

# INDIANA EXPUNGEMENT LAW (IND. CODE 35-38-9)

\*\*\*\*\*

<b>LEVEL/ CATEGORY</b>	<b>Section 1</b> (Ind. Code § 35-38-9-1)	<b>Section 2</b> (Ind. Code § 35-38-9-2)	<b>Section 3</b> (Ind. Code § 35-38-9-3)	<b>Section 4</b> (Ind. Code § 35-38-9-4)	<b>Section 5</b> (Ind. Code § 35-38-9-5)
<b>TYPE OF CRIME</b>	<b>Arrests/ Dismissed Cases</b> No conviction has occurred or been upheld + Not in a pre-trial diversion program	<b>Misdemeanors + Reduced Felonies</b> (D Felony or Level F6 Felony Reduced to a Misdemeanor)	<b>D &amp; F6 Felonies</b> (Not Battery or criminal recklessness; and Not Reduced to a Misdemeanor)	<b>Higher Level Felonies</b> (A – C & F1 – F5) + <u>No</u> Serious Bodily Injury	<b>Higher Level Felonies</b> (A – C & F1 – F5) + Serious Bodily Injury
<b>FEES</b>	No Filing Fee	\$157 Filing Fee	\$157 Filing Fee	\$157 Filing Fee	\$157 Filing Fee
<b>WAITING PERIOD</b>	<b>1 YEAR</b> from date of Arrest or Dismissal  OR  Earlier if Prosecutor Agrees	<b>5 YEARS</b> from date of most recent conviction  OR  Earlier if Prosecutor Agrees	<b>8 YEARS</b> from date of most recent conviction  OR  Earlier if Prosecutor Agrees	<b>8 YEARS</b> from date of most recent conviction  OR  3 Years from completion of sentence (including probation)  OR  Earlier if Prosecutor Agrees	<b>10 YEARS</b> from date of most recent conviction  OR  5 Years from completion of sentence (including probation)  OR  Earlier if Prosecutor Agrees
<b>WHAT MUST BE SATISFIED IN ORDER TO FILE (note specific requirements for each type of case)</b>	1. No charges currently pending; + 2. Arrest or charges did not result in conviction; + 3. Not currently in pretrial diversion program	1. No charges currently pending; + 2. All files, fees, court costs, and restitution are paid; + 3. Waiting period requirements are met	1. No charges currently pending; + 2. All files, fees, court costs, and restitution are paid; + 3. Waiting period requirements are met	1. No charges currently pending; + 2. All files, fees, court costs, and restitution are paid; + 3. Waiting period requirements are met	1. No charges currently pending; + 2. All files, fees, court costs, and restitution are paid; + 3. Waiting period requirements are met; + 4. <b>Prosecutor consents to Expungement</b>
<b>END RESULT (THE COURT SHALL/MAY GRANT THE PETITION)</b>	Court <b>Shall</b> Grant Petition	Court <b>Shall</b> Grant Petition	Court <b>Shall</b> Grant Petition	Court <b>May</b> Grant Petition <b>(Visible but marked as expunged if granted)</b>	Court <b>May</b> Grant Petition <b>(Visible but marked as expunged if granted)</b>

- NOTE:**
- Should you have more than one conviction, you file to expunge all convictions in one conviction petition, but all must be individually eligible based upon where they fall in the chart above
  - The same above idea goes for any and all arrests or dismissed charge cases that you are seeking to expunge, you put all in one arrest/dismissal petition, and each and every one must meet the criteria for category one expungement
  - You expunge cases by cause or case numbers, this means that when you expunge a conviction you are also expunging the arrest that happened to lead to the conviction
  - Many times cases will have several charges listed – some of which are dismissed and some of which result in a conviction. If there is one charge resulting in a conviction, that entire case is viewed as a conviction, and if eligible, would go in a conviction expungement petition. If, on the other hand, all charges are dismissed, then that case would be viewed as a dismissal, and would go in an arrest/dismissal petition.

## GENERAL LIST OF CRIMES THAT CANNOT BE EXPUNGED IN INDIANA

Pursuant to I.C. 35-38-9-2(b), 35-38-9-3(b), I.C. 35-38-9-4(b) and I.C. 35-38-9-5(b), the statute excludes certain types of felonies from eligibility for expungement: An attempt or conviction of any of the below noted crimes:

- Persons convicted of:
  - Two (2) or more felony offenses that
    - Involve the use of a deadly weapon and were not committed as part of the same episode of criminal conduct.
  - Homicide Crimes in addition to those in 11-8-8-5 (35-42-1)
    - Causing Suicide
    - Assisting Suicide
    - Involuntary Manslaughter
    - Reckless Homicide
    - Feticide
  - Human & Sexual Trafficking Crimes in addition to those in 11-8-8-5 (35-42-3.5)
    - Promotion of Human Trafficking
    - Promotion of Human Trafficking of a Minor
  - Official Misconduct (I.C. 35-44.1-1-1)
    - Perjury (35-44.1-2-1)
    - Official Misconduct (35-44.1-1-1)
  - Sex Crimes in addition to those in 11-8-8-5 (35-42-4)
    - Sexual Battery
    - Unlawful Employment Near Children by a Sexual Predator
    - Sex Offender Residency Offense
    - Sex Offender Internet Offense (prior conviction)
  - Sex/Violent Offender as defined in I.C. § 11-8-8-5 (Megan's Law Sex Offender Registry)
    - A sex or violent offender (as defined in 11-8-8-5)
    - Rape
    - Criminal Deviate Conduct
    - Child Molesting
    - Child Exploitation
    - Vicarious Sexual Gratification
    - Performing Sexual Conduct in the Presence of a Minor
    - Child Solicitation
    - Child Seduction
    - Sexual Misconduct with a Minor (all classes excluded)
    - Incest
    - Sexual Battery
    - Kidnapping (if the victim is less than 18 and the convicted person is not the victim's parent or guardian)
    - Criminal Confinement (if the victim is less than 18 and the convicted person is not the victim's parent or guardian)
    - Possession of Child Pornography
    - Promoting Prostitution as a Class B Felony
    - Sexual Trafficking of a Minor
    - Human Trafficking
    - Murder
    - Voluntary Manslaughter
    - Sexual Misconduct by a Service Provider with a Detained Child
    - An attempt conviction of any of the above crimes

**Note:** Since none of the above listed exclusions appear under I.C. 35-38-9-2 (expungement for misdemeanors), it appears that persons who fall into the above-listed categories are still eligible to pursue the expungement remedy with regard to misdemeanor offenses and D felony offenses that were either alternatively sentenced as or converted to a misdemeanor judgments