



S.B. 187

123rd General Assembly
(As Introduced)

Sens. Johnson, White, Cupp, Watts

BILL SUMMARY

- Permits a parent or guardian of a child for whom a specified type of institution, organization, or local government entity provides care, treatment, education, training, instruction, supervision, or recreation to make a written request to the institution, organization, or entity that a criminal records check be conducted regarding an employee or volunteer of the institution, organization, or entity.
- Requires an institution, organization, or entity that receives such a criminal records check request from a parent or guardian to request the Bureau of Criminal Identification and Investigation to conduct a criminal records check with request to a specified employee or volunteer who serves in a position that enables the employee or volunteer, on a regular basis, to have unsupervised access to a child.
- Requires the Bureau, upon receipt of the request, to conduct the requested criminal records check.

TABLE OF CONTENTS

Existing law	2
Mandatory criminal records checks for certain employment or positions.....	2
Discretionary criminal records checks	4
Operation of the bill	4
Generally	4
Request for criminal records check; procedures.....	5
Conduct of criminal records check	7
Notification of requesting institution, organization, or entity, and of requesting parent or guardian, regarding test results	7
Access to report of criminal records check	9

Notice to applicants, and current employees or volunteers, of possibility of subsequent criminal records check	9
Exception regarding current employee or volunteer who was the subject of a prior criminal records check	10
Definitions.....	11

CONTENT AND OPERATION

Existing law

Mandatory criminal records checks for certain employment or positions

Existing law contains numerous provisions regarding mandatory criminal records checks of persons who are under final consideration for certain types of employment or certain positions. It provides that:

(1) Any children's out-of-home care entity (R.C. 2151.86), head start agency (R.C. 3301.32), preschool program (R.C. 3301.541), board of education of a school district (R.C. 3319.39), governing board of an educational service center (R.C. 3319.39), chartered nonpublic school (R.C. 3319.39), child day-care center (R.C. 5104.012), type-A family day-care home (R.C. 5104.012), certified type-B family day-care home (R.C. 5104.012), or public children services agency (R.C. 5153.111) must request the Bureau of Criminal Identification and Investigation (the BCII) to conduct a criminal records check regarding each person who is under final consideration for a position involving the care, custody, or control of a child.

(2) Any county board of mental retardation and developmental disabilities (R.C. 5126.28), and any entity under contract with a county board of mental retardation and developmental disabilities for the provision of services to individuals with mental retardation or a developmental disability (R.C. 5126.281), must request the BCII to conduct a criminal records check regarding each final applicant for any position with the county board or under consideration with the contracting entity in a position that involves the provision of services to individuals with mental retardation or a developmental disability.

(3) Any entity that designates a person as a prospective adoptive parent or as a prospective foster parent (R.C. 2151.86) must request the BCII to conduct a criminal records check regarding any person who is under consideration as a prospective adoptive or foster parent.

(4) The state Department of Human Services, as part of the licensure process of child day-care centers and type-A family day-care homes, must request

the BCII to conduct a criminal records check with respect to any owner, licensee, or administrator of a child day-care center, any owner, licensee or administrator of a type-A family day-care home, and any person 18 years of age or older who resides in a type-A family day-care home, and a county department of human services, as part of the certification process of type-B family day-care homes, must request the BCII to conduct a criminal records check with respect to any authorized provider of a certified type-B family day-care home and any person 18 years of age or older who resides in a certified type-B family day-care home (R.C. 5104.013).

(5) Any PASSPORT agency (R.C. 173.41), hospice care program (R.C. 3712.09), adult day-care program (R.C. 3721.121), or adult care facility (R.C. 3722.151), and certain types of nursing homes, residential care facilities, homes for the aging, and related types of homes (R.C. 3721.121), must request the BCII to conduct a criminal records check of each person under final consideration for employment in a position that involves providing direct care to an "older adult."

(6) Finally, any home health agency must request the BCII to conduct a criminal records check of each person under final consideration for a position involving the care, custody, or control of a child or for employment in a position that involves providing direct care to an "older adult" (R.C. 3701.881).

Generally, the entities that are subject to the provisions described in the paragraphs (1) to (6), above, 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 a list of "designated offenses" (the list of designated offenses varies, depending upon whether the position in question is one described above in paragraph (1), (3), or (4), paragraph (2), paragraph (5), or paragraph (6)). Upon receipt of a request from any of the specified entities, a completed form prescribed for that purpose, a set of fingerprint impressions from the subject person, and a "reasonable fee" prescribed by the BCII, the BCII conducts a check of the criminal records it maintains under R.C. 109.57(A) to determine whether the subject person has been convicted of any of the designated offenses. When requested, the BCII contacts the FBI for information that the FBI has with respect to the subject person and reviews the information so provided. Within 30 days after receiving the request, the form, the impressions, and the fee, the BCII sends 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 the BCII determines exists with respect to the subject person and that indicates that the subject person previously has been convicted of or pleaded guilty to any of the designated offenses. A determination whether any information exists that indicates that a subject person previously has been convicted of or pleaded guilty to any of the designated offenses that is made under a criminal records check described in this

paragraph is valid for the subject person for a period of one year from the date on which the BCII makes the determination. (R.C. 109.57 and 109.572.)

BCII's Superintendent is required to prescribe a form to obtain the information necessary to conduct a criminal records check under the above-described provisions, prescribe standard impression sheets to obtain the fingerprint impressions of a person who is the subject of a criminal records check under those provisions, and to prescribe and charge a reasonable fee for providing criminal records checks under those provisions. The person making a criminal records check request under those provisions must pay the fee so prescribed. (R.C. 109.572(C).)

Discretionary criminal records checks

Existing law requires the Attorney General to adopt rules, under the Administrative Procedure Act, setting forth the procedure by which a person may receive or release information the BCII gathers pursuant to R.C. 109.57(A) and provides that a reasonable fee may be charged for that service (R.C. 109.57(E)).

Existing section 109:5-1-01 of the Ohio Administrative Code, adopted by the Attorney General, specifies that any person may obtain information concerning the criminal record of any other person maintained at the BCII by submitting the following: (1) the complete name, current address, and other "identifying characteristics" (defined as date of birth, social security number, height, weight, sex, race, and nationality) of the individual whose records are sought, (2) a complete set of fingerprints of the individual whose records are sought, (3) the signed consent of the individual whose records are sought, and (4) a \$15 fee payable to the BCII (law enforcement officers, as defined in existing R.C. 2901.01, are exempt from this fee).

Operation of the bill

Generally

The bill enacts a new mechanism that permits the parent or guardian of a child who is provided services by a specified type of institution, organization, or local government entity to request a criminal records check regarding any person who is an employee of or volunteer of the institution, organization, or local government entity and who serves in a position that enables the person, on a regular basis, to have unsupervised access to a child. Upon receipt of such a request from a parent or guardian, the institution, organization, or entity must request that BCII conduct the requested criminal records check. The bill requires the BCII, upon receipt of the request, to conduct the requested check (R.C. 109.574).

Request for criminal records check; procedures

The bill specifies that, subject to the provisions described below, any 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 must request the Superintendent of the BCII to conduct, as if the request had been made by a school district board of education, a "criminal records check" with respect to any "current employee or volunteer" of the institution, organization, or entity who, on a regular basis, has "unsupervised access to a child" if both of the following apply: (1) a parent or guardian of a child for whom the institution, organization, or local government entity provides services makes a written request to the institution, organization, or entity that a criminal records check be conducted with respect to that employee or volunteer, and (2) the parent or guardian pays the requisite fee, as described below (see "*Definitions*," below) (R.C. 109.574(B)(1)(a)).

The request for a criminal records check that a religious, charitable, scientific, educational, athletic, or service institution or organization or local government entity is required to make must consist of a request for the information a school district board of education may request under current law and must be accompanied by the form and standard impression sheet prescribed under existing law by BCII. If the current employee or volunteer in relation to whom a request is to be made does not present proof that the current employee or volunteer has been a resident of this state for the five-year period immediately prior to the date upon which the criminal records check is requested or does not provide evidence that within that five-year period BCII has requested information about the current employee or volunteer from the FBI in a criminal records check, the institution, organization, or entity making the request must request that the Superintendent obtain information from the FBI as part of the criminal records check for the current employee or volunteer. If the current employee or volunteer presents proof that he or she has been a resident of this state for that five-year period, the institution, organization, or entity may request that the Superintendent obtain information from the FBI as part of the criminal records check. (R.C. 109.57(B)(1)(b) and (c).)

Any religious, charitable, scientific, educational, athletic, or service institution or organization or local government entity required, as described above, to request a criminal records check must provide to any current employee or volunteer in relation to whom a request is made a copy of the form prescribed by the Attorney General (see below) and a standard impression sheet to obtain fingerprint impressions prescribed by the Attorney General (see below), obtain the completed form and impression sheet from that current employee or volunteer, and forward the completed form and impression sheet to BCII's Superintendent at the

time the institution, organization, or entity requests a criminal record check with respect to that employee. Any current employee or volunteer who so receives a copy of the form and a copy of an impression sheet and who is requested to complete the form and provide a set of fingerprint impressions must complete the form or provide all of the information necessary to complete it and must provide the impression sheet with the impressions of the current employee's or volunteer's fingerprints, taken as described below. If a current employee or volunteer, upon request, fails to provide the information necessary to complete the form or fails to provide impressions of the current employee's or volunteer's fingerprints, the institution, organization, or entity promptly must remove the current employee or volunteer from any position that enables the current employee or volunteer, on a regular basis, to have unsupervised access to a child. (R.C. 109.574(B)(2) and (3).)

A written request for a criminal records check submitted by a parent or guardian under the provisions described above may identify more than one current employee or volunteer for whom the check is requested. If a parent or guardian of a child submits a written request for a criminal records check of any current employee or volunteer, the parent or guardian, at the time of submitting the request, must pay to the institution, organization, or local government entity to which the request was submitted the requisite fee (see below). The parent or guardian must pay a separate fee for each written request or, if more than one current employee or volunteer is identified on a written request so submitted, for each current employee or volunteer so identified on the written request. The institution, organization, or entity to which the request was submitted must forward each fee paid in relation to the request to the BCII at the same time that the institution, organization, or entity requests BCII's Superintendent to conduct a criminal records check of the current employees or volunteers identified in the request. (R.C. 109.574(D).)

The provisions of existing law that require BCII's Superintendent to prescribe a form to obtain the information necessary to conduct a criminal records check, to prescribe standard impression sheets to obtain the fingerprint impressions of a person who is the subject of a criminal records check, and to prescribe and charge a reasonable fee for providing criminal records checks apply regarding criminal records checks conducted under the provisions of the bill. The person making a criminal records check request under the bill's provisions must pay the fee so prescribed. The bill also provides that the form and fingerprint impression sheet prescribed by the Superintendent may be in a tangible format, an electronic format, or both tangible and electronic formats. (R.C. 109.572(C) and 109.574(B)(1)(b).)

Conduct of criminal records check

When the Superintendent of BCII receives a request for a criminal records check under the bill with respect to a particular employee or volunteer, the Superintendent must perform the records check in the same manner as if the request had been made by a school district board of education under existing law. Under that existing procedure, BCII's Superintendent must do all of the following: (1) determine whether any information gathered and compiled by the bureau under R.C. 109.57(A) relates to the current employee or volunteer who is the subject of the request, including any relevant information contained in records that have been sealed under the existing First Offender Criminal Conviction Record Sealing Law contained in R.C. 2953.32, and (2) upon the request of the entity making the records request, request from the FBI any information that it has with respect to the current employee or volunteer who is the subject of the request. (R.C. 109.57(F)(2)(a) and (b) and 109.574(B)(1)(d).)

Notification of requesting institution, organization, or entity, and of requesting parent or guardian, regarding test results

To requesting institution, organization, or entity. Except as provided below, a religious, charitable, scientific, educational, athletic, or service institution or organization or local government entity that requests a criminal records check promptly must remove the current employee or volunteer identified in the request from any position that enables the current employee or volunteer on a regular basis to have unsupervised access to a child if the information requested under this section from BCII indicates that the current employee or volunteer previously has been convicted of or pleaded guilty to any of the following offenses (R.C. 109.574(C)(1)):

(1) Any offense under Ohio law that is a felony or any offense under a former Ohio law that was a felony at the time it was committed;

(2) Any offense committed under the law of a state other than Ohio or under the law of the United States that, if committed in Ohio, would be a felony under Ohio law;

(3) Any sexually oriented offense (see **COMMENT**) committed under Ohio law or the law of another state or the United States.

A religious, charitable, scientific, educational, athletic, or service institution or organization or local government entity that requests a criminal records check and that receives information from BCII pursuant to the request that indicates that the current employee or volunteer identified in the request previously has been convicted of or pleaded guilty to any offense identified above is not required to

remove the current employee or volunteer from a position that enables the current employee or volunteer on a regular basis to have unsupervised access to a child if the current employee or volunteer was hired or accepted as a volunteer for that position as a result of the current officer or employee satisfying applicable rehabilitation standards or personal character standards adopted by the appropriate regulatory entity under existing law (R.C. 109.574(C)(3)).

To requesting parent or guardian. Upon receipt of a notification of the results of a criminal records check from the BCII, the religious, charitable, scientific, educational, athletic, or service institution or organization or local government entity that receives the notification promptly must notify the parent or guardian who requested the check whether the check showed, or did not show, that the current employee or volunteer who is the subject of the check previously has been convicted of or pleaded guilty to any of the offenses listed in paragraphs (1), (2), and (3), above. If the check showed that the current employee or volunteer previously has been convicted of or pleaded guilty to one or more of those offenses, the notification to the parent or guardian must state the fact of the conviction or guilty plea but cannot identify the offense or offenses. If the current employee or volunteer was hired or accepted as a volunteer to the position that enables the current employee or volunteer on a regular basis to have unsupervised access to a child as a result of the current employee or volunteer satisfying applicable rehabilitation standards or personal character standards adopted by the appropriate regulatory entity, the notification also must state that fact and that the law does not require the removal of the current officer or employee from the position that enables the current officer or employee on a regular basis to have unsupervised access to a child. If the parent or guardian of more than one child requested a check regarding the same current employee or volunteer, the institution, organization, or entity must provide the notification under this provision to each such requesting parent or guardian. The bill states that its criminal records check provisions do not require the institution, organization, or entity to transfer, terminate the employment or volunteer status, or impose any other sanction against a current employee or volunteer who is the subject of a criminal records check if the check showed that the current employee or volunteer previously has been convicted of or pleaded guilty to one or more of the offenses listed in paragraphs (1), (2), and (3), above. (R.C. 109.574(C)(2).)

Access to report of criminal records check

The bill states that the report of any criminal records check conducted by the BCII in accordance with, and pursuant to a request made under, the bill is not a public record for the purposes of the existing Public Records Law (R.C. 149.43) and cannot be made available to any person other than the current employee or volunteer to whom it pertains, the religious, charitable, scientific, educational,

athletic, or service institution or organization or local government entity requesting the criminal records check, and any court, hearing officer, or other necessary individual involved in a case dealing with the current employee or volunteer. This provision does not limit or restrict the provision of information, pursuant to the provisions described above in "Notification of requesting institution, organization, or entity, and of requesting parent or guardian, regarding test results" and below in "Exception regarding current employee or volunteer who was the subject of a prior criminal records check," to a parent or guardian who made a request for a criminal records check of the current employee or volunteer. (R.C. 109.574(E).)

Notice to applicants, and current employees or volunteers, of possibility of subsequent criminal records check

At the time of a person's initial application to any religious, charitable, scientific, educational, athletic, or service institution or organization or local government entity for appointment or employment on a full-time or part-time basis, or as a volunteer on a full-time or part-time basis, in any position that will enable the person on a regular basis to have unsupervised access to a child, the institution, organization, or entity is required to inform the person that if the person is appointed or employed to or accepted as a volunteer in the position the person subsequently might be required to provide a set of fingerprint impressions and that a criminal records check subsequently might be conducted of the person in accordance with the above-described provisions of the bill. Not later than 30 days after the bill's effective date, each 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 must notify each current employee or volunteer that the current employee or volunteer subsequently might be required to provide a set of fingerprint impressions and that a criminal records check subsequently might be conducted of the person in accordance with the above-described provisions of the bill. (R.C. 109.574(F).)

Exception regarding current employee or volunteer who was the subject of a prior criminal records check

The bill states that its provisions described above regarding criminal records checks of current employees or volunteers do not apply regarding any current employee or volunteer of 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 if, *within the 12-month period preceding the making of a request by a parent or guardian for a criminal records check of the current employee or volunteer*

pursuant to those provisions, either of the following occurred (R.C. 109.574(G)(1)):

(1) The institution, organization, or entity requested a criminal records check regarding the current employee or volunteer under the existing provisions regarding mandatory criminal records checks of an applicant under final consideration for a position involving the care, custody, or control of a child, a person who is under consideration as a prospective adoptive or foster parent, or a person who is involved with a child day-care center, type-A family day-care home, or type-B family day-care home, as described above in paragraphs (1), (3), (4), or (6) of "**Mandatory criminal records checks for certain positions**" under "**Existing law**," and the criminal records check did not reveal any prior conviction of or plea of guilty to an offense described above in the first paragraph of "**Notification of requesting institution, organization, or entity, and of requesting parent or guardian, regarding test results.**"

(2) The institution, organization, or entity requested a criminal records check regarding the current employee or volunteer under the bill's provisions described above regarding criminal records checks of current employees or volunteers, and the criminal records check did not reveal any prior conviction of or plea of guilty to an offense described above in the first paragraph of "**Notification of requesting institution, organization, or entity, and of requesting parent or guardian, regarding test results.**"

If a parent or guardian of a child makes a written request pursuant to the bill's provisions for a criminal records check of a current employee or volunteer of an institution, organization, or local government entity and if, pursuant to the provisions described in the preceding three paragraphs, the bill's criminal records check provisions do not apply regarding the current employee or volunteer, the institution, organization, or entity is not required to request BCII's Superintendent to conduct a criminal records check with respect to that current employee or volunteer, but the institution, organization, or entity promptly must notify the parent or guardian who requested the check that a prior check conducted within the preceding 12 months did not show that the current employee or volunteer previously has been convicted of or pleaded guilty to any offense described above in the first paragraph of "**Notification of requesting institution, organization, or entity, and of requesting parent or guardian, regarding test results**" (R.C. 109.574(G)(2)).

Definitions

The bill defines the following terms for use regarding its provisions described above regarding criminal records checks of current employees or volunteers (R.C. 109.574(A)):

(1) "Current employee or volunteer" means any person who, at the time in question and regardless of whether the person commenced the person's employment or volunteer status prior to, on, or after the bill's effective date, is employed on a full-time or part-time basis, or is a volunteer on a full-time or part-time basis, in any position that enables the person, on a regular basis, to have "unsupervised access to a child" (see below).

(2) "Criminal records check" means a criminal records check conducted by BCII's Superintendent in accordance with the above-described provisions of the bill.

(3) "Unsupervised access to a child" means that the person in question has access to a child and that either or both of the following applies: (a) no other person over 18 years of age is present in the same room with the child or, if outdoors, no other person is within a 30-yard radius of the child, or (b) the person in question establishes or attempts to establish a relationship of trust with the child.

COMMENT

The existing Sex Offender Notification and Registration Law, contained in Chapter 2950., defines "sexually oriented offense" as any of the following offenses:

(1) Regardless of the age of the victim of the offense, a violation of R.C. 2907.02, 2907.03, 2907.05, or 2907.12. (R.C. 2907.12 has been repealed, and its prohibitions have been subsumed into R.C. 2907.02.);

(2) Any of the following offenses involving a minor, in the circumstances specified: (a) a violation of R.C. 2905.01, 2905.02, 2905.03, 2905.04, 2905.05, or 2907.04 when the victim of the offense is under 18, (b) a violation of R.C. 2907.21 when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18, (c) a violation of division (A)(1) or (3) of R.C. 2907.321 or 2907.322, (d) a violation of division (A)(1) or (2) of R.C. 2907.323 of the Revised Code, or (e) a violation of division (B)(5) of R.C. 2919.22 when the child who is involved in the offense is under 18;

(3) Regardless of the age of the victim of the offense, a violation of R.C. 2903.01, 2903.02, 2903.11, or 2905.01, or of division (A) of R.C. 2903.04, that is committed with a purpose to gratify the sexual needs or desires of the offender;

(4) A sexually violent offense, as defined in existing R.C. 2971.01;

(5) A violation of any former Ohio law that was substantially equivalent to any offense listed in paragraphs (1) to (4), above;

(6) A violation of an existing or former municipal ordinance or law of a state other than Ohio or the United States, or a violation under the law applicable in a military court, that is or was substantially equivalent to any offense listed in paragraphs (1) to (4), above;

(7) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraphs (1) to (6), above.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-23-99	p. 1010

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