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Bill Analysis
Legislative Service Commission

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Sens. Dann, Hagan, Fingerhut, R. Miller, Fedor, D. Miller

BILL SUMMARY

- Provides that, subject to an exception regarding most municipal ordinance offenses and certain less-serious offenses committed by a child, if a person or child has not been arrested and first appears before a court or magistrate in response to a summons, the court must order the person or child to appear before the sheriff or chief of police within 24 hours to have the person's or child's fingerprints taken and the sheriff or chief must forward copies of the fingerprints, any other description that may be required, and the history of the offense committed to the Bureau of Criminal Identification and Investigation (BCII) to be classified and filed and to the clerk of the court.
- Provides that every court with jurisdiction over a case involving a person or child with respect to whom the provision described in the preceding dot point, or a similar existing provision regarding a person or child who has been arrested for a specified type of offense, requires a sheriff or chief of police to take the person's or child's fingerprints must inquire at the time of the person's or child's sentencing or adjudication whether or not the person or child has been fingerprinted pursuant to either provision, and specifies that, if the person or child was not fingerprinted for the original arrest or court appearance upon which the sentence or adjudication is based, the court must order the person or child to appear before the sheriff or chief of police within 24 hours to have the person's or child's fingerprints taken and the sheriff or chief must forward copies of the fingerprints, any other description that may be required, and the history of the offense committed to BCII to be classified and filed and to the clerk of the court.
- Requires the Attorney General (the AG) annually to provide written notice to the judges of each court of common pleas, county court, and

municipal court and to each clerk of those courts stating the courts' duties under the Revised Code pertaining to the fingerprinting of criminal defendants, including the duty enacted in the bill that is described above in the second preceding dot point.

- Requires the AG to: (1) work with the judges and clerks of the courts of common pleas, county courts, and municipal courts to develop a method to monitor and document the courts' compliance with the provisions of the Revised Code governing the fingerprinting of criminal defendants, (2) monitor and document the courts' compliance in accordance with this method, and (3) annually submit a written report on the courts' compliance with those provisions to the Governor, the Speaker of the House of Representatives, the Senate President, the Minority Leader of the House of Representatives, the Senate Minority Leader, and each Justice of the Ohio Supreme Court.
- Provides that any taxpayer may bring an action against the AG for failing to provide the notice, or failing to monitor, document, and report on the courts' compliance with the provisions of the Revised Code governing the fingerprinting of criminal defendants, as required under the provisions described in the preceding dot point and, regarding the action: (1) authorizes the court to order injunctive relief if the court finds that the AG has failed to fulfill any of the AG's duties under those provisions but may not award reparations or provide other forms of equitable relief, (2) specifies that, if the court finds that the AG has failed to fulfill any of the AG's duties under those provisions, it must order the AG to pay, and the AG must pay, a \$25,000 fine, and (3) provides that the fine must be deposited into the existing Reparations Fund.

TABLE OF CONTENTS

Background	3
Fingerprints and descriptions to be taken by sheriffs and police chiefs and forwarded to BCII, regarding arrests or custody	4
Existing law.....	4
Operation of the bill	7

CONTENT AND OPERATION

Background

Existing law sets forth a series of provisions pursuant to which various persons and entities involved in the criminal justice system must provide to the Bureau of Criminal Identification and Investigation (BCII) of the Attorney General's Office specified information about persons who are charged with or convicted of a criminal offense or charged with or adjudicated a delinquent child and are "within the system." For example, R.C. 109.60(A)(1) to (3) require specified law enforcement personnel, upon the arrest of a person for a specified type of offense or delinquent act, to provide the person's fingerprints and other specified information to BCII. R.C. 109.60(A)(1) to (3) also require at various times throughout the criminal justice process, if the person's fingerprints previously have not been taken, the involved court to order them to be taken and provided, along with other specified information, to BCII. The provisions of R.C. 109.60(A) are described in detail below in **"Fingerprints and descriptions to be taken by sheriffs and police chiefs and forwarded to BCII."**

Other existing provisions pursuant to which various persons and entities involved in the criminal justice system must provide specified information to BCII are: (1) R.C. 109.57(A), not in the bill, which requires the person in charge of any state or local correctional facility, or other state institution, with custody of a person suspected of having committed a specified type of offense or delinquent act, and the clerk of an Ohio court of record (other than the Supreme Court or a court of appeals) in which there is a case involving a specified type of criminal offense or delinquent act, to send specified information regarding the person or case to BCII's Superintendent (see **COMMENT 1** for a summary of these provisions), (2) R.C. 109.59, not in the bill, which requires specified law enforcement personnel to send to BCII any fingerprint impressions and other descriptive measurements its Superintendent requires (see **COMMENT 2** for a summary of this provision), (3) R.C. 109.60(A)(4), which requires specified law enforcement officers and detention facility officials that have custody of a person or child for an offense or act who discover that a warrant or bill of information has been issued alleging that the person or child has committed a different offense or act that is one for which fingerprints are to be taken under R.C. 109.60(A)(1), as described in the preceding paragraph, to provide the person's or child's fingerprints and other specified information to BCII (this provision appears in, but is unchanged by, the bill; see **COMMENT 3** for a summary of it), (4) R.C. 109.60(C), which requires each law enforcement agency that arrests any person for a specified type of drug offense that is methamphetamine-related to send specified information to BCII regarding all arrests for those offenses and relative to illegal methamphetamine manufacturing laboratories, dump sites, and chemical

caches discovered in the agency's territory (this provision appears in, but is unchanged by, the bill; see **COMMENT 4** for a summary of this provision), and (5) R.C. 109.61, not in the bill, which requires specified law enforcement personnel to furnish to BCII fingerprints and other specified information regarding persons arrested for specified types of offenses or delinquent acts or involved in another specified manners with the criminal justice system (see **COMMENT 5** for a summary of these provisions).

Under R.C. 109.572(A)(11) and (B), which is not in the bill, when a person or entity that is required by state law to make a criminal records check regarding a person under final consideration for employment in a position in which the person will have contact with children, older adults, or individuals with mental retardation or a developmental disability (or under consideration for certain types of licenses or permits) requests BCII to conduct the records check (see **COMMENT 6** for a summary of state law imposing the requirements), BCII's Superintendent must review or cause to be reviewed any relevant information gathered and compiled by BCII under R.C. 109.57(A) that relates to the person who is the subject of the request, including any relevant information contained in records sealed under the Conviction Records Sealing Law. When requested, the Superintendent contacts the FBI for information that it 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. Not later than 30 days after the Superintendent receives the request and other specified materials, the Superintendent must send the person or entity that made the request information the Superintendent determines exists with respect to the subject person that indicates that the person has been convicted of an offense specified by law that disqualifies the person from serving in the position in question.

Fingerprints and descriptions to be taken by sheriffs and police chiefs and forwarded to BCII, regarding arrests or custody

Existing law

General requirement. Existing R.C. 109.60(A)(1) requires the sheriffs of the several counties and the chiefs of police of cities, *immediately upon the arrest of any person* for any felony, on suspicion of any felony, for a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or for any misdemeanor described in R.C. 109.572(A)(1)(a) or (A)(10)(a), and *immediately upon the arrest or taking into custody of any child* under 18 for committing an act that would be a felony or an offense of violence if committed by an adult or upon probable cause to believe that a child of that age may have committed an act that would be a felony or an offense of violence if committed by an adult, to take the person's or child's fingerprints, or cause them to be taken, according to the

fingerprint system of identification on the forms furnished by BCII's Superintendent (apparently, the forms described in "*Fingerprint impression sheets*," below), and immediately forward copies of the completed forms, any other description that may be required, and the history of the offense committed to BCII to be classified and filed and to the clerk of the court with jurisdiction over the prosecution of the offense or the adjudication relative to the act.

Upon order of court, if general requirement not satisfied. Existing R.C. 109.60(A)(2) provides that, if a sheriff or chief of police has not taken, or caused to be taken, a person's or child's fingerprints in accordance with the provision described above in "*General requirement*" by the time of the arraignment or first appearance of the person or child, the court must order the person or child to appear before the sheriff or chief of police within 24 hours to have the person's or child's fingerprints taken. The sheriff or chief of police must take the person's or child's fingerprints, or cause them to be taken, according to the fingerprint system of identification on the forms furnished by BCII's Superintendent (apparently, the forms described in "*Fingerprint impression sheets*," below) and, immediately after the person's or child's arraignment or first appearance, forward copies of the completed forms, any other description that may be required, and the history of the offense committed to BCII to be classified and filed and to the clerk of the court.

Under existing R.C. 109.60(A)(3), every court with jurisdiction over a case involving a person or child with respect to whom the provision described above in "*General requirement*" requires a sheriff or chief of police to take the person's or child's fingerprints must inquire *at the time of the person's or child's sentencing or adjudication* whether or not the person or child has been fingerprinted pursuant to that provision or the provision described in the preceding paragraph for the original arrest upon which the sentence or adjudication is based. If the person or child was not fingerprinted for the original arrest upon which the sentence or adjudication is based, the court must order the person or child to appear before the sheriff or chief of police within 24 hours to have the person's or child's fingerprints taken. The sheriff or chief of police must take the person's or child's fingerprints, or cause them to be taken, according to the fingerprint system of identification on the forms furnished by BCII's Superintendent (apparently, the forms described in "*Fingerprint impression sheets*," below) and immediately forward copies of the completed forms, any other description that may be required, and the history of the offense committed to BCII to be classified and filed and to the clerk of the court.

BCII duties; return of materials to accused; exemption from provisions. Existing R.C. 109.60(A)(6) requires BCII's Superintendent to compare the description received under the provisions described above in "*General requirement*" and "*Upon order of court, if general requirement not satisfied*" with those already on file with BCII. If the Superintendent finds that the person

arrested or taken into custody has a criminal record or a record as a delinquent child for having committed an act that would be a felony or an offense of violence if committed by an adult or is a fugitive from justice or wanted by any jurisdiction in Ohio or another state, the United States, or a foreign country for any offense, the Superintendent at once must inform the arresting officer, the officer taking the person into custody, or the chief administrative officer of the local jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution in which the person or child is in custody of that fact and give appropriate notice to the proper authorities in the jurisdiction in which the person is wanted, or, if that jurisdiction is a foreign country, give appropriate notice to federal authorities for transmission to the foreign country. The names, under which each person whose identification is filed is known, must be alphabetically indexed by the Superintendent.

Under existing R.C. 109.60(A)(5), if an accused is found not guilty of the offense charged or a *nolle prosequi* is entered in any case, or if any accused child under 18 is found not to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult or not guilty of the felony or offense of violence charged or a *nolle prosequi* is entered in that case, the fingerprints and description (apparently, those taken under the provisions described above in "General requirement" and "Upon order of court, if general requirement not satisfied") must be given to the accused upon the accused's request.

Existing R.C. 109.60(B) provides that the provisions described above in "General requirement" and "Upon order of court, if general requirement not satisfied" do not apply to: (1) a violator of a city ordinance unless the officers have reason to believe that the violator is a past offender or the crime is one constituting a misdemeanor on the first offense and a felony on subsequent offenses, or unless it is advisable for the purpose of subsequent identification, or (2) any child under 18 who was not arrested or otherwise taken into custody for committing an act that would be a felony or an offense of violence if committed by an adult or upon probable cause to believe that a child of that age may have committed an act that would be a felony or an offense of violence if committed by an adult, except as provided in R.C. 2151.313.

Fingerprint impression sheets. Existing R.C. 109.58, not in the bill, requires BCII's Superintendent to prepare standard impression sheets on which fingerprints may be made in accordance with the fingerprint system of identification. The impression sheets may provide for other descriptive matter that the Superintendent prescribes. The Superintendent must furnish the impression sheets to each sheriff, chief of police, and person in charge of every county, multicounty, municipal, municipal-county, or multicounty-municipal jail or

workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution in Ohio.

Operation of the bill

The bill imposes new duties on courts regarding the taking of fingerprints of persons who have not been arrested and first appear before a court or magistrate in response to a summons. It also requires the Attorney General to provide notice to judges and court clerks regarding their statutory duties pertaining to the fingerprinting of criminal defendants and to monitor, document, and report on all courts' compliance with those duties. The bill also establishes a taxpayers' action that may be brought against the Attorney General for failing to comply with the monitoring, documenting, and reporting requirements.

Court duties regarding the taking of fingerprints of persons who have not been arrested and first appear before a court or magistrate in response to a summons. The bill provides that, except as described in the exception specified below, *if a person or child has not been arrested and first appears before a court or magistrate in response to a summons*, the court must order the person or child to appear before the sheriff or chief of police within 24 hours to have the person's or child's fingerprints taken. The sheriff or chief of police must take the person's or child's fingerprints, or cause them to be taken, according to the fingerprint system of identification *on the forms furnished by BCII's Superintendent* (apparently, the forms described above in "**Fingerprint impression sheets**," under "**Existing law**") and, immediately after the person's or child's arraignment or first appearance, forward copies of the completed forms, any other description that may be required, and the history of the offense committed to BCII to be classified and filed and to the clerk of the court. (R.C. 109.60(A)(2).)

Every court with jurisdiction over a case involving a person or child with respect to whom the bill's provision described in the preceding paragraph, or the existing provision described above in "**General requirement**" under "**Existing law**," requires a sheriff or chief of police to take the person's or child's fingerprints must inquire at the time of the person's or child's sentencing or adjudication whether or not the person or child has been fingerprinted pursuant to either provision "for the original arrest" (the bill neglects to mention the issuance of the summons) upon which the sentence or adjudication is based. If the person or child was not fingerprinted for the original arrest *or court appearance* upon which the sentence or adjudication is based, the court must order the person or child to appear before the sheriff or chief of police within 24 hours to have the person's or child's fingerprints taken. The sheriff or chief of police must take the person's or child's fingerprints, or cause them to be taken, according to the fingerprint system of identification *on the forms furnished by BCII's Superintendent* (apparently, the forms described above in "**Fingerprint impression sheets**," under "**Existing law**")

and immediately forward copies of the completed forms, any other description that may be required, and the history of the offense committed to BCII to be classified and filed and to the clerk of the court. (R.C. 109.60(A)(3).)

Under existing R.C. 109.60(B), unchanged by the bill, the bill's provisions described in the preceding two paragraphs do not apply to: (1) a violator of a city ordinance unless the officers have reason to believe that the violator is a past offender or the crime is one constituting a misdemeanor on the first offense and a felony on subsequent offenses, or unless it is advisable for the purpose of subsequent identification, or (2) any child under 18 who was not arrested or otherwise taken into custody for committing an act that would be a felony or an offense of violence if committed by an adult or upon probable cause to believe that a child of that age may have committed an act that would be a felony or an offense of violence if committed by an adult, except as provided in R.C. 2151.313. The existing provisions described above in "*BCII duties; return of materials to accused; exemption from provisions*" under "*Existing law*" also apply regarding the bill's provisions described in the preceding two paragraphs. (R.C. 109.60(A)(5), (A)(6), and (B).)

Attorney General's duties. The bill requires the Attorney General (the AG) annually to provide written notice to the judges of each court of common pleas, county court, and municipal court and to each clerk of those courts stating the courts' duties under the Revised Code pertaining to the fingerprinting of criminal defendants, including the duty enacted in the bill, as described above in "*Court duties regarding the taking of fingerprints of persons who have not been arrested and first appear before a court or magistrate in response to a summons,*" to order a person or child first appearing before the court pursuant to a summons to appear before the sheriff or chief of police within 24 hours after the court appearance to have the person's or child's fingerprints taken.

It also requires the AG to work with the judges and clerks of the courts of common pleas, county courts, and municipal courts to develop a method to monitor and document the courts' compliance with the provisions of the Revised Code governing the fingerprinting of criminal defendants. The AG must monitor and document the courts' compliance in accordance with this method. Annually, the AG must submit a written report on the courts' compliance with the provisions of the Revised Code governing the fingerprinting of criminal defendants to the Governor, the Speaker of the House of Representatives, the Senate President, the Minority Leader of the House of Representatives, the Senate Minority Leader, and each Justice of the Ohio Supreme Court. (R.C. 109.60(D) and (E).)

Taxpayer action against the Attorney General. The bill provides that any taxpayer may bring an action against the AG for failing to provide the notice, or failing to monitor, document, and report on the courts' compliance with the

provisions of the Revised Code governing the fingerprinting of criminal defendants, as required under the bill's provisions described above in "Attorney General's duties." A court may order injunctive relief if the court finds that the AG has failed to fulfill any of the AG's duties under those provisions but may not award reparations or provide other forms of equitable relief. If the court finds that the AG has failed to fulfill any of the AG's duties under those provisions, it must order the AG to pay, and the AG must pay, a \$25,000 fine to the clerk of the court. The clerk must pay the fine to the Treasurer of State for deposit into the existing Reparations Fund (established under existing R.C. 2743.191, not in the bill). The bill specifies that a taxpayer's right to bring an action under this provision is not restricted by existing R.C. 2743.02(A)(3), not in the bill, which generally provides that the state of Ohio is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty, including the performance or nonperformance of a public duty that is owed by the state in relation to any action of an individual who is committed to the custody of the state. (R.C. 109.60(F).)

COMMENT

1. Existing R.C. 109.57(A)(1), not in the bill, requires BCII's Superintendent to procure from wherever procurable 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 in Ohio a felony, a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or a misdemeanor described in R.C. 109.572(A)(1)(a), 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 have been convicted of such an offense, and of all well-known and habitual criminals. It also requires the person in charge of any local jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution and the person in charge of any state institution having 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 misdemeanor described in R.C. 109.572(A)(1)(a), or having 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, to furnish to BCII's Superintendent all photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent to the suspected offender or delinquent child. Fingerprints, photographs, or other descriptive information of a child who is under 18, has not been arrested, taken into custody, or adjudicated a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult, has not been convicted of or

pleaded guilty to committing a felony or an offense of violence, and is not a child 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 cannot be furnished by any person in charge of any of the specified detention facilities, except as authorized in R.C. 2151.313.

Existing R.C. 109.57(A)(2), not in the bill, requires every clerk of a court of record in Ohio, other than the Supreme Court or a court of appeals, to send to BCII's Superintendent a weekly report containing a summary of each case involving a felony, involving any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, involving a misdemeanor described in R.C. 109.572(A)(1)(a), or involving 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. The clerk of the court of common pleas must include in the report and summary all the information required in the summaries, as specified below, regarding a case before the court of appeals that is served by that clerk. The summary must be written on the standard forms furnished by the Superintendent and must include the following information: (a) the incident tracking number contained on the standard forms furnished by the Superintendent, (b) the style and number of the case, (c) the date of arrest, (d) the date on which the person was convicted of or pleaded guilty to the offense, adjudicated a delinquent child for committing the act that would be a felony or an offense of violence if committed by an adult, found not guilty of the offense, or found not to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult, the date of an entry dismissing the charge, an entry declaring a mistrial of the offense in which the person is discharged, an entry finding that the person or child is not competent to stand trial, or an entry of a *nolle prosequi*, or the date of any other determination that constitutes final resolution of the case, (e) a statement of the original charge with the section of the Revised Code allegedly violated, and (f) if the person or child was convicted, pleaded guilty, or was adjudicated a delinquent child, the sentence or terms of probation imposed or any other disposition of the offender or the delinquent child. If the offense involved the disarming of a law enforcement officer or an attempt to disarm a law enforcement officer, the clerk must clearly state that fact in the summary, and the Superintendent must ensure that a clear statement of that fact is placed in BCII's records.

2. Existing R.C. 109.59, not in the bill, requires the sheriff, chief of police, or other person in charge of each prison, workhouse, or state correctional institution to send to BCII, on forms furnished by BCII's Superintendent, any fingerprint impressions and other descriptive information that the Superintendent requires. BCII must file, classify, and preserve the information sent to it.

3. Existing R.C. 109.60(A)(4), unchanged by the bill, provides that, if a person or child is in the custody of a law enforcement agency or a detention facility, as defined in R.C. 2921.01, and the chief law enforcement officer or chief administrative officer of the facility discovers that a warrant has been issued or a bill of information has been filed alleging the person or child to have committed an offense or act other than the offense or act for which the person or child is in custody, and the other alleged offense or act is one for which fingerprints are to be taken pursuant to the provision described above in "General requirement" under "Existing law" and "Fingerprints and descriptions to be taken by sheriffs and police chiefs and forwarded to BCII, regarding arrests or custody" in the **CONTENT AND OPERATION** portion of this analysis, the law enforcement agency or detention facility must take the fingerprints of the person or child, or cause them to be taken, according to the fingerprint system of identification on the forms furnished by BCII's Superintendent and immediately forward copies of the completed forms, any other description that may be required, and the history of the offense committed to BCII to be classified and filed and to the clerk of the court that issued the warrant or with which the bill of information was filed.

4. Existing R.C. 109.60(C), unchanged by the bill, requires each law enforcement agency that, in any calendar year, arrests any person for a violation of R.C. 2925.04 that is based on the manufacture of methamphetamine or a methamphetamine product, a violation of R.C. 2925.041 that is based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product, or a violation of any other provision of R.C. Chapter 2925. or 3719. that is based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product to prepare an annual report covering the calendar year that contains the information specified below relative to all arrests for violations of those sections committed under those circumstances during that calendar year and relative to illegal methamphetamine manufacturing laboratories, dump sites, and chemical caches as specified below and to send the annual report to BCII. The agency is required to write the annual report on standard forms furnished by BCII's Superintendent; related to this provision, BCII's Superintendent is required to prepare and furnish to each law enforcement agency in Ohio standard forms for making the annual reports. These standard forms may be in a tangible format, in an electronic format, or in both a tangible format and an electronic format. For purposes of this provision, a law enforcement agency is considered to have arrested a person if any law enforcement officer who is employed by, appointed by, or serves that agency arrests the person.

The annual report prepared and filed by a law enforcement agency as described in the preceding paragraph must be a statistical report, and nothing in the report or in the information it contains can identify, or enable the identification

of, any person who was arrested and whose arrest is included in the information contained in the report. The annual report in BCII's possession and the information it contains are public records for the purpose of the state's Public Records Law. The annual report is separate from, and in addition to, any report, materials, or information required under any other provision of R.C. 109.57 to 109.62. The annual report must contain all of the following information for the calendar year it covers: (a) the total number of arrests made by the agency in that calendar year for a violation of R.C. 2925.04 that is based on the manufacture of methamphetamine or a methamphetamine product, a violation of R.C. 2925.041 that is based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product, or a violation of any other provision of R.C. Chapter 2925. or 3719. that is based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product, (b) the total number of illegal methamphetamine manufacturing laboratories at which one or more of the arrests reported as described in clause (a) of this paragraph occurred, or that were discovered in that calendar year within the territory served by the agency but at which none of the arrests so reported occurred, and (c) the total number of dump sites and chemical caches that are, or that are reasonably believed to be, related to illegal methamphetamine manufacturing and that were discovered in that calendar year within the territory served by the agency.

5. Existing R.C. 109.61, not in the bill, requires each sheriff or chief of police to furnish BCII with descriptions, fingerprints, photographs, and measurements of the following: (a) persons arrested who in that sheriff's or chief's judgment are wanted for serious offenses, are fugitives from justice, or in whose possession at the time of arrest are found goods or property reasonably believed to have been stolen, (b) children arrested or otherwise taken into custody who in that sheriff's or chief's judgment are under 18 and have committed an act that would be a felony or an offense of violence if committed by an adult, (c) all persons in whose possession are found burglar outfits, burglar tools, or burglar keys, or who have in their possession high power explosives reasonably believed to be intended to be used for unlawful purposes, (d) persons who are in possession of "infernal machines" or other contrivances in whole or in part and reasonably believed by the sheriff or chief to be intended to be used for unlawful purposes, (e) all persons carrying concealed firearms or other deadly weapons reasonably believed to be carried for unlawful purposes, and (f) all persons who have in their possession inks, dies, paper, or other articles necessary in the making of counterfeit bank notes or in the alteration of bank notes, or dies, molds, or other articles necessary in the making of counterfeit money and reasonably believed to be intended to be used by them for those types of unlawful purposes.

6. Existing law contains numerous provisions, none of which are in the bill, that require criminal records checks by BCII of persons under final consideration for certain types of employment or certain positions or licenses. Existing law also contains a series of provisions that authorize certain potential employers or licensors, or other persons, to request criminal records checks by BCII of persons under final consideration for certain types of employment or certain positions or licenses or who are in other specified circumstances, and a provision that requires the AG to adopt rules under the Administrative Procedure Act setting forth the procedure by which any person may receive or release information BCII gathers pursuant to R.C. 109.57(A). Regarding the mandatory records check, existing law, none of which is in the bill, 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 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 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. 173.394), 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).

HISTORY

ACTION	DATE
Introduced	10-03-06

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