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INDIANA CRIMINAL HISTORY INFORMATION - A NEW RESTRICTION FOR INDIANA EMPLOYERS

Last year a new Indiana law [I. C. 35-38-8-7] went into effect that allows persons convicted of non-violent misdemeanors and certain felonies to petition a court to restrict access to the records and, if the court grants the petition to, according to the law, **"legally state on applications for employment and any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the restricted records."** This law created quite a commotion at the time, and this year the General Assembly may have added a bit more to the debate about the so called "Legal Lie."

THE LEGAL LIE AND SEALED RECORDS

As we reported last year, the law states that eight years after a person completes his or her sentence, that person may petition the sentencing court to **restrict access** to the records concerning his or her conviction. The law does not apply to sex or violent offenders and certain juvenile offenses. The sentencing court will grant the petition if the petitioner is not a sex offender and the petitioner was convicted of a non-violent misdemeanor or a Class D felony (Class D felonies include certain non-violent felonies, such as drunk driving, theft, dealing or possession of marijuana, etc.), so long as the petitioner has not been convicted of another felony since. The court's order restricting access to the person's records also applies to repositories of criminal history information, and those repositories would be prohibited from disclosing that criminal history information without a court order.

When this law went into effect, several commentators suggested that, since prospective employees could "legally lie" about restricted criminal information on an application for employment, employers might consider asking an applicant, *"Do you have records in the non-jvenile criminal justice system that have been restricted from disclosure by a court pursuant to I. C. 35-38-8?"* The substance of this suggested inquiry appears in the law itself [I. C. 35-38-8-6] and is allowed when the person whose criminal records have been restricted is the plaintiff in a lawsuit where the criminal history information could be relevant.

EMPLOYERS - DON'T ASK ABOUT SEALED RECORDS

This approach is no longer valid because the General Assembly has shut the door on asking an applicant about sealed criminal records. An amendment to last year's law now provides: **"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."** A Class B infraction can result in a fine of up to \$1,000.

The bottom line for Indiana employers is that an employee or an applicant whose criminal history information has been sealed by a court is legally free to lie about past arrests and convictions and the employer may not ask about whether any records are sealed.

The amendment was added by P.L.194-2011 and is effective **July 1, 2012**.

Should you have questions or require further information, please contact Stephen W. Lyman at 317.977.1422 or slyman@hallrender.com or your regular Hall Render attorney.