

**SAMPLE PETITION AND ORDER FOR EXPUNGEMENT OF
MISDEMEANOR OR CLASS D FELONY OR LEVEL 6 FELONY
REDUCED TO A MISDEMEANOR
I.C. 35-38-9-2**

This Sample Petition was created jointly by the Indiana Supreme Court Division of State Court Administration and the Indiana Judicial Center and is intended to be an example of the information that should be included in a Petition filed under I.C. 35-38-9-2. This form may be subject to change.

The procedure to seal or expunge records under I.C. 35-38-9 is extremely complex, has not yet been fully litigated and contains severe consequences if mistakes are made. The Indiana Supreme Court Division of State Court Administration and the Indiana Judicial Center strongly recommend that you seek legal advice from an attorney before filing a petition on your own especially if you are seeking to seal or expunge more than one record.

INSTRUCTIONS FOR CLERKS AND COURTS

1. This form should only be used for a misdemeanors or Class D felonies reduced to a misdemeanor that occurred before July 1, 2014 or Level 6 felonies committed after June 30, 2014 that were reduced to a misdemeanor.
2. No filing fees are required.
3. Petitioner should complete the petition in its entirety. The completed forms should be delivered to the Clerk following the provisions of Indiana Rule of Trial Procedure Rule 5(G) on green paper or with a green coversheet marked “Not for Public Access” or “Confidential”.
4. The petitioner needs to choose between alternatives (indicated by an [OR]) in the introductory statement and paragraphs 2, 4, 8 and 10. The petitioner should choose the alternative that best describes his/her situation and delete or redact the other choices. Do not include more than one paragraph option for any numbered paragraph in the Verified Petition.
5. Paragraph 12 is optional. It is the Petitioner’s decision whether to share additional information with the Court.
6. Waiting Period:
At least five (5) years after the date of conviction unless the Prosecuting Attorney consents in writing to an earlier period.
7. Case Type:
The petition should be filed in a MI – miscellaneous civil case.

Although the expungement petition and order filed in the MI case are confidential and not available on public access, the actual MI case is not confidential. The petitioner may wish to file a verified written request with the court hearing the MI case requesting the

MI case be sealed and removed from public access. The procedure for filing this request can be found in Indiana Administrative Rule 9(H)(1).

8. Where Petition should be filed:
I.C. 35-38-9-2(c) provides that the petition should be filed in a circuit or superior court in the county of conviction. The petition may not be filed in a city or town court.
9. Notice to Prosecutor:
The petitioner must serve a copy of the petition (not a summons) on the Prosecuting Attorney in accordance with the Indiana Rules of Trial Procedure.
10. Response from Prosecutor:
The prosecuting attorney shall respond to the petition not later than 30 days after receipt.
11. Victim Notification:
The prosecuting attorney shall inform the victim of their rights under I.C. 35-40-6 by contacting them at their last known address. The victim is entitled to submit an oral or written statement in support of or in opposition to the petition at the time of the hearing.
12. Burdon of Proof to be met by the Petitioner:
The petitioner must prove his/her petition by a preponderance of the evidence.
13. Hearing:
If the prosecuting attorney does not object, the court may grant the petition without a hearing. If the prosecuting attorney does object, the court shall set the matter for hearing not sooner than sixty (60) days after service of the petition on the prosecuting attorney.
14. Court Discretion with finding:
The court shall grant the petition if all statutory conditions are met. The court may summarily deny a petition if the petition does not meet the requirements of I.C. 35-38-9-8 or if the statements contained in the petition demonstrate that the petitioner is not entitled to relief.
15. Lifetime Limit:
A petitioner may file only one (1) petition for expungement during the petitioner's lifetime. 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. See I.C. 35-38-9-9(h). The only exception to the lifetime limit is if the petitioner's petition was denied on its merits. See "Result if Petition is Denied" for more information.
16. Result if Petition is Granted:
The Court is required to enter an order:
 1. to the department of correction, bureau of motor vehicles and each law enforcement agency and other person who incarcerated, provided treatment or other services for the petitioner under order of court that prohibits release of the petitioner's records or information in the petitioner'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. to the central repository for criminal history information maintained by the state police department to seal the person's expunged records,
 3. to the Clerk of the Supreme Court to seal any records in the Clerk's possession that relate to the conviction

4. that requires the expunged conviction to be clearly marked as expunged on the sex offender registry web site however, 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
5. that requires the records of the sentencing court, a juvenile court, a court of appeals and the Supreme Court concerning the petitioner to be permanently sealed
6. to the Indiana Supreme Court and the Court of Appeals of Indiana requiring the redaction of the appellate opinion/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 and requiring them to provide a redacted copy of such opinion or memorandum decision to any publisher or organization that publishes the opinion/memorandum decision as required by I.C. 35-38-9-6(c), however this does not require the destruction of any existing copy of an appellate opinion/memorandum decision that includes the Petitioner's name.

An expungement order will require the expunged conviction to be clearly marked as expunged on the sex offender registry web site. However, 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.

An order for expungement does not affect an existing or pending driver's license suspension.

Expungement of a crime of domestic violence under section does not restore a person's right to possess a firearm. The right of a person convicted of a crime of domestic violence to possess a firearm may be restored only in accordance with I.C. 35-47-4-7.

The prosecutor may appeal the granting of the order.

See also I.C. 35-38-9-10.

18. Who has access to the expunged (sealed) records?

Under certain conditions a prosecuting attorney, defense attorney, a probation department, and others may be given access to the expunged conviction records. See I.C. 35-38-9-6.

If the court orders the conviction records expunged, these records will be sealed and therefore excluded from public access as provided in Administrative Rule 9(G). Access by other parties shall be governed by Administrative Rule 9(I) which requires a petition, notice and hearing.

19. Result of Petition is Denied:

1. The petitioner may appeal the court's decision or
2. If the original petition is denied, in whole or in part, the petitioner may file a subsequent petition for expungement with respect to one or more convictions included in the initial expungement petition that were not expunged. This subsequent petition for expungement may not include any conviction that was not included in the initial expungement petition unless a court grants permission under I.C. 35-38-9-9(j). Under this subsection, a court may permit a petitioner to file a subsequent petition for expungement with respect to one (1) or more convictions that were not included in the initial expungement petition only if

the court finds that:

1. the petitioner intended in good faith to comply with I.C. 35-38-9-9(g) and (h);
2. the petitioner's failure to comply was due to:
 - A. excusable neglect; or
 - B. circumstances beyond the petitioner's control; and
3. permitting the petitioner to file a subsequent petition for expungement is in the best interests of justice.

20. Multiple Convictions:

A petitioner may petition to expunge more than one conviction at a time. The convictions must be consolidated by county and the petitioner must file a petition in each county in which a conviction was entered. The petitioner is given a 365 day "window" to file all petitions for expungement of convictions. See Indiana Code 35-38-9-9(h). The sample petition provides space for only one conviction. When appropriate, the petitioner may amend the sample petition to accommodate requests to expunge multiple convictions.

21. Required Attachments:

- Indiana Driving Record from the Bureau of Motor Vehicles: Updated to date of filing of the petition
- Evidence that petitioner has paid all fines, fees and court costs and satisfied any restitution obligation imposed as part of the criminal sentence

STATE OF INDIANA) IN THE _____ COURT
) SS:
 COUNTY OF _____) CASE NO. ____-____-MI-_____

IN THE MATTER OF THE PETITION) *This will be opened as an MI -*
 FOR EXPUNGEMENT OF RECORDS OF) *Miscellaneous Civil case.*
 MISDEMEANOR OR CLASS D OR LEVEL 6)
 FELONY REDUCED TO A CLASS A)
 MISDEMEANOR CONVICTIONS OF)
)
 _____,)
 Petitioner.)

Expungement Petitions are confidential under I.C. 35-38-9-10(i)

VERIFIED PETITION FOR EXPUNGEMENT OF RECORDS OF MISDEMEANOR OR A
 CLASS D OR LEVEL 6 FELONY REDUCED TO CLASS A MISDEMEANOR
 CONVICTION UNDER I.C. 35-38-9-2

Petitioner, _____, unrepresented by counsel/by counsel,
 pursuant to I.C. 35-38-9-2 respectfully moves the Court to expunge Petitioner’s misdemeanor
 records filed under case number(s)

_____ and
 captioned State of Indiana vs. _____.

Petitioner affirms under the penalties of perjury:

1. Petitioner’s full name is _____.
 2. Petitioner has no other legal names or aliases by which Petitioner is or has been known.
- [OR]**
2. Petitioner has other legal names and aliases by which Petitioner is or has been known and they include: _____.

3. Petitioner's date of birth is _____.
4. At least five (5) years have expired since the date of Petitioner's conviction.

[OR]

4. The Prosecuting Attorney has agreed in writing to a lesser time period and a copy of the agreement is attached.
5. Petitioner's addresses from the date of the offense/first offense to the date of this Petition are/ have been (list most current address first and add additional lines as needed):
 _____;
 _____.
6. A certified copy of Petitioner's records from the Bureau of Motor Vehicles is attached.
7. There are no current criminal investigations or charges pending against Petitioner.
8. Petitioner has not committed or been convicted of any crime within the past five (5) years.

[OR]

8. The Prosecuting Attorney has agreed in writing to a lesser period of time which is attached.
9. Petitioner has been convicted of the following offense(s), the dates of those convictions are stated below as well as the dates of any appellate decision concerning those convictions (list all convictions with most recent conviction listed first and add additional lines as needed):

| Case Number | Offense | Conviction Date | Appellate Decision Date |
|-------------|---------|-----------------|-------------------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

10. Petitioner has not filed other petitions under I.C. 35-38-9.

[OR]

10. Petitioner has filed other petitions under I.C. 35-38-9, specifically (list County, case number and date petition filed and add additional lines as needed):

| County | Case Number | Filing Date |
|--------|-------------|-------------|
| _____ | _____ | _____ |

11. Petitioner has paid all fines, fees and court costs and satisfied any restitution obligation imposed as a part of the sentence. (If you have copies of receipts, they must be attached.)
12. Petitioner has served a copy of this Verified Petition for Expungement upon the Prosecuting Attorney in accordance with the Indiana Rules of Trial Procedure.
13. **(Optional)** The Petitioner wishes to provide the following information to assist the Court:

WHEREFORE, Petitioner respectfully requests this Court to expunge the conviction records that relate to the Petitioner's misdemeanor or Class D or Level 6 felony reduced to Class A misdemeanor conviction(s) as required by I.C. 35-38-9-6, and all other relief that is just and proper.

Date: _____

Signature of Petitioner

Printed Name of Petitioner

Signature of Petitioner's Attorney

Printed Name of Petitioner's Attorney

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of this Petition by first class mail to the Prosecuting Attorney on _____ (date).

Signature

STATE OF INDIANA) IN THE _____ COURT
) SS:
COUNTY OF _____) CASE NO. _____-_____-MI-_____

IN RE: THE MATTER OF THE PETITION)
FOR EXPUNGEMENT OF RECORDS OF)
MISDEMEANOR OR CLASS D OR LEVEL 6)
FELONY REDUCED TO A CLASS A)
MISDEMEANOR CONVICTIONS OF)
))
))
_____,)
Petitioner.)

Expungement Orders are confidential under I.C. 35-38-9-10(i)

FINDINGS AND ORDER ON PETITIONER’S VERIFIED PETITION FOR EXPUNGEMENT OF RECORDS OF MISDEMEANOR OR A CLASS D OR LEVEL 6 FELONY REDUCED TO A CLASS A MISDEMEANOR CONVICTION

Petitioner, _____, unrepresented by counsel/by counsel, filed his/her Verified Petition for Expungement of Records of Misdemeanor or Class D or Level 6 Felony Reduced to Class A Misdemeanor Conviction on _____, 20___. The State of Indiana, by counsel, filed its Response to Petitioner’s Verified Petition for Expungement on _____, 20__.

Petitioner’s Verified Petition for Expungement seeks relief as provided by I.C. 35-38-9-2 for a Misdemeanor or a Class D or Level 6 felony reduced to a Class A Misdemeanor as set out in IC 35-38-9-2(a).

Upon review of the Petitioner’s Verified Petition, the State of Indiana’s Response to Petitioner’s Verified Petition and the evidence presented, if any, the Court now enters the

following Findings and Order on Petitioner's Verified Petition for Expungement.

FINDINGS

The Court now finds by a preponderance of the evidence that:

1. Petitioner's Verified Petition for Expungement complies with the requirements of I.C. 35-38-9-8.
2. Petitioner's date of birth is _____.
3. Except as provided in I.C. 35-38-9-9(h), Petitioner has only filed one (1) Verified Petition for Expungement in his or her lifetime.
4. The period required by I.C. 35-38-9-2(b) has elapsed or a shorter period has been agreed to by the Prosecuting Attorney;
5. No charges or criminal investigations are pending against Petitioner;
6. Petitioner has paid all fines, fees and court costs and satisfied any restitution obligation imposed as a part of the sentence; and
7. Petitioner has not been convicted of a crime within the previous five (5) or within the lesser period of time agreed upon by the Prosecuting Attorney.

ORDER

It is therefore ORDERED, ADJUDGED, and DECREED that Petitioner's Verified Petition for Expungement is GRANTED. Petitioner's conviction records shall be expunged in accordance with I.C. 35-38-9-6. It is, therefore, Ordered as follows:

1. The Indiana Department of Correction; the Indiana Bureau of Motor Vehicles; and each law enforcement agency and other person who incarcerated, provided treatment for, or provided other services for the person under an order of the court is prohibited from releasing the Petitioner's records or information in the Petitioner's records to anyone without court order, other than a law enforcement officer acting in the course of the officer's official duty.
2. The Indiana State Police Central Repository for Criminal History information is ordered to seal Petitioner's expunged conviction records. Records sealed may be disclosed only to:
 - A. a prosecuting attorney if authorized by court order and needed to

carry out the official duties of the prosecuting attorney,

B. a defense attorney, if authorized by a court order and needed to carry out the professional duties of the defense attorney,

C. a probation department, if authorized by a court order and necessary to prepare a presentence report,

D. the Federal Bureau of Investigation and the Department of Homeland Security, if disclosure is required to comply with an agreement to the sharing of criminal history information,

E. the Indiana Supreme Court, members, the executive directors or employees of the Indiana State Board of Law Examiners in accordance with rules adopted by the such board for determining whether an applicant possesses the necessary good moral character for admission to the bar and

F. a person required to access expunged records to comply with the Secure and Fair Enforcement of Mortgage Licensing Act (12 U.S.C. 5101 et seq.) or regulations adopted under such act.

3. The Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court is ordered to seal any records in the clerk's possession that relate to the conviction(s).

4. Except as provided in I.C. 35-38-9-6(c) and notwithstanding I.C. 35-38-9-6(d), the records of the sentencing court, a juvenile court, the Court of Appeals of Indiana, and the Indiana Supreme Court concerning Petitioner represented by criminal case number(s) _____ and appellate case number(s) _____ shall be permanently sealed.

5. The Indiana Supreme Court and the Court of Appeals of Indiana shall 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 and provide a redacted copy of such opinion or memorandum decision to any publisher or organization that publishes the opinion or memorandum decision as required by I.C. 35-38-9-6(c), however this does not require the destruction of any existing copy of an opinion or memorandum decision that includes the Petitioner's name.

6. If Petitioner is obligated to register as a sex offender based on the

commission of the felony which has been expunged, such registration obligation is not altered by this order nor does this order affect the operation of the sex offender registry web site, any person's ability to access the petitioner's records, records required to be maintained concerning sex or violent offenders, however the expunged conviction(s) must be clearly marked as expunged on the sex offender registry web site.

7. Petitioner's civil rights shall be restored, including the right to vote, to hold public office, to serve as a juror.

8. Petitioner shall be treated as if Petitioner had never been convicted of the offense. However, upon subsequent arrest or conviction for an unrelated offense, the 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 the purposes of a habitual offender enhancement and 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.

9. The Clerk shall send a copy of this Order to all parties of record or their attorneys and to the Indiana Department of Corrections, the Indiana Bureau of Motor Vehicles, the following law enforcement agencies or entities that incarcerated Petitioner or provided treatment or services: _____ (insert name of person/agency), and the Indiana State Police Central Repository for Criminal History.

10. If any of the expunged conviction records were appealed, the Clerk shall also send a copy of this Order to the Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court.

SO ORDERED this ____ day of _____, 20__.

Judge, _____ Court