

# Expungement

## Frequently Asked Questions

to

Public Law 159-2013

House Enrolled Act 1482(2013)

*\*This document is not intended to be legal advice, but to give you some guidance.*

*\*\*This document provides a general outline of Indiana's new expungement law through a frequently asked question format. Whether your conviction or arrest records may be expunged depends on the specific facts and circumstances of the crime and, possibly, your behavior following your conviction.*

*\*\*\*You are HIGHLY advised to get an attorney of your choosing in order to get your arrest records sealed and convictions expunged particularly because you an individual may only seek expungement one time in their life.*

## Indiana's New Expungement Law Frequently Asked Questions

### 1. **What are the crimes that can be expunged?**

This is a very broad question. There are numerous criminal offenses that now are subject to expungement in Indiana. A general answer would be almost all alcohol, drug, and theft related offenses would qualify for expungement. However, there are instances where an individual may not qualify for expungement because of the individual's post-sentencing activities.

### 2. **What crimes cannot be expunged?**

Prohibitions exist and every case will have its own particular circumstances that affect if and how an individual's record is cleared.

A general listing of crimes that cannot be expunged would be: sex crimes (rape, child molesting, child seduction, incest, sexual battery, etc...); official misconduct by a public servant; human and sexual trafficking crimes; any individual who has been classified as a sex or violent offender; and homicide crimes (murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, etc...).

There may be additional crimes and elements of a crime that may prohibit an expungement order from being granted by a judge. *It is highly advised that you confer with an attorney before proceeding forward with the expungement process on your own.*

### 3. **Where do I go to file the petition?**

The petition must be filed in the county where the conviction occurred.

### 4. **Do I need an attorney and what is the cost?**

This is a complicated process. *It is highly recommended that you retain an attorney of your choosing.* You must discuss with the attorney the legal fees.

### 5. **Do I need to get a background check to see what convictions are on my record?**

A person has only one shot at obtaining an expungement order so you will need to ensure that all of your prior convictions are a part of the initial expungement petition. Therefore, *it is highly recommended that you obtain a criminal history background check.*

### 6. **Will I be allowed my Second Amendment Rights to own or possess a firearm if my record(s) are expunged?**

This law only applies to Indiana laws, and federal laws might make it unlawful for you to own or possess a firearm.

### 7. **Will a company be allowed to fire me if they find out my criminal record(s) have been expunged?**

No, you cannot be discriminated against if your criminal record(s) have been expunged by a court.

**8. Are there protections for companies that hire individuals with criminal records that have been expunged?**

Yes, the law does provide protection for companies.

**9. If my request for an expungement is denied, can I re-apply?**

A person may re-apply not earlier than three (3) years following the denial. A subsequent request for expungement may not include any conviction that was not included in the initial expungement request. Hence, it is important to obtain a criminal history background check to ensure all convictions are listed in your initial expungement request.

**10. If I have convictions in another state, will this law apply to those out of state convictions?**

No, this only applies to convictions in the state of Indiana.

**11. Is it possible to get my records expunged earlier than the required timeline?**

It is possible to file earlier. The prosecuting attorney must consent in writing to an earlier filing period.

**12. Do other states have expungement laws and what are they?**

A number of other states do have expungement laws or second chance laws in place. It is advised that you consult with an attorney in the other state to determine what is required of that specific state's law.

**13. How does the law apply to juveniles?**

The law will apply to juveniles who were prosecuted as an adult court.

The law does specifically reference juvenile adjudications being vacated on appeal or a juvenile arrest not resulting in adjudication. The juvenile may then be eligible to have the arrest record sealed.

The expungement of juvenile delinquency records is found under I.C. 31-39-8. The juvenile expungement process may actually result in the juvenile record being destroyed or given to person in question.

**14. Does this affect housing and student loan programs?**

No.

**15. Can a company ask if records have been expunged or sealed?**

No. However, in any application for employment, a license, or other right or privilege, a person may be questioned about a previous criminal record in the following manner: "Have you ever been arrested for or convicted of a crime that has not been expunged by a court?"

**16. Who has access to sealed and expunged records?**

A criminal justice agency may access sealed arrest records without a court order. The law does provide for a process by which expunged records may be accessed by a prosecutor with a court order. The FBI and Department of Homeland Security may gain access.

**17. Are my civil rights restored once my records are expunged?**

The law does specifically state: "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."

**18. How long does it take to get records expunged?**

The law does not specify a timeframe.

**19. Can one petition cover several convictions?**

Yes, but only if they were convictions within the same county. You must file a separate expungement petition in each county where you have convictions. If you have to file in multiple counties, be aware that a filing deadline is involved.

**20. Is there a filing fee?**

The law does state that a person who files a petition to expunge conviction records must pay the filing fees required for filing a civil action. A civil action filing fee is \$141. The fee may not be waived or reduced, regardless of a showing of indigency.

**21. I had my arrest records sealed, should I also get my conviction expunged?**

Yes, expungement gives you greater protections.

**22. I was arrested and convicted, but that conviction was overturned, does this law apply to me?**

Yes. Not earlier than one year after the date the vacating opinion becomes final and the filing of a petition with the proper court, the law would require the court to seal your record contained in: a court's files; the files of the DOC; the files of the BMV; the files of any other person who provided treatment or services under a court order; and the central repository for criminal history information maintained by the state police. A person who files a petition to seal arrest records is not required to pay a filing fee.

**23. What is the law?**

The text of the sealing of arrest records and the expunging of conviction records can be found under IC 35-38-9. The Indiana Code can be found on line. If you do not have access to the internet, most public libraries have a complete copy of the Indiana Code.

**24. Where can I get my criminal records?**

The Indiana State Police (ISP) does offer a limited criminal history record search for a fee. Limited criminal histories contain only felonies and class A misdemeanor arrests within the state of Indiana. The completeness of the ISP information is based upon a particular county's level of participation.

ISP Office location: Indiana Government Center North, 100 North Senate Ave., Room 301, Indianapolis, IN, 46204; Monday through Friday from 8:15 a.m. to 4:00 p.m.;

If you have a criminal history in Marion County, you can go to the Marion County Clerk's office to access the *Justice* data system.

If you have a criminal history in any of the other 91 Indiana counties, you must contact the county clerk or county sheriff to obtain the necessary information.

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Places to get help and organizations that may be able to point you in the right direction to get assistance:

***Marion County Bar Association***  
P.O. Box 603  
Indianapolis, IN 46206  
Website: <http://www.mcba-indy.org>

***The Indianapolis Bar Association***  
135 N. Pennsylvania, Suite 1500  
Indianapolis, IN 46204  
Phone: (317) 269-2000 Fax: (317) 269-1915  
E-Mail: [iba@indybar.org](mailto:iba@indybar.org)  
Website: <http://www.indybar.org/>  
Business Hours: 8:30 a.m. to 4:30 p.m.

***Indianapolis Legal Aid Society, Inc.***  
615 N. Alabama Suite 122  
Indianapolis, IN 46204  
Phone: (317) 635-9538 Fax: (317) 631-4423  
**Hours:** Monday – Friday, 9 a.m. – 5 p.m.  
**Website:** <http://www.indylas.org/>

***Indiana Legal Services, Inc., Indianapolis Chapter***  
Market Square Center  
151 North Delaware Suite 1800  
Indianapolis, IN 46204  
**Services:** Legal Representation; Consultation; Advice. **Legal Areas:** Family law, Consumer law, Senior law, Housing issues, Public benefits **Eligibility:** Income up to 125% of the

Federal Poverty Guidelines (up to 200% in certain circumstances).

**Screening: Office hours:** Monday-Friday 8:30-5:00.

**Intake hours:** Telephone: Monday and Friday 9:00 am - 11:00 am; Wednesday 1:00 pm - 3:00 pm. Walk-ins: Wednesday 9:00 am -11:00 am; Tuesday and Thursday 1:00 pm -3:00 pm.

**Counties Served:** Boone, Decatur, Delaware, Fayette, Franklin, Hamilton, Hancock, Hendricks, Henry, Johnson, Madison, Marion, Randolph, Rush, Shelby, Union and Wayne.

**Phone:** (317) 631-9410

**Second Phone:** (800) 869-0212 (toll free)

**Fax:** 317-631-9775

**Website:** <http://www.indianalegalservices.org/provider/583>

**Notes:** Spanish speaking staff available.

***Indiana Pro Bono Commission***

*230 E. Ohio Street, 4th Floor*

*Indianapolis, IN 46204*

**Phone:** 317.269.2415 **Fax:** 317.269.2420

**Email:** [probono@inbf.org](mailto:probono@inbf.org)

**Website:** <http://www.in.gov/judiciary/probono/2332.htm>

***Neighborhood Christian Legal Clinic***

*3333 N. Meridian Street, Suite 201*

*Indianapolis, IN 46208*

**Phone:** 317-429-4131

**Website:** <http://www.nclegalclinic.org/>

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For more information contact IAIC  
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[www.recoveryindiana.org](http://www.recoveryindiana.org) [recovery@recoveryindiana.org](mailto:recovery@recoveryindiana.org)  
317-638-3501 x 231