

LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6317

BILL NUMBER: HB 1033

NOTE PREPARED: Feb 16, 2012

BILL AMENDED: Feb 16, 2012

SUBJECT: Conversion of Class D Felony to Class A Misdemeanor.

FIRST AUTHOR: Rep. McMillin

FIRST SPONSOR: Sen. Steele

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill has the following provisions:

- A. *Criminal History Provider* – It 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. It provides that a criminal history provider may only disclose 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 nonconviction information.
- B. *Employer Questions about Criminal Background* – An employer would commit a Class B infraction if an employer asks whether a person's criminal records have been sealed or restricted.
- C. *Conversion of One or More Class D Felonies to Class A Misdemeanors* – It allows a court to convert one or more Class D felonies to Class A misdemeanors if: (1) the person is not a sex or violent offender; (2) the offense was a nonviolent 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. It 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.
- D. *Converting a Class A Misdemeanor Back to a Class D Felony* – It 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.

Effective Date: July 1, 2012.

Explanation of State Expenditures: The conversion from a Class D felony to a Class A misdemeanor will change the offender's record. However, the offender will have already paid any fines and served any prison sentence required. Consequently, there would be no fiscal impact from this provision.

Converting a Class A Misdemeanor Back to Class D Felony – It is possible that some persons who are convicted of future felonies may have their time in prison increased because of habitual enhancements under IC 35-50-2-8.

Explanation of State Revenues: (Revised) *Penalty Provision – There are two penalty provisions in this bill.*

(1) If a criminal history provider does not update its records to remove any information that is either inaccurate, expunged, or restricted in access, the provider can be assessed a civil penalty of \$1,000 for a first violation and \$5,000 for any subsequent violation. Any revenue ordered by the courts for a civil penalty would be deposited in the state General Fund.

(2) An employer commits a Class B infraction if an employer asks whether an employee, contract employee, or applicant has a criminal record that has either been sealed or restricted. The maximum judgment for a Class B infraction is \$1,000, which would be deposited in the state General Fund. However, any additional revenue is likely to be small.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Penalty Provision –* If additional court actions are filed and a judgment is entered, local governments would receive revenue from court fees. However, any additional revenue is likely to be small.

State Agencies Affected: Department of Correction; Office of the Attorney General; Indiana State Police.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

Fiscal Analyst: Mark Goodpaster, 317.232.9852.