



**Sub. H.B. 104\***

127th General Assembly

(As Reported by S. Judiciary - Criminal Justice)

**Reps. Core, Setzer, Seitz, Hughes, Dodd, Flowers, Combs, Adams, White, Webster, R. McGregor, Bulp, Collier, J. McGregor, Stebelton, Blessing, Dyer, Batchelder, Bacon, Coley, Domenick, J. Hagan, Huffman, Latta, Mandel, Patton, Uecker, Wagoner**

---

**BILL SUMMARY**

- Requires a criminal records check of an applicant for an initial license for a registered accounting firm, certified or registered public accountant, barber, barber shop operator, dentist, dental hygienist, dental hygienist teacher, funeral director, embalmer, operator of a funeral home, embalming facility, and crematory facility, optometrist, dispensing optician, ophthalmologist, pharmacist, physician assistant, physician, massage therapist, cosmetic therapist, telemedicine practitioner, podiatrist, wholesale distributor of dangerous drugs, animal shelter that uses drugs for euthanasia of animals, terminal distributor of dangerous drugs, psychologist, school psychologist, chiropractor, construction industry contractor, veterinarian, occupational therapist, occupational therapist assistant, physical therapist, physical therapist assistant, athletic trainer, counselor, professional clinical counselor, professional counselor, social worker, independent social worker, social worker assistant, marriage and family therapist, dietician, anesthesiologist assistant, respiratory care professional, acupuncturist, orthotist, prosthetist, and pedorthotist.
- Requires a criminal records check of an applicant for restoration of a suspended license for a physician assistant, physician, massage therapist, cosmetic therapist, podiatrist, anesthesiologist assistant, and acupuncturist.

---

\* This analysis was prepared before the report of the Senate Judiciary - Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Modifies the requirements for reinstatement of the license of a physician assistant, physician, massage therapist, cosmetic therapist, podiatrist, anesthesiologist assistant, or acupuncturist whose license has been suspended for failure to renew the license or to pay the biennial registration fee.
- Establishes a procedure for an applicant to request the Bureau of Criminal Identification and Investigation to conduct a criminal records check using existing forms and procedures used for currently required criminal records checks.
- Requires the Superintendent of the Bureau of Criminal Identification and Investigation to conduct the requested criminal records checks and report the results to the applicable licensing agency.
- Requires agencies that grant licenses for the specified occupations to adopt rules establishing administrative and procedural requirements for criminal records checks.
- Provides that the results of criminal records checks of applicants for initial licenses in the specified occupations are not public records.
- Permits the Treasurer of State to require any individual who applies for employment with, or is employed by, the Treasurer of State's office to undergo a criminal records check and to request the Bureau of Criminal Identification and Investigation to conduct a criminal records check of any such individual.

---

## TABLE OF CONTENTS

Background.....	3
Requirement of criminal records checks for certain occupational licenses .....	3
Occupational licenses for which criminal records checks will be required .....	3
Procedure for obtaining criminal records checks and reporting results .....	5
Technical change regarding ocularists .....	6
Reinstatement or restoration of licenses issued by the State Medical Board.....	7
Physician assistants .....	7
Massage therapists and cosmetic therapists .....	7
Physicians and podiatrists .....	8
Anesthesiologist assistants and acupuncturists .....	8
Authority for Treasurer of State to require criminal records checks for prospective and current employees .....	9

In general .....	9
Conduct of criminal records check under R.C. 109.572 .....	11
Sealed criminal conviction records--inspection by BCII under an R.C. 109.572	
criminal records check.....	12
Existing law .....	12
Operation of the bill.....	13

## **CONTENT AND OPERATION**

### **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 who are under final consideration for certain types of employment or certain positions or licenses (e.g., a position in which the person will have contact with children, older adults, or individuals with mental retardation or a developmental disability, etc.). These provisions are summarized in **COMMENT 1**. Existing law also contains a series of provisions that authorize certain potential employers, potential licensors, or other persons to request criminal records checks by BCII of persons who are under final consideration for certain types of employment or certain positions or licenses or who are in other specified circumstances. These provisions are summarized in **COMMENT 2**.

Further, existing R.C. 109.57(E), not in the bill, requires the Attorney General (the AG) to adopt rules under the Administrative Procedure Act setting forth the procedure by which any person may receive or release information BCII gathers pursuant to R.C. 109.57(A) and provides that a reasonable fee may be charged for that service. Existing section 109:5-1-01 of the Ohio Administrative Code, adopted by the AG, specifies that any person may obtain information concerning the criminal record of any other person maintained at BCII by submitting the following: (1) the complete name, current address, and other "identifying characteristics" (defined as date of birth, Social Security number, height, weight, sex, race, and nationality) of the individual whose records are sought, (2) a complete set of fingerprints of the individual whose records are sought, (3) the signed consent of the individual whose records are sought, and (4) a \$15 fee payable to BCII (law enforcement officers are exempt from this fee).

### **Requirement of criminal records checks for certain occupational licenses**

#### **Occupational licenses for which criminal records checks will be required**

The bill requires criminal records checks of applicants for initial licenses in certain occupations. As used in the bill (R.C. 4776.01(A), (B), (C), and (D)):

(1) "License" means any of the following: (a) an authorization evidenced by a license, certificate, registration, permit, card, or other authority that is issued or conferred by a "licensing agency" described in clause (a) of paragraph (3), below to a "licensee" or to an "applicant for an initial license" by which the licensee or initial license applicant has or claims the privilege to engage in a profession, occupation, or occupational activity, or to have control of and operate certain specific equipment, machinery, or premises, over which the licensing agency has jurisdiction, or (b) an authorization evidenced by a license or certificate that is issued by a licensing agency described in clause (b) of paragraph (3), below, pursuant to R.C. 4715.12, 4715.16, 4715.21, or 4715.27 (i.e., a license for a dentist, dental hygienist, or dental hygienist teacher issued by the State Dental Board, but not any other professional license or certification issued by the Board under R.C. Chapter 4715.) to a licensee or to an applicant for an initial license by which the licensee or applicant has or claims the privilege to engage in a profession, occupation, or occupational activity over which the licensing agency has jurisdiction.

(2) An "applicant for an initial license" includes persons seeking a license for the first time or who have a license from another state and are seeking a license in Ohio by reciprocity, endorsement, or similar manner.

(3) A "licensing agency" means any of the following: (a) the board authorized by any of the Revised Code chapters specified in the bill other than the State Dental Board (see next paragraph for a list of those boards) to issue a license to engage in a specific profession, occupation, or occupational activity, or to have charge of and operate certain specified equipment, machinery, or premises, or (b) the State Dental Board, relative to its authority to issue a license pursuant to R.C. 4715.12, 4715.16, 4715.21, or 4715.27 (i.e., a license for a dentist, dental hygienist, or dental hygienist teacher, but not any other professional license or certification issued by the Board under R.C. Chapter 4715.).

(4) "Licensee" means a person to whom a licensing agency issues a license.

The licensing agencies and licensees affected by the bill are the following: Accountancy Board (registered accounting firms, certified and registered public accountants), Barber Board (barbers and barber shop operators), State Dental Board (dentists, dental hygienists, and dental hygienist teachers, but not other professionals licensed or certified by the Board under R.C. Chapter 4715.), Board of Embalmers and Funeral Directors (funeral directors, embalmers, and operators of funeral homes, embalming facilities, and crematory facilities), State Board of Optometry (optometrists), Ohio Optical Dispensers Board (dispensing opticians and ocularists), State Board of Pharmacy (pharmacists, wholesale distributors of dangerous drugs, animal shelters that use drugs for euthanasia of animals, and

terminal distributors of dangerous drugs), State Medical Board (physician assistants, physicians, massage therapists, cosmetic therapists, telemedicine practitioners, podiatrists, anesthesiologist assistants, and acupuncturists), State Board of Psychology (psychologists and school psychologists), State Chiropractic Board (chiropractors), Ohio Construction Industry Licensing Board (heating, ventilating, and air conditioning contractors, refrigeration contractors, electrical contractors, plumbing contractors, and hydronics contractors), State Veterinary Medical Licensing Board (veterinarians), Occupational Therapy Section, Physical Therapy Section, and Athletic Trainers Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board (occupational therapists, occupational therapist assistants, physical therapists, physical therapist assistants, and athletic trainers), Counselor, Social Worker, and Marriage and Family Therapist Board (counselors, professional clinical counselors, professional counselors, social workers, independent social workers, social worker assistants, and marriage and family therapists), Ohio Board of Dietetics (dietitians), Ohio Respiratory Care Board (respiratory care professionals), and State Board of Orthotics, Prosthetics, and Pedorthics (orthotists, prosthetists, and pedorthosists). The specified licensing agencies may not grant an application for an initial license in any of the specified occupations unless the applicant requests a criminal records check as required by the bill and the agency, in its discretion, decides that the results of the check do not make the applicant ineligible for the license. The required criminal records check is in addition to any other eligibility requirement for the license. (R.C. 4701.08, 4709.071, 4715.101, 4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4731.081, 4731.171, 4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 4755.70, 4757.101, 4759.061, 4760.032, 4761.051, 4762.031, 4776.01(C), 4776.02(A), and 4779.091.)

The bill also requires criminal records checks for the restoration by the State Medical Board of licenses that have been suspended for failure to pay the biennial registration fee (see "**Reinstatement of licenses issued by the State Medical Board**," below). "Applicant for a restored license" includes persons seeking restoration of a certificate under R.C. 4730.14, 4731.281, 4760.06, or 4762.06. The affected professions are physician assistant, physician, massage therapist, cosmetic therapist, podiatrist, anesthesiologist assistant, and acupuncturist. (R.C. 4730.14(G)(2), 4730.28(B)(1), 4731.15(B), 4731.222, 4731.281(D), 4760.06(D), 4762.06(D), 4776.02(A), and 4776.01(E).)

### **Procedure for obtaining criminal records checks and reporting results**

The bill requires an "applicant for an initial license" or an "applicant for a restored license" in the specified occupations to submit a request to BCII for a criminal records check of the applicant. The request must be accompanied by the form prescribed by the Superintendent of BCII under existing law for conducting a

records check, fingerprint impressions obtained on a standard impression sheet prescribed by the Superintendent under existing law, and fee prescribed by the Superintendent for criminal records checks under existing law (see **COMMENT 1** for existing procedures). The applicant must provide BCII with the applicant's name and address and the licensing agency's name and address and request that the Superintendent of BCII obtain from the FBI any information it has pertaining to the applicant. Upon receiving the applicant's request, fingerprints, and fee, the Superintendent must conduct a criminal records check of the applicant in accordance with the existing procedure for employment-related record checks (see **COMMENT 1** for existing procedures) to determine whether any information exists that indicates that the applicant has been convicted of or pleaded guilty to any criminal offense in Ohio or any other state. The Superintendent must report the results of the criminal records check and any information received from the FBI to the licensing agency. A determination whether any information exists that indicates that a person previously has been convicted of or pleaded guilty to any criminal offense in Ohio or any other state regarding a criminal records check requested under these provisions of the bill that is made by the Superintendent is valid for the person who is the subject of the check for one year from the date on which the Superintendent makes the determination. (R.C. 109.572(A)(13), (B), (C), and (D) and 4776.02.)

The bill requires each "licensing agency" to adopt rules under R.C. Chapter 119. establishing administrative and procedural requirements for criminal records checks conducted under the bill (R.C. 4776.03, 4709.05(J)(6), 4717.04(A)(12), 4725.09(D), 4725.44(B), 4740.04(G)(3), 4755.06(K), 4755.61(A)(1), 4757.10(D), 4759.05(A)(12), 4761.03(A)(11), and 4779.08(A)(13)).

The results of criminal records checks made pursuant to the bill and reports containing those results, including any information provided by the FBI, are not public records for purposes of R.C. 149.43 (Public Records Law). The Superintendent of the BCII must make the results available to the licensing agency for use in determining whether the applicant should be granted a license, and the licensing agency must make the results available to the applicant or the applicant's representative. Otherwise, the results and report may not be made available to any other person or for any other purpose. (R.C. 4776.04.)

### **Technical change regarding ocularists**

In existing provisions that require the Ohio Optical Dispensers Board to process applications for licensure as licensed dispensing opticians and to adopt, amend, or rescind rules for the licensure of dispensing opticians, the bill adds references to ocularists (R.C. 4725.44(A) and (B)). Under existing law, the Board licenses ocularists and has administrative authority over them, but the existing provisions modified by the bill neglect to mention ocularists.

## **Reinstatement or restoration of licenses issued by the State Medical Board**

### **Physician assistants**

Under existing law, the certificate of a physician assistant that is not renewed on or before its expiration date is automatically suspended on its expiration date. If the certificate has been suspended for two years or less, it may be "reinstated" upon the applicant's submission of the biennial renewal fee, any applicable monetary penalty (\$50), and certification by the applicant that the applicant has completed the number of hours of continuing education necessary to have a certificate reinstated, as specified in the rules of the State Medical Board. If the certificate has been suspended for more than two years, it may be "restored" upon submission of a restoration application, the biennial renewal fee, and any applicable monetary penalty (\$100) and a determination by the Board that the applicant is fit to resume practice. The bill eliminates the certification requirement for "reinstatement" and requires the submission of a renewal application in addition to the renewal fee and applicable monetary penalty. For "restoration," the bill adds the requirement of a criminal records check and a requirement that the Board decide that the results of the check do not make the applicant ineligible for the certificate. (R.C. 4730.14(G)(2) and 4730.28(B)(1).)

### **Massage therapists and cosmetic therapists**

Under existing law, a certificate to practice a limited branch of medicine (massage therapy, cosmetic therapy, naprapathy, and mechotherapy)<sup>1</sup> is automatically suspended if the biennial registration fee is not paid by September 1 of the year it is due. The State Medical Board must reinstate the certificate on an applicant's payment of the biennial registration fee and the applicable monetary penalty (\$25 or \$50, depending upon the length of the suspension) and, if the license has been suspended for more than two years, on the Board's determination of the applicant's fitness to resume practice. An applicant for reinstatement of a certificate to practice cosmetic therapy must also submit certification of completion of the requisite continuing education. For reinstatement of a certificate that has been suspended for two years or less, the bill adds the requirement of a renewal application. For reinstatement of a certificate that has been suspended for more than two years, the bill requires submission of a restoration application, the biennial registration fee, the applicable monetary penalty (\$50), a criminal records

---

<sup>1</sup> Before March 2, 1992, the State Medical Board licensed naprapaths and mechanotherapists. Naprapathy involves manipulation of the tissues. Mechanotherapy involves manipulation and other treatment of the musculoskeletal system. Naprapaths and mechanotherapists may continue to practice if they keep their licenses current. (R.C. 4731.15 and 4731.151.)

check, and a determination by the Board that the results of the criminal records check do not make the applicant ineligible to hold a certificate. (R.C. 4731.15(B) and 4731.222.)

**Physicians and podiatrists**

Under existing law, failure of a physician or podiatrist to register for renewal of a certificate automatically results in suspension of the certificate. If the certificate has been suspended for two years or less, it may be reinstated upon the applicant's submission of the biennial renewal fee, any applicable monetary penalty (\$50), and certification that the applicant has completed the requisite continuing medical education. If the certificate has been suspended for more than two years, it may be restored upon submission of a restoration application, the biennial registration fee, and the applicable monetary penalty (\$100) and a determination by the Board that the applicant is fit to resume practice. For reinstatement of a certificate that has been suspended for two years or less, the bill eliminates the certification requirement and adds the requirement of a renewal application. For restoration of a certificate that has been suspended for more than two years, the bill adds the requirements of a criminal records check and a determination by the Board that the results of the criminal records check do not make the applicant ineligible to hold a certificate. (R.C. 4731.222 and 4731.281(D).)

**Anesthesiologist assistants and acupuncturists**

Under existing law, the certificate of registration of an anesthesiologist assistant or acupuncturist that is not renewed on or before its expiration date is automatically suspended on its expiration date. The State Medical Board must reinstate a certificate on an applicant's submission of the biennial renewal fee and the applicable monetary penalty (\$25 or \$50, depending upon the length of the suspension). For reinstatement of a certificate that has been suspended for two years or less, the bill adds the requirement of a renewal application. For restoration of a certificate that has been suspended for more than two years, the bill requires submission of a restoration application, the biennial registration fee, the applicable monetary penalty (\$50), a criminal records check, and a determination by the Board that the results of the criminal records check do not make the applicant ineligible to hold a certificate. (R.C. 4760.06(D) and 4762.06(D).)

*Authority for Treasurer of State to require criminal records checks for prospective and current employees*

*In general*

The bill enacts provisions that authorize the Treasurer of State to require an individual who applies for employment with, or is employed by, the Treasurer's office to undergo a criminal records check conducted by BCII's Superintendent in accordance with R.C. 109.572 (see "*Conduct of criminal records check under R.C. 109.572*," below). If, pursuant to this provision, the Treasurer of State requires an individual to undergo a criminal records check, the Treasurer must request the Superintendent to conduct a criminal records check with respect to the individual in accordance with R.C. 109.572. In the request, the Treasurer of State may request that the Superintendent obtain in the criminal records check information from the FBI about the individual who is the subject of the check. The Treasurer of State also may request that the Superintendent request criminal history records of the individual from other states or the federal government pursuant to the National Crime Prevention and Privacy Compact set forth in R.C. 109.571 as part of the criminal records check.

The bill requires the Treasurer of State to provide to each individual required to undergo a criminal records check a copy of the form prescribed by BCII's Superintendent under existing law for conducting a records check and a standard impression sheet to obtain fingerprint impressions prescribed by the Superintendent under existing law, obtain the completed form and impression sheet from the individual, and forward the completed form and impression sheet to the Superintendent of BCII at the time the criminal records check is requested. Any individual subject to a criminal records check who receives a copy of the form and a copy of an impression sheet and who is requested to complete the form and provide a set of fingerprint impressions must complete the form or provide all the information necessary to complete the form and must provide the impression sheet with the impressions of the individual's fingerprints.

The bill authorizes the Treasurer of State to deny employment to or terminate the employment of an individual who is the subject of a criminal records check conducted under the provisions described above if either of the following applies: (1) the individual fails to complete the form prescribed by BCII's Superintendent for conducting a records check or fails to provide a set of the individual's fingerprint impressions on the standard impression sheet prescribed by the Superintendent for conducting a records check, or (2) the individual has been convicted of or pleaded guilty to any offense involving or relating to fraud, deceit, or theft.

The bill specifies that, in determining whether to take any employment action, up to and including termination, with respect to an individual who is a current employee for the reason listed in clause (2) of the preceding paragraph, the Treasurer of State must afford the current employee a due process review. In the review, the Treasurer of State must consider all of the following factors: (1) the current employee's age at the time of the offense, (2) the nature and seriousness of the offense, (3) the circumstances under which the offense was committed, (4) the degree to which the current employee participated in the offense, (5) the time elapsed since the current employee was fully discharged from imprisonment, probation, or any other sanction or penalty imposed for the offense, (6) the likelihood that the circumstances leading to the offense will recur, (7) whether the current employee is a repeat offender, (8) the current employee's employment record with the Treasurer of State, (9) the current employee's efforts at rehabilitation and the results of those efforts, (10) whether at the time of the review, any criminal proceedings are pending against the current employee, (11) whether the current employee has been convicted of or pleaded guilty to any felony or misdemeanor offense set forth in the Revised Code that is not listed in clause (2) of the preceding paragraph and that bears a direct and substantial relationship to the duties and responsibilities of the position the current employee holds in the office of the Treasurer of State, and (12) any other extenuating circumstances relating to the current employee or the offense. If the Treasurer of State conducts a review under this provision, the Treasurer of State must prepare a written report of the review and provide a copy of the written report to the current employee who is the subject of the review.

The bill requires the Treasurer of State to pay to BCII the fee prescribed pursuant to R.C. 109.572(C)(3) for each criminal records check conducted in accordance with the bill. The Treasurer of State may charge the individual subject to the criminal records check a fee for the costs the Treasurer incurs in obtaining the criminal records check. A fee charged under this provision cannot exceed the amount of fees the Treasurer of State pays for the criminal records check. If a fee is charged under this provision, the Treasurer of State must notify the individual who is the subject of the criminal records check of the fee and that the individual is required to pay the fee.

The bill specifies that the report of any criminal records check conducted by BCII under the bill is not a public record for the purposes of the state's Public Records Law and cannot be made available to any person other than: the individual who is the subject of the criminal records check or the individual's representative; the Treasurer of State or the Treasurer's representative; and any court, hearing officer, or other necessary individual involved in a case dealing with the denial or termination of employment.

The bill states that nothing in its provisions described above regarding the authorization for the Treasurer of State to require criminal records checks for prospective and current employees precludes, or may be construed as precluding, any of the following: (1) any public official other than the Treasurer of State from conducting or having conducted a criminal records check of any individual, in any manner authorized under law, (2) the Treasurer of State from conducting or having conducted a criminal records check other than in accordance with this section, in any manner otherwise authorized under law. As used in this provision, "public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers. (R.C. 113.041.)

### **Conduct of criminal records check under R.C. 109.572**

The bill provides that, upon receipt of a request from the Treasurer of State under the bill's provisions described above in "**In general**," accompanied by a completed form and a set of fingerprint impressions, BCII's Superintendent is required to conduct a criminal records check to determine whether any information exists that indicates that the person who is the subject of the request has been convicted of or pleaded guilty to any criminal offense in Ohio or any other state. The Superintendent must send the results of the check to the Treasurer of State.

Not later than 30 days after the Superintendent receives a request for a criminal records check from the Treasurer of State pursuant to the bill's provisions described above in "**In general**," the completed form, and the fingerprint impressions, the Superintendent must send the Treasurer any information, other than information the dissemination of which is prohibited by federal law, the Superintendent determines exist with respect to the person who is the subject of the request that indicates that the person previously has been convicted of or pleaded guilty to any criminal offense in Ohio or any other state.

The bill specifies that the Superintendent must conduct any criminal records check requested by the Treasurer of State pursuant to the bill's provisions described above in "**In general**" as follows (this procedure is the same procedure that applies under existing law regarding employment-related checks; see **COMMENT 1**): (1) the Superintendent must review or cause to be reviewed any relevant information gathered and compiled by BCII under R.C. 109.57(A) that relates to the person who is the subject of the request, including any relevant information contained in records that have been sealed under R.C. 2953.32, (2) if the request the Superintendent received asks for information from the FBI, the Superintendent must request from the FBI any information it has with respect to the person who is the subject of the request and must review or cause to be

reviewed any information received from the FBI, and (3) the Superintendent or the Superintendent's 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 bill specifies that a determination that indicates that a person previously has been convicted of or pleaded guilty to any criminal offense in Ohio or any other state regarding a criminal records check requested by the Treasurer of State pursuant to the bill's provisions described above in "*In general*" is valid for the person who is the subject of the criminal records check for a period of one year from the date upon which the Superintendent makes the determination. During the period in which the determination in regard to a person is valid, if another request under R.C. 109.572 is made for a criminal records check for that person, the Superintendent must provide the information that is the basis for the Superintendent's initial determination at a lower fee than the fee prescribed for the initial criminal records check.

*Sealed criminal conviction records--inspection by BCII under an R.C. 109.572 criminal records check*

*Existing law*

Existing law provides a mechanism pursuant to which a "first offender" (a defined term) may, under specified circumstances, apply for and obtain a court order that requires the sealing of all official records pertaining to the offender's case. Inspection of the sealed records included in the court order may be made only by limited categories of persons or for limited purposes. The person or governmental agency, office, or department that maintains records that are sealed under such a court order may maintain a manual or computerized index to the sealed records, which index may be made available to a person who is authorized to inspect the sealed records. (R.C. 2953.31 to 2953.36.)

The provisions of existing law that set forth the criminal conviction record-sealing mechanism contain a general list of the limited categories of persons who may inspect sealed records included in the court order and the limited purposes for which sealed records may be inspected. The general list does not include BCII for the purpose of conducting a criminal records check pursuant to R.C. 109.572. (R.C. 2953.32(D).) However, as described in **COMMENT 1**, the provisions of existing law governing BCII's conduct of criminal records checks under R.C. 109.572 specify that, in conducting the records checks, BCII's Superintendent may review relevant information contained in records that have been sealed under the provisions of existing law that set forth the criminal conviction record-sealing mechanism (R.C. 109.572(B)).

### Operation of the bill

The bill revises the general list contained in the law that sets forth the criminal conviction record-sealing mechanism that identifies the limited categories of persons who may inspect sealed records included in the court order and the limited purposes for which sealed records may be inspected to include in the general list a reference to BCII and authorized employees of BCII for the purpose of conducting a criminal records check pursuant to R.C. 109.572(B). (R.C. 2953.32(D)(11).) This change does not change the substance of existing law but merely reflects in the criminal conviction record-sealing law the current authority contained in R.C. 109.572, as described in **COMMENT 1**.

---

## **COMMENT**

1. **Mandatory criminal records checks for certain employment, positions, or licenses.** Existing law contains numerous provisions regarding mandatory criminal records checks of persons who are under final consideration for certain types of employment or certain positions or licenses. It provides that:

(a) Any children's out-of-home care entity (R.C. 2151.86), head start agency (R.C. 3301.32), preschool program (R.C. 3301.541), board of education of a school district (R.C. 3319.39), governing board of an educational service center (R.C. 3319.39), chartered nonpublic school (R.C. 3319.39), home health agency (R.C. 3701.881), child day-care center (R.C. 5104.012), type A family day-care home (R.C. 5104.012), certified type B family day-care home (R.C. 5104.012), or public children services agency (R.C. 5153.111) must request BCII to conduct a criminal records check regarding each person who is under final consideration for appointment to or employment in a position involving the care, custody, or control of a child.

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

(c) Any entity under contract with a county board of mental retardation and developmental disabilities for the provision of services to individuals with mental retardation or a developmental disability must request BCII to conduct a criminal records check regarding each final applicant for any position with the county board or under consideration with the contracting entity in a position that involves

the provision of services to individuals with mental retardation or a developmental disability (R.C. 5126.281).

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

(e) The state Department of Job and Family Services, as part of the licensure process of child day-care centers and type A family day-care homes, must request BCII to conduct a criminal records check with respect to any owner, licensee, or administrator of a child day-care center or type A family day-care home and any person 18 years of age or older who resides in a type A family day-care home, and a county department of human services, as part of the certification process of type B family day-care homes, must request BCII to conduct a criminal records check with respect to any authorized provider of a certified type B family day-care home and any person 18 years of age or older who resides in a certified type B family day-care home (R.C. 5104.013).

(f) 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).

(g) 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).

(h) 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 in a position that involves providing direct care to an "older adult."

(i) Any home health agency must request BCII to conduct a criminal records check of each person under final consideration for a position involving the care, custody, or control of a child or for employment in a position that involves providing direct care to an "older adult" (R.C. 3701.881).

(j) 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).

(k) 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).

(l) 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).

(m) 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).

(n) 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).

(o) 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).

Generally, the provisions described in **COMMENT** 1(a) to (o), above, specify that the entities and persons that are subject to those provisions cannot employ or permit a person to serve or be licensed in any of the specified capacities if the person has been convicted of or pleaded guilty to any of a list of "designated offenses" (the list of designated offenses varies, depending upon the position or

capacity in question). Upon receipt of a request from any of the specified entities or persons, a completed form prescribed for that purpose, a set of fingerprint impressions from the subject person, and a "reasonable fee" prescribed by BCII's Superintendent, the Superintendent conducts a check of the criminal records BCII maintains under R.C. 109.57(A) to determine whether the subject person has been convicted of any of the designated offenses (R.C. 109.57(A) provides for the furnishing of information by various officials from the criminal justice system to BCII regarding persons who are within the system for the commission of certain specified offenses and for BCII's maintenance of information regarding the persons). In conducting the check, the Superintendent may review relevant information contained in records that have been sealed under the state's Criminal Conviction Record Sealing Law. When requested, the Superintendent contacts the FBI for information that the FBI has with respect to the subject person and reviews the information so provided (in certain cases, the request for an FBI check is mandatory). The Superintendent may request criminal history records from other states or the federal government pursuant to the National Crime Prevention and Privacy Compact set forth in R.C. 109.571. Within 30 days after receiving the request, the form, the impressions, and the fee, the Superintendent sends the entity or person that made the request a list of all of the designated offenses, and any information, other than information the dissemination of which is prohibited by federal law, that he or she determines exists with respect to the subject person and that indicates that the subject person previously has been convicted of or pleaded guilty to any of the designated offenses. A determination whether any information exists that indicates that a subject person previously has been convicted of or pleaded guilty to any of the designated offenses that is made under a criminal records check described in this paragraph is valid for the subject person for a period of one year from the date on which the Superintendent makes the determination.

BCII's Superintendent is required to prescribe a form to obtain the information necessary to conduct a criminal records check under the above-described provisions, prescribe standard impression sheets to obtain the fingerprint impressions of a person who is the subject of a criminal records check under those provisions, and to prescribe and charge a reasonable fee for providing criminal records checks under those provisions. The person making a criminal records check request under those provisions must pay the fee so prescribed. (R.C. 109.572.)

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

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

(b) In addition to or in conjunction with any mandatory criminal records check request required to be made under R.C. 109.572, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 5104.012, 5104.013, 5123.081, 5126.28, 5126.281, or 5153.111, as described above in **COMMENT 1**, the board of education of any school district; the director of Mental Retardation and Developmental Disabilities; any county board of mental retardation and developmental disabilities or entity under contract with any such county board; the chief administrator of any chartered nonpublic school; the chief administrator of any home health agency; the chief administrator of or person operating any licensed or certified child day-care center, Type A family day-care home, or Type B family day-care home; the administrator of any certified Type C family day-care home; the chief administrator of any head start agency; or the executive director of a public children services agency may request that BCII investigate and determine, with respect to any individual who has applied for employment in any position, or any individual wishing to apply for employment with a board of education may request, with regard to the individual, whether BCII has any information gathered under R.C. 109.57(A) that pertains to that individual. On receipt of the request, BCII must determine whether that information exists and, upon request of the person, board, or entity requesting information, also must request from the FBI any criminal records it has pertaining to that individual. BCII also may request criminal history records from other states or the federal government pursuant to the National Crime Prevention and Privacy Compact. Within 30 days of the date that BCII receives a request, it must send to the board, entity, or person a report of any information that it determines exists, including information contained in records that have been sealed under R.C. 2953.32, and, within 30 days of its receipt, must send the board, entity, or person a report of any information received from the FBI, other than information the dissemination of which is prohibited by federal law. The State Board of Education may request, with respect to any individual who has applied for employment in any position with the State Board or the Department of Education, any information that a school district board of education is authorized to request under the provision described in the preceding sentence, and BCII must proceed as if the request has been received from a school district board of education under that provision. BCII may charge a reasonable fee

for providing information or criminal records under this provision. (R.C. 109.57(F)(2), (F)(3), and (I), not in the bill.)

(c) In addition to or in conjunction with any request that is required to be made under R.C. 3712.09, 3721.121, or 3722.151, as described above in **COMMENT 1**, with respect to an individual who has applied for employment in a position that involves providing direct care to an older adult, the chief administrator of a home health agency, hospice care program, home licensed under R.C. Chapter 3721., adult day-care program, or adult care facility may request that BCII investigate and determine, with respect to any individual who has applied for employment in a position that does not involve providing direct care to an older adult, whether BCII has any information gathered under R.C. 109.57(A) that pertains to that individual. In addition to or in conjunction with any request that is required to be made under R.C. 173.27, as described above in **COMMENT 1**, with respect to an individual who has applied for employment in a position that involves providing ombudsperson services to residents of long-term care facilities or recipients of community-based long-term care services, the state long-term care ombudsperson or Director of Health may request that BCII investigate and determine, with respect to any individual who has applied for employment in a position that does not involve providing such ombudsperson services, whether BCII has any information gathered under R.C. 109.57(A) that pertains to that individual. In addition to or in conjunction with any request that is required to be made under R.C. 173.394, as described above in **COMMENT 1**, with respect to an individual who has applied for employment in a position that involves providing direct care to an individual, the chief administrator of a community-based long-term care agency may request that BCII investigate and determine, with respect to any individual who has applied for employment in a position that does not involve providing direct care, whether BCII has any information gathered under R.C. 109.57(A) that pertains to that individual. Provisions similar to those described in the preceding paragraph govern BCII's handling and treatment of any such request. BCII may charge a reasonable fee for providing information or criminal records under this provision. (R.C. 109.57(G) and (I), not in the bill.)

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

directly to children any program or service funded in whole or in part by the grant.  
(R.C. 109.57(F)(5) and 3301.88, not in the bill.)

---

## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	03-13-07
Reported, H. Judiciary	05-29-07
Passed House (69-29)	06-13-07
Reported, S. Judiciary - Criminal Justice	---

h0104-rs-127.doc/kl

