



January 31, 2003

SENATE BILL No. 315

DIGEST OF SB 315 (Updated January 30, 2003 9:23 AM - DI 106)

Citations Affected: IC 5-2; IC 12-10; IC 12-17.2; IC 16-25; IC 16-27; IC 16-28; IC 20-1; IC 20-5; IC 20-6.1; IC 25-36.5; IC 35-38.

Synopsis: Criminal history information. Removes the definition of "limited criminal history" from the law concerning criminal history information. Changes references in the Indiana Code from "limited criminal history" to "criminal history data". Repeals and replaces a provision concerning release of criminal history data to noncriminal justice organizations to: (1) make a technical correction; and (2) allow release of the data if the subject of a release request is employed by an entity that seeks to enter into a contract with a public school or a nonpublic school and the subject is expected to have direct, ongoing contact with school children. Provides that data may be expunged from a criminal history data report if an individual is found not guilty, or if the individual is the victim of identity theft, with certain exceptions. Repeals provisions that require: (1) the Indiana central repository for criminal history information to process requests from certain persons for a limited criminal history check from the Federal Bureau of Investigation's National Crime Information Center; and (2) the state police department to limit access to the limited criminal history of certain persons. Makes a technical correction.

Effective: July 1, 2003.

Bray

January 15, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.
January 30, 2003, amended, reported favorably — Do Pass.

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January 31, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

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SENATE BILL No. 315

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-2-5-1, AS AMENDED BY P.L.1-2002,
2 SECTION 13, AS AMENDED BY P.L.77-2002, SECTION 1, AND
3 AS AMENDED BY P.L.133-2002, SECTION 1, IS CORRECTED
4 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
5 2003]: Sec. 1. The following definitions apply throughout this chapter:
6 (1) "Limited criminal history" means information with respect to
7 any arrest or criminal charge; which must include a disposition.
8 However, information about any arrest or criminal charge which
9 occurred less than one (1) year before the date of a request shall
10 be considered a limited criminal history even if no disposition has
11 been entered.
12 (2) (1) "Bias crime" means an offense in which the person who
13 committed the offense knowingly or intentionally:
14 (A) selected the person who was injured; or
15 (B) damaged or otherwise affected property;
16 by the offense because of the color, creed, disability, national
17 origin, race, religion, or sexual orientation of the injured person

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1 or of the owner or occupant of the affected property or because
 2 the injured person or owner or occupant of the affected property
 3 was associated with any other recognizable group or affiliation.

4 ~~(3)~~ **(2)** "Care" means the provision of care, treatment, education,
 5 training, instruction, supervision, or recreation to children less
 6 than eighteen (18) years of age.

7 ~~(4)~~ **(3)** "Council" means the security and privacy council created
 8 under section 11 of this chapter.

9 ~~(5)~~ **(4)** "Criminal history data" means information collected by
 10 criminal justice agencies, the United States Department of Justice
 11 for the department's information system, or individuals. The term
 12 consists of the following:

13 (A) Identifiable descriptions and notations of arrests,
 14 indictments, informations, or other formal criminal charges.

15 (B) Information regarding a sex and violent offender (as
 16 defined in IC 5-2-12-4) obtained through sex and violent
 17 offender registration under IC 5-2-12.

18 (C) Any disposition, including sentencing, and correctional
 19 system intake, transfer, and release.

20 ~~(6)~~ **(5)** "Certificated employee" has the meaning set forth in
 21 IC 20-7.5-1-2.

22 ~~(7)~~ **(6)** "Criminal justice agency" means any agency or department
 23 of any level of government whose principal function is the
 24 apprehension, prosecution, adjudication, incarceration, probation,
 25 rehabilitation, or representation of criminal offenders, the location
 26 of parents with child support obligations under 42 U.S.C. 653, the
 27 licensing and regulating of riverboat gambling operations, or the
 28 licensing and regulating of pari-mutuel horse racing operations.

29 *The term includes the office of the attorney general.* The term
 30 includes the Medicaid fraud control unit for the purpose of
 31 investigating offenses involving Medicaid. The term includes a
 32 nongovernmental entity that performs as its principal function the:

33 (A) apprehension, prosecution, adjudication, incarceration, or
 34 rehabilitation of criminal offenders;

35 (B) location of parents with child support obligations under 42
 36 U.S.C. 653;

37 (C) licensing and regulating of riverboat gambling operations;
 38 or

39 (D) licensing and regulating of pari-mutuel horse racing
 40 operations;

41 under a contract with an agency or department of any level of
 42 government.

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- 1 ~~(8)~~ **(7)** "Department" means the state police department.
- 2 ~~(9)~~ **(8)** "Disposition" means information disclosing that criminal
- 3 proceedings have been concluded or indefinitely postponed.
- 4 ~~(10)~~ "*Foreign protection order*" has the meaning set forth in
- 5 ~~IC 34-6-2-48.5.~~
- 6 ~~(11)~~ "*Indiana order*" has the meaning set forth in ~~IC 5-2-9-2.1.~~
- 7 ~~(10)~~ ~~(12)~~ **(9)** "Inspection" means visual perusal and includes the
- 8 right to make memoranda abstracts of the information.
- 9 ~~(11)~~ ~~(13)~~ **(10)** "Institute" means the Indiana criminal justice
- 10 institute established under IC 5-2-6.
- 11 ~~(12)~~ ~~(14)~~ **(11)** "Law enforcement agency" means an agency or a
- 12 department of any level of government whose principal function
- 13 is the apprehension of criminal offenders. *The term includes the*
- 14 *office of the attorney general.*
- 15 ~~(13)~~ ~~(15)~~ **(12)** "National criminal history background check"
- 16 means the criminal history record system maintained by the
- 17 Federal Bureau of Investigation based on fingerprint identification
- 18 or any other method of positive identification.
- 19 ~~(14)~~ **(13)** "*No contact order*" means an order that prohibits a
- 20 *person from having direct or indirect contact with another person*
- 21 *and that is issued under:*
- 22 (A) IC 31-32-13;
- 23 (B) IC 31-34-17;
- 24 (C) IC 31-34-20;
- 25 (D) IC 31-37-16;
- 26 (E) IC 31-37-19-1;
- 27 (F) IC 31-37-19-6;
- 28 (G) IC 33-14-1-7;
- 29 (H) IC 35-33-8-3.2; or
- 30 (I) IC 35-38-2-2.3.
- 31 ~~(15)~~ ~~(16)~~ **(14)** "Noncertificated employee" has the meaning set
- 32 forth in IC 20-7.5-1-2.
- 33 ~~(16)~~ ~~(17)~~ **(15)** "Protective order" has the meaning set forth in
- 34 IC 5-2-9-2.1. *The term includes a foreign protection order (as*
- 35 *defined in IC 34-6-2-48.5).*
- 36 ~~(17)~~ ~~(18)~~ **(16)** "Qualified entity" means a business or an
- 37 organization, whether public, private, for-profit, nonprofit, or
- 38 voluntary, that provides care or care placement services, including
- 39 a business or an organization that licenses or certifies others to
- 40 provide care or care placement services.
- 41 ~~(18)~~ ~~(19)~~ **(17)** "Release" means the furnishing of a copy, or an
- 42 edited copy, of criminal history data.

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1 ~~(19)~~ ~~(20)~~ **(18)** "Reportable offenses" means all felonies and those
 2 Class A misdemeanors which the superintendent may designate.
 3 ~~(20)~~ ~~(21)~~ **(19)** "Request" means the asking for release or
 4 inspection of a ~~limited~~ criminal history **data** by noncriminal
 5 justice organizations or individuals in a manner which:

6 (A) reasonably ensures the identification of the subject of the
 7 inquiry; and

8 (B) contains a statement of the purpose for which the
 9 information is requested.

10 ~~(21)~~ ~~(22)~~ **(20)** "School corporation" has the meaning set forth in
 11 IC 20-10.1-1-1.

12 ~~(22)~~ ~~(23)~~ **(21)** "Special education cooperative" has the meaning
 13 set forth in IC 20-1-6-20.

14 ~~(23)~~ ~~(24)~~ **(22)** "Unidentified person" means a deceased or
 15 mentally incapacitated person whose identity is unknown.

16 ~~(24)~~ **(23)** "*Workplace violence restraining order*" means an order
 17 issued under IC 34-26-6.

18 SECTION 2. IC 5-2-5-5.2 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2003]: **Sec. 5.2. (a) Except as provided in subsection (b), on
 21 request, law enforcement agencies shall release or allow inspection
 22 of criminal history data to noncriminal justice organizations or
 23 individuals only if the subject of the request:**

24 **(1) has applied for employment with a noncriminal justice
 25 organization or individual;**

26 **(2) has applied for a license and criminal history data as
 27 required by law to be provided in connection with the license;**

28 **(3) is a candidate for public office or a public official;**

29 **(4) is in the process of being apprehended by a law
 30 enforcement agency;**

31 **(5) is placed under arrest for the alleged commission of a
 32 crime;**

33 **(6) has charged that the subject's rights have been abused
 34 repeatedly by criminal justice agencies;**

35 **(7) is the subject of judicial decision or determination with
 36 respect to the setting of bond, plea bargaining, sentencing, or
 37 probation;**

38 **(8) has volunteered services that involve contact with, care of,
 39 or supervision over a child who is being placed, matched, or
 40 monitored by a social services agency or a nonprofit
 41 corporation;**

42 **(9) is employed by an entity that seeks to enter into a contract**

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- 1 with a public school (as defined in IC 20-10.1-1-2) or a
 2 nonpublic school (as defined in IC 20-10.1-1-3), if the subject
 3 of the request is expected to have direct, ongoing contact with
 4 school children within the scope of the subject's employment;
 5 (10) has volunteered services at a public school (as defined in
 6 IC 20-10.1-1-2) or nonpublic school (as defined in
 7 IC 20-10.1-1-3) that involve contact with, care of, or
 8 supervision over a student enrolled in the school;
 9 (11) is being investigated for welfare fraud by an investigator
 10 of the division of family and children or a county office of
 11 family and children;
 12 (12) is being sought by the parent locator service of the child
 13 support bureau of the division of family and children;
 14 (13) is or was required to register as a sex and violent offender
 15 under IC 5-2-12; or
 16 (14) has been convicted of any of the following:
 17 (A) Rape (IC 35-42-4-1), if the victim is less than eighteen
 18 (18) years of age.
 19 (B) Criminal deviate conduct (IC 35-42-4-2), if the victim
 20 is less than eighteen (18) years of age.
 21 (C) Child molesting (IC 35-42-4-3).
 22 (D) Child exploitation (IC 35-42-4-4(b)).
 23 (E) Possession of child pornography (IC 35-42-4-4(c)).
 24 (F) Vicarious sexual gratification (IC 35-42-4-5).
 25 (G) Child solicitation (IC 35-42-4-6).
 26 (H) Child seduction (IC 35-42-4-7).
 27 (I) Sexual misconduct with a minor as a felony
 28 (IC 35-42-4-9).
 29 (J) Incest (IC 35-46-1-3), if the victim is less than eighteen
 30 (18) years of age.

31 However, criminal history data obtained from the National Crime
 32 Information Center may not be released under this section except
 33 to the extent permitted by the Attorney General of the United
 34 States.

35 (b) A law enforcement agency shall allow inspection of criminal
 36 history data by and release criminal history data to the following
 37 noncriminal justice organizations:

- 38 (1) Federally chartered or insured banking institutions.
 39 (2) Officials of state and local government for any of the
 40 following purposes:
 41 (A) Employment with a state or local governmental entity.
 42 (B) Licensing.



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1 **(3) Segments of the securities industry identified under 15**
 2 **U.S.C. 78q(f)(2).**

3 **(c) A person who uses criminal history data for any purpose not**
 4 **specified under this section commits a Class A misdemeanor.**

5 SECTION 3. IC 5-2-5-6 IS AMENDED TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2003]: Sec. 6. A noncriminal justice
 7 organization or individual which receives a ~~limited~~ criminal history
 8 **data** may not utilize it for purposes:

- 9 (1) other than those stated in the request; or
 10 (2) which deny the subject any civil right to which the subject is
 11 entitled.

12 SECTION 4. IC 5-2-5-7, AS AMENDED BY P.L.116-2002,
 13 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2003]: Sec. 7. (a) Except as provided in subsection (c), on
 15 request for release or inspection of a ~~limited~~ criminal history **data**, law
 16 enforcement agencies may and the department shall do the following:

- 17 (1) Require a form, provided by them, to be completed. This form
 18 shall be maintained for a period of two (2) years and shall be
 19 available to the record subject upon request.
 20 (2) Collect a three dollar (\$3) fee to defray the cost of processing
 21 a request for inspection.
 22 (3) Collect a seven dollar (\$7) fee to defray the cost of processing
 23 a request for release. However, law enforcement agencies and the
 24 department may not charge the fee for requests received from the
 25 parent locator service of the child support bureau of the division
 26 of family and children.

27 (b) Law enforcement agencies and the department shall edit
 28 information so that the only information released or inspected is
 29 information which:

- 30 (1) has been requested; and
 31 (2) is ~~limited~~ criminal history ~~information:~~ **data.**

32 (c) The fee required under subsection (a) shall be waived if the
 33 request relates to the sex and violent offender directory under IC 5-2-6
 34 or concerns a person required to register as a sex and violent offender
 35 under IC 5-2-12.

36 SECTION 5. IC 5-2-5-13, AS AMENDED BY P.L.109-2002,
 37 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2003]: Sec. 13. (a) The department may not charge a fee for
 39 responding to a request for the release of a ~~limited~~ criminal history
 40 **record data** if the request is made by a nonprofit organization:

- 41 (1) that has been in existence for at least ten (10) years; and
 42 (2) that:

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- 1 (A) has a primary purpose of providing an individual
 2 relationship for a child with an adult volunteer if the request
 3 is made as part of a background investigation of a prospective
 4 adult volunteer for the organization;
 5 (B) is a home health agency licensed under IC 16-27-1;
 6 (C) is a community mental retardation and other
 7 developmental disabilities center (as defined in IC 12-7-2-39);
 8 or
 9 (D) is a supervised group living facility licensed under
 10 IC 12-28-5.

11 (b) The department may not charge a fee for responding to a request
 12 for the release of a ~~limited~~ criminal history ~~record~~ **data** made by the
 13 division of family and children or a county office of family and
 14 children if the request is made as part of a background investigation of
 15 an applicant for a license under IC 12-17.2 or IC 12-17.4.

16 (c) The department may not charge a fee for responding to a request
 17 for the release of a ~~limited~~ criminal history **data** if the request is made
 18 by a school corporation, special education cooperative, or non-public
 19 school (as defined in IC 20-10.1-1-3) as part of a background
 20 investigation of an employee or adult volunteer for the school
 21 corporation, special education cooperative, or non-public school.

22 SECTION 6. IC 12-10-17-12, AS AMENDED BY P.L.134-2002,
 23 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2003]: Sec. 12. (a) The division shall register an individual
 25 who provides the following:

- 26 (1) A personal resume containing information concerning the
 27 individual's qualifications, work experience, and any credentials
 28 the individual may hold. The individual must certify that the
 29 information contained in the resume is true and accurate.
 30 (2) The individual's ~~limited~~ criminal history **data** check from the
 31 Indiana central repository for criminal history information under
 32 IC 5-2-5 or another source allowed by law.
 33 (3) If applicable, the individual's state nurse aide registry report
 34 from the state department of health. This subdivision does not
 35 require an individual to be a nurse aide.
 36 (4) Three (3) letters of reference.
 37 (5) A registration fee. The division shall establish the amount of
 38 the registration fee.
 39 (6) Proof that the individual is at least eighteen (18) years of age.
 40 (7) Any other information required by the division.

41 (b) A registration is valid for two (2) years. A personal services
 42 attendant may renew the personal services attendant's registration by

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1 updating any information in the file that has changed and by paying the
 2 fee required under subsection (a)(5). The ~~limited~~ criminal history **data**
 3 check and report required under subsection (a)(2) and (a)(3) must be
 4 updated every two (2) years.

5 (c) The division and any organization designated under section 11
 6 of this chapter shall maintain a file for each personal services attendant
 7 that contains:

8 (1) comments related to the provision of attendant care services
 9 submitted by an individual in need of self-directed in-home care
 10 who has employed the personal services attendant; and

11 (2) the items described in subsection (a)(1) through (a)(4).

12 (d) Upon request, the division shall provide to an individual in need
 13 of self-directed in-home care the following:

14 (1) Without charge, a list of personal services attendants who are
 15 registered with the division and available within the requested
 16 geographic area.

17 (2) A copy of the information of a specified personal services
 18 attendant who is on file with the division under subsection (c).

19 The division may charge a fee for shipping, handling, and copying
 20 expenses.

21 SECTION 7. IC 12-17.2-3.5-12, AS AMENDED BY P.L.109-2002,
 22 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2003]: Sec. 12. (a) A provider shall, at the provider's expense,
 24 provide to the voucher agent a copy of a ~~limited~~ criminal history **data**
 25 for:

26 (1) the provider;

27 (2) if the provider provides child care in the provider's home, any
 28 individual who resides with the provider and who is:

29 (A) at least eighteen (18) years of age; or

30 (B) less than eighteen (18) years of age but has previously
 31 been waived from juvenile court to adult court; and

32 (3) any individual who is employed at the facility where the
 33 provider provides child care.

34 (b) In addition to the requirement under subsection (a), a provider
 35 shall report to the voucher agent any:

36 (1) police investigations;

37 (2) arrests; and

38 (3) criminal convictions;

39 not listed ~~on a limited in~~ criminal history **data** provided under
 40 subsection (a) regarding any of the persons listed in subsection (a).

41 (c) A provider that meets the other eligibility requirements of this
 42 chapter is temporarily eligible to receive voucher payments until the

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1 provider receives the ~~limited~~ criminal history **data** required under
 2 subsection (a) from the state police department if:

3 (1) the provider:

4 (A) has applied for the ~~limited~~ criminal history **data** required
 5 under subsection (a); and

6 (B) obtains a local criminal history for the individuals
 7 described in subsection (a) from each individual's local law
 8 enforcement agency; and

9 (2) the local criminal history does not reveal that an individual
 10 has been convicted of a:

11 (A) felony;

12 (B) misdemeanor related to the health or safety of a child;

13 (C) misdemeanor for operating a child care center without a
 14 license under IC 12-17.2-4-35; or

15 (D) misdemeanor for operating a child care home without a
 16 license under IC 12-17.2-5-35.

17 (d) A provider is ineligible to receive a voucher payment if an
 18 individual for whom a ~~limited~~ criminal history **data** is required under
 19 this section has been convicted of a:

20 (1) felony;

21 (2) misdemeanor related to the health or safety of a child;

22 (3) misdemeanor for operating a child care center without a
 23 license under IC 12-17.2-4-35; or

24 (4) misdemeanor for operating a child care home without a
 25 license under IC 12-17.2-5-35;

26 until the individual is dismissed from employment at the facility or no
 27 longer resides with the provider.

28 SECTION 8. IC 16-25-6-2, AS ADDED BY P.L.256-1999,
 29 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2003]: Sec. 2. (a) A person who owns or operates a hospice
 31 program shall apply, not more than three (3) business days after the
 32 date that an employee or a volunteer begins to provide hospice
 33 services, for a copy of the employee's or volunteer's ~~limited~~ criminal
 34 history **data** from the Indiana central repository for criminal history
 35 information under IC 5-2-5.

36 (b) A hospice program may not employ an individual or allow a
 37 volunteer to provide hospice services for more than three (3) business
 38 days without applying for that individual's or volunteer's ~~limited~~
 39 criminal history **data** as required by subsection (a).

40 SECTION 9. IC 16-25-6-3, AS ADDED BY P.L.256-1999,
 41 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2003]: Sec. 3. (a) Except as provided in subsection (b), a

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1 person who owns or operates a hospice program may not employ an
 2 individual or allow a volunteer to provide hospice services if that
 3 individual's or volunteer's ~~limited~~ criminal history **data** indicates that
 4 the individual or volunteer has:

- 5 (1) been convicted of rape (IC 35-42-4-1);
- 6 (2) been convicted of criminal deviate conduct (IC 35-42-4-2);
- 7 (3) been convicted of exploitation of an endangered adult
 8 (IC 35-46-1-12);
- 9 (4) had a judgment entered against the individual for failure to
 10 report battery, neglect, or exploitation of an endangered adult
 11 (IC 35-46-1-13); or
- 12 (5) been convicted of theft (IC 35-43-4), if the conviction for theft
 13 occurred less than ten (10) years before the individual's
 14 employment application date.

15 (b) A hospice program may not employ an individual or allow a
 16 volunteer to provide hospice services for more than twenty-one (21)
 17 calendar days without receipt of that individual's or volunteer's ~~limited~~
 18 criminal history **data** required by section 2 of this chapter, unless the
 19 Indiana central repository for criminal history information under
 20 IC 5-2-5 is solely responsible for failing to provide the individual's or
 21 volunteer's ~~limited~~ criminal history **data** to the hospice program within
 22 the time required under this subsection.

23 SECTION 10. IC 16-27-2-4 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) A person who
 25 operates a home health agency shall apply, not more than three (3)
 26 business days after the date that an employee begins to provide services
 27 in a patient's temporary or permanent residence, for a copy of the
 28 employee's ~~limited~~ criminal history **data** from the Indiana central
 29 repository for criminal history information under IC 5-2-5.

30 (b) A home health agency may not employ a person to provide
 31 services in a patient's or client's temporary or permanent residence for
 32 more than three (3) business days without applying for that person's
 33 ~~limited~~ criminal history **data** as required by subsection (a).

34 SECTION 11. IC 16-27-2-5 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Except as
 36 provided in subsection (b), a person who operates a home health
 37 agency may not employ a person to provide services in a patient's or
 38 client's temporary or permanent residence if that person's ~~limited~~
 39 criminal history **data** indicates that the person has been convicted of
 40 any of the following:

- 41 (1) Rape (IC 35-42-4-1).
- 42 (2) Criminal deviate conduct (IC 35-42-4-2).

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- 1 (3) Exploitation of an endangered adult (IC 35-46-1-12).
- 2 (4) Failure to report battery, neglect, or exploitation of an
- 3 endangered adult (IC 35-46-1-13).
- 4 (5) Theft (IC 35-43-4), if the conviction for theft occurred less
- 5 than ten (10) years before the person's employment application
- 6 date.

7 (b) A home health agency may not employ a person to provide
 8 services in a patient's or client's temporary or permanent residence for
 9 more than twenty-one (21) calendar days without receipt of that
 10 person's ~~limited~~ criminal history **data** required by section 4 of this
 11 chapter, unless the Indiana central repository for criminal history
 12 information under IC 5-2-5 is solely responsible for failing to provide
 13 the person's ~~limited~~ criminal history **data** to the home health agency
 14 within the time required under this subsection.

15 SECTION 12. IC 16-28-13-4, AS AMENDED BY P.L.108-1999,
 16 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2003]: Sec. 4. (a) Except as provided in subsection (b), a
 18 person who:

- 19 (1) operates or administers a health care facility; or
- 20 (2) operates an entity in the business of contracting to provide
- 21 nurse aides or other unlicensed employees for a health care
- 22 facility;

23 shall apply within three (3) business days from the date a person is
 24 employed as a nurse aide or other unlicensed employee for a copy of
 25 the person's state nurse aide registry report from the state department
 26 and a ~~limited~~ criminal history **data** from the Indiana central repository
 27 for criminal history information under IC 5-2-5 or another source
 28 allowed by law.

29 (b) A health care facility is not required to apply for the state nurse
 30 aide registry report and limited criminal history required by subsection
 31 (a) if the health care facility contracts to use the services of a nurse aide
 32 or other unlicensed employee who is employed by an entity in the
 33 business of contracting to provide nurse aides or other unlicensed
 34 employees to health care facilities.

35 SECTION 13. IC 16-28-13-5, AS AMENDED BY P.L.108-1999,
 36 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2003]: Sec. 5. A person who:

- 38 (1) operates or administers a health care facility; or
- 39 (2) operates an entity in the business of contracting to provide
- 40 nurse aides or other unlicensed employees for a health care
- 41 facility;

42 may not employ a person as a nurse aide or other unlicensed employee

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1 after receipt of the person's state nurse aide registry report if that
 2 person's report indicates that the person committed an offense under
 3 section (3)(a)(2) of this chapter and has been placed on the state nurse
 4 aide registry, or after receipt of the ~~limited~~ criminal history **data** if that
 5 person's ~~limited~~ criminal history **data** indicates that the person has
 6 been convicted of any of the offenses described in section 3(a)(1) of
 7 this chapter.

8 SECTION 14. IC 16-28-13-6, AS AMENDED BY P.L.108-1999,
 9 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2003]: Sec. 6. (a) A person who:

- 11 (1) operates or administers a health care facility; or
 12 (2) operates an entity in the business of contracting to provide
 13 nurse aides or other unlicensed employees for a health care
 14 facility;

15 is responsible for the payment of fees under IC 5-2-5-7 and other fees
 16 required to process a state nurse aide registry report and a ~~limited~~
 17 criminal history **data** under section 4 of this chapter.

18 (b) A health care facility or an entity in the business of contracting
 19 to provide nurse aides or other unlicensed employees for a health care
 20 facility may require a person who applies to the health care facility or
 21 entity for employment as a nurse aide or other unlicensed employee:

- 22 (1) to pay the cost of fees described in subsection (a) to the health
 23 care facility or entity at the time the person submits an application
 24 for employment; or
 25 (2) to reimburse the health care facility or entity for the cost of
 26 fees described in subsection (a).

27 SECTION 15. IC 16-28-13-11, AS AMENDED BY P.L.108-1999,
 28 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2003]: Sec. 11. (a) Each:

- 30 (1) health care facility; and
 31 (2) entity in the business of contracting to provide nurse aides or
 32 other unlicensed employees for a health care facility;

33 shall maintain a personnel record for each nurse aide and other
 34 unlicensed employee employed by the health care facility or entity that
 35 includes the nurse aide's or other unlicensed employee's state nurse
 36 aide registry report and ~~limited~~ criminal history **data** required by
 37 section 4 of this chapter.

38 (b) The personnel records of each health care facility shall be
 39 available for inspection by the state department to assure compliance
 40 with this chapter.

41 (c) An entity in the business of contracting to provide nurse aides or
 42 other unlicensed employees to health care facilities shall provide a

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1 copy of the state nurse aide registry report and limited criminal history
2 obtained under section 4 of this chapter to each health care facility to
3 which the entity provides a nurse aide or other unlicensed employee.
4 If the entity fails to provide a copy of the state nurse aide registry report
5 and ~~limited~~ criminal history **data** to a health care facility, the health
6 care facility is not in violation of this chapter.

7 SECTION 16. IC 20-1-1.8-20 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 20. The proposal must
9 comply with the following minimum requirements:

10 (1) Include a detailed description of the manner in which the
11 eligible programs available within the county are to be
12 implemented, coordinated, and monitored.

13 (2) Certify that each eligible entity shall request and obtain a
14 ~~limited~~ criminal history **data** on each prospective employee hired
15 by the eligible entity after July 1, 1991.

16 (3) Designate a fiscal agent to administer the implementation
17 grant.

18 (4) Demonstrate how at least the following eligible programs may
19 be offered, coordinated, and monitored within the entire county
20 under an agreement with the providers of the following eligible
21 programs:

22 (A) Preschool, including Head Start under 42 U.S.C. 9831 et
23 seq., special education preschool, or developmental child care
24 programs for preschool children.

25 (B) Child care programs.

26 (C) The Early and Periodic Screening, Diagnosis, and
27 Treatment program under 42 U.S.C. 1396 et seq.

28 (D) Early intervention parent information programs.

29 (E) Individual family service plans.

30 (F) School age child care programs (commonly referred to as
31 latch key programs).

32 (G) Family literacy programs that may be funded through Even
33 Start under 20 U.S.C. 2741 et seq.

34 (H) Job Opportunities and Basic Skills Training Program
35 under 42 U.S.C. 701 et seq.

36 (I) Job Training Partnership Act programs under 29 U.S.C.
37 1501 et seq.

38 (J) Parental involvement programs.

39 (K) Children of children child care programs aimed at serving
40 children of teenage parents to encourage the teenage parents
41 to graduate from high school or participate in vocational
42 training.

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- 1 (L) Vocational training programs for unemployed parents.
- 2 (M) Health, nutrition, and vaccination programs.
- 3 (N) State medical assistance services for eligible individuals
- 4 under IC 12-15.
- 5 (5) Certify that the eligible programs described in subdivision (4)
- 6 are provided at no cost to parents of children who qualify under
- 7 the income eligibility guidelines and at an affordable or sliding
- 8 fee for other parents.
- 9 (6) Describe the manner in which the implementation grant will
- 10 be directed to and expended by eligible programs.

11 SECTION 17. IC 20-5-2-7, AS AMENDED BY P.L.272-2001,
 12 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2003]: Sec. 7. (a) A school corporation, including a school
 14 township, shall adopt a policy concerning criminal history information
 15 for individuals who:

- 16 (1) apply for:
 - 17 (A) employment with the school corporation; or
 - 18 (B) employment with an entity with which the school
 - 19 corporation contracts for services;
- 20 (2) seek to enter into a contract to provide services to the school
- 21 corporation; or
- 22 (3) are employed by an entity that seeks to enter into a contract to
- 23 provide services to the school corporation;

24 if the individuals are likely to have direct, ongoing contact with
 25 children within the scope of the individuals' employment.

26 (b) A school corporation, including a school township, shall
 27 administer a policy adopted under this section uniformly for all
 28 individuals to whom the policy applies. A policy adopted under this
 29 section may require any of the following:

- 30 (1) The school corporation, including a school township, may
- 31 request ~~limited~~ criminal history ~~information data~~ concerning each
- 32 applicant for noncertificated employment or certificated
- 33 employment from a local or state law enforcement agency before
- 34 or not later than three (3) months after the applicant's employment
- 35 by the school corporation.
- 36 (2) Each individual hired for noncertificated employment or
- 37 certificated employment may be required to provide a written
- 38 consent for the school corporation to request under IC 5-2-5
- 39 ~~limited~~ criminal history ~~information data~~ or a national criminal
- 40 history background check concerning the individual before or not
- 41 later than three (3) months after the individual's employment by
- 42 the school corporation. The school corporation may require the

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individual to provide a set of fingerprints and pay any fees required for a national criminal history background check.

(3) Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's ~~limited~~ criminal history **data** (as defined in ~~IC 5-2-5-1(1)~~ **IC 5-2-5-1(4)**) to the school corporation.

(4) Each individual hired for noncertificated employment may be required at the time the individual is hired to:

(A) submit a request to the Indiana central repository for ~~limited~~ criminal history ~~information~~ **data** under IC 5-2-5;

(B) obtain a copy of the individual's ~~limited~~ criminal history **data**; and

(C) submit to the school corporation the individual's ~~limited~~ criminal history **data** and a document verifying a disposition (as defined in ~~IC 5-2-5-1(6)~~ **IC 5-2-5-1(8)**) that does not appear ~~on~~ **in** the ~~limited~~ criminal history **data**.

(5) Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to answer questions concerning the individual's ~~limited~~ criminal history **data**. The failure to answer honestly questions asked under this subdivision is grounds for termination of the employee's employment.

(6) Each individual that:

(A) seeks to enter into a contract to provide services to a school corporation; or

(B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in subdivision (4)(A) and (4)(B). The school corporation either may require that the individual or the contractor comply with the procedures described in subdivision (4)(C) or (5). Failure to comply with subdivisions (4) and (5), as required by the school corporation, is grounds for termination of the contract.

(c) If an individual is required to obtain a ~~limited~~ criminal history **data** under this section, the individual is responsible for all costs associated with obtaining the ~~limited~~ criminal history **data**.

(d) Information obtained under this section must be used in accordance with IC 5-2-5-6.

SECTION 18. IC 20-6.1-3-7.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7.1. (a) As used in this section, "applicant" refers to an applicant for:

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- 1 (1) a new license;
- 2 (2) a renewal license; or
- 3 (3) a substitute teacher certificate;
- 4 issued by the board.
- 5 (b) As used in this section, "~~limited~~ criminal history **data**" has the
- 6 meaning set forth in ~~IC 5-2-5-1(1)~~: **IC 5-2-5-1(4)**.
- 7 (c) As used in this section, "disposition" has the meaning set forth
- 8 in ~~IC 5-2-5-1(6)~~: **IC 5-2-5-1(8)**.
- 9 (d) An applicant must do the following:
- 10 (1) Submit a request to the Indiana central repository for ~~limited~~
- 11 criminal history ~~information~~ **data** under IC 5-2-5.
- 12 (2) Obtain a copy of the ~~limited~~ criminal history **data** for the
- 13 applicant from the repository's records.
- 14 (3) Submit to the board the ~~limited~~ criminal history **data** for the
- 15 applicant.
- 16 (4) Submit to the board a document verifying a disposition that
- 17 does not appear ~~on~~ **in** the ~~limited~~ criminal history **data** for the
- 18 applicant.
- 19 (e) The board may deny the issuance of a license or certificate to an
- 20 applicant who is convicted of an offense for which the individual's
- 21 license may be revoked or suspended under this chapter.
- 22 (f) The board must use the information obtained under this section
- 23 in accordance with IC 5-2-5-6.
- 24 (g) An applicant is responsible for all costs associated with meeting
- 25 the requirements of this section.
- 26 SECTION 19. IC 25-36.5-1-18 IS AMENDED TO READ AS
- 27 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. (a) The definitions
- 28 set forth in IC 5-2-5-1 apply throughout this section.
- 29 (b) The department shall under ~~IC 5-2-5-5(b)~~ **IC 5-2-5-5.2(b)**
- 30 request and obtain the release of a ~~limited~~ criminal history **data** from
- 31 the state police department on each person who applies to the
- 32 department under this chapter for the issuance of either of the
- 33 following:
- 34 (1) A timber buyer registration certificate.
- 35 (2) A timber buyer agent's license.
- 36 SECTION 20. IC 35-38-5-1 IS AMENDED TO READ AS
- 37 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) Whenever:
- 38 (1) an individual is arrested but no criminal charges are filed
- 39 against the individual; ~~or~~
- 40 (2) ~~at a criminal charges charge~~ **charge** filed against an individual ~~are~~
- 41 ~~dropped because:~~ **is dismissed;**
- 42 (A) of a mistaken identity;

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1 ~~(B) no offense was in fact committed; or~~
2 ~~(C) there was an absence of probable cause;~~
3 **(3) an individual is arrested and charged with committing an**
4 **offense and is subsequently found not guilty of committing the**
5 **offense; or**
6 **(4) an individual believes that the record of an arrest or**
7 **conviction erroneously identifies the individual as the person**
8 **arrested or convicted because the person was the victim of**
9 **identity deception (IC 35-43-5-3.5);**
10 the individual may petition the court for expungement of the records
11 related to the arrest **or conviction.**
12 (b) A petition for expungement of records must be verified and filed
13 in the court in which the charges were filed, or if no criminal charges
14 were filed, in a court with criminal jurisdiction in the county where the
15 arrest occurred. The petition must set forth:
16 (1) the date of the arrest;
17 (2) the charge;
18 (3) the law enforcement agency employing the arresting officer;
19 (4) any other known identifying information, such as the name of
20 the arresting officer, case number, or court cause number;
21 (5) the date of the petitioner's birth; and
22 (6) the petitioner's Social Security number.
23 (c) A copy of the petition shall be served on the law enforcement
24 agency and the state central repository for records.
25 (d) Upon receipt of a petition for expungement, the law enforcement
26 agency shall notify the court of the name and address of each agency
27 to which any records related to the arrest were forwarded. The clerk
28 shall immediately send a copy of the petition to each of those agencies.
29 Any agency desiring to oppose the expungement shall file a notice of
30 opposition with the court setting forth reasons for resisting the
31 expungement along with any sworn statements from individuals who
32 represent the agency that explain the reasons for resisting the
33 expungement within thirty (30) days after the petition is filed. A copy
34 of the notice of opposition and copies of any sworn statements shall be
35 served on the petitioner in accordance with the Rules of Trial
36 Procedure. The court shall:
37 (1) summarily grant the petition;
38 (2) set the matter for hearing; or
39 (3) summarily deny the petition, if the court determines that:
40 (A) the petition is insufficient; or
41 (B) based on information contained in sworn statements
42 submitted by individuals who represent an agency, the

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1 petitioner is not entitled to an expungement of records.
2 (e) If a notice of opposition is filed and the court does not
3 summarily grant or summarily deny the petition, the court shall set the
4 matter for a hearing.
5 (f) After a hearing is held under this section, the petition shall be
6 granted unless the court finds:
7 (1) the conditions in subsection (a) have not been met;
8 (2) the individual has a record of arrests ~~other than minor traffic~~
9 ~~offenses;~~ **that creates an inference of repetitive conduct;** or
10 (3) additional criminal charges are pending against the individual.
11 SECTION 21. THE FOLLOWING ARE REPEALED [EFFECTIVE
12 JULY 1, 2003]: IC 5-2-5-5; IC 5-2-5-5.1; IC 35-38-5-5.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred Senate Bill No. 315, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 5, line 3, delete "contract" and insert "**contact**".

Page 16, between lines 36 and 37, begin a new paragraph and insert:

"SECTION 20. IC 35-38-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) Whenever:

(1) an individual is arrested but no criminal charges are filed against the individual; ~~or~~

(2) ~~at a criminal charges charge~~ filed against an individual ~~are dropped because:~~ **is dismissed;**

~~(A) of a mistaken identity;~~

~~(B) no offense was in fact committed; or~~

~~(C) there was an absence of probable cause;~~

(3) an individual is arrested and charged with committing an offense and is subsequently found not guilty of committing the offense; or

(4) an individual believes that the record of an arrest or conviction erroneously identifies the individual as the person arrested or convicted because the person was the victim of identity deception (IC 35-43-5-3.5);

the individual may petition the court for expungement of the records related to the arrest **or conviction.**

(b) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:

(1) the date of the arrest;

(2) the charge;

(3) the law enforcement agency employing the arresting officer;

(4) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;

(5) the date of the petitioner's birth; and

(6) the petitioner's Social Security number.

(c) A copy of the petition shall be served on the law enforcement agency and the state central repository for records.

(d) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk

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shall immediately send a copy of the petition to each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals who represent the agency that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Trial Procedure. The court shall:

- (1) summarily grant the petition;
- (2) set the matter for hearing; or
- (3) summarily deny the petition, if the court determines that:
 - (A) the petition is insufficient; or
 - (B) based on information contained in sworn statements submitted by individuals who represent an agency, the petitioner is not entitled to an expungement of records.

(e) If a notice of opposition is filed and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

(f) After a hearing is held under this section, the petition shall be granted unless the court finds:

- (1) the conditions in subsection (a) have not been met;
- (2) the individual has a record of arrests ~~other than minor traffic offenses;~~ **that creates an inference of repetitive conduct;** or
- (3) additional criminal charges are pending against the individual."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 315 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 8, Nays 0.

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