

**CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1033**

Citations Affected: IC 24-4-18; IC 34-28-5; IC 35-38-8-7; IC 35-50-2.

Synopsis: Criminal history and sentencing. Conference committee report for EHB 1033. Defines "criminal history provider." Requires a criminal history provider to: (1) update its records annually to remove inaccurate information and information that has been expunged, restricted, or limited; and (2) only disclose certain information relating to a conviction; as of July 1, 2013. Allows 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. Requires a court to restrict disclosure of information relating to an infraction to a noncriminal justice organization or individual if: (1) the person alleged to have committed the infraction 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. Establishes a procedure for the person to restrict disclosure of the information relating to the infraction if the court fails to act on its own. Requires records relating to an infraction to be sealed five years after the judgment for the infraction is satisfied. Makes it a Class B infraction for an employer to ask if a person's criminal records have been sealed or restricted. Allows a court to convert a Class D felony conviction to Class A misdemeanor conviction if: (1) the person is not a sex or violent 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. 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. 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. **(This conference committee report: (1) changes the effective date of the law concerning criminal history providers to July 1, 2013; (2) makes changes to the definitions of "criminal history information" and "criminal history provider"; and (3) removes provisions concerning petitions for restricted access to conviction records.)**

Effective: July 1, 2012; July 1, 2013.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1033 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 24-4-18 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2013]:
- 5 **Chapter 18. Criminal History Providers**
- 6 **Sec. 1. (a) As used in this chapter, "criminal history**
- 7 **information" means information:**
- 8 **(1) concerning a criminal conviction in Indiana; and**
- 9 **(2) available in records kept by a clerk of a court with**
- 10 **jurisdiction in Indiana.**
- 11 **(b) The term consists of the following:**
- 12 **(1) Identifiable descriptions and notations of arrests,**
- 13 **indictments, informations, or other formal criminal charges.**
- 14 **(2) Information, including a photograph, regarding a sex or**
- 15 **violent offender (as defined in IC 11-8-8-5) obtained through**
- 16 **sex or violent offender registration under IC 11-8-8.**
- 17 **(3) Any disposition, including sentencing, and correctional**
- 18 **system intake, transfer, and release.**
- 19 **(4) A photograph of the person who is the subject of the**
- 20 **information described in subdivisions (1) through (3).**
- 21 **(c) The term includes fingerprint information described in**
- 22 **IC 10-13-3- 24(f).**

1 **Sec. 2. (a) As used in this section, "criminal history provider"**
 2 **means a person or an organization that assembles criminal history**
 3 **reports and either uses the report or provides the report to a**
 4 **person or an organization other than a criminal justice agency or**
 5 **law enforcement agency.**

6 **(b) The term does not include the following:**

7 **(1) A criminal justice agency.**

8 **(2) A law enforcement agency.**

9 **(3) Any:**

10 **(A) person connected with or employed by:**

11 **(i) a newspaper or other periodical issued at regular**
 12 **intervals and having a general circulation; or**

13 **(ii) a recognized press association or wire service;**

14 **as a bona fide owner, editorial or reportorial employee,**
 15 **who receives income from legitimate gathering, writing,**
 16 **editing, and interpretation of news;**

17 **(B) person connected with a licensed radio or television**
 18 **station as an owner or official, or as an editorial or**
 19 **reportorial employee who receives income from legitimate**
 20 **gathering, writing, editing, interpreting, announcing, or**
 21 **broadcasting of news; or**

22 **(C) other person who gathers, records, compiles, or**
 23 **disseminates:**

24 **(i) criminal history information; or**

25 **(ii) criminal history reports;**

26 **solely for journalistic purposes.**

27 **Sec. 3. As used in this section, "criminal history report" means**
 28 **criminal history information that has been compiled for the**
 29 **purposes of evaluating a particular person's:**

30 **(1) character; or**

31 **(2) eligibility for:**

32 **(A) employment;**

33 **(B) housing; or**

34 **(C) participation in any activity or transaction.**

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

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

39 **Sec. 6. (a) A criminal history provider may provide only**
 40 **criminal history information that relates to a conviction.**

41 **(b) A criminal history provider may not provide information**
 42 **relating to the following:**

43 **(1) An infraction, an arrest, or a charge that did not result in**
 44 **a conviction.**

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

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

48 **(4) A record indicating a conviction of a Class D felony if the**
 49 **Class D felony conviction:**

50 **(A) has been entered as a Class A misdemeanor conviction;**

51 **or**

1 **(B) has been converted to a Class A misdemeanor**
 2 **conviction.**

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

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

10 **Sec. 8. (a) The attorney general may bring an action to enforce**
 11 **a violation of section 6 or 7 of this chapter. In addition to any**
 12 **injunctive or other relief, the attorney general may recover a civil**
 13 **penalty of:**

14 **(1) not more than one thousand dollars (\$1,000) for a first**
 15 **violation; and**

16 **(2) not more than five thousand dollars (\$5,000) for a second**
 17 **or subsequent violation.**

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

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

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

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

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

24 **SECTION 2. IC 34-28-5-15 IS ADDED TO THE INDIANA CODE**
 25 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 26 **1, 2012]: Sec. 15. (a) If a person alleged to have violated a statute**
 27 **defining an infraction:**

28 **(1) is not prosecuted or if the action against the person is**
 29 **dismissed;**

30 **(2) is adjudged not to have committed the infraction; or**

31 **(3) is adjudged to have committed the infraction and the**
 32 **adjudication is subsequently vacated;**

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

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

40 **(c) A petition under subsection (b) must be verified and filed in:**

41 **(1) the court in which the action was filed, for a person**
 42 **described in subsection (a)(1); or**

43 **(2) the court in which the trial was held, for a person**
 44 **described in subsection (a)(2) or (a)(3).**

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

47 **(1) if the person is adjudged to have not committed the**
 48 **infraction, thirty (30) days after the date of judgment;**

49 **(2) if the person's adjudication is vacated, three hundred**
 50 **sixty-five (365) days after:**

51 **(A) the order vacating the adjudication is final, if there is**

- 1 no appeal or the appeal is terminated before entry of an
2 opinion or memorandum decision; or
3 **(B) the opinion or memorandum decision vacating the**
4 **adjudication is certified; or**
5 **(3) if the person is not prosecuted or the action is dismissed,**
6 **thirty (30) days after the action is dismissed, if a new action is**
7 **not filed.**
8 **(e) A petition under subsection (b) must set forth:**
9 **(1) the date of the alleged violation;**
10 **(2) the violation;**
11 **(3) the date the action was dismissed, if applicable;**
12 **(4) the date of judgment, if applicable;**
13 **(5) the date the adjudication was vacated, if applicable;**
14 **(6) the basis on which the adjudication was vacated, if**
15 **applicable;**
16 **(7) the law enforcement agency employing the officer who**
17 **issued the complaint, if applicable;**
18 **(8) any other known identifying information, such as the name**
19 **of the officer, case number, or court cause number;**
20 **(9) the date of the petitioner's birth; and**
21 **(10) the petitioner's Social Security number.**
22 **(f) A copy of a petition under subsection (b) shall be served on**
23 **the prosecuting attorney.**
24 **(g) If the prosecuting attorney wishes to oppose a petition under**
25 **subsection (b), the prosecuting attorney shall, not later than thirty**
26 **(30) days after the petition is filed, file a notice of opposition with**
27 **the court setting forth reasons for opposing the petition. The**
28 **prosecuting attorney shall attach to the notice of opposition a**
29 **certified copy of any documentary evidence showing that the**
30 **petitioner is not entitled to relief. A copy of the notice of opposition**
31 **and copies of any documentary evidence shall be served on the**
32 **petitioner in accordance with the Indiana Rules of Trial Procedure.**
33 **The court may:**
34 **(1) summarily grant the petition;**
35 **(2) set the matter for hearing; or**
36 **(3) summarily deny the petition, if the court determines that:**
37 **(A) the petition is insufficient; or**
38 **(B) based on documentary evidence submitted by the**
39 **prosecuting attorney, the petitioner is not entitled to have**
40 **access to the petitioner's records restricted.**
41 **(h) If a notice of opposition is filed under subsection (g) and the**
42 **court does not summarily grant or summarily deny the petition,**
43 **the court shall set the matter for a hearing.**
44 **(i) After a hearing is held under subsection (h), the court shall**
45 **grant the petition filed under subsection (b) if the person is entitled**
46 **to relief under subsection (a).**
47 **(j) If the court grants a petition filed under subsection (b), the**
48 **court shall order the clerk not to disclose or permit disclosure of**
49 **information related to the infraction to a noncriminal justice**
50 **organization or an individual.**
51 SECTION 3. IC 34-28-5-16 IS ADDED TO THE INDIANA CODE

1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2012]: **Sec. 16. (a) This chapter applies only to a person found to
3 have committed an infraction.**

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

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

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

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

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

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

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

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

36 SECTION 5. IC 35-50-2-1 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 1. (a) As used in this
38 chapter, "Class D felony conviction" means a conviction of a Class D
39 felony in Indiana and a conviction, in any other jurisdiction at any time,
40 with respect to which the convicted person might have been imprisoned
41 for more than one (1) year. However, it does not include a conviction
42 with respect to which the person has been pardoned, or a conviction of
43 a Class A misdemeanor entered under IC 35-38-1-1.5 or section 7(b)
44 or 7(c) of this chapter.**

45 **(b) As used in this chapter, "felony conviction" means a conviction,
46 in any jurisdiction at any time, with respect to which the convicted
47 person might have been imprisoned for more than one (1) year.
48 However, it does not include a conviction with respect to which the
49 person has been pardoned, or a conviction of a Class A misdemeanor
50 under section 7(b) of this chapter.**

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

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

6 SECTION 6. IC 35-50-2-7, AS AMENDED BY P.L.71-2005,
 7 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2012]: Sec. 7. (a) A person who commits a Class D felony
 9 shall be imprisoned for a fixed term of between six (6) months and
 10 three (3) years, with the advisory sentence being one and one-half (1
 11 1/2) years. In addition, the person may be fined not more than ten
 12 thousand dollars (\$10,000).

13 (b) Notwithstanding subsection (a), if a person has committed a
 14 Class D felony, the court may enter judgment of conviction of a Class
 15 A misdemeanor and sentence accordingly. However, the court shall
 16 enter a judgment of conviction of a Class D felony if:

- 17 (1) the court finds that:
 - 18 (A) the person has committed a prior, unrelated felony for
 19 which judgment was entered as a conviction of a Class A
 20 misdemeanor; and
 - 21 (B) the prior felony was committed less than three (3) years
 22 before the second felony was committed;
- 23 (2) the offense is domestic battery as a Class D felony under
 24 IC 35-42-2-1.3; or
- 25 (3) the offense is possession of child pornography (IC
 26 35-42-4-4(c)).

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

30 **(c) Notwithstanding subsection (a), the sentencing court may**
 31 **convert a Class D felony conviction to a Class A misdemeanor**
 32 **conviction if, after receiving a verified petition as described in**
 33 **subsection (d) and after conducting a hearing of which the**
 34 **prosecuting attorney has been notified, the court makes the**
 35 **following findings:**

- 36 **(1) The person is not a sex or violent offender (as defined in**
 37 **IC 11-8-8-5).**
- 38 **(2) The person was not convicted of a Class D felony that**
 39 **resulted in bodily injury to another person.**
- 40 **(3) The person has not been convicted of perjury under**
 41 **IC 35-44-2-1 or official misconduct under IC 35-44-1-2.**
- 42 **(4) At least three (3) years have passed since the person:**
 - 43 **(A) completed the person's sentence; and**
 - 44 **(B) satisfied any other obligation imposed on the person as**
 45 **part of the sentence;**
- 46 **for the Class D felony.**
- 47 **(5) The person has not been convicted of a felony since the**
 48 **person:**
 - 49 **(A) completed the person's sentence; and**
 - 50 **(B) satisfied any other obligation imposed on the person as**
 51 **part of the sentence;**

- 1 **for the Class D felony.**
- 2 **(6) No criminal charges are pending against the person.**
- 3 **(d) A petition filed under subsection (c) must be verified and set**
- 4 **forth:**
- 5 **(1) the crime the person has been convicted of;**
- 6 **(2) the date of the conviction;**
- 7 **(3) the date the person completed the person's sentence;**
- 8 **(4) any obligations imposed on the person as part of the**
- 9 **sentence;**
- 10 **(5) the date the obligations were satisfied; and**
- 11 **(6) a verified statement that there are no criminal charges**
- 12 **pending against the person.**
- 13 **(e) If a person whose Class D felony conviction has been**
- 14 **converted to a Class A misdemeanor conviction under subsection**
- 15 **(c) is convicted of a felony within five (5) years after the conversion**
- 16 **under subsection (c), a prosecuting attorney may petition a court**
- 17 **to convert the person's Class A misdemeanor conviction back to a**
- 18 **Class D felony conviction.**
- 19 SECTION 7. [EFFECTIVE JULY 1, 2012] **(a) As used in this**
- 20 **SECTION, "legislative council" refers to the legislative council**
- 21 **established by IC 2-5-1.1-1.**
- 22 **(b) As used in this SECTION, "study committee" means either**
- 23 **of the following:**
- 24 **(1) A statutory committee established under IC 2-5.**
- 25 **(2) An interim study committee.**
- 26 **(c) The legislative council is urged to assign the following topics**
- 27 **to a study committee during the 2012 legislative interim:**
- 28 **(1) The provisions of IC 24-4-18, as added by this act,**
- 29 **concerning criminal history providers.**
- 30 **(2) The need for any legislation to amend IC 24-4-18, as added**
- 31 **by this act, concerning criminal history providers before**
- 32 **IC 24-4-18 takes effect on July 1, 2013.**
- 33 **(d) If the topics described in subsection (c) are assigned to a**
- 34 **study committee, the study committee shall issue a final report to**
- 35 **the legislative council containing the study committee's findings**
- 36 **and recommendations, including any recommended legislation**
- 37 **concerning the topics, in an electronic format under IC 5-14-6 not**
- 38 **later than November 1, 2012.**
- 39 **(e) This SECTION expires December 31, 2012.**
 (Reference is to EHB 1033 as reprinted February 29, 2012.)

Conference Committee Report
on
Engrossed House Bill 1033

Signed by:

Representative McMillin
Chairperson

Senator Steele

Representative Pierce

Senator Hume

House Conferees

Senate Conferees