



Dennis M. Papp

Bill Analysis
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BILL SUMMARY

- Modifies the provisions regarding mandatory criminal records checks to be conducted upon request by the Bureau of Criminal Identification and Investigation (BCII) for persons under final consideration for a position responsible for a child's care in out-of-home care, for prospective adoptive parents, and for prospective foster caregivers by: (1) expanding the list of offenses the conviction of which disqualifies a person from that position or status so that it also includes permitting child abuse, menacing by stalking, soliciting or providing support for an act of terrorism, making terroristic threats, terrorism, identity fraud, inciting to violence, aggravated riot, telecommunications harassment, a drug possession offense in violation of R.C. 2925.11, ethnic intimidation, and a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of those offenses, (2) regarding checks for prospective foster caregivers and persons 18 or older who reside with them, specifying that the statewide checks BCII conducts must be updated annually until BCII is informed that the foster home is no longer certified, (3) specifying that, if a person subject to a check related to a position responsible for a child's out-of-home care does not present proof that the person has been an Ohio resident for the preceding five-year period or provide evidence that, within that period, BCII requested information about the person from the FBI in a criminal records check, the appointing or hiring officer must request, and each administrative hiring officer regarding a check related to prospective adoptive parents or foster caregivers must request, that BCII obtain information from the FBI as part of the check related to a position responsible for a child's care in out-of-home care, and (4) prohibiting the Department of Job and Family Services (ODJFS) from renewing a

certificate authorizing a "prospective" foster caregiver to operate a foster home if the "prospective" foster caregiver or a person over 18 who resides with the "prospective" foster caregiver has been convicted of any of the disqualifying offenses and requiring ODJFS to revoke such a certificate if the "prospective" foster caregiver or a person over 18 who resides with the "prospective" foster caregiver has been convicted of any of those offenses.

- Provides that, in addition to the current steps BCII must take in conducting a mandatory criminal records check, it also must request a fingerprint-based criminal records check of national crime information databases, and must request a check of an equivalent registry in another state if the person who is the subject of the request resided in that state in the preceding five-year period, as required by the federal "Adam Walsh Child Protection and Safety Act of 2006," and requires BCII to comply with any similar request from another state.
- In a provision that generally requires a public children services agency (a PCSA) or private child placing agency to file a motion with a court requesting permanent custody of a child who has been in the temporary custody of one or more such agencies for 12 or more months of a consecutive 22-month period, specifies that, if the child has been in the temporary custody of one or more such agencies and the child was previously in the temporary custody of an equivalent agency in another state on or after March 18, 1999, the agency with custody of the child must apply the time in temporary custody in the other state to the time in temporary custody in Ohio and, generally, if the time spent in temporary custody equals 15 or more months of a consecutive 22-month period, the agency with custody must file a motion requesting permanent custody of the child.
- In the provisions that pertain to court hearings, findings, and actions subsequent to the filing of a motion for permanent custody of a child: (1) expands the possible findings that could be the basis for a grant of permanent custody of a child to also include findings that the child: (a) has not been in the temporary custody of one or more PCSAs or private child placing agencies for 15 or more months of a consecutive 22-month period, was previously in the temporary custody of an equivalent agency in another state on or after March 18, 1999, and cannot be placed with either parent within a reasonable time or should not be placed with the



parents, or (b) has been in the temporary custody of one or more PCSAs or private child placing agencies for 15 or more months of a consecutive 22-month period and was previously in the temporary custody of an equivalent agency in another state on or after March 18, 1999, (2) expands the "custodial history" factor that a court must consider in determining the best interest of a child at a hearing to include consideration of whether the child has been in the temporary custody of one or more PCSAs or private child placing agencies for 15 or more months of a consecutive 22-month period and, as described in the preceding dot point, the child was previously in the temporary custody of an equivalent agency in another state on or after March 18, 1999, and (3) modifies the "involuntary termination of parental rights" determination that could be the basis for a finding that the child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent so that the determination is that the parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to R.C. 2151.353, 2151.414, or 2151.415, or under an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to those sections.

- In a provision that requires a court that, at a hearing, removes a child from the child's home to make certain determinations regarding the involved agency's efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from it, and return the child to the child's home, modifies the "involuntary termination of parental rights" determination that excuses the agency from those efforts so that the determination is that the parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to R.C. 2151.353, 2151.414, or 2151.415, or under an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to those sections.
- Increases the penalty for the offense of gross sexual imposition when the other person or one of the other persons involved in the offense is less than ten years of age, whether or not the offender knows the age of that person to a felony of the first degree, and requires the court to impose on an offender convicted of the offense in those circumstances a mandatory prison term equal to one of the prison terms prescribed by law for a felony of the first degree if: (1) evidence other than the testimony of the victim was admitted in the case corroborating the violation, or (2) the

offender previously was convicted of or pleaded guilty to gross sexual imposition, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was under ten.

- Expands the definition of "corrupt activity" that applies to the Corrupt Activity Law so that it also includes a "sexually oriented offense" that is not a "registration-exempt sexually oriented offense," if the offense is not otherwise currently included in the definition.
- Provides that: (1) upon arresting a person or charging a person for an offense other than a minor misdemeanor, a specified law enforcement officer who knows or has reason to believe that the person is a foster caregiver or is a person over 18 years of age who resides with a foster caregiver must notify ODJFS of the arrest or charge, and (2) unless the person is found not guilty of committing the offense, ODJFS must retain the information contained in the notice with the foster caregiver's records.
- Modifies the penalties for a violation of any prohibition in the Sex Offender Registration and Notification Law that prohibits a person from failing to comply with the Law's registration, change of address, address verification, and notice of intent to reside requirements, so that: (1) subject to clause (2) of this paragraph, if the most serious offense that was the basis of the requirement violated is aggravated murder, murder, or a felony of the first, second, or third degree, the offender is guilty of a felony of the third degree, and the court must impose as a mandatory prison term one of the prison terms for a felony of the third degree, and if the most serious offense that was the basis of the requirement violated is a felony of the fourth or fifth degree or a misdemeanor, the offender is guilty of a felony of the fourth degree, and the court must impose as a mandatory prison term one of the prison terms for a felony of the fourth degree that is not less than 12 months, and (2) if the offender previously has been convicted of or adjudicated delinquent for violating any of the prohibitions: if the most serious offense that was the basis of the requirement violated is aggravated murder, murder, or a felony of the first, second, third, or fourth degree, the offender is guilty of a felony of the third degree, and the court must impose as a mandatory prison term one of the prison terms for a felony of the third degree, and, if the most serious offense that was the basis of the requirement violated is a felony of the fifth degree or a misdemeanor, the offender is guilty of a felony of the fourth degree, and the court must impose as a mandatory prison term

one of the prison terms for a felony of the fourth degree that is not less than 12 months.

- In the definition of "violent sex offense" that applies to the Sexually Violent Predator Sentencing Law, conforms the portion of the definition that includes a reference to the offense of gross sexual imposition to the bill's changes made to that offense for the purpose of the penalty increase described in the fourth preceding dot point.
- In the provisions that currently require ODJFS to establish and maintain a Uniform Statewide Automated Child Welfare Information System and that specify the circumstances in which information contained in the Information System may be accessed: (1) also requires ODJFS to disseminate information from the Information System, and specifies that the establishment, maintenance, and dissemination of information must be in accordance with the federal "Adam Walsh Child Protection and Safety Act of 2006," and related federal regulations and guidelines, in addition to currently specified provisions of federal law, and (2) expands the circumstances in which ODJFS and a PCSA may access information in the Information System so that ODJFS and a PCSA also may access the information when the access is required by the federal "Adam Walsh Child Protection and Safety Act of 2006."
- Specifies that any eligible entity seeking federal sex offender monitoring pilot program grants under the federal "Adam Walsh Child Protection and Safety Act of 2006" must apply for such grants through the Ohio Attorney General, requires the Ohio Attorney General to submit the application to the U.S. Attorney General on behalf of the entity, and requires the Ohio Attorney General to administer any grants received to assist in programs to outfit sex offenders with electronic monitoring units and employ law enforcement officials to carry out electronic monitoring programs.
- Requires the Ohio Attorney General, within six months of the bill's effective date, to: (1) adopt rules to conform Ohio law to the federal Sex Offender Registration and Notification Act, and (2) submit recommendations to the General Assembly regarding any legislative changes needed to conform Ohio law to that federal Act.

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CONTENT AND OPERATION

Mandatory criminal records checks of persons under final consideration for specified types of employment or for specified types of licenses or permits

Background

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 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). Among the provisions that requires mandatory criminal records checks is R.C. 2151.86, which requires the appointing or hiring authority of any entity that appoints or employs persons responsible for a child's care in out-of-home care to request BCII to conduct a check with respect to any person who is under final consideration for appointment or employment as a person responsible for a child's care in out-of-home care (unless the entity involved is a public school, educational service center, or chartered nonpublic school), requires an agency or attorney that arranges an adoption to request BCII to conduct a check with respect to the prospective adoptive parent and other adults who reside with that person, and requires an agency that intends to recommend the issuance of a foster home certificate to request BCII to conduct a check with respect to the prospective foster caregiver and other adults who reside with that person. Another of those provisions is R.C. 5153.111, which requires the executive director of a public children services agency to request BCII to conduct a check with respect to any applicant who has applied to the agency for employment as a person responsible for the care, custody, or control of a child. These provisions are described in detail in the next two parts of this analysis (other provisions that require mandatory criminal records checks are summarized in **COMMENT 1**). 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 Attorney General to adopt rules setting forth the procedure by which any person may receive information BCII gathers regarding criminal offenders.

Mandatory criminal records checks for persons under final consideration for a position responsible for a child's care in out-of-home care, for prospective adoptive parents, and for prospective foster caregivers

Existing law. Existing law specifies that the appointing or hiring officer of any entity that appoints or employs any person responsible for a child's care in out-of-home care must request BCII's Superintendent to conduct a criminal records check with respect to any person under final consideration for appointment or employment as a person responsible for a child's care in out-of-home care, except that R.C. 3319.39 applies instead of this provision if the out-of-home care entity is a public school, educational service center, or chartered nonpublic school. It also requires the administrative director of an agency, or attorney, who arranges an adoption for a prospective adoptive parent to request BCII's Superintendent to conduct a criminal records check with respect to that prospective adoptive parent and all persons 18 or older who reside with the prospective adoptive parent. Additionally, it provides that, before a recommending agency submits a recommendation to the Department of Job and Family Services (ODJFS) on whether the Department should issue a certificate to a foster home under R.C. 5103.03, the agency's administrative director must request BCII's Superintendent to conduct a criminal records check with respect to the prospective foster caregiver and all other persons 18 or older who reside with the foster caregiver. The appointing or hiring officer, administrative director, or attorney must pay to BCII the fee prescribed for the criminal records check, and may charge the person subject to the check a fee for the actual costs incurred in obtaining the check.

If a person subject to a criminal records check under any of these provisions does not present proof that the person has been an Ohio resident for the five-year period immediately prior to the date upon which the check is requested or does not provide evidence that, within that five-year period, BCII's Superintendent requested information about the person from the FBI in a criminal records check, the appointing or hiring officer, administrative director, or attorney must request that BCII's Superintendent obtain information from the FBI as part of the check. If the person subject to the check presents proof that the person has been an Ohio resident for that five-year period, the officer, director, or attorney may request that the Superintendent include information from the FBI in the check.

An appointing or hiring officer, administrative director, or attorney required to request a criminal records check must provide to each person subject to a check a copy of a form and the standard fingerprint impression sheet the Attorney General (the AG) prescribes for purposes of the check, obtain the completed form and impression sheet from the person, and forward them to BCII's Superintendent at the time the check is requested. If a person subject to a criminal records check,

upon request, fails to provide the information necessary to complete the form or to provide the person's fingerprints, the appointing or hiring officer cannot appoint or employ the person as a person responsible for a child's care in out-of-home care, a probate court cannot issue a final decree of adoption or an interlocutory order of adoption making the person an adoptive parent, and ODJFS cannot issue a certificate authorizing the prospective foster caregiver to operate a foster home.

No appointing or hiring officer may appoint or employ a person as a person responsible for a child's care in out-of-home care, ODJFS cannot issue a certificate authorizing a prospective foster caregiver to operate a foster home, and no probate court may issue a final decree of adoption or an interlocutory order of adoption making a person an adoptive parent if the person or, in the case of a prospective foster caregiver or prospective adoptive parent, any person 18 or older who resides with the prospective foster caregiver or adoptive parent previously has been convicted of any of a specified list of offenses (hereafter, "disqualifying offenses"), unless the person meets rehabilitation standards established as described below. The offenses that are disqualifying offenses are: (1) aggravated murder (set forth in R.C. 2903.01), murder (R.C. 2903.02), voluntary manslaughter (R.C. 2903.03), involuntary manslaughter (R.C. 2903.04), felonious assault (R.C. 2903.11), aggravated assault (R.C. 2903.12), assault (R.C. 2903.13), knowingly failing to provide for a functionally impaired person, or recklessly failing to provide for a functionally impaired person (R.C. 2903.16), aggravated menacing (R.C. 2903.21), patient abuse, gross patient neglect, or patient neglect (R.C. 2903.34), kidnapping (R.C. 2905.01), abduction (R.C. 2905.02), criminal child enticement (R.C. 2905.05), rape (R.C. 2907.02), sexual battery (R.C. 2907.03), unlawful sexual conduct with a minor (R.C. 2907.04), gross sexual imposition (R.C. 2907.05), sexual imposition (R.C. 2907.06), importuning (R.C. 2907.07), voyeurism (R.C. 2907.08), public indecency (R.C. 2907.09), compelling prostitution (R.C. 2907.21), promoting prostitution (R.C. 2907.22), procuring (R.C. 2907.23), prostitution, and engaging in prostitution after a positive HIV test (R.C. 2907.25), disseminating matter harmful to juveniles (R.C. 2907.31), pandering obscenity (R.C. 2907.32), pandering obscenity involving a minor (R.C. 2907.321), pandering sexually oriented matter involving a minor (R.C. 2907.322), illegal use of a minor in a nudity-oriented material or performance (R.C. 2907.323), aggravated arson (R.C. 2909.02), arson (R.C. 2909.03), aggravated robbery (R.C. 2911.01), robbery (R.C. 2911.02), aggravated burglary (R.C. 2911.11), burglary (R.C. 2911.12), unlawful abortion (R.C. 2919.12), endangering children (R.C. 2919.22), contributing to the unruliness or delinquency of a child (R.C. 2919.24), domestic violence (R.C. 2919.25), carrying concealed weapons (R.C. 2923.12), having weapons while under disability (R.C. 2923.13), improperly discharging firearms at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function (R.C. 2923.161), corrupting

another with drugs (R.C. 2925.02), a drug trafficking offense under R.C. 2925.03, illegal manufacture of drugs, or illegal cultivation of marihuana (R.C. 2925.04), aggravated funding of drug trafficking, funding of drug trafficking, or funding of marihuana trafficking (R.C. 2925.05), illegal administration or distribution of anabolic steroids (R.C. 2925.06), placing a harmful object in a food or confection or furnishing such an adulterated food or confection to a person in violation of R.C. 3716.11, child stealing as it existed under R.C. 2905.04 prior to July 1, 1996, interference with custody that would have been child stealing as it existed under R.C. 2905.04 prior to July 1, 1996, had the conduct been committed prior to that date, a drug possession offense under R.C. 2925.11 that is not a minor drug possession offense, or felonious sexual penetration in violation of former R.C. 2907.12, and (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 described in clause (1) of this paragraph.

An appointing or hiring officer may appoint or employ a person as a person responsible for a child's care in out-of-home care conditionally until the criminal records check required under this provision is completed and the officer receives the results of the check. If the results of the criminal records check indicate that, under the provision described in the preceding paragraph, the subject person does not qualify for appointment or employment, the officer must release the person from appointment or employment.

The report of any criminal records check conducted by BCII pursuant to these provisions is not a public record and may be made available only to the person who is the subject of the check or the person's representative; the appointing or hiring officer, administrative director, or attorney requesting the check or that person's representative; ODJFS or a county department of job and family services; or a court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment, a final decree of adoption or interlocutory order of adoption, or a foster home certificate.

The Director of ODJFS is required to adopt rules to implement these provisions. The rules must include rehabilitation standards a person who has been convicted of a disqualifying offense must meet for an appointing or hiring officer to appoint or employ the person as a person responsible for a child's care in out-of-home care, a probate court to issue a final decree of adoption or interlocutory order of adoption making the person an adoptive parent, or ODJFS to issue a certificate authorizing the prospective foster caregiver to operate a foster home.

ODJFS may waive the requirement that a criminal records check based on fingerprints be conducted for an adult resident of a prospective adoptive or foster home or the home of a foster caregiver, if the recommending agency documents to ODJFS's satisfaction that the adult resident is physically unable to comply with the

fingerprinting requirement and poses no danger to foster children or adoptive children who may be placed in the home. In such cases, the recommending or approving agency must request that BCII conduct a criminal records check using the person's name and Social Security number. (R.C. 2151.86.)

Operation of the bill. The bill modifies the existing provisions regarding mandatory criminal records checks for persons under final consideration for a position responsible for a child's care in out-of-home care, for prospective adoptive parents, and for prospective foster caregivers in four ways:

(1) It expands the list of disqualifying offenses so that, in addition to the offenses currently included in the list, the list also includes the offenses of permitting child abuse (R.C. 2903.15), menacing by stalking (R.C. 2903.211), soliciting or providing support for an act of terrorism (R.C. 2909.22), making terroristic threats (R.C. 2909.23), terrorism (R.C. 2909.24), identity fraud (R.C. 2913.49), inciting to violence (R.C. 2917.01), aggravated riot (R.C. 2917.02), telecommunications harassment (R.C. 2917.21), a drug possession offense in violation of R.C. 2925.11, and ethnic intimidation (R.C. 2927.12), and a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of those offenses (R.C. 109.572(A)(8) and 2151.86(C)(1)(a) and (b)).

(2) In the provision that pertains to requests for mandatory criminal records checks for prospective foster caregivers and persons 18 or older who reside with the foster caregiver, it specifies that the statewide criminal records checks conducted by BCII's Superintendent must be updated annually by the Superintendent until the recommending agency informs the Superintendent that the foster home is no longer certified under R.C. 5103.03 (R.C. 2151.86(A)(3)).

(3) It modifies the provision that specifies when BCII's Superintendent must be requested to obtain information from the FBI as part of the criminal records check. Under the bill, if a person subject to a criminal records check *under the provision related to appointment or employment for a child's care in out-of-home care* does not present proof that the person has been an Ohio resident for the five-year period immediately prior to the date upon which the check is requested or does not provide evidence that, within that five-year period, BCII's Superintendent has requested information about the person from the FBI in a criminal records check, the appointing or hiring officer must request, *and each administrative hiring officer in relation to a check made under the provision related to prospective adoptive parents or the provision related to prospective foster caregivers must request*, that BCII's Superintendent obtain information from the FBI as part of the check *under the provision related to appointment or employment for a child's care in out-of-home care*. If the person subject to the criminal records check presents proof that the person has been an Ohio resident for

that five-year period, the officer may request that the Superintendent include information from the FBI in the check. (R.C. 2151.86(B).)

(4) It expands the provision that prohibits ODJFS from issuing a certificate under R.C. 5103.03 authorizing a prospective foster caregiver to operate a foster home if the prospective foster caregiver or a person over 18 who resides with the prospective foster caregiver has been convicted of any of the disqualifying offenses, so that the provision also prohibits ODJFS from *renewing* such a certificate if the "prospective" foster caregiver or a person over 18 who resides with the "prospective" foster caregiver has been convicted of any of those offenses and requires ODJFS to *revoke* such a certificate if the "prospective" foster caregiver or a person over 18 who resides with the "prospective" foster caregiver has been convicted of any of those offenses (R.C. 2151.86(C)(1)).

Mandatory criminal records checks for applicants for employment with a public children services agency in a position responsible for the care, custody, or control of a child

Existing law. Existing law specifies that the executive director of a public children services agency (a PCSA) must request BCII's Superintendent to conduct a criminal records check with respect to any applicant who has applied to the agency for employment as a person responsible for the care, custody, or control of a child (an "applicant" is a person under final consideration for appointment or employment in any such position). The PCSA must pay to BCII the fee prescribed for the criminal records check and may charge the applicant subject to the check a fee for the actual costs incurred in obtaining the check. If the applicant does not present proof that the applicant has been an Ohio resident for the five-year period immediately prior to the date upon which the check is requested or does not provide evidence that within that five-year period the Superintendent requested information about the applicant from the FBI in a criminal records check, the executive director must request that the Superintendent obtain information from the FBI as a part of the check for the applicant. If the applicant presents proof that the applicant has been an Ohio resident for that five-year period, the executive director may request that the Superintendent include information from the FBI in the check.

A person required to request a criminal records check must provide to each applicant a copy of a form and the standard fingerprint impression sheet the AG prescribes for purposes of the check, obtain the completed form and impression sheet from each applicant, and forward them to BCII's Superintendent at the time the check is requested. If an applicant subject to a criminal records check, upon request, fails to provide the information necessary to complete the form or to provide the applicant's fingerprints, the PCSA cannot employ the applicant for any position for which a criminal records check is required under the provision.

No PCSA may employ a person as a person responsible for the care, custody, or control of a child if the person previously has been convicted of any of a specified list of offenses (hereafter, "disqualifying offenses"), unless the person meets rehabilitation standards established as described below. The offenses that are disqualifying offenses are the same as the offenses that are disqualifying offenses under the provision described above in "*Mandatory criminal records checks for persons under final consideration for position responsible for a child's care in out-of-home care, for prospective adoptive parents, and for prospective foster caregivers.*" A PCSA may employ an applicant conditionally until the criminal records check is completed and the PCSA receives the results of the check. However, if the results of the check indicate that, under the provision described in the first sentence of this paragraph, the applicant does not qualify for employment, the PCSA must release the applicant from employment.

The report of any criminal records check conducted by BCII pursuant to this provision is not a public record and may be made available only to the applicant who is the subject of the check or the applicant's representative, the PCSA requesting the check or its representative, or a court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment to the applicant. The Director of ODJFS must adopt rules to implement this provision, including rules specifying circumstances under which a PCSA may hire a person who has been convicted of a disqualifying offense but who meets standards in regard to rehabilitation set by ODJFS. (R.C. 5153.111.)

Operation of the bill. The bill modifies the existing provisions regarding mandatory criminal records checks for applicants for employment with a PCSA in a position responsible for the care, custody, or control of a child by expanding the list of disqualifying offenses relevant to such employment. The bill expands the list of disqualifying offenses to also include the offenses of permitting child abuse (R.C. 2903.15), menacing by stalking (R.C. 2903.211), soliciting or providing support for an act of terrorism (R.C. 2909.22), making terroristic threats (R.C. 2909.23), terrorism (R.C. 2909.24), identity fraud (R.C. 2913.49), inciting to violence (R.C. 2917.01), aggravated riot (R.C. 2917.02), telecommunications harassment (R.C. 2917.21), a drug possession offense in violation of R.C. 2925.11, and ethnic intimidation (R.C. 2927.12), and a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of those offenses (R.C. 109.572(A)(10) and 5153.111(B)(1)(a) and (b)).

Manner in which BCII conducts a mandatory criminal records check

Existing law. Under existing R.C. 109.572(A)(13) and (B), when a person or entity that is required by state law to have a criminal records check conducted 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, BCII's Superintendent must review or cause to be reviewed any relevant information BCII gathered and compiled 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. If a request the Superintendent receives asks for information from the FBI, the Superintendent must request from the FBI any information it has with respect to the subject person and must review the information provided. The Superintendent or a 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 R.C. 109.571.

The Superintendent conducts the criminal records check to determine whether any information exists that indicates that the subject person previously has been convicted of any of the "disqualifying offenses" specified by law that apply regarding the position or license in question (the disqualifying offenses for the various positions vary, depending upon the position or license in question; they are listed in R.C. 109.572(A)(1) to (12) and also in the separate individual sections that impose the mandatory criminal records check requirement, as described above in "*Mandatory criminal records checks for persons under final consideration for position responsible for a child's care in out-of-home care, for prospective adoptive parents, and for prospective foster caregivers*" and "*Mandatory criminal records checks for applicants for employment with a public children services agency in a position responsible for the care, custody, or control of a child*"). Not later than 30 days after the Superintendent receives the request, completed form, and fingerprint impressions, the Superintendent must send the person, board, or entity that made the request any information, other than information the dissemination of which is prohibited by federal law, the Superintendent determines exists with respect to the subject person that indicates that the person has been convicted of a "disqualifying offense" specified by law for the position or license in question. The Superintendent must send the person, board, or entity that made the request a copy of the list of disqualifying offenses specified for the position or license in question.

Operation of the bill. The bill provides that, in addition to the current steps that BCII's Superintendent must take in conducting a mandatory criminal records check, the Superintendent or the Superintendent's designee also must request a fingerprint-based criminal records check of national crime information databases, and request a check of an equivalent registry in another state if the person subject of the request resided in that state in the five-year period prior to the date upon which the criminal records check is requested, as required by the federal "Adam

Walsh Child Protection and Safety Act of 2006," as amended (120 Stat. 587, 42 U.S.C. 671; see **COMMENT 2**). The Superintendent must comply with any similar request from another state. The Superintendent may adopt rules in accordance with the Administrative Procedure Act necessary to carry out the purposes of this provision. (R.C. 109.572(B)(3).)

The bill also modifies the relevant lists of disqualifying offenses set forth in R.C. 109.572 to conform them to the bill's expansion of the list of disqualifying offenses for certain positions and licenses that are described above in "**Mandatory criminal records checks for persons under final consideration for position responsible for a child's care in out-of-home care, for prospective adoptive parents, and for prospective foster caregivers**" and "**Mandatory criminal records checks for applicants for employment with a public children services agency in a position responsible for the care, custody, or control of a child**" (R.C. 109.572(A)(8) and (10)).

The bill specifies that the changes it makes in R.C. 109.572 take effect on the later of January 1, 2007, or the earliest time permitted by law. (Section 4 of the bill.)

Grant of permanent custody of a child to a public children services agency or private child placing agency

Motion for permanent custody of a child, by public children services agency or private child placing agency

Existing law. Existing law provides that a PCSA or private child placing agency that pursuant to an order of disposition of an abused, neglected, or dependent child made by a juvenile court under R.C. 2151.353(A)(2) is granted temporary custody of a child who is not abandoned or orphaned may file a motion in the court that made the disposition requesting permanent custody of the child. A PCSA or private child placing agency that pursuant to an order of disposition of an abused, neglected, or dependent child made by a juvenile court under R.C. 2151.353(A)(2) is granted temporary custody of an orphaned child may file a motion in the court that made the disposition requesting permanent custody of the child whenever it can show that no relative of the child is able to take legal custody of the child. A PCSA or private child placing agency that pursuant to an order of disposition of an abused, neglected, or dependent child made by a juvenile court under R.C. 2151.353(A)(5) places a child in a planned permanent living arrangement may file a motion in the court that made the disposition requesting permanent custody of the child.

Except as described below in this paragraph, if a child has been in the temporary custody of one or more PCSAs or private child placing agencies for 12

or more months of a consecutive 22-month period ending on or after March 18, 1999, the agency with custody must file a motion requesting permanent custody of the child (hereafter, this provision is referred to as the "12 or more months of a consecutive 22-month period provision"). The motion must be filed in the court that issued the current order of temporary custody. For the purposes of this provision, a child is considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to R.C. 2151.28 or the date that is 60 days after the removal of the child from home. Except as described below in this paragraph, if a court makes a determination pursuant to R.C. 2151.419(A)(2), the PCSA or private child placing agency required to develop the permanency plan for the child under R.C. 2151.417(K) must file a motion in the court that made the determination requesting permanent custody of the child. An agency is prohibited from filing a motion for permanent custody under either provision described in this paragraph if any of the following applies: (1) the agency documents in the case plan or permanency plan a compelling reason that permanent custody is not in the child's best interest, (2) if reasonable efforts to return the child to the child's home are required under R.C. 2151.419, the agency has not provided the services required by the case plan to the parents of the child or the child to ensure the safe return of the child to the child's home, (3) the agency has been granted permanent custody of the child, or (4) the child has been returned home pursuant to court order in accordance with R.C. 2151.419(A)(3).

Any agency that files a motion for permanent custody under the provisions described above must include in the case plan of the child who is the subject of the motion, a specific plan of the agency's actions to seek an adoptive family for the child and to prepare the child for adoption. ODJFS may adopt rules that set forth the time frames for case reviews and for filing a motion requesting permanent custody under the "12 or more months of a consecutive 22-month period provision" described above. (R.C. 2151.413.)

Operation of the bill. The bill adds language to the existing "12 or more months of a consecutive 22-month period provision" that specifies that if the child in question has been in the temporary custody of one or more PCSAs or private child placing agencies and the child was previously in the temporary custody of an equivalent agency in another state on or after March 18, 1999, the agency with custody of the child must apply the time in temporary custody in the other state to the time in temporary custody in Ohio and, except as described below, if the time spent in temporary custody equals 15 or more months of a consecutive 22-month period, the agency with custody must file a motion requesting permanent custody of the child. The motion must be filed in the court that issued the current order of temporary custody. For the purposes of this provision, a child is considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to R.C. 2151.28 or the date that is 60 days after the

removal of the child from home. An agency is prohibited from filing a motion for permanent custody under this provision if any of the factors identified in clauses (1) to (4) under the second to last paragraph of **'Existing law,'** above, applies. (R.C. 2151.413(D)(1) and (3).)

Court hearing, findings, and action subsequent to the filing of the motion

Existing law. Existing law specifies that, upon the filing of a motion pursuant to the provisions described above in "**Motion for permanent custody of a child, by public children services agency or private child placing agency**" for permanent custody of a child, the court must schedule a hearing and give notice of the filing of the motion and of the hearing, in accordance with R.C. 2151.29, to all parties to the action and to the child's guardian ad litem. The notice also must contain a full explanation that the granting of permanent custody permanently divests the parents of their parental rights, a full explanation of their right to be represented by counsel and have counsel appointed if they are indigent, and the name and telephone number of the court employee designated by the court to arrange for the prompt appointment of counsel for indigent persons.

The court must conduct a hearing in accordance with R.C. 2151.35 to determine if it is in the child's best interest to permanently terminate parental rights and grant permanent custody to the agency that filed the motion. The court must hold the hearing not later than 120 days after the agency files the motion, except that, for good cause shown, it may continue the hearing for a reasonable period of time beyond the 120-day deadline. The court must issue and journalize an order granting, denying, or otherwise disposing of the motion not later than 200 days after the agency files it. Special rules apply when a motion is made under R.C. 2151.413(D)(2).

Except as otherwise described below, the court may grant permanent custody of a child to a movant if the court determines at the hearing held as described in the preceding paragraph, by clear and convincing evidence, that it is in the child's best interest to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following applies: (1) the child is not abandoned or orphaned or has not been in the temporary custody of one or more PCSAs or private child placing agencies for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents, (2) the child is abandoned, (3) the child is orphaned and has no relatives able to take permanent custody, or (4) the child has been in the temporary custody of one or more PCSAs or private child placing agencies for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999. For the purposes of this provision, a child is considered to have entered the temporary custody of an agency on the earlier of

the date the child is adjudicated pursuant to R.C. 2151.28 or the date that is 60 days after the removal of the child from home. With respect to a motion made pursuant to R.C. 2151.413(D)(2), the court must grant permanent custody of the child to the movant if the court determines as described below that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines that permanent custody is in the child's best interest.

In making the determinations required under these provisions or R.C. 2151.353(A)(4), a court cannot consider the effect the granting of permanent custody to the agency would have upon any parent of the child. A written report of the guardian ad litem of the child must be submitted to the court prior to or at the time of the hearing, but is not submitted under oath. If the court grants permanent custody of a child to a movant under these provisions, the court, upon the request of any party, must file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding. The court cannot deny an agency's motion for permanent custody solely because the agency failed to implement any particular aspect of the child's case plan.

In determining the best interest of a child at a hearing held pursuant to the provisions described above or for purposes of R.C. 2151.353(A)(4) or (5) or 2151.415(C), the court must consider all relevant factors, including, but not limited to, the following: (1) the child's interaction and interrelationship with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child, (2) the child's wishes, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child, (3) the child's custodial history, including whether the child has been in the temporary custody of one or more PCSAs or private child placing agencies for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999, (4) the child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency, and (5) whether any of the factors in clauses (7) to (11) of the next paragraph apply in relation to the parents and child. For the purposes of this provision, a child is considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to R.C. 2151.28 or the date 60 days after the child's removal from home.

In determining at a hearing held pursuant to the provisions described above or for purposes of R.C. 2151.353(A)(4) whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court must consider all relevant evidence. If the court determines, by clear and convincing evidence, at such a hearing that one or more of the following exist as to each of the child's parents, the court must enter a finding that the child

cannot be placed with either parent within a reasonable time or should not be placed with either parent: (1) following the child's placement outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home (certain specified factors must be considered in determining whether the parents have substantially remedied those conditions), (2) chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the hearing, (3) the parent committed any abuse, or caused or allowed the child to suffer any neglect, between the date the original complaint alleging abuse or neglect was filed and the date the motion for permanent custody was filed, (4) the parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child, (5) the parent is incarcerated for an offense committed against the child or a sibling of the child, (6) the parent has been convicted of any of a list of specified offenses and the child or a sibling of the child was a victim of the offense, (7) the parent has been convicted of any of a different list of specified offenses and the victim of the offense is the child (for most of the offenses), a sibling of the child, or another child who lived in the parent's household at the time of the offense, (8) the parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide it, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body, (9) the parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued under R.C. 2151.412 requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent, (10) the parent has abandoned the child, (11) the parent has had parental rights involuntarily terminated pursuant to R.C. 2151.353 or 2151.415 with respect to a sibling of the child, (12) the parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing of the child and will not be available to care for the child for at least 18 months after the filing of the motion or the hearing, (13) the parent is repeatedly incarcerated, and the repeated incarceration prevents the parent from providing care for the child, (14) the parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical,

emotional, or sexual abuse or physical, emotional, or mental neglect, (15) the parent has committed abuse against the child or caused or allowed the child to suffer neglect, and the court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety, or (16) any other factor the court considers relevant.

The parents of a child for whom the court has issued an order granting permanent custody pursuant to the provisions described above, upon the issuance of the order, cease to be parties to the action. Existing law states that this provision is not intended to eliminate or restrict any right of the parents to appeal the granting of permanent custody of their child to a movant pursuant to the provisions described above. (R.C. 2151.414.)

Operation of the bill. The bill makes three changes in the existing provisions described above that pertain to court hearings, findings, and actions subsequent to the filing of a motion for permanent custody of a child:

(1) First, in the provision that specifies the findings that a court must make in order to grant permanent custody of a child to a movant, it expands the possible findings that could be the basis for such a grant to include additional factors currently not mentioned in the provision. Under the bill, except with respect to a motion made pursuant to R.C. 2151.413(D)(2), the court may grant permanent custody of a child to a movant if the court determines at the hearing, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply (the factors added by the bill appear in italics): (a) the child is not abandoned, orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999, *or has not been in the temporary custody of one or more PCSAs or private child placing agencies for 15 or more months of a consecutive 22-month period if, as described in division (D)(1) of R.C. 2151.413 (see paragraph (2), below), the child was previously in the temporary custody of an equivalent agency in another state on or after March 18, 1999,* and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents, (b) the child is abandoned, (c) the child is orphaned, and has no relatives able to take permanent custody, or (d) the child has been in the temporary custody of one or more PCSAs or private child placing agencies for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999, *or the child has been in the temporary custody of one or more PCSAs or private child placing agencies for 15 or more months of a consecutive 22-month period and, as described in division (D)(1) of R.C. 2151.413 (see paragraph (2), below), the child*

was previously in the temporary custody of an equivalent agency in another state on or after March 18, 1999 (R.C. 2151.414(B)(1)).

(2) Second, in the provision that identifies a list of factors that a court must consider, along with all other relevant factors, in determining the best interest of a child at a hearing, it expands the third identified factor (i.e., the child's custodial history) to include additional circumstances that define the factor. Under the bill, the third identified factor that the court must consider is the child's custodial history, including whether the child has been in the temporary custody of one or more PCSAs or private child placing agencies for 12 or more months of a consecutive 22-month period ending on or after March 18, 1999, *or the child has been in the temporary custody of one or more PCSAs or private child placing agencies for 15 or more months of a consecutive 22-month period and, as described in division (D)(1) of R.C. 2151.413 (see the next paragraph), the child was previously in the temporary custody of an equivalent agency in another state on or after March 18, 1999* (the language added by the bill appears in italics; R.C. 2151.414(D)(3).)

Regarding the bill's provisions described in the preceding paragraph and paragraph (1), above, R.C. 2151.413(D)(1) is the bill's provision, described above in "*Operation of the bill*" under "*Motion for permanent custody of a child, by public children services agency or private child placing agency*" that specifies that, if a child has been in the temporary custody of one or more PCSAs or private child placing agencies and the child was previously in the temporary custody of an equivalent agency in another state on or after March 18, 1999, the agency with custody of the child must apply the time in temporary custody in the other state to the time in temporary custody in Ohio and, in general, if the time spent in temporary custody equals 15 or more months of a consecutive 22-month period, the agency with custody must file a motion requesting permanent custody of the child.

(3) Third, in the provision that specifies the determinations that a court must make in order to enter a finding that the child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent, it modifies the possible determination that could be the basis for such a finding that relates to the involuntary termination of parental rights of the parent under any of three specified statutory provisions to also refer to additional bases for such an involuntary termination. Under the bill, that possible determination is that the parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to R.C. 2151.353, 2151.414, or 2151.415, *or under an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to those sections* (the language added by the bill appears in italics; R.C. 2151.414(E)(11).)

Removal of a child from the child's home--determination of efforts of public children services agency or private child placing agency to prevent or discontinue removal or allow child to return safely home

Existing law

Existing law provides that, except as described in the next paragraph, at any hearing held pursuant to R.C. 2151.28, 2151.31(E), 2151.314, 2151.33, or 2151.353 at which the court removes a child from the child's home or continues the removal of a child from the child's home, the court must determine whether the PCSA or private child placing agency that filed the complaint in the case, removed the child from home, has custody of the child, or will be given custody of the child has made reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the home, or make it possible for the child to return safely home. The agency has the burden of proving that it has made those reasonable efforts. If the agency removed the child from home during an emergency in which the child could not safely remain at home and the agency did not have prior contact with the child, the court is not prohibited, solely because the agency did not make reasonable efforts during the emergency to prevent the removal, from determining that the agency made those reasonable efforts. In determining whether reasonable efforts were made, the child's health and safety are paramount.

If any of the following applies, the court is required to make a determination that the agency is not required to make reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the home, and return the child to the child's home: (1) the parent from whom the child was removed has been convicted of any of a list of specified offenses and the victim of the offense is the child (for most of the offenses), a sibling of the child, or another child who lived in the parent's household at the time of the offense, (2) the parent from whom the child was removed has repeatedly withheld medical treatment or food from the child when the parent has the means to provide it (if the parent has withheld medical treatment in order to treat the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body, the court or agency must comply with the requirements described in the preceding paragraph), (3) the parent from whom the child was removed has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to R.C. 2151.412 requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring such treatment of the parent, (4) the parent from whom the child was removed has

abandoned the child, or (5) the parent from whom the child was removed has had parental rights involuntarily terminated pursuant to R.C. 2151.353, 2151.414, or 2151.415 with respect to a sibling of the child. At any hearing in which the court determines whether to return a child to the child's home, the court may issue an order that returns the child in situations in which the conditions described in clauses (1) to (5) of this paragraph are present.

A court that is required to make a determination as described in either of the two preceding paragraphs must issue written findings of fact setting forth the reasons supporting its determination. If the court makes a written determination under the provision described in the second preceding paragraph, it must briefly describe in the findings of fact the relevant services provided by the agency to the family of the child and why those services did not prevent the removal of the child from the child's home or enable the child to return safely home. If a court issues an order that returns the child to the child's home in situations in which clause (1), (2), (3), (4), or (5) of the preceding paragraph applies, the court must issue written findings of fact setting forth the reasons supporting its determination. If the court makes a determination pursuant to the provision described in the preceding paragraph, it must conduct a review hearing pursuant to R.C. 2151.417 to approve a permanency plan with respect to the child, unless the court issues an order returning the child home pursuant to the provisions described in that paragraph; the hearing to approve the permanency plan may be held immediately following the court's determination pursuant to the provisions described in that paragraph and must be held no later than 30 days following that determination. (R.C. 2151.419.)

Operation of the bill

In the existing provision that requires the court to make a determination that the involved agency is not required to make reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from it, and return the child to the child's home if any of a list of specified factors apply, the bill modifies the specified factor that relates to the involuntary termination of parental rights of the parent under any of three specified statutory provisions to also refer to additional bases for such an involuntary termination. Under the bill, that factor is that the parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to R.C. 2151.353, 2151.414, or 2151.415, *or under an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to those sections* (the language added by the bill appears in italics; R.C. 2151.419(A)(2)(e).)

Gross sexual imposition penalty, when a person involved is under ten

Existing law

Existing law prohibits a person from having sexual contact with another who is not the spouse of the offender, causing another who is not the spouse of the offender to have sexual contact with the offender, or causing two or more other persons to have sexual contact when any of the following applies: (1) the offender purposely compels the other person or one of the other persons to submit by force or threat of force, (2) for the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception, (3) the offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery, (4) the other person or one of the other persons is less than 13 years of age, whether or not the offender knows the age of that person, or (5) the ability of the other person or one of the other persons to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the person's ability to resist or consent is substantially impaired because of a mental or physical condition or advanced age. Existing law provides special evidentiary rules that apply in prosecutions for a violation of this prohibition.

A violation of the prohibition is the offense of "gross sexual imposition." Except as otherwise described in this paragraph, gross sexual imposition committed in violation of clause (1), (2), (3), or (5) of the preceding paragraph is a felony of the fourth degree. If the offender committed gross sexual imposition in violation of clause (2) of the preceding paragraph and in committing the violation substantially impaired the judgment or control of the other person or one of the other persons by administering any controlled substance to the person surreptitiously or by force, threat of force, or deception, the offense is a felony of the third degree. Gross sexual imposition committed in violation of clause (4) of the preceding paragraph is a felony of the third degree, and, except as otherwise described in this paragraph, there is a presumption that a prison term must be imposed for the offense. The court is required to impose on an offender convicted of gross sexual imposition in violation of clause (4) of the preceding paragraph a mandatory prison term equal to one of the prison terms prescribed by law for a felony of the third degree (under existing R.C. 2929.14, not in the bill, the prison term prescribed for a felony of the third degree is a term of one, two, three, four, or five years) if either of the following applies: (1) evidence other than the

testimony of the victim was admitted in the case corroborating the violation, or (2) the offender previously was convicted of or pleaded guilty to the offense of gross sexual imposition, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was under 13. (R.C. 2907.05.)

Operation of the bill

The bill increases the penalty for the offense of gross sexual imposition when the other person or one of the other persons involved in the offense is less than ten years of age, whether or not the offender knows the age of that person. The bill accomplishes this by separating out from the current prohibition that applies when the conduct in question is directed at or involves a person under 13 a new prohibition that applies when the conduct in question is directed at or involves a person under ten, and then enacting a new increased penalty for the new prohibition (this "separating out" of the specified conduct from the existing prohibition does not create a new prohibition, but, rather, divides the current prohibition into two distinct subcategories of prohibited conduct). Under the bill, gross sexual imposition committed when the other person or one of the other persons involved in the offense is less than ten years of age, whether or not the offender knows the age of that person, is a felony of the first degree (under existing law, which is not in the bill, for a felony of the first degree, there is a presumption in favor of a prison term). The court is required to impose on an offender convicted of gross sexual imposition in those circumstances a mandatory prison term equal to one of the prison terms prescribed by law for a felony of the first degree (under existing R.C. 2929.14, not in the bill, the prison term prescribed for a felony of the first degree is a term of three, four, five, six, seven, eight, nine, or ten years) if either of the following applies: (1) evidence other than the testimony of the victim was admitted in the case corroborating the violation, or (2) the offender previously was convicted of or pleaded guilty to the offense of gross sexual imposition, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was under ten. (R.C. 2907.05(A)(5) and (B)(3).)

Corrupt Activity Law--expansion of definition of "corrupt activity"

Existing law

The existing Corrupt Activity Law is contained in R.C. 2923.31 to 2923.36. It contains a series of prohibitions. The first prohibits a person who is employed by, or associated with, any "enterprise" from conducting or participating in, directly or indirectly, the affairs of an enterprise through a "pattern of corrupt activity" or the collection of an unlawful debt (see below, for definitions of the terms in quotation marks). The second prohibits a person, through a pattern of

corrupt activity or the collection of an unlawful debt, from acquiring or maintaining, directly or indirectly, any interest in, or control of, any enterprise or real property. The third prohibits a person who knowingly has received any proceeds derived, directly or indirectly, from a pattern of corrupt activity or the collection of any unlawful debt from using or investing, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise. A violation of any of the prohibitions is the offense of "engaging in a pattern of corrupt activity," which generally is a felony of the second degree but, in specified circumstances, is a felony of the first degree. The Law authorizes increased fines and financial sanctions for the offense and, in addition to any other penalty or disposition, generally requires the criminal forfeiture to the state of any personal or real property in which the offender has an interest and that was used in the course of or intended for use in the course of a violation of any of the prohibitions, or that was derived from or realized through conduct in violation of any of the prohibitions. The Law sets forth procedures relative to the criminal forfeiture provisions, including procedures for the protection of the rights of innocent persons who have an interest in property that otherwise would be forfeited.

The Corrupt Activity Law also contains a mechanism for civil proceedings by a prosecuting attorney, or a person injured or threatened with injury by a violation of any of the prohibitions described in the preceding paragraph, seeking relief from a person who committed a violation of, or conspired to violate, any of the prohibitions. The mechanism specifies procedures that apply regarding the proceedings and special remedies that are available to a person who proves the violation by a preponderance of the evidence (among the special remedies listed is the divestiture of the defendant's interest in any enterprise or real property). Finally, the Law specifies procedures for the disposition of property forfeited under its provisions. (R.C. 2923.31 to 2923.36.)

As used in the Corrupt Activity Law (R.C. 2923.31):

(1) "Enterprise" includes any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity. "Enterprise" includes illicit as well as licit enterprises.

(2) "Pattern of corrupt activity" means two or more incidents of "corrupt activity" (see paragraph (3), below), whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event. At least one of the incidents forming the pattern must occur on or after January 1, 1986. Unless any incident was an aggravated

murder or murder, the last of the incidents forming the pattern must occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity. For purposes of the criminal penalties that may be imposed pursuant to the Corrupt Activity Law, at least one of the incidents forming the pattern must constitute a felony under the laws of Ohio in existence at the time it was committed or, if committed in violation of the laws of the United States or of any other state, must constitute a felony under the law of the United States or the other state and would be a criminal offense under the law of Ohio if committed in Ohio.

(3) "Corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following:

(a) Conduct defined as "racketeering activity" under the federal "Organized Crime Control Act of 1970," as amended;

(b) Conduct constituting any of the following:

(i) A violation of R.C. 1315.55, 1322.02, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2905.11, 2905.22, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2913.05, 2913.06, 2921.02, 2921.03, 2921.04, 2921.11, 2921.12, 2921.32, 2921.41, 2921.42, 2921.43, 2923.12, 2923.17, 1315.53(F)(1)(a), (b), or (c), 1707.042(A)(1) or (2), 1707.44(B), (C)(4), (D), (E), or (F), 2923.20(A)(1) or (2), 4712.02(J)(1), 4719.02, 4719.05, 4719.06, 4719.07(C), (D), or (E), 4719.08, or 4719.09(A);

(ii) A violation of R.C. 3769.11, 3769.15, 3769.16, or 3769.19 as it existed prior to July 1, 1996, a violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of R.C. 3769.11 as it existed prior to that date, or a violation of R.C. 2915.05 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of R.C. 3769.15, 3769.16, or 3769.19 as it existed prior to that date.

(iii) A violation of R.C. 2907.21, 2907.22, 2907.31, 2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, 2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37, a violation of R.C. 2925.11 that is a felony of the first, second, third, or fourth degree and that occurs on or after July 1, 1996, a violation of R.C. 2915.02 that occurred prior to July 1, 1996, a violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of R.C. 3769.11 as it existed prior to that

date, a violation of R.C. 2915.06 as it existed prior to July 1, 1996, or a violation of R.C. 2915.05(B) as it exists on and after July 1, 1996, when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeds \$500, or any combination of violations described in this paragraph when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$500;

(iv) A violation of R.C. 5743.112 when the amount of unpaid tax exceeds \$100;

(v) A violation or combination of violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation or combination of violations exceeds \$500;

(vi) Any combination of violations described in paragraph (3)(b)(ii), above, and violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$500.

(c) Conduct constituting a violation of any law of any state other than Ohio that is substantially similar to the conduct described in paragraphs (3)(b)(i) to (vi), above, provided the defendant was convicted of the conduct in a criminal proceeding in the other state;

(d) Animal or ecological terrorism, as defined in R.C. 2923.31.

Operation of the bill

The bill expands the definition of "corrupt activity" that applies to the Corrupt Activity Law so that, in addition to the activities and conduct included under existing law, the term also includes a "sexually oriented offense" (see below) that is not a "registration-exempt sexually oriented offense" (see below) if the offense is not otherwise included in paragraphs (3)(b)(i) to (vi) or (3)(c), above, under "**Existing law.**" It specifies that, as used in this expansion of the definition (and throughout the Corrupt Activity Law), "sexually oriented offense" and "registration-exempt sexually oriented offense" have the same meanings as in the existing Sex Offender Registration and Notification Law, which is not in the bill (see **COMMENT** 3 and 4 for the definitions of these terms). (R.C. 2923.31(I)(5) and (O).)

Notification of Department of Job and Family Services, upon arrest or charging of a foster caregiver, or an adult residing with a foster caregiver, with a criminal offense other than a minor misdemeanor

The bill provides that, upon arresting a person, charging a person, or filing a complaint, indictment, or information in relation to a person for an offense other than a minor misdemeanor, a sheriff, deputy sheriff, police constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer or municipal police officer of an adjoining state serving in Ohio under a contract pursuant to R.C. 737.04, Superintendent or trooper of the State Highway Patrol, or prosecuting attorney who knows or has reason to believe that the person who is the subject of the arrest, charge, complaint, indictment, or information is a foster caregiver or is a person over 18 years of age who resides with a foster caregiver must notify ODJFS of the arrest, charge, complaint, indictment, or information. Unless the person who is the subject of the arrest, charge, complaint, indictment, or information is found not guilty of committing the offense, ODJFS must retain the information contained in the notice with the foster caregiver's records. The bill requires ODJFS's Director to adopt rules necessary for implementation of this provision. (R.C. 2925.131.)

Penalties for violations of the Sex Offender Registration and Notification Law

Existing law

Background. The existing Sex Offender Registration and Notification Law (the SORN Law, contained in R.C. Chapter 2950.), in relevant part, generally requires offenders who are convicted of a "sexually oriented offense" that is not a "registration-exempt sexually oriented offense" or to a "child-victim oriented offense" (see **COMMENT** 3, 4, and 5 for definitions of the terms in quotation marks) to register with the appropriate sheriff within a specified period of time the

offender's residence address, school or institution of higher education address, or employment address. If the offender changes the residence, school or institution of higher education, or employment address, the offender within a specified period of time must provide the sheriff with whom the offender registered with notice of the change of address and must register the new address with the appropriate sheriff. The offender in accordance with a specified schedule also must periodically verify the residence, school or institution of higher education, or employment address with the sheriff with whom the offender most recently registered. The Law also requires offenders who are convicted of a sexually oriented offense or a child-victim oriented offense and who are "adjudicated a sexual predator," a "child-victim predator," or an "habitual sexual offender" or "habitual child-victim offender" made subject to community notification (the terms in quotation marks are defined in the SORN Law), and offenders who are convicted of an aggravated sexually oriented offense, to send to the appropriate sheriff prior written notice of the offender's intent to reside in the sheriff's county. The Law prohibits a person from failing to comply with any of these requirements, and provides that a violation of any of the prohibitions is a criminal offense, penalized as described below. The registration, change of address, and address verification provisions, as they pertain to residence addresses, and the intent-to-reside notification provisions, also apply to children who are adjudicated delinquent for committing a sexually oriented offense or a child-victim oriented offense and who are classified by the juvenile court, under existing R.C. 2152.82 to 2152.85, as juvenile offender registrants based on that adjudication. (R.C. 2950.04, 2950.041, 2950.05, and 2950.06.)

The existing SORN Law also provides, in specified circumstances, for the notification of certain categories of persons in the community when, under the SORN Law, a person registers an address or provides a notice of intent to reside and for the notification in specified circumstances of victims of the offense that is the basis of the person's duty to register or provide the notice of intent to reside (R.C. 2950.10 and 2950.11).

Penalties for failure to comply with SORN Law requirement. Existing law provides that a person who violates any prohibition in the SORN Law that prohibits a person from failing to comply with the Law's requirements described in the second preceding paragraph must be punished as follows (R.C. 2950.99(A)(1), (A)(2), and (B)):

(1) Except as otherwise described below in (2), the offender must be punished as follows:

(a) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under

the prohibition is aggravated murder, murder, or a felony of the first, second, or third degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the third degree.

(b) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fourth or fifth degree if committed by an adult, a misdemeanor if committed by an adult, or a comparable category of offense committed in another jurisdiction, the offender is guilty of: (i) a felony of the same degree or a misdemeanor of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated, or (ii) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated was a comparable category of offense committed in another jurisdiction, a felony of the same degree or a misdemeanor of the same degree as that offense committed in the other jurisdiction would constitute or would have constituted if it had been committed in Ohio.

(2) If the offender previously has been convicted of, or previously has been adjudicated a delinquent child for committing, a violation of any of the prohibitions in the SORN Law that prohibits a person from failing to comply with the Law's requirements described above, the offender must be punished as follows:

(a) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder, murder, or a felony of the first, second, third, or fourth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the third degree.

(b) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fifth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fourth degree.

(c) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor of the first degree if committed by an adult or a

comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fifth degree.

(d) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor other than a misdemeanor of the first degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of: (i) a misdemeanor that is one degree higher than the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated, or (ii) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated was a comparable category of offense committed in another jurisdiction, the offender is guilty of a misdemeanor that is one degree higher than the most serious sexually oriented offense or child-victim oriented offense committed in the other jurisdiction would constitute or would have constituted if it had been committed in Ohio.

(3) In addition to any penalty or sanction imposed under the provisions described above in paragraphs (1) and (2) or any other provision of law for a violation of any of the prohibitions in the SORN Law that prohibits a person from failing to comply with the Law's requirements described above, if the offender or delinquent child is subject to a community control sanction, is on parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation constitutes a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.

(4) If a person violates any of the prohibitions in the SORN Law that prohibits a person from failing to comply with the Law's requirements described above that applies to the person as a result of the person being adjudicated a delinquent child and being classified a juvenile offender registrant or as an out-of-state juvenile offender registrant, both of the following apply: (a) if the violation occurs while the person is under 18, the person is subject to proceedings under the Delinquent Child Law based on the violation, and (b) if the violation occurs while the person is 18 or older, the person is subject to criminal prosecution based on the violation.

As used the SORN Law penalty provisions described above in paragraphs (1) to (3), "comparable category of offense committed in another jurisdiction" means a sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated, that is a violation of an existing or former law of another state or the United States, an existing or former

law applicable in a military court or in an Indian tribal court, or an existing or former law of any nation other than the United States, and that, if it had been committed in Ohio, would constitute or would have constituted aggravated murder, murder, or a felony of the first, second, or third degree for purposes of the provision described above in paragraph (1)(a), a felony of the fourth or fifth degree or a misdemeanor for purposes of the provision described above in paragraph (1)(b), aggravated murder, murder, or a felony of the first, second, third, or fourth degree for purposes of the provision described above in paragraph (2)(a), a felony of the fifth degree for purposes of the provision described above in paragraph (2)(b), a misdemeanor of the first degree for purposes of the provision described above in paragraph (2)(c), or a misdemeanor other than a misdemeanor of the first degree for purposes of the provision described above in paragraph (2)(d) (R.C. 2950.99(A)(3)).

Operation of the bill

The bill modifies the penalties for a violation of any prohibition in the SORN Law that prohibits a person from failing to comply with the Law's requirements described above in "**Background**" under "**Existing law.**" Under the bill, a person who violates any of those prohibitions must be punished as follows (R.C. 2950.99(A) and (B)):

(1) Except as otherwise described below in (2), the offender must be punished as follows:

(a) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder, murder, or a felony of the first, second, or third degree if committed by an adult or a comparable category of offense committed in another jurisdiction, as under existing law, the offender is guilty of a felony of the third degree, *but, under a provision added by the bill, the court must impose as a mandatory prison term one of the prison terms for a felony of the third degree.*

(b) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fourth or fifth degree if committed by an adult, a misdemeanor if committed by an adult, or a comparable category of offense committed in another jurisdiction, *under the bill, the offender is guilty of a felony of the fourth degree, and the court must impose as a mandatory prison term one of the prison terms for a felony of the fourth degree that is not less than 12 months.*

(2) If the offender previously has been convicted of, or previously has been adjudicated a delinquent child for committing, a violation of any of the prohibitions in the SORN Law that prohibits a person from failing to comply with the Law's requirements described above, the offender must be punished as follows:

(a) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder, murder, or a felony of the first, second, third, or fourth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, as under existing law, the offender is guilty of a felony of the third degree, *but, under a provision added by the bill, the court must impose as a mandatory prison term one of the prison terms for a felony of the third degree.*

(b) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fifth degree if committed by an adult, a misdemeanor if committed by an adult, or a comparable category of offense committed in another jurisdiction, *under the bill, the offender is guilty of a felony of the fourth degree, and the court must impose as a mandatory prison term one of the prison terms for a felony of the fourth degree that is not less than 12 months.*

(3) The bill retains, without change, the existing provisions described above in paragraphs (3) and (4) of "*Penalties for failure to comply with SORN Law requirement*" under "*Existing law.*" It retains the existing definition of "comparable category of offense committed in another jurisdiction" that is described above in "*Penalties for failure to comply with SORN Law requirement*" under "*Existing law.*" but conforms the definition to the penalty changes described in the preceding paragraph.

Sexually Violent Predator Sentencing Law--conforming change to definition of "violent sex offense"

Existing law

The existing Sexually Violent Predator Sentencing Law (contained in R.C. Chapter 2971.) provides a special sentencing mechanism that applies when a person is convicted of or pleads guilty to a "violent sex offense" and also is convicted of or pleads guilty to a "sexually violent predator specification" that was included in the legal document charging that offense, and when a person is convicted of or pleads guilty to a "designated homicide, assault, or kidnapping offense" and also is convicted of or pleads guilty to both a "sexual motivation

specification" and a "sexually violent predator specification" that were included in the legal document charging that offense (see **COMMENT 6** for a summary of that Law).

As used in that Law, "violent sex offense" means any of the following: (1) a violation of R.C. 2907.02, 2907.03, 2907.12, or 2907.05(A)(4), (2) a felony violation of a former law of Ohio that is substantially equivalent to a violation listed in clause (1) of this paragraph or of an existing or former law of the United States or of another state that is substantially equivalent to a violation listed in that clause, or (3) an attempt to commit or complicity in committing a violation listed in clause (1) or (2) of this paragraph if the attempt or complicity is a felony (R.C. 2971.01; the section also defines the other terms used in that Law, including "sexually violent predator specification," "designated homicide, assault, or kidnapping offense," "sexual motivation specification," and "sexually violent predator specification").

Operation of the bill

The bill revises the definition of "violent sex offense" that applies to the Sexually Violent Predator Sentencing Law so that it also includes a reference to a violation of R.C. 2907.05(A)(5). R.C. 2907.05(A)(5) is the prohibition in the offense of "gross sexual imposition" that the bill, as described above in **'Gross sexual imposition penalty, when a person involved is under ten,'** separates out from other prohibitions currently set forth in the section, for the purpose of providing an increased penalty for a violation of that prohibition. The conduct included in the bill's R.C. 2907.05(A)(5) prohibition currently is prohibited under existing R.C. 2907.05(A)(4), and R.C. 2907.05(A)(4) currently is included within the definition of "violent sex offense." Thus, this provision of the bill does not add new prohibited conduct to the definition of "violent sex offense" but conforms the definition to its relocation of the activity that is described above in **'Gross sexual imposition penalty, when a person involved is under ten.'** (R.C. 2971.01(L)(1), by reference to R.C. 2907.05(A)(5).)

Department of Job and Family Services--new duties related to the federal Adam Walsh Act

Existing law

Existing law requires ODJFS to establish and maintain a Uniform Statewide Automated Child Welfare Information System in accordance with the requirements of a specified provision of federal law (42 U.S.C.A. 674(a)(3)(C), and related federal regulations and guidelines). The Information System must contain records regarding any of the following: (1) investigations of children and families, and children's care in out-of-home care, in accordance with R.C.

2151.421 and 5153.16, (2) care and treatment provided to children and families, and (3) any other information related to children and families that state or federal law, regulation, or rule requires ODJFS or a PCSA to maintain. ODJFS must plan implementation of the Information System on a county by county basis and must finalize statewide implementation not later than January 1, 2008. ODJFS must promptly notify all PCSAs of the initiation and completion of statewide implementation of the Information System.

Information contained in the Information System may be accessed only as follows: (1) ODJFS and a PCSA may access the information when either the access is directly connected with assessment, investigation, or services regarding a child or family, or the access is permitted by state or federal law, rule, or regulation, and (2) a person may access the information in a manner, to the extent, and for the purposes authorized by rules adopted by ODJFS. (R.C. 5101.13 and 5101.132.)

Operation of the bill

The bill modifies the law regarding the Uniform Statewide Automated Child Welfare Information System as follows:

(1) It requires ODJFS to *disseminate information from the Information System*, in addition to establishing and maintaining the Information System, and specifies that the establishment, maintenance, and dissemination of information *must be in accordance with the federal "Adam Walsh Child Protection and Safety Act of 2006,"* (120 Stat. 587, 42 U.S.C. 16990, as amended; see **COMMENT 2**) *and related federal regulations and guidelines*, as well as in accordance with 42 U.S.C.A. 674(a)(3)(C) and related federal regulations and guidelines (R.C. 5101.13(A)).

(2) It expands the circumstances in which ODJFS and a PCSA may access information in the Information System so that, in addition to the circumstances in which existing law permits access, ODJFS and a PCSA may access the information when the access is *required by the federal "Adam Walsh Child Protection and Safety Act of 2006"* (120 Stat. 587, 42 U.S.C. 16990, as amended; see **COMMENT 2**) (R.C. 5101.132(A)).

Attorney General--new duties related to the federal Adam Walsh Act

The bill specifies that any eligible entity seeking federal sex offender monitoring pilot program grants under the federal "Adam Walsh Child Protection and Safety Act of 2006" (120 Stat. 587, 42 U.S.C. 16981, as amended; see **COMMENT 2**), must apply for such grants through the Ohio AG. The bill requires the Ohio AG to submit the application and other required information to

the U.S. Attorney General on behalf of the entity seeking grants. The bill requires the Ohio AG to administer any grants received to assist in carrying out programs to outfit sex offenders with electronic monitoring units and employ law enforcement officials necessary to carry out electronic monitoring programs. (Section 3 of the bill.)

The bill requires the Ohio AG, within six months of the bill's effective date, to do both of the following (Section 5 of the bill): (1) adopt rules to conform Ohio law to the federal Sex Offender Registration and Notification Act (Pub. L. No. 109-249), and (2) submit recommendations to the General Assembly regarding any legislative changes that are needed to conform Ohio law to the federal Sex Offender Registration and Notification Act (see **COMMENT 2**).

COMMENT

1. In addition to the provisions in R.C. 2151.86 and 5153.111 that pertain to mandatory criminal records checks of persons under final consideration for a position responsible for a child's care in out-of-home care, of prospective adoptive parents, of prospective foster caregivers, and of applicants for employment with a public children services agency in a position responsible for the care, custody, or control of a child and that are described in the **CONTENT AND OPERATOIN** portion of this analysis, existing law contains numerous provisions that require criminal records checks by BCII of persons under final consideration for certain other types of employment or other positions or licenses. Regarding those mandatory records check, existing law, none of which is in the bill, provides that:

(a) Any 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), or certified type-B family day-care home (R.C. 5104.012) must request BCII to conduct a criminal records check regarding each person under final consideration for appointment to or employment in a position with the entity 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) 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).

(e) The State Long-term Care Ombudsperson or his or her designee must request BCII to conduct a criminal records check of each person under final consideration for employment with the Ombudsperson's Office in a position that involves providing ombudsperson services to residents and recipients (R.C. 173.27).

(f) Any community-based long-term care agency must request BCII to conduct a criminal records check of each person under final consideration for employment with the agency in a position that involves providing direct care to an individual (R.C. 173.394).

(g) Any 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 with the entity in a position that involves providing direct care to an "older adult."

(h) Any home health agency must request BCII to conduct a criminal records check of each person under final consideration for a position with the agency 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).

(i) 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).

(j) 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).

(k) 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).

(l) 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).

(m) The Superintendent of Financial Institutions must request BCII, or a vendor approved by BCII, to conduct a criminal records check of any applicant for a certificate of registration as a mortgage broker (R.C. 1322.03) or for a license as a loan officer (R.C. 1322.031).

(n) Finally, the Superintendent of Real Estate must request BCII, or a vendor approved by BCII, to conduct a criminal records check of any person who applies to the Superintendent for an initial state-certified general real estate appraiser certificate, an initial state-certified residential real estate appraiser certificate, an initial state-licensed residential real estate appraiser license, or an initial state-registered real estate appraiser assistant registration (R.C. 4763.05).

2. The federal "Adam Walsh Child Protection and Safety Act of 2006" was passed by Congress, and signed by President Bush on July 27, 2006. Title I of the Act is entitled the federal Sex Offender Registration and Notification Act. Relevant portions of a summary of the Act, prepared by the National Conference of State Legislatures and posted and viewable on its website (see: <http://www.ncsl.org/standcomm/sclaw/welshact.htm>), follows:

NCSL SUMMARY

HR 4472

Adam Walsh Child Protection and Safety Act of 2006

Provisions Affecting the States

The stated purpose of the Adam Walsh Child Protection and Safety Act of 2006 is to protect the public, in particular children, from violent sex offenders via a more comprehensive, nationalized system for registration of sex offenders.

The act states that the attorney general will issue guidelines and regulations in interpretation and implementation of the legislation.

The act calls for state conformity to various aspects of sex offender registration, including information that must be collected, duration of registration requirement for classifications of offenders, verification of registry information, access to and sharing of information, and penalties for failure to register as required. The act states that failure of a jurisdiction to comply with the federal requirements within three years of the implementation of the act will result in a 10 percent reduction to Byrne law enforcement assistance grants.

A number of new grant programs are authorized to assist states in improving sex offender registration and related requirements of the act.

Requirements

The Adam Walsh Child Protection and Safety Act requires that sex offender registration occur before an offender is released from imprisonment or within three days of a non-imprisonment sentence. Changes in registry information must be reported in that time period, as well.

Each sex offender is to provide the following registration information: Name; Social Security

number; address or multiple addresses; employer and address; school (if a student) and address; license plate number and description of any vehicle owned or operated by the offender; and any other information required by the attorney general.

Each jurisdiction must include the following information for each offender in the registry: A physical description; the criminal offense; the criminal history of the offender, including dates of arrests and convictions and correctional or release status; a current photograph; fingerprints and palm prints; a DNA sample, a photocopy of a valid driver's license or ID card; and any other information required by the attorney general.

The law defines and requires a three-tier classification system for sex offenders, on which other requirements are based. The tier levels are established as:

Tier I are those other than a tier II or tier III.

Tier II are those other than Tier I with an offense punishable by imprisonment for more than one year and comparable to or more severe than the following federal offenses involving a minor: sex trafficking; coercion and enticement; transportation with intent to engage in criminal sexual activity; abusive sexual contact. Also includes any offense involving use of a minor in a sexual performance, solicitation of a minor to practice prostitution, or production or distribution of child pornography.

Tier III are sex offenses punishable by imprisonment for more than one year and comparable to or more severe than the following federal offenses: sexual abuse or aggravated sexual abuse; abusive sexual contact against a minor less than 13 years old; offense involving kidnapping of a minor (parent or guardian excepted); or any offense that occurs after one has been designated a tier II sex offender.

The law makes further clarifications of a sex offense and offense against a minor.

Regarding juveniles, the act defines a conviction for purposes of registration and classification to include juvenile adjudications if the juvenile offender is at least 14 years of age at the time of the offense and the

offense adjudicated is comparable to or more severe than the federal offense aggravated sexual abuse.

The law sets requirements on duration of the registration requirement, according to the classification system. Tier 1 sex offenders are required to register for 15 years; tier II for 25 years and tier III offenders must register for life. Registration periods may be reduced, also according to the tier system, for completing certain programs or having a clean record for specified periods of time.

Registered sex offenders are required to appear in person to verify their address and other registry information and for update of the required photo. Frequency of personal appearance is set according to the tier system. Tier 1 offenders must appear in person each year; tier II offenders every six months; and for tier III sex offenders in-person verification is required every three months.

States are required to have a criminal penalty that includes a maximum term of imprisonment greater than one year for failure of a sex offender to comply with requirements. Assistance by federal law enforcement agencies is available to assist jurisdictions in locating and apprehending sex offenders who abscond from the registration requirement.

The law requires that states make registry information available on the Internet, in readily accessible form and with certain mandatory exemptions. Each state's website must have search capabilities compatible to the National Sex Offender Public Registry. The attorney general is to develop software to enable jurisdictions to establish and operate uniform registries and Internet sites, and states will have one year to implement it after it becomes available. The act also requires prompt sharing of information on registered sex offenders among state, local and federal law enforcement agencies and other entities.

Grant Programs Authorized

The Adam Walsh Child Protection and Safety Act of 2006 authorizes a Sex Offender Management Assistance grant program to help states implement and comply with the law, with bonus payments for substantial implementation within two years of the Act. A Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office is established in the Department of Justice to administer standards for sex offender registration, grant programs and assistance to states. Other grants to states or localities are authorized to assist with verification of sex offender addresses.

The law authorizes grants to states for establishing, enhancing or operating civil commitment programs for sexually dangerous people. It includes definition of a sexually dangerous person and provides that states must have such a program or a plan for establishment within two years of the enactment of this act to receive these grants.

Also authorized is a three-year grant program at \$5 million each year, supporting active, real-time and continuous monitoring (GPS) of offenders. States and localities may apply FY 2007 through FY 2009, and will be required to report on effectiveness and cost effectiveness.

The act authorizes Sex Offender Apprehension Grants, also 2007 through 2009, to assist states and localities in enforcing sex offender registration requirements.

Juvenile Sex Offender Treatment Grants are authorized, also 2007 through 2009, to assist state and local governments, public and private entities, in addressing treatment needs of juvenile sex offenders.

Grants to law enforcement agencies are authorized under the Bureau of Justice Assistance to help with investigation and enforcement of sexual crimes against children. This includes funds for personnel, computer hardware and software needed to investigate and

enforce Internet-facilitated crimes against children. Grants also are authorized to law enforcement agencies for fingerprinting programs for children; and to government and nonprofit organizations for purposes of establishing and improving child Internet safety.

3. Existing R.C. 2950.01(D), which is not in the bill, provides that, as used in the Sex Offender Registration and Notification Law, which is set forth in R.C. Chapter 2950., "sexually oriented offense" means any of the following:

(a) Any of the following violations when committed by a person 18 years of age or older:

(i) Regardless of the age of the victim, rape, sexual battery, gross sexual imposition, or importuning;

(ii) Any of the following offenses involving a minor, in the circumstances specified: kidnapping for the purpose of engaging in sexual activity with the victim against the victim's will, unlawful sexual conduct with a minor, sexual imposition, or voyeurism, when the victim of the offense is under 18 years of age; compelling prostitution when the person compelled, induced, procured, etc. to engage in the sexual activity in question is under 18; certain violations under the offense of pandering obscenity to a minor or pandering sexually oriented matter involving a minor; illegal use of a minor in a nudity-oriented material or performance when the offense is a felony of the second degree; endangering children when the offense is committed by enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing a child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter and the child is under 18; or kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will, menacing by stalking, abduction, unlawful restraint, criminal child enticement, or the former offense of child stealing when the victim of the offense is under 18 and the offense is committed with a sexual motivation.

(iii) Regardless of the age of the victim, aggravated murder, murder, involuntary manslaughter that is the proximate result of the offender's committing or attempting to commit a felony, felonious assault, or kidnapping that is committed with a sexual motivation;

(iv) A violent sex offense, or a designated homicide, assault, or kidnapping offense if the offender also was convicted of or pleaded guilty to a sexual

motivation specification included in the document charging the designated homicide, assault, or kidnapping offense;

(v) Sexual imposition or voyeurism when the victim of the offense is 18 or older or menacing by stalking when the victim of the offense is 18 or older and the offense is committed with a sexual motivation;

(vi) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed in paragraph (4)(a)(i) to (v), above;

(vii) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (4)(a)(i) to (vi), above.

(b) Any of the following violations when committed by a person under 18 (but subject to paragraph (4)(b)(ix), below):

(i) Regardless of the age of the victim, rape, sexual battery, gross sexual imposition, or importuning;

(ii) Any of the following offenses involving a minor, in the circumstances specified: kidnapping for the purpose of engaging in sexual activity with the victim against the victim's will, sexual imposition, or voyeurism when the victim of the offense is under 18; compelling prostitution when the person compelled, induced, procured, etc. to engage in the sexual activity in question is under 18; endangering children when the offense is committed by enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing a child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter and the child is under 18; or kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will, menacing by stalking, or the former offense of child stealing when the victim of the offense is under 18 and the offense is committed with a sexual motivation;

(iii) Any violent sex offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree, or any designated homicide, assault, or kidnapping offense if that offense, if committed by an adult, would be a felony of the first, second, third, or fourth degree and if the court determined that, if the child was an adult, the child would be guilty of a sexual motivation specification regarding that offense;

(iv) Aggravated murder, murder, involuntary manslaughter that is the proximate result of the offender's committing or attempting to commit a felony, felonious assault, abduction, or kidnapping or an attempt to violate any of these provisions that is committed with a sexual motivation;

(v) Certain violations under the offense of pandering obscenity to a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance, or an attempt to violate any of these provisions, if the person who violates or attempts to violate the provision is four or more years older than the minor who is the victim of the violation;

(vi) Sexual imposition or voyeurism when the victim of the offense is 18 or older, or menacing by stalking when the victim of the offense is 18 or older and the offense is committed with a sexual motivation;

(vii) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed in paragraph (4)(b)(i) to (vi), above;

(viii) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (4)(b)(i) to (vii), above.

(ix) If the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any violation listed in paragraph (4)(a), above, or would be any offense listed in any of those clauses if committed by an adult.

4. Existing R.C. 2950.01(P) and (Q), which are not in the bill, provide that, as used in the Sex Offender Registration and Notification Law, which is set forth in R.C. Chapter 2950., "registration-exempt sexually oriented offense" generally means a sexually oriented offense described in paragraph (5)(a) to (e), below, when the offense is committed by a person who previously has not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense, when the victim or intended victim of the offense is 18 years of age or older, and when a court has not determined that the offender should be subjected to registration and other duties and responsibilities under the SORN Law:

(a) Sexual imposition or voyeurism when the victim is 18 years of age or older, or menacing by stalking when the victim is 18 years of age or older and the offense is committed with sexual motivation;

(b) Any violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is committed by a person who is 18 years of age or older and is or was substantially equivalent to any offense listed in paragraph (5)(a), above;

(c) Subject to paragraph (5)(e), below, a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation committed by a person who is under 18 that is or was substantially equivalent to any offense listed in paragraph (5)(a), above, and that would be a felony of the fourth degree if committed by an adult;

(d) If the person is 18 years of age or older, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (5)(a) or (b), above, or, if the person is under 18, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (5)(a) or (c), above, subject to paragraph (5)(e), below;

(e) Regarding an act committed by a person under 18 years of age, if the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any offense listed in paragraph (5)(a), (b), or (d), above.

5. Existing R.C. 2950.01(S), which is not in the bill, provides that, as used in the Sex Offender Registration and Notification Law, which is set forth in R.C. Chapter 2950., "child-victim oriented offense" excludes all sexually violent offenses and means any of the following:

(a) Any of the following violations committed by a person 18 years of age or older, when the victim of the offense is under 18 and is not the child of the person who commits the offense: (i) kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will, abduction, unlawful restraint, criminal child enticement, or the former offense of child stealing, (ii) a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed in clause (i) of this paragraph, or (iii) an attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (i) or (ii) of this paragraph.

(b) Any of the following violations committed by a person under the age of 18, when the victim of the offense is under 18 years of age and is not the child of

the person who commits the offense: (i) subject to clause (iv) of this paragraph, below, kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will or the former offense of child stealing, (ii) subject to clause (iv) of this paragraph, a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed in clause (i) of this paragraph, (iii) subject to clause (iv) of this paragraph, below, an attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (i) or (ii) of this paragraph, or (iv) if the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any violation listed in paragraph (6)(a), above, or would be any offense listed in that paragraph if committed by an adult.

6. The existing Sexually Violent Predator Sentencing Law (contained in R.C. Chapter 2971., which, except for R.C. 2971.01, is not in the bill) provides that, notwithstanding the Felony Sentencing Law or another Revised Code section, other than R.C. 2929.14(D) and (E), that authorizes or requires a specified prison term or a mandatory prison term or specifies the manner and place of service of a prison term or term of imprisonment, the court must impose a sentence upon a person who is convicted of or pleads guilty to a "violent sex offense" and who also is convicted of or pleads guilty to a "sexually violent predator specification" that was included in the legal document charging that offense, and upon a person who is convicted of or pleads guilty to a "designated homicide, assault, or kidnapping offense" and also is convicted of or pleads guilty to both a "sexual motivation specification" and a "sexually violent predator specification" that were included in the legal document charging that offense (all of the terms in quotation marks are defined in existing R.C. 2971.01), as follows:

(a) If the offense for which the sentence is being imposed is aggravated murder and if the court does not impose a sentence of death, it must impose a term of life imprisonment without parole. If a sentence of death is vacated, overturned, or otherwise set aside, it must impose a term of life imprisonment without parole.

(b) If the offense is murder or an offense other than aggravated murder or murder for which a term of life imprisonment may be imposed, it must impose a term of life imprisonment without parole.

(c) Except as provided in paragraph (7)(d), (e), (f), or (g), below, if the offense is an offense other than aggravated murder, murder, or an offense for which a term of life imprisonment may be imposed, it must impose an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a maximum term of life imprisonment.

(d) Except as otherwise provided in paragraph (7)(g), below, if the offense is kidnapping that is a felony of the first degree, it must impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment.

(e) Except as otherwise provided in paragraph (7)(g), below, if the offense is kidnapping that is a felony of the second degree, it must impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than eight years, and a maximum term of life imprisonment.

(f) Except as otherwise provided in paragraph (7)(g), below, if the offense is rape for which a term of life imprisonment is not imposed under R.C. 2907.02 or paragraph (7)(b), above, it must impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment.

(g) For any offense for which the sentence is being imposed, if the offender previously has been convicted of or pleaded guilty to a violent sex offense and also to a sexually violent predator specification, or previously has been convicted of or pleaded guilty to a designated homicide, assault, or kidnapping offense and also to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense, it must impose upon the offender a term of life imprisonment without parole.

Generally, an offender sentenced to a prison term or term of life imprisonment without parole pursuant to the above-described provisions must serve the entire prison term or term of life imprisonment in a state correctional institution. The offender is not eligible for judicial release. For a prison term imposed under the provision described in paragraph (7)(c), (d), (e), or (f), above, the sentencing court may terminate the prison term or modify the requirement that the offender serve the entire term in a state correctional institution if all of the following apply: (a) the offender has served at least the minimum term imposed as part of the prison term, (b) the Parole Board has terminated its control over the offender's service of the prison term after determining at a hearing that the offender does not represent a substantial risk of physical harm to others, and (c) the court holds a hearing and finds by clear and convincing evidence either that the offender is unlikely to commit a sexually violent offense in the future in the case of a termination of the prison term or that the offender does not represent a substantial risk of physical harm to others in the case of a modification of the requirement. (R.C. 2971.03, 2971.04, 2971.05(A), (B), (C), and (D), 2971.06, and 2971.07.)

If a prison term imposed upon an offender sentenced under the provision described in paragraph (7)(c), (d), (e), or (f), above, is modified or terminated, the APA must supervise the offender with an active global positioning system device during any time period in which the offender is not incarcerated in a state correctional institution. Unless the court removes the offender's classification as a sexually violent predator, the offender is subject to supervision with an active global positioning system device for the offender's entire life. The costs of administering the supervision of offenders with an active global positioning system device pursuant to this division is to be paid out of funds from the Reparations Fund, created pursuant to R.C. 2743.191. (R.C. 2971.05(E).)

HISTORY

ACTION	DATE
Introduced	10-26-06

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