

HB271 – Clarifying and Effectuating the Intent of the New Record Restriction Law (Expungement) from HB1176

1. Restriction is the Same Regardless of the Date of Arrest

PROBLEM: HB1176 establishes automatic restriction for eligible arrests *after* July 1, 2013 but does not provide eligibility requirements for arrests *prior* to July 1, 2013. This difference in standards will lead to inconsistent and potentially unfair results when the law is applied across the state.

SOLUTION: HB271 will require prosecuting attorneys determine restriction eligibility for arrests *prior* to July 1, 2013, by using the **same criteria** that will automatically apply to arrests *after* July 1, 2013.

EFFECT: Record restriction will be consistent and fair across the state and individuals, regardless of when they were arrested, will know which arrests qualify for restriction under the new law.

2. Certain Individuals Charged with a Felony but Convicted of an Unrelated Misdemeanor Can Have the Felony Charge Restricted

PROBLEM: HB1176 provides that an individual charged with a felony but convicted of a misdemeanor arising out of the same transaction or occurrence can petition a court for the restriction of the felony charge. However, in order for the court to grant restriction, the court must find that the misdemeanor did not arise out of the same transaction or occurrence. HB1176 attempts to provide a remedy but the language is conflicting and thus ineffective.

SOLUTION: HB271 will allow a court to restrict a felony charge that did not result in conviction, if the individual was convicted of an unrelated misdemeanor (not a lesser included offense of the felony), and can demonstrate that the harm to the individual clearly outweighs the public's interest in the record being available.

EFFECT: The records of those charged with a felony, but only convicted of an unrelated misdemeanor will be restricted if they can demonstrate sufficient harm. This means that the felony charge will not act as a barrier to employment or other opportunities; this is appropriate because the individual was not convicted of any offense related to the felony.