



February 17, 2012

**ENGROSSED  
HOUSE BILL No. 1033**

DIGEST OF HB 1033 (Updated February 14, 2012 10:51 am - DI 106)

**Citations Affected:** IC 24-4; IC 35-38; IC 35-50.

**Synopsis:** Sentencing and criminal history. Defines "criminal history provider" and requires a criminal history provider to update its records annually to remove inaccurate information and information that has been expunged, restricted, or limited. Provides that a criminal history provider may only disclose information relating to a conviction, and permits the attorney general and a person harmed by a criminal history provider to bring an action against the criminal history provider if the criminal history provider fails to update its records or discloses non-conviction information. Makes it a Class B infraction for an employer to ask whether a person's criminal records have been sealed or restricted. Allows a court to convert one or more Class D felonies to a Class A misdemeanors if: (1) the person is not a sex or violent  
(Continued next page)

**Effective:** July 1, 2012.

**McMillin, Turner, DeLaney, Pierce**

(SENATE SPONSORS — STEELE, HUME, TAYLOR)

January 9, 2012, read first time and referred to Committee on Courts and Criminal Code.  
January 23, 2012, amended, reported — Do Pass.  
January 26, 2012, read second time, ordered engrossed. Engrossed.  
January 30, 2012, read third time, passed. Yeas 85, nays 9.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.  
February 16, 2012, amended, reported favorably — Do Pass.

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offender; (2) the offense was a non-violent offense; (3) the person has not been convicted of perjury or official misconduct; (4) at least three years have passed since the person completed the sentence; (5) the person has not been convicted of a new felony; and (6) no criminal charges are pending against the person. Specifies that a conviction for a Class A misdemeanor that was originally entered as a Class D felony and converted to a Class A misdemeanor under an express sentencing provision is treated as a Class A misdemeanor. Provides that if a person whose Class D felony conviction has been converted to a Class A misdemeanor conviction is convicted of a felony within five years after the conversion, a prosecuting attorney may petition a court to convert the person's Class A misdemeanor conviction back to a Class D felony conviction.

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February 17, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1033

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

- 1 SECTION 1. IC 24-4-18 IS ADDED TO THE INDIANA CODE AS  
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2012]:  
4 **Chapter 18. Criminal History Providers**  
5 **Sec. 1. As used in this section, "criminal history information"**  
6 **has the meaning set forth for "criminal history data" in**  
7 **IC 10-13-3-5.**  
8 **Sec. 2. As used in this section, "criminal history provider"**  
9 **means a person in the business of providing criminal history**  
10 **information to a person that is not a criminal justice agency or law**  
11 **enforcement agency. The term does not include a criminal justice**  
12 **agency or a law enforcement agency.**  
13 **Sec. 3. As used in this section, "criminal justice agency" has the**  
14 **meaning set forth in IC 10-13-3-6.**  
15 **Sec. 4. As used in this section, "law enforcement agency" has the**  
16 **meaning set forth in IC 10-13-3-10.**  
17 **Sec. 5. A criminal history provider may provide only criminal**

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1 **history information that relates to a conviction. A criminal history**  
 2 **provider may not provide information relating to an arrest or a**  
 3 **charge that did not result in a conviction.**

4 **Sec. 6. (a) A criminal history provider shall update its records**  
 5 **at least one (1) time per calendar year.**

6 **(b) When a criminal history provider updates its records, the**  
 7 **provider shall remove from its records any information:**

8 **(1) the provider knows to be inaccurate; or**

9 **(2) that relates to criminal history information:**

10 **(A) that has been expunged;**

11 **(B) that has been restricted; or**

12 **(C) to which access has been limited;**

13 **under IC 35-38-5 or any other law.**

14 **Sec. 7. (a) The attorney general may bring an action to enforce**  
 15 **a violation of section 5 or 6 of this chapter. In addition to any**  
 16 **injunctive or other relief, the attorney general may recover a civil**  
 17 **penalty of not more than one thousand dollars (\$1,000) for a first**  
 18 **violation, and of not more than five thousand dollars (\$5,000) for**  
 19 **a second or subsequent violation.**

20 **(b) Any person injured by a violation of section 5 or 6 of this**  
 21 **chapter may bring an action to recover:**

22 **(1) the greater of:**

23 **(A) actual damages, including consequential damages; or**

24 **(B) liquidated damages of five hundred dollars (\$500); and**

25 **(2) court costs and reasonable attorney's fees.**

26 SECTION 2. IC 35-38-8-2, AS ADDED BY P.L.194-2011,  
 27 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2012]: Sec. 2. This chapter applies only to a person:

29 (1) convicted of a ~~misdemeanor~~ **one (1) or more misdemeanors**  
 30 **or a Class D felony felonies** that did not result in injury to a  
 31 person; or

32 (2) adjudicated a delinquent child for committing ~~an offense~~ **one**  
 33 **(1) or more offenses** that, if committed by an adult, would be a  
 34 ~~misdemeanor~~ **misdemeanors** or Class D ~~felony~~ **felonies** that did  
 35 not result in injury to a person.

36 SECTION 3. IC 35-38-8-4, AS ADDED BY P.L.194-2011,  
 37 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 38 JULY 1, 2012]: Sec. 4. The court shall grant a petition under this  
 39 chapter if the court finds:

40 (1) the person is:

41 (A) not a sex or violent offender; or

42 (B) a sex or violent offender, but the offender's status as a sex

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1 or violent offender is solely due to the offender's conviction for  
 2 sexual misconduct with a minor (IC 35-42-4-9) and the  
 3 offender proved that the defense described in IC 35-42-4-9(e)  
 4 applies to the offender;  
 5 (2) the person was:  
 6 (A) convicted of a ~~misdemeanor~~ **one (1) or more**  
 7 **misdemeanors** or a Class D ~~felony felonies~~  
 8 that did not result  
 9 in injury to a person; or  
 10 (B) adjudicated a delinquent child for committing ~~an offense~~  
 11 **one (1) or more offenses** that, if committed by an adult, would  
 12 be a ~~misdemeanor~~ **misdemeanors** or Class D ~~felony felonies~~  
 13 not resulting in injury to a person;  
 14 (3) eight (8) years have passed since the person completed the  
 15 person's sentence and satisfied any other obligation imposed on  
 16 the person as part of the sentence; and  
 17 (4) the person has not been convicted of a felony since the person  
 18 completed the person's sentence and satisfied any other obligation  
 19 imposed on the person as part of the sentence.  
 20 SECTION 4. IC 35-38-8-5, AS ADDED BY P.L.194-2011,  
 21 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2012]: Sec. 5. If the court grants the petition of a person under  
 23 this chapter, the court shall do the following:  
 24 (1) Order:  
 25 (A) the department of correction; and  
 26 (B) each:  
 27 (i) law enforcement agency; and  
 28 (ii) other person;  
 29 who incarcerated, provided treatment for, or provided other  
 30 services for the person under an order of the court;  
 31 to prohibit the release of the person's records or information  
 32 relating to the ~~misdemeanor~~, **misdemeanors**, nonviolent Class D  
 33 ~~felony felonies~~, or juvenile ~~adjudication~~ **adjudications** described  
 34 in section 2 of this chapter, in the person's records to a  
 35 noncriminal justice agency without a court order.  
 36 (2) Order any:  
 37 (A) state;  
 38 (B) regional; or  
 39 (C) local;  
 40 central repository for criminal history information to prohibit the  
 41 release of the person's records or information relating to the  
 42 ~~misdemeanor~~ **misdemeanors**, nonviolent Class D ~~felony felonies~~,  
 or juvenile ~~adjudication~~ **adjudications** described in section 2 of

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1 this chapter, in the person's records to a noncriminal justice  
2 agency without a court order.

3 SECTION 5. IC 35-38-8-7, AS ADDED BY P.L.194-2011,  
4 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2012]: Sec. 7. (a) If a court orders a person's records to be  
6 restricted under this chapter, the person may legally state on an  
7 application for employment or any other document that the person has  
8 not been arrested for or convicted of the felony or misdemeanor  
9 recorded in the restricted records.

10 (b) **An employer may not ask an employee, contract employee,**  
11 **or applicant whether the person's criminal records have been**  
12 **sealed or restricted. An employer who violates this subsection**  
13 **commits a Class B infraction.**

14 SECTION 6. IC 35-50-2-1 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) As used in this  
16 chapter, "Class D felony conviction" means a conviction of a Class D  
17 felony in Indiana and a conviction, in any other jurisdiction at any time,  
18 with respect to which the convicted person might have been imprisoned  
19 for more than one (1) year. However, it does not include a conviction  
20 with respect to which the person has been pardoned, or a conviction of  
21 a Class A misdemeanor **entered** under **IC 35-38-1-1.5** or section 7(b)  
22 **or 7(c)** of this chapter.

23 (b) As used in this chapter, "felony conviction" means a conviction,  
24 in any jurisdiction at any time, with respect to which the convicted  
25 person might have been imprisoned for more than one (1) year.  
26 However, it does not include a conviction with respect to which the  
27 person has been pardoned, or a conviction of a Class A misdemeanor  
28 under section 7(b) of this chapter.

29 (c) As used in this chapter, "minimum sentence" means:

- 30 (1) for murder, forty-five (45) years;
- 31 (2) for a Class A felony, twenty (20) years;
- 32 (3) for a Class B felony, six (6) years;
- 33 (4) for a Class C felony, two (2) years; and
- 34 (5) for a Class D felony, one-half (1/2) year.

35 SECTION 7. IC 35-50-2-7, AS AMENDED BY P.L.71-2005,  
36 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
37 JULY 1, 2012]: Sec. 7. (a) A person who commits a Class D felony  
38 shall be imprisoned for a fixed term of between six (6) months and  
39 three (3) years, with the advisory sentence being one and one-half (1  
40 1/2) years. In addition, the person may be fined not more than ten  
41 thousand dollars (\$10,000).

42 (b) Notwithstanding subsection (a), if a person has committed a

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1 Class D felony, the court may enter judgment of conviction of a Class  
 2 A misdemeanor and sentence accordingly. However, the court shall  
 3 enter a judgment of conviction of a Class D felony if:

4 (1) the court finds that:

5 (A) the person has committed a prior, unrelated felony for  
 6 which judgment was entered as a conviction of a Class A  
 7 misdemeanor; and

8 (B) the prior felony was committed less than three (3) years  
 9 before the second felony was committed;

10 (2) the offense is domestic battery as a Class D felony under  
 11 IC 35-42-2-1.3; or

12 (3) the offense is possession of child pornography  
 13 (IC 35-42-4-4(c)).

14 The court shall enter in the record, in detail, the reason for its action  
 15 whenever it exercises the power to enter judgment of conviction of a  
 16 Class A misdemeanor granted in this subsection.

17 **(c) Notwithstanding subsection (a), the sentencing court may**  
 18 **convert a Class D felony conviction to a Class A misdemeanor**  
 19 **conviction if, after receiving a verified petition as described in**  
 20 **subsection (d) and after conducting a hearing of which the**  
 21 **prosecuting attorney has been notified, the court makes the**  
 22 **following findings:**

23 **(1) The person is not a sex or violent offender (as defined in**  
 24 **IC 11-8-8-5).**

25 **(2) The person was not convicted of a Class D felony that**  
 26 **resulted in bodily injury to another person.**

27 **(3) The person has not been convicted of perjury under**  
 28 **IC 35-44-2-1 or official misconduct under IC 35-44-1-2.**

29 **(4) At least three (3) years have passed since the person:**

30 **(A) completed the person's sentence; and**

31 **(B) satisfied any other obligation imposed on the person as**  
 32 **part of the sentence;**

33 **for the Class D felony.**

34 **(5) The person has not been convicted of a felony since the**  
 35 **person:**

36 **(A) completed the person's sentence; and**

37 **(B) satisfied any other obligation imposed on the person as**  
 38 **part of the sentence;**

39 **for the Class D felony.**

40 **(6) No criminal charges are pending against the person.**

41 **(d) A petition filed under subsection (c) must be verified and set**  
 42 **forth:**

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- 1           **(1) the crime the person has been convicted of;**
- 2           **(2) the date of the conviction;**
- 3           **(3) the date the person completed the person's sentence;**
- 4           **(4) any obligations imposed on the person as part of the**
- 5           **sentence;**
- 6           **(5) the date the obligations were satisfied; and**
- 7           **(6) a verified statement that there are no criminal charges**
- 8           **pending against the person.**
- 9           **(e) If a person whose Class D felony conviction has been**
- 10          **converted to a Class A misdemeanor conviction under subsection**
- 11          **(c) is convicted of a felony within five (5) years after the conversion**
- 12          **under subsection (c), a prosecuting attorney may petition a court**
- 13          **to convert the person's Class A misdemeanor conviction back to a**
- 14          **Class D felony conviction.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1033, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 29, delete "subsection (a)," and insert "**subsections (a) and (d),**".

Page 3, after line 5, begin a new paragraph and insert:

**"(d) If a person whose Class D felony conviction has been converted to a Class A misdemeanor conviction under subsection (c) is convicted of a felony within five (5) years after the conversion under subsection (c), a prosecuting attorney may petition a court to convert the person's Class A misdemeanor conviction back to a Class D felony conviction."**

and when so amended that said bill do pass.

(Reference is to HB 1033 as introduced.)

STEUERWALD, Chair

Committee Vote: yeas 9, nays 0.

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 COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1033, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 24-4-18 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

**Chapter 18. Criminal History Providers**

**Sec. 1. As used in this section, "criminal history information" has the meaning set forth for "criminal history data" in IC 10-13-3-5.**

**Sec. 2. As used in this section, "criminal history provider" means a person in the business of providing criminal history information to a person that is not a criminal justice agency or law**

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enforcement agency. The term does not include a criminal justice agency or a law enforcement agency.

Sec. 3. As used in this section, "criminal justice agency" has the meaning set forth in IC 10-13-3-6.

Sec. 4. As used in this section, "law enforcement agency" has the meaning set forth in IC 10-13-3-10.

Sec. 5. A criminal history provider may provide only criminal history information that relates to a conviction. A criminal history provider may not provide information relating to an arrest or a charge that did not result in a conviction.

Sec. 6. (a) A criminal history provider shall update its records at least one (1) time per calendar year.

(b) When a criminal history provider updates its records, the provider shall remove from its records any information:

- (1) the provider knows to be inaccurate; or
- (2) that relates to criminal history information:
  - (A) that has been expunged;
  - (B) that has been restricted; or
  - (C) to which access has been limited;
 under IC 35-38-5 or any other law.

Sec. 7. (a) The attorney general may bring an action to enforce a violation of section 5 or 6 of this chapter. In addition to any injunctive or other relief, the attorney general may recover a civil penalty of not more than one thousand dollars (\$1,000) for a first violation, and of not more than five thousand dollars (\$5,000) for a second or subsequent violation.

(b) Any person injured by a violation of section 5 or 6 of this chapter may bring an action to recover:

- (1) the greater of:
  - (A) actual damages, including consequential damages; or
  - (B) liquidated damages of five hundred dollars (\$500); and
- (2) court costs and reasonable attorney's fees.

SECTION 2. IC 35-38-8-2, AS ADDED BY P.L.194-2011, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. This chapter applies only to a person:

- (1) convicted of a ~~misdemeanor~~ **misdemeanor one (1) or more misdemeanors** or a Class D ~~felony~~ **felonies** that did not result in injury to a person; or
- (2) adjudicated a delinquent child for committing ~~an offense~~ **one (1) or more offenses** that, if committed by an adult, would be a ~~misdemeanor~~ **misdemeanors** or Class D ~~felony~~ **felonies** that did not result in injury to a person.

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SECTION 3. IC 35-38-8-4, AS ADDED BY P.L.194-2011, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. The court shall grant a petition under this chapter if the court finds:

- (1) the person is:
  - (A) not a sex or violent offender; or
  - (B) a sex or violent offender, but the offender's status as a sex or violent offender is solely due to the offender's conviction for sexual misconduct with a minor (IC 35-42-4-9) and the offender proved that the defense described in IC 35-42-4-9(e) applies to the offender;
- (2) the person was:
  - (A) convicted of a ~~misdemeanor~~ **one (1) or more misdemeanors** or a Class D ~~felony felonies~~ that did not result in injury to a person; or
  - (B) adjudicated a delinquent child for committing ~~an offense~~ **one (1) or more offenses** that, if committed by an adult, would be a ~~misdemeanor~~ **misdemeanors** or Class D ~~felony felonies~~ not resulting in injury to a person;
- (3) eight (8) years have passed since the person completed the person's sentence and satisfied any other obligation imposed on the person as part of the sentence; and
- (4) the person has not been convicted of a felony since the person completed the person's sentence and satisfied any other obligation imposed on the person as part of the sentence.

SECTION 4. IC 35-38-8-5, AS ADDED BY P.L.194-2011, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. If the court grants the petition of a person under this chapter, the court shall do the following:

- (1) Order:
  - (A) the department of correction; and
  - (B) each:
    - (i) law enforcement agency; and
    - (ii) other person;
 

who incarcerated, provided treatment for, or provided other services for the person under an order of the court;

to prohibit the release of the person's records or information relating to the ~~misdemeanor~~, **misdemeanors**, nonviolent Class D ~~felony felonies~~, or juvenile ~~adjudication~~ **adjudications** described in section 2 of this chapter, in the person's records to a noncriminal justice agency without a court order.
- (2) Order any:

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- (A) state;
- (B) regional; or
- (C) local;

central repository for criminal history information to prohibit the release of the person's records or information relating to the ~~misdemeanor~~ **misdemeanors**, nonviolent Class D ~~felony~~ **felonies**, or juvenile ~~adjudication~~ **adjudications** described in section 2 of this chapter, in the person's records to a noncriminal justice agency without a court order.

SECTION 5. IC 35-38-8-7, AS ADDED BY P.L.194-2011, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. **(a)** If a court orders a person's records to be restricted under this chapter, the person may legally state on an application for employment or any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the restricted records.

**(b) An employer may not ask an employee, contract employee, or applicant whether the person's criminal records have been sealed or restricted. An employer who violates this subsection commits a Class B infraction."**

Page 2, line 29, delete "subsections (a) and (d)," and insert "**subsection (a)**,".

Page 2, line 31, after "after" insert "**receiving a verified petition as described in subsection (d) and after conducting**".

Page 2, between lines 36 and 37, begin a new line block indented and insert:

**"(3) The person has not been convicted of perjury under IC 35-44-2-1 or official misconduct under IC 35-44-1-2."**

Page 2, line 37, before "At" delete "(3)" and insert "**(4)**".

Page 2, line 42, delete "(4)" and insert "**(5)**".

Page 3, between lines 5 and 6, begin a new line block indented and insert:

**"(6) No criminal charges are pending against the person.**

**(d) A petition filed under subsection (c) must be verified and set forth:**

- (1) the crime the person has been convicted of;**
- (2) the date of the conviction;**
- (3) the date the person completed the person's sentence;**
- (4) any obligations imposed on the person as part of the sentence;**
- (5) the date the obligations were satisfied; and**
- (6) a verified statement that there are no criminal charges**



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**pending against the person."**

Page 3, line 6, delete "(d)" and insert "(e)".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1033 as printed January 23, 2012.)

STEELE, Chairperson

Committee Vote: Yeas 9, Nays 0.

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