

## **IC 10-13-3**

### **Chapter 3. Criminal History Information**

#### **IC 10-13-3-1**

##### **"Bias crime"**

Sec. 1. As used in this chapter, "bias crime" means an offense in which the person who commits the offense knowingly or intentionally:

- (1) selected the person who was injured; or
- (2) damaged or otherwise affected property;

by the offense because of the color, creed, disability, national origin, race, religion, or sexual orientation of the injured person or of the owner or occupant of the affected property or because the injured person or owner or occupant of the affected property was associated with any other recognizable group or affiliation.

*As added by P.L.2-2003, SEC.4.*

#### **IC 10-13-3-2**

##### **"Care"**

Sec. 2. As used in this chapter, "care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children less than eighteen (18) years of age.

*As added by P.L.2-2003, SEC.4.*

#### **IC 10-13-3-2.5**

##### **"Caseworker"**

Sec. 2.5. As used in this chapter, "caseworker" has the meaning set forth in IC 31-9-2-11.

*As added by P.L.146-2006, SEC.1.*

#### **IC 10-13-3-3**

##### **"Certificated employee"**

Sec. 3. As used in this chapter, "certificated employee" has the meaning set forth in IC 20-29-2-4.

*As added by P.L.2-2003, SEC.4. Amended by P.L.1-2005, SEC.113.*

#### **IC 10-13-3-4**

##### **"Council"**

Sec. 4. As used in this chapter, "council" means the security and privacy council established by section 34 of this chapter.

*As added by P.L.2-2003, SEC.4.*

#### **IC 10-13-3-5**

##### **"Criminal history data"**

Sec. 5. (a) As used in this chapter, "criminal history data" means information collected by criminal justice agencies, the United States Department of Justice for the department's information system, or individuals.

(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 section 24(f) of this chapter.

*As added by P.L.2-2003, SEC.4. Amended by P.L.20-2006, SEC.1; P.L.140-2006, SEC.4 and P.L.173-2006, SEC.4; P.L.1-2007, SEC.96; P.L.216-2007, SEC.3.*

### **IC 10-13-3-6**

#### **"Criminal justice agency"**

Sec. 6. (a) As used in this chapter, "criminal justice agency" means 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.

(b) The term includes the following:

(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.

*As added by P.L.2-2003, SEC.4. Amended by P.L.70-2004, SEC.1; P.L.234-2005, SEC.6.*

### **IC 10-13-3-7**

#### **"Disposition"**

Sec. 7. As used in this chapter, "disposition" means information

disclosing that criminal proceedings have been concluded or indefinitely postponed.

*As added by P.L.2-2003, SEC.4.*

### **IC 10-13-3-7.5**

#### **"Emergency placement"**

Sec. 7.5. (a) As used in this chapter, "emergency placement" means an emergency out-of-home placement of a child by:

- (1) the department of child services established by IC 31-25-1-1;
- (2) a law enforcement officer;
- (3) a caseworker;
- (4) a juvenile probation officer; or
- (5) a court;

as a result of exigent circumstances that require immediate placement with a person other than the child's parent, guardian, or custodian.

(b) The term includes any out-of-home placement for temporary care and custody of a child at or after the time of initial removal or transfer of custody of the child from the child's parent, guardian, or custodian, as authorized under any of the following:

- (1) IC 31-34-2.
- (2) IC 31-34-2.5.
- (3) IC 31-34-4.
- (4) IC 31-34-5.
- (5) IC 31-37-4.
- (6) IC 31-37-5.
- (7) IC 31-37-6.

(c) The term does not include any proposed or actual change in location of the child's placement for continuing care and custody after the court has entered an order at the time of or following a detention hearing required under IC 31-34-5 or IC 31-37-6, unless a court or an agency responsible for the child's care and supervision determines that an immediate change in placement is necessary to protect the health or safety of the child.

(d) The term does not include placement to an entity or in a facility that is not a residence (as defined in IC 3-5-2-42.5) or that is licensed by the state.

*As added by P.L.234-2005, SEC.7. Amended by P.L.145-2006, SEC.26; P.L.146-2006, SEC.2.*

### **IC 10-13-3-8**

#### **"Inspection"**

Sec. 8. As used in this chapter, "inspection" means visual perusal and includes the right to make memoranda abstracts of the information.

*As added by P.L.2-2003, SEC.4.*

### **IC 10-13-3-9**

#### **"Institute"**

Sec. 9. As used in this chapter, "institute" means the Indiana

criminal justice institute established by IC 5-2-6-3.  
*As added by P.L.2-2003, SEC.4.*

#### **IC 10-13-3-10**

##### **"Law enforcement agency"**

Sec. 10. (a) As used in this chapter, "law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders.

(b) The term includes:

- (1) the office of the attorney general; and
- (2) the office of the inspector general.

*As added by P.L.2-2003, SEC.4. Amended by P.L.222-2005, SEC.29.*

#### **IC 10-13-3-11**

##### **"Limited criminal history"**

Sec. 11. (a) As used in this chapter, "limited criminal history" means information with respect to any arrest or criminal charge, which must include:

- (1) a disposition; and
- (2) a photograph of the person who is the subject of the limited criminal history, if a photograph is available.

(b) However, the term includes information about any arrest or criminal charge that occurred less than one (1) year before the date of a request even if no disposition has been entered.

*As added by P.L.2-2003, SEC.4. Amended by P.L.20-2006, SEC.2.*

#### **IC 10-13-3-12**

##### **"National criminal history background check"**

Sec. 12. As used in this chapter, "national criminal history background check" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.

*As added by P.L.2-2003, SEC.4.*

#### **IC 10-13-3-12.5**

##### **"National name based criminal history record check"**

Sec. 12.5. As used in this chapter, "national name based criminal history record check" means a query of the Interstate Identification Index data base maintained by the Federal Bureau of Investigation that:

- (1) is conducted using the subject's name; and
- (2) does not use fingerprint identification or another method of positive identification.

*As added by P.L.234-2005, SEC.8.*

#### **IC 10-13-3-13**

##### **"No contact order"**

Sec. 13. As used in this chapter, "no contact order" means an order that prohibits a person from having direct or indirect contact

with another person and that is issued under any of the following:

- (1) IC 31-32-13.
- (2) IC 31-34-20.
- (3) IC 31-37-19-1.
- (4) IC 31-37-19-6.
- (5) IC 33-39-1-8.
- (6) IC 35-33-8-3.2.
- (7) IC 35-38-2-2.3.

*As added by P.L.2-2003, SEC.4. Amended by P.L.98-2004, SEC.80; P.L.1-2010, SEC.53.*

#### **IC 10-13-3-14**

##### **"Noncertificated employee"**

Sec. 14. As used in this chapter, "noncertificated employee" has the meaning set forth in IC 20-29-2-11.

*As added by P.L.2-2003, SEC.4. Amended by P.L.1-2005, SEC.114.*

#### **IC 10-13-3-15**

##### **"Protective order"**

Sec. 15. (a) As used in this chapter, "protective order" has the meaning set forth in IC 5-2-9-2.1.

(b) The term includes a foreign protection order (as defined in IC 34-6-2-48.5).

*As added by P.L.2-2003, SEC.4.*

#### **IC 10-13-3-16**

##### **"Qualified entity"**

Sec. 16. (a) As used in this chapter, "qualified entity" means a business or an organization, whether public, private, for-profit, nonprofit, or voluntary, that provides care or care placement services.

(b) The term includes the following:

- (1) A business or an organization that licenses or certifies others to provide care or care placement services.
- (2) A home health agency licensed under IC 16-27-1.
- (3) A personal services agency licensed under IC 16-27-4.

*As added by P.L.2-2003, SEC.4. Amended by P.L.197-2007, SEC.1.*

#### **IC 10-13-3-17**

##### **"Release"**

Sec. 17. As used in this chapter, "release" means furnishing a copy or an edited copy of criminal history data.

*As added by P.L.2-2003, SEC.4.*

#### **IC 10-13-3-18**

##### **"Reportable offenses"**

Sec. 18. As used in this chapter, "reportable offenses" means all felonies and those misdemeanors the superintendent designates.

*As added by P.L.2-2003, SEC.4. Amended by P.L.156-2003, SEC.4.*

#### **IC 10-13-3-19**

**"Request"**

Sec. 19. As used in this chapter, "request" means asking for release or inspection of a limited criminal history by noncriminal justice organizations or individuals in a manner that:

- (1) reasonably ensures the identification of the subject of the inquiry; and
- (2) contains a statement of the purpose for which the information is requested.

*As added by P.L.2-2003, SEC.4.*

**IC 10-13-3-20**

**"School corporation"**

Sec. 20. As used in this chapter, "school corporation" has the meaning set forth in IC 20-18-2-16.

*As added by P.L.2-2003, SEC.4. Amended by P.L.1-2005, SEC.115.*

**IC 10-13-3-21**

**"Special education cooperative"**

Sec. 21. As used in this chapter, "special education cooperative" has the meaning set forth in IC 20-35-5-1(7).

*As added by P.L.2-2003, SEC.4. Amended by P.L.1-2005, SEC.116; P.L.231-2005, SEC.4; P.L.1-2006, SEC.170.*

**IC 10-13-3-22**

**"Unidentified person"**

Sec. 22. As used in this chapter, "unidentified person" means a deceased or mentally incapacitated person whose identity is unknown.

*As added by P.L.2-2003, SEC.4.*

**IC 10-13-3-23**

**"Workplace violence restraining order"**

Sec. 23. As used in this chapter, "workplace violence restraining order" means an order issued under IC 34-26-6.

*As added by P.L.2-2003, SEC.4.*

**IC 10-13-3-24**

**State central repository; report of arrests; fingerprints**

Sec. 24. (a) The department shall act as the official state central repository for criminal history data.

(b) A sheriff, police department, or criminal justice agency in Indiana shall report to the department, on forms provided by the department, all arrests for reportable offenses.

(c) Except as provided in subsection (e), at the time a sheriff, police department, or criminal justice agency makes the report described in subsection (b), the sheriff, police department, or criminal justice agency shall transmit a photograph of the person who is the subject of the report to the department.

(d) The department may adopt guidelines concerning the:

- (1) form; and

(2) manner of transmission (including electronic transmission); of a photograph described in subsection (c). If the department adopts guidelines under this subsection, the sheriff, police department, or criminal justice agency required to transmit a photograph under subsection (c) shall transmit the photograph in accordance with the guidelines adopted by the department.

(e) Notwithstanding subsections (c) and (d):

(1) the department is not required to process; and

(2) a sheriff, police department, or criminal justice agency is not required to submit;

a photograph under this section unless the department has sufficient funding available to process photographs submitted under this section.

(f) The department of correction may report to the department:

(1) fingerprints recorded by the department of correction in any reliable manner, including the use of a digital fingerprinting device, when a person convicted of an offense is received by the department of correction; and

(2) an abstract of judgment received by the department of correction that relates to the fingerprints described in subdivision (1).

*As added by P.L.2-2003, SEC.4. Amended by P.L.20-2006, SEC.3; P.L.216-2007, SEC.4.*

### **IC 10-13-3-25**

#### **Disposition reports**

Sec. 25. (a) If a person whose arrest has been reported as required by section 24 of this chapter is:

(1) transferred to the custody of another criminal justice agency; or

(2) released without having an indictment or information filed with any court;

a disposition report shall be furnished to the department by the agency from whose custody the person has been transferred or released. Disposition reports shall be made on forms provided by the department.

(b) If an indictment or information is filed in a court, the clerk of the court shall furnish to the department, on forms provided by the department, a report of the disposition of the case.

(c) A disposition report, whether by a criminal justice agency or a court clerk, shall be sent to the department within thirty (30) days after the disposition.

*As added by P.L.2-2003, SEC.4.*

### **IC 10-13-3-26**

#### **Release of data to criminal justice agencies**

Sec. 26. (a) A criminal justice agency:

(1) shall provide criminal history data to another criminal justice agency upon request; and

(2) may receive criminal history data from another criminal

justice agency.

(b) If the request is made by an agency doing a presentence investigation, the information shall be transmitted not later than seven (7) days after the date that the request is received.

(c) The department shall provide criminal history data to a criminal justice agency making a request if the council determines that the agency has complied with this chapter.

*As added by P.L.2-2003, SEC.4.*

### **IC 10-13-3-27**

#### **Release of data to noncriminal justice organization or to individuals; national crime information center data restricted; penalties**

Sec. 27. (a) Except as provided in subsection (b), on request, a law enforcement agency shall release a limited criminal history to or allow inspection of a limited criminal history by noncriminal justice organizations or individuals only if the subject of the request:

- (1) has applied for employment with a noncriminal justice organization or individual;
- (2) has:
  - (A) applied for a license or is maintaining a license; and
  - (B) provided criminal history data as required by law to be provided in connection with the license;
- (3) is a candidate for public office or a public official;
- (4) is in the process of being apprehended by a law enforcement agency;
- (5) is placed under arrest for the alleged commission of a crime;
- (6) has charged that the subject's rights have been abused repeatedly by criminal justice agencies;
- (7) is the subject of a judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;
- (8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;
- (9) is currently residing in a location designated by the department of child services (established by IC 31-25-1-1) or by a juvenile court as the out-of-home placement for a child at the time the child will reside in the location;
- (10) has volunteered services at a public school (as defined in IC 20-18-2-15) or nonpublic school (as defined in IC 20-18-2-12) that involve contact with, care of, or supervision over a student enrolled in the school;
- (11) is being investigated for welfare fraud by an investigator of the division of family resources or a county office of the division of family resources;
- (12) is being sought by the parent locator service of the child support bureau of the department of child services;
- (13) is or was required to register as a sex or violent offender



under IC 11-8-8; or

(14) has been convicted of any of the following:

- (A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.
- (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.
- (C) Child molesting (IC 35-42-4-3).
- (D) Child exploitation (IC 35-42-4-4(b)).
- (E) Possession of child pornography (IC 35-42-4-4(c)).
- (F) Vicarious sexual gratification (IC 35-42-4-5).
- (G) Child solicitation (IC 35-42-4-6).
- (H) Child seduction (IC 35-42-4-7).
- (I) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
- (J) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.
- (K) Attempt under IC 35-41-5-1 to commit an offense listed in clauses (A) through (J).
- (L) Conspiracy under IC 35-41-5-2 to commit an offense listed in clauses (A) through (J).
- (M) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under clauses (A) through (J).

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) A law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to the following noncriminal justice organizations:

- (1) Federally chartered or insured banking institutions.
- (2) Officials of state and local government for any of the following purposes:
  - (A) Employment with a state or local governmental entity.
  - (B) Licensing.
- (3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) Any person who knowingly or intentionally uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

*As added by P.L.2-2003, SEC.4. Amended by P.L.1-2005, SEC.117; P.L.234-2005, SEC.9; P.L.1-2006, SEC.171; P.L.145-2006, SEC.27; P.L.140-2006, SEC.5 and P.L.173-2006, SEC.5; P.L.1-2007, SEC.97; P.L.216-2007, SEC.5; P.L.146-2008, SEC.368; P.L.44-2009, SEC.4; P.L.153-2011, SEC.2.*

### **IC 10-13-3-27.5**

**Record check by department of child services under exigent circumstances; transmittal of report copy; providing fingerprints;**

**removal of child for failure to provide fingerprints; compliance with federal law; contesting denial of placement; fee**

Sec. 27.5. (a) If:

- (1) exigent circumstances require the emergency placement of a child; and
- (2) the department will be unable to obtain criminal history information from the Interstate Identification Index before the emergency placement is scheduled to occur;

upon request of the department of child services established by IC 31-25-1-1, a caseworker, or a juvenile probation officer, the department may conduct a national name based criminal history record check of each individual who is at least eighteen (18) years of age and who is currently residing in the location designated as the out-of-home placement at the time the child will reside in the location. The department shall promptly transmit a copy of the report it receives from the Interstate Identification Index to the agency or person that submitted a request under this section.

(b) Not later than seventy-two (72) hours after the department of child services, the caseworker, or the juvenile probation officer receives the results of the national name based criminal history record check, the department of child services, the caseworker, or the juvenile probation officer shall provide the department with a complete set of fingerprints for each individual who is at least eighteen (18) years of age and who is currently residing in the location designated as the out-of-home placement at the time the child will be placed in the location. The department shall:

- (1) use fingerprint identification to positively identify each individual whose fingerprints are provided to the department under this subsection; or
- (2) submit the fingerprints to the Federal Bureau of Investigation not later than fifteen (15) calendar days after the date on which the national name based criminal history record check was conducted.

The child shall be removed from the location designated as the out-of-home placement if an individual who is at least eighteen (18) years of age and who is currently residing in the location designated as the out-of-home placement at the time the child will reside in the location fails to provide a complete set of fingerprints to the department of child services, the caseworker, or the juvenile probation officer.

(c) The department and the person or agency that provided fingerprints shall comply with all requirements of 42 U.S.C. 5119a and any other applicable federal law or regulation regarding:

- (1) notification to the subject of the check; and
- (2) the use of the results obtained based on the check of the person's fingerprints.

(d) If an out-of-home placement is denied as the result of a national name based criminal history record check, an individual who is the subject of the name based criminal history record check may contest the denial by submitting to the department of child services,

the caseworker, or the juvenile probation officer:

- (1) a complete set of the individual's fingerprints; and
- (2) written authorization permitting the department of child services, the caseworker, or the juvenile probation officer to forward the fingerprints to the department for submission to the Federal Bureau of Investigation;

not later than five (5) days after the out-of-home placement is denied.

(e) The:

- (1) department; and
- (2) Federal Bureau of Investigation;

may charge a reasonable fee for processing a national name based criminal history record check. The department shall adopt rules under IC 4-22-2 to establish a reasonable fee for processing a national name based criminal history record check and for collecting fees owed under this subsection.

(f) The:

- (1) department of child services, for an out-of-home placement arranged by a caseworker or the department of child services; or
- (2) juvenile court, for an out-of-home placement ordered by the juvenile court;

shall pay the fee described in subsection (e), arrange for fingerprinting, and pay the costs of fingerprinting, if any.

*As added by P.L.234-2005, SEC.10. Amended by P.L.145-2006, SEC.28; P.L.146-2006, SEC.3; P.L.138-2007, SEC.1.*

### **IC 10-13-3-28**

#### **Criminal history check on request of an individual seeking employment**

Sec. 28. On request of an individual who has applied for employment with a noncriminal justice organization or individual, the Indiana central repository for criminal history information shall process a request for a national fingerprint based criminal history check of the individual making the request from the Federal Bureau of Investigation's National Crime Information Center upon:

- (1) the submission of fingerprints of the individual making the request; and
- (2) the payment of a fifteen dollar (\$15) fee.

*As added by P.L.2-2003, SEC.4. Amended by P.L.127-2011, SEC.1.*

### **IC 10-13-3-29**

#### **Use by noncriminal justice organizations or individuals restricted**

Sec. 29. A noncriminal justice organization or individual that receives a limited criminal history may not use it for purposes:

- (1) other than those stated in the request; or
- (2) that deny the subject any civil right to which the subject is entitled.

*As added by P.L.2-2003, SEC.4.*

### **IC 10-13-3-30**

**Request for limited criminal history; duties of law enforcement agency and department**

Sec. 30. (a) Except as provided in subsection (c), on request for release or inspection of a limited criminal history, law enforcement agencies may, if the agency has complied with the reporting requirements in section 24 of this chapter, and the department shall do the following:

(1) Require a form, provided by law enforcement agencies and the department, to be completed. The form shall be maintained for two (2) years and shall be available to the record subject upon request.

(2) Collect a three dollar (\$3) fee to defray the cost of processing a request for inspection.

(3) Collect a seven dollar (\$7) fee to defray the cost of processing a request for release. However, law enforcement agencies and the department may not charge the fee for requests received from the parent locator service of the child support bureau of the department of child services.

(b) Law enforcement agencies and the department shall edit information so that the only information released or inspected is information that:

(1) has been requested; and

(2) is limited criminal history information.

(c) The fee required under subsection (a) shall be waived if the request relates to the registration of sex or violent offenders under IC 11-8-8 or the Indiana sex and violent offender registry under IC 36-2-13-5.5 or concerns a person required to register as a sex or violent offender under IC 11-8-8.

*As added by P.L.2-2003, SEC.4. Amended by P.L.156-2003, SEC.5; P.L.145-2006, SEC.29; P.L.140-2006, SEC.6 and P.L.173-2006, SEC.6; P.L.216-2007, SEC.6.*

**IC 10-13-3-31**

**Release of data to subject person; fee; challenge of data authorized**

Sec. 31. (a) Unless otherwise prohibited by law, a criminal justice agency that maintains criminal history data, upon request and proper identification of the person about whom criminal history data is maintained, shall provide that person with a copy of the person's criminal history data for a reasonable fee.

(b) Any person may challenge the information contained in the person's criminal history data file.

*As added by P.L.2-2003, SEC.4.*

**IC 10-13-3-32**

**Application of chapter**

Sec. 32. This chapter is not applicable to and does not prevent the release or inspection of information contained in the following:

(1) Wanted person posters or announcements.

(2) An original record of entry, including a police blotter, maintained by a criminal justice agency.

- (3) Published court or administrative opinions or records of public judicial, administrative, or legislative proceedings.
- (4) Records of traffic offenses maintained by the bureau of motor vehicles.
- (5) Announcements of pardon or executive clemency.

*As added by P.L.2-2003, SEC.4.*

### **IC 10-13-3-33**

#### **Rules; challenge of data procedure**

Sec. 33. (a) The council shall adopt rules under IC 4-22-2 to:

- (1) assure the completeness and accuracy of criminal history data;
- (2) protect information from loss, alteration, destruction, or improper direct access to the information files;
- (3) prevent unreasonable interference with the regular discharge of the duties of employees of law enforcement agencies; and
- (4) carry out this chapter.

(b) If a person makes a challenge under section 31(b) of this chapter, the department shall:

- (1) make the changes requested, if it determines the data is in error; or
- (2) conduct a hearing under IC 4-21.5-3, if requested by the person making the challenge.

(c) The rules adopted under this chapter must provide for inspection in a reasonable and timely manner.

*As added by P.L.2-2003, SEC.4.*

### **IC 10-13-3-34**

#### **Security and privacy council; establishment; members**

Sec. 34. (a) There is established a security and privacy council that consists of nine (9) members selected under subsections (b) and (c).

(b) The following six (6) members shall be appointed by and shall serve at the pleasure of the governor:

- (1) A prosecuting attorney.
- (2) The police chief of a city.
- (3) The sheriff of a county.
- (4) A criminal court judge.
- (5) Two (2) citizens who are not law enforcement officers.

(c) The following persons, or their designees, also are members of the council:

- (1) The superintendent.
- (2) The attorney general.
- (3) The commissioner of the department of correction.

(d) Members of the council are not entitled to receive compensation but are entitled to receive a per diem and mileage on those days in which they are engaged in the business of the council. Per diem and mileage paid shall be that amount paid to state employees.

*As added by P.L.2-2003, SEC.4.*

### **IC 10-13-3-35**

#### **Indiana data and communication system; national crime information center's missing, wanted, and unidentified person files; entry or deletion of information**

Sec. 35. (a) On a daily basis, all law enforcement agencies shall enter into the Indiana data and communication system (IDACS) computer the following:

- (1) All information concerning stolen or recovered property, including the following:
  - (A) Motor vehicles.
  - (B) Firearms.
  - (C) Securities.
  - (D) Boats.
  - (E) License plates.
  - (F) Other stolen or recovered property.
- (2) All information concerning fugitives charged with a crime, including information concerning extradition.
- (3) All information concerning runaways, missing and unidentified persons, and missing children (as defined in IC 10-13-5-4), including information concerning the release of those persons to the custody of a parent or guardian.
- (4) Information contained in a protective order, including any modifications or extensions issued by a court and filed with a law enforcement agency as required in IC 5-2-9-6(f).

(b) On a daily basis, all law enforcement agencies shall do the following:

- (1) Enter all information concerning missing children (as defined in IC 10-13-5-4) into the National Crime Information Center's Missing Person File.
- (2) Enter all information concerning warrants issued for a person who allegedly abducted or unlawfully retained a missing child into the National Crime Information Center's Wanted Person File.
- (3) Enter all information concerning unidentified persons into the National Crime Information Center's Unidentified Person File.
- (4) Enter all information concerning a protective order, a workplace violence restraining order, or a no contact order involving intimate partners into the National Crime Information Center's (NCIC) Protection Order File if the order qualifies under NCIC rules.

(c) If a protective order, a no contact order, or a workplace violence restraining order is removed from a depository established under IC 5-2-9, the law enforcement agency responsible for the depository shall delete the information entered under subsection (a)(4) from the Indiana data and communication system (IDACS) computer.

*As added by P.L.2-2003, SEC.4.*

### **IC 10-13-3-36**

**Fees; nonprofit organizations; family and children division; family and children offices; health professions bureau; educational institutions**

Sec. 36. (a) The department may not charge a fee for responding to a request for the release of a limited criminal history record if the request is made by a nonprofit organization:

- (1) that has been in existence for at least ten (10) years; and
- (2) that:
  - (A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization;
  - (B) is a home health agency licensed under IC 16-27-1;
  - (C) is a community mental retardation and other developmental disabilities center (as defined in IC 12-7-2-39);
  - (D) is a supervised group living facility licensed under IC 12-28-5;
  - (E) is an area agency on aging designated under IC 12-10-1;
  - (F) is a community action agency (as defined in IC 12-14-23-2);
  - (G) is the owner or operator of a hospice program licensed under IC 16-25-3; or
  - (H) is a community mental health center (as defined in IC 12-7-2-38).

(b) Except as provided in subsection (d), the department may not charge a fee for responding to a request for the release of a limited criminal history record made by the department of child services or the division of family resources if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 31-27.

(c) The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made by a school corporation, special education cooperative, or nonpublic school (as defined in IC 20-18-2-12) as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer for the school corporation, special education cooperative, or nonpublic school.

(d) As used in this subsection, "state agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of state government, including the executive and judicial branches of state government, the principal secretary of the senate, the principal clerk of the house of representatives, the executive director of the legislative services agency, a state elected official's office, or a body corporate and politic, but does not include a state educational institution. The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made:

- (1) by a state agency; and
- (2) through the computer gateway that is administered by the

office of technology established by IC 4-13.1-2-1.

(e) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the Indiana professional licensing agency established by IC 25-1-5-3 if the request is:

- (1) made through the computer gateway that is administered by the office of technology; and
- (2) part of a background investigation of a practitioner or an individual who has applied for a license issued by a board (as defined in IC 25-1-9-1).

(f) The department may not charge a church or religious society a fee for responding to a request for the release of a limited criminal history record if:

- (1) the church or religious society is a religious organization exempt from federal income taxation under Section 501 of the Internal Revenue Code;
- (2) the request is made as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer; and
- (3) the employee or volunteer works in a nonprofit program or ministry of the church or religious society, including a child care ministry registered under IC 12-17.2-6.

(g) The department may not charge the school of education of a public or private postsecondary educational institution a fee for responding to a request for the release of a limited criminal history record if the request is made as part of a background investigation of a student before or after the student begins the student's field or classroom experience. However, the department may charge the student a fee for responding to a request for the release of a limited criminal history record.

*As added by P.L.2-2003, SEC.4. Amended by P.L.138-2003, SEC.2; P.L.158-2003, SEC.1; P.L.261-2003, SEC.12; P.L.97-2004, SEC.42; P.L.1-2005, SEC.118; P.L.177-2005, SEC.30; P.L.1-2006, SEC.172; P.L.145-2006, SEC.30; P.L.142-2006, SEC.1; P.L.2-2007, SEC.147; P.L.121-2009, SEC.2.*

### **IC 10-13-3-37**

#### **Use of fingerprints submitted for certain licensure applications; fees; retention of fingerprints**

Sec. 37. (a) Under Public Law 92-544 (86 Stat. 1115), a local law enforcement agency may use fingerprints submitted for the purpose of identification in a request related to the following:

- (1) A taxicab driver's license application.
- (2) Reinstatement or renewal of a taxicab driver's license.

(b) An applicant shall submit the fingerprints on forms provided for the license application.

(c) The local law enforcement agency shall charge each applicant the fees set by the department and federal authorities to defray the costs associated with a search for and classification of the applicant's fingerprints.



- (d) The local law enforcement agency may:
  - (1) forward for processing to the Federal Bureau of Investigation or any other agency fingerprints submitted by a license applicant; and
  - (2) receive the results of all fingerprint investigations.
- (e) The department:
  - (1) may permanently retain an applicant's fingerprints submitted under this section; and
  - (2) shall retain the applicant's fingerprints separately from fingerprints collected under section 24 of this chapter.

*As added by P.L.2-2003, SEC.4. Amended by P.L.200-2007, SEC.1; P.L.155-2011, SEC.1.*

### **IC 10-13-3-38**

#### **Collection of bias crime information; reports**

Sec. 38. (a) A law enforcement agency shall collect information concerning bias crimes.

(b) At least two (2) times each year, a law enforcement agency shall submit information collected under subsection (a) to the Indiana central repository for criminal history information. Information shall be reported in the manner and form prescribed by the department.

(c) At least one (1) time each year, the Indiana central repository for criminal history information shall submit a report that includes a compilation of information obtained under subsection (b) to each law enforcement agency and to the legislative council. A report submitted to a law enforcement agency and the legislative council under this subsection may not contain the name of a person who:

- (1) committed or allegedly committed a bias crime; or
- (2) was the victim or the alleged victim of a bias crime.

A report submitted to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(d) Except as provided in subsection (e), information collected, submitted, and reported under this section must be consistent with guidelines established for the acquisition, preservation, and exchange of identification records and information by:

- (1) the Attorney General of the United States; or
- (2) the Federal Bureau of Investigation;

under 28 U.S.C. 534 and the Hate Crime Statistics Act, as amended (28 U.S.C. 534 note).

(e) Information submitted under subsection (b) and reports issued under subsection (c) shall, in conformity with guidelines prescribed by the department:

- (1) be separated in reports on the basis of whether it is an alleged crime, a charged crime, or a crime for which a conviction has been obtained; and
- (2) be divided in reports on the basis of whether, in the opinion of the reporting individual and the data collectors, bias was the primary motivation for the crime or only incidental to the crime.

*As added by P.L.2-2003, SEC.4. Amended by P.L.28-2004, SEC.79.*

### **IC 10-13-3-38.5**

#### **Use of fingerprints for employment or license; retention of fingerprints**

Sec. 38.5. (a) Under federal P.L.92-544 (86 Stat. 1115), the department may use an individual's fingerprints submitted by the individual for the following purposes:

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

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

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

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

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

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

(F) at a juvenile detention facility;

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

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

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

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

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

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

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

An applicant shall submit the fingerprints in an appropriate format or on forms provided for the employment, license, or certificate application. The department shall charge each applicant the fee

established under section 28 of this chapter and by federal authorities to defray the costs associated with a search for and classification of the applicant's fingerprints. The department may forward fingerprints submitted by an applicant to the Federal Bureau of Investigation or any other agency for processing. The state personnel department, the Indiana professional licensing agency, or the agency to which the applicant is applying for employment or a license may receive the results of all fingerprint investigations.

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

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

(d) The department:

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

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

*As added by P.L.261-2003, SEC.13. Amended by P.L.1-2005, SEC.119; P.L.120-2005, SEC.1; P.L.212-2005, SEC.1; P.L.218-2005, SEC.4; P.L.246-2005, SEC.90; P.L.1-2006, SEC.173; P.L.160-2009, SEC.2; P.L.113-2010, SEC.71; P.L.155-2011, SEC.2.*

### **IC 10-13-3-39**

#### **Department designated authorized agency for national criminal history background check; request for background check by qualified entity; exchange of identification records; results provided to public agency**

Sec. 39. (a) The department is designated as the authorized agency to receive requests for, process, and disseminate the results of national criminal history background checks that comply with this section and 42 U.S.C. 5119a.

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

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

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

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

(4) A person for whom a national criminal history background check is required for purposes of placement of a child in a foster family home, a prospective adoptive home, or the home

of a relative or other caretaker, or for purposes of a report concerning an adoption as required by IC 31-19-8.

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

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

- (1) the requirements of 42 U.S.C. 5119a; and
- (2) the regulations prescribed by the Attorney General of the United States under 42 U.S.C. 5119a.

(e) Subsection (f):

- (1) applies to a qualified entity that:
  - (A) is not a school corporation or a special education cooperative; or
  - (B) is a school corporation or a special education cooperative and seeks a national criminal history background check for a volunteer; and
- (2) does not apply to a qualified entity that is a:
  - (A) home health agency licensed under IC 16-27-1; or
  - (B) personal services agency licensed under IC 16-27-4.

(f) After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall make a determination whether the person who is the subject of a request has been convicted of:

- (1) an offense described in IC 20-26-5-11;
- (2) in the case of a foster family home, an offense described in IC 31-27-4-13(a);
- (3) in the case of a prospective adoptive home, an offense described in IC 31-19-11-1(c);
- (4) any other felony; or
- (5) any misdemeanor;

and convey the determination to the requesting qualified entity.

(g) This subsection applies to a qualified entity that:

- (1) is a school corporation or a special education cooperative; and
- (2) seeks a national criminal history background check to determine whether to employ or continue the employment of a certificated employee or a noncertificated employee of a school corporation or an equivalent position with a special education cooperative.

After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department may exchange identification records concerning convictions for offenses described in IC 20-26-5-11 with the school corporation or special education cooperative solely for purposes of making an employment determination. The exchange may be made only for the official use of the officials with authority to make the employment

determination. The exchange is subject to the restrictions on dissemination imposed under P.L.92-544, (86 Stat. 1115) (1972).

(h) This subsection applies to a qualified entity (as defined in IC 10-13-3-16) that is a public agency under IC 5-14-1.5-2(a)(1). After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall provide a copy to the public agency. Except as permitted by federal law, the public agency may not share the information contained in the national criminal history background check with a private agency.

(i) This subsection applies to a qualified entity that is a:

- (1) home health agency licensed under IC 16-27-1; or
- (2) personal services agency licensed under IC 16-27-4.

After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall make a determination whether the applicant has been convicted of an offense described in IC 16-27-2-5(a) and convey the determination to the requesting qualified entity.

(j) The department:

- (1) may permanently retain an applicant's fingerprints submitted under this section; and
- (2) shall retain the applicant's fingerprints separately from fingerprints collected under section 24 of this chapter.

*As added by P.L.2-2003, SEC.4. Amended by P.L.1-2005, SEC.120; P.L.234-2005, SEC.11; P.L.138-2007, SEC.2; P.L.197-2007, SEC.2; P.L.3-2008, SEC.85; P.L.155-2011, SEC.3.*

### **IC 10-13-3-40**

#### **Appropriation; use**

Sec. 40. (a) The department may use the appropriations described in subsection (b) for either or both of the following purposes:

- (1) Operating and maintaining the central repository for criminal history data.
- (2) Establishing, operating, or maintaining an electronic log to record the sale of drugs containing ephedrine or pseudoephedrine in accordance with IC 35-48-4-14.7.

(b) If the amount of money that is deposited in the state general fund during a state fiscal year from handgun license fees (as described in IC 35-47-2-4) exceeds one million one hundred thousand dollars (\$1,100,000), the excess is appropriated from the state general fund to the department for the purposes described in subsection (a). An appropriation under this section is subject to allotment by the budget agency.

*As added by P.L.190-2006, SEC.1.*