

LEGAL CLEANUP IN INDIANA

A Guide To Successfully Expunging
Criminal & Juvenile Records



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A GUIDE TO SUCCESSFULLY EXPUNGING
CRIMINAL & JUVENILE RECORDS

By Robert H. Bellinger II, Esq.

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TABLE OF CONTENTS

| | |
|---|----|
| Attorney Introduction | 5 |
| An Overview Of The Expungement Process In The State Of Indiana | 7 |
| The Primary Difference Between Expungement And Sealing Of Criminal Records | 12 |
| Expungement Is A Once In A Lifetime Opportunity In The State Of Indiana..... | 17 |
| Common Misconceptions Regarding The Indiana Expungement Process..... | 19 |
| The Costs Associated With The Process Of Expungement In Indiana | 22 |
| The Difficult Aspects Of Dealing With The Expungement Process..... | 26 |
| A Breakdown of the Expungement Application Process in Indiana | 30 |
| Notable Case Studies Involving The Expungement Process In Indiana | 32 |

ATTORNEY INTRODUCTION

Robert Henry Bellinger II grew up in eastern Whitley County, graduated from Columbia City High School and went on to graduate from IPFW and Thomas M. Cooley Law School.

He has “seen the inside of a courtroom” and has extensive trial experience.



He is also the chairman and co-founder of the American Unity Party. The AUP is an independent, and therefore non-partisan, party designed to cater to the interests of the shrinking middle-class. He believes that religious training and participation in volunteer activities are important to the communities in which we live and has participated in volunteer programs that are too numerous to list.

The Bellinger Law office was founded upon principles that you wouldn't expect from other law firms. Attorney Bellinger believes in providing the best customer service through “breadbasket advocacy.”

He defines customer service as being accessible, meeting with a real lawyer; not a paralegal, listening more than talking, being knowledgeable, showing empathy, and possessing a friendly and outgoing personality. By breadbasket advocacy Mr. Bellinger works to find a voice for the common middle class of citizens like you and I who make up the pulse of our communities.

In fact it is vitally important that the breadbasket have a voice and that it be heard. The legal system is not designed for the very wealthy or the very poor.

The Bellinger Law Office caters to the grassroots of the community by providing legal services that address and solve everyday concerns that are important to the individual. This is done by providing all of the relevant information that a client will need to make a well-informed decision.

AN OVERVIEW OF THE EXPUNGEMENT PROCESS IN THE STATE OF INDIANA

Interviewer: What is an expungement?

Robert Bellinger: It's not really an expungement in the sense that convictions and records are destroyed and disposed of. Our legislature passed the statutory scheme and called it expungement but attorneys actually put the word expungement in quotes.



Although the new law does indicate that some conviction records will be expunged, it's not a traditional expungement where records are destroyed. Instead this new statutory scheme provides enough to seal some arrests and convictions in some categories of conviction records and restrict the use of other conviction records.

So they don't truly get expunged or destroyed or wiped clean. They're really in essence just sealed and access to those convictions and arrest records are restricted.

THE STATE OF INDIANA DID NOT HAVE AN EXPUNGEMENT STATUTE PRIOR TO 2013

Interviewer: How was the expungement law before this previously?

Robert Bellinger: Indiana didn't have one. In July 2013 our legislature did this because of the statewide economy. People were having a tough time getting jobs. Many people with misdemeanors or low level felony convictions were not able to obtain decent employment because employers would do background checks, a conviction would show up, and that person would not get hired. People were being punished economically long after they had paid their debt to society. This law was designed to seal those records so that the public cannot access them, including potential employers. It's really just a means to help people seek employment and get jobs.

THE MAIN REASONS FOR GETTING AN EXPUNGEMENT IN THE STATE OF INDIANA

Interviewer: Why would someone want to get an expungement? If I had a misdemeanor or a felony, could I get an expungement?

Robert Bellinger: They would want to get it expunged so that it's not on their record and they can get a good paying job. The type of criminal

offense will determine the criteria for expungement and the length of the waiting period in order to get the conviction expunged.

THE CRITERIA OF ELIGIBILITY FOR EXPUNGEMENT REGARDING CRIMINAL CONVICTIONS

Interviewer: What kind of cases cannot be expunged?

Robert Bellinger: There are some ineligible felony convictions that cannot be expunged. Anyone convicted of official misconduct, homicide offenses, human and sexual trafficking offenses, or any sex crime offenses cannot take advantage of the expungement law.

THE POTENTIAL TIMEFRAME OF APPLICATION FOR THE EXPUNGEMENT PROCESS IN INDIANA

Interviewer: How long does it take? How long does someone have to wait before they can apply for the expungement process?

Robert Bellinger: The expungement law is divided into five sections. It is important to distinguish between Sections 1 through 3 and Sections 4 and 5. Section 1 deals with arrests without conviction or a juvenile adjudication. Section 2 covers all misdemeanor offenses including Class D felonies, or

now what is called Level 6 felonies, that were alternatively sentenced as or converted to a misdemeanor after the person served their felony punishment. Section 3 covers Class D/Level 6 felonies that did not result in bodily injury to another person.

Sections 4 and 5 only provide for the *marking* of certain felony conviction records as “expunged,” but these records *remain available* to the public on public access. If a

conviction is expunged under these sections there are new limits placed on how these records may be used. Section 4 includes

all eligible felonies that did not result in serious bodily injury to another person and are not eligible for this remedy if the conviction was for a Class D/Level 6 felony that resulted in bodily injury to another person. Section 5 deals with any remaining eligible felony *only if* the prosecutor provides written consent to authorize the filing of the expungement petition.



THE WAITING PERIOD FOR SECTION 1 IS ONE YEAR, THE WAITING PERIOD FOR SECTION 2 IS FIVE YEARS, THE WAITING PERIODS FOR SECTIONS 3 AND 4 IS 8 YEARS AND FOR SECTION 5 IS 10 YEARS

The waiting periods to file an expungement petition differ. For a Section 1 offense the waiting period is one year after the date of the arrest. Under Section 2 the waiting period to file the petition is five years after the date of the conviction. For Section 3 offenses the waiting period is 8 years after the date of the conviction.



Section 4 offenses require a waiting period of 8 years from the date of the conviction or 3 years after the completion of the person's sentence. The waiting period for Section 5 offenses is ten years from the date of conviction or five years after the completion of the sentence. All of the waiting periods may be shortened *only* if the prosecutor agrees in writing to shorten it.

THE PRIMARY DIFFERENCE BETWEEN EXPUNGEMENT AND SEALING OF CRIMINAL RECORDS

Interviewer: What is the primary difference between an expungement and getting something sealed?

Robert Bellinger: The law is not a true expungement, meaning that the conviction records are not destroyed. The records will still exist; they are only sealed. This means that no information concerning the conviction can be made accessible to the public.



There is a difference in how records are handled under Sections 4 and 5. If a petition for expungement under these sections is granted the court records and other public records relating to the arrest, conviction, or sentence will be marked or identified as expunged; however, *these records will remain public records and will remain on public access*. Therefore, the Indiana State Police, BMV, and any other law enforcement agency in possession

of records that relate to the conviction that are ordered expunged shall add an entry to the person's record of arrest, conviction, or sentence in the criminal history data base stating that the record is marked as expunged.

ALL THE RECORDS PERTAINING TO A PERSON'S ARREST OR CONVICTION ARE SEALED IN AN EXPUNGEMENT

If the petitioner of the expungement is successful, the court must order the Department of Correction, the Bureau of Motor Vehicles, law enforcement agencies, or any other persons dealing with an arrest or providing services to the person under a court order from releasing any records relating to the person's conviction. It also orders the Indiana State Police to seal the person's conviction records and the records that are contained in their central repository for criminal history information. The order will notify the Clerk of the Indiana Supreme Court to seal the records that are in the Court's possession that relate to the conviction. Further, it must order the records sealed for the sentencing courts or even the Indiana Court of Appeals if the conviction went up for appeal.

RESTORATION OF CIVIL RIGHTS

If the person's conviction resulted in the loss of their right to vote, to hold public office, or serve as a juror, these rights must be restored.

AN EXPUNGEMENT CAN HELP A PERSON TO BE GAINFULLY EMPLOYED IN INDIANA

Interviewer: Can you provide an example of how someone was trying to get a particular job and they got something expunged with that? Would an expungement help them from getting a job they previously couldn't get because of something that showed up on their record?

Robert Bellinger: Yes, it becomes unlawful discrimination for anyone to suspend, expel, refuse to employ, refuse to admit, refuse to grant or renew a license or permit needed to engage in any activity, occupation, or profession, or otherwise discriminate against anyone because of a conviction or arrest record that has been expunged or sealed. In applications for employment, a license, or any other right or privilege protected by this law, a person may lawfully ask the applicant, "Have you ever been arrested for or convicted of a crime that has not been expunged by a court?"



THE PROPER MANNER TO DISCLOSE AN EXPUNGED CONVICTION TO A POTENTIAL EMPLOYER

Interviewer: In a lot of different states, you can't even expunge convictions, you can only expunge something that's just a charge or an arrest and now in Indiana you can actually expunge convictions. How would someone phrase it to an employer to disclose it?



Robert Bellinger: The person could simply say that they haven't been arrested or convicted of a felony or misdemeanor. If the person is asked the question posed above, then they should answer truthfully.

SOMETIMES EXPUNGED RECORDS CAN BE ACCESSED

Interviewer: Who has access to expunged records?

Robert Bellinger: It depends on the type of record that has been expunged or sealed and who is requesting access to them. There are two records categories. Records category 1 are those in possession of the Indiana Department of Correction, the BMV, and any law enforcement agency or any other person or entity who incarcerated, provided treatment or other services for the person whose

records were expunged. These records may be released *only* to a law enforcement officer acting in the course of their official duty. Otherwise, anyone attempting to access the records in this category must get a court order to do so.

Records category 2 are records collected in the Indiana State Police central repository.

These records may be accessed by a prosecuting attorney, a defense attorney, or a probation department



if needed to carry out their professional duties.

These records can only be accessed pursuant to a court order.

Records category 3 are records possessed by the sentencing court, juvenile court, the Indiana Court of Appeals and the Indiana Supreme Court. These records are considered permanently sealed.

EXPUNGEMENT IS A ONCE IN A LIFETIME OPPORTUNITY IN THE STATE OF INDIANA

Interviewer: How many times can somebody get something expunged?

Robert Bellinger: It's a once in a lifetime deal, so you've got to get it right the first time. If a person has arrests or convictions in different counties, they would have to file multiple petitions in each respective county in one 365 day period.

TYPICAL TIMEFRAME OF RESOLUTION FOR THE EXPUNGEMENT PROCESS IN INDIANA

Interviewer: How long does the process take? What is the process like?

Robert Bellinger: The time the process takes depends on several variables. Once the prosecuting attorney is served with the expungement petition they have 30 days in which they must respond. Provided that the prosecutor does not object to the filing of the petition the court may grant the petition without a hearing. If the prosecutor does object, the court must set the matter for a hearing not sooner than 60 days from the date the prosecutor was served.

THE COMMON OBSTACLES FACED DURING AN EXPUNGEMENT IN INDIANA

Interviewer: What are some barriers that could get in the way during the expungement process?

Robert Bellinger: The person filing the petition for expungement must show by a preponderance of the evidence that they have met the waiting period, there are no charges currently pending against them, they have paid all fines, court costs, any restitution owed and have not been convicted of a crime



within the previous 5 years for a Section 2 offense; 8 years for Section 3 and 4 offenses; and 10 years for a Section 5 offense. There also exist specific provisions that must be included in an expungement petition that are dependent on the offense that a person is attempting to expunge. Due to the complexities involved in drafting the petition, the possibility of conducting a hearing on the petition, and the fact that you only get one shot at doing this, an attorney should be retained to overcome these barriers and accomplish the expungement.

THE JUDGE CANNOT IMPOSE ANY ADDITIONAL JUDGMENT IN AN EXPUNGEMENT HEARING

Interviewer: Is there anything that a judge could possibly impose in addition to an expungement?

Robert Bellinger: No, there's nothing additional that can be imposed, the expungement petition will either be granted or denied. If the petition is denied it becomes an appealable final order.

COMMON MISCONCEPTIONS REGARDING THE INDIANA EXPUNGEMENT PROCESS

Interviewer: What are some of the common misconceptions that people have about expungements?

Robert Bellinger: One thing that people don't realize is that the granting of an expungement has no effect on an existing or pending driver's license suspension. For example, a person can have a habitual traffic violator conviction expunged but if their driver's license is suspended the suspension will remain. Moreover, the expungement of a crime of domestic violence under Section 2 does not restore a person's right to possess a firearm. Additionally, if a person who has had their records expunged is subsequently arrested or convicted for

an unrelated offense the expunged records may be considered by the sentencing court in determining the sentence for the new offense or for the purpose of a habitual offender enhancement.

RETAINING AN EXPERT ATTORNEY FOR THE PROCESS OF EXPUNGEMENT IS ADVISABLE

Interviewer: If someone worked with another attorney on a previous conviction, could they go to you for their expungement?

Robert Bellinger: Yes. There are many criminal defense attorneys that don't handle expungement cases.

Also, I strongly recommend that you hire an attorney experienced in this area. Simply put, if somebody tries to do this on their own and they don't do it correctly then they're out of luck. They can't file an amended expungement petition.



COMMON CASES THAT PEOPLE GET EXPUNGED IN THE STATE OF INDIANA

Interviewer: What are some of the most common cases that people get expunged?

Robert Bellinger: The most common are the Section 1 and 2 offenses. I believe they are the most common because the wait period is short (one and five years respectively) and I have not had a prosecutor object to any offenses in these categories.

THE BENEFITS OF RETAINING AN ATTORNEY FOR THE PROCESS OF EXPUNGEMENT

Interviewer: Why would it be beneficial to hire an attorney for an expungement?

Robert Bellinger: Without question, it would be beneficial to hire an attorney that has the expertise required to follow the statutory



scheme. As I've previously stated, you only get one opportunity at this, there are no do-overs. Also, if you have a hearing, you don't want to try to do the hearing without an attorney because the Court is going to expect you to know the Indiana Criminal Code and the rules of trial procedure.

A COMPETENT ATTORNEY CAN ADVISE POTENTIAL CLIENTS IF THEIR OFFENSE IS ELIGIBLE FOR EXPUNGEMENT OR NOT

Interviewer: If someone doesn't know they have a charge that could be expunged, could they give you

a call and you can give them an idea if they can pursue it?

Robert Bellinger: Yes. I like to meet with them and go through all of the elements of the statutory scheme with them to make sure they qualify.

THE COSTS ASSOCIATED WITH THE PROCESS OF EXPUNGEMENT IN INDIANA

Interviewer: What are some of the costs that are associated with an expungement? What are some of the costs that someone may have to pay?

Robert Bellinger: Attorney fees are dependent on which offense sections the person is seeking to expunge, the complexity of the issues and the time required to represent the client. It is important to note that there are no filing fees associated with the filing of an expungement petition.

MULTIPLE CHARGES CAN BE EXPUNGED IF THE WAITING PERIOD FOR ALL OF THEM HAS LAPSED

Interviewer: If I have several charges can I expunge only one and if so can an attorney help me make the choice of which one would be better to expunge?

Robert Bellinger: Since a person has only one opportunity to expunge their criminal records I recommend that they wait the longest required waiting period and expunge all of them. For example if someone had 5 convictions, 2 of them are 10 years old, 2 of them are 8 years old, but 1 of them is only a year old, I would tell that person to wait until they're outside the waiting period of that last conviction so we can get wipe the slate clean. Otherwise you would be able to expunge 4 out of the 5 convictions and still be left with one on your record for a lifetime; and that could spoil your future employment prospects.



MITIGATING FACTORS FOR THE EXPUNGEMENT PROCESS IN THE STATE OF INDIANA

Interviewer: Would it help if I had some letters or witnesses to help validate my character if the prosecutor objected to my expungement?

Robert Bellinger: It would help the validation of your character. For example, let's say that somebody wants to expunge a Section 2 offense but doesn't want to wait the 5 years to file the petition.

Presenting good character evidence to the prosecutor could show that you have bettered yourself, you've redeemed yourself, and you no longer pose a threat to any person in society. This information may convince the prosecutor to agree to shorten the waiting period so that you can get that awesome job.



THE PROCESS OF EXPUNGEMENT FOR TRAFFIC INFRACTIONS IN INDIANA

Interviewer: What about stuff like speeding or traffic infractions? Can they be expunged?

Robert Bellinger: This expungement law doesn't address traffic infractions, but there are other programs available. Depending on the infraction and the person's criminal history, it may be possible to have the infraction expunged provided they pay to required fine and do not get any traffic tickets for a period of six or twelve months.

OWI OFFENSES CAN BE EXPUNGED IN THE STATE OF INDIANA

Interviewer: Can OWIs be expunged?

Robert Bellinger: Yes, you can have OWI's expunged provided you meet the appropriate criteria.

AN OUT OF STATE CONVICTION CANNOT BE EXPUNGED IN THE STATE OF INDIANA

Interviewer: What about the case where someone has a charge from another state? Would that person have to go and get that expunged at that particular state.

Robert Bellinger: This only works for convictions in Indiana, so if it's a conviction outside of Indiana, that person will have to find an attorney in that jurisdiction.

A PRIOR EXPUNGEMENT FROM ANOTHER STATE DOES NOT COUNT IN INDIANA

Interviewer: If I have had prior expungement from another state, does that still count in Indiana?

Robert Bellinger: I have yet to see this issue come up. The Indiana expungement statutes do not address the issue of previous out-of-state expungements, therefore I would say that an out-of-state expungement would not count in Indiana.

THE DIFFICULT ASPECTS OF DEALING WITH THE EXPUNGEMENT PROCESS

Interviewer: What would you say is the most difficult aspect of the whole expungement process?

Robert Bellinger: One of the requirements of the expungement petition is to list all of the petitioner's addresses from the date of the offense sought to be expunged to the date of the petition. I've had instances where clients want to expunge offenses that are twenty years old.

This poses a considerable challenge for the client and myself to track down all of the client's previous addresses for the past twenty years.



Another difficult aspect of this new law is that it hasn't been fully litigated yet and some gray areas do exist in the statutes as written and the court's interpretation of them.

THE THINGS A CLIENT CAN DO TO MITIGATE THEIR EXPUNGEMENT PROCESS

Interviewer: Is there anything that a client can do to make it easier to make their expungement go more smoothly in order to expedite it?

Robert Bellinger: The thing that will make it easy is to come prepared and to give the attorney as much information as they can. For example, their addresses, driver's license number, criminal history and whether or not they actually complied with the terms of their probation of the previous conviction by paying any outstanding court fines or costs or paying any restitution that may be owed.



A PERSON HAVING PENDING CHARGES AGAINST THEM CANNOT EXPUNGE A PREVIOUS OFFENSE

Interviewer: What about the situation where someone has a pending trial or pending case that's hanging and that they've already had something they want to expunge, would you recommend for them to wait for the final decision of that one?

Robert Bellinger: Yes, they have to wait. The statute states that if a person tries to expunge an

arrest or conviction they cannot have any pending charges against them.

THE PROCESS OF EXPUNGEMENT FOR JUVENILE CASES IN THE STATE OF INDIANA

Interviewer: What about juvenile cases, how does that work? Are they able to get out of it?

Robert Bellinger: The expungement of juvenile cases is covered in another statute. The new expungement law does not incorporate juvenile cases into the statutory scheme.



THE TIME IT TAKES FOR EXPUNGEMENT TO TAKE EFFECT AFTER A JUDGE'S APPROVAL

Interviewer: Once the expungement petition has been approved how long does it take for the expungement to take effect?

Robert Bellinger: The judge's approval is immediate. However, there is no real way to know when the actual records will be expunged because the order goes out to all of the different agencies. For example it will go to the Indiana Department of Correction, Indiana State Police, Bureau of Motor

Vehicles, etc. There's just really no way of knowing how long it will take on their end to show that the records are expunged in their databases.

A COMPETENT DEFENSE ATTORNEY TRIES TO GET THE MOST LENIENT PUNISHMENT AVAILABLE FOR THEIR CLIENT

Interviewer: Do you come up with a strategy if somebody is charged with a heavier charge? Do you try to reduce those charges so that they could have a possible expungement plan for the long run?

Robert Bellinger: Yes. Defense attorneys always try to do that because we want to get our clients the most lenient punishment possible. For example, if I have a client who was charged with a Level 6 felony that didn't result in bodily injury, I would work to negotiate that charge down to either a misdemeanor or a Level 6 felony that could be reduced to a misdemeanor in the future. Strategically, this would decrease the waiting period to file the expungement petition from 8 years to 5 years.



A BREAKDOWN OF THE EXPUNGEMENT APPLICATION PROCESS IN INDIANA

Interviewer: What does the application process consist of? Is there any paper work that I would have to do?

Robert Bellinger: No, there is no paperwork that you would have to do. This is why it is so important to work with an attorney who does a lot of expungement cases. It's not as simple as filling out a form. This law is detailed and complex and the lay person attempting to do this on their own most likely won't have much luck dealing with the prosecuting attorney. I cannot stress this enough; hire a good attorney and let them walk you through this process.



Interviewer: Now if I don't have my paperwork with me, if I don't have that information with me. Would you be able to track that down for me?

Robert Bellinger: Yes. I'd be able to track it down, it's just going to take longer because I'm going to have to do some sleuthing.

IT IS IMPERATIVE TO PLAN IN ADVANCE BEFORE APPLYING FOR AN EXPUNGEMENT IN INDIANA

Interviewer: For anyone even considering an expungement right now, would you recommend that they start gathering as much information as possible, the paper work and all of that?

Robert Bellinger: Yes, because it's going to make the process go smoother and faster. The sooner we file the petition, the sooner we can obtain an order to expunge the person's records, the sooner they can go out and apply for jobs and get the job they really want.



THE PAPERWORK REQUIRED IN THE INDIANA EXPUNGEMENT PROCESS

Interviewer: What are some examples of some of the paperwork that they should start gathering together?

Robert Bellinger: The most important thing that a person can do is to track down and write down all of their previous addresses. Everything else, like their driving history, criminal history, etc., I can acquire.

NOTABLE CASE STUDIES INVOLVING THE EXPUNGEMENT PROCESS IN INDIANA

Interviewer: Are there any particular cases that you could think of involving expungement that you could share just to get an example of how it works?

Robert Bellinger: I am doing one now where the client was convicted of a Class D felony battery to a child. This client is a nurse, she ended up losing her job and had her license suspended



because of that conviction. We filed the petition for expungement, the prosecutor objected and we have a hearing set in the future.

THE REASONS BEHIND A PROSECUTOR'S OBJECTION TO AN EXPUNGEMENT PETITION

Interviewer: Why would a prosecutor want to object or try to block it?

Robert Bellinger: I think it's because they are not convinced that the person has redeemed themselves. I think that if a situation arose where a person tried to expunge multiple domestic violence or battery convictions the prosecutor would have a real

problem with that. It's the prosecutor's job to hold an offender accountable for their actions and protect the public.

KEY FACTORS TO CONSIDER WHEN CONTEMPLATING GETTING AN EXPUNGEMENT

Interviewer: Is there anything you want people to come away with from this interview? What would it be as far as expungements go? What are some key factors?

Robert Bellinger: The key factors are to meet with an attorney experienced in expungement law and ask a lot of questions.

This new law provides a great opportunity for people to wipe the slate clean, start over and get back to work or get their dream job. It's conceptually similar to a bankruptcy. I don't do bankruptcies but we all know how they work; you're so far in debt and you're trying to just make ends meet and you can't get your head above water so you go file bankruptcy, and your debts are wiped out and you get a fresh start. That's what this expungement law does. Anyone with an arrest or conviction really should look into this opportunity so that they can get the help they need.

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