

## **2014 EXPUNGEMENT REMEDY LEGISLATION EFFECTIVE MARCH 26, 2014**

**Here is a summary of the changes in the expungement remedies made by 2014 House Enrolled Act 1155. This legislation went into effect Wednesday, March 26, 2014, when it was signed by the Governor. To read the bill, copy the following link and paste it in your browser: <http://iga.in.gov/legislative/2014/bills/house/1155/#>**

- 1. IC 35-38-5 remedy is repealed** - the repealed chapter provided for a person arrested but not charged, or who had charges dismissed because of mistaken identity, no crime was in fact committed, or no probable cause, to have all arrest records, photographs, and fingerprint records of law enforcement destroyed or delivered to arrestee
  
- 2. Changes to IC 35-38-9-1 on arrest expungements:**
  - legislation adds a new subsection listing required contents for arrest expungement petition
  - requires service of petition on prosecutor
  - instead of requiring sealing as last year's arrest expungement statute did, this year's change provides that no information re the expunged arrest may be "placed or retained" in any state or local repository for criminal history information, but makes exceptions for internal law enforcement records, court records, or diversion or deferral program records
  
- 3. Changes applicable to all conviction expungement statutes, IC 35-38-9-2 through 35-38-9-5:**
  - any conviction petition is now to be filed in any circuit or superior court in the county of conviction (changes from last year's provision that filing was to be in court of conviction; note this means city and town courts will no longer hear petitions to expunge convictions entered in those courts)
  - new legislation strikes out and does not replace the former language prohibiting any waiver or reduction of filing fees for an indigent petitioner
  - new legislation changes burden of proof for conviction expungement petition from clear and convincing to preponderance
  - new legislation removes the former requirement that a conviction expungement petitioner must prove he or she had "successfully completed" the sentence but specifies that petitioner must show payment of all fines, fees, and court costs, and satisfaction of any restitution obligation
  
- 4. Changes for IC 35-38-9-4 expungement of felonies above D or Level 6:**
  - new law modifies the wait period for filing to not earlier than the later of eight (8) years from the date of conviction (the limit in last year's legislation), or (new) three (3) years from the completion of the person's sentence
  
- 5. Changes for IC 35-38-9-5 expungement of felonies when petitioner was a public official when committed or which resulted in serious bodily injury:**

- new law modifies the wait period for filing to not earlier than the later of ten (10) years from the date of conviction (the limit in last year's legislation, or (new) five (5) years from the completion of the person's sentence

**6. Changes for IC 35-38-9-6 expungements for misdemeanors or D or Level 6 felonies:**

- new legislation provides that defense lawyers and probation officers (when necessary for presentence) as well as prosecutors may, after getting a court order, have access to the state police central repository for criminal history information to access expunged conviction records
- new law specifies that, notwithstanding the conviction expungement, the probation department may provide an unredacted presentence report to anyone entitled by law to have it

**7. Generally applicable changes to IC 35-38-9-8 on conviction expungement petition contents:**

- new law adds to items to be attached to petition a copy of the petitioner's BMV records
- adds to petition requirement that all convictions and dates be entered an additional requirement that all appeals and dates of appellate opinions be listed
- changes petition requirement of evidence that all terms of sentence were successfully completed to require instead evidence that all fines, fees, and court costs have been paid and that all restitution obligations have been satisfied
- changes requirement that prosecutor send a copy of petition to victim's last know address to require instead that prosecutor inform victim of victim's rights under 35-40-6 (the victim's rights chapter)

**8. Changes to IC 35-38-9-9 limits on petitions:**

- adds limit for petitions for felonies higher than D or Level 6 that, if a petition was denied by the court, a subsequent petition cannot be filed for 3 years
- allows a petitioner who omitted a conviction from his initial petition for expungement to file a subsequent petition if the court finds the failure to list the conviction in the initial petition was in good faith, that the omission was due to excusable neglect or factors beyond petitioner's control, and that the new filing is in the best interests of justice

**9. Changes to IC 35-38-9-10 remedies and protections after expungement:**

- adds provision that a petition for expungement and an order of expungement are confidential

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**10. Changes to IC 35-38-9-11 on subsequent procedures and other matters:**

- prohibits any waivers of the right to expungement in plea agreements
- adds language stating that any purported waiver of the right to expungement in a plea agreement is invalid and unenforceable as against public policy