



Am. S.B. 187*
123rd General Assembly
(As Reported by H. Family Services)

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

BILL SUMMARY

- Allows certain organizations and entities that provide care, treatment, education, training, instruction, supervision, or recreation to children to request that the Bureau of Criminal Identification and Investigation (BCII) conduct criminal records checks with respect to current or prospective volunteers.
- Requires BCII, on receipt of a request, to conduct a criminal records check and compile a report including information from sealed conviction records.
- Requires the organization or entity that requests a criminal records check to pay the fee charged by BCII.
- Generally requires the removal from any position with unsupervised access to a child of a volunteer for whom the criminal records check indicates a conviction of any of certain offenses with exceptions for persons who meet rehabilitation standards.

TABLE OF CONTENTS

Existing law..... 2
Mandatory criminal records checks for certain employment or positions 2

** This analysis was prepared before the report of the House Family Services Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

Discretionary criminal records checks made in conjunction with mandatory checks	3
Operation of the bill	4
Introduction.....	4
Request for criminal records check; procedures	4
Sealed records	5
Duties of requesting organization or entity on receipt of notice regarding check results	6
Exceptions to removal requirement.....	6
Notice of possibility of criminal records check.....	8
Procedures for requiring volunteers to submit to a criminal records check.....	8
Confidentiality of criminal records check.....	8
Immunity from prosecution for requesting criminal records check.....	9
Duties of Governor’s Community Service Council.....	9

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.¹ 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 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

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

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 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 providing criminal records checks. The person making a criminal records check request must pay the 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.²

On receipt of the request, the Superintendent must determine whether information exists and, on request of the person, board, or entity requesting information, also request from the FBI any criminal records it has pertaining to that individual. Within 30 days of the date 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,

² *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.*

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 certain organizations and entities to request a criminal records check regarding any person who is a volunteer or prospective volunteer for the organization or entity and serves in a position that permits the person, on a regular basis, to have unsupervised access to a child. On receipt of a request from the organization or entity, BCII must conduct the criminal records check.

Request for criminal records check; procedures

(secs. 109.574 and 109.575)

The bill provides that 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 may request that the Superintendent of BCII conduct a criminal records check with respect to any current or prospective volunteer who, on a regular basis, has unsupervised access to a child.³

The request for a criminal records check must consist of a request for the information regarding previous convictions and guilty pleas for certain offenses and must be accompanied by the form and standard fingerprint impression sheet prescribed under existing law by BCII. If the current or prospective volunteer subject to a criminal records check 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 organization or entity must request that the Superintendent obtain information from the FBI as part of the criminal records check. If the current or prospective volunteer presents proof of having been a resident of Ohio for that five-year period, the organization

³ *“Unsupervised access to a child” means that the person in question has access to a child and that either of the following applies: (1) no other person 18 years of age or older is present in the same room with the child, or (2) if outdoors, no other person 18 years of age or older is within a 30-yard radius of the child or has visual contact with the child. (Sec. 109.574(C).)*

or entity may still request that the Superintendent obtain information from the FBI as part of the criminal records check.

Fee for criminal records check. An organization or entity making a criminal records request must pay the fee prescribed by BCII for each request it makes.

Form and fingerprint impression sheets. The organization or entity must provide a person subject to a criminal records request a copy of the form and standard fingerprint impression sheet prescribed by the Superintendent of BCII, obtain the completed form and impression sheet from the person, and forward them to BCII with the request for the criminal records check. A current or prospective volunteer 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 the person fails to provide the information necessary to complete the form or fails to provide fingerprint impressions, the organization or entity must not accept the person, or permit the person to continue, as a volunteer in any position that permits unsupervised access to a child on a regular basis.

Sealed records

(secs. 109.575(F) and 2953.32)

The Superintendent must compile a report of the results of the criminal records check indicating whether any records of conviction have been sealed and, if so, specifying the offenses for which the records of conviction have been sealed.⁴

⁴ *Upon application to the sentencing court, certain misdemeanor, felony, or first offenders may have their conviction record sealed after a number of years have elapsed since the final discharge of the sentence. (Sec. 2953.32.)*

The bill expands the purposes for which BCII may inspect sealed records to include the making of a report requested by an entity or organization regarding the criminal records of current or prospective volunteers in positions that permit unsupervised access to a child on a regular basis. (Sec. 2953.32(D)(8).)

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

(sec. 109.576)

Removal of employee or volunteer. Except as described below, an organization or entity that requests a criminal records check under the bill must not accept a person as a volunteer or permit a person to continue as a volunteer in any position that enables unsupervised access to a child on a regular basis if the information received from BCII indicates that the person 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.⁵

Exceptions to removal requirement

(secs. 109.576, 109.577, and 109.578)

An organization or entity may accept a person with a criminal record as a volunteer, or allow the person to continue as a volunteer, in a position that permits unsupervised access to a child on a regular basis in any of the following circumstances:

(1) The criminal records check revealed only misdemeanors for which the conviction records have been sealed;

(2) The volunteer meets rehabilitation standards adopted by the organization or entity;

⁵ *"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.*

(3) The organization or entity has not adopted its own rehabilitation standards, the only crimes identified in the criminal records check are felony offenses for which the records of conviction have been sealed and the person has met rehabilitation standards established by the bill (see "Statutory standards," below).

Rehabilitation standards developed by organization or entity. An organization or entity may adopt rehabilitation standards that are designed to ensure that a volunteer who has prior convictions will not jeopardize the health, safety, or welfare of children in a position that permits unsupervised access to a child on a regular basis.

An organization or entity that establishes its own rehabilitation standards must notify, in writing, the parent or guardian of each child for whom it provides a service at the time the service begins that the organization or entity uses its own rehabilitation standards and the differences between its standards and those established in R.C. 109.578 (see below).

Statutory rehabilitation standards. The bill establishes rehabilitation standards that apply to an organization or entity that has not adopted its own standards. An organization or entity that uses these standards may accept, or permit to remain, a volunteer who has committed a felony offense for which the records of conviction have been sealed if all of the following apply:

- (1) The victim of the offense was not under 18 years of age;
- (2) At least five years have elapsed since the person was fully discharged from imprisonment, probation, and parole;
- (3) The person provides written confirmation from a court, the person's parole officer, or the person's counselor that the person has been rehabilitated;
- (4) The organization or entity for which the person works, or seeks to work, as a volunteer determines that the person will not jeopardize the health, safety, or welfare of the children served by the organization or entity. This determination is to be based on the following factors: the person's age at the time of the offense; age and ability of the victim, including any physical or mental disabilities; nature and seriousness of the offense, circumstances under which the offense was committed and likelihood they will recur, degree to which the person participated in the offense; time elapsed since the person's discharge from imprisonment, probation, or parole; extent to which the position creates an opportunity for commission of an offense; the person's employment record and efforts at rehabilitation; whether any criminal proceedings are pending; and any other factor the organization or entity considers relevant.

The person must provide written evidence of meeting the rehabilitation standards. If the person fails to do so, or the organization or entity finds the evidence inconclusive, the organization or entity may not accept or allow the person to continue as a volunteer in any position that enables the person on a regular basis to have unsupervised access to a child. Any doubts as to whether the person meets the standards must be resolved against the person. The organization or entity must make this determination not later than seven days after receiving the evidence of rehabilitation from the person.

Notice of possibility of criminal records check

(sec. 109.579)

At the time of a person's initial application to an organization or entity to be a volunteer in any position that will enable the person on a regular basis to have unsupervised access to a child, the organization or entity must inform the person that, at any time, a criminal records check might be conducted as provided in the bill. Not later than 30 days after the bill's effective date, each organization or entity subject to the bill must notify each current volunteer that a criminal records check might be conducted.

Procedures for requiring volunteers to submit to a criminal records check

(sec. 109.5710)

An organization or entity that requires a current or prospective volunteer to submit to a criminal records check must establish policies and procedures regarding the checks. The policy must include criteria for determining who should be required to submit to a check; the persons responsible for requesting, receiving, and maintaining the criminal records check reports; the process for applying rehabilitation standards, and any other procedure the organization or entity determines appropriate.

Confidentiality of criminal records check

(sec. 109.5711)

The bill states that the report of a criminal records check conducted pursuant to a request of an organization or entity is confidential and must not be released by the organization or entity, unless expressly permitted by the person who is the subject of the report. The report of the criminal records check is not a public record for the purposes of the existing public records law.⁶

⁶ Revised Code sec. 149.43.

Immunity from prosecution for requesting criminal records check

(sec. 109.5712)

A person, organization, or entity that, in good faith, attempts to comply with the bill and the policies adopted under it, is immune from civil liability for any death, injury, or loss that occurs as a result of the compliance, attempted compliance, or failure to comply. The bill specifies that this immunity does not apply to persons who have immunity under sections of the Revised Code dealing with sovereign immunity and that the bill does not create a new cause of action or substantive legal right or affect any immunities from civil liability or defenses established by the Revised Code or at common law against a person, organization, or entity.

Duties of Governor's Community Service Council

(sec. 109.5713)

The bill requires the Governor's Community Service Council to establish and maintain an educational program that does all of the following:

(1) Makes available to parents and guardians of children notice of the bill's provisions and information about how to keep children safe when they are under the care, custody, or control of a person other than the parent or guardian;

(2) Makes available to organizations and entities information regarding the best methods for screening and managing volunteers, obtaining criminal records checks, establishing rehabilitation standards, and confidentiality issues relating to the criminal records reports;

(3) Makes available to volunteers information regarding criminal records checks, the reason a criminal records check may be required of a volunteer, and displaying appropriate behavior to minors;

(4) Makes available to children advice on personal safety and proper responses to a person who takes inappropriate action towards them.

The Governor's Community Service Council must begin making these materials available not later than one year after the bill's effective date.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-23-99	p. 1010
Reported, S. Judiciary	03-16-00	pp. 1464-1465
Passed Senate (32-0)	03-21-00	pp. 1481-1482
Reported, H. Family Services	---	---

S0187-RH.123/kl

