: <ul style="list-style-type: none"> <li>○ Petitioner: <ol style="list-style-type: none"> <li>1) full name, other legal names or aliases;</li> <li>2) DOB;</li> <li>3) SSN;</li> <li>4) driver's license number;</li> <li>5) addresses (from the date of the offense to the date of the petition)</li> </ol> </li> <li>○ For each case resulting in one or more convictions: <ol style="list-style-type: none"> <li>1) the cause number or case number;</li> <li>2) date of arrest;</li> <li>3) location of arrest (city and county)</li> <li>4) date of conviction;</li> <li>5) If applicable, appellate cause number and the date of appellate decision</li> </ol> </li> </ul> </li> </ul> <p><b>Practice Notes:</b></p> <ul style="list-style-type: none"> <li>○ Expungement <b><i>granted:</i></b> <ul style="list-style-type: none"> <li>▪ expungement (XP) case file and all records under the expungement cause number become a <u>confidential case file</u> under A.R. 9(G)(1)(a).</li> <li>▪ Order should be distributed on <u>green paper</u>.</li> </ul> </li> <li>○ Expungement <b><i>denied:</i></b> <ul style="list-style-type: none"> <li>▪ expungement (XP) case file and all records under the expungement</li> </ul> </li> </ul>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<ul style="list-style-type: none"> <li>cause number remain publicly accessible. <ul style="list-style-type: none"> <li>▪ order should be distributed on white paper.</li> </ul> </li> </ul> <p><b>Collateral Impact of Expungement Order:</b></p> <ul style="list-style-type: none"> <li>○ Existing or pending <b>driver’s license suspension</b> will not be affected.<sup>32</sup></li> <li>○ <b>Sex Offender Registry:</b><sup>33</sup> <ul style="list-style-type: none"> <li>▪ sex offender registration requirement or any person's ability to access the person's records is not affected.</li> <li>▪ expunged convictions must be clearly marked as “expunged” on the sex offender registry web site. <ul style="list-style-type: none"> <li>» <b>Right to possess firearm</b> under Indiana Law.<sup>34</sup></li> </ul> </li> <li>▪ The right of a person convicted of a crime of domestic violence to possess a firearm may be restored <u>only</u> in accordance with IC 35-47-4-7</li> </ul> </li> </ul>
<p>“Section 7” Orders (IC 35-38-9-7)</p>	<ul style="list-style-type: none"> <li>• <b>“Section 4” convictions</b> <ul style="list-style-type: none"> <li>○ D felonies (and level 6 felonies) with bodily injury</li> <li>○ Other felonies – no serious bodily injury</li> </ul> </li> <li>• <b>“Section 5” convictions</b> <ul style="list-style-type: none"> <li>○ Remaining non-excluded felonies<sup>35</sup></li> </ul> </li> <li>• Order on a petition that addresses convictions under multiple cause numbers may contain both a “Section 6” order and a “Section 7” order</li> </ul>	<p><b>What will the expungement order accomplish:</b></p> <ul style="list-style-type: none"> <li>○ <b><i>Court records remain public record, but should be clearly marked EXPUNGED:</i></b><sup>36</sup> <ul style="list-style-type: none"> <li>▪ The court’s paper file and the paper copies of the judgment of conviction, sentencing order, probation order, and abstract of judgment should be clearly marked “EXPUNGED PER IC 35-38-9-7.”</li> <li>▪ All electronic records available via a public access website must be clearly marked expunged.</li> </ul> </li> <li>○ <b><i>Any public records related to arrest, conviction or sentence must be clearly marked EXPUNGED.</i></b><sup>37</sup></li> <li>○ <b><i>Records that relate to the conviction that are in the possession of:</i></b> <ul style="list-style-type: none"> <li>➤ <b><i>Indiana State Police,</i></b></li> <li>➤ <b><i>Bureau of Motor Vehicles, or</i></b></li> <li>➤ <b><i>Any Law Enforcement Agency</i></b><sup>38</sup></li> </ul> </li> <li>▪ Records shall be marked expunged; and</li> <li>▪ entry shall be added to the person's record of arrest, conviction, or</li> </ul>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<p>sentence in the criminal history data base stating that the record is marked as expunged</p> <p><b>Descriptive content of order:</b></p> <ul style="list-style-type: none"> <li>○ Order <b>must</b> contain information described in <b>section 8(b)</b>.<sup>39</sup></li> <li>○ Essential information: <ul style="list-style-type: none"> <li>▪ Petitioner: <ol style="list-style-type: none"> <li>1) full name, other legal names or aliases;</li> <li>2) DOB;</li> <li>3) SSN;</li> <li>4) driver's license number;</li> <li>5) addresses (from the date of the offense to the date of the petition)</li> </ol> </li> <li>▪ For each conviction: <ol style="list-style-type: none"> <li>1) the cause number or case number;</li> <li>2) date of arrest;</li> <li>3) location of arrest (city and county)</li> <li>4) date of conviction;</li> <li>5) If applicable, appellate cause number and the date of appellate decision</li> </ol> </li> </ul> </li> </ul> <p><b>Collateral Impact of Order:</b></p> <ul style="list-style-type: none"> <li>○ Expungement order does not affect an existing or pending driver's license suspension.<sup>40</sup></li> <li>○ Expungement order does not prevent the Indiana BMV from reporting conviction information to the Commercial Drivers License Information System (CDLIS) in compliance with IC 9-24-6-2(d)<sup>41</sup></li> </ul>

## Distribution of Orders

Parties:	1. Petitioner/Petitioner's Attorney
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	<ol style="list-style-type: none"> <li>2. County Prosecutor's Office</li> </ol>
<p>Entities and Service Providers in possession of records related to expunged cases:</p>	<ol style="list-style-type: none"> <li>1. County Clerk</li> <li>2. County Sheriff's Dept.</li> <li>3. All local service providers who are in possession of records related to expunged cases.</li> <li>4. All local law enforcement agencies who are in possession of records related to expunged cases.</li> <li>5. Attorney for and local law enforcement entity required to act under order. <b>(Required under TR 4.6(A)(4))</b></li> <li>6. Indiana State Police  Attn: Records Division  100 N Senate Ave., Room N301 (East)  Indianapolis, IN 46204  <a href="mailto:Expungement@isp.in.gov">Expungement@isp.in.gov</a> </li> <li>7. Office of the Indiana Attorney General <b>(Required by TR 4.6(A)(3))</b>  Indiana Government Center South, 5th Floor  302 W. Washington Street  Indianapolis, IN 46204</li> </ol>
<p>Entities that MAY possess records related to expunged cases:</p>	<ol style="list-style-type: none"> <li>1. Indiana Supreme Court  STAD – Court Technology  30 S. Meridian Street, Ste. 500  Indianapolis, Indiana 46204  [only if a NO CONTACT ORDER was issued in one or more of the expunged cases as a condition of BOND.]</li> <li>2. Clerk of the Appellate Courts  216 State House</li> </ol>

	<p>200 West Washington Street Indianapolis, IN 46204 [only if one or more of the expunged cases was appealed.]</p> <p>3. Indiana Bureau of Motor Vehicles IGC North, Room 402 100 North Senate Avenue Indianapolis, IN 46204 <a href="mailto:courtdocuments@bmv.in.gov">courtdocuments@bmv.in.gov</a> <b>[only if Petitioner's Official Driver Record contains entries related to any of the expunged cases]</b></p> <p>4. Indiana Department of Correction Attn: Records Division 302 W. Washington Street, Room E-334 Indianapolis, IN 46204 <a href="mailto:rshort@idoc.in.gov">rshort@idoc.in.gov</a> <b>[only if 1) Petitioner had a conviction in any of the expunged cases, and 2) Petition sentenced to executed time in the DOC]</b></p>
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## Steps in Odyssey

### XP Case:

1. Create XP
2. Assess filing fees when applicable.
3. Add PESR (Petition to Expunged/Sealed Filed)
4. Add appropriate Order Event: (OGPE) Order Granting Petition to Expunge/Seal or (ODPE) Order Denying Petition to Expunge/Seal

5. The Order Granting event will make the case confidential.
6. The Order Denying will leave the case public.

## Underlying Criminal Case:

1. Section 1 Orders that Grant the Sealing of the case: Add the (SP1): Sealed Pursuant to Section1 of 35-38-9 event.
2. The event will seal the case and add a case flag and message that the case should not be disclosed outside od Court or Clerk without Court authorization.
3. Section 6 Orders grant the sealing of the case: Add the (SP6): Sealed Pursuant to section 6 of 35-38-9 event. The event will seal the case and add a case flag and message that the case should not be disclosed outside od Court or Clerk without Court authorization.
4. Section 7 Orders granting the case to be expunged: Add (SP7): Expunged pursuant to Section 7 of 35-38-9 event. The case will remain public.

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

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

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

- did not result in a conviction or juvenile adjudication;

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

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

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

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(B) resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal;

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

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

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

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<sup>4</sup> **I.C. § 35-38-9** provides no direction as to how convictions vacated by a trial court via a post conviction relief proceedings should be treated.

<sup>5</sup> **I.C. § 35-38-9-1(c)**.

<sup>6</sup> **I.C. § 35-38-9-1(c)**:

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

<sup>7</sup> *Order*, Indiana Supreme Court, Cause No: 94S00-1501-MS-22, March 19, 2015.

<sup>8</sup> **I.C. § 35-38-9-1(c)**:

. . .A person who files a petition under this section is not required to pay a filing fee.

<sup>9</sup> **I.C. § 35-38-9** now specifies that while no filing fee may be assessed for petitions that address arrest or juvenile adjudications that did not result in a conviction, a file fee is required for petitions that pertain to convictions.

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

An expungement case, and all documents filed in the case, becomes confidential when the court issues the order granting the petition. However, until the court issues the order granting the petition, documents filed in the case are not confidential, and any hearing held in the case shall be open.

<sup>11</sup> **I.C. § 35-38-9-8.5(b)**:

- (a) This section applies only to a person seeking to expunge an Indiana offense punishable by an indeterminate sentence under a law other than IC 35-50.
- (b) 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 section 2 of this chapter.

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<sup>12</sup> **I.C. § 35-38-9-8.5(c)**:

- (a) This section applies only to a person seeking to expunge an Indiana offense punishable by an indeterminate sentence under a law other than IC 35-50.
- (c) If the offense for which the person was convicted:

- (1) is a Level 6 felony at the time the person files the petition for expungement; and
- (2) is not substantially similar to an offense described in section 3(b) of this chapter;

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<sup>13</sup> **I.C. § 35-38-98.5(d)**:

- (a) This section applies only to a person seeking to expunge an Indiana offense punishable by an indeterminate sentence under a law other than IC 35-50.
- (d) If:

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- (1) the person to whom this chapter applies may not seek expungement under section 3 of this chapter; and
  - (2) the offense the person seeks to expunge is not substantially similar to an offense described in section 4(b) of this chapter;
- the person may file the petition under section 4 of this chapter.

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<sup>14</sup> **I.C. § 35-38-9-8.5(e):**

If the offense for which the person was convicted:

- (1) is a felony at the time of filing the petition, including a felony described in section 5(a) of this chapter; and
- (2) is not substantially similar to an offense described in section 5(b) of this chapter;

the person may file the petition under section 5 of this chapter.

**I.C. § 35-38-9-5(b):**

This section does not apply to the following:

- (1) A sex or violent offender (as defined in IC 11-8-8-5).
- (2) A person convicted of official misconduct (IC 35-44.1-1-1).
- (3) A person convicted of an offense described in:
  - a. IC 35-42-1;
  - b. IC 35-42-3.5; or
  - c. IC 35-42-4.
- (4) A person convicted of two (2) or more felony offenses that:
  - a. involved the unlawful use of a deadly weapon; and
  - b. were not committed as part of the same episode of criminal conduct.

<sup>15</sup> **I.C. § 35-38-9-8(b):**

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

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<sup>16</sup> I.C. § 35-38-9-2(d), I.C. § 35-38-9-3(d), I.C. § 35-38-9-4(d), and I.C. § 35-38-9-5(d).

<sup>17</sup> *Order*, Indiana Supreme Court, Cause No: 94S00-1501-MS-22, March 19, 2015.

<sup>18</sup> **I.C. § 35-38-9-8(d):**

A person who files a petition under this section is required to pay the filing fee required in civil cases. The court may reduce or waive this fee if the person is indigent.

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

This subsection applies only to a petition to expunge conviction records filed under sections 2 through 5 of this chapter. This subsection does not apply to a petition to expunge arrest records under section 1 of this chapter. A petitioner may seek to expunge more than one (1) conviction at the same time. The

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petitioner shall consolidate all convictions that the petitioner wishes to expunge from the same county in one (1) petition. A petitioner who wishes to expunge convictions from separate counties must file a petition in each county in which a conviction was entered.

**<sup>20</sup> I.C. § 35-38-9-10(i):**

An expungement case, and all documents filed in the case, becomes confidential when the court issues the order granting the petition. However, until the court issues the order granting the petition, documents filed in the case are not confidential, and any hearing held in the case shall be open.

**<sup>21</sup> I.C. § 35-38-9-1(f)(1):**

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

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

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**<sup>22</sup> I.C. § 35-38-9-1(f)(3):**

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

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- (1) 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

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

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

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- 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:
  - 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
  - provide a redacted copy of the opinion to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement.

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

**<sup>24</sup> I.C. § 35-38-9-1(h):**

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(h) However, This chapter does not require any change or alteration in:

- (1) any internal record made by a law enforcement agency at the time of the arrest and not intended for release to the public; or
- (2) records that relate to a diversion or deferral program.

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

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

**I.C. § 35-38-9-1(c):**

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

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

<sup>26</sup> **I.C. § 35-38-9-6(a)(1):**

Order:

- (A) the department of correction;
- (B) the bureau of motor vehicles; and
- (C) each:
  - (i) law enforcement agency; and
  - (ii) other person;

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

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<sup>27</sup> **I.C. § 35-38-9-6(a)(2):**

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

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- Order the central repository for criminal history information maintained by the state police department to seal the person's expunged conviction records. Records sealed under this subdivision may be disclosed only to:
    - a prosecuting attorney, if:
      - authorized by a court order; and
      - needed to carry out the official duties of the prosecuting attorney;
    - a defense attorney, if:
      - authorized by a court order; and
      - needed to carry out the professional duties of the defense attorney;
    - a probation department, if:
      - authorized by a court order; and
      - necessary to prepare a presentence report; and
    - 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;
    - the:
      - 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; and
- a person required to access expunged records to comply with the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.) or regulations adopted under the Secure and Fair Enforcement for Mortgage Licensing Act.
  - the bureau of motor vehicles, the Federal Motor Carrier Administration, and the Commercial Drivers License Information System (CDLIS), if disclosure is required to comply with IC 9-24-6-2(d) relating to reporting a conviction for a violation of a traffic control law.

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**<sup>28</sup> I.C. § 35-38-9-6(b):**

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

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

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

**<sup>29</sup> I.C. § 35-38-9-6(d):**

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

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prosecuting attorney who submits a written application under this subsection shows that the records are relevant for a new prosecution of the person, the court that granted the expungement petition shall:

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

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

<sup>30</sup> **I.C. § 35-38-9-6(c)**

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

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

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

<sup>31</sup> **I.C. § 35-38-9-6(g)**

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

**I.C. § 35-38-9-8(b):**

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

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

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(15) The petitioner shall describe any other petitions that the petitioner has filed under this chapter.

(16) For a petition filed under section 5 of this chapter, the petitioner shall attach a copy of the prosecuting attorney's written consent.

**<sup>32</sup> I.C. § 35-38-9-6(b):**

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

**<sup>33</sup> I.C. § 35-38-9-6(e):**

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

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

**<sup>34</sup> I.C. § 35-38-9-6(f):**

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

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

This section does not apply to the following:

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

**<sup>36</sup> I.C. § 35-38-9-7(b):**

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

**<sup>37</sup> I.C. § 35-38-9-7(b).**

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

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

**<sup>39</sup> I.C. 35-38-9-7(d):**

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

**I.C. § 35-38-9-8(b):**

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

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

- (A) the petitioner's Social Security number;
- (B) the petitioner's driver's license number;
- (C) the date of the petitioner's arrest, if applicable; and
- (D) the date on which the petitioner was convicted.

1. The petitioner shall affirm that the required period has elapsed or attach a copy of the prosecuting attorney's written consent to a shorter period.
2. The petitioner shall describe any other petitions that the petitioner has filed under this chapter.
3. For a petition filed under section 5 of this chapter, the petitioner shall attach a copy of the prosecuting attorney's written consent.

<sup>40</sup> **I.C. § 35-38-9(b):**

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

<sup>41</sup> **I.C. § 35-38-9-7(c):**

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