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***Bill Analysis***  
*Legislative Service Commission*

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(As Reported by H. State Government)

**Reps. Calvert, Clancy**

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### **BILL SUMMARY**

- Changes the criminal background (records) check requirements for Department of Mental Retardation and Developmental Disabilities (DMRDD) 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 DMRDD.
- Changes the law governing audits of and payment agreements with providers of services or programs to the DMRDD and the accreditation by the DMRDD of services or programs offered by county MRDD boards.
- 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.
- Extends the expiration date of the Joint Council on Mental Retardation and Developmental Disabilities from December 31, 2001, to December 31, 2004.
- Makes other changes in the DMRDD and County MRDD Laws.
- Revises the law governing criminal records checks conducted by the Bureau of Criminal Identification and Investigation and associated statutes.

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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 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), 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, including, but not limited to, a person who is being transferred to the DMRDD and an employee who is being recalled or reemployed after a layoff.<sup>2</sup> (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 *fingerprint-based* information

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<sup>1</sup> The county MRDD board similar provisions are in section 5126.28 of the Revised Code. Those provisions are amended in a few respects by the bill. Footnotes 2 through 8 indicate the substantive changes made in those provisions by the bill.

<sup>2</sup> The bill specifies in the similar county MRDD board provisions that an applicant includes a person who is being transferred to a county board and an employee who is being recalled or reemployed after a layoff (sec. 5126.28(A)(1)).

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 *fingerprint-based* 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. 5123.081(B)).<sup>3</sup>

The bill requires that the Director (1) provide to each applicant a copy of the form that the Superintendent must prescribe under law to obtain the information necessary to conduct a criminal records check, (2) provide to each applicant material needed to obtain fingerprint impressions by standard impression sheets or other methods that the Superintendent must prescribe under law, (3) obtain the completed form and material from each applicant, and (4) forward or transmit the completed form and material to the Superintendent at the time the Director requests a criminal records check.<sup>4</sup> 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 cannot 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

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<sup>3</sup> *The bill specifies in the similar county MRDD board provisions that the information to be obtained from the FBI is "fingerprint-based" information. Under current law, a county MRDD board superintendent is required or permitted to request the BCII Superintendent include "information" from the FBI in a criminal records check. (Sec. 5126.28(B).)*

<sup>4</sup> *The bill amends the similar county MRDD board provisions (a) by substituting "material needed to obtain fingerprint impressions" for existing law's "standard impression sheets" used to obtain those impressions and (b) by requiring a county MRDD board superintendent to forward or transmit the completed criminal records check form and fingerprint impressions material to the BCII Superintendent. (Sec. 5126.28(C).)*

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 another developmental disability 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 copy. (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 within 14 calendar days if, while employed with the DMRDD, the applicant is ever formally charged with, convicted of, or pleads guilty to any of those offenses. The agreement must inform the applicant that failure to report formal charges, a conviction, or a guilty plea may result in the applicant being dismissed from employment. (New sec. 5123.081(F).)<sup>5</sup>

**Disqualifying criminal offenses.** Except as provided in rules adopted by the DMRDD Director under the bill (see below), the Director generally 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

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<sup>5</sup> *The bill amends the similar county MRDD board provisions to specify that the applicant's signed agreement must require the applicant to notify the county MRDD board superintendent "within 14 calendar days" (added by the bill) if, while employed by the board, the applicant is ever formally charged with (existing law), convicted of (added by the bill), or pleads guilty to (added by the bill) any disqualifying criminal offense (sec. 5126.28(F)).*

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 item (1) above, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled, (3) any offense contained in the Revised Code constituting a misdemeanor of the first degree on the first offense and a felony on a subsequent offense, if the offense bears a direct and substantial relationship to the position being filled and the nature of the services being provided by the DMRDD, or (4) 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 or described in item (1), (2), or (3) above (new sec. 5123.081(A)(3) and (E)).<sup>6</sup>

**DMRDD Director rules.** The bill requires the DMRDD Director to adopt rules under the Administrative Procedure Act to implement the criminal records check provisions, including rules specifying circumstances under which the Director may employ a person if the person has been convicted of or pleaded

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<sup>6</sup> *In the similar county MRDD board provisions, the bill adds as a disqualifying criminal offense the type of offense described in item (3) above (sec. 5126.28(E)(3)).*

guilty to any of the offenses listed or described above but who meets *standards in regard to rehabilitation* set by the Director (new sec. 5123.081(M)).<sup>7</sup>

**Fees.** The bill requires the DMRDD Director to pay to the BCII the fee prescribed under continuing 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 to be charged to an 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 these DMRDD provisions of 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 records check or 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 of 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 agencies or entities to which the copies are to be sent. On receiving the request, the Director must send copies of the reports to the specified agencies or 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)).

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<sup>7</sup> *In the similar county MRDD board provisions, the bill adds that a person who has "pleaded guilty to" or, as under existing law, has been convicted of a disqualifying criminal offense may be employed if the person meets rehabilitation standards prescribed by the DMRDD by rule (sec. 5126.28(M)).*

The Director must provide each applicant with a copy of any report or abstract obtained about the applicant under the DMRDD criminal records check provisions of the bill (new sec. 5123.081(J)).<sup>8</sup>

**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 but moves them to 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 the respite care (sec. 5126.281(B)(1) and (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).)

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<sup>8</sup> *Under the existing County MRDD Board Law, a county MRDD board superintendent always must provide the DMRDD with a copy of each report or abstract obtained under the criminal records check provisions pertaining to board applicants. The bill instead requires that provision only if the DMRDD Director requests a copy. (Sec. 5126.28(J).)*

### **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 programs 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; repealed by Section 2 of the bill). 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. (Section 7 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 ("requirements for accreditation" under the bill), a county MRDD board continues to fail to meet them, the DMRDD must issue an order *denying the board accreditation*. The DMRDD simultaneously must notify specified county officials of the denied accreditation, setting forth "the programs and services" denied accreditation and certain other matter. The bill continues these provisions but removes a related provision of current law that provides 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 the board did not meet its accreditation standards. (Sec. 5126.081(D).)

### **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 (1) removes the references to the Office of Support, instead referring to the DMRDD itself performing the functions and (2) replaces the references to "contractor" in the provisions with "provider of a service or program" (sec. 5123.051).<sup>9</sup> It also removes the provision of current law that requires that all money collected under the payment agreement provisions be deposited in the state treasury to the credit of the Purchase of Service Fund. Current law creates that fund and requires it to be used solely to pay contracts to obtain programs and services. The bill instead requires that the fund be used to conduct audits of the programs and services that receive funds through or are subject to regulation by the DMRDD. (Secs. 5123.05 and 5123.051(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; the return payment must be paid from the Purchase of Service Fund. Neither the retroactive increase nor a payment the DMRDD returns to a contractor is an amount payable to the state for purposes of current law that governs the collection of amounts

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<sup>9</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 with the substantive changes described under "Miscellaneous changes related to the DMRDD and county MRDD boards," below).*

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 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, 2004. (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 certain early childhood, adult, or family support services and (2) that these rules specify actions that county MRDD boards and the agencies with which they contract 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 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 the standards (sec. 5126.082(D)).

### **Miscellaneous changes relating to the DMRDD and county MRDD boards**

The bill does all of the following:

(1)(a) Reduces from 13 to *seven* the number of members of the citizen's advisory council required to be established for each DMRDD institution and branch institution, (b) specifies that the reduction does not affect existing advisory council member terms, (c) reduces from seven to *four* the number of the members who cannot be providers of mental retardation services, and (d) eliminates the authority of the Joint Council on Mental Retardation and Developmental Disabilities to appoint advisory council members when the DMRDD Director

rejects nominees for appointment to an advisory council (sec. 5123.092; Section 6 of the bill);

(2) Authorizes, rather than requires as under existing law, the DMRDD to enter into agreements with medical or osteopathic medical colleges to establish, manage, and conduct residency medical training programs (sec. 5123.11(A));

(3) Removes the authority of the DMRDD Director to require the superintendent of a DMRDD institution to reside on the institution's grounds (sec. 5123.09);

(4) Allows an individual to be appointed a trustee of an estate of an individual with mental retardation or another developmental disability, in lieu of guardianship and without a judicial determination of incompetency, if the value of the estate is \$10,000 or less, rather than \$7,000 or less as under existing law (sec. 5123.55);

(5) Removes the requirement that instruction about the "bill of rights" for individuals with mental retardation or another developmental disability be part of all individual habitation plans and instead requires that the instruction merely be *documented* (sec. 5123.63);

(6) Prohibits the assignment of a person or agency that provides services to an individual with mental retardation as the individual's guardian, unless the person is related by blood or marriage or unless the service the person or agency provides is a protective service (sec. 5123.93);

(7) Authorizes a DMRDD institution's managing officer to *provide access to* the records and certain other "confidential" documents relating to a resident, former resident, or person whose institutionalization was sought, upon the latter's death, to the guardian or, if there was no guardian, to a family member (defined as a parent, brother, sister, spouse, son, daughter, grandparent, aunt, uncle, or cousin) of the decedent "upon a written request" for the access (sec. 5123.89(C));

(8) Removes the \$20 limit on the amount of travel and escort expenses a DMRDD institution may provide under certain circumstances for a resident upon the resident's discharge or during a trial visit to an alternative community residential placement (sec. 5123.801);

(9)(a) Increases from 20 to 30 *days* the time within which, after a resident's admission to a DMRDD institution, a comprehensive evaluation must be completed and (b) changes the definition of "comprehensive evaluation" so that the group that conducts the evaluation need not include an individual

professionally qualified in the field of education (secs. 5123.01(C) and 5123.85(A));

(10)(a) Replaces in existing law's list of the purposes that R.C. Chapter 5123. must be "liberally construed" to accomplish a requirement that the need of persons with mental retardation or another developmental disability to live in surroundings and circumstances *as close to normal as possible* be recognized when care in a residential facility is absolutely necessary, with a requirement that opportunities be promoted for those persons to live in surroundings and circumstances that are *typical for other community members*, and (b) adds as a purpose the promotion of the right of those persons to speak and be heard about the desired direction of their lives and to use available resources in ways that further that direction (sec. 5123.67(E) and (F));

(11) Changes certain existing references in MRDD-related statutes from "mentally retarded or developmentally disabled persons" to "persons with mental retardation or another developmental disability" (secs. 5123.01(C), 5123.02(A) and (C) to (F), 5123.042(A)(1)(a), 5123.082(A)(3), 5123.17, 5123.181, 5123.27, 5123.34(A), 5123.351, 5123.353(A), 5123.55(C) and (D), 5123.62, 5123.63, 5123.67, 5123.93, and 5126.042(C)(7));<sup>10</sup>

(12) Changes references from "chief" to "deputy director" of a division of the DMRDD; replaces references to "standards and *procedures*" for the certification of habitation centers (adopted by DMRDD Director rules) with references to "standards" for that certification; changes a reference from "head of a hospital" to "managing officer" of an "institution"; and removes references to a "semi-independent living home," "family home," "group home," and "foster family home" in various MRDD-related statutes (secs. 5123.041, 5123.06, 5123.18(D), 5123.19(A), (K), and (L), and 5123.21);<sup>11</sup>

(13) Provides that the following take precedence over provisions in current law governing waiting lists for MRDD programs or services: (a) Medicaid rules and regulations and (b) any specific requirements that may be contained within a Medicaid state plan amendment or waiver program that a county MRDD board has

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<sup>10</sup> *Occasionally, there is some minor variation in this phraseology in existing law and the bill's changes to that law.*

<sup>11</sup> *The latter types of homes are all "residential facilities," a term the bill retains without modification (sec. 5123.19(A)(1)). The bill does relocate into operative law certain aspects of the repealed definitions of certain of the latter types of homes (sec. 5123.19(K) and (L)).*

authority to administer or respect to which it has authority to provide services, programs, or supports (sec. 5126.042(A)(2) and (G));

(14) Extends the exemption from county MRDD board delegated nursing task requirements for in-home care to specified "family members" who act as primary supervisor of the care and select and directly supervise the unlicensed in-home care worker (sec. 5126.357);

(15)(a) Changes from February 15 to March 30 the annual date for certifying to the DMRDD county MRDD board income and operating expenditure reports covering the immediately preceding calendar year and (b) requires that this annual report cover all income and operating expenditures in the format the DMRDD specifies (sec. 5126.12(B)(3));

(16) Requires the fiscal officer of a regional council of government that consists of county MRDD boards to provide an income and operating expenditure report to the DMRDD, in the format the DMRDD specifies, by each March 30 covering the immediately preceding calendar year (sec. 5126.13(B));

(17) Reduces from 20 to *ten* the average number of hours required per week for a person with mental retardation or a developmental disability to be considered as participating in "community employment services" for purposes of a specified report a county MRDD board must annually submit in October to the DMRDD (sec. 5126.12(B)(1)(c)(iv));

(18) Requires (a) that county MRDD board members be United States citizens and (b) that both the board of county commissioners and the probate judge, to the maximum extent possible, appoint members to the county MRDD board who have professional training and experience in business management, finance, law, health care practice, personnel administration, or government service (sec. 5126.02(A)(1));

(19) Authorizes a county MRDD board to appoint, when a vacancy occurs, a superintendent for an interim period not to exceed 120 days until a permanent superintendent can be employed or arranged for under current law, but allows the DMRDD Director to approve additional time periods for these types of interim appointments if a county MRDD board so requests and if the Director determines that additional periods are warranted and the services of a permanent superintendent are unavailable (sec. 5126.023(C));

(20) Authorizes a county MRDD board or an entity under contract with it to *provide access* to the records and other "confidential" reports pertaining to an eligible person or a person who requests programs or services, upon the person's death, to the guardian or, if there was no guardian, to a family member (defined as

a parent, brother, sister, spouse, son, daughter, grandparent, aunt, uncle, or cousin) of the person "upon a written request" for the access (sec. 5126.044(F));

(21)(a) Repeals a requirement that the DMRDD Director adopt rules under the Administrative Procedure Act establishing "procedures" as well as uniform standards (retained by the bill) governing the submission of certain plans to county MRDD boards for the development of residential services for individuals with mental retardation or another developmental disability, and (b) removes a related reference to a county MRDD board's comprehensive service plan being "approved by" the DMRDD Director (sec. 5123.042(A) and (B));

(22) Outright repeals two statutes whose interrelated provisions *no longer are operative* and that related (a) to the sale or lease of land or facilities under the DMRDD's jurisdiction and (b) substantial compliance by DMRDD institutions and the DMRDD itself with standards for mental retardation facilities of the Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Persons or medical assistance standards under Title XIX of the Social Security Act by July 1, 1982 or January 1, 1983 (secs. 5123.16 and 5123.231; Section 2 of the bill).

### **Changes in the BCII Law**

#### **Tangible and electronic formats for criminal records check forms**

Current law requires the BCII Superintendent to prescribe a form to obtain the information necessary to conduct a criminal records check from any person for whom a criminal records check is required under any of several provisions of existing law (see "**Conforming changes**," below). The bill allows the form the Superintendent prescribes to be in a tangible format, in an electronic format, or in both tangible formats and electronic formats. (Sec. 109.572(C)(1).)

#### **Other methods to obtain fingerprint impressions**

Current law also requires the Superintendent to prescribe *standard impression sheets* to obtain the fingerprint impressions of any person for whom a criminal records check is required under any of several provisions of existing law (see "**Conforming changes**," below). The bill allows the Superintendent to prescribe *other methods* to obtain the fingerprint impressions of any person for whom a criminal records check is so required or *of any person for whom any other criminal records check is requested of the Superintendent for employment or licensing purposes*. Under the bill, these standard impression sheets or other methods that the Superintendent prescribes may be in a tangible format, in an electronic format, or in both tangible formats and electronic formats. (Sec. 109.572(C)(2).) The bill also authorizes the Superintendent to prescribe methods

for capturing, entering, and transmitting fingerprint impressions and other descriptive information in an electronic format (sec. 109.58(B)).

**Determining who is disqualified**

The bill makes clear that (1) the Superintendent merely provides the person, board, or entity that requested a criminal records check with the results of the check and (2) the *person, board, or entity* that receives the results then *determines* whether or not the person who is the subject of the check is disqualified from holding the position sought (sec. 109.572(A)(1), (2), (3), (4), (5), and (7) and (D)).

**Conforming changes.** The bill amends a number of Revised Code sections to recognize that methods other than standard impression sheets may be used for obtaining fingerprint impressions in the course of the conduct of criminal records checks through the BCII, under the bill's above-described provisions. These sections govern criminal records checks required under current law to be initiated by (1) PASSPORT agencies, (2) entities that employ any person responsible for a child's care in out-of-home care, (3) Head Start agencies, (4) preschool programs, (5) grant recipients or entities approved by the OhioReads Council, (6) school districts, educational service centers, or chartered nonpublic schools, (7) home health agencies, (8) hospice care programs, (9) homes or adult day-care programs, (10) adult care facilities, (11) child day-care centers and certain family day-care homes, (12) the Director of Job and Family Services or director of a county department of job and family services as part of the licensure or certification process of child day-care centers and/or certain family day-care homes, (13) county MRDD boards, and (14) public children services agencies. (Secs. 109.59, 109.60(A)(1) to (4), 173.41(B)(2) and (3), 2151.86(A)(2) and (3), 3301.32(A)(2) and (3), 3301.541(A)(2) and (3), 3301.88(A)(1), 3319.39(A)(2) and (3), 3701.881(B)(2) and (3), 3712.09(B)(2) and (3), 3721.121(B)(2) and (3), 3722.151(B)(2) and (3), 5104.012(A)(2) and (3), 5104.013(B) and (C), 5126.28(C), and 5153.111(A)(2) and (3).)

The bill also amends most of these same sections as well as various provisions of the BCII Law itself to recognize that the FBI only provides *fingerprint-based information*, when the BCII Superintendent contacts the FBI to obtain information, as part of a criminal records check (secs. 109.57(F)(2)(a) and (G), 173.41(B)(1) and (C)(2)(b), 2151.86(A)(1), 3301.32(A)(1), 3301.541(A)(1), 3319.39(A)(1), 3701.881(B)(1) and (C)(3)(b)(ii), 3712.09(B)(1) and (C)(2)(b), 3721.121(B)(1) and (C)(2)(b), 3722.151(B)(1) and (C)(2)(b), 5104.012(A)(1), 5126.28(B), and 5153.111(A)(1)). The bill relatedly requires the BCII Superintendent to request the FBI for any fingerprint-based information it has with respect to the person who is the subject of a criminal records check only (1) upon

request (similar to existing law) and (2) if the criminal records check is *mandated by a section of the Revised Code* (added by the bill) (sec. 109.572(B)(2)).

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## HISTORY

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