

INDIANA'S SECOND CHANCE LAW

INDIANA CODE 35-38-9 – EFFECTIVE DATE JULY 1, 2013

SOURCE: IC 35-38-9; (13)EH1482.1.4. --> SECTION 4. IC 35-38-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 9. Sealing and Expunging Conviction Records

Sec. 1. (a) This section applies only to a person who has been arrested if:

- (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.

(b) Not earlier than one (1) year after the date of arrest, if the person was not convicted or adjudicated a delinquent child, or the date of the opinion vacating the conviction or adjudication becomes final, the person may petition the sentencing court (if the person was sentenced), the court in which the person was charged (if the person was charged), or any court exercising criminal jurisdiction in Indiana (if the person was not charged or convicted) to seal records contained in:

- (1) a court's files;
- (2) the files of the department of correction;
- (3) the files of the bureau of motor vehicles; and
- (4) 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.

(c) A person who files a petition to seal arrest records is not required to pay a filing fee.

(d) If the court finds by clear and convincing evidence that:

- (1) the person's arrest:
 - (A) did not result in a conviction or juvenile adjudication; or
 - (B) resulted in a conviction or juvenile adjudication and the conviction or adjudication was

vacated on appeal; and

(2) no charges are pending against the person; the court shall order the arrest records described in subsection (b) sealed so that only a criminal justice agency may access the records without the order of a court.

Sec. 2. (a) This section applies only to a person convicted of a misdemeanor, including a Class D felony reduced to a misdemeanor.

(b) Not earlier than five (5) 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 sentencing court to expunge conviction records contained in:

- (1) a court's files;
- (2) the files of the department of correction;
- (3) the files of the bureau of motor vehicles; and
- (4) 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.

(c) A person who files a petition to expunge conviction records shall pay the filing fees required for filing a civil action, and the clerk shall distribute the fees as in the case of a civil action. A person who

files a petition to expunge conviction records may not receive a waiver or reduction of fees upon a showing of indigency.

(d) If the court finds by clear and 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;

the court shall order the conviction records described in subsection (b) expunged in accordance with section 6 of this chapter.

Sec. 3. (a) Except as provided in subsection (b), this section applies only to a person convicted of a Class D felony. This section does not apply to a person if the person's Class D felony was reduced to a Class A misdemeanor.

(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 bodily injury to another person.

(4) A person convicted of perjury (IC 35-44.1-2-1) or official misconduct (IC 35-44.1-1-1).

(5) 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.

(c) Not earlier than eight (8) years after the date of conviction (unless the prosecuting attorney consents in writing to an earlier period), the person convicted of the Class D felony may petition the sentencing court to expunge conviction records contained in:

(1) a court's files;

(2) the files of the department of correction;

(3) the files of the bureau of motor vehicles; and

(4) 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 Class D felony conviction.

(d) A person who files a petition to expunge conviction records shall pay the filing fees required for filing a civil action, and the clerk shall distribute the fees as in the case of a civil action. A person who files a petition to expunge conviction records may not receive a waiver or reduction of fees upon a showing of indigency.

(e) If the court finds by clear and 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; the court shall order the conviction records described in subsection (c) expunged in accordance with section 6 of this chapter.

Sec. 4. (a) 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.

(c) Not earlier than eight (8) 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 person convicted of the felony may petition the sentencing court to expunge conviction records contained in:

(1) a court's files;

(2) the files of the department of correction;

(3) the files of the bureau of motor vehicles; and

(4) 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.

(d) A person who files a petition to expunge conviction records shall pay the filing fees required for filing a civil action, and the clerk shall distribute the fees as in the case of a civil action. A person who files a petition to expunge conviction records may not receive a waiver or reduction of fees upon a showing of indigency.

(e) If the court finds by clear and 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;

the court may order the conviction records described in subsection (c) marked as expunged in accordance with section 7 of this chapter. A person whose records have been ordered marked as expunged under this section is considered to have had the person's records expunged for all purposes other than the disposition of the records.

Sec. 5. (a) 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:

(A) IC 35-42-1;

(B) IC 35-42-3.5; or

(C) IC 35-42-4.

(c) Not earlier than ten (10) 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 person convicted of the felony may petition the sentencing court to expunge conviction records contained in:

(1) a court's files;

(2) the files of the department of correction;

(3) the files of the bureau of motor vehicles; and

(4) 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.

(d) A person who files a petition to expunge conviction records shall pay the filing fees required for filing a civil action, and the clerk shall distribute the fees as in the case of a civil action. A person who files a petition to expunge conviction records may not receive a waiver or reduction of fees upon a showing of indigency.

(e) If the court finds by clear and 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. A person whose records have been ordered marked as expunged under this section is considered to have had the person's records expunged for all purposes other than the disposition of the records.

Sec. 6. (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:

(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.

(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; and

(B) 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.

(3) Notify the clerk of the supreme court to seal any records in the clerk's possession that relate to the conviction.

(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.

(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 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.

(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

(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.

(e) If a person whose conviction records are expunged under section 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.

Sec. 7. (a) This section applies only to a person who has filed a petition for expungement under section 4 or 5 of this chapter and whose records have been ordered marked as expunged.

(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.

(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.

Sec. 8. (a) This section applies only to a petition to expunge conviction records under sections 2 through 5 of this chapter. This section does not apply to a petition to seal arrest records under section 1 of this chapter.

(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 petitioner shall affirm that no criminal investigation or charges are pending against the petitioner.

(5) The petitioner shall affirm that the petitioner has not committed another crime within the period required for expungement.

(6) The petitioner shall list all convictions and the date of the conviction.

(7) 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.

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

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

(10) The petitioner shall provide evidence that the petitioner has successfully completed all terms of the sentence previously imposed, including:

(A) payment of restitution, fines, and court costs; and

(B) completion of any terms of probation, parole, or community corrections.

(c) The petitioner may include any other information that the petitioner believes may assist the court.

(d) The petitioner shall serve a copy of the petition upon the prosecuting attorney in accordance with the Indiana Rules of Trial Procedure.

(e) The prosecuting attorney shall promptly forward a copy of the petition to the last known address of the victim and inform the victim of the victim's right to be present and address the court.

(f) The prosecuting attorney shall reply to the petition not later than thirty (30) days after receipt.

Sec. 9. (a) If the prosecuting attorney does not object, the court may grant the petition for expungement without a hearing.

(b) The court may summarily deny a petition, if the petition does not meet the requirements of section 8 of this chapter, or if the statements contained in the petition demonstrate that the petitioner is not entitled to relief.

(c) If the prosecuting attorney objects to the petition, the court shall set the matter for hearing not sooner than sixty (60) days after service of the petition on the prosecuting attorney.

(d) A victim of the offense for which expungement is sought may submit an oral or written statement in support of or in opposition to the petition at the time of the hearing. The court shall consider the victim's statement before making its determination.

(e) The petitioner must prove by clear and convincing evidence that the facts alleged in the verified petition are true.

(f) The denial of a petition is an appealable final order.

(g) If the court grants the petition for expungement, the court shall issue an order of expungement as described in section 6 of this chapter.

(h) 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 seal arrest records under section 1 of this chapter. A petitioner may seek to expunge more than one (1) conviction at the same time. The 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.

(i) 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 seal arrest records under section 1 of this chapter. Except as provided in subsection (j), a petitioner may file only one (1) petition for expungement during the petitioner's lifetime. For purposes of this subsection, all petitions for expungement filed in separate counties for offenses committed in those counties count as one (1) petition if they are filed in one (1) three hundred sixty-five (365) day period.

(j) A petitioner whose petition for expungement has been denied on the merits, in whole or in part, may file a subsequent petition for expungement with respect to one (1) or more convictions included in the initial expungement petition that were not expunged. A subsequent petition for expungement may be filed not earlier than three (3) years following the denial of a previous expungement petition. A subsequent petition for expungement may not include any conviction that was not included in the initial expungement petition.

Sec. 10. (a) It is unlawful discrimination for any person to:

- (1) suspend;
- (2) expel;
- (3) refuse to employ;
- (4) refuse to admit;
- (5) refuse to grant or renew a license, permit, or certificate necessary to engage in any activity, occupation, or profession; or
- (6) otherwise discriminate against;

any person because of a conviction or arrest record expunged or sealed under this chapter.

(b) The civil rights of a person whose conviction has been expunged shall be restored, including the right to vote, to hold public office, to serve as a juror, and, to the extent not prohibited by federal law, to own or possess a firearm.

(c) In any application for employment, a license, or other right or privilege, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests, such as: "Have you ever been arrested for or convicted of a crime that has not been expunged by a court?".

(d) A person whose record is expunged shall be treated as if the person had never been convicted of the offense. However, upon a subsequent arrest or conviction for an unrelated offense, the prior expunged conviction:

- (1) may be considered by the court in determining the sentence imposed for the new offense;
- (2) is a prior unrelated conviction for purposes of:
 - (A) a habitual offender enhancement; and
 - (B) enhancing the new offense based on a prior conviction; and

(3) may be admitted as evidence in the proceeding for a new offense as if the conviction had not been expunged.

(e) Any person that discriminates against a person as described in subsection (a) commits a Class C infraction and may be held in contempt by the court issuing the order of expungement or by any other court of general jurisdiction. Any person may file a written motion of contempt to bring an alleged violation of this section to the attention of a court. In addition, the person is entitled to injunctive relief.

(f) In any judicial or administrative proceeding alleging negligence or other fault, an order of expungement may be introduced as evidence of the person's exercise of due care in hiring, retaining, licensing, certifying, admitting to a school or program, or otherwise transacting business or engaging in activity with the person to whom the order of expungement was issued.

(g) A conviction that has been expunged under this chapter is not admissible as evidence in an action for negligent hiring, admission, or licensure against a person or entity who relied on the order.