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Bill Analysis

Legislative Service Commission

H.B. 530

123rd General Assembly
(As Introduced)

Reps. Roberts, Pringle, Perry, Verich, Netzley

BILL SUMMARY

- Specifies a number of offenses that disqualify or may disqualify a person from being appointed or employed, or continuing appointment or employment, as a person working with children.
- Prohibits a private or government entity that knows a person is under indictment or subject to criminal proceedings for committing any of the disqualifying offenses from appointing or hiring the person as a person working with children or, if the person is currently so appointed or employed, requires that the entity suspend the person's appointment or employment.
- Requires a private or government entity to request that the Superintendent of the Bureau of Identification and Investigation (BCII) conduct a criminal records check of each person who comes under final consideration for appointment or employment, or is currently appointed or employed, by the entity as a person working with children.
- Requires that a criminal records check with regard to a person already appointed or employed as a person working with children be conducted annually and that each criminal records check be completed not later than one year after the date the Superintendent of BCII made a previous criminal records check under the bill regarding the person.
- Permits a private or government entity to appoint or employ conditionally a person as a person working with children until the criminal records check is completed and the entity receives the results of the check.
- Requires the Superintendent of BCII, not later than 30 days after receiving a criminal records check request and necessary materials, to send the

requesting entity information the Superintendent determines exists that indicates that the person who is the subject of the request has been convicted of or pleaded guilty to any of the offenses that disqualifies the person from working with children.

- Authorizes the Superintendent of BCII to charge a maximum \$5 fee for providing a criminal records check and, under certain conditions, permits the entity requesting the check to charge the person subject to the check a fee for costs incurred in obtaining the check.
- Authorizes a county sheriff's office, municipal police department, or any other entity that makes fingerprint impressions for the purpose of a criminal records check conducted under the bill to charge a reasonable fee.
- Provides that a determination of whether any information exists that indicates that a person has been convicted of or pleaded guilty to an offense that disqualifies a person from working with children is valid for the subject of the check for one year from the date the Superintendent makes the determination.
- Provides that the report of a criminal records check conducted by the Superintendent of BCII under the bill is not a public record and may be made available only to certain entities.
- Provides certain protections in a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by a person subject to a criminal records check under the bill.

CONTENT AND OPERATION

Conditions on appointment or employment of person working with children

(secs. 109.575, 109.576, and 109.5715)

The bill prohibits a person with a criminal history of certain crimes from being appointed or employed as a person working with children. Private and government entities must request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of each person under final consideration for appointment or employment, or currently appointed or employed, as a person working with children.

A person is a "person working with children," and therefore subject to the bill, if the person, as a volunteer or for hire, works with one or more children more than one hour a week for six or more weeks a year and with no other adult present for at least 30 consecutive minutes of that one-hour period. Certain persons subject to a criminal records check by current law are not considered to be a person working with children for the purpose of the bill.¹

Disqualifying offenses

(secs. 109.5715 and 109.5716)

The bill specifies a number of offenses that disqualify a person from being appointed or employed, or continuing appointment or employment, by a private or government entity as a person working with children. The following are the disqualifying offenses: aggravated murder, murder, failing to provide for a functionally impaired person, patient abuse or neglect, kidnapping, abduction, criminal child enticement, rape, sexual battery, corruption of a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, public indecency, compelling prostitution, promoting prostitution, procuring, disseminating matter

¹ *The following persons are subject to a criminal records check by current law (Revised Code § 109.572):*

- (1) A prospective foster parent;*
- (2) A person under final consideration for appointment or employment as a person responsible for a child's care in out-of-home care or with any of the following as a person responsible for the care, custody, or control of a child: head start agency, preschool program, school district, educational service center, chartered nonpublic school, home health agency, child day-care center, type A family day-care home, certified type B family day-care home, or public children services agency;*
- (3) The owner, licensee, or administrator of a child day-care center or type A family day-care home, authorized provider of a certified type B family day-care home, or any person age 18 or older who resides in a type A family day-care home or certified type B family day-care home;*
- (4) A person under final consideration for appointment or employment in any position with a county board of mental retardation and developmental disabilities;*
- (5) A person under final consideration for employment with an entity that contracts with a county board of mental retardation and developmental disabilities to provide direct services to individuals with mental retardation or a developmental disability if the employment position involves the direct services.*

harmful to juveniles, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of a minor in nudity-oriented material or performance, endangering children, felonious sexual penetration in violation of former law, child stealing in violation of former law, interference with custody in a manner that would have been child stealing under former law had it occurred prior to July 1, 1996, or a violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of these offenses.

The bill also specifies certain other offenses that, with an exception, disqualify a person from being appointed or employed, or continuing appointment or employment, as a person working with children. The exception is that the offense does not disqualify the appointment or employment, or continued appointment or employment, on the expiration of one of the following periods, whichever is longest: (1) ten years from the date of conviction or plea of guilty for the offense, (2) seven years from the termination date of all sanctions related to the offense, or (3) five years from the date of release from imprisonment for the offense. The following are these disqualifying offenses: voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, aggravated menacing, aggravated robbery, robbery, aggravated burglary, burglary, breaking and entering, theft, unauthorized use of a vehicle, unauthorized use of property or computer or telecommunications property, passing bad checks, misuse of credit cards, forgery, forging identification cards, selling or distributing forged identification cards, Medicaid fraud, securing writings by deception, insurance fraud, receiving stolen property, unlawful abortion, contributing to the unruliness or delinquency of a child, domestic violence, carrying a concealed weapon, having weapons while under disability, improperly discharging a firearm at or into habitation or school safety zone, corrupting another with drugs, trafficking in drugs, illegal manufacture of drugs or cultivation of marihuana, funding of drug or marihuana trafficking, illegal administration or distribution of anabolic steroids, possession of drugs, permitting drug abuse, deception to obtain a dangerous drug, illegal processing of drug documents, adulteration of food, or a violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of these offenses.

A private or government entity that knows a person is under indictment or subject to criminal proceedings for committing any of the disqualifying offenses is prohibited from appointing or hiring the person, or must suspend the person from current appointment or employment, as a person working with children.

Criminal records check requirement

(secs. 109.575, 109.576, 109.577, 109.5710, and 109.5717; Section 3)

The appointing or hiring officer of any private or government entity is required to request that the Superintendent of BCII conduct a criminal records check of each person who comes under final consideration for appointment or employment, or is currently appointed or employed, by the entity as a person working with children. The criminal records check for a person currently appointed or employed must be requested not later than one month after the bill's effective date.

A criminal records check with regard to a person already appointed or employed as a person working with children must be conducted annually. Each criminal records check is to be completed not later than one year after the date the Superintendent made a previous criminal records check under the bill regarding the person.²

If a person subject to the bill's criminal records check requirements does not present either proof that the person has been a resident of this state for the five-year period immediately preceding the date on which the criminal records check is requested or evidence that within that five-year period the Superintendent requested information about the person from the Federal Bureau of Investigation (FBI) in a criminal records check, the private or government entity requesting the check must request that the Superintendent obtain information from the FBI as part of the check. Even if the person presents the proof, the private or government entity is permitted to request that the Superintendent include information from the FBI in the criminal records check.

If a person subject to the bill fails to provide the information necessary to complete a form for the check prescribed by the Superintendent or fails to provide impressions of the person's fingerprints, the private or government entity required to request the check is prohibited from appointing or employing the person, or

² *It is possible to construe the bill as making a person who was required by current law to undergo a criminal records check subject to the bill's annual criminal records check requirement. The bill excludes from the criminal records check requirement a person subject to a criminal records check under R.C. 109.572. As discussed in the previous footnote, that section provides for criminal records checks for persons under final consideration for appointment or employment in certain jobs. Once such a person is appointed or employed, he or she is no longer under final consideration for appointment or employment and, arguably, not a person subject to R.C. 109.572. If the person is not subject to R.C. 109.572, he or she is subject to the bill's annual criminal records check requirement as a person currently appointed or employed as a person working with children. A person not subject to R.C. 109.572 because he or she was grandfathered from the criminal records check requirement also would be subject to the bill's annual criminal records check requirement.*

must terminate the person's appointment or employment, as a person working with children.

The private or government entity is permitted to appoint or employ conditionally a person as a person working with children until the criminal records check is completed and the entity receives the results of the check. If the results indicate that the person does not qualify for appointment or employment, the entity is required to terminate the person's appointment or employment.

Duties of entity requesting a criminal records check

(sec. 109.578)

A private or government entity required by the bill to request a criminal records check must do all of the following:

(1) Inform a person subject to the check, at the time of the person's initial application, or, if the person is currently appointed or employed, at least three months prior to requesting the check, that the person is required to provide a set of impressions of the person's fingerprints and that a criminal records check is required to be conducted and satisfactorily completed;

(2) Provide the person a copy of the form and standard fingerprint impression sheet prescribed by the Superintendent of BCII;

(3) Obtain the completed form and impression sheet from the person;

(4) Forward the completed form and impression sheet to the Superintendent at the time the check is requested.

Duties of person subject to criminal records check requirement

(sec. 109.579)

A person required by the bill to undergo a criminal records check must complete a form prescribed by the Superintendent of BCII for the check or provide all the information necessary for its completion and provide an impression sheet prescribed by the Superintendent with the impressions of the person's fingerprints. The person is to obtain the fingerprint impressions at a county sheriff's office, municipal police department, or any other entity with the ability to make fingerprint impressions on the impression sheets.

Duties of Superintendent of BCII when requested to do a criminal records check

(secs. 109.5711 and 109.5712)

When the Superintendent of BCII receives a request to conduct a criminal records check and a completed criminal records check form and fingerprint impression sheet, the Superintendent is required to conduct a check to determine whether any information exists that indicates the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the offenses that disqualify the person from working with children. In conducting the criminal records check, the Superintendent must review or cause to be reviewed any relevant information gathered and compiled by BCII that relates to the subject of the check, including any relevant information contained in records that have been sealed. If the criminal records check request asks for information from the FBI, the Superintendent also must request from the FBI any information it has with respect to the subject of the check and review or cause to be reviewed any information the Superintendent receives from the FBI.

Not later than 30 days after receiving the request and completed form and fingerprint impressions, the Superintendent is required to send the person that made the request any information, other than information the dissemination of which is prohibited by federal law, the Superintendent determines exists with respect to the person who is the subject of the request that indicates that that person previously has been convicted of or pleaded guilty to any of the offenses that disqualifies the person from working with children. The Superintendent must send the entity that made the request a copy of the list of disqualifying offenses.

Fee for criminal records check and making fingerprint impressions

(secs. 109.5719, 109.5720, and 109.5721)

The Superintendent of BCII is permitted to charge a maximum \$5 fee for providing a criminal records check under the bill. A private or government entity requesting a criminal records check must pay to BCII the fee charged by the Superintendent.

The entity is allowed to charge a fee for the costs the entity incurs in obtaining the check. The fee the entity charges cannot exceed the fee the entity pays to BCII. If the entity charges the fee, the entity is required to notify the person subject to the criminal records check of the amount of the fee at the time of the initial application for appointment or employment, or, if the person is currently appointed or employed by the entity, at the time the person is notified that the person must undergo the check. The entity also must notify the person that, unless the fee is paid, the person will not be considered for appointment or employment, or, if the person is currently appointed or employed by the entity, the person's appointment or employment will be terminated. The entity may not charge the fee if Medicaid reimburses the entity for the fee it pays to BCII.

A county sheriff's office, municipal police department, or any other entity that makes fingerprint impressions for the purpose of a criminal records check conducted under the bill is permitted to charge a reasonable fee.

Superintendent of BCII to prescribe form and impression sheets

(sec. 109.5722)

The Superintendent of BCII is required by the bill to prescribe a form to obtain the information necessary to conduct a criminal records check from any person subject to a check under the bill. The Superintendent also must prescribe standard impression sheets to obtain the fingerprint impressions of those persons.

Criminal records check valid for one year

(sec. 109.5713)

The bill provides that a determination of whether any information exists that indicates that a person previously has been convicted of or pleaded guilty to an offense that disqualifies a person from working with children that is made by the Superintendent of BCII with respect to information considered in a criminal records check is valid for the subject of the check for one year from the date on which the Superintendent makes the determination.

Criminal records check not a public record

(sec. 109.5714)

The report of a criminal records check conducted by the Superintendent of BCII under the bill is not a public record and is not to be made available to any private or government entity other than the following:

- (1) The subject of the check or that person's representative;
- (2) The private or government entity that requested the check or the entity's representative;
- (3) An entity owned or operated by the private entity that requested the check;
- (4) A court, hearing officer, or other necessary individual involved in a case dealing with a denial or termination of appointment or employment or employment or unemployment benefits with respect to the subject of the check.

Protection in tort or other civil action

(sec. 109.5718)

The bill provides that the following apply in a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by a person subject to a criminal records check under the bill:

(1) If the private or government entity appointed or employed, or continued the appointment or employment of the person in good faith and reasonable reliance on the report of a criminal records check, the entity is not to be found negligent solely because of its reliance on the report, even if the information in the report is determined later to have been incomplete or inaccurate.

(2) If the entity appointed or employed, or continued the appointment or employment of, the person in good faith on a conditional basis as permitted by the bill, the entity is not to be found negligent solely because it employed the person prior to receiving the report of the criminal records check.

Actions officials must take regarding certain misdemeanors

(secs. 109.57 and 109.60)

Under current law, the Superintendent of BCII is required to procure from wherever procurable and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of all persons who have been convicted of committing within this state a felony, any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or any misdemeanor that may disqualify persons under current law from certain jobs involving children. The person in charge of any state institution having custody of a person suspected of having committed such an offense is required to furnish the materials to the Superintendent. Clerks of courts, other than the Ohio Supreme Court or a court of appeals, must send to the Superintendent a weekly report containing a summary of each case involving such offenses. The Superintendent is required to cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on a charge of such an offense. County sheriffs and city police chiefs are required, immediately on the arrest of a person for such an offense, to take the person's fingerprints, or cause them to be taken, on forms furnished by the Superintendent and forward copies of the completed forms, any other description that may be required, and the history of the offense to BCII.

The bill requires that these officials also take the actions when the offense is a misdemeanor that, under the bill, disqualifies a person from working with children.

HISTORY

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