

SPECIALIZED DRIVING PRIVILEGES & EXPUNGEMENTS

ICLEF

ANNUAL OVWI DEFENSE UPDATE

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Specialized Driving Privileges (SDP)

- **IC 9-30-16**
- **What is SDP?**
 - **Similar to old “hardship” license**
 - **Allows a suspended driver to have limited driving privileges**
 - **Most judges restrict driving schedule and locations to & from:**
 - **work/school**
 - **Court/probation**
 - **Doctor/counseling**
 - **Life necessities (grocery, pharmacy, gas station)**
 - **Childcare/parenting time**
 - **May require ignition interlock, or other alcohol monitoring (BACTrack, transdermal alcohol monitors, etc.)**

Specialized Driving Privileges (SDP)

- **Types of SDP**

- **Court ordered License Suspension**

- **Operating While Intoxicated**
 - **Failed Chemical Test**
 - **Probable Cause for violation of I.C. 9-30-5**
 - **Driving While Suspended**
 - **Reckless Driving**
 - **Drug Conviction**
 - **Workzone Speeding**

- **Administrative License Suspension**

- **No Insurance Suspension**
 - **Excessive Points**
 - **Habitual Traffic Violator**

Specialized Driving Privileges (SDP)

- Who is NOT eligible?
- IC 9-30-16-1
 - Never been Indiana resident
 - Suspended due to chemical test refusal
 - unless granted with ignition interlock - see IC 9-30-6-8(d)
 - Suspended due to conviction for OVWI-Causing Death
 - Driver suspended under IC 9-24-10-7(b)(2)(A) – incompetent/unfit
 - Driver suspended for passing a school bus with stop arm extended

Specialized Driving Privileges (SDP)

- How to Apply:
 - IC 9-30-16-3 (Court Ordered Suspensions)
 - File petition in Court and same cause number in which license suspension was (or will be) ordered
 - Court only has authority to order SDP for a suspension issued by that same court or an administrative suspension if driver also resides in county for Court that issued order
 - Court can order SDP for both court-ordered and administrative suspensions if both listed in same petition and proposed order
 - IC 9-30-16-4(d)(2) regardless of county of residence as long as Indiana resident
 - If multiple court ordered suspensions from different counties, must file petition in each county

Specialized Driving Privileges (SDP)

- How to Apply (continued)
- I.C. 9-30-16-4 (Administrative Suspensions) – Suspensions imposed by the BMV
 - Habitual Traffic Violator
 - Excessive Points
 - No-Insurance Suspensions (for some older ones)
- MUST file in county of residence
- If client was a resident of Indiana when the license was suspended but no longer resides in Indiana, you can apply in the county where the most recent Indiana moving violation judgment was entered
- Can cover all administrative suspensions
- Must serve prosecuting attorney and BMV (and AG)

Specialized Driving Privileges (SDP)

- When to apply?
 - Pre-conviction
 - If indicated intent to file SDP at Initial Hearing, can ask Court to stay the suspension for up to 10 days [IC 9-30-16-1(g)]
 - Must then file SDP within that 10-day period.
 - Court will then set for hearing within 30 days of initial hearing
 - Stay remains in effect until hearing provided petitioner does not request the continuance
 - May request that license suspension begins prior to conviction
 - Common in HTV cases
 - IC 9-30-16-1(d) “Except as provided in section 3.5 of this chapter, a suspension of driving privileges under this chapter may begin before the conviction. Multiple suspensions of driving privileges ordered by a court that are part of the same episode of criminal conduct shall be served concurrently. A court may grant credit time for any suspension that began before the conviction, except as prohibited by section 6(a)(2) of this chapter.”

Specialized Driving Privileges (SDP)

- When to apply?
 - Post-conviction
 - Can apply at any time
 - No longer need to wait for half of HTV suspension to be completed before being eligible
 - Formerly, on HTV 10 year had to wait 5 years before hardship eligible & 10 years on lifetime
 - Follow same procedures

Specialized Driving Privileges (SDP)

- IC 9-30-16-4 Petition for specialized driving privileges
- Sec. 4. (a) An individual whose driving privileges have been suspended by the bureau by an administrative action and not by a court order may petition a court for specialized driving privileges as described in section 3(b) through 3(d) of this chapter.
- (b) A petition filed under this section must:
 - (1) be verified by the petitioner;
 - (2) state the petitioner's age, date of birth, and address;
 - (3) state the grounds for relief and the relief sought;
 - (4) be filed in the appropriate county, as determined under subsection (d);
 - (5) be filed in a circuit or superior court; and
 - (6) be served on the bureau and the prosecuting attorney.
- (c) A prosecuting attorney shall appear on behalf of the bureau to respond to a petition filed under this section.
- (d) An individual whose driving privileges are suspended in Indiana may file a petition for specialized driving privileges. The petition must be filed as follows:
 - (1) Except as provided in subdivision (2), if the individual is an Indiana resident, in the county in which the individual resides.
 - (2) If the individual is an Indiana resident and is subject to an active administrative suspension under this section in addition to an active court ordered suspension under section 3 or 3.5 of this chapter, in the court that has ordered or imposed a suspension of the individual's driving privileges.
 - (3) If the individual was an Indiana resident at the time the individual's driving privileges were suspended but is currently a nonresident, in the county in which the individual's most recent Indiana moving violation judgment was entered against the individual.

Pro Tip

- Proposed Order for SDP needs to run through 11:59:59 PM on the last date that suspension will be in effect.
- If you fail to indicate an end date/time for the SDP, BMV will consider SDP to remain in effect even if client is eligible to have fully valid license.

Other License Suspensions

- Failure to File Insurance
 - I.C. 9-25-5-1 & I.C. 9-25-6-3 (No-Insurance Suspension after certain moving violations or traffic accident)
 - If Certificate of Compliance is not received, BMV shall suspend license indefinitely until SR22 is received or Certificate of Compliance is filed
 - Once BMV receives SR22, the suspension is stayed for 180 days
 - If SR22 is maintained for that 180-day period, BMV will terminate suspension
 - After 180 days and suspension is terminated, the client is also not required to pay a reinstatement fee
- You do not have to apply for SDP on these suspensions anymore (in most cases)

Other License Suspensions

- FTA Suspensions (Failure to Appear)
 - Client is suspended for failing to appear or respond to a traffic violation **but court did not enter a default judgment**
 - Suspension will remain indefinitely until client resolves the FTA
 - If client obtains an SR22, the BMV will stay suspension, but if SR22 is cancelled, suspension will be reinstated
 - BMV record may still show the suspension as active, but client will be able to apply for a license
 - Client will still need to resolve the FTA and ticket with the court unless client wants to maintain SR22 forever
- Great way to get client valid and then contact prosecutor to resolve the outstanding case (these are often very old tickets)

Other License Suspensions

- FTP Suspensions (Failure to Pay)
 - Client suspended for failing to satisfy a judgment
 - Court can suspend for 3 years for failure to satisfy a judgment
 - Client can obtain SR22 and BMV will stay the suspension for 3 years
 - Client has the option of paying or negotiating an alternate solution with the prosecutor to resolve ticket (sometimes DPA will dismiss or reduce fees or can apply for amnesty)
 - After 3 years, if SR22 is maintained, suspension is closed, and no reinstatement fee is due (but may still owe money to court for ticket)
 - BMV record may still show the suspension as active, but client will be able to apply for a license
- Great way to get client valid while they work to pay off old tickets!

Pro Tip

- **Always check whether a ticket suspension is an FTA or an FTP!**
 - Paying an FTP ticket will not usually trigger new suspensions because the judgment is already entered
 - Paying an FTA ticket can trigger new suspensions (insurance, DWS, HTV) depending on how old the ticket is, what it was for, etc.
 - Make sure to double check how a case will affect the driving record because you don't want to tell a client to go pay a ticket without first advising them of how that may affect their ability to get valid!

Reinstatement Fees

- You can still petition to have reinstatement fees waived in the client's county of residence (I.C. 9-25-6-15.1)
- If client obtains SR22, often client will be able to obtain a license even before fees are waived
- Reinstatement fees waived for failure to file insurance after maintaining SR22 for 180 days
- Best practice may be to file petition for fee waiver to make sure all items are cleared up on client's record, but this may be a case-by-case basis

Pro Tip

- Some suspensions cannot be resolved by an SDP or getting SR-22
- Unfortunately, many prosecutors and some judges do not yet understand the new statutes
- Take extra time to educate yourself first and then educate your local prosecutors and judges on these new statutory changes
- Caution clients that even though some suspensions or outstanding fees may show up on their driving record, in some situations, they may still be valid. This is VERY confusing to clients and police officers so be sure to take extra care to educate your clients

EXPUNGEMENTS

- What is an “expungement?”
 - Finding by a judge that a conviction, arrest, dismissal or existence of a criminal charge cannot be used to discriminate against a person
 - Effect:
 - Employment
 - Housing
 - Attend/volunteer for child’s school activities

“The legislature intended to give individuals who have been convicted of certain crimes a second chance by not experiencing many of the stigmas associated with a criminal conviction – especially where an individual has completed the requirements established by the trial court and has since been a law-abiding citizen.”

EXPUNGEMENTS

- What is an expungement?
 - Civil matters
 - Must use an “XP” cause number
 - Caption: In Re the Expungement Petition of _____
 - Cannot be filed under an existing (or closed) criminal cause number
 - Civil filing fees ARE required for expungement petitions for ANY convictions
 - Civil filing fees are NOT required to expunge an arrest or charge that did not result in conviction
 - Expungement proceedings are governed by the Indiana Rules of Civil Procedure, not the Rules of Criminal Procedure.

EXPUNGEMENTS

- What an Expungement DOES do:
 - Prevents the use of an expunged criminal conviction, arrest or criminal charge and dismissal from being used to discriminate against a person.
 - ONLY APPLIES TO INDIANA ACTIONS (Employment, housing, etc.)
 - IC 35-38-9-10
 - “It is unlawful discrimination for any person to:
 - (1) suspend;
 - (2) expel;
 - (3) Refuse to employ;
 - (4) Refuse to admit;
 - (5) Refuse to grant or renew a license permit, or certificate necessary to engage in any activity, occupation, or profession; or
 - (6) otherwise discriminate against;
 - Any person because of a conviction or arrest record expunged or sealed under this chapter.”

EXPUNGEMENTS

- If convicted of any homicide OR sex crime offenses, not eligible to get ANY convictions (even non-homicide and non-sex crimes convictions) expunged.

EXPUNGEMENTS

- Sealed cases (IC 35-38-9-6)
- Sealed cases cannot be accessed by the general public
 - Cases are sealed ONLY if:
 - Highest level of conviction is either a Misdemeanor (including a felony conviction reduced to a misdemeanor via Alternative Misdemeanor Sentencing)
 - NOTE: Convictions for D felony/F6 convictions that result in bodily injury are not sealed.
 - Sealed cases can be accessed under specific circumstances by:
 - Prosecutors for the investigation and/or the filing of a new criminal case
 - Public defender if needed for a defense

EXPUNGEMENTS

- Cases Not Sealed (IC 35-38-9-7)
- Any other case with a Class C Felony or Level 5 Felony or higher CANNOT be sealed
- Class D and Level 6 Battery convictions are also no eligible to be sealed.
- Public will still be able to access these cases through MyCase or other official public records
- Any agency with records pertaining to an expunged but not sealed case must mark the file as “EXPUNGED”

EXPUNGEMENTS

- Court Ordered Fines, Fees, Costs & Restitution ALL MUST BE SATISFIED before a conviction can be ordered expunged.
 - Applies to all financial obligations ordered by the court
 - Community corrections fees
 - Probation fees
 - Court costs & fines
 - Restitution
 - Public defender fees
 - Substance abuse testing and treatment fees
- Court hearing the expungement case does NOT have authority to waive any unsatisfied fines, costs fees or restitution. Must go back to address that waiver of said fees through the criminal cause

EXPUNGEMENTS

- Collateral Actions (IC 35-38-9-0.5)

- For a collateral action to be expunged, it must have a direct connection to the criminal conviction or arrest that is being sealed or expunged.
- Collateral Actions include anything that is part of the case being expunged including the conviction, the arrest, the dismissal, not guilty findings. Requires that all part of the case to be deemed expunged and (if appropriate) sealed.
- If the expunged conviction or arrest that is directly related to the Collateral Action must be expunged and sealed, the Collateral Action must be expunged and sealed.
- If the expunged conviction that is directly related to the Collateral Action can only be expunged but not sealed, the Collateral Action can only be expunged but not sealed.
- Collateral Actions permits the expungement of an administrative proceeding, that is factually or legally related to an arrest, a criminal charge, a conviction, a juvenile delinquency allegation, or a juvenile delinquency adjudication.
- IC 35-38-9-0.5 specifically mentions property seizure, a civil forfeiture, and a petition for specialized driving privileges.
 - These actions are usually in civil courts.
- A person whose petition for expungement was granted before July 1, 2019, can get a supplemental order of expungement for collateral actions under IC 35-38-9-0.6 and to those sections of a case not previously sealed and/or expunged to be sealed and expunged.
- Collateral Actions can be used to expunge probation cases transferred from the county of the conviction to another county for oversight of the probationer

PRO TIP

- Keep current on the Expungement Law
- Determine where and how you can access information about your client's criminal history
 - BMV records
 - ISP criminal history
 - local criminal history)
- Clearly define the information that your client must provide
 - Personal information
 - Prior addresses
 - Out of state convictions
- Check your calculations as to time requirements for filing
 - Statutory timeframes (5 years, 8 years, 10 years)
 - Crime-free times (5 years, 8 years, 10 years)
 - Consider all convictions in all Indiana counties and convictions outside of Indiana

Pro Tip

- Familiarize Yourself with the local expungement requirements of each county
 - If and when hearings are held
 - Position and requirements of the local judge
 - Position and requirements of the county prosecutor (consent to waive position)
 - Experience level of the county system in handling “out of the ordinary expungement matters” and if you may need to educate the judge and/or the prosecutor.
- Determine which county to file in first if there are multiple petitions to file
- Remember that If you need consent to file early in one county you will may need consent in other counties

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