



Dennis M. Papp

Bill Analysis
Legislative Service Commission

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Sens. Fedor, D. Miller, Schuring

BILL SUMMARY

- Requires the Ohio Parks and Recreation Association to develop and provide to each individual who participates in recreational youth athletics a Coach's Conduct and Ethics Policy for volunteer coaches involved in recreational youth athletics.
- Specifies that the Coach's Conduct and Ethics Policy must require a volunteer coach to pledge to: (1) treat every coach, player, official, parent, and administrator associated with the recreational activity with respect and dignity, (2) prevent the placement of a participant in a situation jeopardizing the participant's health or safety, (3) conduct all activities that the coach controls in a manner that is not harmful to the mental and physical welfare of the participants, (4) cooperate with administrators of the activity in the enforcement of its rules, (5) manage all games, competitions, and practices in such a manner that all participants have an equal opportunity to improve their athletic skills through active participation, (6) learn the strengths and weaknesses of the participants and encourage them to have fun and learn the fundamentals of the activity as well as good sportsmanship, (7) report to an administrator of the activity any situation or practice that violates reasonable recreational guidelines, and (8) comply with any other requirement that the Association determines is beneficial to recreational youth athletics.
- Provides that a volunteer coach for a recreational youth athletics organization or entity must be the subject of a criminal records check, requires the administrator of the organization or entity to request the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to determine whether that volunteer coach has been convicted of or pleaded guilty to any of a list of specified disqualifying offenses,

requires the Superintendent upon receipt of such a request to conduct the criminal records check in a specified manner without fee, and provides that the organization or entity cannot use a volunteer coach who has been convicted of or pleaded guilty to any of the specified disqualifying offenses.

- Grants a recreational youth athletics organization or entity immunity from civil liability that might otherwise be incurred or imposed for any injury, death, or loss to person or property allegedly caused by an act or omission of a volunteer coach and resulting from or related to the volunteer coach having unsupervised access to a child on a regular basis if: (1) the administrator of the organization or entity causes a criminal records check of the volunteer coach to be conducted as described in the preceding dot point, (2) the organization or entity receives a determination that the individual has not been convicted of and has not pleaded guilty to any of the specified disqualifying offenses, and (3) the organization or entity, in good faith reliance on the determination, uses the individual as a volunteer coach in an athletic activity in which the volunteer coach has unsupervised access to a child on a regular basis.
- Specifies that, in addition to or in conjunction with a request for a mandatory criminal records check made under the provision described in the second preceding dot point, the administrator of a recreational youth athletics organization or entity may request that BCII's Superintendent investigate and determine, with respect to any individual who has applied to be a volunteer coach for the organization or entity, whether BCII has any information gathered under existing R.C. 109.57(A) that pertains to that individual.

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CONTENT AND OPERATION

Existing law

Mandatory and discretionary criminal records checks for certain employment, positions, or licenses

Existing law contains numerous provisions that require criminal records checks by the Bureau of Criminal Identification and Investigation (BCII) of the Attorney General's Office of persons who are under final consideration for certain types of employment or certain positions or licenses. These provisions are summarized in **COMMENT 1**. Existing law also contains a series of provisions that authorize certain potential employers, potential licensors, or other persons to request criminal records checks by BCII of persons who are under final consideration for certain types of employment or certain positions or licenses or who are in other specified circumstances. These provisions are summarized in **COMMENT 2**. Existing R.C. 109.57(E) requires the Attorney General (the AG) to adopt rules under the Administrative Procedure Act setting forth the procedure by which a person may receive or release information BCII gathers pursuant to division (A) of R.C. 109.57 (see **COMMENT 3**) and provides that a reasonable fee may be charged for that service.

Existing section 109:5-1-01 of the Ohio Administrative Code, adopted by the AG, specifies that any person may obtain information concerning the criminal record of any other person maintained at 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 BCII (law enforcement officers, as defined in existing R.C. 2901.01, are exempt from this fee). The information and materials may be submitted to BCII either by mail or electronically in a format designated by BCII's Superintendent.

Volunteers who regularly have unsupervised access to a child

Existing law sets forth a series of provisions regarding volunteers for "organizations or entities" who, on a regular basis, have "unsupervised access to a child." As used in all of the provisions, "organization or entity" means 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, and "unsupervised access to a child" means that the person in question has access to a child and either that no other person 18 years of age or older is present in the same room with the child or,

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 (R.C. 109.574 and 121.401). Under the provisions:

(1) The Governor's Community Service Council (see **COMMENT 4**) is required to adopt a set of "recommended best practices" for organizations and entities to follow when one or more of its volunteers have unsupervised access to one or more children or otherwise interact with one or more children. The recommended best practices must focus on, but not be limited to, the issue of the safety of the children and, in addition, the screening and supervision of volunteers. They must include as a recommended best practice that the organization or entity subject to a criminal records check performed by BCII all persons who apply to serve as a volunteer in a position in which the person will have unsupervised access to a child on a regular basis, and all volunteers who are in a position in which the person will have unsupervised access to a child on a regular basis and who the organization or entity has not previously subjected to a criminal records check performed by BCII. The recommended best practices are in addition to the educational program required to be established by the Council under the provision described below in (5). (R.C. 121.401.)

(2) At the time of a person's initial application to an organization or entity to be a volunteer in a position in which the person on a regular basis will have unsupervised access to a child, the organization or entity must inform the person that, at any time, the person might be required to provide a set of fingerprints and a criminal records check might be conducted with respect to the person. Each organization or entity also was required to notify each volunteer serving it on March 22, 2001, who was in a position in which the volunteer on a regular basis had unsupervised access to a child that, at any time, the volunteer might be required to provide a set of fingerprints and a criminal records check might be conducted. (R.C. 109.575.)

(3) If a person applies to an organization or entity to be a volunteer in a position in which the person on a regular basis has unsupervised access to a child, if the organization or entity subjects the person to a criminal records check and the check shows that the person has been convicted of or pleaded guilty to one or more of a list of specified offenses (see below), and if the organization or entity accepts the person to serve as a volunteer in that position, the organization or entity must notify the parent or guardian of each child for whom it provides services that the person has been convicted of one or more of the offenses but that, nonetheless, the person will be serving the organization or entity in that position. A similar provision applies regarding persons already serving as a volunteer in such a position, who are subjected to a criminal records check that shows a conviction, and who are retained as a volunteer in the same position or in any other position with regular access to a child. The notification provisions apply

regarding any criminal records checks conducted by BCII, any criminal records check performed in any manner by the organization or entity or any of its employees or officers, or any criminal records checks performed in any manner by any person on the request of the organization or entity or any of its employees or officers. The notice must be in writing, must identify the person who is accepted or retained as a volunteer, and must state that the person has been convicted of or pleaded guilty to the offense, but it may not identify the specific offense in question. The notice must be sent on the date the organization or entity begins providing services to the child or on the date the organization or entity decides to accept or retain the person as a volunteer after receiving the report of the results of the criminal records check, whichever is later. The specified offenses are the same as those identified under existing law as offenses that disqualify a person from being an adoptive parent, a foster caregiver, or a person responsible for a child's care in out-of-home care. (R.C. 109.576.)

(4) If an organization or entity uses a volunteer in a position in which the volunteer on a regular basis has unsupervised access to a child and the volunteer has been subjected to a criminal records check conducted by BCII, the organization or entity, and its officials and employees, are immune from civil liability that might otherwise be incurred or imposed for any death or any injury or loss to person or property that is caused by an act or omission of the volunteer and that results from or is related to the volunteer having unsupervised access to a child on a regular basis. The immunity does not apply to a person, organization, or entity that has immunity under existing R.C. 9.86, 2844.02, or 2744.03 for the good faith compliance, attempted compliance, or failure to comply. The provision specifies that it does not create a new cause of action or substantive legal right against a person, organization, or entity and does not affect any immunities from civil liability or defenses established by another Revised Code section or available at common law, to which a person, organization, or entity may be entitled under circumstances covered by the act. (R.C. 109.577.)

(5) The Governor's Community Service Council (see **COMMENT 4**) is required to establish and maintain an educational program that does all of the following: (a) makes available to parents and guardians of children notice about the provisions of law described above in (1) to (4) 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, (b) makes available to organizations and entities information regarding the best methods of screening and supervising volunteers, how to obtain a criminal records check of a volunteer, confidentiality issues relating to reports of criminal records checks, and record keeping regarding the reports, (c) makes available to volunteers information regarding the possibility of being subjected to a criminal records check and displaying appropriate behavior to minors, and (d) makes available to children advice on personal safety and

information on what action to take if someone takes inappropriate action towards a child. (R.C. 121.402.)

Operation of the bill

Coach's Conduct and Ethics Policy for volunteer coaches

The bill requires that, not later than 90 days after its effective date, the Ohio Parks and Recreation Association (see **COMMENT 5**) must develop a Coach's Conduct and Ethics Policy for volunteer coaches involved in recreational youth athletics. The Association must provide a copy of the policy to each individual who participates in recreational youth athletics. The Policy must require a volunteer coach to pledge to do all of the following: (1) treat every coach, player, official, parent, and administrator associated with the recreational activity with respect and dignity, (2) prevent the placement of a participant in a situation that would jeopardize the participant's health or safety, (3) conduct all activities that the volunteer coach controls in a manner that is not harmful to the mental and physical welfare of the participants, (4) cooperate with administrators of the recreational athletic activity in the enforcement of the rules associated with the activity, (5) manage all games, competitions, and practices in such a manner that all participants have an equal opportunity to improve their athletic skills through active participation, (6) learn the strengths and weaknesses of the participants and encourage the participants to have fun and learn the fundamentals of the recreational athletic activity as well as good sportsmanship, (7) report to an administrator of the recreational athletic activity any situation or practice that violates reasonable recreational guidelines, and (8) comply with any other requirement that the Association determines is beneficial to recreational youth athletics.

The Ohio Parks and Recreation Association must include in the Conduct and Ethics Policy a statement that explains the possible disciplinary actions that may occur if a coach violates any requirement in the Policy that is established under the provision described in the preceding paragraph. (R.C. 1541.80(A) to (C).)

Mandatory criminal records check for volunteer coaches

The bill provides that, notwithstanding the existing provisions described above in paragraphs (2) and (3) of "**Volunteers who regularly have unsupervised access to a child**" under "**Existing law**," a volunteer coach for a recreational youth athletics organization or entity is required to be the subject of a criminal records check. The administrator of the recreational youth athletics organization or entity must request BCII's Superintendent as described below to determine whether that volunteer coach has been convicted of or pleaded guilty to any specified disqualifying offenses, which are listed in the next paragraph. Notwithstanding

the existing provisions described above in paragraphs (2) and (3) of "Volunteers who regularly have unsupervised access to a child" under "Existing law," a recreational youth athletics organization or entity cannot use a volunteer coach who has been convicted of or pleaded guilty to any of the specified disqualifying offenses. BCII's Superintendent cannot charge any fee to conduct a criminal records check that the administrator of a recreational youth athletics organization or entity requests under this provision, or any fee for information or criminal records the administrator requests under R.C. 109.57 in relation to an individual applying to serve as a volunteer coach for the organization or entity. (R.C. 1541.80(D)(1).)

Upon receipt of a request made pursuant to the bill's provision described in the preceding paragraph, a completed form prescribed pursuant as described below, and a set of fingerprint impressions obtained in the manner described below, BCII's Superintendent must conduct a criminal records check in the manner described in the next paragraph to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following: (1) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11, felonious sexual penetration in violation of former R.C. 2907.12, a violation of R.C. 2905.04 as it existed prior to July 1, 1996, a violation of R.C. 2919.23 that would have been a violation of R.C. 2905.04 as it existed prior to July 1, 1996, had the violation been committed prior to that date, or a violation of R.C. 2925.11 that is not a minor drug possession offense, or (2) a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in clause (1) of this paragraph (R.C. 109.572(A)(1)).

BCII's Superintendent is required to conduct the criminal records check in the same manner as is required under existing law for mandatory criminal records checks, as described in **COMMENT 1**. Specifically, the Superintendent must review or cause to be reviewed any relevant information gathered and compiled by BCII under R.C. 109.57(A), as described in **COMMENT 3**, that relates to the person who is the subject of the request, including any relevant information contained in records that have been sealed under R.C. 2953.32. If the request asks for information from the FBI, the Superintendent must request from the FBI any information it has with respect to the person who is the subject of the request and must review or cause to be reviewed any information received from the FBI. Also, the Superintendent or his or her designee may request criminal history records from other states or the federal government pursuant to the National Crime

Prevention and Privacy Compact set forth in existing R.C. 109.571. Within 30 days after receiving the request, the form, and the impressions, the Superintendent must send the person, board, or 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, the Superintendent determines exists with respect to the subject person and that indicates that the 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 the criminal records check is valid for the subject person for a period of one year from the date on which BCII makes the determination. During the period during which the determination is valid, if another request is made for a criminal records check for that person, the Superintendent must provide the information that is the basis of the determination at a reduced fee, but cannot charge any fee for providing it if the request is made by the administrator of a recreational youth athletics organization or entity under the bill because the subject person is applying to serve as a volunteer coach. (R.C. 109.572(A)(11), (B), and (D).)

The bill expands the existing provisions that require BCII's Superintendent to prescribe a form to obtain the information necessary to conduct a criminal records check under an existing mandatory criminal records check provision and to prescribe standard impression sheets to obtain the fingerprint impressions of any person for whom a criminal records check is required under any such provision so that they also apply regarding a criminal records check requested under the bill's provisions described in the third preceding paragraph. The bill specifies that the Superintendent cannot charge a fee for providing a criminal records check requested under the bill's provisions described in the third preceding paragraph by the administrator of a recreational youth athletics organization or entity in relation to an individual applying to serve as a volunteer coach. (R.C. 109.572(C)(1) to (3).)

Qualified immunity for recreational youth athletics organization or entity

The bill grants a recreational youth athletics organization or entity immunity from civil liability that might otherwise be incurred or imposed for any injury, death, or loss to person or property that allegedly is caused by an act or omission of a volunteer coach and that results from or is related to the volunteer coach having unsupervised access to a child on a regular basis, if all of the following apply: (1) the administrator of the organization or entity causes BCII's Superintendent to conduct a criminal records check of the volunteer coach as required under the bill's provisions described above in "**Mandatory criminal records check for volunteer coaches**," (2) the organization or entity receives a determination from the Superintendent that the individual has not been convicted

of and has not pleaded guilty to any of the specified disqualifying offenses listed in that part of the analysis, and (3) the organization or entity, in good faith reliance on the Superintendent's determination, uses the individual as a volunteer coach in an athletic activity in which the volunteer coach has unsupervised access to a child on a regular basis.

The immunity conferred by the provision described in the preceding paragraph does not apply to a recreational youth athletics organization or entity that has immunity from civil liability under existing R.C. 9.86 or Chapter 2744. for an act or omission described in that paragraph. The immunity does not create a new cause of action or substantive legal right against a recreational youth athletics organization or entity and does not affect any immunities from civil liability or defenses established by another Revised Code section or available at common law to which a recreational youth athletics organization or entity may be entitled under circumstances not covered by the bill's immunity provisions. (R.C. 1541.80(D)(2).)

Discretionary criminal records checks for volunteer coaches

The bill enacts a provision that specifies that, in addition to or in conjunction with a request for a mandatory criminal records check made under the bill's provisions described above in "**Mandatory criminal records check for volunteer coaches**," the administrator of a recreational youth athletics organization or entity may request that BCII's Superintendent investigate and determine with respect to any individual who has applied to be a volunteer coach for the organization or entity whether BCII has any information gathered under division (A) of R.C. 109.57 (see **COMMENT 3**) that pertains to that individual. Upon receipt of any such request, the Superintendent must proceed in the same manner as is described below in **COMMENT 2(b)** regarding a request made under an existing provision described in that part of the analysis. The Superintendent cannot charge any fee to conduct a criminal records check that the administrator of a recreational youth athletics organization or entity requests under this provision in relation to an individual applying to serve as a volunteer coach for the organization or entity. (R.C. 109.57(F)(2) and 1541.80(D)(1).)

Miscellaneous and conforming changes

The bill amends several existing provisions to conform them to the bill's mandatory criminal records check provisions described above in "**Mandatory criminal records check for volunteer coaches**." Specifically, it:

(1) Amends the existing provision that requires the AG to adopt rules setting forth the procedure by which a person may receive or release information BCII gathers pursuant to R.C. 109.57(A) and provides that a reasonable fee may be charged for that service to specify that BCII's Superintendent may not charge a

fee for information gathered pursuant to that provision as a result of a request made by the administrator of a recreational youth athletics organization or entity in relation to an individual applying to serve as a volunteer coach who is subject to a criminal records check under the bill's mandatory criminal records check provisions (R.C. 109.57(E)).

(2) Specifies that BCII's Superintendent cannot charge a fee for a criminal records check made under the bill's mandatory criminal records check provisions (R.C. 109.57(I)).

(3) In the existing provision that requires an organization or entity to inform persons who apply to it to be a volunteer who regularly will have unsupervised access to a child that the person might be required to provide a set of fingerprints and a criminal records check might be conducted with respect to the person, specifies that the requirement does not apply "as otherwise provided" in the bill's mandatory criminal records check provisions described above in "**Mandatory criminal records check for volunteer coaches**" and repeals the language that imposed a similar notification requirement regarding volunteers serving it on March 22, 2001 (R.C. 109.575).

(4) In the existing provisions that require that, if an organization or entity accepts or retains a person as a volunteer even though the results of a discretionary criminal records test indicate that the person has been convicted of or pleaded guilty to any of the list of specified offenses, the organization or entity must notify the parent or guardian of each child for whom it provides services that the volunteer has been so convicted but, nonetheless, will be serving the organization or entity as a volunteer, specifies that the requirements do not apply "as otherwise provided" in the bill's mandatory criminal records check provisions described above in "**Mandatory criminal records check for volunteer coaches**" (R.C. 109.576).

(5) Specifies that the existing provisions that grant an immunity from civil liability to an organization or entity that uses a volunteer in a position in which the volunteer on a regular basis has unsupervised access to a child and that subjected the volunteer to a criminal records check conducted by BCII do not apply "as otherwise provided" in the bill's mandatory criminal records check provisions described above in "**Mandatory criminal records check for volunteer coaches**" (R.C. 109.577).

(6) Expands the existing provision that requires the Governor's Community Service Council to establish and maintain an educational program regarding volunteers and the safety of children so that, in addition to the matters currently covered by the educational program, it also must: (a) make available to parents and guardians of children notice about the bill's provisions described above in "**Coach's Conduct and Ethics Policy for volunteer coaches**," "**Mandatory**

criminal records check for volunteer coaches," and "Qualified immunity for recreational youth athletics organization or entity," and (b) make available to recreational youth athletics volunteer coaches information regarding the requirement for a criminal records check under the bill's provisions described above in "Mandatory criminal records check for volunteer coaches" (R.C. 121.402).

Technical change

The bill repeals an existing reference in R.C. 109.57(F)(2) to an administrator of a certified Type C family day-care home; Type C homes no longer exist.

COMMENT

1. Mandatory criminal records checks for certain employment, positions, or licenses. 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 or licenses. It provides that:

(a) 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), home health agency (R.C. 3701.881), 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 BCII to conduct a criminal records check regarding each person who is under final consideration for appointment to or employment in a position involving the care, custody, or control of a child.

(b) The Director of the Department of Mental Retardation and Developmental Disabilities (R.C. 5123.081) and any county board of mental retardation and developmental disabilities (R.C. 5126.28) must request BCII to conduct a criminal records check regarding each person who is under final consideration for appointment or employment with, respectively, the Department or the county board.

(c) 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 must request 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 (R.C. 5126.281).

(d) Any agency or attorney that arranges an adoption for a prospective adoptive parent, and any agency that intends to recommend that a certificate should be issued to a foster home must request BCII to conduct a criminal records check regarding the prospective adoptive parent or prospective foster caregiver, whichever is applicable, and all persons 18 years of age or older who reside with the prospective adoptive parent or foster caregiver (R.C. 2151.86).

(e) 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 BCII to conduct a criminal records check with respect to any owner, licensee, or administrator of a child day-care center or 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 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).

(f) 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 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."

(g) Any home health agency must request 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).

(h) Any "waiver agency" must request BCII to conduct a criminal records check with respect to each person who is under final consideration for employment, or an existing employee, with a waiver agency in any position that involves providing home and community-based waiver services to a person with disabilities (R.C. 5111.95).

(i) Any person who submits an application to the Department of Job and Family Services for a provider agreement or who has a provider agreement as an independent provider in a Department-administered home and community-based services program providing home and community-based waiver services to consumers with disabilities must have BCII conduct a criminal records check of the person (R.C. 5111.96).

(j) Any person applying for a private investigator license, security guard provider license, or combination private investigator and security guard provider

license must request BCII to conduct a criminal records check of the person (R.C. 4749.03), and any person who has been issued any such license and has an investigator or security guard employee must request BCII, as part of the mandatory registration process of the employee, to conduct a criminal records check of the employee (R.C. 4749.06).

(k) Finally, the State Board of Education or the Superintendent of Public Instruction must request BCII to conduct a criminal records check of any person who applies for a specified type of education-related certificate, license, or permit, including certain teachers, administrators, educational assistants, etc. (R.C. 3319.291; R.C. 109.57(F)(4) provides that criminal records checks based on such a request are conducted in the same manner as is described below in **COMMENT 2**, as if the request had been received from a school district board of education).

Generally, the provisions described in **COMMENT 1(a) to (j)**, above, specify that the entities and persons that are subject to those provisions cannot employ or permit a person to serve or be licensed 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 the position in question). Upon receipt of a request from any of the specified entities or persons, a completed form prescribed for that purpose, a set of fingerprint impressions from the subject person, and a "reasonable fee" prescribed by BCII's Superintendent, the Superintendent conducts a check of the criminal records BCII maintains under R.C. 109.57(A), as described below in **COMMENT 3**, to determine whether the subject person has been convicted of any of the designated offenses. When requested, the Superintendent contacts the FBI for information that the FBI has with respect to the subject person and reviews the information so provided. The Superintendent may request criminal history records from other states or the federal government pursuant to the National Crime Prevention and Privacy Compact set forth in R.C. 109.571. Within 30 days after receiving the request, the form, the impressions, and the fee, the Superintendent sends the entity or person 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 he or she 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 Superintendent 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).)

2. **Discretionary criminal records checks for certain employment, positions, or licenses.** Existing law contains a series of provisions regarding discretionary criminal records checks of persons who are under final consideration for certain types of employment or certain positions or licenses or who are in other specified circumstances. It provides that:

(a) The Department of Commerce or any of its Divisions may request from BCII a criminal records check for a person whose identity is required to be disclosed by an applicant for the issuance or transfer of a permit, license, or certification issued or transferred by the Department (R.C. 121.08). Upon receipt of a request from the Department or a Division, a completed form prescribed for that purpose, a set of fingerprint impressions from the subject person, and a "reasonable fee" prescribed by BCII's Superintendent, BCII conducts a check of the criminal records it maintains under R.C. 109.57(A), as described below in **COMMENT 3**, in accordance with the procedures and provisions described above in **COMMENT 1**.

(b) In addition to or in conjunction with any mandatory criminal records check request required to be made under R.C. 109.572, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 5104.012, 5104.013, 5123.081, 5126.28, 5126.281, or 5153.111, as described above in **COMMENT 1**, the board of education of any school district; the director of Mental Retardation and Developmental Disabilities; any county board of mental retardation and developmental disabilities or entity under contract with any such county board; the chief administrator of any chartered nonpublic school; the chief administrator of any home health agency; the chief administrator of or person operating any licensed or certified child day-care center, Type A family day-care home, or Type B family day-care home; the administrator of any certified Type C family day-care home; the chief administrator of any head start agency; or the executive director of a public children services agency may request that BCII investigate and determine, with respect to any individual who has applied for employment in any position, or any individual wishing to apply for employment with a board of education may request, with regard to the individual, whether BCII has any information gathered under R.C. 109.57(A), as described below in **COMMENT 3**, that pertains to that individual. On receipt of the request, BCII must determine whether that information exists and, upon request of the person, board, or entity requesting information, also must request from the FBI any criminal records it has pertaining

to that individual. BCII also may request criminal history records from other states or the federal government pursuant to the National Crime Prevention and Privacy Compact. Within 30 days of the date that BCII receives a request, it must send to the board, entity, or person a report of any information that it determines exists, including information contained in records that have been sealed under R.C. 2953.32, 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. The State Board of Education may request, with respect to any individual who has applied for employment in any position with the State Board or the Department of Education, any information that a school district board of education is authorized to request under the provision described in the preceding sentence, and BCII must proceed as if the request has been received from a school district board of education under that provision. BCII may charge a reasonable fee for providing information or criminal records under this provision. (R.C. 109.57(F)(2), (F)(3), and (I).)

(c) In addition to or in conjunction with any request that is required to be made under R.C. 173.41, 3701.881, 3712.09, 3721.121, or 3722.151, as described above in **COMMENT 1**, with respect to an individual who has applied for employment in a position that involves providing direct care to an older adult, the chief administrator of a PASSPORT agency that provides services through the PASSPORT program, home health agency, hospice care program, home licensed under R.C. Chapter 3721., adult day-care program, or adult care facility may request that BCII investigate and determine, with respect to any individual who has applied for employment in a position that does not involve providing direct care to an older adult, whether BCII has any information gathered under R.C. 109.57(A) that pertains to that individual. Provisions similar to those described in the preceding paragraph govern BCII's handling and treatment of any such request. BCII may charge a reasonable fee for providing information or criminal records under this provision. (R.C. 109.57(G) and (I).)

(d) A recipient of any OhioReads program grant or an entity approved by the OhioReads Council generally may request from BCII a criminal records check on any individual who applies to participate in providing directly to children any program or service through an entity approved by the Council or funded in whole or in part by the grant. When BCII receives such a request, it must proceed in the manner described in **COMMENT 2(b)**, above, as if the request had been received from a school district board of education. If information requested from BCII under this provision indicates that the subject individual ever has been convicted of or pleaded guilty to a felony or any of a list of specified offenses, the grant recipient or entity generally cannot permit the individual to participate in providing directly to children any program or service through an entity approved by the Council or funded in whole or in part by the grant. (R.C. 109.57(F)(5) and 3301.88.)

3. Under existing R.C. 109.57(A), unchanged by the bill, BCII's Superintendent is required to procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of all persons who have been convicted of committing within Ohio a felony, a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or a specified misdemeanor, of all children under 18 who have been adjudicated delinquent children for committing within Ohio an act that would be a felony or an offense of violence if committed by an adult or who have been convicted of committing within Ohio a felony or an offense of violence, and of all well-known and habitual criminals. The person in charge of any local correctional facility or state correctional institution, and the person in charge of any state institution with custody of a person suspected of having committed a felony, a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or a specified misdemeanor or with custody of a child under 18 with respect to whom there is probable cause to believe that the child may have committed an act that would be a felony or an offense of violence if committed by an adult must furnish such material to the Superintendent. Every clerk of an Ohio court of record, other than the Supreme Court or a court of appeals, must send to the Superintendent a weekly report containing a summary of, and specified information regarding, each case involving a felony, a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, a specified misdemeanor, or an adjudication in a case in which a child under 18 was alleged to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult.

4. Existing law does not specifically create any entity named the "Governor's Community Service Council," but R.C. 121.40 creates the "Ohio Community Service Council" and the Governor has appointing authority for some of the members of the Council. The Ohio Community Service Council consists of 21 members, including the Superintendent of Public Instruction or the Superintendent's designee, the Chancellor of the Ohio Board of Regents or the Chancellor's designee, the Director of Natural Resources or the Director's designee, the Director of Youth Services or the Director's designee, the Director of Aging or the Director's designee, the Director of Job and Family Services or the Director's designee, the Chairperson of the committee of the House of Representatives dealing with education or the Chairperson's designee, the Chairperson of the committee of the Senate dealing with education or the Chairperson's designee, and 13 members appointed by the Governor with the advice and consent of the Senate who serve three-year terms. The appointees must include educators, including teachers and administrators; representatives of youth organizations; students and parents; representatives of organizations engaged in volunteer program development and management throughout the state, including youth and conservation programs; and representatives of business, government, nonprofit organizations, social service agencies, veterans organizations, religious

organizations, or philanthropies that support or encourage volunteerism within the state. The Council is required to appoint an Executive Director, who is to supervise the Council's activities, report to the Council on the progress of those activities, and do all things necessary for the efficient and effective implementation of the duties of the Council. Existing law specifies various duties and responsibilities for the Council.

5. The Ohio Parks and Recreation Association is not an entity created by state law, but, rather, is a private, nonprofit public interest group. The Association's Internet web site describes its structure and functions as follows:

The Ohio Parks & Recreation Association is....
a non-profit, public interest organization representing over 1600 professionals and citizen board members involved in providing leisure facilities and opportunities to all Ohioans as well as the tourists who visit our state each year. Ohio has become known as a trend setter in the nation with parks and recreation often singled out for national test markets and pilot programs.

OPRA was initially organized in 1934 as the Ohio Recreation Association, with a separate organization, the Ohio Parks Association, formed in 1942. In 1963 ORA and OPA Incorporated to become OPRA. The Association is directed by a Board, executive director and administrative staff.

Vision... "We're Connected"

Mission... The Ohio Parks and Recreation Association is a non-profit corporation dedicated to the promotion of parks and recreation services for all Ohioans and the sound stewardship of Ohio's natural resources.

Goals.... To be a coalition of individuals, groups and agencies committed to the promotion, conservation, and maintenance of parks, recreation and leisure services for Ohioans.

To implement a legislative program for the advancement of park, recreation, leisure services and natural resource management.

To enhance knowledge and skills of those working in the field of parks, recreation, leisure services and natural resource management.

Am. Sub. H.B. 66 of the 126th General Assembly included one nonvoting member of the Association (appointed by it) on the Local Government and Library Revenue Distribution Task Force (Section 503.12) and one representative of the Association (apparently appointed by it) on the School Physical Fitness and Wellness Advisory Council (Section 206.10.12).

HISTORY

ACTION	DATE
Introduced	03-16-06

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