



Reprinted  
February 29, 2012

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# ENGROSSED HOUSE BILL No. 1033

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DIGEST OF HB 1033 (Updated February 28, 2012 2:06 pm - DI 106)

**Citations Affected:** IC 24-4; IC 34-28; 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 certain 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 offender; (2) the offense was a non-violent offense; (3) the person has  
(Continued next page)

**Effective:** July 1, 2012.

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**McMillin, Turner, DeLaney, Pierce**  
(SENATE SPONSORS — STEELE, HUME, TAYLOR, RANDOLPH)

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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.  
February 28, 2012, read second time, amended, ordered engrossed.

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EH 1033—LS 6317/DI 106+



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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. Requires a court to detail the reasons for denying a petition to reduce a Class D felony to a Class A misdemeanor if the denial is based on the court's discretion. 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. Requires a court to restrict disclosure of records relating to an infraction if: (1) the person is not prosecuted; (2) the infraction is dismissed; (3) the person is found not to have committed the infraction; or (4) the judgment is reversed on appeal; and establishes a procedure to restrict infractions if the court does not act on its own motion. Requires records relating to an infraction be sealed five years after the judgment for the infraction is satisfied.

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Reprinted  
February 29, 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 or organization that assembles criminal history**  
10 **reports and either uses the report or provides the report to a**  
11 **person or organization other than a criminal justice agency or law**  
12 **enforcement agency. The term does not include a criminal justice**  
13 **agency or a law enforcement agency.**  
14 **Sec. 3. As used in this section, "criminal history report" means**  
15 **criminal history information that has been compiled for the**  
16 **purposes of evaluating a particular person's:**  
17 **(1) character; or**

EH 1033—LS 6317/DI 106+



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1           (2) eligibility for:

2               (A) employment;

3               (B) housing; or

4               (C) participation in any activity or transaction.

5           Sec. 4. As used in this section, "criminal justice agency" has the  
6 meaning set forth in IC 10-13-3-6.

7           Sec. 5. As used in this section, "law enforcement agency" has the  
8 meaning set forth in IC 10-13-3-10.

9           Sec. 6. (a) A criminal history provider may provide only  
10 criminal history information that relates to a conviction.

11           (b) A criminal history provider may not provide information  
12 relating to the following:

13               (1) An infraction, an arrest, or a charge that did not result in  
14 a conviction.

15               (2) A record that has been expunged.

16               (3) A record that is restricted by the rules of a court.

17               (4) A record that has been restricted or expunged under  
18 IC 35-38-5 or restricted or expunged under another law.

19               (5) A record that the criminal history provider knows is  
20 inaccurate.

21           Sec. 7. A criminal history provider may not include criminal  
22 history data in a criminal history report if the criminal history  
23 data has not been updated to reflect changes to the official record  
24 occurring sixty (60) days or more before the date the criminal  
25 history report is delivered.

26           Sec. 8. (a) The attorney general may bring an action to enforce  
27 a violation of section 6 or 7 of this chapter. In addition to any  
28 injunctive or other relief, the attorney general may recover a civil  
29 penalty of not more than one thousand dollars (\$1,000) for a first  
30 violation, and of not more than five thousand dollars (\$5,000) for  
31 a second or subsequent violation.

32           (b) Any person injured by a violation of section 6 or 7 of this  
33 chapter may bring an action to recover:

34               (1) the greater of:

35                   (A) actual damages, including consequential damages; or

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

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

38           SECTION 2. IC 34-28-5-15 IS ADDED TO THE INDIANA CODE  
39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
40 1, 2012]: Sec. 15. (a) If a person alleged to have violated a statute  
41 defining an infraction:

42               (1) is not prosecuted or if the action against the person is

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- 1 dismissed;
- 2 (2) is adjudged not to have committed the infraction; or
- 3 (3) is adjudged to have committed the infraction and the
- 4 adjudication is subsequently vacated;
- 5 the court in which the action was filed shall order the clerk not to
- 6 disclose or permit disclosure of information related to the
- 7 infraction to a noncriminal justice organization or an individual.
- 8 (b) If a court fails to order the court to restrict information
- 9 related to the infraction under subsection (a), the person may
- 10 petition the court to restrict disclosure of the records related to the
- 11 infraction to a noncriminal justice organization or an individual.
- 12 (c) A petition under subsection (a) must be verified and filed in:
- 13 (1) the court in which the action was filed, for a person
- 14 described in subsection (a)(1); or
- 15 (2) the court in which the trial was held, for a person
- 16 described in subsection (a)(2) or (a)(3).
- 17 (d) A petition under subsection (b) must be filed not earlier
- 18 than:
- 19 (1) if the person is adjudged to have not committed the
- 20 infraction, thirty (30) days from the date of judgment;
- 21 (2) if the person's adjudication is vacated, three hundred
- 22 sixty-five (365) days after:
- 23 (A) the order vacating the adjudication is final, if there is
- 24 no appeal or the appeal is terminated before entry of an
- 25 opinion or memorandum decision; or
- 26 (B) the opinion or memorandum decision vacating the
- 27 adjudication is certified; or
- 28 (3) if the person is not prosecuted or the action is dismissed,
- 29 thirty (30) days after the action is dismissed, if a new action is
- 30 not filed.
- 31 (e) A petition under subsection (b) must set forth:
- 32 (1) the date of the alleged violation;
- 33 (2) the violation;
- 34 (3) the date the action was dismissed, if applicable;
- 35 (4) the date of judgment, if applicable;
- 36 (5) the date the adjudication was vacated, if applicable;
- 37 (6) the basis on which the adjudication was vacated, if
- 38 applicable;
- 39 (7) the law enforcement agency employing the officer who
- 40 issued the complaint, if applicable;
- 41 (8) any other known identifying information, such as the name
- 42 of the officer, case number, or court cause number;

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

(10) the petitioner's Social Security number.

(f) A copy of a petition under subsection (b) shall be served on the prosecuting attorney.

(g) If the prosecuting attorney wishes to oppose a petition under subsection (b), the prosecuting attorney shall, not later than thirty (30) days after the petition is filed, file a notice of opposition with the court setting forth reasons for opposing the petition. The prosecuting attorney shall attach to the notice of opposition a certified copy of any documentary evidence showing that the petitioner is not entitled to relief. A copy of the notice of opposition and copies of any documentary evidence shall be served on the petitioner in accordance with the Indiana Rules of Trial Procedure. The court may:

- (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 documentary evidence submitted by the prosecuting attorney, the petitioner is not entitled to have access to the petitioner's records restricted.

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

(i) After a hearing is held under subsection (h), the court shall grant the petition filed under subsection (b) if the person is entitled to relief under subsection (a).

(j) If the court grants a petition filed under subsection (b), the court shall order the clerk not to disclose or permit disclosure of information related to the infraction to a noncriminal justice organization or an individual.

SECTION 3. IC 34-28-5-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 16. (a) This chapter applies only to a person found to have committed an infraction.**

**(b) Five (5) years after the date a person satisfies a judgment imposed on a person for the violation of an infraction, the clerk of the court shall prohibit the disclosure of information related to the infraction to a noncriminal justice organization or an individual.**

**(c) If a person whose records are restricted under this section brings a civil action that might be defended with the contents of the records, the defendant is presumed to have a complete defense to**

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the action.

(d) For the plaintiff to recover in an action described in subsection (c), the plaintiff must show that the contents of the restricted records would not exonerate the defendant.

(e) In an action described in subsection (c), the plaintiff may be required to state under oath whether the disclosure of records relating to an infraction has been restricted.

(f) In an action described in subsection (c), if the plaintiff denies the existence of the records, the defendant may prove the existence of the records in any manner compatible with the law of evidence.

(g) A person whose records have been restricted under this section may legally state on an application for employment or any other document that the person has not been adjudicated to have committed the infraction recorded in the restricted records.

SECTION 4. 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~~ **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.

SECTION 5. 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~~ **may** 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**

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- 1 not resulting in injury to a person;
- 2 (3) eight (8) years have passed since the person completed the
- 3 person's sentence and satisfied any other obligation imposed on
- 4 the person as part of the sentence; and
- 5 (4) the person has not been convicted of a felony since the person
- 6 completed the person's sentence and satisfied any other obligation
- 7 imposed on the person as part of the sentence.

8 **If a court uses its discretion to deny a petition that would otherwise**  
 9 **qualify under this section, the court shall set forth in detail its**  
 10 **specific reasons for denying the petition.**

11 SECTION 6. IC 35-38-8-5, AS ADDED BY P.L.194-2011,  
 12 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2012]: Sec. 5. If the court grants the petition of a person under  
 14 this chapter, the court shall do the following:

- 15 (1) Order:
  - 16 (A) the department of correction; and
  - 17 (B) each:
    - 18 (i) law enforcement agency; and
    - 19 (ii) other person;
- 20 who incarcerated, provided treatment for, or provided other
- 21 services for the person under an order of the court;
- 22 to prohibit the release of the person's records or information
- 23 relating to the ~~misdemeanor~~, **misdemeanors**, nonviolent Class D
- 24 ~~felony felonies~~, or juvenile ~~adjudication~~ **adjudications** described
- 25 in section 2 of this chapter, in the person's records to a
- 26 noncriminal justice agency without a court order.

- 27 (2) Order any:
  - 28 (A) state;
  - 29 (B) regional; or
  - 30 (C) local;
- 31 central repository for criminal history information to prohibit the
- 32 release of the person's records or information relating to the
- 33 ~~misdemeanor~~ **misdemeanors**, nonviolent Class D ~~felony~~ **felonies**,
- 34 or juvenile ~~adjudication~~ **adjudications** described in section 2 of
- 35 this chapter, in the person's records to a noncriminal justice
- 36 agency without a court order.

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

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1 recorded in the restricted records.

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

6 SECTION 8. IC 35-50-2-1 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) As used in this  
 8 chapter, "Class D felony conviction" means a conviction of a Class D  
 9 felony in Indiana and a conviction, in any other jurisdiction at any time,  
 10 with respect to which the convicted person might have been imprisoned  
 11 for more than one (1) year. However, it does not include a conviction  
 12 with respect to which the person has been pardoned, or a conviction of  
 13 a Class A misdemeanor **entered** under **IC 35-38-1-1.5** or section 7(b)  
 14 **or 7(c)** of this chapter.

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

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

- 22 (1) for murder, forty-five (45) years;
- 23 (2) for a Class A felony, twenty (20) years;
- 24 (3) for a Class B felony, six (6) years;
- 25 (4) for a Class C felony, two (2) years; and
- 26 (5) for a Class D felony, one-half (1/2) year.

27 SECTION 9. IC 35-50-2-7, AS AMENDED BY P.L.71-2005,  
 28 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29 JULY 1, 2012]: Sec. 7. (a) A person who commits a Class D felony  
 30 shall be imprisoned for a fixed term of between six (6) months and  
 31 three (3) years, with the advisory sentence being one and one-half (1  
 32 1/2) years. In addition, the person may be fined not more than ten  
 33 thousand dollars (\$10,000).

34 (b) Notwithstanding subsection (a), if a person has committed a  
 35 Class D felony, the court may enter judgment of conviction of a Class  
 36 A misdemeanor and sentence accordingly. However, the court shall  
 37 enter a judgment of conviction of a Class D felony if:

38 (1) the court finds that:

- 39 (A) the person has committed a prior, unrelated felony for  
 40 which judgment was entered as a conviction of a Class A  
 41 misdemeanor; and
- 42 (B) the prior felony was committed less than three (3) years

EH 1033—LS 6317/DI 106+



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- 1 before the second felony was committed;
- 2 (2) the offense is domestic battery as a Class D felony under
- 3 IC 35-42-2-1.3; or
- 4 (3) the offense is possession of child pornography
- 5 (IC 35-42-4-4(c)).
- 6 The court shall enter in the record, in detail, the reason for its action
- 7 whenever it exercises the power to enter judgment of conviction of a
- 8 Class A misdemeanor granted in this subsection.
- 9 **(c) Notwithstanding subsection (a), the sentencing court may**
- 10 **convert a Class D felony conviction to a Class A misdemeanor**
- 11 **conviction if, after receiving a verified petition as described in**
- 12 **subsection (d) and after conducting a hearing of which the**
- 13 **prosecuting attorney has been notified, the court makes the**
- 14 **following findings:**
- 15 **(1) The person is not a sex or violent offender (as defined in**
- 16 **IC 11-8-8-5).**
- 17 **(2) The person was not convicted of a Class D felony that**
- 18 **resulted in bodily injury to another person.**
- 19 **(3) The person has not been convicted of perjury under**
- 20 **IC 35-44-2-1 or official misconduct under IC 35-44-1-2.**
- 21 **(4) At least three (3) years have passed since the person:**
- 22 **(A) completed the person's sentence; and**
- 23 **(B) satisfied any other obligation imposed on the person as**
- 24 **part of the sentence;**
- 25 **for the Class D felony.**
- 26 **(5) The person has not been convicted of a felony since the**
- 27 **person:**
- 28 **(A) completed the person's sentence; and**
- 29 **(B) satisfied any other obligation imposed on the person as**
- 30 **part of the sentence;**
- 31 **for the Class D felony.**
- 32 **(6) No criminal charges are pending against the person.**
- 33 **(d) A petition filed under subsection (c) must be verified and set**
- 34 **forth:**
- 35 **(1) the crime the person has been convicted of;**
- 36 **(2) the date of the conviction;**
- 37 **(3) the date the person completed the person's sentence;**
- 38 **(4) any obligations imposed on the person as part of the**
- 39 **sentence;**
- 40 **(5) the date the obligations were satisfied; and**
- 41 **(6) a verified statement that there are no criminal charges**
- 42 **pending against the person.**

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1           (e) If a person whose Class D felony conviction has been  
2 converted to a Class A misdemeanor conviction under subsection  
3 (c) is convicted of a felony within five (5) years after the conversion  
4 under subsection (c), a prosecuting attorney may petition a court  
5 to convert the person's Class A misdemeanor conviction back to a  
6 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**

EH 1033—LS 6317/DI 106+



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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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SENATE MOTION

Madam President: I move that Engrossed House Bill 1033 be amended to read as follows:

Page 2, line 38, strike "shall" and insert "**may**".

Page 3, between lines 18 and 19, begin a new line blocked left and insert:

**"If a court uses its discretion to deny a petition that would otherwise qualify under this section, the court shall set forth in detail its specific reasons for denying the petition."**

(Reference is to EHB 1033 as printed February 17, 2012.)

BRAY

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1033 be amended to read as follows:

Page 1, line 9, delete "in the business of providing" and insert "**or organization that assembles**".

Page 1, line 10, delete "information to a person that is not" and insert "**reports and either uses the report or provides the report to a person or organization other than**".

Page 1, line 13, after "section," insert "**criminal history report**" means **criminal history information that has been compiled for the purposes of evaluating a particular person's:**

- (1) character; or**
- (2) eligibility for:**
  - (A) employment;**



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- (B) housing; or**
- (C) participation in any activity or transaction.**

**Sec. 4. As used in this section,"**

Page 1, line 15, delete "4." and insert "5."

Page 1, line 17, delete "5." and insert "6. (a)".

Page 2, line 1, delete "A", begin a new paragraph and insert:  
"(b) A".

Page 2, line 2, delete "to an" and insert "to the following:

**(1) An".**

Page 2, between lines 3 and 4, begin a new line block indented and insert:

**"(2) A record that has been expunged.**

**(3) A record that is restricted by the rules of a court.**

**(4) A record that has been restricted or expunged under IC 35-38-5 or restricted or expunged under another law.**

**(5) A record that the criminal history provider knows is inaccurate.**

**Sec. 7. A criminal history provider may not include criminal history data in a criminal history report if the criminal history data has not been updated to reflect changes to the official record occurring sixty (60) days or more before the date the criminal history report is delivered."**

Page 2, delete lines 4 through 13.

Page 2, line 14, delete "7." and insert "8."

Page 2, line 15, delete "5 or 6" and insert "6 or 7".

Page 2, line 20, delete "5 or 6" and insert "6 or 7".

(Reference is to EHB 1033 as printed February 17, 2012.)

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1033 be amended to read as follows:

Page 2, line 2, after "an" insert "infraction, an".

Page 2, line 2, after "arrest" insert ",".

Page 2, between lines 25 and 26, begin a new paragraph and insert:  
"SECTION 2. IC 34-28-5-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 15. (a) If a person alleged to have violated a statute**



**defining an infraction:**

- (1) is not prosecuted or if the action against the person is dismissed;
- (2) is adjudged not to have committed the infraction; or
- (3) is adjudged to have committed the infraction and the adjudication is subsequently vacated;

the court in which the action was filed shall order the clerk not to disclose or permit disclosure of information related to the infraction to a noncriminal justice organization or an individual.

(b) If a court fails to order the court to restrict information related to the infraction under subsection (a), the person may petition the court to restrict disclosure of the records related to the infraction to a noncriminal justice organization or an individual.

(c) A petition under subsection (a) must be verified and filed in:

- (1) the court in which the action was filed, for a person described in subsection (a)(1); or
- (2) the court in which the trial was held, for a person described in subsection (a)(2) or (a)(3).

(d) A petition under subsection (b) must be filed not earlier than:

- (1) if the person is adjudged to have not committed the infraction, thirty (30) days from the date of judgment;
- (2) if the person's adjudication is vacated, three hundred sixty-five (365) days after:
  - (A) the order vacating the adjudication is final, if there is no appeal or the appeal is terminated before entry of an opinion or memorandum decision; or
  - (B) the opinion or memorandum decision vacating the adjudication is certified; or
- (3) if the person is not prosecuted or the action is dismissed, thirty (30) days after the action is dismissed, if a new action is not filed.

(e) A petition under subsection (b) must set forth:

- (1) the date of the alleged violation;
- (2) the violation;
- (3) the date the action was dismissed, if applicable;
- (4) the date of judgment, if applicable;
- (5) the date the adjudication was vacated, if applicable;
- (6) the basis on which the adjudication was vacated, if applicable;
- (7) the law enforcement agency employing the officer who issued the complaint, if applicable;



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- (8) any other known identifying information, such as the name of the officer, case number, or court cause number;
- (9) the date of the petitioner's birth; and
- (10) the petitioner's Social Security number.

(f) A copy of a petition under subsection (b) shall be served on the prosecuting attorney.

(g) If the prosecuting attorney wishes to oppose a petition under subsection (b), the prosecuting attorney shall, not later than thirty (30) days after the petition is filed, file a notice of opposition with the court setting forth reasons for opposing the petition. The prosecuting attorney shall attach to the notice of opposition a certified copy of any documentary evidence showing that the petitioner is not entitled to relief. A copy of the notice of opposition and copies of any documentary evidence shall be served on the petitioner in accordance with the Indiana Rules of Trial Procedure.

The court may:

- (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 documentary evidence submitted by the prosecuting attorney, the petitioner is not entitled to have access to the petitioner's records restricted.

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

(i) After a hearing is held under subsection (h), the court shall grant the petition filed under subsection (b) if the person is entitled to relief under subsection (a).

(j) If the court grants a petition filed under subsection (b), the court shall order the clerk not to disclose or permit disclosure of information related to the infraction to a noncriminal justice organization or an individual.

SECTION 3. IC 34-28-5-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 16. (a) This chapter applies only to a person found to have committed an infraction.

(b) Five (5) years after the date a person satisfies a judgment imposed on a person for the violation of an infraction, the clerk of the court shall prohibit the disclosure of information related to the infraction to a noncriminal justice organization or an individual.

(c) If a person whose records are restricted under this section

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**brings a civil action that might be defended with the contents of the records, the defendant is presumed to have a complete defense to the action.**

**(d) For the plaintiff to recover in an action described in subsection (c), the plaintiff must show that the contents of the restricted records would not exonerate the defendant.**

**(e) In an action described in subsection (c), the plaintiff may be required to state under oath whether the disclosure of records relating to an infraction has been restricted.**

**(f) In an action described in subsection (c), if the plaintiff denies the existence of the records, the defendant may prove the existence of the records in any manner compatible with the law of evidence.**

**(g) A person whose records have been restricted under this section may legally state on an application for employment or any other document that the person has not been adjudicated to have committed the infraction recorded in the restricted records."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1033 as printed February 17, 2012.)

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