



**H.B. 538**  
123rd General Assembly  
(As Introduced)

**Reps. Calvert, Clancy**

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**BILL SUMMARY**

- Changes the criminal background check requirements for Department of Mental Retardation and Developmental Disabilities employees and for certain employees of contractors with county boards of mental retardation and developmental disabilities (MRDD).
- Permits county MRDD boards to continue to perform certification and registration of their employees on behalf of the Department.
- Changes the law governing audits of and payment agreements with providers of services or programs to the Department and the accreditation by the Department of services or programs offered by county MRDD boards.
- Provides that a contractor is not required to repay the Department the amount the contractor received from the Department pursuant to a retroactive rate increase the Department issued in April 1997.
- Extends the expiration date of the Joint Council on Mental Retardation and Developmental Disabilities from December 31, 2001, to December 31, 2005.
- Makes other changes in the MRDD Law.

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## CONTENT AND OPERATION

### *Criminal records checks for DMRDD employees*

#### *Current law*

Current law prohibits any appointing officer from appointing a person to a classified or unclassified position in the Department of Mental Retardation and Developmental Disabilities (DMRDD) if the person has been convicted of or pleaded guilty to any of the following: (1) any felony, or crime constituting a misdemeanor of the first degree on the first offense and a felony on subsequent offenses, contained in the Revised Code, if the felony or misdemeanor bears a direct and substantial relationship to the position being filled or (2) an existing or former law of Ohio, any other state, or the United States, if the law violated is substantially equivalent to any offense described in item (1) above. Current law also requires the DMRDD's Director or an appointing officer to request the Bureau of Criminal Identification and Investigation (BCII) in the Attorney General's office, or any other state or federal agency, to supply the Director or officer with a written report regarding the criminal records of any applicant for a position who is under "final consideration." (Existing sec. 5123.081(A), (B), and (D).)

#### *Changes proposed by the bill*

*New requirements: in general.* The bill repeals the provisions described in the immediately preceding paragraph and in their place enacts criminal records check requirements similar to those required for employees of county MRDD boards (new sec. 5123.081; Section 2 of the bill).<sup>1</sup> These new requirements apply only to persons who apply for appointment to or employment with the DMRDD on or after the bill's effective date (Section 3 of the bill). The bill relatedly amends the provisions of current law that govern how the BCII conducts criminal records

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<sup>1</sup> *The county MRDD board similar provisions are in section 5126.28 of the Revised Code (amended in minor respects by the bill).*



checks on persons for whom a criminal records check is required under various provisions of current law, to bring the new requirements under the BCII's jurisdiction (secs. 109.57(F)(2)(a) and 109.572(A)(2), (B), and (C)(1), (2)(a), and (3)).

The bill requires the DMRDD's Director to request the BCII's Superintendent to conduct a criminal records check with respect to each *applicant*, except that the Director need not request a criminal records check for a DMRDD employee who is being considered for a different position or is returning after a leave of absence or seasonal break in employment, as long as the Director has no reason to believe that the employee has committed any of the offenses listed or described below. The bill defines "applicant" as meaning a person who is under final consideration for appointment to or employment with the DMRDD. (New sec. 5123.081(A)(1) and (2) and (B).)

The Director must inform each person, at the time of the person's *initial application for employment* with the DMRDD, that the person must provide a set of impressions of the person's fingerprints and that a criminal records check is required to be conducted and satisfactorily completed if the person comes under final consideration for employment as a precondition to employment in a position (new sec. 5123.081(K)(1)). If the applicant does not present proof that the applicant has been a resident of Ohio for the five-year period immediately prior to the date upon which the Director requests a criminal records check, the Director must request that the BCII Superintendent obtain information from the FBI as part of the criminal records check. If the applicant presents proof that the applicant has been an Ohio resident for that five-year period, the Director may request that the Superintendent include information from the FBI in the criminal records check. An applicant may provide proof of residency by presenting, with a notarized statement asserting that the applicant has been an Ohio resident for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state income tax form identifying the applicant's permanent residence, or any other document the Director considers acceptable (new sec. 5123.021(B)).

The bill requires that the Director (1) provide to each applicant a copy of the form that the Superintendent must prescribe under current law to obtain the information necessary to conduct a criminal records check, (2) provide to each applicant material needed to obtain fingerprint impressions that the Superintendent must prescribe under current law, (3) obtain the completed form and material from each applicant, and (4) forward the completed form and material to the Superintendent at the time the Director requests a criminal records check. Any applicant who receives a copy of the form and the material needed to obtain fingerprint impressions and who is requested to complete the form and provide a



set of fingerprint impressions must complete the form or provide all the information necessary to complete the form, and must provide the material with the impressions of the applicant's fingerprints. If an applicant, upon request, fails to do these things, the Director must not employ the applicant. (New sec. 5123.081(C).)

**Criminal records from other agencies; licensing records.** Under the bill, the DMRDD Director may request any other state or federal agency to supply the Director with a written report regarding the criminal record of an applicant. With regard to an applicant who becomes a DMRDD employee, if the employee holds an occupational or professional license or other credentials, the Director may request that the state or federal agency that regulates the employee's occupation or profession supply the Director with a written report of any information pertaining to the employee's criminal record that the agency obtains in the course of conducting an investigation or in the process of renewing the employee's license or other credentials. (New sec. 5123.081(D).)

**Violations of motor vehicle laws.** The bill requires the DMRDD Director to request the Registrar of Motor Vehicles to supply the Director with a certified abstract regarding the record of convictions for violations of motor vehicle laws of each applicant who will be required by the applicant's employment to (1) transport individuals with mental retardation or developmental disabilities or (2) operate the DMRDD's vehicles for any other purpose. For each abstract provided, the Director must pay the amount specified under current law to obtain the copies. (New sec. 5123.081(I).)

**Conditional hiring of applicants and applicants' statements.** The DMRDD Director may employ an applicant pending receipt of reports requested under the bill. The Director must terminate the employment of any such applicant if it is determined from the reports that the applicant failed to inform the Director that the applicant had been convicted of or pleaded guilty to any of the offenses listed or described below. (New sec. 5123.081(K)(2).)

Prior to employing an applicant, the Director must require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of or pleaded guilty to any of the offenses listed or described below. The Director also must require that applicant to sign an agreement under which the applicant agrees to notify the Director if, while employed with the DMRDD, the applicant is ever formally charged with any of those offenses. The agreement must inform the applicant that failure to report formal charges may result in being dismissed from employment. (New sec. 5123.081(F).)

**Disqualifying criminal offenses.** Except as provided in rules adopted by the DMRDD Director under the bill (see below), the Director must not employ an applicant if the applicant previously has been convicted of or pleaded guilty to any of the following offenses: (1) aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, failing to provide for a functionally impaired person, aggravated menacing, patient abuse, gross patient neglect, patient 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, prostitution, prostitution after a positive HIV test, disseminating matter 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, aggravated robbery, robbery, aggravated burglary, burglary, unlawful abortion, endangering children, contributing to the unruliness or delinquency of a child, domestic violence, carrying concealed weapons, having weapons while under disability, improperly discharging a firearm at or into a habitation or in a school safety zone, corrupting another with drugs, numerous types of "trafficking in drugs" offenses, illegal manufacture of drugs or illegal cultivation of marihuana, various funding of drug or marihuana trafficking offenses, illegal administration or distribution of anabolic steroids, placing harmful or hazardous objects or substances in or furnishing adulterated food or confections, child stealing as it existed prior to July 1, 1996, interference with custody that would have been the offense of child stealing as it existed prior to July 1, 1996, various types of possession of drugs offenses that are not a minor drug possession offense, or the former offense of felonious sexual penetration, (2) a felony contained in the Revised Code that is not listed in (1) above, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled, or (3) a violation of any existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses or violations listed in (1) or (2) above (new sec. 5123.081(E)).

**DMRDD Director rules.** The bill requires the DMRDD Director to adopt rules under the Administrative Procedure Act to implement its provisions, including rules specifying circumstances under which the Director may employ a person if the person has been convicted of one of the offenses listed or described above but who meets standards in regard to rehabilitation set by the Director (new sec. 5123.081(M)).

**Fees.** The bill requires the DMRDD Director to pay to the BCII the fee prescribed under current law, for each criminal records check conducted upon a request from the Director. The Director may charge, however, an applicant a fee for the costs incurred in obtaining reports, abstracts, or fingerprint impressions



under the bill's provisions. A fee charged to an applicant must not exceed the amount of the fees the Director pays to the BCII and the Registrar of Motor Vehicles. If a fee is charged the applicant, the Director must notify the applicant at the time of the applicant's initial application for employment of the amount of the fee and that, unless the fee is paid, the Director will not consider the applicant for employment. (New sec. 5123.081(G) and (L).)

**Confidentiality of reports.** Any report obtained under the bill is *not a public record* for purposes of the Public Records Law and must not be made available to any person other than (1) the applicant who is the subject of the criminal records check or the applicant's representative, (2) the DMRDD or its representative, (3) a county MRDD board, and (4) any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment to the applicant or the denial, suspension, or revocation or a certificate or evidence of registration (new sec. 5123.081(H)(1)).

**Copies of records and reports.** An individual for whom the DMRDD Director has obtained reports may submit a written request to the Director to have copies of the reports sent to any state agency, entity of local government, or private entity. The individual must specify in the request the entities to which the copies are to be sent. On receiving the request, the Director must send copies of the reports to the specified entities. (New sec. 5123.081(H)(2).)

The Director may request that a state agency, entity of local government, or private entity send to the Director copies of any report regarding a records check or criminal records check that the entity possesses, if the Director obtains the written consent of the individual who is the subject of the report (new sec. 5123.081(H)(2)).

The Director must provide each applicant with a copy of any report or abstract obtained about the applicant under the bill (new sec. 5123.081(J)).

**Method for obtaining fingerprint impressions.** The bill provides that the BCII Superintendent may develop a method, that differs from the method provided in current law, of obtaining fingerprint impressions of any person for whom a criminal records check is required under the statutes pertaining to DMRDD employees or employees or contractors of county MRDD boards.<sup>2</sup> If the Superintendent develops a different method, any person for whom a criminal

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<sup>2</sup> Existing law requires the Superintendent to prescribe standard impression sheets to obtain fingerprint impressions, that persons for whom a criminal records check is required shall use to obtain fingerprint impressions at a county sheriff's office, municipal police department, or another entity (sec. 109.572(C)(2)(a)).

records check under those statutes is required must obtain the fingerprint impressions through that method. The Superintendent, or an entity implementing the alternative method, may charge a reasonable fee for obtaining the impressions. (Sec. 109.572(C)(2)(b).)

**Criminal records checks for certain employees of contractors with county MRDD boards**

Current law generally requires an entity that is under contract with a county MRDD board and that provides "direct services" to individuals with mental retardation or a developmental disability to conduct criminal records checks, in the same manner as county MRDD boards must conduct those checks for their applicants for employment, for all persons under final consideration for employment with the contracting entity in a position that involves providing services directly to such individuals (sec. 5126.281(A) and (B)). The bill maintains the current exceptions to this requirement in another location and also *exempts* a person who will provide *only respite care under a family support services program* established under existing law and who is selected by a family member of the individual with mental retardation or a developmental disability who is to receive respite care (sec. 5126.281(B)(2)(a) and (b)).

The bill adopts a new term to describe individuals who provide direct services and the nature of those services. It refers to employment in a "direct services position," which means an employment position in which the employee has physical contact with, the opportunity to be alone with, or exercises supervision or control over one or more individuals with mental retardation or a developmental disability (sec. 5126.281(A)(2), (B)(1), (C), and (D)). The bill also refers to contracting entities providing "specialized services" to individuals pursuant to the contract with a county MRDD board (instead of "direct services" under current law). "Specialized services" means any program or service designed and operated to serve primarily individuals with mental retardation or a developmental disability, including a program or service provided by an entity licensed or certified by the DMRDD. If there is a question as to whether a contracting entity is providing specialized services, the contracting entity may request that the DMRDD's Director make a determination, and the Director's determination is final. (Sec. 5126.281(A)(1) and (3).)

**Alternate certification and registration programs for county MRDD board employees**

Current law generally requires that no person can be employed or compensated by a county MRDD board who does not hold the certificate, evidence of registration, or license required for the position under the rules of the



DMRDD or the State Department of Education (sec. 5126.26--not in the bill). The bill provides that, notwithstanding this general requirement and related requirements, the DMRDD may authorize county MRDD boards to establish and administer in their counties programs for the certification and registration of persons for employment by the boards and by entities contracting with the boards. A certificate or evidence of registration issued by a board participating in a *pilot project* under this type of DMRDD authorization has the same force and effect as a certificate or evidence of registration issued by the DMRDD. (New sec. 5126.252.)

Temporary law that expired June 30, 1999, authorized the DMRDD to exercise the power described in the immediately preceding paragraph by means of pilot projects (former sec. 5126.252). The bill specifies that the provisions that it enacts in new section 5126.252 revive the temporary law, except that, under the bill, the provisions are permanent law and programs authorized by the DMRDD are not limited to pilot projects.<sup>3</sup> (Section 6 of the bill.)

### **Accreditation of county MRDD boards**

Current law requires the DMRDD to establish a system of accreditation for county MRDD boards to ensure that they comply with federal and state statutes and rules. The DMRDD must establish *uniform standards for the system* by rules adopted in accordance with the Administrative Procedure Act. The bill, however, instead requires the DMRDD to adopt *rules governing the system of accreditation*. (Sec. 5126.081(A).) The bill correspondingly replaces references in existing law to the DMRDD's accreditation *standards* with references to its accreditation *requirements* (sec. 5126.081(A), (B), (C), (D), (E)(3), and (G)).

Current law specifies that if, after being given an opportunity to implement a correction plan to comply with the DMRDD's standards for accreditation, a county MRDD board continues to fail to meet them, the DMRDD must issue an order denying the board accreditation. Besides substituting DMRDD accreditation "requirements" for existing law's accreditation "standards," the bill removes provisions of current law that (1) authorize the DMRDD to deny accreditation for *all or part of the programs or services* a county MRDD board offers and (2) provide that a board denied accreditation is ineligible to receive, for the programs and services that are the subject of the denied accreditation, any state or federal funds in an amount that exceeds the amount the board received for the programs and services immediately prior to the date on which the DMRDD determined that

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<sup>3</sup> *Despite the bill's uncodified law in Section 6, new section 5126.252 contains a reference to "pilot projects" that may need to be changed to "a program" (lines 1,889-1,890).*



the board did not meet its accreditation standards. (Sec. 5126.081(D).) The bill also correspondingly removes other references to programs or services that were denied accreditation (sec. 5126.081(E)).

### **Audits of providers of services or programs**

Current law provides that if the DMRDD determines pursuant to an audit or a reconciliation that money is owed to the state by a contractor, the Office of Support within the DMRDD may enter into a payment agreement with the contractor (sec. 5123.183(B)). Existing law defines "contractor" as a person or government agency that has entered into a contract with the DMRDD to provide residential or respite care services (sec. 5123.183(A)).

Besides renumbering the statute containing these payment agreement provisions, the bill replaces the references to "contractor" in the provisions with "provider of a service or program" (sec. 5123.051).<sup>4</sup> It also removes provisions of current law that (1) require the Office of Support to certify the entire balance owed to the Attorney General for collection if a contractor fails to pay any installment in full within 45 days after its due date, (2) authorize the DMRDD to withhold funds from payments made to a contractor to satisfy a judgment secured by the Attorney General, and (3) require that all money collected be deposited in the state treasury to the credit of the Purchase of Service Fund, which current law creates and requires to be used solely to pay contracts to obtain programs and services (sec. 5123.051(C) and (D)).

### **Repayments by contractors to the DMRDD**

The bill provides that a contractor is not required to repay the DMRDD the amount the contractor received from the DMRDD pursuant to a retroactive rate increase the DMRDD issued in April 1997. If prior to the bill's effective date a contractor repaid the DMRDD the amount it received pursuant to that retroactive rate increase, the DMRDD must return the payment to the contractor. Neither the retroactive increase nor a payment the DMRDD returns to a contractor under the bill is an amount payable to the state for purposes of current law that governs collection of amounts owed the state or is subject to a reconciliation under the MRDD Law. (Section 5 of the bill.)

The bill relatedly defines "contractor" as meaning a person or government agency that has entered into a contract with the DMRDD to provide residential

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<sup>4</sup> *The bill also relocates the related "audit" provisions from section 5123.02(B) to a new section 5123.05, and it renumbers current section 5123.05 as 5123.06 without any substantive changes.*

services to individuals with mental retardation or developmental disabilities (Section 5 of the bill).

**Extension of the Joint Council on Mental Retardation and Developmental Disabilities**

The bill exempts the Joint Council on Mental Retardation and Developmental Disabilities from the operation of the Sunset Review Law, under which the Joint Council will expire on December 31, 2001. The bill extends the expiration date of the Joint Council until December 31, 2005. (Section 4 of the bill.)

**Self audits by county MRDD boards**

Current law requires (1) that the DMRDD Director adopt rules in accordance with the Administrative Procedure Act that establish standards for promoting and advancing the quality of life of individuals with mental retardation and developmental disabilities that receive early childhood, adult, or family support services and (2) that these rules specify actions that county MRDD boards should take to implement these standards (sec. 5126.082(A) and (B)). Current law also requires each county MRDD board annually to submit a report to the DMRDD regarding the board's progress in complying fully with the standards the DMRDD has so established (sec. 5126.082(D)). The bill instead requires each county MRDD board to conduct a self audit to evaluate the board's progress in fully complying with these standards (sec. 5126.082(D)).

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**HISTORY**

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Introduced	01-11-00	p. 1494

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