

Expungement

Digest on Orders

I.C. 35-38-9

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NOTICE TO PUBLIC

This information is written to assist trial courts and circuit clerks. Please do not contact our office with questions because Indiana Supreme Court policies do not permit our office to provide legal advice to the public. We recommend that any person with questions about their case seek the advice of a licensed attorney. The Indiana Coalition for Court Access (<https://indianalegalhelp.org/>) can assist in finding low-cost legal help. Additionally, the Indiana Coalition for Court Access and Bar Associations provide options if you do not qualify for low-cost legal aid.

Expungement Case Type

Under Ind. Admin. Rule 8(B)(3), expungement cases are filed using the XP case type.

Expungement Procedure

The petition, case file, and all documents filed in the expungement case are open to the public until an order granting the expungement is issued. Pursuant to Ind. Access to Court Records Rule 5(c)(1), because the petition must contain the petitioner's SSN, the confidential information shall be filed on green paper (if paper filing) or filed as a confidential document (if e-filed). A separate document with the confidential information redacted shall be filed on white paper (if paper filing) or filed as a public document (if e-filing). A separate A.C.R Form, found in the Appendix to the Ind. Access to Court Records Rules, identifying the information excluded from public access and the Rule 5 grounds for exclusion shall also be filed.

If the expungement is granted, the expungement case file and all records under the

expungement case number become a confidential case file under A.C.R. Rule 5(A)(1); Ind. Code 35-38-9-10(i).

If the expungement is denied, the expungement case file and all records under the expungement case number remain publicly accessible.

The expungement statute is a restricted use and sealing statute. Court records are not deleted or destroyed under I.C. 35-38-9.

Collateral actions are also subject to expungement when they relate to a conviction, arrest, and/or a vacated delinquency adjudication or conviction.

- Collateral action is defined as 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. The term includes a proceeding or action concerning a seizure, a civil forfeiture, and a petition for specialized driving privileges. I.C. 35-38-9-0.5.
- Pursuant to I.C. 35-38-9-9.5, upon receipt of a request to expunge records related to a collateral action and a properly certified expungement order, a circuit or superior court in the county in which the collateral action occurred shall consider the following procedural requirements:
 - Notify the prosecuting attorney of the county in which the court is located of the request and set the matter for hearing; or
 - If the record conclusively establishes that the petitioner is entitled to an expungement of records related to a collateral hearing, the court may grant the request without a hearing;
 - If the underlying expungement was granted under sections 1 through 3 the records of the collateral action shall be expunged or marked as expunged (for an expungement granted under sections 4 through 5 of this chapter), unless the court finds that the collateral action does not

- relate to the expunged arrest or conviction;
 - A request to expunge a collateral action may be made at any time after the original expungement order is issued;
 - The petition should, if possible, be filed under the cause of the collateral action; and
- A filing fee is not required.

Expungement Orders – I.C. 35-38-9

If the court issues an order granting a petition for expungement under sections 2 through 5, the court shall include in its order the information described in section 10(c)(the person's civil rights have been fully restored). I.C. 35-38-9-6(i).

Section 1 Orders

These orders apply to both automatic expungements and petitions brought under I.C. 35-38-9-1 involving arrests, criminal charges, or juvenile adjudications without convictions, arrests that resulted in only infractions, or convictions that have been expunged. When granted, the petition will result in the removal of information concerning:

- arrest;
- criminal charges;
- juvenile delinquency allegation;
- vacated conviction; and
- vacated juvenile delinquency allegation

from the "alphabetically arranged criminal history information system" maintained by the Indiana State Police and/or local or regional law enforcement agency. I.C. 35-38-9-1(h)(1).

Section 1 orders must include the information in I.C. 35-38-9-1(e), including the:

- 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's name, aliases, or other names;
- petitioner's DOB;
- petitioner's SSN;
- petitioner's driver's license number; and
- a list of each criminal charge and its disposition.

A Section 1 order requires redaction or permanent sealing of the records of the sentencing court, juvenile court, Court of Appeals, Supreme Court, and records that identify the petitioner in a collateral action. Records in the possession of the Appellate Clerk are also redacted or sealed, and opinions or memorandum decisions that appear on the computer gateway are also redacted to remove the petitioner's name. I.C. 35-38-9-1(h)(4).

IC 35-38-9-6 - Section 6 Orders

These orders apply only to petitions brought under I.C. 35-38-9-2 involving "Section 2" convictions (misdemeanors, and Class D felonies and Level 6 felonies reduced to misdemeanors) and "Section 3" convictions (Class D felonies and Level 6 felonies with no bodily injury).

When granted, the order will prohibit the release of conviction records, including any records relating to the conviction, any records relating to a collateral action, and an arrest or offense in which no conviction was entered that was committed as part of the same episode of conduct as the case ordered expunged in possession of the:

- Indiana DOC;
- Indiana BMV;

- law enforcement agency who incarcerated or provided treatment or services; or
- other person who provided treatment services. I.C. 35-38-9-6(a)(1).

Law enforcement officers acting in the course of their official duties may still access conviction records expunged under a Section 6 order. In addition, the BMV is still permitted to report information about a conviction for a violation of a traffic control law to the Commercial Driver's License Information System (CDLIS). I.C. 35-38-9-6(a)(3)(G); I.C. 35-38-9-7(c).

The expungement order requires the sealing of conviction records, and records of collateral actions, in possession of the Indiana State Police (ISP) Central Records Depository. These records may be disclosed to the following parties with a court order:

- Prosecutor and/or defense attorney, if necessary, to professional duties; and
- Probation department if necessary to prepare presentence report.

Expunged conviction records in possession of the ISP Central Records Depository may be disclosed to the following parties *without* a court order:

- FBI and Department of Homeland Security;
- Ind. Supreme Court, Board of Law Examiners (executive director and employees) to determine if an 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 CDLIS when disclosure is required under I.C. 9-24-6-2(d);
- Schools for the purposes of employment and/or to grant access or admission to the school to an applicant contractor or a contractor if the person, contractor, or applicant contractor is likely to have contact with a student enrolled in the school, regardless of the age of the student.

The trial court's paper file is marked as "EXPUNGED PER I.C. 35-38- 9-6, Permanently Sealed," so court staff will know that the file may not be given to anyone without court

order.

The appellate court should redact the petitioner's name from the opinion or memorandum decision as it appears on the computer gateway. A redacted copy of the 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. I.C. 35-38-9-6(c).

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.

Pursuant to I.C. 35-38-9-6(h), the Section 6 order must contain the information described in I.C. 35-38-9-8(b), including:

- Petitioner:
 - 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:
 - 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; and
 - all collateral actions.

A Section 6 order will not affect an existing or pending driver's license suspension. I.C. 35-38-9-6(b). A Section 6 order will also not affect the sex offender registration requirement or any person's ability to access the offender's records on the sex offender registry web site

entry regarding the conviction that is clearly marked as “expunged”.

The right of a person convicted of a crime of domestic violence to possess a firearm is restored only in accordance with I.C. 35-47-4-7, even if the crime is expunged.

IC 35-38-9-7 - Section 7 Orders

These orders apply only to:

- “Section 4” convictions
 - Class D and Level 6 felonies with bodily injury;
 - other felonies with no serious bodily injury except those excluded by I.C. 35-38-9-4(b); and
- “Section 5” convictions except the felonies excluded by I.C. 35-38-9-5(b).

When a Section 7 order is issued, court records, including the court’s paper file and paper copies of the judgment of conviction, sentencing order, probation order, and abstract of judgment, remain public record, but are clearly marked “EXPUNGED PER I.C. 35-38-9-7.”

Any public records related to the petitioner’s arrest, conviction, collateral action, or sentence are clearly marked “EXPUNGED,” as well as all electronic records available via a public access website. I.C. 35-38-9-7(b).

When a Section 7 order is granted, records that relate to the conviction, and any records concerning a collateral action, in the possession of the:

- Indiana State Police;
- Bureau of Motor Vehicles; or
- any law enforcement agency

are marked expunged, and an entry is added to the person’s record of arrest, conviction, or sentence in the criminal history database stating that the record is marked as expunged.

I.C. 35-38-9-7(c).

Pursuant to I.C. 35-38-9-7(d), the Section 7 order must contain the information described in I.C. 35-38-9-8(b), including:

- Petitioner:
 - 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:
 - the cause number or case number;
 - date of arrest;
 - location of arrest (city and county);
 - date of conviction;
 - the appellate cause number and the date of appellate decision, if applicable; and
 - all collateral actions

A Section 7 expungement order does not affect an existing or pending driver's license suspension (I.C. 35-38-9-7(b)) and does not prevent the Indiana BMV from reporting conviction information to the Commercial Driver's License Information System (CDLIS). I.C. 35-38-9-7(c).

Section 6 and Section 7 expungement orders must also indicate that all records under I.C. 35-38-9-1(h) (arrest records), that relate to the expunged conviction, must also be sealed, or redacted in accordance with I.C. 35-38-9-1. *See* I.C. 35-38-9-6(g); I.C. 35-38-9-7(e).

As of July 1, 2021:

A criminal history provider also includes an entity that "regularly publishes criminal history information on the Internet or regularly makes criminal history information available through the Internet." I.C. 24-4-18-2.

A criminal history provider (as defined in I.C. 24-4-18-2) that provides a criminal history report containing an expunged conviction is subject to the penalties

described in IC 24–4–18–8. See I.C. 35-98-9-12.

Distribution of Expungement Orders

All expungement orders are distributed to the petitioner, the petitioner’s attorney, and the county prosecutor’s office.

Expungement orders are also distributed to all entities in possession of records related to the expunged case(s), including:

- County Clerk;
- County Sheriff’s Department;
- All service providers and law enforcement agencies who are in possession of records related to expunged cases;
- The attorney for a local law enforcement entity required to act under the order (required by Trial Rule 4.6(A)(4));
- The Indiana State Police
 - Attn: Records Division
 - 100 N. Senate Ave., Rm. N301 (East)
 - Indianapolis, IN 46204
 - Expungement@isp.in.gov
- Other entities may also possess records related to expunged cases. If any of these circumstances apply, the expungement order is also sent to:
 - **if a no contact order was issued in one or more of the expunged cases.**
 - Indiana Supreme Court, Office of Court Services—Court Technology
 - 251 N. Illinois Street, Suite 700
 - Indianapolis, IN 46204
 - **if one or more of the expunged cases were appealed**
 - Clerk of the Appellate Court

216 State House
200 West Washington Street
Indianapolis, IN 46204

- **if Petitioner's Official Driver Record contains entries related to any of the expunged cases**

Indiana Bureau of Motor Vehicles IGC North, Room 402
100 North Senate Avenue Indianapolis, IN 46204
courtdocuments@bmv.in.gov

- **if Petitioner had a conviction in any of the expunged cases and was sentenced to executed time in the DOC**

Indiana Department of Correction
Attn: Records Division
302 W. Washington Street, Room E-334
Indianapolis, IN 46204_
ltyle1@idoc.in.gov