

# Expungement

## The “Expungement” Statutes

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### NOTICE TO PUBLIC

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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 (<https://indianalegalhelp.org/what-if-i-dont-qualify/>) and Bar Associations provide options if you do not qualify for low-cost legal aid.

The Indiana expungement statutes continue to experience yearly modifications. Ind. Code 35-38-9 continues to provide the current procedures and provisions related to this topic.

#### **Recent amendments:**

- I.C. 35-38-9-1 now permits expungements for an arrest if the criminal charges, or juvenile delinquency allegation, resulted in an adjudication for an infraction.
- Previously, expungements under IC 35-38-9-1 were prohibited while a person was participating in a pretrial diversion program. Beginning July 1, 2022, those participating in a pretrial diversion program may seek expungement if authorized by the prosecuting attorney.
- IC 35-38-9-1(b) now provides for automatic expungements of arrests in certain circumstances:
  - If a court dismisses all criminal charges or juvenile delinquency allegations filed and pending against a person (IC 35-38-9-1(b)(1)):

- one (1) year has passed since juvenile delinquency allegations were filed against a child and there is no disposition; and the state is not actively prosecuting the allegations (I.C. 35-38-9-1(b)(2)); or
  - If in a criminal trial a defendant is acquitted of all charges, or the defendant's conviction is later vacated; or if in a juvenile proceeding the court finds all allegations not true, or the juvenile's true finding is later vacated (I.C. 35-38-9-1(b)(3));
- the court shall immediately order all records related to the criminal charges or juvenile delinquency allegations expunged. An expungement order that is issued based on non-prosecution under subdivision (2) goes into effect immediately. An expungement order issued under subdivision (1) or (3) may not go into effect earlier than sixty (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 case which justifies a delay, the court may delay implementation of an expungement order under subdivision (1) or (3) for up to one (1) year from the date of the dismissal, acquittal, or no true finding.
- IC 35-38-9-1(c) permits an individual to petition a court exercising criminal jurisdiction in the county if:
  - The person is arrested, and one (1) year has elapsed since the date of the arrest; and no charges are pending against the person;

Upon receipt of the petition, the judge shall immediately order the expungement of all records related to the arrest. Expungement under this subsection does not shorten the statute of limitations. A prosecutor may still file a charge under this subsection.

- **Exemptions:**

I.C. 35-38-9-0.6 exempts from alteration an internal record made by a:

- law enforcement agency; or
- public defender agency;

that is not intended for release to the public.

- A nonpublic record that relates to a diversion or deferral program; or
- A disciplinary record or proceeding as it relates to a, certification, or public entity.

### **Collateral Actions:**

- I.C. 35-38-9-0.5 defines collateral action, a new term added to the statute, as follows:

“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. The term includes a proceeding or action concerning a seizure, a civil forfeiture, and a petition for specialized driving privileges.
- 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 a 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

- No filing fee is required.

In 2019 there were also two new procedural changes:

- If the statute is amended after expungement has been granted in a manner which provides greater relief to a petitioner, the petitioner may file a petition for a supplemental order of expungement in the court that granted the expungement which “succinctly set forth the relief the petitioner seeks.” I.C. 35-38-9-9(l).
- If the court finds that the petitioner was granted relief prior to the amendment, and that the petitioner is otherwise entitled to the relief set forth in the amendment, the court shall grant the supplemental petition consistent with the amendment. I.C. 35-38-9-9(l).

If an expungement of a conviction is granted under any section, the court shall also order the petitioner’s arrest records, as set forth in I.C. 35-38-9-1(h), related to the conviction(s) also expunged. I.C. 35-38-9-6(g); I.C. 35-38-9-7(e).

Further guidance for trial court judges, court staff, and clerks is available in other chapters related to expungements. See:

- Expungement – Digest for Judges
- Expungement – Digest for Court Staff and Clerks
- Expungement – Digest on Orders.

Although the title of this law indicates some conviction records will be expunged, this is not a traditional expungement where records are destroyed. Instead, I.C. 35-38-9 provides a method to seal some arrest and conviction records and restrict the use of other conviction records. **Court records are not deleted or destroyed under I.C. 35-38-9.**

## **Other Methods to Expunge or Restrict Access to Court Records**

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### **Expungement of Juvenile Records - I.C. 31-39-8-1, et seq.**

Records created because of an allegation that a child is a delinquent or a child in need of services may be expunged under I.C. 31-39-8-1, *et seq.* A person may petition the juvenile court to remove from the court’s files, the files of any law enforcement agency and the files of any other person who has provided services to a child under court order,

those records pertaining to the child's involvement in juvenile court proceedings. If the court grants the expungement, the statute directs that the court order each law enforcement agency and each person who provided treatment for the child to send that person's record to the court. The records then may either be destroyed or given to the person to whom the record pertains.

Statutory sections of note:

- Section 1.5 provides that the juvenile court in the county of the original action has exclusive jurisdiction of expungement petitions in JD and JC cases.
- Section 2 requires that electronic records from the files of the court, law enforcement agencies, and service providers are removed to a secure database inaccessible to the public or persons without legal or statutory authority for access.
- Section 3 establishes requirements to the contents of a petition, requires service upon the Prosecuting Attorney or Department of Child Services (as appropriate) and allows them 30 days to reply or object, and allows the court to rule without a hearing unless an objection is filed.
- Section 6 requires that upon the granting of an expungement petition, the records are destroyed except that
  - court records will be maintained on a secure database that does not identify the offender to the public or other persons who do not have legal or statutory authority to access the records and
  - the records may only be used for statistical analysis, research, and financial auditing.

Expungement orders entered in juvenile cases are confidential under Ind. Access to Court Records Rule 5(A)(1).

### **Automatic Expungement of Juvenile Records - I.C. 31-39-8-3.5**

The section applies to the records of a child adjudicated a delinquent child after June 30, 2021.

This section does not apply to the records of a child adjudicated a delinquent child for committing an act that would be a felony if committed by an adult or firearm related offenses pursuant to [IC 35-47-2](#) and/or [IC 35-47-10](#).

- When a child reaches nineteen (19) years of age, or one (1) year after the date on which the juvenile court discharges the child under [IC 31-37-20-7](#), whichever is later, the court shall, on its own motion and without holding a hearing, order expungement of the records relating to the child's delinquency adjudication that are not excluded under subsection (a) within sixty (60) days, unless the court finds, based on the nature of the delinquent act and the needs of the child, that automatic expungement under this section would not serve the interests of justice.

### **Expungement of Protection Orders – I.C. 34-26-7.5-1, et seq.**

Effective July 1, 2019, protective orders that were issued but subsequently terminated due to the:

- dismissal of the petition before a court hearing on the protection order;
- denial of the protection order upon the order of the court;
- failure of the plaintiff to appear at the court hearing on the protection order;
- a protection order was reversed or vacated by an appellate court; or
- A petition for a protection order was filed but the court did not grant the petition. I.C. 34-26-7.5-1(3) (effective July 1, 2020).

are subject to expungement.

The court *shall* grant relief if a petitioner can prove by a preponderance of the evidence that the protective order was terminated based upon one of the enumerated reasons.

Statutory sections of note:

- Expunged protective orders are sealed from public access but remain available to law enforcement agencies and courts;
- There is no waiting period to seek expungement;
- The petition must be filed in the court that issued or denied the protective order;
- The petitioner files the petition with the court and the court then redacts the petitioner's date of birth, SSN, and driver's license number from the petition, serves the petition on the plaintiff who originally sought the protection order, and sets the matter for hearing.
- The plaintiff who originally sought the protection order is entitled to appear at the hearing;
- If the original plaintiff waives the right to appear *and* the petition conclusively established that petitioner is entitled to relief, the court may grant the petition without a hearing.
- Upon the grant of expungement of a protection order, the court shall:
- Order the office of judicial administration to remove the protection order from the Indiana protective order registry established under I.C. 5-2-9-5.5; and
- Redact or permanently seal the court's own records relating to the protection order.
- Appellate opinions that vacate or reverse the issuance of protective order must be redacted to remove the name of the subject of the protection order.

### **Proceedings To Restrict Disclosure When a Person Is Not Convicted of An Infraction Or The Infraction Conviction Is Vacated - I.C. 34-28-5-15**

#### Automatic Proceedings

A court is required to act automatically in certain infraction cases. This requirement does not apply to individuals whose prosecution for an infraction

has been deferred.

The court must act to assist an individual charged with committing an infraction who:

- is not prosecuted or the charges are dismissed;
- is adjudged not to have committed the infraction, or
- is adjudged to have committed the infraction and the adjudication is subsequently vacated.

The judge in the court where the action was filed must 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.

#### [If The Court Failed to Act Automatically](#)

If the court should have automatically ordered the clerk not to disclose information related to the infraction but failed to do so, an individual may file a verified petition requesting non-disclosure. This petition may not be filed earlier than:

- 30 days after date of the judgment if the person was found not to have committed the infraction;
- 365 days after the order vacating the person's adjudication is final or 365 days after the opinion or memorandum decision vacating the adjudication is certified;
- 2 years after the alleged conduct or violation occurred if the person is not prosecuted;
- 30 days after the action is dismissed, provided a new action is not filed

#### [Special Provisions For Individuals Who Complete A Deferral Program Or Who Have Satisfied All Terms Of The Infraction Violation Judgment](#)

Individuals who have:



- successfully complete a deferral program or
- have satisfied the terms of the judgment imposed for the infraction violation may file a verified petition with the court to prohibit disclosure of information related to the infraction to a noncriminal justice organization or an individual.
- This petition may not be filed earlier than five (5) years after the individual whose prosecution for an infraction has been deferred; or who was found to have violated a statute defining an infraction; has satisfied the conditions of the deferral program or the judgment imposed for the violation.

If granted, 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.

### **Practice Tips**

Petitions filed under I.C. 34-28-5-15 must be timely filed either in the court where the charges were brought or where a trial was held or the court having jurisdiction over the violation for a person who entered a deferral program.

The petition should be filed under the case number of the original case, but if the prosecution was dropped before a case number was assigned, the petition should be assigned an MC case type. Payment of a filing fee is not required. If an MC is required, cross reference the case numbers in the CCS for the MC and the original case.

A copy of the petition must be served on the prosecuting attorney who has thirty days to file a notice in opposition.

The court may:

- summarily grant the petition;
- set the matter for a hearing, or
- summarily deny the petition, if the court finds the petition is insufficient or based on documentary evidence submitted to the court that shows the

petitioner is not entitled to have his or her records restricted.

The judge must set the matter for a hearing if a notice of opposition is filed and the court does not summarily grant or deny the petition.