

NEW OPTIONS FOR RESTRICTING AND EXPUNGING CRIMINAL RECORDS

Debra Dial,
Director of Legal and Client Advocacy
Mental Health America of Indiana
October 17, 2013

BEFORE JULY 1, 2013

...

**ONCE UPON
A TIME, IN
INDIANA...**

...individuals had few choices when it came to restricting access or expunging criminal conviction and arrest records.

**A PERSON
WHO WAS
ARRESTED...**

- *but had no criminal charges filed,
OR*
- *had all criminal charges dropped
because there was mistaken
identity, no offense was actually
committed, or there was an
absence of probable cause*

*...could petition to have their criminal
record expunged. (I.C. 35-38-5)*

PROS AND CONS

Pros

- *This is still an existing law and option.(?)*
- *There appears to be no filing fee.*
- *There is no waiting period.*
- *“Expungement” means that the criminal record would be destroyed or the record would be delivered to the individual (fingerprints, photos, arrest records, etc.).*
- *No information concerning the arrest could be place or retained in any state repository for criminal information or any other local, regional, or state wide information system maintained by law enforcement.*
- *No access exceptions for law enforcement...the record should no longer exist.*

Cons

- *The law was written in 1983. The last time it was amended was 1994. It doesn't really take into account modern record keeping or the public's general access to information.*
- *The law is silent on what an individual who has been granted relief under this section is allowed to answer when asked “have you ever been arrested or convicted of a crime”. [Note: The new expungement laws have protections written into the law, but states the protections only apply to expungements granted under Chapter 9 (I.C. 35-38-9). This particular statute is under Chapter 5 (I.C. 35-38-5).]*

FOR INDIVIDUALS, WHERE MORE THAN 15 YEARS HAVE ELAPSED SINCE DISCHARGE FROM RESULTS OF THE LAST CONVICTION OF A CRIME...

...these persons may petition the state police department to limit access by non-criminal justice agencies to the person's limited criminal history.

**TO REQUEST
THIS TYPE OF
RESTRICTION
TO CRIMINAL
HISTORIES,
INDIVIDUALS
MAY CALL OR
SEND A LETTER
TO THE
FOLLOWING:**

*Indiana State Police, IGCN-100
North Senate Avenue, Room N302
Indianapolis, IN 46204
(317) 233-8472*

PROS AND CONS

Pros

- *No filing in a court...just contact the state police department.*
- *No fees.*
- *Applies to all criminal records.*

Cons

- *15 year waiting period.*
- *The law is silent on what an individual who has been granted relief under this section is allowed to answer when asked “have you ever been arrested or convicted of a crime”. [Note: The new expungement laws have protections written into the law, but states the protections only apply to expungements granted under Chapter 9 (I.C. 35-38-9). This particular statute is under Chapter 5 (I.C. 35-38-5).]*

**SO, WHAT
HAPPENED TO
THE OTHER
NOT-SO-NEW
RESTRICTION/
EXPUNGEMENT
LAWS?**

- *Two laws became effective July 1, 2011 which provided greater options and relief for individuals with criminal records.*
- *Those laws have been repealed.*

**WHAT HAPPENS
TO INDIVIDUALS
WHO WERE
GRANTED
RELIEF UNDER
THE NOW
REPEALED
LAWS?**

- *Good question. Do not know the answer right now.*
- *None of the protections enacted under Chapter 9 apply to any other Chapter. (No type of “grandfather” clause.)*

AFTER JULY 1, 2013

...

**TO SEAL
ARREST
RECORDS...
(I.C. 35-38-9-1)**

***This applies only to a person
who has ...***

- *been arrested , but the arrest did not result in a conviction or juvenile adjudication*

OR

- *the arrest resulted in a conviction or juvenile adjudication which was vacated on appeal;*

AND

- *one year has passed since arrest or final opinion that vacates conviction or juvenile adjudication;*

AND

- *there are no charges pending against the person.*

**TO SEAL
ARREST
RECORDS...
(I.C. 35-38-9-1)**

cont.

Where do you file?

- 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
ARREST
RECORDS...
(I.C. 35-38-9-1)**

Is there a filing fee?

cont.

NO

**TO SEAL
ARREST
RECORDS...
(I.C. 35-38-9-1)**

cont.

What records are sealed?

- Records contained in:
 - Court files;
 - The files of the department of corrections;
 - The files of the bureau of motor vehicles;
 - The files of any other person who provided treatment or services under a court order;
 - The central repository for criminal history information maintained by the state police department.

**TO SEAL
ARREST
RECORDS...
(I.C. 35-38-9-1)**

cont.

If the court grants the petition, what does this mean?

- *The records will be sealed so that only a criminal justice agency may access the records.*
- *The individual is protected under the anti-discrimination section of the law .*

**EXPUNGING
MISDEMEANOR
CONVICTIONS
(I.C. 35-38-9-2)**

*This applies only to a
person who has...*

- *Been convicted of a misdemeanor, including a Class D felony reduced to a misdemeanor;*

AND

- *Five years have passed since the date of conviction (unless the prosecuting attorney consents in writing to an earlier period);*

AND

- *There are no charges pending against the person,*
- *The person does not have an existing or pending driver's license suspension,*
- *The person has successfully completed the sentence and all terms and obligations of the sentence,*
- *The person has not been convicted of a crime within the previous five years;*

AND

- *The person has paid the filing fee.*

**EXPUNGING
MISDEMEANOR
CONVICTIONS
(I.C. 35-38-9-2)**

cont.

Where do you file?

The sentencing court

**EXPUNGING
MISDEMEANOR
CONVICTIONS
(I.C. 35-38-9-2)**

cont.

Is there a filing fee?

Yes,

Petitioners must pay the filing fee required for filing 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.

**EXPUNGING
MISDEMEANOR
CONVICTIONS
(I.C. 35-38-9-2)**

cont.

What records are sealed?

- Records contained in:
 - Court files;
 - The files of the department of corrections;
 - The files of the bureau of motor vehicles;
 - The files of any other person who provided treatment or services under a court order;

**EXPUNGING
MISDEMEANOR
CONVICTIONS
(I.C. 35-38-9-2)**

cont.

*If the court grants the petition,
what does this mean?*

- *The court will order:*
 - *each entity listed in the petition to prohibit the release of the person's records or information to anyone without a court order, other than a law enforcement officer acting in the course of his duty.*
 - *the central repository for criminal history information maintained by the state police department to seal the person's expunged conviction records, which means they can only be disclosed to a prosecuting attorney, FBI, or Homeland Security under specific circumstances.*
 - *Notify the clerk of the Supreme Court to seal any records related to the conviction.*

If the court grants the petition, what does this mean?

CONT.

- *A procedure is implemented so that any memorandum decisions or opinions will be redacted on the computer gateway (such as is used with opinions involving juveniles.)*
- *All of the related court records shall be sealed.*
- *The individual is protected under the anti-discrimination section of the law .*

If the court grants the petition, what does this mean?

CONT.

Keep in Mind

Prosecuting attorneys may be able to access permanently sealed records if such records are relevant in a new prosecution of the person. If there is no conviction, the records will be re-sealed. If there is a conviction, the court does not have to re-seal the records.

The expungement does not affect the operation of the sex offender registry or any person's ability to access records required to be maintained concerning sex or violent offenders.

**EXPUNGING
MINOR
CLASS D
FELONY
CONVICTIONS
(I.C. 35-38-9-3)**

This applies only to a person who has...

- *Been convicted of a Class D felony (this does not apply if the person's Class D felony was reduced to a Class A misdemeanor);*

AND

- *The person is NOT an elected official convicted of an offense while serving the official's term or as a candidate for public office;*

OR

- *The person is NOT a sex or violent offender;*

OR

- *The person is NOT convicted of a felony that resulted in serious bodily injury to another person;*

OR

- *The person has NOT been convicted of perjury or official misconduct;*

OR

- *The person has NOT been convicted of murder, child molestation, child exploitation, or sex trafficking;*

AND

- *Eight years have passed since the date of conviction (unless the prosecuting attorney consents in writing to an earlier period);*

AND

- *There are no charges pending against the person,*
- *The person does not have an existing or pending driver's license suspension,*
- *The person has successfully completed the sentence and all terms and obligations of the sentence,*
- *The person has not been convicted of a crime within the previous eight years;*

AND

- *The person has paid the filing fee.*

**EXPUNGING
MINOR
CLASS D
FELONY
CONVICTIONS
(I.C. 35-38-9-3)**

Where do you file?

cont.

The sentencing court

**EXPUNGING
MINOR
CLASS D
FELONY
CONVICTIONS
(I.C. 35-38-9-3)**

cont.

Is there a filing fee?

Yes,

Petitioners must pay the filing fee required for filing 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.

**EXPUNGING
MINOR
CLASS D
FELONY
CONVICTIONS
(I.C. 35-38-9-3)**

cont.

What records are sealed?

- Records contained in:
 - Court files;
 - The files of the department of corrections;
 - The files of the bureau of motor vehicles;
 - The files of any other person who provided treatment or services under a court order;

**EXPUNGING
MINOR
CLASS D
FELONY
CONVICTIONS
(I.C. 35-38-9-3)**

cont.

If the court grants the petition, what does this mean?

- The court will order:
 - each entity listed in the petition to prohibit the release of the person's records or information to anyone without a court order, other than a law enforcement officer acting in the course of his duty.
 - the central repository for criminal history information maintained by the state police department to seal the person's expunged conviction records, which means they can only be disclosed to a prosecuting attorney, FBI, or Homeland Security under specific circumstances.
 - Notify the clerk of the Supreme Court to seal any records related to the conviction.

If the court grants the petition, what does this mean?

CONT.

- *A procedure is implemented so that any memorandum decisions or opinions will be redacted on the computer gateway (such as is used with opinions involving juveniles.)*
- *All of the related court records shall be sealed.*
- *The individual is protected under the anti-discrimination section of the law .*

If the court grants the petition, what does this mean?

CONT.

Keep in Mind

Prosecuting attorneys may be able to access permanently sealed records if such records are relevant in a new prosecution of the person. If no conviction, the records will be re-sealed. If there is a conviction, the court does not have to re-seal the records.

The expungement does not affect the operation of the sex offender registry or any person's ability to access records required to be maintained concerning sex or violent offenders.

**EXPUNGING
CERTAIN LESS
SERIOUS
FELONY
CONVICTIONS
(I.C. 35-38-9-4)**

This applies only to a person who has...

- *Been convicted of a felony;*

AND

- *The person is NOT an elected official convicted of an offense while serving the official's term or as a candidate for public office;*

OR

- *The person is NOT a sex or violent offender;*

OR

- *The person is NOT convicted of a felony that resulted in serious bodily injury to another person;*

OR

- *The person has NOT been convicted of official misconduct;*

OR

- *The person has NOT been convicted of murder, child molestation, child exploitation, or sex trafficking;*

AND

- *Eight years have passed since the date of conviction (unless the prosecuting attorney consents in writing to an earlier period);*

AND

- *There are no charges pending against the person,*
- *The person does not have an existing or pending driver's license suspension,*
- *The person has successfully completed the sentence and all terms and obligations of the sentence,*
- *The person has not been convicted of a crime within the previous eight years;*

AND

- *The person has paid the filing fee.*

**EXPUNGING
CERTAIN LESS
SERIOUS
FELONY
CONVICTIONS
(I.C. 35-38-9-4)**

cont.

Where do you file?

The sentencing court

**EXPUNGING
CERTAIN LESS
SERIOUS
FELONY
CONVICTIONS
(I.C. 35-38-9-4)**

cont.

Is there a filing fee?

Yes,

Petitioners must pay the filing fee required for filing 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.

**EXPUNGING
CERTAIN LESS
SERIOUS
FELONY
CONVICTIONS
(I.C. 35-38-9-4)**

cont.

*What records are
expunged?*

- Records contained in:
 - Court files;
 - The files of the department of corrections;
 - The files of the bureau of motor vehicles;
 - The files of any other person who provided treatment or services under a court order;

**EXPUNGING
CERTAIN LESS
SERIOUS
FELONY
CONVICTIONS
(I.C. 35-38-9-4)**

cont.

If the court grants the petition, what does this mean?

- The court records and other public records relating to the arrest, conviction, or sentence will remain public records but be clearly and visibly marked.*
- The individual is protected under the anti-discrimination section of the law .*

**EXPUNGING
CERTAIN
SERIOUS
FELONY
CONVICTIONS
(I.C. 35-38-9-5)**

This applies only to a person who has...

- *Been convicted of a felony (including a an elected official convicted of an offense while serving the official's term or as a candidate for public office; AND a person convicted of a felony that resulted in serious bodily injury to another person;*

AND

- *The person is NOT a sex or violent offender;*
- OR
- *The person has NOT been convicted of official misconduct;*
- OR
- *The person has NOT been convicted of murder, child molestation, child exploitation, or sex trafficking;*

AND

- *Ten years have passed since the date of conviction (unless the prosecuting attorney consents in writing to an earlier period);*

AND

- *There are no charges pending against the person,*
- *The person does not have an existing or pending driver's license suspension,*
- *The person has successfully completed the sentence and all terms and obligations of the sentence,*
- *The person has not been convicted of a crime within the previous ten years;*
- ****THE PROSECUTING ATTORNEY HAS CONSENTED IN WRITING TO THE EXPUNGEMENT OF THE RECORDS***;*

AND

- *The person has paid the filing fee.*

**EXPUNGING
CERTAIN
SERIOUS
FELONY
CONVICTIONS
(I.C. 35-38-9-5)**

cont.

Where do you file?

The sentencing court

**EXPUNGING
CERTAIN
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**EXPUNGING
CERTAIN
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CONVICTIONS
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- Records contained in:
 - Court files;
 - The files of the department of corrections;
 - The files of the bureau of motor vehicles;
 - The files of any other person who provided treatment or services under a court order;

**EXPUNGING
CERTAIN
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CONVICTIONS
(I.C. 35-38-9-5)**

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If the court grants the petition, what does this mean?

- *The court records and other public records relating to the arrest, conviction, or sentence will remain public records but be clearly and visibly marked.*
- *The individual is protected under the anti-discrimination section of the law .*

THINGS TO KEEP IN MIND

- *For all petitions to expunge conviction records under sections 2 through 5, a petitioner may seek to expunge more than one conviction at the same time. The petitioner shall consolidate all convictions that the petitioner wishes to expunge from the same county in one petition. If there is more than one county involved, there must be a separate petition for each county.*

THINGS TO KEEP IN MIND

- *For all petitions to expunge conviction records under sections 2 through 5, a petitioner may file only one petition for expungement during the petitioner's lifetime. All petitions filed in separate counties count as one petition if they are filed in one three hundred and sixty-five day period.*
- *If any of the expungements filed in the initial petitions are denied on the merits, petitioner may file a subsequent petition after three years. This subsequent petition may not include any conviction not included in the initial petitions.*

NEW PROTECTIONS

- *It is unlawful discrimination to suspend, expel, refuse to employ, refuse to admit, refuse to grant or renew licenses, permits, etc. necessary to engage in occupations or professions or otherwise discriminate against any person because of a conviction or arrest record expunged or sealed under this chapter.*
- *The civil rights of a person whose convictions have been expunged shall be restored.*
- *A person whose record is expunged shall be treated as if the person was never convicted of the offense. (exceptions if there is subsequent arrests or convictions)*

NEW PROTECTIONS

cont.

- *In any application for employment, licenses, or other rights or privilege, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests.*
- *A conviction that has been expunged under this chapter is not admissible as evidence in an action for negligent hiring, admission, or licensure against any person who relied on that order.*

**WHAT HAPPENS IF
SOMEONE
DISCRIMINATES
AGAINST A
PERSON WITH
SEALED OR
EXPUNGED
RECORDS?**

- *It is considered a Class C infraction and the individual may be held in contempt of court. The petitioner is also entitled to injunctive relief.*
- *There is nothing in the statute that allows monetary relief.*

**CONTACT
INFORMATION**

*Mental Health America of
Indiana*

*1431 North Delaware Street
Indianapolis, Indiana, 46202*

(317) 638-3501

www.mhai.net