

**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 6385

BILL NUMBER: HB 1392

NOTE PREPARED: Apr 23, 2013

BILL AMENDED: Mar 21, 2013

SUBJECT: Restricting Criminal Background Checks.

FIRST AUTHOR: Rep. Steuerwald

FIRST SPONSOR: Sen. M. Young

BILL STATUS: Enrolled

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Regulation of Criminal History Providers* – It specifies that the clerk of a court is not a "criminal history provider". It permits a criminal history provider to provide certain information relating to an incident that did not result in a conviction. It 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. It 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. It provides that a violation of these requirements is a deceptive act.
- B. *Disclosure of Infractions* – It 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 Date: July 1, 2013.

Explanation of State Expenditures: *Regulation of Criminal History Providers* – Criminal history providers who demonstrate negligence in providing improper information for a criminal history report could be subject to unfair and deceptive acts under IC 24-5-0.5-4. The Office of the Attorney General could investigate allegations and provide adjudicative proceedings to determine if an unfair or deceptive act has been committed.

Explanation of State Revenues: *Disclosure of Infractions – Court Fee Revenue:* This bill would give a person the ability to file a civil action to prohibit the disclosure of information about an infractions violation if the person has satisfied any judgments imposed by the court for an infractions violation and five years have passed since any conditions related to the infraction have been satisfied. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the automated record keeping fee (\$5) are deposited into the state User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: *Disclosure of Infractions – Repealing this provision would reduce the workload of clerks of the circuit courts to restrict the disclosure of infractions once five years have elapsed after the person has satisfied any judgments imposed for the infraction.*

As proposed, this bill would permit a person, under certain circumstances, to petition a court to prohibit the disclosure of information related to an infraction to a noncriminal justice organization or an individual. The person who wished to prohibit disclosure would file a civil action. (See *Explanation of Local Revenues.*)

After reviewing the petition, the court could order the clerk and the operator of any state, regional, or local case management system to not disclose or permit disclosure of information related to the infraction to a noncriminal justice organization or individual.

Background– IC 5-2-4-1 defines criminal justice agency to mean any agency or department of any level of government which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders, or location of parents with child support obligations under 42 U.S.C. 653. The term includes:

- (A) a nongovernmental entity that performs as its principal function the:
 - (i) apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders; or
 - (ii) location of parents with child support obligations under 42 U.S.C. 653; under a contract with an agency or department of any level of government;
- (B) the Department of Homeland Security; and
- (C) the Indiana Intelligence Fusion Center established by IC 10-11-9-2.

Explanation of Local Revenues: *Disclosure of Infractions – Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil action are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$2) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per document) are charged for preparing transcripts or copies of record or certificate under seal.
- Service fee (\$10) collected from the filing party for each defendant beyond the first cited in the lawsuit.

State Agencies Affected: Office of the Attorney General.

Local Agencies Affected: Clerks of the Circuit Court.

Information Sources: IC 5-2-4-1.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.