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## SECOND CHANCE LAW

In 2011, the Indiana General Assembly passed legislation permitting individuals to seal portions of their criminal record, which was revised and condensed in to Indiana Code 35-38-9 effective July 1, 2013. If successful, any case that has been restricted will not show up on a criminal history check by noncriminal justice organizations or individuals. Criminal justice agencies like the court, prosecutor and police continue to have access to the information.

There are different classifications of individuals that may qualify to restrict access to criminal records pursuant to Indiana Code 35-38-9 (effective July 1, 2013 ):

### Individuals NOT Determined To Be Guilty

This section applies to those individuals where:

- (1) the arrest did not result in a conviction or juvenile adjudication; or
- (2) the arrest resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal.

At least one year after the date of arrest, a person may petition to seal records contained in the court's files; the files of the department of correction; the files of the bureau of motor vehicles; and the files of any other person who provided treatment or services to the petitioning person under a court order; that relate to the person's arrest. A person who files a petition to seal arrest records is not required to pay a filing fee.

### Individuals Convicted of a Misdemeanor, Including Class D Felony Reduced to a Misdemeanor

This section applies only to a person convicted of a misdemeanor, including a Class D felony reduced to a misdemeanor.

At least five years after the date of conviction (unless the prosecuting attorney consents in writing to an earlier period), the person convicted of the misdemeanor may petition the court to restrict access to records contained in a court's files; the files of the department of correction; the files of the bureau of motor vehicles; and the files of any other person who provided treatment or services to the petitioning person under a court order; that relate to the person's misdemeanor conviction. A person who files a petition to seal conviction records shall pay the filing fees required for filing a civil action, and may not receive a waiver or reduction of fees upon a showing of indigence.

The court will order conviction records to be restricted if there is convincing evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person does not have an existing or pending driver's license suspension;
- (4) the person has successfully completed the person's sentence, including any term of supervised release, and satisfied all other obligations placed on the person as part of the sentence; and
- (5) the person has not been convicted of a crime within the previous five (5) years.

### Individuals Convicted of a Non-Violent Felony

Except as provided in subsection (b), this section applies only to a person convicted of a felony.

(b) This section does not apply to the following:

- (1) An elected official convicted of an offense while serving the official's term or as a candidate for public office.
- (2) A sex or violent offender (as defined in IC 11-8-8-5).
- (3) A person convicted of a felony that resulted in serious bodily injury to another person.
- (4) 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.

At least eight years after the completion of the person's sentence (including the completion of any term of supervised release and the satisfaction of all other obligations placed on the person as part of the sentence, unless the prosecuting attorney consents in writing to an earlier period), a person may petition the court to restrict access to a court's files; the files of the department of correction; the files of the bureau of motor vehicles; and the files of any other person who provided treatment or services to the petitioning person under a court order; that relate to the person's felony conviction. A person who files a petition to restrict conviction records shall pay the filing fees required for filing a civil action and may not receive a waiver or reduction of fees upon a showing of indigence.

The court will order conviction records to be restricted if there is convincing evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person does not have an existing or pending driver's license suspension;
- (4) the person has successfully completed the person's sentence, including any term of supervised release, and satisfied all other obligations placed on the person as part of the sentence; and
- (5) the person has not been convicted of a crime within the previous eight (8) years;

### Individuals Convicted of a Violent or Sexual Felony

Except as provided in subsection (b), this section applies to a person convicted of a felony, including:

(1) an elected official convicted of an offense while serving the official's term or as a candidate for public office; and

(2) a person convicted of a felony that resulted in serious bodily injury to another person.

(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 an offense described in IC 35-42-1; IC 35-42-3.5; or IC 35-42-4.

At least ten years after the completion of the person's sentence (including the completion of any term of supervised release and the satisfaction of all other obligations placed on the person as part of the sentence, unless the prosecuting attorney consents in writing to an earlier period), the individual may petition the court to restrict access to records contained in a court's files; the files of any other person who provided treatment or services to the petitioning person under a court order that relate to the person's felony conviction. A person who files a petition to expunge conviction records shall pay the filing fees required for filing a civil action and may not receive a waiver or reduction of fees upon a showing of indigence.

The court will order conviction records to be restricted if there is convincing evidence that:

- (1) the period required by this section has elapsed;
- (2) no charges are pending against the person;
- (3) the person does not have an existing or pending driver's license suspension;
- (4) the person has successfully completed the person's sentence, including any term of supervised release, and satisfied all other obligations placed on the person as part of the sentence;
- (5) the person has not been convicted of a crime within the previous ten (10) years; and
- (6) the prosecuting attorney has consented in writing to the expungement of the person's criminal records; the court may order the conviction records described in subsection (c) marked as expunged in accordance with section 7 of this chapter.

### How to File

Where your important legal rights are at stake, you should seek the advice of an attorney. However, you can follow these steps to file your petition if you prefer to represent yourself. **Please note: If your petition is denied by the judge, you cannot re-file or submit a new petition asking for the same criminal cases to be restricted.**

- Complete the petition (guidance for the required content of the petition is provided in the statute IC 35-38-9 ).
- Bring your original petition AND two copies of the petition to Civil Filing division of the Marion County Clerk's Office located in room W122 of the City/County Building located at 200 E. Washington Street.
- Though the petition concerns criminal matters, it will be given a civil case cause number and assigned as a miscellaneous (MI) case type.

- Pay the filing fee (if applicable)
- Petitions will be assigned to the original trial court, unless:
  - For those petitions with multiple criminal cases listed, the civil case will be assigned to the court that handled the criminal case with the highest offense.
  - For petitions where the criminal cases are of the same level of offenses, the petition will be assigned the court handling the most recent conviction.
  - For those petitions where no charges were filed or the case dismissed, the petition will be reviewed by the Criminal Term Chair. (This position changes each year; in 2013, the Criminal Term Chair is Judge Borges in court G04)
- Clerk staff will take original and provide you with one copy of the petition.
- Clerk staff will distribute the other copy of petition to the Marion County Prosecutor's Office.
- Court staff will notify you of any hearing AND whether or not your petition is granted.

## Resources

To research your Marion County criminal case or arrest charges, you can use the public access terminals located in Clerk's Office, W-122 of the City-County Building during regular business hours. You can perform the same research through [www.indygov.biz](http://www.indygov.biz), but there is a fee to view those records from the convenience of your home or office.

The Clerk's Office is not in a position to provide legal advice. If you decide to hire an attorney to help you with this process, the Indianapolis Bar Association offers a lawyer referral line. Call (317) 269-2222 or visit [www.indybar.org](http://www.indybar.org) for more information. You might also look to pro bono agencies like the Neighborhood Christian Legal Clinic or Legal Aid and ask if they are in a position to assist you.

You can research Indiana law at [www.in.gov/legislative/ic/code](http://www.in.gov/legislative/ic/code).

The Indiana State Supreme Court's website might also be helpful: [www.in.gov/judiciary/selfservice](http://www.in.gov/judiciary/selfservice).