

Members

Rep. Greg Steuerwald, Chairperson
Rep. Ralph Foley
Rep. Ed DeLaney
Rep. Vernon Smith
Sen. Brent Steele
Sen. R. Michael Young
Sen. James Arnold
Sen. Lindel Hume
Larry Landis
David Powell
Commissioner Bruce Lemmon
Greg Server
Don Travis
Hon. Stephen R. Heimann



CRIMINAL LAW AND SENTENCING POLICY STUDY COMMITTEE

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Sue Vansickle, Staff Person for the Committee
Mark Goodpaster, Fiscal Analyst for the
Committee
Andrew Hedges, Attorney for the Committee
K.C. Norwalk, Attorney for the Committee
Timothy Tyler, Attorney for the Committee

Authority: IC 2-5-32.5

MEETING MINUTES¹

Meeting Date: October 4, 2012
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Greg Steuerwald, Chairperson; Rep. Ralph Foley; Rep. Vernon Smith; Sen. R. Michael Young; Sen. James Arnold; Larry Landis; David Powell; Commissioner Bruce Lemmon; Don Travis.

Members Absent: Rep. Ed DeLaney; Sen. Brent Steele; Sen. Lindel Hume; Greg Server; Hon. Stephen R. Heimann.

1. Call to Order -

Chairman Greg Steuerwald called the Criminal Law and Sentencing Policy Study Committee meeting to order at 10:15 a.m. Chairman Steuerwald opened the meeting and called on Mark Goodpaster to present a staff report on criminal record providers.

2. Staff Report from Mark Goodpaster -

Mark Goodpaster, Fiscal Analyst for the Committee, presented a staff report about how other states regulate providing bulk records to criminal history providers and requiring them to periodically update the criminal records that they use in providing criminal histories. (See Exhibit A.)

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

3. Presentation by Mary DePrez –

Mary DePrez, Director and Counsel for Trial Court Technology, and Donna Edgar, Project Manager, demonstrated how the Odyssey statewide case management system works. (See Exhibit B.)

4. Presentation by Major Douglas Shelton –

Major Shelton described to the Committee the criminal history information that is maintained by the Indiana State Police.

5. Presentation by Steve Luce, Executive Director of the Indiana Sheriffs Association –

Mr. Luce discussed in further detail the administration of the Sex Offender Registry. (See Exhibit C.)

6. Presentation by Adam Deming, Psy.D., Liberty Behavioral Health Corporation and Executive Director, Indiana Sex Offender Management and Monitoring Program –

Dr. Deming described the management and monitoring of sex offenders.

After committee discussion, the meeting was adjourned.

Members

Rep. Greg Steuerwald, Chairperson
Rep. Ralph Foley
Rep. Ed DeLaney
Rep. Vernon Smith
Sen. Brent Steele
Sen. R. Michael Young
Sen. James Arnold
Sen. Lindel Hume
Larry Landis
David Powell
Commissioner Bruce Lemmon
Greg Server
Don Travis
Hon. Stephen R. Heimann



Exhibit A
Criminal Law and Sentencing
Policy Study Committee
Meeting #2, October 4, 2012

CRIMINAL LAW AND SENTENCING POLICY STUDY COMMITTEE

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Sue Vansickle, Staff Person for the Committee
Mark Goodpaster, Fiscal Analyst for the
Committee
Andrew Hedges, Attorney for the Committee
K.C. Norwalk, Attorney for the Committee
Timothy Tyler, Attorney for the Committee

Authority: IC 2-5-32.5

To: Members of the Criminal Law and Sentencing Policy Study Committee
From: Mark Goodpaster
Date: October 3, 2012
Re: How Other States Deal with Expungements and Sealed Records for Bulk Purchase Buyers

The purpose of the memo is to:

- (1) Summarize the changes in law that have occurred since 2011 affecting the criminal records of persons who have had their records ordered to be expunged or restricted from the public.
- (2) Describe the sources of data that consumer reporting agencies use from Indiana when performing criminal background checks.
- (3) Describe how other states deal with the requirement of updating criminal records of persons who have had their criminal records expunged or restricted.

Indiana's Current Law Concerning Sealed and Expunged Records

In Indiana, under certain circumstances, criminal history records can be either expunged or restricted from the public. Expunged records are destroyed so that they not available to either the public or criminal justice agencies. Restricted records are available for viewing by only criminal justice agencies.

HEA 1211 – 2011 and HEA 1033 – 2012 expanded the circumstances in which criminal history records for certain offenses would be restricted from the public and available to viewing only by criminal justice agencies.

By definition (IC 10-13-3-6) criminal justice agencies include the following:

- Any agency or department of any level of government whose principal function is:
- (1) the apprehension, prosecution, adjudication, incarceration, probation, rehabilitation, or representation of criminal offenders;

- (2) the location of parents with child support obligations under 42 U.S.C. 653;
- (3) the licensing and regulating of riverboat gambling operations; or
- (4) the licensing and regulating of pari-mutuel horse racing operations.

These entities are specifically defined as criminal justice agencies in statute:

- (1) The Office of the Attorney General.
- (2) The Medicaid fraud control unit, for the purpose of investigating offenses involving Medicaid.
- (3) A nongovernmental entity that performs as its principal function the:
 - (A) apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders;
 - (B) location of parents with child support obligations under 42 U.S.C. 653;
 - (C) licensing and regulating of riverboat gambling operations; or
 - (D) licensing and regulating of pari-mutuel horse racing operations;
 under a contract with an agency or department of any level of government.

The following table summarizes the circumstances under which certain criminal records can be either expunged (not available to either criminal justice agencies or the public) or restricted (only able to be viewed by criminal justice agencies)

Expungements and Restricted Access to Criminal History Records		
	<u>If Found Not Guilty</u>	<u>If Guilty</u>
Felonies and Misdemeanors	Court-Ordered Expungement (if person petitions): IC 35-38-5. If court finds that: no criminal charges are filed or all criminal charges are dropped because: (1) of a mistaken identity; (2) no offense was committed; or (3) absence of probable cause; Court-Ordered Restricted Disclosure (if person petitions): IC 35-38-5-5.5. If the person charged with a crime: (1) is not prosecuted or if charges are dismissed; (2) is acquitted of all criminal charges; or (3) is convicted of the crime and the conviction is subsequently vacated.	State Police-Ordered Restricted Disclosure (if person petitions): IC 35-38-5. Person may petition ISP if more than 15 years have elapsed since the person was discharged from probation, imprisonment, or parole for the last conviction for a crime. Court-Ordered Restricted Disclosure (if person petitions): IC 35-38-8. In case of nonviolent Class D felonies and misdemeanors, if 8 years have elapsed after the sentence is completed and any other obligations have been satisfied.
Infractions	<i>Court-Ordered Restricted Disclosure (person not required to petition) IC 34-28-5-15. If a person alleged to have violated an infraction: (1) is not prosecuted or if the action against the person is dismissed; (2) is adjudged not to have committed the infraction; or (3) is adjudged to have committed the infraction and the adjudication is vacated; court shall order restricted disclosure.</i>	<i>Automatic Prohibition of Disclosure (person not required to petition): IC 34-28-5-16. Five years after the date a person satisfies a judgment imposed on a person for the violation of an infraction, clerk of the court shall restrict disclosure as an affirmative duty.</i>
Prior to 2011 As added by HEA 1211 – 2011 As added by HEA 1033 – 2012		

Information Sources for Consumer Reporting Agencies

The products and services that consumer reporting agencies provide for clients range from automated to verified to traditional searches.

Automated searches allow firms to use internal proprietary databases that can be done with almost no staff time. These proprietary data bases are developed from bulk records that the firms acquire from sources ranging from courts to law enforcement agencies. Clients, for a fee, access these data bases to do their own criminal search histories.

Verified searches involve consumer reporting agencies first checking their internal databases and then verifying their searches with what they can find on public access sites maintained by courts at the local level. Public access sites in Indiana are maintained by Doxpop, the Indiana Supreme Court (Odyssey), and local courts, themselves. The courts

that maintain these public access sites presumably keep data updated.

Finally, traditional searches involve staff visiting the courthouses and examining physical records by hand, especially when information is not available in bulk data on public access sites.

To be able to perform automated searches, firms need to have access to bulk records, which they can use for their internal data bases. In Indiana, all requests for bulk records must be approved by the Indiana Supreme Court. Through the Indiana Supreme Court, bulk records are available for 34 counties from the Odyssey system.

Next, a firm can verify criminal records in their own data base with the information that firms can access from public access sites. Doxpop maintains a public access site that includes the 34 counties that use Odyssey and 42 counties that work with Doxpop. Of the remaining counties, a few (Lake, Tippecanoe, and Boone) provide public access but do not necessarily distribute bulk records.

Finally, of the remaining counties, any type of search of records would have to be done at the actual courthouse.

How Other States Deal with Expungements and Record Sealing

The Committee asked staff to examine how other states provide commercial vendors who purchase bulk criminal history records, specifically, the laws and practices of Texas, Pennsylvania and Florida. The staff broadened the search with the help of the National Conference of State Legislatures to include three other states.

The summaries shown are limited to the mechanics of how other state laws and practices deal with either expunging or sealing criminal history records. The specific types of criminal and noncriminal offenses that are eligible for expungement and record sealing in each state are not considered in this survey.

Texas – Private entities that compile and disseminate for compensation criminal history record information are required to destroy or not disseminate any information in their possession if they receive an order of expunction or an order of nondisclosure. When an order of nondisclosure is issued by the court the clerk of the court sends all relevant criminal history record information to the Crime Records Service of the Department of Public Safety. Within 10 days of receiving the order of non disclosure, the department sends this order to, among others, private entities that purchase criminal history record information from the department. The department may charge the private entity that purchases criminal history record information a fee to recover the costs of providing this information.

A section of Texas statute also permits commercial vendors who are not regulated by federal law to disseminate criminal history record information only if the entity has obtained the information within the past 90 days, received that information as updated record information of its database, and notifies the department if the entity sells any compilation of the information to another similar entity. If a vendor violates this law, it is liable for any damages sustained.

Florida – The Office of Program Policy Analysis and Government Accountability indicated that no law currently exists that requires any type of record revision be made available to consumer reporting agencies. An evaluation that was prepared by the Office of Program Policy Analysis and Government Accountability concluded that data sold by commercial vendors may be less reliable than data available from the Florida Department of Law Enforcement because some companies maintain and sell records that are not current.

Pennsylvania – No law exists in Pennsylvania governing criminal record updates to commercial vendors. Staff of the Administrative Office of Pennsylvania Courts (AOPC) indicated that the court decided in April 2010 that it would affirmatively produce weekly lists of expunged causes for subscribers to its bulk distributions of criminal case data. This file informs subscribers of information that should be removed from a database and contains updates for all of the courts for which the AOPC provides electronic information. AOPC also requires its bulk subscribers to remove expunged cases and audits for compliance. Staff indicated that background providers are required to sign an agreement with AOPC staff that permits staff access to the providers' databases to confirm that the vendors are actually removing court ordered expunged or restricted records.

Colorado – The Colorado legislature added language in 2011 that defined criminal history providers as “private custodians” who have custody of criminal justice records in question and are in the business of providing information to others. When arrests and criminal records are sealed the petitioner has the *affirmative* obligation to provide not only the Colorado Bureau of Investigation and every custodian of such records but also the “private custodian” with a copy of this order. The private custodian that receives a copy of the order from the petitioner is then required to remove the record from its database.

Minnesota – Minnesota law uses the term “business screening service” to describe persons regularly engaged in the business of collecting, assembling, evaluating or disseminating criminal records for a fee. Governmental entities are not business screening services. Business screening services may only disseminate criminal records that reflect the complete and accurate record provided the source of data. And a record is complete and accurate if it has been updated within 30 days of its receipt or been verified with the source of the data within the previous 90 days as being up-to-date. An individual who is the subject of a criminal record may dispute the completeness and accuracy of the records maintained by the screening service. If the record is disputed the screening service shall review and consider all relevant information submitted by the subject of the record to determine whether the record maintained by the screening service accurately reflects the content of the official record as maintained by the official government custodian. The screening service is then responsible with ensuring that the disputed record accurately reflect the content of the official record.

Connecticut – Connecticut law uses the term “consumer reporting agency” as any person who regularly engages in whole and in part in the practice of assembling or preparing consumer reports for a fee which reports compile and report items of information on consumers that are matters of public record and are likely to have an adverse effect on a consumer's ability to obtain employment but does not include a public agency. The Judicial Department is required to make available to consumer reporting agencies information on criminal records that have been erased. It also requires consumer reporting agencies to purchase from the Judicial Department on a monthly basis or on such other schedule as the Judicial Department may establish, any update criminal matters of public record or information.

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1211

AN ACT to amend the Indiana code concerning restricted access to criminal records.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-38-5-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 5.5. (a) If a person charged with a crime:**

- (1) is not prosecuted or if charges against the person are dismissed;
- (2) is acquitted of all criminal charges; or
- (3) is convicted of the crime and the conviction is subsequently vacated;

the person may petition a court to restrict disclosure of the records related to the arrest to a noncriminal justice organization or an individual.

(b) A petition under subsection (a) must be verified and filed in:

- (1) the court in which the charges against the person were filed, for a person described in subsection (a)(1); or
- (2) the court in which the trial was held, for a person described in subsection (a)(2) or (a)(3).

(c) A petition under subsection (a) must be filed not earlier than:

- (1) if the person is acquitted, thirty (30) days after the person is acquitted;
- (2) if the person's conviction is vacated, three hundred sixty-five (365) days after:

HEA 1211 — Concur



- (A) the order vacating the person's conviction is final, if there is no appeal or the appeal is terminated before entry of an opinion or memorandum decision; or
- (B) the opinion or memorandum decision vacating the person's conviction is certified; or
- (3) if the person is not prosecuted, thirty (30) days after charges are dismissed, if the charges are not refiled.
- (d) A petition under subsection (a) must set forth:
- (1) the date of the arrest;
 - (2) the charge;
 - (3) the date charges were dismissed, if applicable;
 - (4) the date of conviction or acquittal, if applicable;
 - (5) the date the conviction was vacated, if applicable;
 - (6) the basis on which the conviction was vacated, if applicable;
 - (7) the law enforcement agency employing the arresting officer;
 - (8) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;
 - (9) the date of the petitioner's birth; and
 - (10) the petitioner's Social Security number.
- (e) A copy of a petition under subsection (a) shall be served on the prosecuting attorney and the state central repository for records.
- (f) If the prosecuting attorney wishes to oppose a petition under subsection (a), the prosecuting attorney shall, not later than thirty (30) days after the petition is filed, file a notice of opposition with the court setting forth reasons for opposing the petition. The prosecuting attorney shall attach to the notice of opposition a certified copy of any documentary evidence showing that the petitioner is not entitled to relief. A copy of the notice of opposition and copies of any documentary evidence shall be served on the petitioner in accordance with the Indiana Rules of Trial Procedure. The court may:
- (1) summarily grant the petition;
 - (2) set the matter for hearing; or
 - (3) summarily deny the petition, if the court determines that:
 - (A) the petition is insufficient; or
 - (B) based on documentary evidence submitted by the prosecuting attorney, the petitioner is not entitled to have access to the petitioner's arrest records restricted.
- (g) If a notice of opposition is filed under subsection (f) and the



court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

(h) After a hearing is held under subsection (g), the court shall grant the petition filed under subsection (a), unless the petitioner is being re prosecuted on charges related to the original conviction.

(i) If the court grants a petition filed under subsection (a), the court shall order the state police department not to disclose or permit disclosure of the petitioner's limited criminal history information to a noncriminal justice organization or an individual under IC 10-13-3-27.

SECTION 2. IC 35-38-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 8. Restricted Access to Conviction Records

Sec. 1. This chapter does not apply to a sex or violent offender unless the offender's status as a sex or violent offender is solely due to the offender's conviction for sexual misconduct with a minor (IC 35-42-4-9) and the offender proves that the defense described in IC 35-42-4-9(e) applies to the offender.

Sec. 2. This chapter applies only to a person:

- (1) convicted of a misdemeanor or a Class D felony that did not result in injury to a person; or
- (2) adjudicated a delinquent child for committing an offense that, if committed by an adult, would be a misdemeanor or Class D felony that did not result in injury to a person.

Sec. 3. Eight (8) years after the date a person completes the person's sentence and satisfies any other obligations imposed on the person as a part of the sentence, the person may petition a sentencing court to order the state police department to restrict access to the records concerning the person's arrest and involvement in criminal or juvenile court proceedings.

Sec. 4. The court shall grant a petition under this chapter if the court finds:

- (1) the person is:
 - (A) not a sex or violent offender; or
 - (B) a sex or violent offender, but the offender's status as a sex or violent offender is solely due to the offender's conviction for sexual misconduct with a minor (IC 35-42-4-9) and the offender proved that the defense described in IC 35-42-4-9(e) applies to the offender;
- (2) the person was:
 - (A) convicted of a misdemeanor or a Class D felony that



did not result in injury to a person; or

(B) adjudicated a delinquent child for committing an offense that, if committed by an adult, would be a misdemeanor or Class D felony not resulting in injury to a person;

(3) eight (8) years have passed since the person completed the person's sentence and satisfied any other obligation imposed on the person as part of the sentence; and

(4) the person has not been convicted of a felony since the person completed the person's sentence and satisfied any other obligation imposed on the person as part of the sentence.

Sec. 5. If the court grants the petition of a person under this chapter, the court shall do the following:

(1) Order:

(A) the department of correction; and

(B) each:

(i) law enforcement agency; and

(ii) other person;

who incarcerated, provided treatment for, or provided other services for the person under an order of the court; to prohibit the release of the person's records or information relating to the misdemeanor, nonviolent Class D felony, or juvenile adjudication described in section 2 of this chapter, in the person's records to a noncriminal justice agency without a court order.

(2) Order any:

(A) state;

(B) regional; or

(C) local;

central repository for criminal history information to prohibit the release of the person's records or information relating to the misdemeanor, nonviolent Class D felony, or juvenile adjudication described in section 2 of this chapter, in the person's records to a noncriminal justice agency without a court order.

Sec. 6. (a) If a person whose records are restricted under this chapter brings a civil action that might be defended with the contents of the records, the defendant is presumed to have a complete defense to the action.

(b) For the plaintiff to recover in an action described in subsection (a), the plaintiff must show that the contents of the



restricted records would not exonerate the defendant.

(c) In an action described in subsection (a), the plaintiff may be required to state under oath whether:

- (1) the plaintiff had records in the criminal justice system;
and
- (2) those records were restricted.

(d) In an action described in subsection (a), if the plaintiff denies the existence of the records, the defendant may prove the existence of the records in any manner compatible with the law of evidence.

Sec. 7. If a court orders a person's records to be restricted under this chapter, the person may legally state on an application for employment or any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the restricted records.



HEA 1211 — Concur



Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1033

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-4-18 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 18. Criminal History Providers

Sec. 1. (a) As used in this chapter, "criminal history information" means information:

- (1) concerning a criminal conviction in Indiana; and
- (2) available in records kept by a clerk of a court with jurisdiction in Indiana.

(b) The term consists of the following:

- (1) Identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges.
- (2) Information, including a photograph, regarding a sex or violent offender (as defined in IC 11-8-8-5) obtained through sex or violent offender registration under IC 11-8-8.
- (3) Any disposition, including sentencing, and correctional system intake, transfer, and release.
- (4) A photograph of the person who is the subject of the information described in subdivisions (1) through (3).

(c) The term includes fingerprint information described in

HEA10331 — Concur



IC 10-13-3- 24(f).

Sec. 2. (a) As used in this section, "criminal history provider" means a person or an organization that assembles criminal history reports and either uses the report or provides the report to a person or an organization other than a criminal justice agency or law enforcement agency.

(b) The term does not include the following:

- (1) A criminal justice agency.
- (2) A law enforcement agency.
- (3) Any:

(A) person connected with or employed by:

- (i) a newspaper or other periodical issued at regular intervals and having a general circulation; or
- (ii) a recognized press association or wire service;

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

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

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

- (i) criminal history information; or
 - (ii) criminal history reports;
- solely for journalistic purposes.

Sec. 3. As used in this section, "criminal history report" means criminal history information that has been compiled for the purposes of evaluating a particular person's:

- (1) character; or
- (2) eligibility for:
 - (A) employment;
 - (B) housing; or
 - (C) participation in any activity or transaction.

Sec. 4. As used in this section, "criminal justice agency" has the meaning set forth in IC 10-13-3-6.

Sec. 5. As used in this section, "law enforcement agency" has the meaning set forth in IC 10-13-3-10.

Sec. 6. (a) A criminal history provider may provide only criminal history information that relates to a conviction.

(b) A criminal history provider may not provide information

HEA1031 — Concur



relating to the following:

- (1) An infraction, an arrest, or a charge that did not result in a conviction.
- (2) A record that has been expunged.
- (3) A record that is restricted by a court or the rules of a court.
- (4) A record indicating a conviction of a Class D felony if the Class D felony conviction:
 - (A) has been entered as a Class A misdemeanor conviction; or
 - (B) has been converted to a Class A misdemeanor conviction.
- (5) A record that the criminal history provider knows is inaccurate.

Sec. 7. A criminal history provider may not include criminal history data in a criminal history report if the criminal history data has not been updated to reflect changes to the official record occurring sixty (60) days or more before the date the criminal history report is delivered.

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.

SECTION 2. IC 34-28-5-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 15. (a) If a person alleged to have violated a statute defining an infraction:

- (1) is not prosecuted or if the action against the person is dismissed;
- (2) is adjudged not to have committed the infraction; or
- (3) is adjudged to have committed the infraction and the adjudication is subsequently vacated;



the court in which the action was filed shall order the clerk not to disclose or permit disclosure of information related to the infraction to a noncriminal justice organization or an individual.

(b) If a court fails to order the court to restrict information related to the infraction under subsection (a), the person may petition the court to restrict disclosure of the records related to the infraction to a noncriminal justice organization or an individual.

(c) A petition under subsection (b) must be verified and filed in:

- (1) the court in which the action was filed, for a person described in subsection (a)(1); or
- (2) the court in which the trial was held, for a person described in subsection (a)(2) or (a)(3).

(d) A petition under subsection (b) must be filed not earlier than:

- (1) if the person is adjudged to have not committed the infraction, thirty (30) days after the date of judgment;
- (2) if the person's adjudication is vacated, three hundred sixty-five (365) days after:
 - (A) the order vacating the adjudication is final, if there is no appeal or the appeal is terminated before entry of an opinion or memorandum decision; or
 - (B) the opinion or memorandum decision vacating the adjudication is certified; or
- (3) if the person is not prosecuted or the action is dismissed, thirty (30) days after the action is dismissed, if a new action is not filed.

(e) A petition under subsection (b) must set forth:

- (1) the date of the alleged violation;
- (2) the violation;
- (3) the date the action was dismissed, if applicable;
- (4) the date of judgment, if applicable;
- (5) the date the adjudication was vacated, if applicable;
- (6) the basis on which the adjudication was vacated, if applicable;
- (7) the law enforcement agency employing the officer who issued the complaint, if applicable;
- (8) any other known identifying information, such as the name of the officer, case number, or court cause number;
- (9) the date of the petitioner's birth; and
- (10) the petitioner's Social Security number.

(f) A copy of a petition under subsection (b) shall be served on the prosecuting attorney.

HEA10211 — Concur



(g) If the prosecuting attorney wishes to oppose a petition under subsection (b), the prosecuting attorney shall, not later than thirty (30) days after the petition is filed, file a notice of opposition with the court setting forth reasons for opposing the petition. The prosecuting attorney shall attach to the notice of opposition a certified copy of any documentary evidence showing that the petitioner is not entitled to relief. A copy of the notice of opposition and copies of any documentary evidence shall be served on the petitioner in accordance with the Indiana Rules of Trial Procedure.

The court may:

- (1) summarily grant the petition;
- (2) set the matter for hearing; or
- (3) summarily deny the petition, if the court determines that:
 - (A) the petition is insufficient; or
 - (B) based on documentary evidence submitted by the prosecuting attorney, the petitioner is not entitled to have access to the petitioner's records restricted.

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

(i) After a hearing is held under subsection (h), the court shall grant the petition filed under subsection (b) if the person is entitled to relief under subsection (a).

(j) If the court grants a petition filed under subsection (b), the court shall order the clerk not to disclose or permit disclosure of information related to the infraction to a noncriminal justice organization or an individual.

SECTION 3. IC 34-28-5-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 16. (a) This chapter applies only to a person found to have committed an infraction.

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

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

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

HEA10211 — Concur



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

(f) In an action described in subsection (c), if the plaintiff denies the existence of the records, the defendant may prove the existence of the records in any manner compatible with the law of evidence.

(g) A person whose records have been restricted under this section may legally state on an application for employment or any other document that the person has not been adjudicated to have committed the infraction recorded in the restricted records.

SECTION 4. IC 35-38-8-7, AS ADDED BY P.L.194-2011, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) If a court orders a person's records to be restricted under this chapter, the person may legally state on an application for employment or any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the restricted records.

(b) An employer may not ask an employee, contract employee, or applicant whether the person's criminal records have been sealed or restricted. An employer who violates this subsection commits a Class B infraction.

SECTION 5. IC 35-50-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) As used in this chapter, "Class D felony conviction" means a conviction of a Class D felony in Indiana and a conviction, in any other jurisdiction at any time, with respect to which the convicted person might have been imprisoned for more than one (1) year. However, it does not include a conviction with respect to which the person has been pardoned, or a conviction of a Class A misdemeanor entered under IC 35-38-1-1.5 or section 7(b) or 7(c) of this chapter.

(b) As used in this chapter, "felony conviction" means a conviction, in any jurisdiction at any time, with respect to which the convicted person might have been imprisoned for more than one (1) year. However, it does not include a conviction with respect to which the person has been pardoned, or a conviction of a Class A misdemeanor under section 7(b) of this chapter.

(c) As used in this chapter, "minimum sentence" means:

- (1) for murder, forty-five (45) years;
- (2) for a Class A felony, twenty (20) years;
- (3) for a Class B felony, six (6) years;
- (4) for a Class C felony, two (2) years; and
- (5) for a Class D felony, one-half (1/2) year.



SECTION 6. IC 35-50-2-7, AS AMENDED BY P.L.71-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:

(1) the court finds that:

(A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and

(B) the prior felony was committed less than three (3) years before the second felony was committed;

(2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3; or

(3) the offense is possession of child pornography (IC 35-42-4-4(c)).

The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.

(c) Notwithstanding subsection (a), the sentencing court may convert a Class D felony conviction to a Class A misdemeanor conviction if, after receiving a verified petition as described in subsection (d) and after conducting a hearing of which the prosecuting attorney has been notified, the court makes the following findings:

(1) The person is not a sex or violent offender (as defined in IC 11-8-8-5).

(2) The person was not convicted of a Class D felony that resulted in bodily injury to another person.

(3) The person has not been convicted of perjury under IC 35-44-2-1 or official misconduct under IC 35-44-1-2.

(4) At least three (3) years have passed since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D felony.

(5) The person has not been convicted of a felony since the



person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D felony.

(6) No criminal charges are pending against the person.

(d) A petition filed under subsection (c) must be verified and set forth:

(1) the crime the person has been convicted of;

(2) the date of the conviction;

(3) the date the person completed the person's sentence;

(4) any obligations imposed on the person as part of the sentence;

(5) the date the obligations were satisfied; and

(6) a verified statement that there are no criminal charges pending against the person.

(e) If a person whose Class D felony conviction has been converted to a Class A misdemeanor conviction under subsection (c) is convicted of a felony within five (5) years after the conversion under subsection (c), a prosecuting attorney may petition a court to convert the person's Class A misdemeanor conviction back to a Class D felony conviction.

SECTION 7. [EFFECTIVE JULY 1, 2012] (a) As used in this SECTION, "legislative council" refers to the legislative council established by IC 2-5-1.1-1.

(b) As used in this SECTION, "study committee" means either of the following:

(1) A statutory committee established under IC 2-5.

(2) An interim study committee.

(c) The legislative council is urged to assign the following topics to a study committee during the 2012 legislative interim:

(1) The provisions of IC 24-4-18, as added by this act, concerning criminal history providers.

(2) The need for any legislation to amend IC 24-4-18, as added by this act, concerning criminal history providers before IC 24-4-18 takes effect on July 1, 2013.

(d) If the topics described in subsection (c) are assigned to a study committee, the study committee shall issue a final report to the legislative council containing the study committee's findings and recommendations, including any recommended legislation concerning the topics, in an electronic format under IC 5-14-6 not later than November 1, 2012.

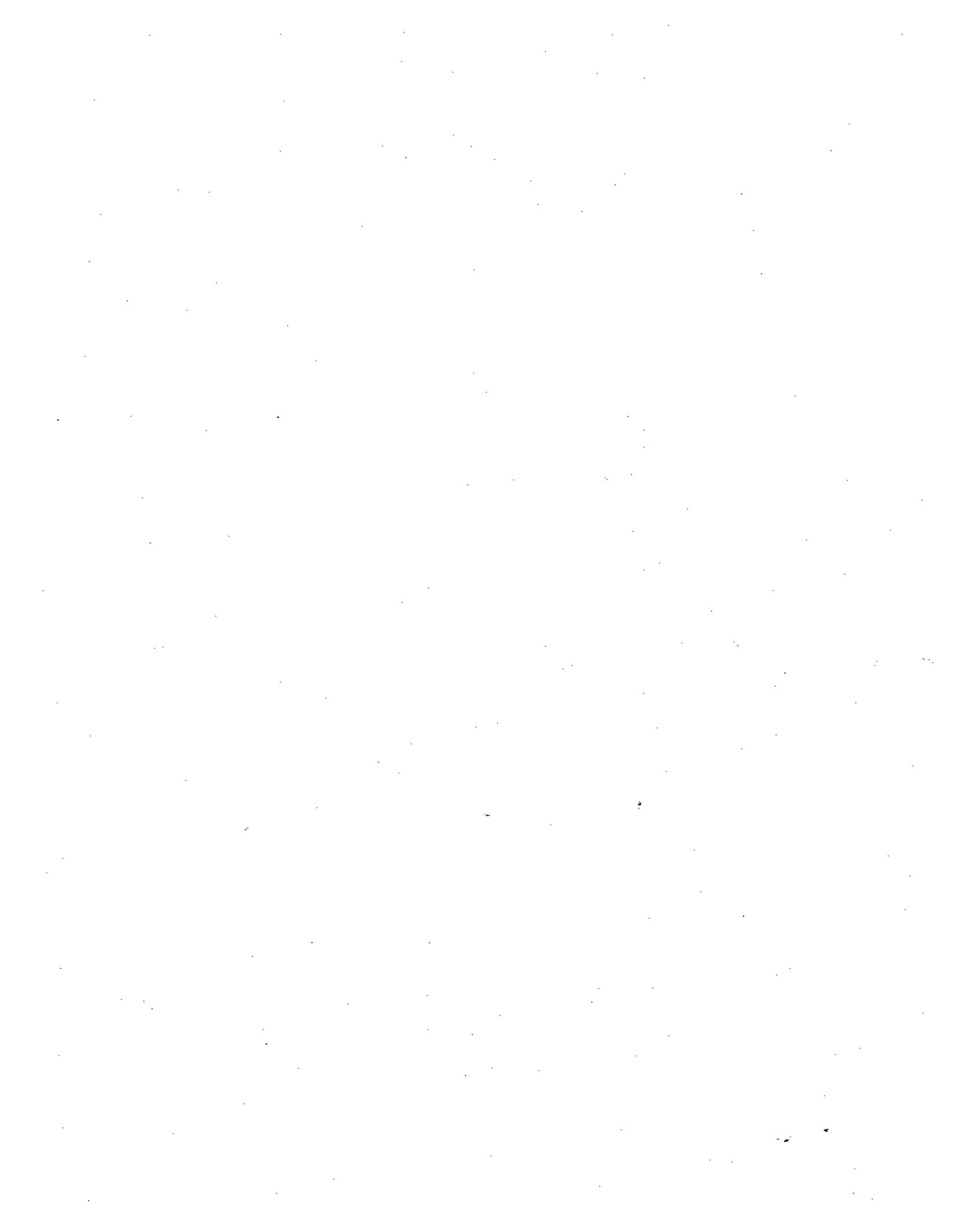
~~HEA 10211~~ — Concur



(e) This SECTION expires December 31, 2012.

HEA10311 — Concur





From Texas Statute

Sec. 411.0851: DUTY OF PRIVATE ENTITY TO UPDATE CRIMINAL HISTORY RECORD INFORMATION; CIVIL LIABILITY. (a) A private entity that compiles and disseminates for compensation criminal history record information shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d).

(b) Unless the entity is regulated by the federal Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) or the Gramm-Leach-Bliley Act (15 U.S.C. Sections 6801 to 6809), a private entity described by Subsection (a) that purchases criminal history record information from the department or from another governmental agency or entity in this state:

(1) may disseminate that information only if, within the 90-day period preceding the date of dissemination, the entity:

(A) originally obtains that information; or

(B) receives that information as updated record information to its database; and

(2) shall notify the department if the entity sells any compilation of the information to another similar entity.

(c) A private entity that disseminates information in violation of this section is liable for any damages that are sustained as a result of the violation by the person who is the subject of that information. A person who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorney's fees.

Added by Acts 2007, 80th Leg., R.S., Ch. 1017 , Sec. 7, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 780 , Sec. 2, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 731 , Sec. 8, eff. June 17, 2011.

Sec. 411.081: APPLICATION OF SUBCHAPTER. (a) This subchapter does not apply to criminal history record information that is contained in:

(1) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(2) original records of entry, including police blotters maintained by a criminal justice agency that are compiled chronologically and required by law or long-standing practice to be available to the public;

(3) public judicial, administrative, or legislative proceedings;

(4) court records of public judicial proceedings;

(5) published judicial or administrative opinions; or

(6) announcements of executive clemency.

(b) This subchapter does not prohibit a criminal justice agency from disclosing to the public criminal history record information that is related to the offense for which a person is involved in the criminal justice system.

(c) This subchapter does not prohibit a criminal justice agency from confirming previous criminal history record information to any person on specific inquiry about whether a named person was arrested, detained, indicted, or formally charged on a specified date, if the information disclosed is based on data excluded by Subsection (b).

(d) Notwithstanding any other provision of this subchapter, if a person is placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, subsequently receives a discharge and dismissal under Section 5(c), Article 42.12, and satisfies the requirements of Subsection (e), the person may petition the court that placed the defendant on deferred adjudication for an order of nondisclosure under this subsection. Except as provided by Subsection (e), a person may petition the court under this subsection regardless of whether the person has been previously placed on deferred adjudication community supervision for another offense. After notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication. A criminal justice agency may disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order. A person may petition the court that placed the person on deferred adjudication for an order of nondisclosure on payment of

a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. The payment may be made only on or after:

(1) the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor other than a misdemeanor described by Subdivision (2);

(2) the second anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor under Chapter 20, 21, 22, 25, 42, or 46, Penal Code; or

(3) the fifth anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a felony.

(e) A person is entitled to petition the court under Subsection (d) only if during the period of the deferred adjudication community supervision for which the order of nondisclosure is requested and during the applicable period described by Subsection (d)(1), (2), or (3), as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only. A person is not entitled to petition the court under Subsection (d) if the person was placed on the deferred adjudication community supervision for or has been previously convicted or placed on any other deferred adjudication for:

(1) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;

(2) an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;

(3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, or 42.072, Penal Code; or

(4) any other offense involving family violence, as defined by Section 71.004, Family Code.

(f) For purposes of Subsection (d), a person is considered to have been placed on deferred adjudication community supervision if, regardless of the statutory authorization:

(1) the person entered a plea of guilty or nolo contendere;

(2) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and

(3) at the end of the period of supervision the judge dismissed the proceedings and discharged the person.

(f-1) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 731, Sec. 12, eff. June 17, 2011.

(g) Not later than the 15th business day after the date an order of nondisclosure is issued under this section, the clerk of the court shall send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission to the Crime Records Service of the Department of Public Safety.

(g-1) Not later than 10 business days after receipt of relevant criminal history record information contained in an order or a copy of an order under Subsection (g), the Department of Public Safety shall seal any criminal history record information maintained by the department that is the subject of the order. The department shall also send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission to all:

(1) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;

(2) central federal depositories of criminal records that there is reason to believe have criminal history record information that is the subject of the order; and

(3) private entities that purchase criminal history record information from the department or that otherwise are likely to have criminal history record information that is subject to the order.

(g-1a) The director shall adopt rules regarding minimum standards for the security of secure electronic mail, electronic transmissions, and facsimile transmissions under Subsections (g) and (g-1). In adopting rules under this subsection, the director shall consult with the Office of Court Administration of the Texas Judicial System.

(g-1b) Not later than 30 business days after receipt of relevant criminal history record information contained in an order or a copy of an order from the Department of Public Safety under Subsection (g-1), an individual or entity described by Subsection (g-1)(1) shall seal any criminal history record information maintained by the individual or entity that is the subject of the order.

(g-1c) The department may charge to a private entity that purchases criminal history record information from the department a fee in an amount sufficient to recover costs incurred by the department in providing relevant criminal history record information contained in an order or a copy of an order under Subsection (g-1)(3) to the entity.

(g-2) A person whose criminal history record information has been sealed under this section is not required in any application for employment, information, or licensing to state that the person has been the subject of any criminal proceeding related to the information that is the subject of an order issued under this section.

(h) The clerk of a court that collects a fee under Subsection (d) shall remit the fee to the comptroller not later than the last day of the month following the end of the calendar quarter in which the fee is collected, and the comptroller shall deposit the fee in the general revenue fund. The Department of Public Safety shall submit a report to the legislature not later than December 1 of each even-numbered year that includes information on:

(1) the number of petitions for nondisclosure and orders of nondisclosure received by the department in each of the previous two years;

(2) the actions taken by the department with respect to the petitions and orders received;

(3) the costs incurred by the department in taking those actions; and

(4) the number of persons who are the subject of an order of nondisclosure and who became the subject of criminal charges for an offense committed after the order was issued.

(i) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (d) to the following noncriminal justice agencies or entities only:

- (1) the State Board for Educator Certification;
- (2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;
- (3) the Texas Medical Board;
- (4) the Texas School for the Blind and Visually Impaired;
- (5) the Board of Law Examiners;
- (6) the State Bar of Texas;
- (7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;
- (8) the Texas School for the Deaf;
- (9) the Department of Family and Protective Services;
- (10) the Texas Youth Commission;
- (11) the Department of Assistive and Rehabilitative Services;
- (12) the Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or retardation;
- (13) the Texas Private Security Board;
- (14) a municipal or volunteer fire department;
- (15) the Texas Board of Nursing;
- (16) a safe house providing shelter to children in harmful situations;
- (17) a public or nonprofit hospital or hospital district;
- (18) the Texas Juvenile Probation Commission;
- (19) the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner;
- (20) the Texas State Board of Public Accountancy;
- (21) the Texas Department of Licensing and Regulation;

- (22) the Health and Human Services Commission;
- (23) the Department of Aging and Disability Services;
- (24) the Texas Education Agency;
- (25) the Guardianship Certification Board;
- (26) a county clerk's office in relation to a proceeding for the appointment of a guardian under Chapter XIII, Texas Probate Code;
- (27) the Department of Information Resources but only regarding an employee, applicant for employment, contractor, subcontractor, intern, or volunteer who provides network security services under Chapter 2059 to:
 - (A) the Department of Information Resources; or
 - (B) a contractor or subcontractor of the Department of Information Resources;
- (28) the Court Reporters Certification Board;
- (29) the Texas Department of Insurance; and
- (30) the Teacher Retirement System of Texas.
- (j) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 731, Sec. 12, eff. June 17, 2011.

Added by Acts 1993, 73rd Leg., ch. 790, Sec. 35, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1236, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 177 , Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1309 , Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 , Sec. 54, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 , Sec. 6.061, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1017 , Sec. 5, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1017 , Sec. 6, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1017 , Sec. 11, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1372 , Sec. 16, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 183 , Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 780 , Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 816 , Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1027 , Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 , Sec. 11.005, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 455 , Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 731 , Sec. 12, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1182 , Sec. 12, eff. September 1, 2011.



State Criminal Record Processes Are Adequate; Potential for Inaccuracies from Private Companies

at a glance

Employers conduct criminal history background checks to ensure that prospective hires do not have a criminal history that would make them unsuitable for employment. Employers can obtain criminal history data from government sources, such as the Florida Department of Law Enforcement, or from private background check companies.

There are adequate safeguards in place to ensure that criminal history data maintained by criminal justice entities is accurate, current, and complete. Employers who use department data for a criminal background check can be reasonably confident that the information is reliable. However, data sold by private background check companies may be less reliable because some companies maintain and sell records that are not current; companies generally use name-based checks, which are less reliable than fingerprint-based checks; and information provided by some companies may not cover all law enforcement jurisdictions or time periods.

* Florida's criminal justice agencies use several processes to ensure that sealed or expunged records are purged in accordance with state statutes. However, there are no requirements directing private companies to similarly purge records that have been expunged or sealed.

Scope

As directed by the Legislature, OPPAGA examined the processes by which the public and employers may access criminal history information. This report addresses three questions.

- What safeguards exist to ensure that criminal history data maintained by criminal justice agencies is accurate, current, and complete?
- What safeguards exist to ensure that employers receive accurate criminal history information?
- What safeguards protect applicants from the unauthorized release of sealed or expunged records?

Background

Employers commonly use background checks as a prerequisite to hiring to ensure that prospective workers do not pose an unacceptable risk on the job or have a conviction that would disqualify them from employment.¹ As part of the background screening process, employers often review applicants' criminal histories, which include arrests and convictions. In addition to employment screening, the criminal history information also often is used by the public for purposes such as screening volunteers and tenants.

¹ Florida statutes provide that persons may be denied licensure and employment in many professions due to certain criminal convictions; these provisions govern professions such as teaching, real estate appraisal, mortgage brokerage, and medicine.

Federal law allows states to determine the level of public access to the state's criminal records. Florida is considered an open records state, as criminal records are easily accessed and available to the public. By law, anyone can request criminal history information, although there may be a processing fee.²

Employers and the public can access Florida criminal records in three ways. First, individuals can obtain this information from criminal justice agencies that originate arrest and conviction data, such as local law enforcement agencies or the courts. Second, individuals can obtain the data from the Florida Department of Law Enforcement (FDLE), which serves as the state's central repository for criminal history data. Third, individuals and the public can obtain criminal history information from private background screening companies, which obtain the information from criminal justice agencies.

To ensure public safety and appropriate hiring decisions, it is important that criminal history information be current, accurate, and complete, regardless of the source from which it is obtained.

Questions and Answers —

What safeguards exist to ensure that criminal history data maintained by criminal justice agencies is accurate, current, and complete?

Florida's criminal justice agencies use several data entry and verification processes to ensure that criminal history data is accurate, complete, and current.

Federal laws require government agencies to implement measures to ensure that criminal history data is accurate, complete, and current. In addition, the U.S. Department of Justice has

² Background check fees are set by the Legislature and depend on customer type and the type of check needed; e.g., job applicant and licensee statewide background checks are \$24. Special fees for high-use state agencies are as low as \$8 and criminal justice agencies are not charged a fee. The fee for a state plus national check with fingerprints is \$43.25 for electronic submissions, and \$54.25 for hard card submissions. Private background screening companies we tested charged fees ranging from \$12.95 to \$39.95 for multi-county information.

identified data quality procedures that state criminal history repositories should use to ensure data accuracy.

Florida's criminal justice entities meet these requirements and have reasonable procedures in place to ensure identity verification through fingerprints, ensure timely data input by using integrated technology, and validate data input through edit checks and other data verification procedures.

Fingerprint identification is used to assure identity. Positive identification of persons who commit crimes is fundamental to ensuring that criminal records are accurate. The U.S. Department of Justice's voluntary standards for criminal history records, developed by the Federal Bureau of Investigation, provide that fingerprint images are the basic source document for each arrest recorded in the criminal history record system. Fingerprints are unique to each person and are the most reliable method to ensure that individuals are properly identified and their records are correctly matched.

When an arrest is made in Florida, the law enforcement agency records the subject's fingerprints as the primary identifier and also records other identifying information, such as the subject's full name, date of birth, sex, race, social security number, and a unique tracking number. The Federal Bureau of Investigation conducts a triennial audit of FDLE's criminal history procedures and confirms the accuracy of a sample of criminal justice records using fingerprint images. FDLE conducts biennial audits of its records using local law enforcement agency and court records to examine criminal history accuracy. In these audits, FDLE staff uses source data from other criminal justice agencies to compare with its own records to ensure that its database is accurate.

Integrated communications help ensure timely data input. It is also important for criminal history information to be quickly updated as arrests, charges, and dispositions occur so that criminal justice entities, employers, and the public have access to current data. The federal Crime Identification Technology Act of 1998 provided grants to participating states to

promote criminal justice information systems integration, which helped improve timely entry and access to statewide data. Florida used these and other federal funds to enhance its Criminal Justice Information Network (CJNet). This system provides near real-time data access to criminal justice histories. For example, the system enables all Florida jails to electronically submit fingerprints to FDLE at the time of arrest. Most law enforcement agencies in Florida submit fingerprint records electronically; FDLE reports that it currently receives 93% of arrest fingerprint data electronically. Florida statutes require clerks of court to transmit disposition data to FDLE at least once a month to ensure data currency. To maintain system currency, the department contacts clerks who have not entered final case dispositions into the database.

Edit checks and verification procedures help ensure accurate data input. Finally, it is critical that criminal history data be accurate and free from data entry errors. Law enforcement agencies and clerks of court reported using various processes to ensure data accuracy.

County sheriffs reported using several procedures to ensure criminal justice data accuracy, including manually reviewing records for accuracy, employing quality control staff, limiting access to criminal records, and maintaining standard operating procedures. Clerks also reported using various processes to ensure data accuracy, including compiling error reports, double entry of certain data such as social security numbers, and conducting periodic audits.

To verify the accuracy of data entered by criminal justice entities, FDLE's biennial audits review a sample of each agency's source documents and the computer edit and verification programs that are used. FDLE also compares a random sample of records to state criminal history data, and corrects any identified errors in the state repository.

Audit results indicate that current data safeguards are reasonably sufficient. FDLE's biennial audits, which include clerks of court and law enforcement agency data, have found an accuracy rate for the department's criminal history records that ranged from 89% in 2000 to

96% in June 2008. FDLE has received positive federal audit results and the U.S. Department of Justice reports that Florida is one of only five states that employ all recommended data collection procedures.

What safeguards exist to ensure that employers receive accurate criminal history information?

Florida's criminal justice agencies employ several safeguards to assure that they provide employers reliable and current criminal history information. However, information provided by some private background screening companies may not be current or comprehensive.

As discussed above, Florida's criminal justice agencies employ a variety of safeguards to ensure they report reliable and timely criminal history information to employers and the public. These include edit checks, fingerprint verification, and near real-time updates to criminal history databases. Private background screening companies also offer criminal background information to employers and the public. Some employers and citizens purchase criminal history records from private companies because they wish to obtain other information that the companies offer, such as credit checks, or because the employer does not know how to obtain the information directly from a public criminal justice agency or lacks the time to do so. These companies obtain their records from criminal justice agencies. Accordingly, these records are valid at the time they are obtained. However, in some cases, records provided by private background screening companies are less complete or reliable than those provided by criminal justice agencies. This can occur for three reasons:

- some background screening companies maintain and sell records that are not current;
- companies generally use name-based checks, which are less reliable than fingerprint-based checks; and
- some companies do not provide information for all time periods from all law enforcement jurisdictions.

Some background screening companies maintain and sell records that are not current. Whereas some background screening companies claim that they obtain criminal history records from criminal justice agencies each time they receive a customer order, other companies build their own databases of records that they obtain from criminal justice agencies. These companies obtain their data through various methods, such as making periodic requests of criminal justice agencies to provide entire databases or using computer programs that extract information from criminal justice agency websites via the Internet.³ These methods allow companies to collect large quantities of criminal history data at a low cost. However, unless this information is regularly updated, it may become outdated and not reflect recent arrests, convictions, or other court outcomes. For example, companies we examined reported using varying methods for providing criminal records and updating their databases. Some companies reported that they initiate a new criminal history search with criminal justice agencies each time they receive a customer order. However, other companies reported that they update their databases on a less frequent basis (e.g., annually). As a result, criminal histories provided by these companies may not reflect recent offenses or other court outcomes.

Federal law establishes guidelines for background screening, but does not direct companies to maintain data safeguards. The Fair Credit Reporting Act directs background screening agencies to "follow reasonable procedures to assure maximum possible accuracy." When furnishing public record information for employment purposes, the act directs the background screening company to "notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported" or to "maintain strict procedures designed to ensure that whenever public record information which is likely to have

an adverse effect on a consumer's ability to obtain employment is reported it is complete and up-to-date." The act considers information up-to-date if "the current public record status of the item at the time of the report is reported."

Private background screening companies generally use name-based identity checks, which can be less reliable than fingerprint-based checks. Employers and citizens may generally obtain two types of background checks—those that match information based on an individual's fingerprints and those that match information based on an individual's name and other identifying information such as their social security number and date of birth. As criminal justice entities use fingerprint images as the basic identity source document for all data recorded in the criminal history database, fingerprint-based checks tend to be more complete and accurate than name-based checks. Background checks based on matching an individual's name and other information can result in incorrect matches if another person has a similar name and/or date of birth. These errors can be compounded if an individual has provided incorrect information as a means of avoiding discovery of his or her prior criminal history.

FDLE offers both fingerprint-based and name-based background checks. In contrast, private background screening companies customarily offer only name-based background checks using the applicant's name and another identifier, such as a social security number, date of birth, or address to search their databases. While background screening companies have made improvements in using name-based checks to make reliable identifications, they can result in incorrect identifications. These can include "false positives" when results are returned for a different person who has identical or similar personal identifiers such as names and/or dates of birth, and "false negatives" when the search misses criminal histories because the provided personal identifying information did not match information in the database.

³ FDLE has not, to date, released bulk data for private or commercial purposes; however, other agencies have. For example, at least 13 clerks of court reported that they release court disposition data in bulk.

Some background screening companies do not maintain information for all time periods from all jurisdictions. By law, FDLE's database includes arrests and dispositions from all Florida law enforcement jurisdictions in all 67 counties. Therefore, employers and citizens who obtain criminal history checks through FDLE will receive complete statewide information. In contrast, some background screening companies do not maintain data for all time periods from all jurisdictions. Ten websites for 20 background screening companies we examined indicated that the company databases did not cover all time periods; for example, some provided records for Escambia County only from 1990 to 2005. Further, 8 of these 10 websites indicated that the companies also did not have data from all counties. As a result, background checks from such companies may not provide complete and current criminal history information.

The remaining 10 websites for the 20 background screening companies we examined did not disclose what time periods or jurisdictions were included in their database. When background check companies market criminal history searches as statewide and do not disclose their data coverage, employers may reasonably assume that all time periods and all counties are included. This increases the opportunity of false negatives, where the results do not return records when they might exist for a time period or a county not included in the company's database.

There is little data available to determine the accuracy of information provided by private screening companies. While background checks provided by some private screening companies may not provide as complete or current criminal history information as that provided by FDLE, Florida's Attorney General has few official complaints against private screening companies alleging provision of inaccurate or outdated information in recent years. The records showed they received six such complaints between Fiscal Years 2003-04 and 2007-08. The state's Better Business Bureaus and the Department of Agriculture and Consumer Services do not maintain a uniform complaint category relating to background screening, therefore complaints against these companies cannot be clearly identified.

What safeguards protect applicants from the unauthorized release of sealed or expunged records?

Florida's criminal justice agencies use several processes to ensure that sealed or expunged records are handled in accordance with state statutes. However, there are no requirements directing private companies to similarly destroy or not release records that have been expunged or sealed.

Florida statutes allow some individuals who were charged with but not adjudicated guilty for crimes to have part or all of their criminal history sealed or expunged.⁴ Sealed records of a criminal charge are not accessible to the public, while expunged records of criminal charges are physically destroyed. Individuals who have a record sealed or expunged are afforded the opportunity to legally deny that charge except under specified conditions.⁵

When the Florida Department of Law Enforcement receives a court order to seal or expunge a criminal history record, it flags the record as not releasable to non-criminal justice entities, sends a notification of the action to the Federal Bureau of Investigation, and notifies all involved criminal justice agencies that the court order has been complied with. Sheriffs and clerks of court maintain strict procedures for these cases, including using data codes that exclude sealed records from public information requests, physically storing sealed records

⁴ There are several restrictions that apply to sealing and expunction. For example, eligibility can only be applied to charges and not convictions. Also, there are many charges that cannot be sealed or expunged when adjudication is withheld, such as arson, child abuse, murder, manslaughter, domestic violence, and sexual battery. Persons convicted (adjudicated guilty) of a previous felony or misdemeanor, at the time they seek relief, are not eligible to have any charges sealed or expunged.

⁵ Individuals must disclose sealed or expunged records only when they apply for employment with a criminal justice agency; are defendants in a criminal prosecution; apply for additional sealing or expunction; apply for admission to The Florida Bar; or apply for employment at or access to Florida seaports. In addition, individuals must disclose sealed records when they attempt to purchase a firearm. Individuals also must disclose sealed or expunged records if they seek employment, licensure, or contracts with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, primary or secondary schools or licensed child care facilities, or the Department of Juvenile Justice, or are seeking to have direct contact with children, the developmentally disabled, the aged, or the elderly.

separately, and redacting the individual's name from documentation associated with the sealed or expunged record.

Florida laws pertaining to sealing and expunging records do not address data maintained by private companies. A 2005 national study funded by the U.S. Department of Justice showed that although some companies address this issue by periodically obtaining complete new data records from their sources, other companies do not make efforts to update their records and eliminate records that have been sealed or expunged.

While there is no statewide data on practices followed by private screening companies that provide Florida criminal history checks, some private companies have not addressed sealed and expunged court records. We obtained criminal background checks from six companies for an individual who notified us that his record, which had been expunged by court order, was being sold by private companies. Four of the six companies provided details of the record that should not have been disclosed to the public. Individuals in similar cases may not be aware that their sealed or expunged records are maintained on private databases; in some cases these persons could suffer consequences such as being denied a job by a prospective employer based on the information.

In 2008, Connecticut passed legislation requiring background screening companies that buy criminal history data to update this information

monthly or according to a specific schedule, and to permanently delete any "erased" records from that updated information. The Legislature could consider similar legislation if it wished to address this issue. Specifically, it could take the actions described below.

- Require private companies to disclose Florida jurisdictions included in their databases and the date the data was last updated. This would help ensure that employers that intend to buy statewide criminal histories are aware if any jurisdictions or time periods are not included in the report.
- Require private companies to purge a record from their database upon receiving a copy of a court order to seal or expunge from the individual or his/her designee. This would help to ensure that the privacy provided in law extends beyond records maintained by criminal justice agencies to those maintained by private companies and reduce the unauthorized release of these records.

Agency Response ---

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Commissioner of the Florida Department of Law Enforcement for his review and response.

The Commissioner's written response is reproduced in its entirety in Appendix A.

Appendix A



Florida Department of
Law Enforcement

Gerald M. Bailey
Commissioner

Office of Executive Director
Post Office Box 1489
Tallahassee, Florida 32302-1489
(850) 410-7001
www.fdle.state.fl.us

Charlie Crist, Governor
Bill McCollum, Attorney General
Alex Sink, Chief Financial Officer
Charles H. Bronson, Commissioner of Agriculture

February 17, 2009

Mr. Gary R. VanLandingham, Ph.D.
Director
Office of Program Policy Analysis and
Government Accountability
Claude Pepper Building, Room 312
111 West Madison Street
Tallahassee, Florida 32399-1475

Dear Director VanLandingham:

In response to your report on State Criminal Record Processes, we have enclosed our responses and concur with the report's major findings:

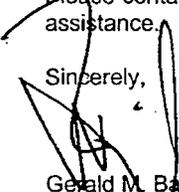
What safeguards exist to ensure that criminal history data maintained by criminal justice agencies is accurate, current, and complete? "Florida's criminal justice agencies use several data entry and verification processes to ensure that criminal history data is accurate, complete, and current."

What safeguards exist to ensure that employers receive accurate criminal history information? "Florida's criminal justice agencies employ several safeguards to assure that they provide employers' reliable and current criminal history information. However, information provided by some private background screening companies may not be current or comprehensive."

What safeguards protect applicants from the unauthorized release of sealed or expunged records? "Florida's criminal justice agencies use several processes to ensure that sealed or expunged records are handled in accordance with state statutes. However, there are no requirements directing private companies to similarly destroy or not release records that have been expunged or sealed."

Please contact me or Legislative Affairs Director Lynn Dodson at 410-7001 if you need further assistance.

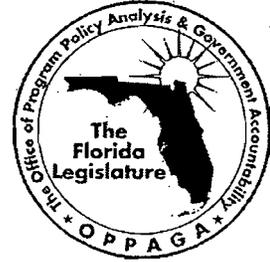
Sincerely,



Gerald M. Bailey
Commissioner

GMB/ALD/bic

The Florida Legislature
Office of Program Policy Analysis
and Government Accountability



OPPAGA provides performance and accountability information about Florida government in several ways.

- OPPAGA reviews deliver program evaluation, policy analysis, and Sunset reviews of state programs to assist the Legislature in overseeing government operations, developing policy choices, and making Florida government better, faster, and cheaper.
- OPPAGA PolicyCasts, short narrated slide presentations, provide bottom-line briefings of findings and recommendations for select reports.
- Florida Government Accountability Report (FGAR), an Internet encyclopedia, www.oppaga.state.fl.us/government, provides descriptive, evaluative, and performance information on more than 200 Florida state government programs.
- Florida Monitor Weekly, an electronic newsletter, delivers brief announcements of research reports, conferences, and other resources of interest for Florida's policy research and program evaluation community.
- Visit OPPAGA's website, the Florida Monitor, at www.oppaga.state.fl.us

OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

Project supervised by Rashada Houston (850/487-4971)

Project conducted by Michelle Harrison and Vic Williams

Marti Harkness (850/487-9233), Staff Director

Gary R. VanLandingham, Ph.D., OPPAGA Director

CHAPTER 72

COURTS

HOUSE BILL 11-1203

BY REPRESENTATIVE(S) Lee, Ferrandino, Levy, Tyler, Barker, Duran, Fields, Kagan, Labuda, Nikkel, Pabon, Pacc, Schafer S., Solano, Vigil, Wilson;
also SENATOR(S) Nicholson, Aguilar, Bacon, Giron, Guzman, Hudak, Jahn, Newell, Steadman, Tochtrop, Williams S.

AN ACT

CONCERNING A REQUIREMENT THAT PRIVATE CUSTODIANS OF CRIMINAL RECORDS REMOVE RECORDS FROM THEIR DATABASES WHEN A COURT ORDERS THE CRIMINAL RECORDS SEALED.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 24-72-302, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-72-302. Definitions. As used in this part 3, unless the context otherwise requires:

(11) "PRIVATE CUSTODIAN" MEANS A PRIVATE ENTITY THAT HAS CUSTODY OF THE CRIMINAL JUSTICE RECORDS IN QUESTION AND IS IN THE BUSINESS OF PROVIDING THE INFORMATION TO OTHERS.

SECTION 2. 24-72-308 (1) (c), Colorado Revised Statutes, is amended to read:

24-72-308. Sealing of arrest and criminal records other than convictions. (1) (c) After the hearing described in subparagraph (II) of paragraph (b) of this subsection (1) is conducted and if the court finds that the harm to the privacy of the petitioner or dangers of unwarranted adverse consequences to the petitioner outweigh the public interest in retaining the records, the court may order such records, except basic identification information, to be sealed. Any order entered pursuant to this paragraph (c) shall be directed to every custodian who may have custody of any part of the arrest and criminal records information which is the subject of the order. Whenever a court enters an order sealing criminal records pursuant to this paragraph (c), the petitioner shall provide the Colorado bureau of investigation and every custodian of such records with a copy of such order. THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

PETITIONER SHALL PROVIDE A PRIVATE CUSTODIAN WITH A COPY OF THE ORDER AND SEND THE PRIVATE CUSTODIAN AN ELECTRONIC NOTIFICATION OF THE ORDER. EACH PRIVATE CUSTODIAN THAT RECEIVES A COPY OF THE ORDER FROM THE PETITIONER SHALL REMOVE THE RECORDS THAT ARE SUBJECT TO AN ORDER FROM ITS DATABASE. Thereafter, the petitioner may request and the court may grant an order sealing the civil case in which the records were sealed. *

SECTION 3. 24-72-308.5 (2) (c), Colorado Revised Statutes, is amended to read:

24-72-308.5. Sealing of criminal conviction records information for offenses involving controlled substances. (2) **Sealing of conviction records.** (c) After the hearing described in subparagraph (II) of paragraph (b) of this subsection (2) is conducted and if the court finds that the harm to the privacy of the defendant or the dangers of unwarranted, adverse consequences to the defendant outweigh the public interest in retaining the conviction records, the court may order the conviction records, except basic identification information, to be sealed. In making this determination, the court shall, at a minimum, consider the severity of the offense that is the basis of the conviction records sought to be sealed, the criminal history of the defendant, and the need for the government agency to retain the records. An order entered pursuant to this paragraph (c) shall be directed to each custodian who may have custody of any part of the conviction records that are the subject of the order. Whenever a court enters an order sealing conviction records pursuant to this paragraph (c), the defendant shall provide the Colorado bureau of investigation and each custodian of the conviction records with a copy of the order. ~~and~~ THE PETITIONER SHALL PROVIDE A PRIVATE CUSTODIAN WITH A COPY OF THE ORDER AND SEND THE PRIVATE CUSTODIAN AN ELECTRONIC NOTIFICATION OF THE ORDER. EACH PRIVATE CUSTODIAN THAT RECEIVES A COPY OF THE ORDER FROM THE PETITIONER SHALL REMOVE THE RECORDS THAT ARE SUBJECT TO AN ORDER FROM ITS DATABASE. THE DEFENDANT shall pay to the bureau any costs related to the sealing of his or her criminal conviction records in the custody of the bureau. Thereafter, the defendant may request and the court may grant an order sealing the civil case in which the conviction records were sealed. *

SECTION 4. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 29, 2011

CHAPTER 240—S.F.No. 2322

An act relating to commerce; regulating business screening services; providing for the correction and deletion of certain criminal records; amending Minnesota Statutes 2008, section 332.70, subdivisions 1, 2, 3, 4.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 332.70, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** For purposes of this section:

(a) "Business screening service" means a person regularly engaged in the business of collecting, assembling, evaluating, or disseminating ~~criminal record information records~~ on individuals for a fee. Business screening service does not include a government entity, as defined in section 13.02, or the news media.

(b) "Conviction" has the meaning given in section 609.02, subdivision 5.

(c) "Criminal record" means a record of an arrest, citation, prosecution, criminal proceeding, or conviction.

Sec. 2. Minnesota Statutes 2008, section 332.70, subdivision 2, is amended to read:

Subd. 2. **Criminal records.** ~~A business screening service must not disseminate a criminal record unless the record has been updated within the previous month. A business screening service must only disseminate a criminal record that reflects the complete and accurate record provided by the source of the data. A complete and accurate record is a record that has:~~

(1) been updated within 30 days of its receipt; or

(2) been verified with the source of the data within the previous 90 days as being up-to-date.

Sec. 3. Minnesota Statutes 2008, section 332.70, subdivision 3, is amended to read:

Subd. 3. **Correction and deletion of records.** (a) If the completeness or accuracy of a criminal record maintained by a business screening service is disputed by the individual who is the subject of the record, the screening service shall, without charge, investigate the disputed record. In conducting an investigation, the business screening service shall review and consider all relevant information submitted by the subject of the record with respect to the disputed record to determine whether the record maintained by the screening service accurately reflects the content of the official record, as maintained by the official government custodian.

~~(b) If the disputed record is found to be inaccurate or incomplete, the business screening service shall promptly correct the record. If the disputed record is found to be sealed, expunged, or the subject of a pardon, the business screening service shall promptly~~

delete the record. If, upon investigation, the screening service determines that the record does not accurately reflect the content of the official record, the screening service shall correct the disputed record so as to accurately reflect the content of the official record. If the disputed record is found to be sealed, expunged, or the subject of a pardon, the business screening service shall promptly delete the record.

(c) A business screening service may terminate an investigation of a disputed record if the business screening agency reasonably determines that the dispute is frivolous, which may be based on the failure of the subject of the record to provide sufficient information to investigate the disputed record. Upon making a determination that the dispute is frivolous, the business screening service shall inform the subject of the record of the specific reasons why it has determined that the dispute is frivolous and provide a description of any information required to investigate the disputed record.

(d) The business screening service shall notify the subject of the disputed record of the correction or deletion of the record or of the termination or completion of the investigation related to the record within 30 days of the date when the agency receives notice of the dispute from the subject of the record.

Sec. 4. Minnesota Statutes 2008, section 332.70, subdivision 4, is amended to read:

Subd. 4. **Date and notice required.** A business screening service that disseminates a criminal record that was collected on or after July 1, 2010, must include the date when the record was collected by the business screening service and a notice that the information may include criminal records that have been expunged, sealed, or otherwise have become inaccessible to the public since that date.

Sec. 5. **EFFECTIVE DATE.**

Sections 1 to 4 are effective July 1, 2010.

Presented to the governor April 12, 2010

Signed by the governor April 15, 2010, 11:58 a.m.



Senate Bill No. 704

Public Act No. 08-53

**AN ACT CONCERNING THE RELEASE, SALE AND ACCURACY
OF CONVICTION INFORMATION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (h) of section 31-51i of the 2008 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective May 1, 2008*):

(h) (1) For the purposes of this subsection: (A) "Consumer reporting agency" means any person who regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a fee, which reports compile and report items of information on consumers that are matters of public record and are likely to have an adverse effect on a consumer's ability to obtain employment, but does not include any public agency; (B) "consumer report" means any written, oral or other communication of information bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living; and (C) "criminal matters of public record" means information obtained from the Judicial Department relating to arrests, indictments, convictions, [erased records, pardons and] outstanding judgments, and any other conviction information, as defined in section 54-142g.

Senate Bill No. 704

(2) Each consumer reporting agency that issues a consumer report that is used or is expected to be used for employment purposes and that includes in such report criminal matters of public record concerning the consumer shall:

(A) At the time the consumer reporting agency issues such consumer report to a person other than the consumer who is the subject of the report, provide the consumer who is the subject of the consumer report (i) notice that the consumer reporting agency is reporting criminal matters of public record, and (ii) the name and address of the person to whom such consumer report is being issued;

[(B) Access the conviction information available to the public on the Internet web site of the Judicial Department to verify, as of the date the consumer report is issued, the accuracy of any criminal matters of public record contained in the consumer report;]

[(C) (B) Maintain procedures designed to ensure that any criminal matter of public record reported is complete and up-to-date as of the date the consumer report is issued, which procedures shall, at a minimum, conform to the requirements set forth in section 2 of this act.

(3) This subsection shall not apply in the case of an agency or department of the United States government seeking to obtain and use a consumer report for employment purposes if the head of the agency or department makes a written finding pursuant to 15 USC 1681b(b)(4)(A).

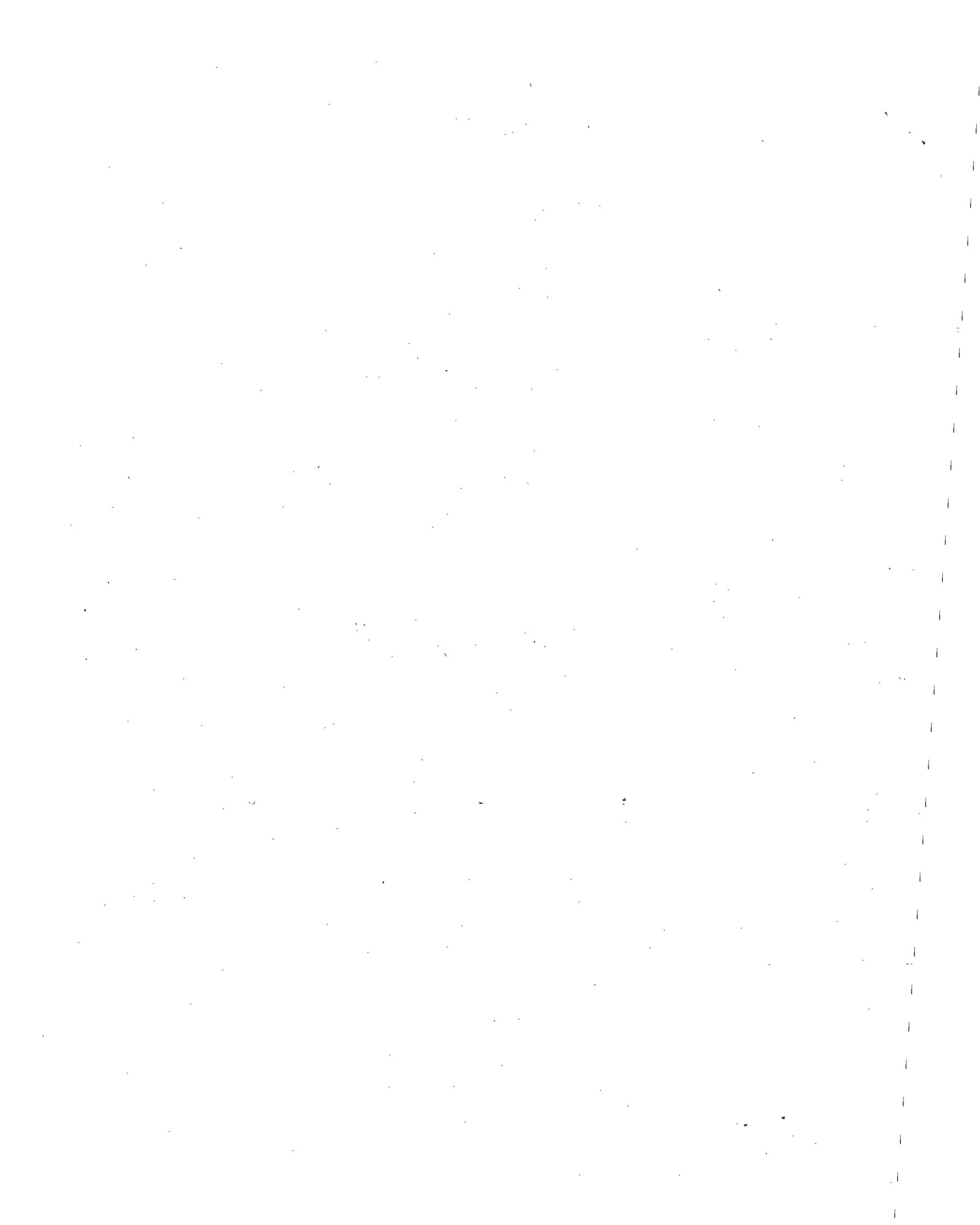
Sec. 2. (NEW) (Effective May 1, 2008) (a) Notwithstanding the provisions of subsection (e) of section 54-142a of the general statutes and section 54-142c of the general statutes, with respect to any person, including, but not limited to, a consumer reporting agency as defined in subsection (h) of section 31-51i of the 2008 supplement to the general statutes, as amended by this act, who purchases criminal matters of

Senate Bill No. 704

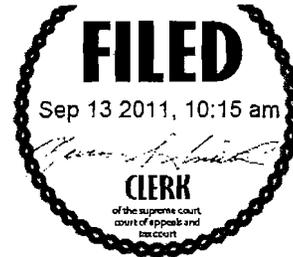
public record, as defined in said subsection (h), from the Judicial Department, the department shall make available to such person information concerning such criminal matters of public record that have been erased pursuant to section 54-142a of the general statutes. Such information may include docket numbers or other information that permits the person to identify and permanently delete records that have been erased pursuant to section 54-142a of the general statutes.

(b) Each person, including, but not limited to, a consumer reporting agency, that has purchased records of criminal matters of public record from the Judicial Department shall, prior to disclosing such records, (1) purchase from the Judicial Department, on a monthly basis or on such other schedule as the Judicial Department may establish, any updated criminal matters of public record or information available for the purpose of complying with this section, and (2) update its records of criminal matters of public record to permanently delete such erased records. Such person shall not further disclose such erased records.

Approved April 29, 2008



In the
Indiana Supreme Court



IN THE MATTER OF)
BULK DISTRIBUTION OF AND)
REMOTE ACCESS TO COURT)
RECORDS IN ELECTRONIC FORM)

Case No. 94S00-1109-MS-552

ORDER CONCERNING THE BULK DISTRIBUTION OF
AND REMOTE ACCESS TO COURT RECORDS IN THE ELECTRONIC FORM

Information on individual cases in the state case management system, Odyssey, is available at no cost to the public over the Internet. Commercial users have expressed an interest in purchasing bulk distribution of Odyssey records. This order sets forth the procedures to be used to obtain bulk distribution of and also remote access to the records of those courts using the Odyssey case management system.

Odyssey is a leading national case management system. The Indiana Supreme Court obtained rights to install Odyssey in all Indiana courts following its selection for that purpose in a competitive procurement involving trial court judges, clerks, and IT professionals from throughout the state. As of the date of this order, 104 courts in 35 counties comprising more than 34% of the state's caseload are using Odyssey, and additional courts are being added each month. Data within Odyssey is stored in a central repository maintained by the Indiana Office of Technology and is accessible to authorized users over the Internet.

Bulk Distribution

Administrative Rule 9 sets forth general rules governing access to court records. To the extent not defined or otherwise described in this order, terms shall have the meaning set forth in Admin.R. 9. Administrative Rule 9(F) authorizes courts, in their discretion, to provide bulk distribution of information in court records in electronic form that is accessible to the public. Administrative Rule 9(F)(2) places this authority in this Court with respect to records from multiple

courts such as those maintained in the Odyssey data repository. Pursuant to Admin.R. 9, this Court authorizes bulk distribution of Odyssey records that are not excluded from public access by Admin.R. 9(G) or (H).

Requests for bulk distribution of Odyssey information that is not excluded by Admin.R. 9(G) or (H) shall be made in writing to the Executive Director of the Division of State Court Administration. The Executive Director is authorized to act upon such requests without further direction from this Court and is directed to do so within a reasonable period of time. When a party requests bulk distribution of Odyssey records and makes arrangements for payment in accordance with Admin. R. 9 and this Order, the Division is authorized and directed to provide bulk distribution of Odyssey records by two methods.

First, on or before October 1, 2011, the Division shall place (or "drop") Odyssey case records on a server for vendors and others with appropriate security permissions to copy once a month (or on another periodic schedule established by the Division). We refer to this method as the "file drop" method. Second, on or before January 1, 2012, the Division is authorized and directed to create a file (or "message") each time an Odyssey case is added or edited to be sent to or retrieved by vendors and others with appropriate security permissions so that the systems of such vendors and others are updated within a few seconds or minutes. We refer to this method as the "messaging" method."

The party requesting bulk distribution must execute an agreement governing the bulk data with the Division, on a form provided by the Division.

Administrative Rule 9(F)(3) authorizes courts to charge an amount for bulk distribution that does not exceed the fair market value of the information. Being duly advised of the fair market value of such information in the current marketplace, the Court authorizes the Division to charge the following prices for bulk distribution of and remote access to the records of those courts using the Odyssey case management system:

- A. File drop method.
 - (1) One cent (\$0.01) for each closed case.
 - (2) Ten cents (\$0.10) for an open case or a new case added since the last file drop.
 - (3) No charge for any updates to a case already provided.

B. Messaging method.

- (1) One cent (\$0.01) for each closed case.
- (2) Fifteen cents (\$0.15) for an open case or a new case added since the last message.
- (3) No charge for any updates to a case already provided.

The Division is authorized to exempt bona fide governmental and educational entities from a portion or all of such charges on the condition that they do not sell the data or make any other commercial use of it. The Division is authorized to change the charges set forth in this order without further approval from this Court, subject to the following conditions: *first*, such charges shall in no event exceed the fair market value of the information provided; and, *second*, no such change shall take effect until after the new charges have been posted on the Division's website in a conspicuous fashion for 30 days.

Remote Access

Administrative Rule 9(E) authorizes a County Board of Commissioners, upon the request and at an amount approved by a majority of judges of courts of record in the county, to adopt electronic system fees to be charged in conjunction with electronic access to court records. Just as Admin.R. 9(F)(2) places the authority in this Court to approve bulk distribution of records from multiple courts, today's contemporaneous amendment of Admin.R. 9(E), confirms the Court's authority to adopt electronic system fees to be charged in conjunction with electronic access to Odyssey records. Such fees may cover costs associated with electronic filing, see Admin. R. 16(D); paying court costs, fines, penalties, and other charges online; enhanced access to electronic records maintained by courts and clerks; and other charges related to the use of electronic systems maintained by courts and clerks.

Under the authority provided in the preceding paragraph, the Executive Director may establish an electronic system fee without further approval from this Court, subject to the following conditions: *first*, the Executive Director shall advise the Court in writing of the nature, purpose, and amount of the fee; *second*, such fee shall in no event exceed the fair market value of the services that the fee covers; and, *third*, no such fee shall be collected until after the nature, purpose, and amount of the fee shall have been posted on the Division's website in a conspicuous fashion

for 30 days.

Compiled Information

Because the requirements of each request for compiled information will differ, and fulfilling such requests would divert Division staff and resources from its principal mission, compiled information will not be provided at this time. Recipients of information provided via one of the approved methods of bulk distribution will have the ability to compile information themselves from the bulk data. See Admin. R. 9(F), Commentary.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Public Defender's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and Thomson Reuters. The Clerk is also Directed to post this Order to the Court's website.

Thomson Reuters is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 13th day of September, 2011.

/s/Randall T. Shepard
Randall T. Shepard
Chief Justice of Indiana

All Justices concur.



January 29, 2010

SENATE BILL No. 291

DIGEST OF SB 291 (Updated January 26, 2010 6:17 pm - DI 106)

Citations Affected: IC 4-10; IC 35-38.

Synopsis: Sex or violent offender tracking program. Creates the public safety technology fund to purchase, operate, and maintain a qualified sex or violent offender tracking program. Establishes a monthly \$1 probation technology fee to fund the public safety technology fund, and provides that the attorney general shall administer the fund in consultation with the Indiana sheriffs.

Effective: July 1, 2010.

Steele

January 11, 2010, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
January 28, 2010, amended, reported favorably — Do Pass. Pursuant to Senate Rule 65(b), reassigned to Committee on Appropriations.

C
O
P
Y



January 29, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

SENATE BILL No. 291

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-38-2-1, AS AMENDED BY P.L.1-2006,
2 SECTION 529, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Whenever it places a person
4 on probation, the court shall:
5 (1) specify in the record the conditions of the probation; and
6 (2) advise the person that if the person violates a condition of
7 probation during the probationary period, a petition to revoke
8 probation may be filed before the earlier of the following:
9 (A) One (1) year after the termination of probation.
10 (B) Forty-five (45) days after the state receives notice of the
11 violation.
12 (b) In addition, if the person was convicted of a felony and is placed
13 on probation, the court shall order the person to pay to the probation
14 department the user's fee prescribed under subsection (d). If the person
15 was convicted of a misdemeanor, the court may order the person to pay
16 the user's fee prescribed under subsection (e). The court may:
17 (1) modify the conditions (except a fee payment may only be

SB 291—LS 7042/DI 106+



C
O
P
Y

1 modified as provided in section 1.7(b) of this chapter); or
2 (2) terminate the probation;
3 at any time. If the person commits an additional crime, the court may
4 revoke the probation.

5 (c) If a clerk of a court collects a probation user's fee, the clerk:

6 (1) may keep not more than three percent (3%) of the fee to defray
7 the administrative costs of collecting the fee and shall deposit any
8 fee kept under this subsection in the clerk's record perpetuation
9 fund established under IC 33-37-5-2; and

10 (2) if requested to do so by the county auditor, city fiscal officer,
11 or town fiscal officer under clause (A), (B), or (C), transfer not
12 more than three percent (3%) of the fee to the:

13 (A) county auditor, who shall deposit the money transferred
14 under this subdivision into the county general fund;

15 (B) city general fund when requested by the city fiscal officer;
16 or

17 (C) town general fund when requested by the town fiscal
18 officer.

19 (d) In addition to any other conditions of probation, the court shall
20 order each person convicted of a felony to pay:

21 (1) not less than twenty-five dollars (\$25) nor more than one
22 hundred dollars (\$100) as an initial probation user's fee;

23 (2) a monthly probation user's fee of not less than fifteen dollars
24 (\$15) nor more than thirty dollars (\$30) for each month that the
25 person remains on probation;

26 (3) the costs of the laboratory test or series of tests to detect and
27 confirm the presence of the human immunodeficiency virus (HIV)
28 antigen or antibodies to the human immunodeficiency virus (HIV)
29 if such tests are required by the court under section 2.3 of this
30 chapter;

31 (4) an alcohol abuse deterrent fee and a medical fee set by the
32 court under IC 9-30-9-8, if the court has referred the defendant to
33 an alcohol abuse deterrent program; **and**

34 (5) an administrative fee of one hundred dollars (\$100); **and**

35 **(6) a monthly probation technology fee of one dollar (\$1) for**
36 **each month that the person remains on probation;**

37 to either the probation department or the clerk.

38 (e) In addition to any other conditions of probation, the court may
39 order each person convicted of a misdemeanor to pay:

40 (1) not more than a fifty dollar (\$50) initial probation user's fee;

41 (2) a monthly probation user's fee of not less than ten dollars
42 (\$10) nor more than twenty dollars (\$20) for each month that the

C
O
P
Y



1 person remains on probation;
 2 (3) the costs of the laboratory test or series of tests to detect and
 3 confirm the presence of the human immunodeficiency virus (HIV)
 4 antigen or antibodies to the human immunodeficiency virus (HIV)
 5 if such tests are required by the court under section 2.3 of this
 6 chapter; ~~and~~
 7 (4) an administrative fee of fifty dollars (\$50); **and**
 8 **(6) a monthly probation technology fee of one dollar (\$1) for**
 9 **each month that the person remains on probation;**
 10 to either the probation department or the clerk.
 11 (f) The probation department or clerk shall collect the
 12 administrative fees under subsections (d)(5) and (e)(4) before
 13 collecting any other fee under subsection (d) or (e). All money
 14 collected by the probation department or the clerk under this section
 15 shall be transferred to the county treasurer, who shall, **except as**
 16 **provided in subsection (n)**, deposit the money into the county
 17 supplemental adult probation services fund. The fiscal body of the
 18 county shall appropriate money from the county supplemental adult
 19 probation services fund:
 20 (1) to the county, superior, circuit, or municipal court of the
 21 county that provides probation services to adults to supplement
 22 adult probation services; and
 23 (2) to supplement the salaries of probation officers in accordance
 24 with the schedule adopted by the county fiscal body under
 25 IC 36-2-16.5.
 26 (g) The probation department or clerk shall collect the
 27 administrative fee under subsection (e)(4) before collecting any other
 28 fee under subsection (e). All money collected by the probation
 29 department or the clerk of a city or town court under this section shall
 30 be transferred to the fiscal officer of the city or town, **who shall, except**
 31 **as provided in subsection (n)**, ~~for~~ deposit the money into the local
 32 supplemental adult probation services fund. The fiscal body of the city
 33 or town shall appropriate money from the local supplemental adult
 34 probation services fund to the city or town court of the city or town for
 35 the court's use in providing probation services to adults or for the
 36 court's use for other purposes as may be appropriated by the fiscal
 37 body. Money may be appropriated under this subsection only to those
 38 city or town courts that have an adult probation services program. If a
 39 city or town court does not have such a program, the money collected
 40 by the probation department must be transferred and appropriated as
 41 provided under subsection (f).
 42 (h) Except as provided in subsection (j), the county or local

C
O
P
Y



1 supplemental adult probation services fund may be used only to
 2 supplement probation services and to supplement salaries for probation
 3 officers. A supplemental probation services fund may not be used to
 4 replace other funding of probation services. Any money remaining in
 5 the fund at the end of the year does not revert to any other fund but
 6 continues in the county or local supplemental adult probation services
 7 fund.

8 (i) A person placed on probation for more than one (1) crime:

9 (1) may be required to pay more than one (1) initial probation
 10 user's fee; and

11 (2) may not be required to pay more than one (1) monthly
 12 probation user's fee per month;

13 to the probation department or the clerk.

14 (j) This subsection applies to a city or town located in a county
 15 having a population of more than one hundred eighty-two thousand
 16 seven hundred ninety (182,790) but less than two hundred thousand
 17 (200,000). Any money remaining in the local supplemental adult
 18 probation services fund at the end of the local fiscal year may be
 19 appropriated by the city or town fiscal body to the city or town court for
 20 use by the court for purposes determined by the fiscal body.

21 (k) In addition to other methods of payment allowed by law, a
 22 probation department may accept payment of fees required under this
 23 section and section 1.5 of this chapter by credit card (as defined in
 24 IC 14-11-1-7). The liability for payment is not discharged until the
 25 probation department receives payment or credit from the institution
 26 responsible for making the payment or credit.

27 (l) The probation department may contract with a bank or credit
 28 card vendor for acceptance of bank or credit cards. However, if there
 29 is a vendor transaction charge or discount fee, whether billed to the
 30 probation department or charged directly to the probation department's
 31 account, the probation department may collect a credit card service fee
 32 from the person using the bank or credit card. The fee collected under
 33 this subsection is a permitted additional charge to the money the
 34 probation department is required to collect under subsection (d) or (e).

35 (m) The probation department shall forward the credit card service
 36 fees collected under subsection (l) to the county treasurer or city or
 37 town fiscal officer in accordance with subsection (f) or (g). These funds
 38 may be used without appropriation to pay the transaction charge or
 39 discount fee charged by the bank or credit card vendor.

40 (n) **The county treasurer or the fiscal officer of a city or town**
 41 **shall semiannually distribute to the auditor of state money**
 42 **collected under subsections (d)(6) and (e)(6) for deposit in the**

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

public safety technology fund (IC 4-10-22-3).

SECTION 2. IC 4-10-22 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

Chapter 22. Public Safety Technology Fund

Sec. 1. As used in this chapter, "fund" means the public safety technology fund established by section 3 of this chapter.

Sec. 2. As used in this chapter, "qualified sex or violent offender tracking program" means a computer software program capable of registering, tracking, and monitoring sex or violent offenders (as defined in IC 11-8-8-5). A qualified sex or violent offender tracking program must have the following capabilities:

- (1) The ability to register and track offenders in accordance with Indiana law, including the ability to store all registration data required by statute.**
- (2) Customizable scheduling for offender verification.**
- (3) Automatic calendar functionality.**
- (4) A searchable data base that is maintained by the vendor.**
- (5) Mapping capability that is capable of verifying addresses and identifying exclusion zones.**
- (6) The ability to offer integrated community notification, including customizable electronic mail notification.**
- (7) Guaranteed ninety-nine and nine-tenths percent (99.9%) uptime.**
- (8) Full-time user support services.**
- (9) The ability to provide interagency alerts concerning offender movement.**
- (10) The ability to identify when an offender is in jail custody.**

Sec. 3. (a) The public safety technology fund is established for the purpose of purchasing, operating, and maintaining a qualified sex or violent offender tracking program. The fund shall be administered by the attorney general in consultation with the Indiana sheriffs. The fund consists of:

- (1) money deposited in the fund from the probation technology fee under IC 35-38-2-1;**
- (2) grants; and**
- (3) donations.**

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that

C
O
P
Y



1 accrues from these investments shall be deposited in the fund.
2 (d) Money in the fund at the end of a state fiscal year does not
3 revert to the state general fund.
4

C
o
p
y



Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 65(b), I hereby report that, subsequent to the adoption of the Corrections, Criminal, and Civil Matters Reports on January 28, 2010, Senate Bill 26 and Senate Bill 291 were reassigned to the Committee on Appropriations.

LONG

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 291, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Page 2, line 35, after "a" insert "**monthly**".

Page 2, line 35, after "(\$1)" delete ";" and insert "**for each month that the person remains on probation;**".

Page 3, line 7, after "a" insert "**monthly**".

Page 3, line 7, after "(\$1)" delete ";" and insert "**for each month that the person remains on probation;**".

Page 5, line 15, delete "Calendar" and insert "**Automatic calendar**".

Page 5, between lines 23 and 24, begin a new line block indented and insert:

"(9) The ability to provide interagency alerts concerning offender movement.

(10) The ability to identify when an offender is in jail custody."

Page 5, line 27, after "general" delete "." and insert "**in consultation with the Indiana sheriffs.**".

Page 5, delete lines 40 through 41.

and when so amended that said bill do pass.

(Reference is to SB 291 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 9, Nays 1.

SB 291—LS 7042/DI 106+



C
O
P
Y

COUNTY	ACTIVE	INCARCERATED	TOTAL	SVP	OAC	SEXO	VIOL
ADAMS	31	7	38	5	25	8	0
ALLEN	421	137	558	171	175	210	0
BARTHOLOMEW	76	23	99	30	32	33	4
BENTON	17	3	20	4	10	6	0
BLACKFORD	17	6	23	3	13	0	0
BOONE	67	10	77	20	18	38	1
BROWN	24	6	30	3	19	7	1
CARROLL	34	11	45	4	29	12	0
CASS	91	34	125	37	59	26	3
CLARK	201	50	251	51	111	85	1
CLAY	51	7	58	13	26	19	0
CLINTON	72	40	112	31	58	22	0
CRAWFORD	20	4	24	2	15	7	0
DAVISS	42	13	55	11	26	18	0
DEARBORN	79	43	122	16	53	50	0
DECATUR	46	9	55	11	19	24	1
DEKALB	60	12	72	15	34	20	0
DELAWARE	190	67	257	76	81	90	7
DUBOIS	53	22	75	18	29	26	1
ELKHART	371	153	524	127	196	191	8
FAYETTE	47	11	58	8	21	24	1
FLOYD	90	22	112	32	31	34	0
FOUNTAIN	34	6	40	8	16	16	0
FRANKLIN	42	7	49	1	17	28	1
FULTON	47	7	54	15	30	6	3
GIBSON	47	13	60	5	24	29	0
GRANT	196	26	222	49	100	73	0
GREENE	49	10	59	9	26	21	1
HAMILTON	142	34	176	26	74	40	4
HANCOCK	54	11	65	15	23	24	0
HARRISON	47	15	62	8	30	23	0
HENDRICKS	104	33	137	25	58	50	4
HENRY	66	19	85	16	34	24	0
HOWARD	171	42	213	41	79	92	0
HUNTINGTON	77	43	120	14	68	33	1
IDOC	63	151	214	81	48	82	3
JACKSON	105	33	138	23	57	55	3
JASPER	31	7	38	4	13	18	1
JAY	53	7	60	5	23	31	0
JEFFERSON	48	17	65	15	27	22	0
JENNINGS	66	14	80	15	36	26	2
JOHNSON	141	35	176	36	87	50	1
KNOX	60	2	62	10	22	29	1
KOSCIUSKO	105	11	116	11	68	34	2
LAGRANGE	57	9	66	23	14	28	0
LAKE	591	148	739	151	270	247	28

COUNTY	ACTIVE	INCARCERATED	TOTAL	SVP	OAC	SEXO	VIOL
LAPORTE	148	47	195	44	67	76	5
LAWRENCE	68	10	78	10	41	23	4
MADISON	330	71	401	91	165	138	5
MARION	1464	493	1957	626	699	581	17
MARSHALL	76	14	90	15	50	22	0
MARTIN	12	1	13	0	10	3	0
MIAMI	63	14	77	12	42	23	0
MONROE	134	52	186	29	82	65	10
MONTGOMERY	54	15	69	4	31	32	0
MORGAN	100	18	118	24	50	39	0
NEWTON	21	2	23	1	8	14	0
NOBLE	62	22	84	11	40	33	0
OHIO	15	7	22	3	11	8	0
ORANGE	41	6	47	3	27	17	0
OWEN	36	4	40	10	18	12	0
PARKE	27	24	51	11	11	13	0
PERRY	38	10	48	5	21	21	1
PIKE	35	10	45	8	32	5	0
PORTER	105	36	141	20	76	40	5
POSEY	25	6	31	2	14	12	3
PULASKI	22	12	34	5	19	10	0
PUTNAM	46	13	59	7	31	21	0
RANDOLPH	52	11	63	4	27	31	1
RIPLEY	48	15	63	10	23	28	0
RUSH	39	5	44	3	16	21	2
SCOTT	53	7	60	15	30	15	0
SHELBY	78	25	103	36	33	33	0
SPENCER	30	4	34	3	16	12	0
ST JOSEPH	327	213	540	72	281	130	53
STARKE	36	3	39	5	22	12	0
STEUBEN	58	16	74	14	26	34	0
SULLIVAN	36	17	53	3	27	20	3
SWITZERLAND	23	3	26	4	12	10	0
TIPPECANOE	163	50	213	33	61	118	1
TIPTON	18	3	21	4	6	11	0
UNION	7	2	9	1	2	6	0
VANDEBURGH	376	160	536	123	217	188	8
VERMILLION	19	4	23	1	0	17	2
VIGO	185	62	247	71	83	90	1
WABASH	56	31	87	17	29	30	1
WARREN	19	1	20	3	5	11	0
WARRICK	42	12	54	4	25	24	1
WASHINGTON	59	10	69	11	23	33	1
WAYNE	98	33	131	38	36	55	0
WELLS	48	12	60	5	29	25	1
WHITE	47	15	62	5	30	25	2
WHITLEY	42	10	52	11	28	13	0
TOTALS	9377	3001	12378	2731	4956	4231	210

AS OF SEPTEMBER 25, 2012 ACTIVE INCARCERATED TOTAL ACT / INCARC SVP OAC SEXO VIOL

probation personnel positions, a range of compensation, and such other probation expenditures as the probation departments have reported.

Probation officers and staffs constitute the largest segment of trial court personnel in Indiana. During 2011, there were approximately 1,300 professional probation officers and approximately 573 other employees providing probation services throughout Indiana.

SUMMARY OF 2011 CASELOAD DATA

The probation caseload information presented in this report was reported to the Division on a quarterly basis. It reflects the number of adult and juvenile supervisions pending at the beginning and end of the calendar year, the number of supervisions and referrals received, and the number of supervisions and referrals closed during the reporting year.

Beginning in 1996, Indiana's probation departments began mandatory use of a probation classification and workload measures system. Thus, probationers are assigned to supervision based on the relative risk of committing a new offense while on probation. The statistical information reflects the relative risk levels of probationers on supervision as of December 31, 2011.

The report also reflects information about how the supervision was terminated. The juvenile data provides information on the total number of juvenile referrals, preliminary inquiries, and predisposition reports, as well as the juvenile supervisions.

In 2011, there was an overall decrease of 2.2 percent in the number of new probation supervisions. The decrease was caused by the number of new misdemeanor supervisions which were

down 3,320, a decrease of 5.8 percent. Although there was a decrease in the number of new misdemeanor supervisions, there was an increase in the number of new juvenile and felony supervisions. Juvenile supervisions increased by 232, up 1.3 percent. New felony supervisions received during 2011 increased by 679, an increase of 2.0 percent from last year. In the adult felony category, 34,324 persons were placed on probation during the reporting year, a number that could have resulted in an increased inmate population in the Department of Correction absent the probation system.

Although there was a decline in the overall number of new supervisions received in 2011, the total number of supervisions pending at the end of the year was up from 2010. At the end of 2011, Indiana probation departments were supervising 150,085 adults and juveniles, an increase of 1.7 percent from the previous year.

SUMMARY OF FISCAL DATA

The 2011 data indicates that county trial courts spent \$80,737,060 on salaries of probation officers and probation office staff. The salary expenditure by the city and town court probation departments was an additional \$2,423,549. This represents approximately 31.8 percent of all expenditures on the operation of the trial courts. This amount, however, was partially offset by the collection of adult and juvenile probation user fees. In 2011, \$15,026,293 was collected statewide in adult probation user fees and \$1,387,536 in juvenile user fees, for a total of \$16,413,829.

Many probationers are ordered to pay restitution as a condition of probation. These funds are collected and distributed to the appropriate recipient by the clerk's office or the probation department. In 2011,

such other probation expenditures as the probation departments have reported.

Probation officers and probation office staff constitute the largest segment of trial court personnel in Indiana. During 2010, there were approximately 1,342 professional probation officers and approximately 578 other employees providing probation services throughout Indiana.

SUMMARY OF 2010 CASELOAD DATA

The probation caseload information presented in this report was reported to the Division on a quarterly basis. It reflects the number of adult and juvenile supervisions pending at the beginning and end of the calendar year, the number of supervisions and referrals received, and the number of supervisions and referrals closed during the reporting year.

Beginning in 1996, Indiana's probation departments began mandatory use of a probation classification and workload measures system. Thus, probationers are assigned to supervision based on the relative risk of committing a new offense while on probation. The statistical information reflects the relative risk levels of probationers on supervision as of December 31, 2010.

The report also reflects information about how the supervision was terminated. The juvenile data provide information on the total number of juvenile referrals, preliminary inquiries, and predisposition reports, as well as the juvenile supervisions.

In 2010, there was an overall decrease of 5.5 percent in the number of new probation supervisions. The largest decrease was in the number of new misdemeanor supervisions which were down 4,762, a decrease of 7.7 percent.

Although not as large as the drop in new misdemeanor supervisions, there were also decreases in the number of new juvenile and felony supervisions. Juvenile supervisions decreased by 612, down 3.2 percent. New felony supervisions received during 2010 decreased by 976, a decline of 2.8 percent from last year. In the adult felony category, 33,645 persons were placed on probation during the reporting year, a number that could have resulted in an increased inmate population in the Department of Correction absent the probation system.

Along with the decline in the number of new supervisions received in 2010, the total number of supervisions pending at the end of the year is down from 2009. At the end of 2010, Indiana probation departments were supervising 147,589 adults and juveniles, a decrease of 1.7 percent from the previous year.

SUMMARY OF FISCAL DATA

The 2010 data indicate that county trial courts spent \$80,536,497 on salaries of probation officers and probation office staff. The salary expenditure by the city and town court probation departments was an additional \$2,562,294. This represents approximately 31.8 percent of all expenditures on the operation of the trial courts. This amount, however, was partially offset by the collection of adult and juvenile probation user fees. In 2010, \$16,530,512 was collected statewide in adult probation user fees and \$1,368,608 in juvenile user fees, for a total of \$17,899,120.

Many probationers are ordered to pay restitution as a condition of probation. These funds are collected and distributed to the appropriate recipient by the clerk's office or the probation department. In 2010, probationers paid \$6,524,375 for distribution to aggrieved parties.

HOME DETENTION

Indiana has used home detention, with or without electronic monitoring, as a condition of probation since 1988. Both probation departments and community corrections agencies operate home detention programs. As of January 1, 2009, 20 probation departments were supervising adult and juvenile probationers through home detention, either with or without electronic monitoring. These departments collected \$1,176,249 in home detention user fees in 2009. These fees are charged in addition to probation user fees. Community Correction agencies collected \$9,576,610 from individuals being electronically monitored on home detention.

Home detention supervisions are counted as "Other" supervisions for purposes of this report and are included in the aggregate supervisions reflected herein. A detailed report on Indiana's home detention program is available from the Indiana Judicial Center.

FUNDING OF PROBATION SERVICES

As with other trial court operations, local county revenues, derived primarily through property taxes, fund probation services. Depending on the size of the county and budget, many courts include the court's probation functions within the operations budget of the court itself. In the more populous counties where the probation offices are quite sizable, the probation office prepares a separate budget to the local funding authority. Counties that have established and maintain juvenile detention facilities reflect this substantial expenditure as a probation expense.

Probation user fees, adult and juvenile, provide another significant funding source for probation services. The user fees are paid by probationers as part of the conditions of probation and may be used by the courts to provide probation services.

Because many counties do not have a separate probation budget, non-personnel expenditures are absorbed within the court's expenditures, making it impossible to derive a complete picture of all probation-related expenditures. This report does include probation personnel positions, a range of compensation, and such other probation expenditures as the probation departments have reported.

Probation officers and staffs constitute the largest segment of trial court personnel in Indiana. During 2009, there were approximately 1,362 professional probation officers and approximately 561 other employees providing probation services throughout Indiana.

SUMMARY OF 2009 CASELOAD DATA

The probation caseload information presented in this report was reported to the Division on a quarterly basis. It reflects the number of adult and juvenile supervisions pending at the beginning and end of the calendar year, the number of supervisions and referrals received, and the number of supervisions and referrals closed during the reporting year.

Beginning in 1996, Indiana's probation departments began mandatory use of a probation classification and workload measures system. Thus, probationers are assigned to supervision based on the relative risk of committing a new offense while on probation. The statistical information reflects the relative risk levels of probationers on supervision as of December 31, 2009.

The report also reflects information about how the supervision was terminated. The juvenile data provides information on the total number of juvenile referrals, preliminary inquiries, and predisposition reports, as well as the juvenile supervisions.

In 2009, there was an overall decrease of 3.5% in the number of new probation supervisions. The largest decrease was in the number of new juvenile supervisions which were down 2,467, a decrease of 11.6%. Although not as large as the drop in new juvenile supervisions, there were also decreases in the number of new felony and misdemeanor supervisions. New misdemeanor supervisions received during 2009 decreased by 1,509, a decline of 2.4% from last year. Felony supervisions decreased by 221, down only .6%. In the adult felony category, 34,621 persons were placed on probation during the reporting year, a number that could have resulted in an increased inmate population in the Department of Correction absent the probation system.

Along with the decline in the number of new supervisions received in 2009, the total number of supervisions pending at the end of the year is down from 2008. At the end of 2009, Indiana probation departments were supervising 150,172 adults and juveniles, a decrease of 2.5% from the previous year.

SUMMARY OF FISCAL DATA

The 2009 data indicates that county trial courts spent \$80,144,131 on salaries of probation officers and probation office staff. The salary expenditure by the city and town court probation departments was an additional \$2,557,519. This represents approximately 32% of all expenditures on the operation of the trial courts. This amount, however, was partially offset by the collection of adult and juvenile probation user fees. In 2009, \$15,789,269 was collected statewide in adult probation user fees and \$1,485,576 in juvenile user fees, for a total of \$17,274,845.

Many probationers are ordered to pay restitution as a condition of probation. These funds are collected and distributed to

the appropriate recipient by the clerk's office or the probation department. In 2009, probationers paid \$7,075,780 for distribution to aggrieved parties.

The information compiled in this report would not be possible without the cooperation and contribution of Indiana's probation officers and their staff.

IC 35-38-2-1**Conditions of probation; advice on violation specification in record; administrative costs; transfer of three percent of probation user's fee; administrative fee; user's fee; collection of administrative fee; disposition of money collected; supplemental adult probation services fund; payment by credit card; credit card service fee**

Sec. 1. (a) Whenever it places a person on probation, the court shall:

- (1) specify in the record the conditions of the probation; and
- (2) advise the person that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

- (A) One (1) year after the termination of probation.
- (B) Forty-five (45) days after the state receives notice of the violation.

(b) In addition, if the person was convicted of a felony and is placed on probation, the court shall order the person to pay to the probation department the user's fee prescribed under subsection (d). If the person was convicted of a misdemeanor, the court may order the person to pay the user's fee prescribed under subsection (e). The court may:

(1) modify the conditions (except a fee payment may only be modified as provided in section 1.7(b) of this chapter); or

(2) terminate the probation;

at any time. If the person commits an additional crime, the court may revoke the probation.

(c) If a clerk of a court collects a probation user's fee, the clerk:

(1) may keep not more than three percent (3%) of the fee to defray the administrative costs of collecting the fee and shall deposit any fee kept under this subsection in the clerk's record perpetuation fund established under IC 33-37-5-2; and

(2) if requested to do so by the county auditor, city fiscal officer, or town fiscal officer under clause (A), (B), or (C), may transfer not more than three percent (3%) of the fee to the:

- (A) county auditor, who shall deposit the money transferred under this subdivision into the county general fund;
- (B) city general fund when requested by the city fiscal officer; or
- (C) town general fund when requested by the town fiscal officer.

(d) In addition to any other conditions of probation, the court shall order each person convicted of a felony to pay:

(1) not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) as an initial probation user's fee;

(2) a monthly probation user's fee of not less than fifteen dollars (\$15) nor more than thirty dollars (\$30) for each month that the person remains on probation;

(3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter;

(4) an alcohol abuse deterrent fee and a medical fee set by the court under IC 9-30-9-8, if the court has referred the defendant to an alcohol abuse deterrent program; and

(5) an administrative fee of one hundred dollars (\$100);

to either the probation department or the clerk.

(e) In addition to any other conditions of probation, the court may order each person convicted of a misdemeanor to pay:

(1) not more than a fifty dollar (\$50) initial probation user's fee;

(2) a monthly probation user's fee of not less than ten dollars (\$10) nor more than twenty dollars (\$20) for each month that the person remains on probation;

(3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter; and

(4) an administrative fee of fifty dollars (\$50);

to either the probation department or the clerk.

(f) The probation department or clerk shall collect the administrative fees under subsections (d)(5) and (e)(4) before collecting any other fee under subsection (d) or (e). All money collected by the probation department or the clerk under this section shall be transferred to the county treasurer, who shall deposit the money into the county supplemental adult probation services fund.

The fiscal body of the county shall appropriate money from the county supplemental adult probation services fund:

(1) to the county, superior, circuit, or municipal court of the county that provides probation services to adults to supplement adult probation services; and

(2) to supplement the salaries of probation officers in accordance with the schedule adopted by the county fiscal body under IC 36-2-16.5.

(g) The probation department or clerk shall collect the administrative fee under subsection (e)(4) before collecting any other fee under subsection (e). All money collected by the probation department or the clerk of a city or town court under this section shall be transferred to the fiscal officer of the city or town for deposit into the local supplemental adult probation services fund. The fiscal body of the city or town shall appropriate money from the local supplemental adult probation services fund to the city or town court of the city or town for the court's use in providing probation services to adults or for the court's use for other purposes as may be appropriated by the fiscal body. Money may be appropriated under this subsection only to those city or town courts that have an adult probation services program. If a city or town court does not have such a program, the money collected by the probation department must be transferred and appropriated as provided under subsection (f).

(h) Except as provided in subsection (j), the county or local supplemental adult probation services fund may be used only to supplement probation services and to supplement salaries for probation officers. A supplemental probation services fund may not be used to replace other funding of probation services. Any money remaining in the fund at the end of the year does not revert to any other fund but continues in the county or local supplemental adult probation services fund.

(i) A person placed on probation for more than one (1) crime:

(1) may be required to pay more than one (1) initial probation user's fee; and

(2) may not be required to pay more than one (1) monthly probation user's fee per month; to the probation department or the clerk.

(j) This subsection applies to a city or town located in a county having a population of more than one hundred eighty-five thousand (185,000) but less than two hundred fifty thousand (250,000). Any money remaining in the local supplemental adult probation services fund at the end of the local fiscal year may be appropriated by the city or town fiscal body to the city or town court for use by the court for purposes determined by the fiscal body.

(k) In addition to other methods of payment allowed by law, a probation department may accept payment of fees required under this section and section 1.5 of this chapter by credit card (as defined in IC 14-11-1-7). The liability for payment is not discharged until the probation department receives payment or credit from the institution

responsible for making the payment or credit.

(l) The probation department may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the probation department or charged directly to the probation department's account, the probation department may collect a credit card service fee from the person using the bank or credit card. The fee collected under this subsection is a permitted additional charge to the money the probation department is required to collect under subsection (d) or (e).

(m) The probation department shall forward the credit card service fees collected under subsection (l) to the county treasurer or city or town fiscal officer in accordance with subsection (f) or (g). These funds may be used without appropriation to pay the transaction charge or discount fee charged by the bank or

credit card vendor.

As added by P.L.311-1983, SEC.3. Amended by P.L.182-1984, SEC.1; P.L.296-1985, SEC.2; P.L.178-1986, SEC.2; P.L.305-1987, SEC.36; P.L.123-1988, SEC.28; P.L.67-1990, SEC.10; P.L.1-1991, SEC.196; P.L.18-1995, SEC.112; P.L.216-1996, SEC.14; P.L.117-1996, SEC.4; P.L.117-1996, SEC.6; P.L.170-2002, SEC.132; P.L.277-2003, SEC.11; P.L.98-2004, SEC.150; P.L.1-2006, SEC.529; P.L.119-2012, SEC.166.

IC 35-38-2-1.5

Increased probation user's fee

Sec. 1.5. Notwithstanding the probation user's fee amounts established under section 1 of this chapter, a court may order a person to pay a probation user's fee that exceeds the maximum amount allowed under section 1 of this chapter if:

- (1) the person was placed on probation in another state and moved or was transferred to Indiana;
- (2) the other state allows a higher probation user's fee than the maximum amount allowed under section 1 of this chapter; and
- (3) the probation user's fee the court orders the person to pay does not exceed the maximum amount allowed in the other state.

As added by P.L.277-2003, SEC.12.

IC 35-38-2-1.7

Early payment of probation user's fee; recalculation of probation user's fee; discharge; wage garnishment; withholding driving privileges

Sec. 1.7. (a) A person may pay a monthly probation user's fee under section 1 or 1.5 of this chapter before the date the payment is required to be made without obtaining the prior approval of a court or a probation department. However, if the person is discharged from probation before the date the person was scheduled to be released from probation, any monthly probation user's fee paid in advance by the person may not be refunded.

-
- (b) A probation department may petition a court to:
- (1) impose a probation user's fee on a person; or
 - (2) increase a person's probation user's fee;
- under section 1 or 1.5 of this chapter if the financial ability of the person to pay a probation user's fee changes while the person is on probation.

- (c) An order to pay a probation user's fee under section 1 or 1.5 of this chapter:
- (1) is a judgment lien that:
 - (A) attaches to the property of the person subject to the order;
 - (B) may be perfected;
 - (C) may be enforced to satisfy any payment that is delinquent under section 1 or 1.5 of this chapter; and
 - (D) expires;
 - in the same manner as a judgment lien created in a civil proceeding;
 - (2) is not discharged by the completion of the person's probationary period or other sentence imposed on the person; and
 - (3) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5.

(d) If a court orders a person to pay a probation user's fee under section 1 or 1.5 of this chapter, the court may garnish the wages, salary, and other income earned by the person to enforce the order.

- (e) If:
- (1) a person is delinquent in paying the person's probation user's fees required under section 1 or 1.5 of this chapter; and
 - (2) the person's driver's license or permit has been suspended or revoked or the person has never been issued a driver's license or permit;

the court may order the bureau of motor vehicles to not issue a driver's license or permit to the person until the person has paid the person's delinquent probation user's fees.

As added by P.L.277-2003, SEC.13.

IC 35-38-2-1.8

New probation hearings allowed at any time; modification of conditions; deadlines

Sec. 1.8. (a) This section does not apply to the modification of a user's fee payment under section 1.7 (b) of this chapter.

(b) The court may hold a new probation hearing at any time during a probationer's probationary period:

- (1) upon motion of the probation department or upon the court's motion; and
- (2) after giving notice to the probationer.

(c) At a probation hearing described in subsection (b), the court may modify the probationer's conditions of probation. If the court modifies the probationer's conditions of probation, the court shall:

- (1) specify in the record the conditions of probation; and

(2) advise the probationer that if the probationer violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

- (A) One (1) year after the termination of probation.
- (B) Forty-five (45) days after the state receives notice of the violation.

(d) The court may hold a new probation hearing under this section even if:

- (1) the probationer has not violated the conditions of probation; or
- (2) the probation department has not filed a petition to revoke probation.

As added by P.L.14-2005, SEC.1.

IC 35-38-2-2

Repealed

(Repealed by P.L.1-1991, SEC.197.)

IC 35-38-2-2.1

Conditions of probation; payment of alcohol and drug countermeasures fee

Sec. 2.1. As a condition of probation for a person who is found to have:

- (1) committed an offense under IC 9-30-5; or
- (2) been adjudicated a delinquent for an act that would be an offense under IC 9-30-5, if committed by an adult;

the court shall require the person to pay the alcohol and drug countermeasures fee under IC 33-37.

As added by P.L.126-1989, SEC.28. Amended by P.L.2-1991, SEC.104; P.L.98-2004, SEC.151.



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

October 3, 2012

Sheriff (Ret.) Stephen Luce
Executive Director
Indiana Sheriffs' Association
147 East Maryland Street
Indianapolis, IN 46204

Dear Sheriff Luce,

According to the National Center for Missing and Exploited Children, there are currently 722,499 registered sex offenders in the United States, 17,573 of them are registered in Indiana and an estimated 100,000 of the total number are non-compliant meaning they are "missing"; law enforcement doesn't know where they are but know that they are living in our communities. These offenders have moved and failed to re-register their new address or they provided the wrong address. Over half of rape/sexual assault incidents happen within a mile of the victim's home, yet most people have no idea that a sex offender is living within that radius of their home.

Currently there are 92 sheriff's offices in Indiana utilizing the OffenderWatch® program to successfully register and monitor sex offenders in their jurisdictions. The obvious goal is that all sheriffs' offices have permanent funding and tools to continue utilizing OffenderWatch®. There is legislation that has been adopted in Louisiana that supports a funding solution for sex offender registration software. We have compiled the various aspects of the legislation that was passed establishing the Sex Offender Technology Fund, responsible agencies for registering the offenders, and community notification. Helping states establish and implement a funding source to cover the rising expense of registering and monitoring sex offenders without increasing taxes to the citizens as well as providing law enforcement agencies with the tools to properly perform their responsibilities is one of our foundations missions.

The Notification is Prevention Foundation (NIPF) is a national non-profit 501(c) 3 organization which exists for three specific reasons:

- To aid law enforcement agencies who are responsible for registering, monitoring, and actively notifying citizens of the locations of sex offenders who live and work in their communities.
- To aid law enforcement agencies with education and tools for presentation to their citizens concerning sex offenders.
- To help write and advocate stronger and enforceable sex offender laws.

NIPF is the only national organization whose mission is to increase public awareness of registered sex offenders through grass-roots efforts of education, community awareness, and increased government interaction. NIPF supports legislation such as Megan's Law, the Jessica Lunsford Act, the Adam Walsh Act, and future legislation to prevent future victimization. In response to law enforcement agencies seeking a more expanded approach to meeting community notification inquiries, NIPF provides a direct mail notification service to assist law enforcement, probation, and parole officers. In 2011 NIPF mailed over 2.8 million community notification postcards nationwide, alerting citizens of sex offenders living in their neighborhoods; in 2012 we expect to exceed 3 million postcards. The postcards include sex



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

offenders name, address, scars, tattoos, gender, race, hair, eyes, age, weight, & conviction code. This is the only service of this kind in the country.

NIPF is actively involved in amending legislation to support more proactive and broad based community notification. Law enforcement agencies are required by law to make sex offender registration available for public record but do not have to actively notify the public. The Wetterling Act and Megan's Law do not require active community notification only its passive release, meaning that sex offender information is only available to those who register to receive notification. Several states have extended the federal minimum passive release requirement to mandate some form of active community notification. NIPF supports legislation that provides online public access to sex offender registrations, as well as proactively notifying the community through mail, media, and educational programs of where the sex offenders are living and working.

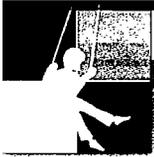
The legislation NIPF recommends is intended to inform legislators and other interested parties of changes and improvements to state sex offender laws that help achieve consistency, reliability and provide a funding source for ongoing sex offender registration and management. These provisions support agencies to achieve compliance with laws such as the Jessica Lunsford Act, Adam Walsh Act and others.

As the Executive Director of the Notification is Prevention Foundation I believe that we have a responsibility to address and help create a solution to support any and all sex offender legislation in our communities. I am asking for your direct help to pass this legislation in your state. Thank you for acting on this legislation, it will help protect our children and provide law enforcement agencies the proper tools to keep our communities safe.

Respectfully,

Alicia

Alicia T. Irmscher
Executive Director
Notification is Prevention Foundation
P.O. Box 3584
Covington, LA 70434
985-276-0190
Alicia@notificationisprevention.org
www.notificationisprevention.org



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

Table of Contents:

Letter of Introduction1-2

Mission Statement4

History of Sex Offender Legislation5

Sex Offender Statistics6

Sex Offender Accountability Act7-17

 I. Optimum Registration Process (Sample Legislation).....7-13

 a. Duty to Register: Establishes who is required by law to register as a sex offender and establishes the Sheriff’s Office as responsible agency for registering, monitoring, and managing the sex offender.

 b. Registration Information: Establishes what documentation is required by law for the sex offender to present when registering.

 c. Notification to those with a duty to register: Establishes requirements for sex offenders to provide active community notification within a certain distance of their home.

 d. Verification Procedures: Establishes the frequency and documentation necessary for a sex offender to present when re-registering either annually, bi-annually, or quarterly at the Sheriff’s Office.

 e. Procedures for out of state activity: Establishes registration and verification procedures for sex offenders convicted in other states, tribal nations, or military.

 f. Penalties: Establishes penalties for failure to properly register and community notification.

 II: Dissemination and Community Notification Process (Sample Legislation).....12-14

 a. Notification of Sex Offenders and Child Predators: Establishes mandatory community notification, frequency, and distance for all sex offenders at their expense to inform the community of their crime, conviction information and where they will be residing.

 III: Funding Features and possible distribution of funds (Sample Legislation).....14-17

 a. Sex Offender Technology Fund: Establishes a minimal monthly fee to be paid by all supervised (Probation & Parole) offenders and how the fee is utilized.

 b. Sex Offender Supervision and Registration Fee: Establishes a \$60 a year fee to be paid to Sheriff’s Office during annual registration to help offset cost of monitoring offenders.

 c. Possible distribution of collected funds/fees.



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

Notification is Prevention Foundation

Our Mission:

Notification Is Prevention Foundation (NIPF) is a nonprofit organization that seeks to increase public awareness of registered sex offenders through grass-roots efforts of education, community awareness, and increased government interaction, thereby supporting Megan's Law, the Jessica Lunsford Act, the Adam Walsh Act, and helping prevent future victimization.

Our Vision:

1. Ensure state sex offender registries increase accuracy of databases to 90%.
2. Improve time from registration to web and community notification to 24 hours or less.
3. Provide tools to registration points that meet minimal statutory requirements.

Objective:

Educate and inform the public about sex offenders within geographic proximity.

1. Require the sex offender to pay for their community notification cards to be mailed in a 0.3 mile radius up to a 1 mile radius.
2. Use mapping technology and US Post Office to mail community notification cards.
3. Provide mailing service for local law enforcement at a cost of one 1st class stamp per mail piece.
4. Mail 3 million community notifications cards in 2012.
5. Mailing done in less than 48 hours.



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

Current Sex Offender Legislation:

Since the enactment of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act in 1994, all states, the District of Columbia and two territories currently have some form of a sex offender registration and notification program. On July 27, 2006, President Bush signed into law the Adam Walsh Child Protection and Safety Act which dramatically enhanced the effectiveness of current programs by establishing a new comprehensive set of minimum standards for sex offender registration and notification

Prior to 1994 few states required convicted sex offenders to register their addresses with local law enforcement. As recognition of the severity of this problem grew, Congress passed the **Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act**, 42 U.S.C. §§14071, et seq. ("Wetterling Act"). This requires state implementation of a sex-offender registration program or a 10 percent forfeiture of federal funds for state and local law enforcement under the Byrne Grant Program of the U.S. Department of Justice. Today, all fifty states and Washington, D.C. have sex offender registries.

The realization that registration alone was not enough came after the tragic murder of 7-year-old Megan Kanka by a released sex offender living on her street. The public outcry created a call for programs to provide the public with information regarding released sex offenders. In 1996 Congress passed a federal law mandating state community notification programs. Megan's Law, section (e) of the Wetterling Act, requires all states to conduct community notification but does not set out specific forms and methods, other than requiring the creation of internet sites containing state sex-offender information. Beyond that requirement, states are given broad discretion in creating their own policies.

The Jessica Lunsford Act revises sexual predator criteria; requires twice yearly re-registration by sexual predators; provides criminal offenses for failing to re-register, failing to respond to address verification, failing to report or providing false information about sexual predators, and harboring or concealing a sexual predator; and requires electronic monitoring for certain offenders placed on conditional release.

Despite states' implementation of the Jacob Wetterling Act, the increased mobility of our society has led to "lost" sex offenders. The "lost" are those who fail to comply with registration duties yet remain undetected due to the inconsistencies among state laws, coupled with the burden faced by authorities to keep track of the increasing number of offenders. The U.S. Congress recognized this problem and acted with the Adam Walsh Child Protection and Safety Act. This sweeping new law mandates specific registration requirements for sex offenders in all states. Once all the states come into compliance with the Adam Walsh Act (the extended deadline is July 27, 2011), the disparities among the state registration laws will be eliminated and sex offenders will no longer be able to slip through the cracks in the system. In addition, the Adam Walsh Act mandates that specified information about sex offenders must be released to the public. Each state must create a publicly-accessible and searchable website that provides consistent information about the offenders in its registry. This will create a better tool for the public in their efforts to protect themselves from sex offenders living in their communities.



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

Sex Offender statistics, why registration and community notification are important:¹

Sex Offenders are people you work with, shop with, go to church with; they are people you know...

- ❖ There are currently 722,499 registered sex offenders in the US and an estimated 100,000 are non-compliant meaning they are “missing”, law enforcement doesn’t know where they are but they are living in our communities.
- ❖ That equates to 1 sex offender per 427 people and 1 sex offender per 210 men
- ❖ 90% are male
- ❖ 90% are religious
- ❖ 75% are Caucasian
- ❖ 80% are/have been married
- ❖ 65% are middle income or above
- ❖ 50% are college educated
- ❖ 45% of sexual assault victims are under 12 years of age.
- ❖ 75% of victims know their attacker.
- ❖ Over half of rape/sexual assault incidents happened within a mile of the victim’s home.
- ❖ Sex offenders cross socio-economic boundaries, living in both the richest and poorest neighborhoods.
- ❖ 1 in 4 girls is sexually abused before the age of 18.
- ❖ 1 in 6 boys is sexually abused before the age of 18.
- ❖ 1 in 3 children will report the incident
- ❖ 1 in 5 children are solicited sexually while on the internet.
- ❖ Nearly 70% of all reported sexual assaults (including assaults on adults) occur to children ages 17 and under.
- ❖ An estimated 39 million survivors of childhood sexual abuse exist in America today.
- ❖ Nearly 70% of child sex offenders have between 1 and 9 victims; at least 20% have 10 to 40 victims.
- ❖ An average serial child molester may have as many as 400 victims in his lifetime.
- ❖ Over 90% of the public feel that tough punishment for sex offenders especially those involving children should be a top national priority for state and federal policymakers.
- ❖ Most sex offenders are not in prison, and those who are tend to serve limited sentences
- ❖ Most sex offenders are largely unknown to people in the community
- ❖ Sex offenders have a high risk of re-offending
- ❖ Cost per day to incarcerate a sex offender: \$85.02
- ❖ Mandatory GPS monitoring unit cost: \$7.50-\$14.50 per day per bracelet
- ❖ Price of mandatory DNA tests: \$35
- ❖ Annual salary of experienced probation officer: \$45,677 to \$70,845 per year
- ❖ Citizens that register for e-mail alerts receive sex offender information within 12 hours of registration.

¹All statistics and facts were taken from the Darkness 2 Light, National Center for Exploited and Missing Children, and VERA Institute of Justice websites.



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

The Challenge:

According to the National Center for Missing and Exploited Children, there are currently 728,435 registered sex offenders in the United States. Sex offenders pose an enormous challenge for policy makers: they evoke unparalleled fear among constituents; their offenses are associated with a great risk of psychological harm; and most of their victims are children and youth. As policy makers address the issue of sex offenders, they are confronted with some basic realities:

- Over 90% of the public feel that tough punishment for sex offenders especially those involving children should be a top national priority for state and federal policymakers.
- Most sex offenders are not in prison, and those who are tend to serve limited sentences
- Most sex offenders are largely unknown to people in the community
- Sex offenders have a high risk of re-offending
- Registering and monitoring sex offenders is very costly to the responsible local law enforcement agency and they rarely receive funding from the state or federal government to properly enforce the laws.

Sex Offender Accountability Act

What is the Sex Offender Accountability Act? *It is an initiative to provide a funding source for States and local Law Enforcement Agencies to support and enforce current and future sex offender legislation. While community supervision and oversight is widely recognized as essential, the system for providing such supervision is overwhelmed. This Act is intended to inform legislators and other interested parties of Notification is Prevention Foundation's recommendations regarding changes and improvements to state sex offender laws that help achieve consistency, reliability and provide a funding source for ongoing sex offender registration, management, and community notification. These provisions can help agencies achieve compliance with federal laws such as the Adam Walsh Act as well as provide funding sources for Sex Offender Registration and Management, and possibly GPS monitoring units and DNA testing for sex offenders:*

I. Amend Sex Offender Registration to include:

When registering with the local law enforcement agency the offender must produce:

- Two proofs of valid address
- Registration of vehicles information to include but not limited to, make, model, year and color.
- Money order or cashier check of \$66 for the supervision fee and estimated dollar amount for the "Community Notification" mailings
- Signed statement that the information provided is accurate
- Failure to provide and meet any obligation is a felony.
- Those offenders representing "indigent" with an inability to make financial payment are to be classified so and shall conduct 100 hours of community service as defined and specified by the local law enforcement agency office.

Failure to register results in these actions:



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

- For a first offense, the sex offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days, or fined not more than five hundred dollars, or both;
- For a second offense, the sex offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years, or fined not more than one thousand dollars, or both;
- For a third or subsequent offense, the sex offender is guilty of a felony and, upon conviction, must be imprisoned for not more than five years, or fined not more than five thousand dollars, or both.
- A local government may not enact an ordinance that contains penalties that exceed or are less lenient than the penalties contained in this section.

SAMPLE LEGISLATION:

A. DUTY TO REGISTER

A. The following persons shall be required to register and provide notification as a sex offender or child predator in accordance with the provisions of this Chapter:

- Any adult residing in this state, who has pled guilty to, has been convicted of, or where adjudication has been deferred or withheld for the perpetration or attempted perpetration of, or any conspiracy to commit either of the following:
 - A sex offense as defined in Revised Statute insert number, with the exception of those convicted of felony carnal knowledge of a juvenile as provided in Subsection F of this Section;
 - A criminal offense against a victim who is a minor as defined in R.S. insert number;
- Any juvenile who has pled guilty or has been convicted of a sex offense or second degree kidnapping as provided for in Children's Code Article insert number or insert number, with the exception of simple rape; and
- Any juvenile, who has attained the age of fourteen years at the time of commission of the offense, who has been adjudicated delinquent based upon the perpetration, attempted perpetration, or conspiracy to commit any of the following offenses:
 - Aggravated rape (R.S. insert number).
 - Forcible rape (R.S. insert number).
 - Second degree sexual battery (R.S. insert number).
 - Aggravated kidnapping of a child who has not attained the age of thirteen years (R.S. insert number).
 - Second degree kidnapping of a child who has not attained the age of thirteen years (R.S. insert number).
 - Aggravated incest involving circumstances defined as an "aggravated offense" (R.S. insert number).
 - Aggravated crime against nature (R.S. insert number).

B. The persons listed in Subsection A of this Section shall register with the sheriff of the county of the person's residence, or residences, if there is more than one.



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

The offender shall also register with the sheriff of the county or counties where the offender is an employee and with the sheriff of the county or counties where the offender attends school. The offender shall also register in the county of conviction for the initial registration only.

B. REGISTRATION INFORMATION

The offender shall register and provide all of the following information to the appropriate law enforcement agencies listed in Subsection B of this Section in accordance with the time period provided for in the Verification Procedures paragraph of this Subsection:

- Name and any aliases used by the offender.
- Physical address or addresses of residence.
- Name and physical address of place of employment. If the offender does not have a fixed place of employment, the offender shall provide information with as much specificity as possible regarding the places where he works, including but not limited to travel routes used by the offender.
- Name and physical address of the school in which he is a student.
- Two forms of proof of residence for each residential address provided, including but not limited to a driver's license, bill for utility service, and bill for telephone service. If those forms of proof of residence are not available, the offender may provide an affidavit of an adult resident living at the same address. The affidavit shall certify that the affiant understands his obligation to provide written notice pursuant to R.S. insert number to the appropriate law enforcement agency with whom the offender last registered when the offender no longer resides at the residence provided in the affidavit.
- The crime for which he was convicted and the date and place of such conviction, and if known by the offender, the court in which the conviction was obtained, the docket number of the case, the specific statute under which he was convicted, and the sentence imposed.
- A current photograph.
- Fingerprints, palm prints, and a DNA sample.
- Telephone numbers, including fixed location phone and mobile phone numbers assigned to the offender or associated with any residence address of the offender.
- A description of every vehicle registered to or operated by the offender, including license plate number and a copy of the offender's driver's license or identification card.
- Social security number and date of birth.
- A description of the physical characteristics of the offender, including but not limited to sex, race, hair color, eye color, height, age, weight, scars, tattoos, or other identifying marks on the body of the offender.
- Every e-mail address, online screen name, or other online identity used by the offender to communicate on the Internet.
- Temporary lodging information regarding any place where the offender plans to stay for seven or more days.
- Travel and immigration documents, including but not limited to passports and documents establishing immigration status.

C. NOTIFICATION TO THOSE WITH A DUTY TO REGISTER

Any adult residing in this state who has pled guilty to, has been convicted of, or where adjudication has



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

been deferred or withheld for the perpetration or attempted perpetration of, or conspiracy to commit, a sex offense as defined in R.S. insert number or a criminal offense against a minor as defined in R.S. insert number shall be required to provide the following notifications:

Give notice of the crime for which he was convicted, his name, residential address, a description of his physical characteristics as provided in R.S. insert number, and a photograph or copy thereof to all of the following:

At least one person in every residence, school, child care facility, recreation district, or business within a one-mile radius in a rural area and a three-tenths of a mile radius in an urban or suburban area of the address of the residence where the offender will reside upon release, including all adults residing in the residence of the offender.

D. VERIFICATION PROCEDURES

Once each year during the required period of registration as defined in R.S. insert number, the sex offender shall appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that offender is required to be registered not less frequently than:

- Each year for a tier I sex offender.
- Every six months for a tier II sex offender.
- Every three months for a tier III sex offender.
- Jurisdictions accordingly must require such periodic appearances by sex offenders who reside or are employees or students in the jurisdiction, since sex offenders must register in the jurisdictions of their residence, employment, and school attendance.
- The sex offender must allow a current photograph to be taken.
- The sex offender must be required to review the existing information in the registry that is within his or her knowledge, to correct any item that has changed or is otherwise inaccurate, and to provide any new information there may be in the required registration information categories.

Upon entry of the updated information into the registry, it must be immediately transmitted by electronic forwarding to all other jurisdictions:

- In which the sex offender is or will be required to register as a resident, employee, or student
- In which the sex offender was required to register as a resident, employee, or student until the time of a change of residence, employment, or student status reported in the appearance, even if the sex offender may no longer be required to register in that jurisdiction in light of the updated information.

E. PROCEDURES FOR OUT OF STATE ACTIVITY

Any person who is convicted of an offense under the laws of another state, or military, territorial, foreign, tribal, or federal law for which R.S. insert number requires registration shall be subject to and shall comply with all of the registration requirements of this Chapter within three days of establishing a



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

residence in state and shall comply with all notification requirements required in R.S. insert number. Such person shall also notify the bureau within three days of establishing residence in state.

Any nonresident full-time or part-time worker employed in this state who would be required to register in his state of residence shall register with the appropriate law enforcement agencies as provided in R.S. insert number within three business days of employment. The provisions of this Subsection shall apply to any person employed in this state, with or without compensation.

Nonresident full-time or part-time students enrolled in this state who are required to register in their state of residence shall register within three business days with the appropriate law enforcement agencies as provided in R.S. insert number.

Any resident of this state required to register as required by R.S. insert number shall notify the appropriate law enforcement agencies as provided in R.S. insert number if he leaves the state for full-time or part-time employment in another state, with or without compensation, for a period of more than seven consecutive days or for an aggregate of thirty days or more during the calendar year.

Any resident of this state required to register under the provisions of this Chapter shall notify the appropriate law enforcement agencies as provided in R.S. insert number within seven consecutive days if he leaves the state to enroll in any school as a full-time or part-time student.

Any resident of this state required to register under the provisions of this Chapter shall notify the bureau of his intent to establish a residence in another state within three days prior to establishing residence in the other state.

F. PENALTIES

A person who fails to register, periodically renew and update registration, provide proof of residence or notification of change of address or other registration information, or provide community notification as required by the provisions of this Chapter, and a person who knowingly provides false information to a law enforcement agency as provided in R.S. insert number, shall, upon first conviction, be fined not more than one thousand dollars and imprisoned with hard labor for not less than two years nor more than ten years without benefit of parole, probation, or suspension of sentence.

Upon second or subsequent convictions, the offender shall be fined three thousand dollars and imprisoned with hard labor for not less than five years nor more than twenty years without benefit of parole, probation, or suspension of sentence.

Any person who certifies by affidavit the location of the residence of the offender shall send written notice to the appropriate law enforcement agency with whom the person last registered when the offender no longer resides at the residence provided in the affidavit. This notification shall be made any time the



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

sex offender is absent from the residence for a period of thirty days or more, or the offender vacates the residence with the intent to establish a new residence at another location. This notification shall be sent within three days of the end of the thirty-day period or within three days of the offender vacating the residence with the requisite intent.

Any person who fails to provide the notice required by this Subsection shall be fined not more than five hundred dollars or imprisoned for not more than six months, with or without hard labor, or both.

II. Amend Community Notification statutes to require community notification for all offenders

- All registering Sex Offenders shall conduct a “Community Notification” mailing, at their expense within the first 21 days of registration, and at least once a year every year on their anniversary.
- The sheriff of the county where the offender is registering is responsible for assuring the notification mailing is completed. Failure to conform to community notification shall result in a violation of the law and punishable incarceration or a fine not to exceed \$1,000.
- “Community Notification” mailings shall state the offenders name, address, physical description, photo and nature of conviction and date of release from incarceration or date of supervision

Mailings shall be sent to at least every residence within a 0.3 mile radius in an urban area and a 1 mile radius in a rural area:

- Notification to be specified as delivered to residents by US mail with defined rural and urban parameters

Included in the 1 mile radius are mailings to:

- Licensed day care and pre-school center operators
- Elementary, Middle, and High School Principals

After the initial community notification, the following provisions apply:

- High risk predators shall conduct mailings, at their expense annually for life or for as long as they are required to register and every time the offender moves
- Medium risk offenders shall conduct mailings, at their expense annually for 25 years or for as long as they are required to register.
- Low risk offenders shall conduct mailings, at their expense annually for 15 years or for as long as they are required to register.

SAMPLE LEGISLATION:

A. NOTIFICATION OF SEX OFFENDERS AND CHILD PREDATORS

A. Any adult residing in this state who has pled guilty to, has been convicted of, or where adjudication has been deferred or withheld for the perpetration or attempted perpetration of, or conspiracy to commit, a sex offense as defined in R.S. insert number or a criminal offense against a minor as defined



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

in R.S. insert number shall be required to provide the following postal notifications at the expense of the offender:

(1) Give notice of the crime for which he was convicted, his name, residential address, a description of his physical characteristics as provided in R.S. insert number, and a photograph or copy thereof to all of the following:

(a) At least one person in every residence or business within a one-mile radius in a rural area and a three-tenths of a mile radius in an urban or suburban area of the address of the residence where the offender will reside upon release, including all adults residing in the residence of the offender.

(b) The superintendent of the school district where the defendant will reside, who shall notify the principal of every school located within a one-mile radius of the address where the offender will reside and may notify the principals of other schools as he deems appropriate. The principal of any such school upon receipt of the notification shall post notices in conspicuous areas at the school which state the defendant's name, address, and the crime for which he was convicted. Failure of the superintendent or principal to comply with the provisions of this Subparagraph shall not be construed to impose civil liability on any person. The notice sent by the superintendent shall be accompanied by two clear, recent photographs, or a clear photocopy thereof, of the offender. The photographs, which shall be provided by the offender, shall be taken after release and within sufficient time to accompany the notification which is required under the provisions of this Chapter.

(c) The lessor, landlord, or owner of the residence or the property on which he resides.

(d) The superintendent of any park, playground, or recreation districts within the designated area where the offender will reside, who shall notify the custodians of the parks, playgrounds, and recreational facilities in the designated area and may notify the custodians of other parks, playgrounds, and recreational facilities as he deems appropriate. The custodian of any such park, playground, and recreational facility, upon receipt of the notification, shall post notices in conspicuous areas at the park, playground, or recreational facility which state the offender's name, address, and the crime for which he was convicted. Failure of the superintendent or custodian to comply with the provisions of this Subparagraph shall not be construed to impose civil liability on any person. The notice sent by the superintendent shall be accompanied by two clear, recent photographs, or a clear photocopy thereof, of the offender. The photographs, which shall be provided by the offender, shall be taken after release and within sufficient time to accompany the notification which is required under the provisions of this Chapter.

(e) Notwithstanding the provisions of Paragraph (1) of this Subsection, persons convicted of R.S. insert number shall not be required to furnish a photograph as required by that Paragraph.

(2)(a) Give notice of the crime for which he was convicted, his name, jurisdiction of conviction, a description of his physical characteristics as required by this Section, and his physical address by mail to all people residing within the designated area within twenty-one days of the date of conviction, if the



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

offender is not taken into custody at the time of conviction, or within twenty-one days of the date of release from confinement or within twenty-one days of establishing residency in the locale where the offender plans to have his domicile.

B. The sheriff of the county where the offender is registering is responsible for providing a mailing estimate to the offender, fee collection for the postal notifications, and assuring the notification mailing is completed. Failure to conform to community notification shall result in a violation of the law and punishable incarceration or a fine not to exceed \$1,000.

III. Establish the \$5.00 Sex Offender Technology & Registration Fund:

A. This provision provides an on-going source of funding state registries and software for local agencies to register and manage offenders in their jurisdictions. Sex offenders represent a cost to the state and taxpayers for at least fifteen years and in many cases for the life of the offender. Local law enforcement lacks the necessary tools to maintain consistent registration and reporting practices and therefore many offenders fall through the “supervision and registration cracks.” As established by the Adam Walsh Act all states are required to have a sex offender state registry available to citizens on the World Wide Web. Most states employ a Sex Offender Web Page to meet community demand for information but at whose expense?

- The \$5.50 Bill establishes a Sex Offender Technology & Registration Fund.
- The fund will accumulate state monies by requiring ALL offenders under Probation and Parole supervision to pay a \$5.50 per month or \$66.00 annually supervision fee for the time period they are required to report to the Dept of Probation and Parole.
- These fees are to be allocated first toward both the provision of a state registry to house sex offender data at the state level and to provide a web-based registry, and ALSO to provide local law enforcement agencies (Sheriff) with a software tool to enable the registration, electronic updates to the state, address verification, continuing compliance management and community notification of sex offenders.
- Local law enforcement agencies will provide free e-mail sex offender notification to citizens who register important addresses, thereby promoting the spirit of the law.

SAMPLE LEGISLATION:

Provides for certain probation fees paid into the Sex Offender Registry Technology Fund.

To amend and reenact Code of Criminal Procedure Article insert number, relative to fees paid as a condition of probation; to provide for the allocation and use of fees credited to the Sex Offender Registry Technology Fund; and to provide for related matters.

Be it enacted by the Legislature of State:

Section 1. Code of Criminal Procedure Article insert number is hereby amended and reenacted to read as follows:



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

Art. Insert number. Probation; restitution; judgment for restitution; fees

* * *

When the court places the defendant on supervised probation, it shall order as a condition of probation the payment of a monthly fee of not less than five dollars and fifty cents. The monthly fee established in this Paragraph of this Article shall be collected, by the Department of Public Safety and Corrections (recommendation) and shall be transmitted, deposited, appropriated, and used in accordance with the following provisions:

(1) The monthly fee established in this Paragraph shall be deposited immediately upon receipt in the state treasury.

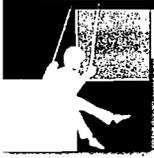
(2) After compliance with the requirements of Article Insert number, Section Insert number of the Constitution of State relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited as required by Subparagraph (1) of this Paragraph shall be credited to a special fund which is hereby created in the state treasury to be known as the "Sex Offender Registry Technology Fund". The monies in this fund shall be used solely as provided in Subparagraph (3) of this Paragraph and only in the amounts appropriated by the legislature.

(3) The monies in the Sex Offender Registry Technology Fund shall be appropriated as follows:

(a) For Fiscal Year 2010-2011 and each year thereafter, an amount equal to fifteen percent of the total monies available for appropriation from the fund shall be appropriated to the Department of Public Safety and Corrections (recommendation) office of adult services, division of probation and parole.

(b) For Fiscal Year 2010-2011, and thereafter, residual monies available for appropriation after satisfying the requirements of Subparagraphs (a) of this Paragraph shall be appropriated to the Department of Justice, office of the attorney general (recommendation). Of that residual amount, one hundred fifty thousand dollars shall be allocated to the office of the attorney general of which fifty thousand dollars shall be allocated for personnel and other costs to assist and monitor sheriff participation in utilization of the computer system, and one hundred thousand dollars of which shall be allocated to the cost of maintenance of the computer system which shall interface with the computer systems of the sheriffs of the counties for registration of sex offenders.

The remainder of the residual monies in excess of the amount appropriated pursuant to Subparagraphs (a) and (b) of this Paragraph shall be distributed through the office of the attorney general to the sheriff of each county, based on the population of convicted sex offenders, sexually violent predators, and child predators who are residing in the county and who are active sex offender registrants or active child predator registrants in the respective counties according to the State Sex Offender and Child Predator Registry. These funds shall be used to cover the costs associated with sex offender registration and compliance. Population data necessary to implement the provisions of this Subparagraph



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

shall be as compiled and certified by the undersecretary of the Department of Public Safety and Corrections (recommended) on the first day of June of each year. The office of the attorney general shall make these distributions based on the data certified by the undersecretary of the Department of Public Safety and Corrections to the recipient sheriffs no later than June fifteenth of each year to sheriffs who are actively registering offenders pursuant to this Paragraph.

B. Establish the \$60.00 Sex Offender Supervision and Registration Fee:

Registering and monitoring sex offenders and verifying their addresses on a periodic basis is a very costly expense for the local law enforcement agency in dollars (salary, overtime, fuel, etc...) as well as man power/hours.

The \$60.00 annual fee establishes a Sex Offender Supervision and Registration Fee

- At the conclusion of state sponsored supervision convicted sex offenders shall be required to pay an annual supervision and registration fee of \$60 to the local law enforcement agency in the county where they reside.
- The \$60.00 annual supervision and registration fee will help offset costs incurred with registration and verification for the local law enforcement agency responsible for registering and verifying the sex offenders.
- The \$60.00 fee shall be collected 10 days prior to their initial registration anniversary date. The sex offenders shall be required to pay the annual registration fee for so long as they are required to register as defined by their state's statute.

C. Possible distribution of Funds:

Establish the requirement that when a court places a defendant on supervised probation, as a condition of probation, they order the defendant to pay a monthly fee of \$5.50 to the Department of Public Safety and Corrections and that the fee collected be credited into the Sex Offender Technology and Registration Fund and that the monies in this Fund be paid as follows:

(1) The amount of \$ is appropriated to the Department of Public Safety and Corrections, office of state police, to be used to administer programs for registration of sex offenders in compliance with federal and state laws, and to support of community notification efforts by sheriff's offices.

(2) Each year an amount equal to % of the total residual monies available for appropriation from the Fund after satisfying the requirements of present law Item (1) above be appropriated to the Department of Corrections, office of adult probation and parole. An amount equal to % of the total monies available for appropriation from the Fund is appropriated to the Department of Public Safety and Corrections, office of adult services, division of probation and parole.

(3) (a) Residual monies available for appropriation after satisfying the requirements of present law Items (1) and (2) above, be appropriated to the Department of Justice, office of the attorney general. Requires that of these residual monies \$ be allocated to the office of the attorney general to facilitate the



Notification Is Prevention Foundation

Providing Community Information Concerning Sexual Offender Programs...

acquisition, implementation, and support of a computer system for the sheriff of each county to monitor and track convicted sex offenders, sexually violent predators, and child predators residing in such county according to the State Sex Offender and Child Predator Registry.

(c) Requires that all residual monies available after satisfying the requirements of proposed law Item (1) above (payments for the office of adult services, division of probation and parole) are to be appropriated to the Department of Justice, office of the attorney general. Provides that of this amount, \$ be allocated to the office of the attorney general of which \$ shall be allocated for personnel and other costs to assist and monitor sheriff participation in utilization of the computer system, and \$ shall be allocated to the cost of maintenance of the computer system which shall interface with the computer systems of the sheriffs of the counties for registration of sex offenders.

(d) Requires the distribution of the remainder of residual monies to the sheriff of each county, based on the population of convicted sex offenders, sexually violent predators, and child predators residing in the respective counties according to the State Sex Offender and Child Predator Registry. Requires that these funds be used to cover the costs associated with sex offender registration and compliance. Requires that the population data be compiled and certified by the undersecretary of the Department of Public Safety and Corrections on the first day of June and that the attorney general distribute funds to the recipient sheriffs no later than June fifteenth. The distribution of the monies in excess of those appropriated pursuant to proposed law Items (2) and (3) above (after payments to the office of adult services, division of probation and parole and to the office of the attorney general). Requires that the attorney general distribute these monies to the recipient sheriffs not later than June 15th of each year to sheriffs who actively register sex offenders.