

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

Digest On Orders

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New XP case type: effective July 1, 2015, expungement case should be filed under cause number using ***new XP case type***¹

Confidentiality of XP case records: the petition, case file, and all documents filed in the case are ***open to public until the order granting*** the expungement is issued.

- Because the ***petition*** must contain ***petitioner’s SSN***, petition should consist of following documents:
 - Petition (white paper with petitioner’s SSN redacted)
 - Confidential information form containing petitioner’s SSN (***green paper***)

- AR 9(G)(1) Notice (white paper)
- Expungement **granted:**
 - expungement case file and all records under the expungement cause number become a confidential case file under A.R. 9(G)(1)(a).
 - Order should be distributed on green paper.
- Expungement **denied:**
 - expungement case file and all records under the expungement cause number remain publicly accessible.
 - Order should be distributed on white paper.

Note reference old expungement statutes: 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 Both of these statutes have been repealed effective July 1, 2013.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?
“Section 1” Orders (IC 35-38-9-1(f))	<ul style="list-style-type: none"> • Only pertains to “Section 1” petitions (Arrests, criminal charges, juvenile adjudications without convictions) 	What will the expungement order accomplish? <ul style="list-style-type: none"> • Criminal History Information -- Removal of information concerning: <ul style="list-style-type: none"> ○ arrest, ○ criminal charges, ○ Juvenile delinquency allegation, ○ Vacated conviction ○ Vacated juvenile delinquency allegation from “alphabetically arranged criminal history information system” maintained by Indiana State Police and/or local law enforcement agency² • Trial Court Records -- Records of the following courts shall be redacted or permanently sealed:³ <ul style="list-style-type: none"> ○ sentencing court, ○ juvenile court, ○ court of appeals, and

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<ul style="list-style-type: none"> ○ supreme court ● Appellate Court Records⁴ – redaction or sealing required: <ul style="list-style-type: none"> ○ Records in clerk’s possession must be redacted or sealed ○ Opinions or memorandum decisions that appear on computer gateway must be redacted to remove petitioner’s name ● No change or alteration required in: <ul style="list-style-type: none"> ○ Internal records of law enforcement agency; ○ Records that relate to a deferral program⁵ <p>Descriptive Content of Order:</p> <ul style="list-style-type: none"> ● Order must include the information described in I.C. § 35-38-9-1(c).⁶ ● Essential information: <ul style="list-style-type: none"> ○ date of the arrest, criminal charges, or juvenile delinquency allegation; ○ date of conviction (if applicable); ○ case number or court cause number; ○ county of arrest, filing of information or indictment, or filing of juvenile delinquency allegation; ○ law enforcement agency of arresting officer, ○ name of the arresting officer; ○ court in which the charges or allegations were filed; ○ Petitioner: <ul style="list-style-type: none"> ▪ name, aliases or other names; ▪ DOB; ▪ SSN; ▪ driver's license number; ▪ a list of each criminal charge and its disposition
<p>“Section 6” Orders</p> <p>(IC 35-38-9-6)</p>	<ul style="list-style-type: none"> ● “Section 2” convictions <ul style="list-style-type: none"> ○ Misdemeanor 	<p>What will the expungement order accomplish:</p> <ul style="list-style-type: none"> ● Records in possession of <ul style="list-style-type: none"> ➤ Indiana DOC; ➤ Indiana BMV;

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
	<ul style="list-style-type: none"> ○ D Felonies (and level 6 felonies) reduced to Misdemeanors ● “Section 3” convictions <ul style="list-style-type: none"> ○ D Felonies (and level 6 felonies) with no bodily injury ● Order on a petition that addresses convictions under multiple cause numbers may contain both a “Section 6” order and a “Section 7” order ● Note: this order addresses the handling of the conviction case records only. Handling of the expungement case file is addressed by I.C. § 35-38-9-10(i). 	<ul style="list-style-type: none"> ➤ Law enforcement agency who incarcerated, provided treatment or services; ➤ Other person who provided treatment services:⁷ <ul style="list-style-type: none"> ○ release to anyone without court order is prohibited; ○ exception: law enforcement officer acting in the course of official duty. ○ BMV exception: BMV is still permitted to report information about a conviction for a violation of a traffic control law to the CDLIS.⁸ ● Records in possession of ISP Central Records Depository:⁹ <ul style="list-style-type: none"> ○ Expunged conviction records must be <i>sealed</i>. ○ <i>May be disclosed</i> to: <ul style="list-style-type: none"> ▪ <u>Prosecutor and/or defense attorney</u> if: <ul style="list-style-type: none"> ● Court order; and ● Necessary to professional duties ▪ <u>Probation department</u> if: <ul style="list-style-type: none"> ● Court order; and ● Necessary to prepare presentence report ▪ <u>FBI and DHS</u> ▪ <u>Supreme Court</u>, ISBLE (executive director and employees) for purpose of determining if applicant to bar has good moral character ▪ Person complying with Secure and Fair Enforcement Mortgage Licensing Act (12 U.S.C. 5101 et seq.) ▪ 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) ● Trial Court’s File and Records:¹⁰ <ul style="list-style-type: none"> ○ “permanently sealed” ○ <i>No one outside of court administrative personnel gets access</i> without first obtaining a court order. ○ Exception: <u>Prosecutor</u> may submit written application to court¹¹

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<ul style="list-style-type: none"> ○ Court’s paper file should be clearly marked “EXPUNGED PER IC 35-38-9-6, Permanently Sealed”, so court staff will know that the file may not be given to anyone without court order. ○ Court case records <i>should not appear</i> on public access website. <p>• Appellate Court’s File and Records:¹²</p> <ul style="list-style-type: none"> ○ Petitioner’s name is redacted from the opinion or memorandum decision as it appears on the computer gateway; and ○ 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. ○ 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. <p>Descriptive content of order:</p> <ul style="list-style-type: none"> • Order must contain information described in section 8(b).¹³ • Essential information: <ul style="list-style-type: none"> ○ Petitioner: <ul style="list-style-type: none"> ▪ full name, other legal names or aliases; ▪ DOB; ▪ SSN; ▪ driver's license number; ▪ addresses (from the date of the offense to the date of the petition) ○ For each conviction: <ul style="list-style-type: none"> ▪ the cause number or case number; ▪ date of arrest; ▪ location of arrest (city and county) ▪ date of conviction; ▪ If applicable, appellate cause number and the date of appellate decision <p>Collateral Impact of Expungement Order:</p>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<ul style="list-style-type: none"> • Existing or pending driver’s license suspension will not be affected.¹⁴ • Sex Offender Registry:¹⁵ <ul style="list-style-type: none"> ○ sex offender registration requirement or any person's ability to access the person's records is not affected. ○ expunged convictions must be clearly marked as “expunged” on the sex offender registry web site. • Right to possess firearm under Indiana Law:¹⁶ <ul style="list-style-type: none"> ○ The right of a person convicted of a crime of domestic violence to possess a firearm may be restored <u>only</u> in accordance with IC 35-47-4-7
<p>“Section 7” Orders (IC 35-38-9-7)</p>	<ul style="list-style-type: none"> • “Section 4” convictions <ul style="list-style-type: none"> ○ D felonies (and level 6 felonies) with bodily injury ○ Other felonies – no serious bodily injury • “Section 5” convictions <ul style="list-style-type: none"> ○ Remaining non-excluded felonies¹⁷ • Order on a petition that addresses convictions under multiple cause numbers may contain both a “Section 6” order and a “Section 7” order 	<p>What will the expungement order accomplish:</p> <ul style="list-style-type: none"> • <i>Court records <u>remain public record, but should be clearly marked EXPUNGED:</u></i>¹⁸ <ul style="list-style-type: none"> ○ 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.” ○ All electronic records available via a public access website must be clearly marked expunged. • <i>Any public records related to arrest, conviction or sentence must be clearly marked EXPUNGED.</i>¹⁹ • <i>Records that relate to the conviction that are in the possession of:</i> <ul style="list-style-type: none"> ➤ <i>Indiana State Police</i> ➤ <i>Bureau of Motor Vehicles</i> ➤ <i>Any Law Enforcement Agency</i>²⁰ <ul style="list-style-type: none"> ○ Records shall be marked expunged; and ○ entry shall be added to the person's record of arrest, conviction, or sentence in the criminal history data base stating that the record is marked as expunged <p>Descriptive content of order:</p>

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
		<ul style="list-style-type: none"> • Order must contain information described in section 8(b).²¹ • Essential information: <ul style="list-style-type: none"> ○ Petitioner: <ul style="list-style-type: none"> ▪ full name, other legal names or aliases; ▪ DOB; ▪ SSN; ▪ driver's license number; ▪ addresses (from the date of the offense to the date of the petition) ○ For each conviction: <ul style="list-style-type: none"> ▪ the cause number or case number; ▪ date of arrest; ▪ location of arrest (city and county) ▪ date of conviction; ▪ If applicable, appellate cause number and the date of appellate decision <p>Collateral Impact of Order:</p> <ul style="list-style-type: none"> • Expungement order does not affect an existing or pending driver's license suspension.²² • 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)²³

Distribution of Orders:

Parties:	<ol style="list-style-type: none"> 1. Petitioner/Petitioner's Attorney 2. County Prosecutor's Office
Entities and Service Providers in possession	<ol style="list-style-type: none"> 1. County Clerk

<p>of records related to expunged cases:</p>	<ol style="list-style-type: none"> 2. County Sheriff's Dept. 3. All local service providers who are in possession of records related to expunged cases. 4. All local law enforcement agencies who are in possession of records related to expunged cases. 5. Attorney for and local law enforcement entity required to act under order. (Required under TR 4.6(A)(4)) 6. Indiana State Police <ul style="list-style-type: none"> Attn: Records Division 100 N Senate Ave., Room N301 (East) Indianapolis, IN 46204 Expungement@isp.in.gov 7. Office of the Indiana Attorney General (Required by TR 4.6(A)(3)) <ul style="list-style-type: none"> Indiana Government Center South, 5th Floor 302 W. Washington Street Indianapolis, IN 46204
<p>Entities that MAY possess records related to expunged cases:</p>	<ol style="list-style-type: none"> 1. Indiana Supreme Court <ul style="list-style-type: none"> 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.] 2. Clerk of the Appellate Courts <ul style="list-style-type: none"> 216 State House 200 West Washington Street Indianapolis, IN 46204 [only if one or more of the expunged cases was appealed.]

	<p>3. Indiana Bureau of Motor Vehicles IGC North, Room 402 100 North Senate Avenue Indianapolis, IN 46204 courtdocuments@bmv.in.gov [only if Petitioner’s Official Driver Record contains entries related to any of the expunged cases]</p> <p>4. Indiana Department of Correction Attn: Records Division 302 W. Washington Street, Room E-334 Indianapolis, IN 46204 rshort@idoc.in.gov [only if 1) Petitioner had a conviction in any of the expunged cases, and 2) Petition sentenced to executed time in the DOC]</p>
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¹ Order, Indiana Supreme Court, Cause No: 94S00-1501-MS-22, March 19, 2015.

² **I.C. § 35-38-9-1(f)(1):**

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

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

³ **I.C. § 35-38-9-1(f)(3):**

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

- (3) the records of:
- (A) the sentencing court;
 - (B) a juvenile court;
 - (C) a court of appeals; and
 - (D) the supreme court;

concerning the person shall be redacted or permanently sealed; and

⁴ I.C. § 35-38-9(f)(4):

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

(4) with respect to the records of a person who is named as an appellant or an appellee in an opinion or memorandum decision by the supreme court or the court of appeals, the court shall:

(A) redact the opinion or memorandum decision as it appears on the computer gateway administered by the office of technology so that it does not include the petitioner's name (in the same manner that opinions involving juveniles are redacted); and

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

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

⁵ I.C. § 35-38-9-1(h):

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

(1) any internal record made by a law enforcement agency at the time of the arrest and not intended for release to the public; or

(2) records that relate to a diversion or deferral program.

⁶ I.C. § 35-38-9-1(g):

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

I.C. § 35-38-9-1(c):

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

(1) the date of the arrest, criminal charges, or juvenile delinquency allegation, and conviction (if applicable);

(2) the county in which the arrest occurred, the county in which the information or indictment was filed, and the county in which the juvenile delinquency allegation was filed, if applicable;

(3) the law enforcement agency employing the arresting officer, if known;

(4) the court in which the criminal charges or juvenile delinquency allegation was filed, if applicable;

(5) any other known identifying information, such as:

(A) the name of the arresting officer;

(B) case number or court cause number;

(C) any aliases or other names used by the petitioner;

(D) the petitioner's driver's license number; and

(E) a list of each criminal charge and its disposition, if applicable;

(6) the date of the petitioner's birth; and

(7) the petitioner's Social Security number.

⁷ I.C. § 35-38-9-6(a)(1):

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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.

⁸ **I.C. § 35-38-9-6(c)(second sentence in paragraph):**

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

⁹ **I.C. § 35-38-9-6(a)(2):**

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

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

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

¹⁰ 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.

¹¹ I.C. § 35-38-9-6(d):

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

- (1) order the records to be unsealed; and

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.

¹² 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.

¹³ I.C. § 35-38-9-6(g)

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

I.C. § 35-38-9-8(b):

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

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

¹⁴ 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.

¹⁵ 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.

¹⁶ 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.

¹⁷ 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

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(C) IC 35-42-4.

¹⁸ 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. . .

¹⁹ I.C. § 35-38-9-7(b).

²⁰ 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.

²¹ I.C. 35-38-9-7(d):

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

I.C. § 35-38-9-8(b):

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

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

²² 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.

²³ I.C. § 35-38-9-7(c):

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. . . 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 [sic] 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.