

**CONFERENCE COMMITTEE REPORT  
DIGEST FOR ESB 363**

**Citations Affected:** IC 10-13-3; IC 20-28-5-8; IC 25-1; IC 35-38-1-9.

**Synopsis:** Criminal background checks of licensed professionals. Proposed conference committee report for SB 363. Requires the state police department to permanently retain a health professional applicant's fingerprints and store the fingerprints separately from fingerprints collected for the state central repository for criminal data. Adds certain crimes for which the department of education must revoke the license of a school employee. Requires applicants for certain licensed health professions to submit to a national criminal history background check. Requires the department to release the results of the national criminal history background check to the Indiana professional licensing agency (agency). Authorizes a licensing board to suspend, deny, or revoke a license if the applicant or license holder has been convicted of specified offenses. Requires the department and the agency to enter into a memorandum of understanding to provide data exchange and data matching regarding licensees who are charged with or convicted of an offense. Requires the personal information data exchanged to be kept confidential. Allows the board of a regulated occupation to designate a person to act on behalf of the board to perform certain duties when seeking a cease and desist order. **(This conference committee report removes language that: (1) allowed a pharmacist to administer an immunization for shingles; (2) removed geographical locations that a supervising physician must be located within; (3) allowed the medical licensing board to deny supervisory agreements; (4) removed certain limitations on physician assistants (PA) prescribing and dispensing certain drugs and controlled substances; (5) required that the supervising physician or physician designee review specified percentages of PA patient encounters within 72 hours based on the PAs years of practice; and (6) removed language that passed in an earlier bill concerning electronic prescriptions.)**

**Effective:** Upon passage; July 1, 2011.

Adopted

Rejected

## CONFERENCE COMMITTEE REPORT

**MR. SPEAKER:**

*Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 363 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House 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 10-13-3-37, AS AMENDED BY P.L.200-2007,
- 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2011]: Sec. 37. (a) Under Public Law 92-544 (86 Stat. 1115),
- 5 a local law enforcement agency may use fingerprints submitted for the
- 6 purpose of identification in a request related to the following:
- 7 (1) A taxicab driver's license application.
- 8 (2) Reinstatement or renewal of a taxicab driver's license.
- 9 (b) An applicant shall submit the fingerprints on forms provided for
- 10 the license application.
- 11 (c) The local law enforcement agency shall charge each applicant
- 12 the fees set by the department and federal authorities to defray the costs
- 13 associated with a search for and classification of the applicant's
- 14 fingerprints.
- 15 (d) The local law enforcement agency may:
- 16 (1) forward for processing to the Federal Bureau of Investigation
- 17 or any other agency fingerprints submitted by a license applicant;
- 18 and
- 19 (2) receive the results of all fingerprint investigations.
- 20 **(e) The department:**
- 21 **(1) may permanently retain an applicant's fingerprints**
- 22 **submitted under this section; and**

1           **(2) shall retain the applicant's fingerprints separately from**  
 2           **fingerprints collected under section 24 of this chapter.**

3           SECTION 2. IC 10-13-3-38.5, AS AMENDED BY P.L.113-2010,  
 4           SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5           JULY 1, 2011]: Sec. 38.5. (a) Under federal P.L.92-544 (86 Stat.  
 6           1115), the department may use an individual's fingerprints submitted  
 7           by the individual for the following purposes:

8           (1) Determining the individual's suitability for employment with  
 9           the state, or as an employee of a contractor of the state, in a  
 10          position:

11           (A) that has a job description that includes contact with, care  
 12           of, or supervision over a person less than eighteen (18) years  
 13           of age;

14           (B) that has a job description that includes contact with, care  
 15           of, or supervision over an endangered adult (as defined in  
 16           IC 12-10-3-2), except the individual is not required to meet the  
 17           standard for harmed or threatened with harm set forth in  
 18           IC 12-10-3-2(a)(3);

19           (C) at a state institution managed by the office of the secretary  
 20           of family and social services or state department of health;

21           (D) at the Indiana School for the Deaf established by  
 22           IC 20-22-2-1;

23           (E) at the Indiana School for the Blind and Visually Impaired  
 24           established by IC 20-21-2-1;

25           (F) at a juvenile detention facility;

26           (G) with the Indiana gaming commission under IC 4-33-3-16;

27           (H) with the department of financial institutions under  
 28           IC 28-11-2-3; or

29           (I) that has a job description that includes access to or  
 30           supervision over state financial or personnel data, including  
 31           state warrants, banking codes, or payroll information  
 32           pertaining to state employees.

33          (2) Identification in a request related to an application for a  
 34          teacher's license submitted to the department of education  
 35          established by IC 20-19-3-1.

36          (3) Use by the gaming commission established under IC 4-33-3-1  
 37          for licensure of a promoter (as defined in IC 4-33-22-6) under  
 38          IC 4-33-22.

39          (4) Use by the Indiana board of pharmacy in determining the  
 40          individual's suitability for a position or employment with a  
 41          wholesale drug distributor, as specified in IC 25-26-14-16(b),  
 42          IC 25-26-14-16.5(b), IC 25-26-14-17.8(c), and IC 25-26-14-20.

43          **(5) Identification in a request related to an individual**  
 44          **applying for or renewing a license or certificate described in**  
 45          **IC 25-1-1.1-4 and a conviction described in IC 25-1-1.1-2 or**  
 46          **IC 25-1-1.1-3.**

47          An applicant shall submit the fingerprints in an appropriate format or  
 48          on forms provided for the employment, ~~or~~ license, **or certificate**  
 49          application. The department shall charge each applicant the fee  
 50          established under section 28 of this chapter and by federal authorities  
 51          to defray the costs associated with a search for and classification of the

1 applicant's fingerprints. The department may forward fingerprints  
 2 submitted by an applicant to the Federal Bureau of Investigation or any  
 3 other agency for processing. The state personnel department, **the**  
 4 **Indiana professional licensing agency**, or the agency to which the  
 5 applicant is applying for employment or a license may receive the  
 6 results of all fingerprint investigations.

7 (b) An applicant who is an employee of the state may not be charged  
 8 under subsection (a).

9 (c) Subsection (a)(1) does not apply to an employee of a contractor  
 10 of the state if the contract involves the construction or repair of a  
 11 capital project or other public works project of the state.

12 **(d) The department:**

13 **(1) may permanently retain an applicant's fingerprints**  
 14 **submitted under this section; and**

15 **(2) shall retain the applicant's fingerprints separately from**  
 16 **fingerprints collected under section 24 of this chapter.**

17 SECTION 3. IC 10-13-3-39, AS AMENDED BY P.L.3-2008,  
 18 SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 19 JULY 1, 2011]: Sec. 39. (a) The department is designated as the  
 20 authorized agency to receive requests for, process, and disseminate the  
 21 results of national criminal history background checks that comply with  
 22 this section and 42 U.S.C. 5119a.

23 (b) A qualified entity may contact the department to request a  
 24 national criminal history background check on any of the following  
 25 persons:

26 (1) A person who seeks to be or is employed with the qualified  
 27 entity. A request under this subdivision must be made not later  
 28 than three (3) months after the person is initially employed by the  
 29 qualified entity.

30 (2) A person who seeks to volunteer or is a volunteer with the  
 31 qualified entity. A request under this subdivision must be made  
 32 not later than three (3) months after the person initially volunteers  
 33 with the qualified entity.

34 (3) A person for whom a national criminal history background  
 35 check is required under any law relating to the licensing of a  
 36 home, center, or other facility for purposes of day care or  
 37 residential care of children.

38 (4) A person for whom a national criminal history background  
 39 check is required for purposes of placement of a child in a foster  
 40 family home, a prospective adoptive home, or the home of a  
 41 relative or other caretaker, or for purposes of a report concerning  
 42 an adoption as required by IC 31-19-8.

43 (c) A qualified entity must submit a request under subsection (b) in  
 44 the form required by the department and provide a set of the person's  
 45 fingerprints and any required fees with the request.

46 (d) If a qualified entity makes a request in conformity with  
 47 subsection (b), the department shall submit the set of fingerprints  
 48 provided with the request to the Federal Bureau of Investigation for a  
 49 national criminal history background check. The department shall  
 50 respond to the request in conformity with:

51 (1) the requirements of 42 U.S.C. 5119a; and

- 1 (2) the regulations prescribed by the Attorney General of the  
 2 United States under 42 U.S.C. 5119a.
- 3 (e) Subsection (f):
- 4 (1) applies to a qualified entity that:
- 5 (A) is not a school corporation or a special education  
 6 cooperative; or
- 7 (B) is a school corporation or a special education cooperative  
 8 and seeks a national criminal history background check for a  
 9 volunteer; and
- 10 (2) does not apply to a qualified entity that is a:
- 11 (A) home health agency licensed under IC 16-27-1; or  
 12 (B) personal services agency licensed under IC 16-27-4.
- 13 (f) After receiving the results of a national criminal history  
 14 background check from the Federal Bureau of Investigation, the  
 15 department shall make a determination whether the person who is the  
 16 subject of a request has been convicted of:
- 17 (1) an offense described in IC 20-26-5-11;  
 18 (2) in the case of a foster family home, an offense described in  
 19 IC 31-27-4-13(a);  
 20 (3) in the case of a prospective adoptive home, an offense  
 21 described in IC 31-19-11-1(c);  
 22 (4) any other felony; or  
 23 (5) any misdemeanor;
- 24 and convey the determination to the requesting qualified entity.
- 25 (g) This subsection applies to a qualified entity that:
- 26 (1) is a school corporation or a special education cooperative; and  
 27 (2) seeks a national criminal history background check to  
 28 determine whether to employ or continue the employment of a  
 29 certificated employee or a noncertificated employee of a school  
 30 corporation or an equivalent position with a special education  
 31 cooperative.
- 32 After receiving the results of a national criminal history background  
 33 check from the Federal Bureau of Investigation, the department may  
 34 exchange identification records concerning convictions for offenses  
 35 described in IC 20-26-5-11 with the school corporation or special  
 36 education cooperative solely for purposes of making an employment  
 37 determination. The exchange may be made only for the official use of  
 38 the officials with authority to make the employment determination. The  
 39 exchange is subject to the restrictions on dissemination imposed under  
 40 P.L.92-544, (86 Stat. 1115) (1972).
- 41 (h) This subsection applies to a qualified entity (as defined in  
 42 IC 10-13-3-16) that is a public agency under IC 5-14-1.5-2(a)(1). After  
 43 receiving the results of a national criminal history background check  
 44 from the Federal Bureau of Investigation, the department shall provide  
 45 a copy to the public agency. Except as permitted by federal law, the  
 46 public agency may not share the information contained in the national  
 47 criminal history background check with a private agency.
- 48 (i) This subsection applies to a qualified entity that is a:
- 49 (1) home health agency licensed under IC 16-27-1; or  
 50 (2) personal services agency licensed under IC 16-27-4.
- 51 After receiving the results of a national criminal history background

1 check from the Federal Bureau of Investigation, the department shall  
 2 make a determination whether the applicant has been convicted of an  
 3 offense described in IC 16-27-2-5(a) and convey the determination to  
 4 the requesting qualified entity.

5 **(j) The department:**

6 **(1) may permanently retain an applicant's fingerprints**  
 7 **submitted under this section; and**

8 **(2) shall retain the applicant's fingerprints separately from**  
 9 **fingerprints collected under section 24 of this chapter.**

10 SECTION 4. IC 20-28-5-8, AS AMENDED BY SEA 1-2011,  
 11 SECTION 24, SEA 57-2011, SECTION 4, AND EHB 1102-2011,  
 12 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2011]: Sec. 8. (a) This section applies when a prosecuting  
 14 attorney knows that a licensed employee of a public school or a  
 15 nonpublic school has been convicted of an offense listed in subsection  
 16 (c). The prosecuting attorney shall immediately give written notice of  
 17 the conviction to the following:

18 (1) The state superintendent.

19 (2) Except as provided in subdivision (3), the superintendent of  
 20 the school corporation that employs the licensed employee or the  
 21 equivalent authority if a nonpublic school employs the licensed  
 22 employee.

23 (3) The presiding officer of the governing body of the school  
 24 corporation that employs the licensed employee, if the convicted  
 25 licensed employee is the superintendent of the school corporation.

26 (b) The superintendent of a school corporation, presiding officer of  
 27 the governing body, or equivalent authority for a nonpublic school shall  
 28 immediately notify the state superintendent when the individual knows  
 29 that a current or former licensed employee of the public school or  
 30 nonpublic school has been convicted of an offense listed in subsection  
 31 (c), or when the governing body or equivalent authority for a nonpublic  
 32 school takes any final action in relation to an employee who engaged  
 33 in any offense listed in subsection (c).

34 (c) The department, after holding a hearing on the matter, shall  
 35 permanently revoke the license of a person who is known by the  
 36 department to have been convicted of any of the following felonies:

37 (1) Kidnapping (IC 35-42-3-2). ~~if the victim is less than eighteen~~  
 38 ~~(18) years of age.~~

39 (2) Criminal confinement (IC 35-42-3-3). ~~if the victim is less than~~  
 40 ~~eighteen (18) years of age.~~

41 (3) Rape (IC 35-42-4-1). ~~if the victim is less than eighteen (18)~~  
 42 ~~years of age.~~

43 (4) Criminal deviate conduct (IC 35-42-4-2). ~~if the victim is less~~  
 44 ~~than eighteen (18) years of age.~~

45 (5) Child molesting (IC 35-42-4-3).

46 (6) Child exploitation (IC 35-42-4-4(b)).

47 (7) Vicarious sexual gratification (IC 35-42-4-5).

48 (8) Child solicitation (IC 35-42-4-6).

49 (9) Child seduction (IC 35-42-4-7).

50 (10) Sexual misconduct with a minor (IC 35-42-4-9).

51 (11) Incest (IC 35-46-1-3). ~~if the victim is less than eighteen (18)~~

- 1 years of age-
- 2 (12) Dealing in or manufacturing cocaine or a narcotic drug
- 3 (IC 35-48-4-1).
- 4 (13) Dealing in methamphetamine (IC 35-48-4-1.1).
- 5 (14) Dealing in a schedule I, II, or III controlled substance
- 6 (IC 35-48-4-2).
- 7 (15) Dealing in a schedule IV controlled substance
- 8 (IC 35-48-4-3).
- 9 (16) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 10 (17) Dealing in a counterfeit substance (IC 35-48-4-5).
- 11 (18) Dealing in marijuana, hash oil, hashish, salvia, or a synthetic
- 12 cannabinoid (IC 35-48-4-10(b)).
- 13 (19) Possession of child pornography (IC 35-42-4-4(c)).
- 14 (20) Homicide (IC 35-42-1).
- 15 **(21) Voluntary manslaughter (IC 35-42-1-3).**
- 16 **(22) Reckless homicide (IC 35-42-1-5).**
- 17 **(23) Battery as any of the following:**
- 18 **(A) A Class A felony (IC 35-42-2-1(a)(5)).**
- 19 **(B) A Class B felony (IC 35-42-2-1(a)(4)).**
- 20 **(C) A Class C felony (IC 35-42-2-1(a)(3)).**
- 21 **(24) Aggravated battery (IC 35-42-2-1.5).**
- 22 **(25) Robbery (IC 35-42-5-1).**
- 23 **(26) Carjacking (IC 35-42-5-2).**
- 24 **(27) Arson as a Class A felony or a Class B felony**
- 25 **(IC 35-43-1-1(a)).**
- 26 **(28) Burglary as a Class A felony or a Class B felony**
- 27 **(IC 35-43-2-1).**
- 28 **(29) Attempt under IC 35-41-5-1 to commit an offense listed**
- 29 **in subdivisions (1) through (28).**
- 30 **(30) Conspiracy under IC 35-41-5-2 to commit an offense**
- 31 **listed in subdivisions (1) through (28).**
- 32 (d) The department, after holding a hearing on the matter, shall
- 33 permanently revoke the license of a person who is known by the
- 34 department to have been convicted of a federal offense or an offense in
- 35 another state that is comparable to a felony listed in subsection (c).
- 36 (e) A license may be suspended by the state superintendent as
- 37 specified in IC 20-28-7.5.
- 38 (f) The department shall develop a data base of information on
- 39 school corporation employees who have been reported to the
- 40 department under this section.
- 41 SECTION 5. IC 25-1-1.1-1 IS AMENDED TO READ AS
- 42 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. Except as provided
- 43 under sections 2 through ~~3~~ 5 of this chapter, a license or certificate of
- 44 registration that an individual is required by law to hold to engage in
- 45 a business, profession, or occupation may not be denied, revoked, or
- 46 suspended because the applicant or holder has been convicted of an
- 47 offense. The acts from which the applicant's or holder's conviction
- 48 resulted may, however, be considered as to whether the applicant or
- 49 holder should be entrusted to serve the public in a specific capacity.
- 50 SECTION 6. IC 25-1-1.1-2, AS AMENDED BY P.L.151-2006,
- 51 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2011]: Sec. 2. **Notwithstanding IC 25-1-7**, a board, a commission, or a committee may suspend, **deny**, or revoke a license or certificate issued under this title by the board, the commission, or the committee **without an investigation by the office of the attorney general** if the individual who holds the license or certificate is convicted of any of the following **and the board, commission, or committee determines, after the individual has appeared in person, that the offense affects the individual's ability to perform the duties of the profession:**

- (1) Possession of cocaine or a narcotic drug under IC 35-48-4-6.
- (2) Possession of methamphetamine under IC 35-48-4-6.1.
- (3) Possession of a controlled substance under IC 35-48-4-7(a).
- (4) Fraudulently obtaining a controlled substance under IC 35-48-4-7(b).
- (5) Manufacture of paraphernalia as a Class D felony under IC 35-48-4-8.1(b).
- (6) Dealing in paraphernalia as a Class D felony under IC 35-48-4-8.5(b).
- (7) Possession of paraphernalia as a Class D felony under IC 35-48-4-8.3(b).
- (8) Possession of marijuana, hash oil, or hashish as a Class D felony under IC 35-48-4-11.
- (9) Maintaining a common nuisance under IC 35-48-4-13.
- (10) An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.
- (11) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (10).
- (12) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (10).
- (13) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (12).
- (14) A sex crime under IC 35-42-4.**
- (15) A felony that reflects adversely on the individual's fitness to hold a professional license.**
- (16) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described in this section.**

SECTION 7. IC 25-1-1.1-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4. (a) This section applies to an individual who is applying for, or will be applying for, an initial license or an initial certificate under one (1) of the following:**

- (1) IC 25-2.5 (acupuncturists).**
- (2) IC 25-10 (chiropractors).**
- (3) IC 25-13 (dental hygienists).**
- (4) IC 25-14 (dentists).**
- (5) IC 25-14.5 (dietitians).**
- (6) IC 25-17.3 (genetic counselors).**



- 1 (7) IC 25-19 (health facility and residential care facility  
2 administrators).  
3 (8) IC 25-21.8 (massage therapists).  
4 (9) IC 25-22.5 (physicians).  
5 (10) IC 25-23 (nurses).  
6 (11) IC 25-23.5 (occupational therapists).  
7 (12) IC 25-24 (optometrists).  
8 (13) IC 25-26 (pharmacists).  
9 (14) IC 25-27 (physical therapists).  
10 (15) IC 25-27.5 (physician assistants).  
11 (16) IC 25-29 (podiatrists).  
12 (17) IC 25-33 (psychologists).  
13 (18) IC 25-34.5 (respiratory care practitioners).  
14 (19) IC 25-35.6 (speech pathologists and audiologists).  
15 (20) IC 25-38.1 (veterinarians).

16 (b) As used in this chapter, "national criminal history  
17 background check" means the criminal history record system  
18 maintained by the Federal Bureau of Investigation based on  
19 fingerprint identification or any other method of positive  
20 identification.

21 (c) An individual applying for an initial license or initial  
22 certificate specified in subsection (a) shall submit to a national  
23 criminal history background check at the cost of the individual.

24 (d) The state police department shall release the results of a  
25 national criminal history background check conducted under this  
26 section to the Indiana professional licensing agency.

27 (e) A board, a commission, or a committee may conduct a  
28 random audit and require an individual seeking a renewal of a  
29 license or a certificate specified in subsection (a) to submit to a  
30 national criminal history background check at the cost of the  
31 individual.

32 SECTION 8. IC 25-1-1.1-5 IS ADDED TO THE INDIANA CODE  
33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
34 1, 2011]: Sec. 5. (a) As used in this section, "licensee" refers to an  
35 individual who is licensed or certified in a profession set forth in  
36 section 4 of this chapter.

37 (b) As used in this section, "personal information" means  
38 information that identifies an individual, including the following:

- 39 (1) Photograph.  
40 (2) Social Security number.  
41 (3) Driver's license number or identification card number.  
42 (4) Name.  
43 (5) Address.  
44 (6) Telephone number.  
45 (7) Fingerprints.

46 (c) The state police department and the Indiana professional  
47 licensing agency shall enter into a memorandum of understanding  
48 to provide data exchange and data matching regarding licensees  
49 who are charged with or convicted of an offense.

50 (d) Personal information data exchanged under subsection (c)  
51 shall be kept confidential and may be used only for the purposes of

1 **a government agency, including the following:**

- 2 (1) **A prosecuting attorney.**  
 3 (2) **The Indiana professional licensing agency or a board,**  
 4 **committee, or commission administered by the Indiana**  
 5 **professional licensing agency.**  
 6 (3) **A court.**  
 7 (4) **A law enforcement agency.**  
 8 (5) **The office of the attorney general.**

9 SECTION 9. IC 25-1-7-14, AS ADDED BY P.L.84-2010,  
 10 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 UPON PASSAGE]: Sec. 14. (a) Notwithstanding any other law, if the  
 12 board of a regulated occupation believes that a person who is not  
 13 licensed, certified, or registered under this title is engaged in or is  
 14 believed to be engaged in activities for which a license, certification,  
 15 or registration is required under this title, the board may do the  
 16 following:

- 17 (1) File a complaint with the attorney general, who shall  
 18 investigate and may file:  
 19 (A) with notice; or  
 20 (B) without notice, if the attorney general determines that  
 21 person is engaged in activities that may affect an individual's  
 22 health or safety;

23 a motion for a cease and desist order with the appropriate board.

24 **For purposes of this subdivision, the board may designate a**  
 25 **board member or an employee of the Indiana professional**  
 26 **licensing agency to act on behalf or in the name of the board.**

- 27 (2) Upon review of the attorney general's motion for a cease and  
 28 desist order, the board may issue an order requiring the affected  
 29 person to show cause why the person should not be ordered to  
 30 cease and desist from such activities. The show cause order must  
 31 set forth a time and place for a hearing at which the affected  
 32 person may appear and show cause as to why the person should  
 33 not be subject to licensing, certification, or registration under this  
 34 title. **For purposes of this subdivision, the board may**  
 35 **designate a board member to act on behalf or in the name of**  
 36 **the board.**

37 (b) If the board, after a hearing, determines that the activities in  
 38 which the person is engaged are subject to licensing, certification, or  
 39 registration under this title, the board may issue a cease and desist  
 40 order that must describe the person and activities that are the subject  
 41 of the order.

42 (c) A hearing conducted under this section must comply with the  
 43 requirements under IC 4-21.5.

44 (d) A cease and desist order issued under this section is enforceable  
 45 in the circuit or superior courts. A person who is enjoined under a  
 46 cease and desist order and who violates the order shall be punished for  
 47 contempt of court.

48 (e) A cease and desist order issued under this section does not  
 49 relieve any person from ~~criminal~~ prosecution **under any other law.**

50 SECTION 10. IC 35-38-1-9 IS AMENDED TO READ AS  
 51 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. (a) As used in this

1 chapter, "recommendation" and "victim" have the meanings set out in  
 2 IC 35-35-3-1.

3 (b) The presentence investigation consists of the gathering of  
 4 information with respect to:

- 5 (1) the circumstances attending the commission of the offense;
- 6 (2) the convicted person's history of delinquency or criminality,  
 7 social history, employment history, family situation, economic  
 8 status, education, and personal habits; ~~and~~
- 9 (3) the impact of the crime upon the victim; **and**
- 10 **(4) whether the convicted person is licensed or certified in a**  
 11 **profession regulated by IC 25.**

12 (c) The presentence investigation may include any matter that the  
 13 probation officer conducting the investigation believes is relevant to  
 14 the question of sentence, and must include:

- 15 (1) any matters the court directs to be included;
- 16 (2) any written statements submitted to the prosecuting attorney  
 17 by a victim under IC 35-35-3;
- 18 (3) any written statements submitted to the probation officer by a  
 19 victim; and
- 20 (4) preparation of the victim impact statement required under  
 21 section 8.5 of this chapter.

22 (d) If there are no written statements submitted to the probation  
 23 officer, ~~he~~ **the probation officer** shall certify to the court:

- 24 (1) that ~~he~~ **the probation officer** has attempted to contact the  
 25 victim; and
- 26 (2) that if ~~he~~ **the probation officer** has contacted the victim, ~~he~~  
 27 **the probation officer** has offered to accept the written statements  
 28 of the victim or to reduce ~~his~~ **the victim's** oral statements to  
 29 writing, concerning the sentence, including the acceptance of any  
 30 recommendation.

31 (e) A presentence investigation report prepared by a probation  
 32 officer must include the information and comply with any other  
 33 requirements established in the rules adopted under IC 11-13-1-8.

34 **SECTION 11. An emergency is declared for this act.**

(Reference is to ESB 363 as reprinted April 19, 2011.)

**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 363**

**S**igned by:

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Senator Miller  
Chairperson

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Representative Frizzell

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Senator Breaux

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Representative Welch

**Senate Conferees**

**House Conferees**