

# 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:**

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

- 1 charge that did not result in a conviction.
- 2 Sec. 6. (a) A criminal history provider shall update its records
- 3 at least one (1) time per calendar year.
- 4 (b) When a criminal history provider updates its records, the
- 5 provider shall remove from its records any information:
- 6 (1) the provider knows to be inaccurate; or
- 7 (2) that relates to criminal history information:
- 8 (A) that has been expunged;
- 9 (B) that has been restricted; or
- 10 (C) to which access has been limited;
- 11 under IC 35-38-5 or any other law.
- 12 Sec. 7. (a) The attorney general may bring an action to enforce
- 13 a violation of section 5 or 6 of this chapter. In addition to any
- 14 injunctive or other relief, the attorney general may recover a civil
- 15 penalty of not more than one thousand dollars (\$1,000) for a first
- 16 violation, and of not more than five thousand dollars (\$5,000) for
- 17 a second or subsequent violation.
- 18 (b) Any person injured by a violation of section 5 or 6 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 35-38-8-2, AS ADDED BY P.L.194-2011,
- 25 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 26 JULY 1, 2012]: Sec. 2. This chapter applies only to a person:
- 27 (1) convicted of a ~~misdemeanor~~ **one (1) or more misdemeanors**
- 28 or a Class D ~~felony~~ **felonies** that did not result in injury to a
- 29 person; or
- 30 (2) adjudicated a delinquent child for committing ~~an offense~~ **one**
- 31 **(1) or more offenses** that, if committed by an adult, would be a
- 32 ~~misdemeanor~~ **misdemeanors** or Class D ~~felony~~ **felonies** that did
- 33 not result in injury to a person.
- 34 SECTION 3. IC 35-38-8-4, AS ADDED BY P.L.194-2011,
- 35 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 36 JULY 1, 2012]: Sec. 4. The court shall grant a petition under this
- 37 chapter if the court finds:
- 38 (1) the person is:

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

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

- 25 (1) Order:
- 26 (A) the department of correction; and
- 27 (B) each:
- 28 (i) law enforcement agency; and
- 29 (ii) other person;
- 30 who incarcerated, provided treatment for, or provided other
- 31 services for the person under an order of the court;
- 32 to prohibit the release of the person's records or information
- 33 relating to the ~~misdemeanor~~, **misdemeanors**, nonviolent Class D
- 34 ~~felony~~ **felonies**, or juvenile ~~adjudication~~ **adjudications** described
- 35 in section 2 of this chapter, in the person's records to a
- 36 noncriminal justice agency without a court order.
- 37 (2) Order any:
- 38 (A) state;

1 (B) regional; or  
 2 (C) local;  
 3 central repository for criminal history information to prohibit the  
 4 release of the person's records or information relating to the  
 5 ~~misdemeanor~~ **misdemeanors**, nonviolent Class D ~~felony~~ **felonies**,  
 6 or juvenile ~~adjudication~~ **adjudications** described in section 2 of  
 7 this chapter, in the person's records to a noncriminal justice  
 8 agency without a court order.

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

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

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

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

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

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

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

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

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

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**

1           **sentence;**  
2           **(5) the date the obligations were satisfied; and**  
3           **(6) a verified statement that there are no criminal charges**  
4           **pending against the person."**

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

6           Renumber all SECTIONS consecutively.

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

**and when so amended that said bill do pass.**

Committee Vote: Yeas 9, Nays 0.

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**Steele**

**Chairperson**