



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

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

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**BILL SUMMARY**

- At the written request of a parent or guardian, requires an institution, organization, or entity that provides care, treatment, education, training, instruction, supervision, or recreation to a child to request that the Bureau of Criminal Identification and Investigation conduct a criminal records check with respect to a specified employee or volunteer.
- Requires the Bureau, on receipt of the request, to conduct the criminal records check.
- Generally requires the removal from any position with unsupervised access to a child of an employee or volunteer for whom the criminal records check indicates a conviction of any of certain offenses.

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**CONTENT AND OPERATION**

**Existing law**

**Mandatory criminal records checks for certain employment or positions**

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

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

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

BCII's Superintendent is required to prescribe a form to obtain the information necessary to conduct a criminal records check, prescribe standard fingerprint impression sheets, and prescribe and charge a reasonable fee for

<sup>1</sup> Revised Code section 109.572 contains references to the various types of employment or positions for which a criminal records check is required.



providing criminal records checks. The person making a criminal records check request must pay the prescribed fee.

**Discretionary criminal records checks made in conjunction with mandatory checks**

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

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

**Operation of the bill**

**Introduction**

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 entity to request a criminal records check regarding any person who is an

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

employee of or volunteer of the institution, organization, or entity and who serves in a position that enables the person, on a regular basis, to have unsupervised access to a child. On receipt of a request from a parent or guardian, the institution, organization, or entity must request that BCII conduct the criminal records check.

**Request for criminal records check; procedures**

(secs. 109.57, 109.572, and 109.574(B)(1)(a) to (c), (B)(2), (B)(3), and (D))

The bill specifies that, subject to the provisions described below, 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 must request that the Superintendent of BCII conduct, as if the request had been made by a school district board of education under existing law governing discretionary checks described above, a criminal records check with respect to any current employee or volunteer who, on a regular basis, has unsupervised access to a child if (1) a parent or guardian makes a written request that a criminal records check be conducted and (2) the parent or guardian pays the fee described below.<sup>3</sup>

The request for a criminal records check that an institution, organization, or entity is required to make must consist of a request for the information a school district board of education may request under existing law governing discretionary checks described above and must be accompanied by the form and standard fingerprint 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 of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or that within that five-year period BCII has requested information from the FBI in a criminal records check, the institution, organization, or entity must request that the Superintendent obtain information from the FBI as part of the criminal records check. If the

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<sup>3</sup> *"Current employee or volunteer" means any person who, at the time in question and regardless of whether the person commenced 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. (Sec. 109.574(A)(1).)*

*"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, 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. (Sec. 109.574(A)(3).)*

current employee or volunteer presents proof of having been a resident for that five-year period, the institution, organization, or entity may still request that the Superintendent obtain information from the FBI as part of the criminal records check.

Any institution, organization, or 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 Superintendent of BCII (see below) and a standard fingerprint impression sheet prescribed by the Superintendent of BCII (see below), obtain the completed form and impression sheet from that current employee or volunteer, and forward them to BCII at the time of requesting the criminal records check with respect to that employee. A current employee or volunteer who receives the form and impression sheet and is asked to complete the form and provide the fingerprint impressions must complete the form or provide all the information necessary to complete it and provide fingerprint impressions. If a current employee or volunteer, on request, fails to provide the information necessary to complete the form or fails to provide fingerprint impressions, the institution, organization, or entity must promptly remove the employee or volunteer from any position that enables the employee or volunteer, on a regular basis, to have unsupervised access to a child.

A written request for a criminal records check submitted by a parent or guardian under the bill may identify more than one employee or volunteer for whom the check is requested. At the time of submitting a request, the parent or guardian must pay a fee to the institution, organization, or entity. A separate fee must be paid for each records check requested. The fee must be forwarded to BCII with the request for a records check.

Existing law requiring BCII's Superintendent to prescribe a form to obtain the information necessary to conduct a criminal records check, prescribe standard fingerprint impression sheets, and to prescribe and charge a reasonable fee for providing criminal records checks applies to criminal records checks conducted under the bill.

**Format of form and impression sheet**

(secs. 109.572(C) and 109.574(B)(1)(b))

The bill 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.

**Conduct of criminal records check; notification of requesting institution, organization, or entity**

(secs. 109.57 and 109.574(B)(1)(b) and (d))

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 governing discretionary requests described above.

**Duties of requesting institution, organization, or entity on receipt of notice regarding check results**

(sec. 109.574(C))

**Removal of employee or volunteer.** Except as described below, an institution, organization, or entity that requests a criminal records check must promptly remove the employee or volunteer identified in the request from any position that enables unsupervised access to a child on a regular basis if the information received from BCII indicates that the employee or volunteer has been convicted of or pleaded guilty to any of the following offenses:

(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 another state or the law of the United States that, if committed in Ohio, would be a felony under Ohio law;

(3) Any "sexually oriented offense," other than the offense of unlawful restraint, committed under Ohio law or the law of another state or the United States.<sup>4</sup>

The exception to the removal requirement is that it need not be applied if the employee or volunteer was hired or accepted as a volunteer as a result of satisfying rehabilitation standards or personal character standards adopted by the

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<sup>4</sup> "Sexually oriented offense" is defined under current law to mean certain offenses, including, for example, rape, sexual battery, and gross sexual imposition; kidnapping, abduction, criminal child enticement, and corruption of a minor when the victim is under 18; or aggravated murder, murder, felonious assault, or kidnapping that is committed with the purpose to gratify the sexual needs or desires of the offender. The remaining offenses included in the definition are listed in sec. 2950.01.

appropriate regulatory entity under provisions of existing law that relate to mandatory criminal records checks.

**Notice to parent or guardian.** On receipt of notice of the results of a criminal records check, the institution, organization, or entity that receives the notice must promptly notify the parent or guardian who requested the check of whether the check shows, or does not show, that the subject of the check has been convicted of or pleaded guilty to any of the offenses listed above. If the check shows that the employee or volunteer has been convicted of or pleaded guilty to one or more of those offenses, the notice must state the fact of the conviction or guilty plea but cannot identify the offense or offenses. If the employee or volunteer was hired or accepted as a volunteer as a result of satisfying applicable rehabilitation standards or personal character standards as described above, the notice must also state that fact and that the law does not require removal. If the parent or guardian of more than one child requests a check regarding the same employee or volunteer, the institution, organization, or entity must provide the notice to each 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 sanction other than removing the employee or volunteer from the unsupervised access position.

**Access to report of criminal records check**

(sec. 109.574(E))

The bill states that the report of any criminal records check conducted pursuant to a request made under it is not a public record for the purposes of the existing public records law (sec. 149.43) and cannot be made available to any person other than the employee or volunteer to whom it pertains; the institution, organization, or entity requesting the criminal records check; and any court, hearing officer, or other necessary individual involved in a case dealing with the employee or volunteer. It states that this provision does not limit or restrict the provision of information to a parent or guardian who made a request for a criminal records check.

**Notice of possibility of criminal records check**

(sec. 109.574(F))

At the time of a person's initial application to an institution, organization, or entity subject to the bill 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 appointed

or employed to or accepted as a volunteer in the position a criminal records check might be conducted as provided in the bill. Not later than 30 days after the bill's effective date, each institution, organization, or entity subject to the bill must notify each current employee or volunteer that a criminal records check might be conducted.

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

(sec. 109.574(G))

The bill's provisions regarding criminal records checks of current employees or volunteers do not apply regarding an employee or volunteer if, within the 12-month period preceding the making of a request by a parent or guardian for a criminal records check, either of the following occurred:

(1) The institution, organization, or entity requested a criminal records check regarding the employee or volunteer under the existing mandatory criminal records checks law addressing (a) applicants under final consideration for a position involving the care, custody, or control of a child, (b) persons under consideration as prospective adoptive or foster parents, or (c) persons involved with a child day-care center, type-A family day-care home, or type-B family day-care home and the criminal records check did not reveal any prior conviction of or plea of guilty to an offense required to be checked under the bill.

(2) The institution, organization, or entity requested a criminal records check regarding the employee or volunteer under the bill and the criminal records check did not reveal any prior conviction of or plea of guilty to an offense required to be checked under the bill.

If a parent or guardian makes a request for a criminal records check pursuant to the bill and the bill's criminal records check provisions do not apply regarding the employee or volunteer, the institution, organization, or entity is not required to request a criminal records check but must promptly notify the parent or guardian that a check conducted within the preceding 12 months did not show that the current employee or volunteer to have been convicted of or pleaded guilty to any offense required to be checked by the bill.

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**HISTORY**

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Passed Senate (32-0)

03-21-00

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