



March 29, 2019

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# ENGROSSED

## HOUSE BILL No. 1150

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DIGEST OF HB 1150 (Updated March 28, 2019 11:53 am - DI 133)

**Citations Affected:** IC 5-2.

**Synopsis:** Monetary awards for exonerated prisoners. Defines "actually innocent" and specifies that a person whose conviction has been vacated and is actually innocent is entitled to compensation in the amount of \$50,000 for each year that the person was wrongfully incarcerated in the department of correction or a county jail, subject to certain conditions. Establishes the exonerated fund (fund). Specifies that the criminal justice institute shall administer the fund and receive and process claims for compensation from the fund. Establishes a  
(Continued next page)

**Effective:** November 1, 2019.

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## Steuerwald, Porter, Thompson, Smaltz

(SENATE SPONSORS — YOUNG M, MISHLER, FREEMAN, TAYLOR G,  
RANDOLPH LONNIE M)

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January 7, 2019, read first time and referred to Committee on Courts and Criminal Code.  
January 24, 2019, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

February 4, 2019, amended, reported — Do Pass.

February 18, 2019, read second time, amended, ordered engrossed.

February 19, 2019, engrossed. Read third time, passed. Yeas 95, nays 0.

#### SENATE ACTION

February 27, 2019, read first time and referred to Committee on Corrections and Criminal Law.

March 19, 2019, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.

March 28, 2019, reported favorably — Do Pass.

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EH 1150—LS 6810/DI 123



## Digest Continued

statute of limitations. Specifies fund eligibility requirements. Provides that a person's: (1) eligibility for; or (2) receipt of; proceeds from the exoneration fund does not prevent the person from applying for, enrolling in, or receiving the benefit of certain treatments, programs, or services if the person is otherwise eligible to receive the desired treatment or participate in the desired program or service. Provides that a person is not entitled to compensation in connection with the wrongful conviction: (1) if the person has previously received an award of damages in connection with the conviction; (2) while the person has a pending case; or (3) if the person does not execute a waiver. Specifies that the criminal justice institute may pay compensation only to the wrongfully incarcerated individual, and not to: (1) an estate; (2) a guardian; (3) a fiduciary; (4) a trust; or (5) an assignee; of the individual. Specifies that compensation from the fund is paid in equal sums over a five year period. Allows a person to appeal an adverse fund eligibility determination.

**EH 1150—LS 6810/DI 123**



March 29, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1150

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A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

1 SECTION 1. IC 5-2-23 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 NOVEMBER 1, 2019]:

4 **Chapter 23. Restitution for Wrongfully Incarcerated Persons**

5 **Sec. 1. (a) This chapter does not apply to a person who has**  
6 **received, in any jurisdiction, an award for restitution or damages**  
7 **concerning a conviction, or a conviction's underlying criminal**  
8 **investigation, against the state of Indiana or a political subdivision**  
9 **and any applicable state agency, official, member, officer, agent, or**  
10 **employee, or the successor to any of those individuals, as**  
11 **applicable.**

12 **(b) Subject to subsection (a), this chapter applies to a person:**

13 **(1) sentenced to the department of correction or a county jail**  
14 **as the result of a criminal conviction;**

15 **(2) who is pardoned by the governor, or whose conviction is**  
16 **vacated, reversed, or set aside;**

17 **(3) who is actually innocent; and**

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1           **(4) who has not:**

2           **(A) previously applied for restitution under this chapter**  
 3           **for the same conviction or any associated criminal**  
 4           **investigation; or**

5           **(B) received compensation in any form from the state or a**  
 6           **political subdivision for claims related to the conviction or**  
 7           **any associated criminal investigation.**

8           **Sec. 2. As used in this chapter, "actually innocent" means, with**  
 9           **respect to a particular offense, that a person:**

10           **(1) did not commit the offense; and**

11           **(2) played no part in the commission of the offense.**

12           **Sec. 3. (a) Subject to section 4 of this chapter, and except as**  
 13           **provided in section 5 of this chapter, a person to whom this chapter**  
 14           **applies is entitled to compensation in the amount of fifty thousand**  
 15           **dollars (\$50,000) for each year that the person was incarcerated in**  
 16           **the department of correction (including a facility under contract**  
 17           **to the department of correction) or a county jail for a conviction**  
 18           **that was vacated. Compensation for a partial year of incarceration**  
 19           **shall be calculated on a pro rata basis.**

20           **(b) A person is not entitled to compensation under this chapter**  
 21           **for time spent in pretrial detention, home detention, or work**  
 22           **release.**

23           **(c) The criminal justice institute shall pay compensation owed**  
 24           **under this chapter in equal sums distributed over five (5) years.**

25           **Sec. 4. A person to whom this chapter applies is entitled to**  
 26           **compensation under this chapter only if the person forever**  
 27           **releases, discharges, and waives any and all claims against the**  
 28           **following persons or entities, as applicable:**

29           **(1) The state of Indiana.**

30           **(2) A political subdivision.**

31           **(3) Any applicable state agency.**

32           **(4) Any current or former:**

33           **(A) official;**

34           **(B) member;**

35           **(C) officer;**

36           **(D) agent; or**

37           **(E) employee;**

38           **of an entity described in subdivisions (1) through (3).**

39           **(5) The successor to any person described in subdivision (4).**

40           **Sec. 5. (a) A person is entitled to compensation for only the**  
 41           **period of incarceration that is solely attributable to the conviction**  
 42           **that is vacated. A person is not entitled to compensation for the**



1 part of a sentence that is served concurrently with a sentence for  
2 a conviction that is not vacated.

3 (b) The maximum amount of compensation that a person may  
4 receive under this chapter is fifty thousand dollars (\$50,000) per  
5 year, regardless of the number of convictions vacated.

6 Sec. 6. (a) This section applies to treatments, programs, or  
7 services offered by one (1) or more of the following:

8 (1) The department of correction.

9 (2) A community corrections program (as defined under  
10 IC 35-38-2.6-2).

11 (3) A court.

12 (b) Nothing in this chapter shall be construed to prevent a  
13 person from enrolling in, participating in, or receiving the benefit  
14 of one (1) or more of the following treatments, programs, or  
15 services if the person is otherwise eligible to receive or participate  
16 in the treatment, program, or service:

17 (1) Mental health evaluation or treatment.

18 (2) Substance abuse evaluation or treatment.

19 (3) Community transition programs or services.

20 (4) Any other program, service, or treatment that is designed  
21 to provide rehabilitation or reintegration services to an  
22 incarcerated person.

23 Sec. 7. (a) The exoneration fund is established for the purpose  
24 of carrying out this chapter. The fund shall be administered by the  
25 criminal justice institute.

26 (b) The fund consists of appropriations from the general  
27 assembly.

28 Sec. 8. (a) A person to whom this chapter applies may seek  
29 compensation under this chapter by applying to the criminal  
30 justice institute on a form and in a manner to be determined by the  
31 criminal justice institute. An application must be submitted not  
32 later than:

33 (1) November 1, 2021; or

34 (2) two (2) years from the date the:

35 (A) judgment vacating, reversing, or setting aside the  
36 person's conviction becomes final; or

37 (B) governor pardons the person;

38 whichever is later. An applicant shall submit additional evidence  
39 to the criminal justice institute upon request by the criminal justice  
40 institute.

41 (b) An applicant must demonstrate the following in any  
42 application submitted to the criminal justice institute:



- 1           (1) The applicant's eligibility for compensation under this  
2           chapter as described in this chapter.
- 3           (2) The applicant's compliance with any rules promulgated or  
4           required by the criminal justice institute pursuant to section  
5           9 of this chapter.
- 6           (c) Upon receipt of:
- 7               (1) a completed application; and  
8               (2) any additional evidence required by the criminal justice  
9               institute;
- 10          the criminal justice institute shall evaluate, investigate, and make  
11          a determination with respect to an applicant's claim.
- 12          (d) If, at the conclusion of an investigation performed pursuant  
13          to subsection (c), the criminal justice institute determines that the  
14          applicant qualifies for compensation under this chapter, the  
15          criminal justice institute shall pay, from the exoneration fund, any  
16          compensation due to the applicant, subject to the requirements of  
17          subsections (e) and (f).
- 18          (e) The criminal justice institute may not pay compensation to  
19          an applicant who:
- 20               (1) has received an award for restitution or damages  
21               described in section 1 of this chapter in connection with the  
22               conviction;
- 23               (2) has a pending case that might result in an award for  
24               restitution or damages described in section 1 of this chapter  
25               with respect to the conviction; or
- 26               (3) has not executed the waiver described in section 4 of this  
27               chapter.
- 28          (f) The criminal justice institute may only pay compensation to  
29          the individual who was wrongfully incarcerated. The criminal  
30          justice institute may not pay compensation to:
- 31               (1) the estate of;
- 32               (2) a guardian of;
- 33               (3) a fiduciary of;
- 34               (4) a trust on behalf of; or
- 35               (5) an assignee of;
- 36          the wrongfully incarcerated individual.
- 37          Sec. 9. (a) The criminal justice institute may adopt rules under  
38          IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to  
39          implement this chapter.
- 40          (b) An emergency rule adopted under this section expires on the  
41          earlier of the following dates:
- 42               (1) The expiration date stated in the emergency rule.



1           **(2) The date the emergency rule is amended or repealed by a**  
2           **later rule adopted under IC 4-22-2-22.5 through IC 4-22-2-36**  
3           **or under IC 4-22-2-37.1.**  
4           **(c) The criminal justice institute may readopt an emergency rule**  
5           **that has expired.**  
6           **Sec. 10. A person may seek judicial review of a determination**  
7           **made by the criminal justice institute under this chapter in**  
8           **accordance with IC 4-21.5-5. However, an applicant appealing an**  
9           **adverse determination is not required to pay for the cost of**  
10           **producing the record.**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1150, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 5, delete "IC 5-2-23-5);" and insert "**IC 5-2-23-6);**".

Page 3, between lines 8 and 9, begin a new paragraph and insert:

**"Sec. 5. (a) This section applies to treatments, programs, or services offered by one (1) or more of the following:**

**(1) The department of corrections.**

**(2) A community corrections program (as defined under IC 35-38-2.6-2).**

**(3) A court.**

**(b) Nothing in this chapter shall be construed to prevent a person from enrolling in, participating in, or receiving the benefit of one (1) or more of the following treatments, programs, or services if the person is otherwise eligible to receive or participate in the treatment, program, or service:**

**(1) Mental health evaluation or treatment.**

**(2) Substance abuse evaluation or treatment.**

**(3) Community transition programs or services.**

**(4) Any other program, service, or treatment that is designed to provide rehabilitation or reintegration services to an incarcerated person."**

Page 3, line 9, delete "Sec. 5." and insert "**Sec. 6.**".

Page 3, line 22, delete "Sec. 6." and insert "**Sec. 7.**".

Page 4, line 2, delete "IC 5-2-23-5," and insert "**IC 5-2-23-6,**".

and when so amended that said bill do pass.

(Reference is to HB 1150 as introduced.)

MCNAMARA

Committee Vote: yeas 13, nays 0.

## COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1150, has had the same under consideration and begs leave to report the same back to the House with the

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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 state and local administration.

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 7.

Page 3, line 28, delete "attorney general." and insert "**office of management and budget.**".

Page 3, line 40, delete "attorney" and insert "**office of management and budget**".

Page 3, line 41, delete "general".

Page 3, line 42, delete "attorney general." and insert "**office of management and budget.**".

Page 3, line 42, delete "evidence" and insert "**information**".

Page 4, line 1, delete "attorney general." and insert "**office of management and budget.**".

Page 4, delete lines 2 through 5, begin a new paragraph and insert "**(b) If the office of management and budget**".

Page 4, line 7, delete "attorney general" and insert "**office of management and budget**".

Page 4, delete lines 10 through 12.

Page 4, line 13, delete "(e) The attorney general" and insert "**(c) The office of management and budget**".

Page 4, line 14, delete "attorney general's" and insert "**office of management and budget's**".

Page 4, line 15, delete "(f)" and insert "**(d)**".

Page 4, line 15, delete "attorney general" and insert "**office of management and budget**".

Page 4, delete lines 17 through 23.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1150 as printed January 25, 2019.)

HUSTON

Committee Vote: yeas 23, nays 0.

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1150 be amended to read as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:  
 "SECTION 1. IC 5-2-23 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

**Chapter 23. Restitution for Wrongfully Incarcerated Persons**

**Sec. 1. (a) This chapter does not apply to a person who, after June 30, 2019, has filed, in any court, a claim or action for restitution or damages concerning a conviction, or a conviction's underlying criminal investigation, against the state of Indiana or a political subdivision and any applicable state agency, official, member, officer, agent, or employee, or the successor to any of those individuals, as applicable.**

**(b) Subject to subsection (a), this chapter applies to a person:**

**(1) sentenced to the department of correction as the result of a criminal conviction;**

**(2) whose conviction is vacated, reversed, or set aside;**

**(3) who is:**

**(A) not retried for the crime for which the person was initially convicted;**

**(B) retried and not convicted of the crime for which the person was initially convicted; or**

**(C) pardoned by the governor on the basis of innocence of the crime for which the person was originally convicted;**

**(4) who did not:**

**(A) commit any charged criminal act; or**

**(B) commit any act, deed, or omission in connection with a charge that constitutes an offense against the state or the United States; and**

**(5) who has not:**

**(A) previously applied for restitution under this chapter; or**

**(B) received compensation in any form from the state or a political subdivision for claims related to a conviction or any associated criminal investigation."**

PAGE 2, delete lines 1 through 4.

Page 2, delete lines 15 through 18, begin a new paragraph and insert:

**"Sec. 3. A person to whom this chapter applies is entitled to**



compensation under this chapter only if the person forever releases, discharges, and waives any and all claims against the following persons or entities, as applicable:

- (1) The state of Indiana.
- (2) A political subdivision.
- (3) Any applicable state agency.
- (4) Any current or former:
  - (A) official;
  - (B) member;
  - (C) officer;
  - (D) agent; or
  - (E) employee;
 of an entity described in subdivisions (1) through (3).
- (5) The successor to any person described in subdivision (4).".

Page 3, line 4, delete "office of management and budget." and insert "criminal justice institute."

Page 3, delete lines 7 through 30, begin a new paragraph and insert:

"Sec. 7. (a) A person to whom this chapter applies may seek compensation under this chapter by applying to the criminal justice institute on a form and in a manner to be determined by the criminal justice institute. An applicant shall submit additional evidence to the criminal justice institute upon request by the criminal justice institute.

(b) An applicant must demonstrate the following in any application submitted to the criminal justice institute:

- (1) The applicant's eligibility for compensation under this chapter as described in section 1 of this chapter.
- (2) The applicant's compliance with any rules promulgated or required by the criminal justice institute pursuant to section 8 of this chapter.

(c) Upon receipt of:

- (1) a completed application; and
- (2) any additional evidence required by the criminal justice institute;

the criminal justice institute shall investigate and evaluate an applicant's claim.

(d) If, at the conclusion of an investigation performed pursuant to subsection (c), the criminal justice institute determines that the applicant qualifies for compensation under this chapter, the criminal justice institute shall pay, from the exoneration fund, any compensation due to the applicant.

(e) Except as provided in subsection (f), the criminal justice



**institute shall not pay any compensation to an applicant under this chapter if, prior to July 1, 2019, the applicant has filed, in any court, a claim or action for restitution or damages concerning a conviction, or a conviction's underlying criminal investigation, against the state of Indiana or a political subdivision and any applicable state agency, official, member, officer, agent, or employee, or the successor to any of those individuals, as applicable.**

**(f) Subsection (e) does not apply to an applicant who dismisses all claims described under subsection (e) not later than thirty (30) days after the criminal justice institute issues a determination concerning the applicant's eligibility for compensation under this chapter.**

**(g) If:**

- (1) an applicant dismisses all claims described under subsection (e) not later than thirty (30) days after the criminal justice institute issues a determination concerning an applicant's eligibility for compensation under this chapter; and**
- (2) the applicant is eligible for compensation under this chapter;**

**the criminal justice institute shall pay, in equal sums distributed over five (5) years, any compensation due to the applicant.**

**Sec. 8. (a) The criminal justice institute may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this chapter.**

**(b) An emergency rule adopted under this section expires on the earlier of the following dates:**

- (1) The expiration date stated in the emergency rule.**
- (2) The date the emergency rule is amended or repealed by a later rule adopted under IC 4-22-2-22.5 through IC 4-22-2-36 or under IC 4-22-2-37.1.**

**(c) The criminal justice institute may readopt an emergency rule that has expired.**

**Sec. 9. (a) If, at the conclusion of an investigation performed pursuant to section 7(c) of this chapter, the criminal justice institute determines that the applicant does not qualify for compensation under this chapter, the applicant may, not later than thirty (30) days after the date of service for the criminal justice institute's final order, appeal the determination contained in the criminal justice institute's final order:**

- (1) to a court with competent jurisdiction; and**



- (2) in a manner consistent with ordinary civil procedure.
- (b) An applicant pursuing an appeal under subsection (a) must:
  - (1) notify the criminal justice institute of the applicant's intent to appeal in writing; and
  - (2) request that the criminal justice institute prepare a record of the criminal justice institute's proceedings.
- (c) The record described in subsection (b)(2) shall consist of the following documents:
  - (1) Transcripts of all oral testimony.
  - (2) All exhibits admitted into evidence.
  - (3) All notices, pleadings, motions, requests, memoranda, and related documentation filed with the criminal justice institute.
- (d) The cost of producing the record described in subsections (b) and (c) shall be paid by the applicant. The criminal justice institute may require the deposit of a reasonable security for the purpose of ensuring the payment of any expense related to the production of the record described in subsections (b) and (c).
- (e) A person may file an appeal under this chapter only after exhausting all administrative remedies available to the person by the agency whose action or determination is being appealed."

Renumber all SECTIONS consecutively.

(Reference is to HB 1150 as printed February 5, 2019.)

STEUERWALD

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1150, 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:

Replace the effective date in SECTION 1 with "[EFFECTIVE NOVEMBER 1, 2019]".

Page 1, line 5, delete "who, after" and insert "**who has received, in any jurisdiction, an award for**".

Page 1, delete line 6.

Page 1, line 13, after "correction" insert "**or a county jail**".

Page 1, line 15, after "(2)" insert "**who is pardoned by the governor, or**".

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- Page 1, line 16, delete "is:" and insert "**is actually innocent; and**".
- Page 1, delete line 17.
- Page 2, delete lines 1 through 10.
- Page 2, line 11, delete "(5)" and insert "(4)".
- Page 2, line 12, delete "chapter;" and insert "**chapter for the same conviction or any associated criminal investigation;**".
- Page 2, line 15, delete "a" and insert "**the**".
- Page 2, between lines 16 and 17, begin a new paragraph and insert:  
**"Sec. 2. As used in this chapter, "actually innocent" means, with respect to a particular offense, that a person:**
- (1) did not commit the offense; and**
  - (2) played no part in the commission of the offense."**
- Page 2, line 17, delete "Sec. 2." and insert "**Sec. 3.**".
- Page 2, line 17, delete "section 3" and insert "**section 4**".
- Page 2, line 18, delete "section 4" and insert "**section 5**".
- Page 2, line 22, after "correction)" insert "**or a county jail**".
- Page 2, line 26, delete "detention." and insert "**detention, home detention, or work release.**".
- Page 2, between lines 26 and 27, begin a new paragraph and insert:  
**"(c) The criminal justice institute shall pay compensation owed under this chapter in equal sums distributed over five (5) years."**
- Page 2, line 27, delete "Sec. 3." and insert "**Sec. 4.**".
- Page 2, line 42, delete "Sec. 4." and insert "**Sec. 5.**".
- Page 3, line 8, delete "Sec. 5." and insert "**Sec. 6.**".
- Page 3, line 10, delete "corrections." and insert "**correction.**".
- Page 3, line 25, delete "Sec. 6." and insert "**Sec. 7.**".
- Page 3, line 30, delete "Sec. 7." and insert "**Sec. 8.**".
- Page 3, line 33, delete "An" and insert "**An application must be submitted not later than:**
- (1) November 1, 2021; or**
  - (2) two (2) years from the date the:**
    - (A) judgment vacating, reversing, or setting aside the person's conviction becomes final; or**
    - (B) governor pardons the person;**
- whichever is later. An"**
- Page 3, line 39, delete "section 1 of".
- Page 3, line 42, delete "8" and insert "9".
- Page 4, line 5, delete "investigate and evaluate" and insert "**evaluate, investigate, and make a determination with respect to**".
- Page 4, line 11, delete "applicant." and insert "**applicant, subject to the requirements of subsections (e) and (f).**".
- Page 4, delete lines 12 through 35, begin a new paragraph and



insert:

**"(e) The criminal justice institute may not pay compensation to an applicant who:**

- (1) has received an award for restitution or damages described in section 1 of this chapter in connection with the conviction;**
- (2) has a pending case that might result in an award for restitution or damages described in section 1 of this chapter with respect to the conviction; or**
- (3) has not executed the waiver described in section 4 of this chapter.**

**(f) The criminal justice institute may only pay compensation to the individual who was wrongfully incarcerated. The criminal justice institute may not pay compensation to:**

- (1) the estate of;**
- (2) a guardian of;**
- (3) a fiduciary of;**
- (4) a trust on behalf of; or**
- (5) an assignee of;**

**the wrongfully incarcerated individual."**

Page 4, line 36, delete "Sec. 8." and insert "Sec. 9."

Page 5, delete lines 5 through 32, begin a new paragraph and insert:

**"Sec. 10. A person may seek judicial review of a determination made by the criminal justice institute under this chapter in accordance with IC 4-21.5-5. However, an applicant appealing an adverse determination is not required to pay for the cost of producing the record."**

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

(Reference is to HB 1150 as reprinted February 19, 2019.)

YOUNG M, Chairperson

Committee Vote: Yeas 7, Nays 0.



COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Engrossed House Bill No. 1150, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to EHB 1150 as printed March 20, 2019.)

MISHLER, Chairperson

Committee Vote: Yeas 10, Nays 2

