



February 8, 2013

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## HOUSE BILL No. 1392

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DIGEST OF HB 1392 (Updated February 6, 2013 6:11 pm - DI 69)

**Citations Affected:** IC 24-4; IC 34-28.

**Synopsis:** Restricting criminal background checks. Specifies that the clerk of a court is not a "criminal history provider". Permits a criminal history provider to provide certain information relating to an incident that did not result in a conviction. Provides that a criminal history provider may provide information concerning expunged, restricted, or reduced convictions to a person required by law to obtain this information. Specifies that a criminal history provider does not violate the requirement to provide current information if the public records used to obtain the information are not current. Provides that a violation of these requirements is a deceptive act. Repeals a provision requiring a clerk to restrict disclosure of an infraction five years after it has been satisfied and permits a person to petition a court to restrict disclosure of an infraction five years after it has been satisfied. (The introduced version of this bill was prepared by the criminal law and sentencing policy study committee.)

**Effective:** July 1, 2013.

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### Steuerwald, DeLaney

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January 22, 2013, read first time and referred to Committee on Courts and Criminal Code.  
February 7, 2013, reported — Do Pass.

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HB 1392—LS 6385/DI 106+



February 8, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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## HOUSE BILL No. 1392

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 24-4-18-1, AS ADDED BY P.L.69-2012,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2013]: Sec. 1. (a) As used in this chapter, "criminal history  
4 information" means information:  
5 (1) concerning a criminal conviction in Indiana; and  
6 (2) available in records kept by a clerk of a **circuit, superior,  
7 city, or town** court with jurisdiction in Indiana.  
8 (b) The term consists of the following:  
9 (1) Identifiable descriptions and notations of arrests, indictments,  
10 informations, or other formal criminal charges.  
11 (2) Information, including a photograph, regarding a sex or  
12 violent offender (as defined in IC 11-8-8-5) obtained through sex  
13 or violent offender registration under IC 11-8-8.  
14 (3) Any disposition, including sentencing, and correctional system  
15 intake, transfer, and release.  
16 (4) A photograph of the person who is the subject of the  
17 information described in subdivisions (1) through (3).

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1 (c) The term includes fingerprint information described in  
2 IC 10-13-3-24(f).

3 SECTION 2. IC 24-4-18-2, AS ADDED BY P.L.69-2012,  
4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2013]: Sec. 2. (a) As used in this section, "criminal history  
6 provider" means a person or an organization that ~~assembles~~ **compiles**  
7 **a criminal history reports report** and either uses the report or provides  
8 the report to a person or an organization other than a criminal justice  
9 agency, ~~or a law enforcement agency, or another criminal history~~  
10 **provider.**

11 (b) The term does not include the following:

12 (1) A criminal justice agency.

13 (2) A law enforcement agency.

14 (3) Any:

15 (A) person connected with or employed by:

16 (i) a newspaper or other periodical issued at regular intervals  
17 and having a general circulation; or

18 (ii) a recognized press association or wire service;

19 as a bona fide owner, editorial or reportorial employee, who  
20 receives income from legitimate gathering, writing, editing,  
21 and interpretation of news;

22 (B) person connected with a licensed radio or television station  
23 as an owner or official, or as an editorial or reportorial  
24 employee who receives income from legitimate gathering,  
25 writing, editing, interpreting, announcing, or broadcasting of  
26 news; or

27 (C) other person who gathers, records, compiles, or  
28 disseminates:

29 (i) criminal history information; or

30 (ii) criminal history reports;

31 solely for journalistic, **academic, governmental, or legal**  
32 **research** purposes.

33 **(4) The clerk of a circuit, superior, city, or town court.**

34 SECTION 3. IC 24-4-18-3, AS ADDED BY P.L.69-2012,  
35 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
36 JULY 1, 2013]: Sec. 3. (a) As used in this section, "criminal history  
37 report" means criminal history information that has been compiled  
38 **primarily** for the purposes of evaluating a particular person's  
39 **eligibility for:**

40 ~~(1) character; or~~

41 ~~(2) eligibility for:~~

42 ~~(A) (1) employment in Indiana;~~

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1           ~~(B)~~ **(2) housing in Indiana; or**  
 2           ~~(C)~~ **(3) participation in any activity or transaction: a license,**  
 3           **permit, or occupational certification issued under state law;**  
 4           **or**  
 5           **(4) insurance, credit, or another financial service, if the**  
 6           **insurance, credit, or financial service is to be provided to a**  
 7           **person residing in Indiana.**

8           **(b) The term does not include information compiled primarily**  
 9           **for the purpose of journalistic, academic, governmental, or legal**  
 10           **research.**

11           **(c) The term includes information described in subsection (a)**  
 12           **and not excluded under subsection (b), regardless of the**  
 13           **geographical location of the person who compiled the information.**

14           SECTION 4. IC 24-4-18-6, AS ADDED BY P.L.69-2012,  
 15           SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16           JULY 1, 2013]: Sec. 6. (a) ~~A criminal history provider may provide~~  
 17           ~~only criminal history information that relates to a conviction:~~

18           ~~(b) Except as provided in subsection (b), a criminal history~~  
 19           ~~provider may not knowingly provide information a criminal history~~  
 20           ~~report that provides criminal history information relating to the~~  
 21           ~~following:~~

22           ~~(1) An infraction, an arrest, or a charge that did not result in a~~  
 23           ~~conviction.~~

24           ~~(2) (1) A record that has been expunged by:~~

25                   ~~(A) marking the record as expunged; or~~

26                   ~~(B) removing the record from public access.~~

27           ~~(3) (2) A record that is restricted by a court or the rules of a court~~  
 28           ~~and is marked as restricted from public disclosure or removed~~  
 29           ~~from public access.~~

30           ~~(4) (3) A record indicating a conviction of a Class D felony if the~~  
 31           ~~Class D felony conviction:~~

32                   ~~(A) has been entered as a Class A misdemeanor conviction; or~~

33                   ~~(B) has been converted to a Class A misdemeanor conviction.~~

34           ~~(5) (4) A record that the criminal history provider knows is~~  
 35           ~~inaccurate.~~

36           **(b) A criminal history provider may provide information**  
 37           **described in subsection (a)(1) through (a)(3) if the person**  
 38           **requesting the criminal history report is:**

39                   **(1) required by state or federal law to obtain the information;**  
 40                   **or**

41                   **(2) the state or a political subdivision, and the information will**  
 42                   **be used solely in connection with the issuance of a public**

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**bond.**  
SECTION 5. IC 24-4-18-7, AS ADDED BY P.L.69-2012, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. **(a)** A criminal history provider may not **knowingly** include criminal history **data information** in a criminal history report if the criminal history **data information has not been updated to fails to** reflect **material** changes to the official record occurring sixty (60) days or more before the date the criminal history report is delivered.

**(b) A criminal history provider that provides a criminal history report and fails to reflect material criminal history information does not violate this section if the material criminal history information was not contained in the official record at least sixty (60) days before the date the criminal history report is delivered.**

SECTION 6. IC 24-4-18-8, AS ADDED BY P.L.69-2012, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. **(a)** The attorney general may bring an action to enforce a violation of section 6 or 7 of this chapter. In addition to any injunctive or other relief, the attorney general may recover a civil penalty of:

- (1) not more than one thousand dollars (\$1,000) for a first violation; and
- (2) not more than five thousand dollars (\$5,000) for a second or subsequent violation.

**(b)** Any person injured by a violation of section 6 or 7 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.

**A violation of section 6 or 7 of this chapter is a deceptive act that is actionable under IC 24-5-0.5-4.**

**(b) This section does not prohibit an individual from bringing an action on the individual's own behalf under the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).**

SECTION 7. IC 34-28-5-15, AS ADDED BY P.L.69-2012, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 15. **(a)** **This subsection does not apply to a person whose prosecution for an infraction is deferred under IC 34-28-5-1.** If a person alleged to have violated a statute defining an infraction:

- (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 **and the**
- 6 **operator of any state, regional, or local case management system**
- 7 not to disclose or permit disclosure of information related to the
- 8 infraction to a noncriminal justice organization or an individual.
- 9 **(b) Not earlier than five (5) years after a person:**
- 10 **(1) whose prosecution for an infraction has been deferred; or**
- 11 **(2) who was found to have violated a statute defining an**
- 12 **infraction;**
- 13 **has satisfied the conditions of the deferral program or the**
- 14 **judgment imposed for the violation, the person may petition the**
- 15 **court to prohibit disclosure of information related to the infraction**
- 16 **to a noncriminal justice organization or an individual. The court**
- 17 **shall order the clerk and the operator of any state, regional, or**
- 18 **local case management system not to disclose or permit disclosure**
- 19 **of information related to the infraction to a noncriminal justice**
- 20 **organization or an individual if the court finds that:**
- 21 **(1) the person satisfied the judgment or conditions of the**
- 22 **deferral program; and**
- 23 **(2) at least five (5) years have passed since the date the person**
- 24 **satisfied the judgment or conditions of the program.**
- 25 ~~(b)~~ **(c) If a court fails to order the court clerk and the operator of**
- 26 **any state, regional, or local case management system to restrict**
- 27 **disclosure of information related to the infraction under subsection (a),**
- 28 **the person may petition the court to restrict disclosure of the records**
- 29 **related to the infraction to a noncriminal justice organization or an**
- 30 **individual.**
- 31 ~~(c)~~ **(d) A petition under subsection (b) or (c) must be verified and**
- 32 **filed in:**
- 33 **(1) the court in which the action was filed, for a person described**
- 34 **in subsection (a)(1); or**
- 35 **(2) the court in which the trial was held, for a person described in**
- 36 **subsection (a)(2) or (a)(3); or**
- 37 **(3) the court finding or having jurisdiction over the violation,**
- 38 **for a person described in subsection (b).**
- 39 ~~(d)~~ **(e) A petition under subsection (b) or (c) must be filed not**
- 40 **earlier than:**
- 41 **(1) if the person is adjudged not to have not committed the**
- 42 **infraction, thirty (30) days after the date of judgment;**

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- 1 (2) if the person's adjudication is vacated, three hundred sixty-five  
 2 (365) days after:
- 3 (A) the order vacating the adjudication is final, if there is no  
 4 appeal or the appeal is terminated before entry of an opinion  
 5 or memorandum decision; or  
 6 (B) the opinion or memorandum decision vacating the  
 7 adjudication is certified; ~~or~~
- 8 (3) if the person is not prosecuted or the action is dismissed, thirty  
 9 (30) days after the action is dismissed, if a new action is not filed;  
 10 **or**
- 11 **(4) if the person participated in a deferral program or is**  
 12 **found to have violated the statute defining the infraction, not**  
 13 **earlier than five (5) years after the date the judgment for the**  
 14 **violation is satisfied or the conditions of the deferral program**  
 15 **are met.**
- 16 ~~(e)~~ **(f)** A petition under subsection (b) **or** (c) must set forth:
- 17 (1) the date of the alleged violation;  
 18 (2) the violation **or alleged violation**;  
 19 (3) the date the action was dismissed, if applicable;  
 20 (4) the date of judgment, if applicable;  
 21 (5) the date the adjudication was vacated, if applicable;  
 22 (6) the basis on which the adjudication was vacated, if applicable;  
 23 (7) **the date the judgment is satisfied or the conditions of the**  
 24 **deferral program were met, if applicable**;  
 25 (8) the law enforcement agency employing the officer who issued  
 26 the complaint, if applicable;
- 27 ~~(8)~~ **(9)** any other known identifying information, such as the name  
 28 of the officer, case number, or court cause number;  
 29 ~~(9)~~ **(10)** the date of the petitioner's birth; and  
 30 ~~(10)~~ **(11) at the option of the petitioner, the:**
- 31 (A) petitioner's **driver's license or state identification card**  
 32 **number; or**  
 33 (B) **last four (4) digits of the petitioner's** Social Security  
 34 number.
- 35 ~~(f)~~ **(g)** A copy of a petition **filed** under subsection (b) **or** (c) shall be  
 36 served on the prosecuting attorney.
- 37 ~~(g)~~ **(h)** If the prosecuting attorney wishes to oppose a petition **filed**  
 38 under subsection (b) **or** (c), the prosecuting attorney shall, not later  
 39 than thirty (30) days after the petition is filed, file a notice of opposition  
 40 with the court setting forth reasons for opposing the petition. The  
 41 prosecuting attorney shall attach to the notice of opposition a certified  
 42 copy of any documentary evidence showing that the petitioner is not

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1 entitled to relief. A copy of the notice of opposition and copies of any  
 2 documentary evidence shall be served on the petitioner in accordance  
 3 with the Indiana Rules of Trial Procedure.

4 **(i)** The court may, **with respect to a petition filed under**  
 5 **subsection (b) or (c):**

6 (1) summarily grant the petition;

7 (2) set the matter for hearing; or

8 (3) summarily deny the petition, if the court determines that:

9 (A) the petition is insufficient; or

10 (B) based on documentary evidence submitted by the  
 11 prosecuting attorney to the court, the petitioner is not entitled  
 12 to have access to the petitioner's records restricted.

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

16 ~~(i)~~ **(k)** After a hearing is held under subsection ~~(h)~~; **(j)**, the court  
 17 shall grant the petition filed under:

18 **(1)** subsection (b) if the person is entitled to relief under **that**  
 19 subsection; ~~(a)~~ or

20 **(2)** subsection (c) if the person is entitled to relief under  
 21 subsection (a).

22 ~~(j)~~ **(l)** If the court grants a petition filed under subsection (b) or (c),  
 23 the court shall order the clerk **and the operator of any state, regional,**  
 24 **or local case management system** not to disclose or permit disclosure  
 25 of information related to the infraction to a noncriminal justice  
 26 organization or an individual.

27 SECTION 8. IC 34-28-5-16 IS REPEALED [EFFECTIVE JULY 1,  
 28 2013]. Sec. 16: (a) This chapter applies only to a person found to have  
 29 committed an infraction:

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

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

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

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



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1           (f) In an action described in subsection (c), if the plaintiff denies the  
2 existence of the records, the defendant may prove the existence of the  
3 records in any manner compatible with the law of evidence.  
4           (g) A person whose records have been restricted under this section  
5 may legally state on an application for employment or any other  
6 document that the person has not been adjudicated to have committed  
7 the infraction recorded in the restricted records.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1392, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

MCMILLIN, Chair

Committee Vote: yeas 11, nays 0.

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