

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6317

BILL NUMBER: HB 1033

NOTE PREPARED: Mar 13, 2012

BILL AMENDED: Mar 9, 2012

SUBJECT: Criminal History and Sentencing.

FIRST AUTHOR: Rep. McMillin

FIRST SPONSOR: Sen. Steele

BILL STATUS: Enrolled

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: This bill has the following provisions:

- A. *Criminal History Provider* – The bill defines "criminal history provider." It 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. It 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 nonconviction information.
- B. *Restricting Disclosure of Infractions* – It 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. It 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. It requires records relating to an infraction to be sealed five years after the judgment for the infraction is satisfied.
- C. *Employer Questions about Criminal Background* – It makes it a Class B infraction for an employer to ask if a person's criminal records have been sealed or restricted.
- D. *Conversion of Felony to Misdemeanor* – It 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 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.

- E. *Reconversion to a Felony from Misdemeanor* – 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. 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.
- F. *Interim Study Committee* – The bill urges the Legislative Council to assign to a study committee the following topics: the provisions affecting criminal history providers and releasing criminal history as added by this bill, and the need for any additional legislation to amend this bill concerning criminal history providers that takes effect on July 1, 2013.

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

Explanation of State Expenditures: *Conversion of Felony to Misdemeanor* - 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.

Reconversion to a Felony from Misdemeanor – 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.

Interim Study Committee – If the committee were to hold additional meetings to address this topic, there would be additional expenditures for legislator per diem and travel reimbursement for the committee members. Any additional expenditures must be within the committee's budget, which is established by the Legislative Council.

Explanation of State Revenues: *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:

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