



 Ralph D. Clark

Final Analysis
 Legislative Service Commission

Am. Sub. S.B. 187
 123rd General Assembly
 (As Passed by the General Assembly)

Sens. Johnson, White, Cupp, Watts, Latta, Spada, Carnes, Ray, Hottinger, Armbruster, Mumper, Wachtmann, Kearns, Horn, Gardner, Blessing, Nein, Drake, Oelslager, Schafrath, Espy, Latell, DiDonato, Hagan

Reps. O'Brien, Boyd, Terwilleger, Peterson, Roberts, Barrett, Barnes, Perry, Widener, Patton, Britton, Verich, Brading, D. Miller.

Effective date: *

ACT SUMMARY

- Requires the Governor's Community Service Council to adopt "recommended best practices" for organizations and entities whose volunteers have unsupervised access to children on a regular basis and provides that the practices must include criminal records checks of those volunteers conducted by the Bureau of Criminal Identification and Investigation (BCII).
- Requires notice to prospective and current volunteers who have or will have unsupervised access to children on a regular basis that they may, at any time, be subject to a criminal records check.
- Requires an organization or entity to notify a parent or guardian of a child served by the organization or entity if a person who has been convicted of or pleaded guilty to certain offenses, according to a criminal records check, will be accepted as or allowed to remain as a volunteer with unsupervised access to children on a regular basis.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Provides immunity from civil liability for death, injury, or loss to person or property that is caused by an act or omission of a volunteer and results from or is related to a volunteer having unsupervised access to a child if the volunteer was subjected to a BCII criminal records check.
- Requires the Governor's Community Service Council to establish and maintain an educational program to aid organizations and entities, parents and guardians of children, volunteers, and children in protecting the safety of children who are under the care, custody, and control of persons other than their parents or guardians.

CONTENT AND OPERATION

Continuing law

Mandatory criminal records checks for certain employment or positions

Continuing law includes numerous provisions requiring criminal records checks of persons who are under final consideration for certain types of employment or certain positions. The positions and employment range widely from those involving care of children in day care to caring for older adults in adult day-care programs.¹ The entities seeking to employ a person in one of those capacities must request that the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of the person.

Generally, entities required to request criminal records checks cannot employ or permit a person to serve in any of the specified capacities if the person has been convicted of or pleaded guilty to any of certain "designated offenses" (the offenses vary, depending on the position or employment in question).

On receipt of a mandatory criminal records check request, BCII is to conduct a check of the criminal records it maintains under law to determine whether the subject person has been convicted of any of the designated offenses. When requested, BCII is to contact the FBI for information that the FBI has with respect to the person and review the information the FBI provides. Within 30 days after receiving the request, and the form, impression sheets, and a fee, BCII is to send the entity that made the request a list of all of the designated offenses and any information, other than information the dissemination of which is prohibited by federal law, that BCII determines exists with respect to the person that indicates

¹ Revised Code section 109.572 specifies the types of employment or positions for which a criminal records check is required.



that the person has been convicted of or pleaded guilty to any of the designated offenses.

BCII's Superintendent is required to prescribe a form in an electronic or tangible format to obtain the information necessary to conduct a criminal records check, prescribe standard fingerprint impression sheets, and prescribe and charge a reasonable fee for providing criminal records checks. The person making a criminal records check request must pay the fee.

Discretionary criminal records checks made in conjunction with mandatory checks

Continuing law specifies that, in addition to or in conjunction with a mandatory request described above, certain entities making mandatory criminal record requests may also request that BCII's Superintendent investigate and determine, with respect to any individual who has applied for employment in any position after October 2, 1989, and that any individual wishing to apply for employment with a board of education may request, with regard to the individual, whether the BCII has any information gathered under law that pertains to that individual.²

On receipt of the request, the Superintendent must determine whether information exists and, on request of the person, board, or entity requesting information, also request from the FBI any criminal records it has pertaining to that individual. Within 30 days of the date the Superintendent receives a request, the Superintendent must send to the board, entity, or person a report of any information the Superintendent determines exists, including information contained in records that have been sealed under the criminal conviction records sealing law, and, within 30 days of its receipt, must send the board, entity, or person a report of any information received from the FBI, other than information the dissemination of which is prohibited by federal law.

² *Entities that may make discretionary criminal records check requests in addition to or in conjunction with a mandatory request are school district boards of education, county boards of mental retardation and developmental disabilities (MR/DD), entities under contract with a county MR/DD board, chief administrators of chartered nonpublic schools, chief administrators of home health agencies, chief administrators of or persons operating child day-care centers, type A family day-care homes, or type B family day-care homes licensed or certified under law, administrators of certified type C family day-care homes, chief administrators of head start agencies, or executive directors of public children services agencies.*



Operation of the act

Best practices for organizations and entities

(sec. 121.401)

The act requires the Governor's Community Service Council to adopt a set of "recommended best practices" for organizations and entities to follow when one or more volunteers of the organization or entity have unsupervised access to one or more children or otherwise interact with one or more children.³ The best practices must focus on, but not be limited to, the issue of the safety of the children and, in addition, the screening and supervision of volunteers. The best practices must include as a best practice that the organization or entity subject to a criminal records check performed by BCII as described above (see, "**Continuing law**") all of the following:

All persons who apply to serve as a volunteer in a position in which the person will have unsupervised access to a child on a regular basis; and

All volunteers who are in a position in which the person will have unsupervised access to a child on a regular basis and who the organization or entity has not previously subjected to a criminal records check performed by BCII.

The recommended best practices are in addition to the educational program required to be established by the Council under the act (see "**Educational program**," below).

Notice to current and prospective volunteers

(sec. 109.575)

The act requires that, at the time of a person's initial application to an organization or entity to be a volunteer in a position in which the person on a regular basis will have unsupervised access to a child, the organization or entity must inform the person that, at any time, the person might be required to provide a set of fingerprints and a criminal records check might be conducted with respect to

³ The act defines "organization or entity" a religious, charitable, scientific, educational, athletic, or service institution or organization or local government entity that provides care, treatment, education, training, instruction, supervision, or recreation to children.

"Unsupervised access to a child" means that the person in question has access to a child and either of the following applies: (1) No other person 18 years old or older is present in the same room with the child or (2) if outdoors, no other person 18 years old or older is within a 30-yard radius of the child or has visual contact with the child.



the person. No later than 30 days after the act's effective date, each organization or entity must notify each current volunteer who is in a position in which the volunteer on a regular basis has unsupervised access to a child that, at any time, the volunteer might be required to provide a set of fingerprints and a criminal records check might be conducted.

Notice to parents

(sec. 109.576)

Under the act, if an organization or entity intends to use a person as a volunteer in a position in which the person on a regular basis has unsupervised access to a child, a criminal records check requested by the organization or entity shows that the person has been convicted of or pleaded guilty to one or more of certain offenses, and the organization or entity permits the person to serve in that position the organization or entity must notify the parent or guardian of each child for whom it provides services that the person has been convicted of one or more of the offenses.⁴ The notice must be in writing and identify the person who is accepted or retained as a volunteer having unsupervised access to a child on a regular basis. The notice may not identify the specific offense or offenses for which the person was convicted or pleaded guilty. The notice must be sent to the parent or guardian on the date the organization or entity begins providing services to the child or on the date the organization or entity decides to accept or retain the person as a volunteer in that position after receiving the report of the results of the criminal records check, whichever is later.

The offenses are the same as those applicable under continuing law that disqualify a person from being an adoptive parent, a foster caregiver, or a person responsible for a child's care in out-of-home care. Those offenses include, for example, murder, voluntary manslaughter, involuntary manslaughter, assault, rape, sexual battery, corruption of a minor, voyeurism, public indecency, promoting prostitution, pandering obscenity involving a minor, robbery, burglary, domestic violence, carrying concealed weapons, trafficking in drugs, and adulteration of food.

⁴ *The following are the types of criminal records checks applicable to the act: (1) criminal records checks conducted by BCII as described under "Continuing law," above, (2) any criminal records check performed in any manner by the organization or entity or any of its employees or officers, and (3) any criminal records checks performed in any manner by any person on the request of the organization or entity or any of its employees or officers.*



Immunity

(sec. 109.577)

Under the act, if an organization or entity uses a volunteer in a position in which the volunteer on a regular basis has unsupervised access to a child and the volunteer has been subjected to a criminal records check conducted by BCII (see "**Continuing law**," above), the organization or entity, and its officials and employees, are immune from civil liability that might otherwise be incurred or imposed for any death or any injury or loss to person or property that is caused by an act or omission of the volunteer and that results from or is related to the volunteer having unsupervised access to a child on a regular basis. The immunity does not apply to a person, organization, or entity that already has immunity under Ohio law for the good faith compliance, attempted compliance, or failure to comply. The act specifies that it does not create a new cause of action or substantive legal right against a person, organization, or entity and does not affect any immunities from civil liability or defenses established by another Revised Code section or available at common law, to which a person, organization, or entity may be entitled under circumstances covered by the act.

Educational program

(sec. 121.402)

The act requires the Governor's Community Service Council to establish and maintain an educational program that does all of the following:

Makes available to parents and guardians of children notice about the provisions of the act and information about how to keep children safe when they are under the care, custody, or control of a person other than the parent or guardian;

Makes available to organizations and entities information regarding the best methods of screening and supervising volunteers, how to obtain a criminal records check of a volunteer, confidentiality issues relating to reports of criminal records checks, and record keeping regarding the reports;

Makes available to volunteers information regarding the possibility of being subjected to a criminal records check and displaying appropriate behavior to minors; and

Makes available to children advice on personal safety and information on what action to take if someone takes inappropriate action towards a child.



The educational program must begin making the materials described above available not later than one year after the effective date of the act.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-23-99	p. 1010
Reported, S. Judiciary	03-16-00	p. 1465
Passed Senate (32-0)	03-21-00	pp. 1481-1482
Reported, H. Children and Family Services	11-13-00	p. 2329
Passed House (90-1)	11-14-00	p. 2341
Senate refused to concur in House amendments (13-20)	11-15-00	pp. 2232-2233
House requested conference committee	11-15-00	p. 2361
Senate acceded to request for conference committee	11-16-00	p. 2270
Senate agreed to conference committee report (28-3)	12-07-00	pp. 2354-2358
House agreed to conference committee report (90-3)	12-12-00	pp. 2478-2483

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