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*Bill Analysis*  
*Legislative Service Commission*

**Sub. H.B. 428\***  
127th General Assembly  
(As Reported by S. Education)

**Reps. Setzer, Evans, Stebelton, B. Williams, Adams, Bacon, Boyd, Brown, Budish, Celeste, Coley, Collier, Combs, DeBose, DeGeeter, Domenick, Fende, Flowers, Goyal, J. Hagan, R. Hagan, Heard, Hite, Hughes, Jones, Luckie, Mandel, J. McGregor, Newcomb, Patton, Sayre, Schlichter, Slesnick, Strahorn, Sykes, Webster, White, Yuko**

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**BILL SUMMARY**

**Discipline for criminal activity**

- Requires the State Board of Education (or the Superintendent of Public Instruction by delegation of the Board) to automatically revoke or deny an educator license, without an administrative hearing, if the person who holds or has applied for the license is convicted of, pleads guilty to, or is found guilty of certain specified criminal offenses.
- Authorizes the State Board to take an action against a licensee or a license applicant based on eligibility for intervention in lieu of conviction or on an agreement for a pre-trial diversion program.
- Requires prosecutors to notify the State Board if a licensee or a school employee is eligible for intervention in lieu of conviction or has agreed to a pre-trial diversion program.
- Requires designated school authorities to report to the Superintendent of Public Instruction when a school employee who is licensed by the State Board is eligible for intervention in lieu of conviction or has agreed to a pre-trial diversion program.

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

- Permits the State Board and the Department of Education to question a licensee or license applicant about an offense committed or alleged to have been committed by that person, the record of which has been sealed or expunged, without demonstrating that the question bears a "direct or substantial relationship" to the person's license or position, as otherwise required under current law.
- Specifies that if an employee of a school district, educational service center, community school or its operator, STEM school, or chartered nonpublic school is arrested or indicted for certain offenses, the employee must be suspended from all duties involving the care, custody, or control of a child during the criminal action.
- Makes explicit that a person is permanently barred from employment as a school bus driver for a conviction of or plea of guilty to any of the same offenses for which the State Board automatically must revoke or deny an educator license.

#### **Criminal records checks**

- Requires the Department of Education to participate in receiving notifications through the Bureau of Criminal Identification and Investigation's Retained Applicant Fingerprint Database of the arrest or conviction of licensed educators.
- Eliminates the requirement for adult education instructors who do not have unsupervised access to children to undergo FBI criminal records checks if, within the previous five-year period, they continuously resided in Ohio or had an FBI check.
- Narrows the requirements for employees of private contractors working in public and chartered nonpublic schools to undergo criminal records checks.
- Requires the Superintendent of Public Instruction to inactivate a professional or permanent teaching certificate if the certificate holder fails to submit to a criminal records check.
- Eliminates the requirement that the deadline prescribed by the State Board of Education for a holder of a professional teaching certificate to

submit to a criminal records check be no more than five years after the certificate was issued or renewed.

- Designates September 5 each year as the deadline for school districts, educational service centers, community schools, STEM schools, and chartered nonpublic schools to request criminal records checks for their non-licensed employees who are not bus drivers and who are due for their regular five-year records checks.
- Permits an educational service center, upon request, to assist local school districts in its territory in conducting criminal records checks of substitutes for non-teaching employees of the district (in addition to substitute teachers, as in current law).
- Requires the sponsor of each community school and the governing body of each STEM school to provide annual assurances to the Department of Education that the school has conducted periodic criminal records checks of its employees who are not licensed by the State Board of Education and are not bus drivers.

### **Reporting of misconduct**

- Designates persons responsible under continuing law for reporting to the Department of Education specified misconduct by licensed educators.
- Requires the chief administrator of a community school to report specified misconduct by a licensed educator employed by the school's operator and working in the school.
- Establishes criminal penalties for designated reporters who knowingly fail to file a required report of misconduct by a licensed educator.
- Authorizes the State Board of Education to deny, limit, suspend, or revoke the educator license of a designated reporter who fails to file a required report of misconduct by another licensed educator.
- Grants immunity from civil liability to persons who make good-faith reports about misconduct by school employees.
- Makes it a first degree misdemeanor for a school employee (1) to knowingly make a false report of misconduct by another person employed by the same employer or (2) to knowingly cause certain

designated school officials to make a false report of that person's misconduct to the Superintendent of Public Instruction or State Board of Education.

- Makes it a first degree misdemeanor for any person to knowingly make a false report directly to the Superintendent of Public Instruction or the State Board of Education alleging misconduct by a school employee.
- Requires a person who knowingly makes a false report of misconduct to pay attorney's fees in a successful civil action brought by the subject of the false report or to pay restitution to the subject of the false report if the subject is charged with a crime based on the false report and acquitted.

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## CONTENT AND OPERATION

### **Background on the State Board of Education's authority to investigate educator conduct and fitness for licensure**

The State Board of Education is authorized to adopt rules prescribing the requirements for educator licensure and to grant licenses, permits, and certificates to persons who meet those requirements. As a part of that responsibility, the State Board may investigate the conduct and background of a licensee or applicant and may deny a license or take other action against a new applicant or current licensee. The State Board is specifically authorized to deny, limit, suspend, or revoke a license if it determines the licensee or applicant has engaged in an immoral act, incompetence, negligence, or conduct unbecoming to the person's position; or has pled guilty to, been found guilty by a jury or court of, or been convicted of any felony, unlawful sexual conduct with a minor, sexual imposition, sexual importuning, an offense of violence, any of several theft offenses, a drug abuse offense that is not a minor misdemeanor, or a violation of a substantively comparable municipal ordinance.

To facilitate investigation of a licensee or applicant, the State Board, or the Department of Education on the Board's behalf, may subpoena witnesses, take depositions, and compel the attendance of witnesses and the production of documents. The law prescribes that all information obtained during an investigation is confidential and is not a public record. When the Board takes an action against a licensee or applicant, it must offer a due process hearing conducted in accordance with the Administrative Procedure Act.<sup>1</sup> The law also requires schools, prosecutors, and public children services agencies to provide to the Department of Education information about disciplinary and criminal actions taken against licensed educators so that the State Board might initiate its own investigations.<sup>2</sup>

In addition, each person who applies for *issuance* or for *renewal* of an educator license or permit, an education aide permit, or a pupil-activity program permit (for extracurricular coaching), must submit to a criminal records check.

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<sup>1</sup> R.C. 3319.31 and 3319.311.

<sup>2</sup> R.C. 3319.20, 3319.313, 3319.52, 5126.253, and 5153.176.

The check must include information from both the Ohio Bureau of Criminal Identification and Investigation (BCII) and the Federal Bureau of Investigation (FBI). Also, persons teaching under eight-year and permanent "certificates," issued under former law prior to September 1, 1998, must submit to a criminal records check at the request of the State Board once every five years. Therefore, persons holding a license, certificate, or permit from the State Board will be subject to a criminal records check at the request of the State Board at least once every five years, and in many cases once a year or once every two to four years, depending upon the type of license, permit, or certificate involved.<sup>3</sup> The State Board may waive the criminal records check if an applicant or licensee has undergone a check in the past year as a condition of employment or presents a certified copy of the results of a check issued by BCII within the past year.<sup>4</sup>

**Automatic revocation or denial of licenses**

(R.C. 3319.31(B)(2) and (C) to (F) and 3319.311)

The bill provides for a streamlined, automatic procedure for revoking or denying educator licenses upon conviction of a licensee or applicant for certain crimes.

**Background--current law**

**Suspension without a hearing.** Under current law, the State Board is permitted, but apparently is not required to, suspend without a hearing any license it has issued if the licensee is convicted of or pleads guilty to aggravated murder, murder, voluntary manslaughter, aggravated arson, aggravated robbery, aggravated burglary, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, or unlawful sexual conduct with a minor, or a violation of a municipal ordinance or a law of another state that is substantially comparable to any of those offenses. In order to do so, the Board first must issue to the licensee, by certified mail or in person, a written order of suspension and offer the licensee

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<sup>3</sup> R.C. 3319.291.

<sup>4</sup> Each applicant for employment with a public or chartered nonpublic school and each person hired by a private company to provide services to a public or chartered nonpublic school must submit to a BCII and FBI criminal records check at the time of initial employment. Those who are not licensed by the State Board or are not bus drivers must be re-checked every five years thereafter. (R.C. 3319.39 and 3319.391.) Licensed employees are rechecked by the State Board upon application for renewal (as described in the text above (R.C. 3319.291)), and bus drivers are checked at initial certification and at re-certification once every six years (R.C. 3327.10 and Ohio Administrative Code (O.A.C.) 3301-83-06).

a hearing subsequent to the Board's initial order. If the person does not request a hearing within 30 days, the Board may enter a final order revoking the license. The law also specifies that a court may not suspend operation of the Board's suspension order during the pendency of an appeal of that administrative action filed with the court under the Administrative Procedure Act. The Board must issue its final order within 60 days after the later of the date of the initial suspension order or the date of the administrative hearing, if one is requested.<sup>5</sup>

**Broader list of offenses that bar licensure.** In addition, the State Board has adopted rules prescribing the offenses for which the Board will not issue a new license to, and for which schools are prohibited from employing, a person who is convicted of or pleads guilty to any of those offenses. The list of these offenses combines the statutory list of offenses that bar employment in schools (listed in R.C. 3319.39) with the broader list of offenses for which the State Board is authorized to take disciplinary action against a licensee (R.C. 3319.31(B)(2)).<sup>6</sup> These offenses are "absolute bars" to licensure.

However, in order to deny or revoke a license for any of these offenses, the State Board currently must conduct an investigation and offer a hearing prior to taking that action. (Under the Board's rule, for certain lesser offenses, a person might not be denied a license or employment, if the person meets specified rehabilitation standards adopted by the State Board pursuant to its statutory authority in R.C. 3319.39(E)).<sup>7</sup> In those cases, the Board may choose to limit or restrict a license. Again, the board first must conduct an investigation and offer a hearing.)

### **Revocation or denial under the bill**

The bill eliminates the current provision for suspension of a license upon a guilty plea or conviction (as described above) and creates a new procedure that streamlines the administrative process to revoke or deny a license in such cases. It also expands the list of offenses that apply to administrative revocation of a license.

Under the bill's new procedure, if the State Board learns that a current licensee, an applicant for an issuance or renewal of a license, or a holder of an expired license has pled guilty to, been found guilty of, or been convicted of any offense specifically listed in the bill (see list below), the State Board *must* revoke

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<sup>5</sup> Current R.C. 3319.311(F), stricken by the bill.

<sup>6</sup> O.A.C. 3301-20-01.

<sup>7</sup> O.A.C. 3301-20-01(E).

or deny the license without an administrative hearing. The bill's list of offenses consists of the "absolute bar" offenses for which the State Board currently bars licensure and employment under its rule. In other words, it consists of those offenses for which the current rule presumes that a person cannot be rehabilitated sufficient to work in a school. The offenses are:

**Offenses of violence:**

- Aggravated murder
- Murder
- Voluntary manslaughter
- Involuntary manslaughter
- Reckless homicide
- Felonious assault
- Aggravated assault
- Permitting child abuse
- Kidnapping
- Abduction
- Criminal child enticement
- Extortion
- Aggravated arson
- Soliciting or providing support for an act of terrorism
- Making a terroristic threat
- Terrorism
- Aggravated robbery
- Robbery
- Aggravated burglary
- Inciting to violence
- Aggravated riot
- Riot
- Inducing panic



- Unlawful possession or use of a hoax weapon of mass destruction
- Unlawful abortion
- Unlawful abortion upon a minor
- Abortion manslaughter
- Endangering children, through abuse, torture, or cruelty
- Endangering children, through corporal or other punishment that is excessive and creates substantial risk of serious physical harm
- Endangering children, through repeated, unwarranted discipline that poses substantial risk of seriously impairing the child's mental health or development
- Interference with custody that would have been a violation of former R.C. 2905.04 (child stealing) had it occurred before July 1, 1996
- Child stealing under former R.C. 2905.04 before July 1, 1996
- Intimidation
- Intimidation of attorney, victim, or witness in a criminal case
- Retaliation
- Escape
- Illegal conveyance or possession of a deadly weapon, dangerous ordnance, or object indistinguishable from a firearm in a school safety zone
- Illegal conveyance or possession of a deadly weapon or dangerous ordnance in a courthouse
- Improperly discharging a firearm 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
- Unlawful possession of dangerous ordnance or illegally manufacturing or processing explosives
- Improperly furnishing firearms to a minor
- Contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance
- Spreading a false report of contamination
- Placing a harmful or hazardous object or substance in a food or confection, or furnishing to a person a food or confection so adulterated

**Sexually oriented offenses:**

- Rape
- Sexual battery
- Unlawful sexual conduct with a minor
- Gross sexual imposition
- Sexual imposition
- Importuning
- Felonious sexual penetration in violation of former R.C. 2907.12
- Compelling prostitution
- Promoting prostitution
- Procuring
- Soliciting
- Loitering to engage in solicitation
- Prostitution
- Disseminating matter harmful to juveniles
- Displaying matter harmful to juveniles
- Pandering obscenity
- Pandering obscenity involving a minor
- Pandering sexually oriented matter involving a minor
- Illegal use of a minor in nudity-oriented material or performance
- Deception to obtain matter harmful to juveniles
- Compelling acceptance of objectionable materials

**Drug abuse offenses:**

- Corrupting another with drugs
- Aggravated trafficking or trafficking in drugs, including marihuana
- Illegal manufacture of drugs or illegal cultivation of marihuana
- Illegal assembly or possession of chemicals for the manufacture of drugs
- Aggravated funding of drug trafficking
- Funding of drug trafficking
- Funding of marihuana trafficking

- Illegal administration or distribution of anabolic steroids
- Permitting drug abuse
- Deception to obtain a dangerous drug
- Illegal processing of drug documents
- Tampering with drugs
- Trafficking in harmful intoxicants or improperly dispensing or distributing nitrous oxide
- Illegal dispensing of drug samples
- Aggravated trafficking or trafficking in counterfeit controlled substances
- Possession of counterfeit controlled substances
- Promoting and encouraging drug abuse
- Fraudulent drug advertising

**Theft offenses:**

- Burglary
- Personating an officer
- Bribery
- Perjury
- Theft in office

The bill specifically permits the State Board to delegate to the Superintendent of Public Instruction the duty to automatically revoke or deny a license. But regardless of which authority acts, revocation or denial of the license is not discretionary. In addition, further investigation and an administrative hearing is *not* required. The revocation or denial is effective immediately upon the Board's or Superintendent's written order and, unlike the suspension order under current law, it may *not be* appealed to a court under the Administrative Procedure Act. The revocation or denial remains in force during the pendency of any criminal appeal of the plea of guilty, finding of guilt, or conviction that is the underlying basis of the revocation or denial. Except for the name of an informant who provides information but who is not required by law to do so, which name must remain confidential, the bill declares that information obtained by the State Board or Superintendent in the course of the automatic revocation or denial procedure is a public record.

**Discretionary reinstatement upon overturn of conviction**

(R.C. 3319.31(E))

The bill establishes a mechanism for the State Board to reinstate a person's license or to grant a new license to a person whose license was automatically revoked or denied, if the guilty plea, finding of guilt, or conviction that is the underlying basis of the action is later overturned. Under the bill, there are two ways in which this mechanism can be triggered. First, the bill requires the clerk of the court that reverses the plea, finding, or conviction, or the clerk of the court that hears an appeal of the reversal, if applicable, to notify the State Board of the reversal. In that case, the State Board must initiate proceedings to reconsider the revocation or denial within 30 days after receiving the notification. Second, "upon exhaustion of the criminal appeal" (that is, after all criminal appellate proceedings are final), the person whose license was revoked or denied may file with the State Board a petition for reconsideration along with appropriate court documents.

Upon receipt of a court notification or a petition and supporting documents, the State Board, after offering the person a hearing in accordance with the Administrative Procedure Act, must determine whether the person committed the act in question in the prior criminal action. The Board then may choose to continue the revocation or denial, may reinstate the license, or may grant a new license either with or without limits. The Board must make its decision based on the grounds and evidentiary standards it employs for other licensure adjudications.<sup>8</sup>

The decision of the Board in its reinstatement decision is subject to appeal to a court under the Administrative Procedure Act. Unlike the automatic revocation or denial order, the bill does not permit the Board to delegate the reinstatement decision to the Superintendent of Public Instruction.

**Prohibition on applying for license after automatic revocation or denial**

(R.C. 3319.31(E)(3))

The bill prohibits a person whose license is automatically revoked or denied from applying for any license issued by the State Board if the guilty plea, finding of guilt, or conviction that was the basis for the revocation or denial, upon exhaustion of the criminal appeal, either (1) is upheld or (2) is overturned but the State Board, after considering reinstatement of the license, elects to continue the

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<sup>8</sup> The standard of proof is not as high for an administrative adjudication (preponderance of the evidence) as it is for a criminal trial (beyond a reasonable doubt). Nor are the Ohio Rules of Evidence required in an adjudication hearing.

revocation or denial and that continuation is upheld by a court on final appeal under the Administrative Procedure Act.

**Disciplinary actions based on an intervention in lieu of conviction or a pre-trial diversion agreement**

(R.C. 3319.31(B)(3))

The bill grants the State Board specific authority to take action against a licensee or an applicant based on the fact that the person is eligible for "intervention in lieu of conviction" or has agreed to a "pre-trial diversion program" for any of the offenses for which the State Board may otherwise take action against the person. Thus, the State Board, after affording the person a due process hearing, may revoke, deny, limit, or suspend the person's license, based on the Board's examination of evidence of the offense, even though the person has not actually been convicted of the offense.

**Background**

**Intervention in lieu of conviction.** Current law not affected by the bill permits a court to provide intervention in lieu of conviction for an offender whose use of drugs or alcohol may have been a factor leading to the criminal behavior. Intervention in lieu of conviction is available for an offender only under certain conditions including, among others, that the offense in question is not a first, second, or third degree felony; is not an offense of violence, aggravated vehicular homicide, aggravated vehicular assault, or operating a motor vehicle under the influence of alcohol or a drug of abuse; and is not an offense that requires the court to impose a mandatory prison term, term of local incarceration, or term of imprisonment in a jail. If the offender's request for intervention in lieu of conviction is granted, the court must place the offender under the control and supervision of the county probation department, the Adult Parole Authority,<sup>9</sup> or another appropriate local probation or court services agency.<sup>10</sup>

**Pre-trial diversion programs.** Current law not affected by the bill permits a county prosecuting attorney to establish a pre-trial diversion program under which the prosecutor, in lieu of prosecuting an alleged offender whom the prosecutor believes will not offend again, may instead offer that person a program of supervision, monitoring, and drug testing. The alleged offender must agree to

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<sup>9</sup> The Adult Parole Authority is a unit of the Department of Rehabilitation and Correction (R.C. 5149.01 to 5149.12, none in the bill).

<sup>10</sup> R.C. 2951.041, not in the bill.

pay a reasonable fee for the cost of the program. It is not available for persons accused of certain violent, sex, drug-related or other serious offenses.<sup>11</sup>

**Prosecutor reports**

(R.C. 3319.20 and 3319.52)

Continuing law requires prosecutors (including county prosecuting attorneys, city attorneys, village solicitors, and their assistants) to notify the State Board if a person licensed by the Board pleads guilty to or is convicted of any of the offenses for which the Board may take a disciplinary action against the person. Prosecutors also are required to notify a school district if a person not licensed by the State Board who is employed by the district pleads guilty to or is convicted of one of the offenses for which the State Board could take action against a licensed person. The bill adds to both of these reporting provisions the requirement to report if a licensee or a school employee has been determined to be eligible for intervention in lieu of conviction or has agreed to a pre-trial diversion program for those same offenses.

**Reports by school authorities**

(R.C. 3314.40, 3319.313, 3326.24, and 5126.081)

Continuing law requires public and chartered nonpublic school authorities to report to the Superintendent of Public Instruction certain information regarding disciplinary actions that have been taken against an employee who is licensed by the State Board. One of the items that must be reported is a known plea of guilty by, a finding of guilt of, or a conviction of that person for any of the offenses for which the State Board also may take disciplinary action against the person. The bill adds the requirement that school authorities also report if a State Board licensee has been determined to be eligible for intervention in lieu of conviction or has agreed to a pre-trial diversion program for those same offenses.

The bill makes other changes to these reporting provisions (see "**Reporting of licensee misconduct**" below).

**Questioning of a licensee or applicant about sealed or expunged record**

(R.C. 2953.33 and 3319.292)

The bill permits the State Board and the Department of Education to question an applicant for issuance or renewal of a license about any criminal

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<sup>11</sup> R.C. 2935.36, not in the bill.

offense committed or alleged to have been committed by the applicant. The bill states further that, if the record of that conviction or allegation has been sealed (under continuing law) or expunged (presumably under former law) by a court, the Board or Department may question the applicant about the offense without asserting or demonstrating that the questioning, with respect to the offense, bears a "direct and substantial relationship" to issuing or renewing the license or to the position in which the applicant will work under the license. Nevertheless, under continuing law, the information from that sealed or expunged record appears to remain confidential, and the State Board and Department could not re-release the information. Furthermore, the bill states that questions of an applicant and the applicant's responses regarding a sealed or expunged record are not public records.

### **Background**

Courts, upon application of a convicted "first offender," may seal the records of the conviction no sooner than three years after the offender's final disposition, for a felony, or one year after the final disposition, for a misdemeanor. A "first offender" is an individual convicted of a criminal offense in Ohio or in another jurisdiction who has not been convicted of any criminal offense in this or another jurisdiction. Sealing is not available for most serious crimes, including most sex offenses. The effect of sealing the offender's records, by statute, means that the case is to be considered to not have occurred. If sealed, that record is confidential and anyone with information about the conviction from the record may not reveal that information. Violation of this prohibition is a fourth degree misdemeanor.<sup>12</sup>

For purposes of law enforcement and the investigation of a person's criminal history, certain entities may obtain information pertaining to a sealed conviction. One of those entities is BCII when conducting a criminal records check for an employer or a licensing agency.<sup>13</sup> The law also specifically permits an agency, when considering the employment of, a privilege for, or the licensure of a first offender whose records of a conviction have been sealed, to question that offender about the conviction, but only if the question bears "a direct and substantial relationship" to the position of employment, privilege, or license for which the offender is applying.<sup>14</sup> The employer or agency, such as the State Board or Department of Education, may use that information for the basis of an action

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<sup>12</sup> R.C. 2953.31, 2953.32, 2953.35, and 2953.36, none in the bill.

<sup>13</sup> R.C. 2953.32(D)(8) and (9).

<sup>14</sup> R.C. 2953.33(B).

regarding employment or licensure, but may not re-release the information to anyone else.

Under former law, a court could "expunge" a record of criminal conviction. That option is no longer provided under law except for juvenile adjudications.

**Prohibiting employment as a school bus driver for specified offenses**

(R.C. 3327.10)

Every school bus driver employed by public or nonpublic schools, or by independent contractors, must be "certified" by the driver's employing or contracting school as being an individual who is at least 18 years old and "is of good moral character and is qualified physically and otherwise for such position." That certification must be renewed once every six years and must include the results of a criminal records check with both BCII and FBI information. As in the case of teachers and other school employees, a school bus driver usually is disqualified following a conviction or guilty plea for certain offenses, but still might be employed if the driver meets the State Board's rehabilitation standards.<sup>15</sup> The bill makes explicit that the same "absolute bar" offenses that permanently prohibit an individual from receiving or retaining an educator license also permanently prohibit an individual from employment as a school bus driver, regardless of the rehabilitation standards.

**Participation in Retained Applicant Fingerprint Database**

(R.C. 3319.316)

The Superintendent of BCII has established the Retained Applicant Fingerprint Database, as required by Am. Sub. S.B. 97 of the 127th General Assembly, which is a database of fingerprints of individuals on whom BCII has conducted criminal records checks for the purpose of determining eligibility for employment with or licensure by a public office.<sup>16</sup> Under this new program, when the Superintendent receives information that an individual whose name is in the

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<sup>15</sup> R.C. 3319.39 and 3327.10 and O.A.C. 3301-83-06. A bus driver is also subject to a driving record check at least once every six months and must be disqualified from driving a bus (at least temporarily) for certain traffic offenses. Under federal law regarding commercial drivers licenses, a bus driver may be subject to random drug tests as well.

<sup>16</sup> R.C. 109.5721, not in the bill. A "public office" is any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by law for the exercise of any function of government (R.C. 117.01, not in the bill).



database has been arrested for or convicted of any offense, the Superintendent must notify any public office that employs or licensed that individual of the arrest or conviction, if the public office elects to receive those notifications. The public office may use that information solely to determine the individual's eligibility for continued employment or licensure.

The bill requires the Department of Education, on behalf of the State Board of Education, to elect to receive BCII notifications of the arrest or conviction of persons who are licensed by the State Board.<sup>17</sup>

### **Criminal records checks of school employees**

#### **Adult education instructors**

(R.C. 3319.39(A)(1))

Under current law, an individual applying for employment with a school district, educational service center (ESC), community school, STEM school, or chartered nonpublic school must undergo a criminal records check conducted by BCII. All records checks must include records of the FBI.<sup>18</sup>

The bill eliminates the mandatory FBI records checks for certain adult education instructors who will not have unsupervised access to children. Specifically, under the bill, an employer is not required to request an FBI check of an applicant for the position of adult education instructor if both of the following apply to the person:

(1) The duties of the person's position will not involve routine interaction with a child or regular responsibility for the care, custody, or control of a child or, during any period of time in which the position will involve that kind of interaction or responsibility, another employee will be present in the same room with the child or, if outdoors, will be within a 30-yard radius of the child or have visual contact with the child; and

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<sup>17</sup> Sub. S.B. 163 of the 127th General Assembly recently made changes to the Retained Applicant Fingerprint Database. Among these new provisions is a requirement that, if an individual has submitted fingerprint impressions for licensure by or employment with a public office that participates in the database, and another public office wishes to participate relative to that same individual, the other public office must "reprint" the individual. The Senate concurred in House amendments to the bill on April 29, 2008. As of May 5, 2008, the bill was awaiting the Governor's decision.

<sup>18</sup> See also R.C. 3314.03(A)(11)(d) and 3326.11.

(2) The person presents proof that the person has been an Ohio resident for the five years prior to the date upon which the criminal records check is requested or that BCII has requested an FBI check of the person during that five-year period.<sup>19</sup>

**Private contractors**

(R.C. 3314.41, 3319.391, 3319.392, and 3326.25; conforming changes in R.C. 109.57)

Current law requires private contractors hired by a school district, ESC, community school, STEM school, or chartered nonpublic school to request BCII and FBI criminal records checks, both prior to hiring and every five years thereafter, for their employees who work in schools and who are not licensed by the State Board of Education and are not bus drivers. The bill applies the records check requirement to a smaller subset of these private contractor employees, specifically employees of private contractors providing "essential school services" who will have unsupervised access to children while working in the district, ESC, or school. Each school district or ESC superintendent (or the chief administrator in the case of a community school, STEM school, or chartered nonpublic school) must specify "essential school services," which the bill defines as necessary services that would need to be provided by school employees if the services were not provided by a private contractor. These services might include, for example, food, janitorial, or clerical services.

Under the bill, a person employed by a private contractor providing an essential school service cannot work in a school district, ESC, or public or chartered nonpublic school unless one of the following conditions is met:

(1) The private contractor has provided proof that (a) the contractor has requested a criminal records check, including an FBI check, within the five-year period prior to the date on which the person will begin working in the district, ESC, or school and (b) the records check indicated that the person had not been convicted of or pleaded guilty to an offense that would disqualify the person for

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<sup>19</sup> All employees of school districts, ESCs, community schools, STEM schools, and chartered nonpublic schools who are not licensed by the State Board of Education and are not bus drivers must undergo criminal records checks every five years after hiring (R.C. 3319.391). If an adult education instructor is not licensed by the State Board, under the bill, these subsequent records checks also would not include an FBI check as long as the instructor met both conditions for the bill's exemption.

employment with the district, ESC, or school (mostly sex offenses, other offenses of violence, and drug offenses);<sup>20</sup> or

(2) During periods of time when the person will have routine interaction with a child or regular responsibility for the care, custody, or control of a child, an employee of the district, ESC, or school has been assigned to be present in the same room as the child or, if outdoors, to be within a 30-yard radius of the child or to have visual contact with the child.

The bill designates the person responsible for ensuring that private contractor employees have successfully completed a criminal records check or will be supervised when they have access to children. In a school district or ESC, the responsible official is the superintendent, or the superintendent's designee. In a community school, STEM school, or chartered nonpublic school, the school's chief administrator, or the chief administrator's designee, is the responsible official.

### **Professional and permanent certificate holders**

(R.C. 3319.291)

**Background.** Prior to September 1, 1998, the State Board of Education issued professional (eight-year) and permanent (lifetime) teaching certificates. Many individuals still teach under these certificates, which remain valid.<sup>21</sup> Holders of a professional certificate must transition to the five-year professional educator license, which is the standard teaching license under continuing law, when their certificates expire. Holders of permanent certificates, however, may work for the remainder of their careers without ever having to renew their certificates.

Under current law, holders of professional and permanent teaching certificates, at designated times, must submit fingerprints and written permission for the State Board or Superintendent of Public Instruction to request a criminal records check of the person. Each professional certificate holder must submit these documents upon a date prescribed by the State Board that is not later than

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<sup>20</sup> The bill explicitly authorizes private companies to request criminal records checks from BCII for this purpose. Generally, under continuing law, information obtained from a records check is confidential and cannot be released by the entity that requested the check (R.C. 109.57(H)). However, the bill makes an exception to this provision so that the private contractor may share that information exclusively with a designated official of the district, ESC, or school. (R.C. 3314.41(D), 3319.392(D), and 3326.25(D).)

<sup>21</sup> R.C. 3319.222, not in the bill.

five years after the certificate was issued or renewed. Each permanent certificate holder must submit the documents upon a date prescribed by the State Board and every five years thereafter.

**Inactivation of certificate for failure to submit to records check** (R.C. 3319.291(D)). The bill requires the Superintendent of Public Instruction, on behalf of the State Board, to inactivate a professional or permanent teaching certificate if the certificate holder fails to submit fingerprints and permission for a criminal records check at any of the designated times.<sup>22</sup> First, however, the Superintendent must attempt to provide written notice to the certificate holder that the deadline for submission has passed and that the person has 15 days from the date the notice was mailed to submit the necessary documents for a records check or the certificate will be inactivated. This notice must be sent by regular mail to the person's last known residence or place of employment, as indicated in the Department of Education's records, or to both places.

If the person fails to submit fingerprints and permission for a records check within 15 days after the notice is mailed, the Superintendent must issue a written order inactivating the person's teaching certificate. The order must state the reason for the inactivation and that the inactivation will remain in effect until the person submits the requested documents. As with the warning notice, the inactivation order must be mailed to the person's last known residence or place of employment, or both. If the person subsequently submits fingerprints and permission for a records check, the Superintendent must issue a written order reactivating the certificate and mail it to the person.

Finally, the bill specifically states that the inactivation of a professional or permanent teaching certificate for failure to submit documents for a criminal records check does not constitute a suspension or revocation of the certificate, which are disciplinary actions. Generally, the State Board cannot take a disciplinary action against a person's license or certificate without first offering the person an opportunity for a hearing (see "**Revocation or denial under the bill,**" above, for an exception regarding the bill's automatic license revocations for "absolute bar" offenses).<sup>23</sup> But since inactivation of a certificate is not a disciplinary action under the bill, the State Board and the Superintendent need not

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<sup>22</sup> However, under continuing law, the State Board or the Superintendent may waive the criminal records check requirement for a person who (1) has undergone a records check in the previous year as a condition of employment with a school or (2) presents a certified copy of the results of a records checks issued by BCII within the past year (R.C. 3319.291(C)). In that case, the person's teaching certificate would remain active.

<sup>23</sup> R.C. 3319.311(C).

provide the certificate holder with an opportunity for a hearing regarding the inactivation.

**Submission deadline for professional certificate holders** (R.C. 3319.291(A)(3)). As discussed above, the current deadline to submit fingerprints and permission for a criminal records check for holders of professional teaching certificates is a date prescribed by the State Board that is no more than five years after the certificate was issued or renewed. Since professional certificates are valid for eight years, many of them were issued or renewed more than five years prior to March 30, 2007, when the requirement for certificate holders to undergo records checks became effective. Consequently, in the case of teachers with older certificates, it was impossible for the State Board to set a deadline that could comply with current law. To correct this problem, the bill removes the five-year timeframe and simply states that professional certificate holders must submit the documents for a records check by a date set by the State Board.

**Deadline for records checks of non-licensed school employees**

(R.C. 3319.391(A))

Continuing law requires school districts, ESCs, community schools, STEM schools, and chartered nonpublic schools to request regular BCII and FBI criminal records checks of their employees who are not licensed by the State Board of Education and are not bus drivers. These checks must be requested every five years after hiring.

The bill sets an annual deadline for these employers to initiate criminal records checks for their employees who are due for their regular five-year check. Specifically, the employer must request the records check by September 5 of the fifth year after the last records check was requested for the employee.

**ESC assistance with records checks**

(R.C. 3319.39(H))

Continuing law permits an ESC to assist local school districts located in its territory in conducting criminal records checks of potential substitute teachers. The bill expands this provision to allow an ESC to assist a local district with criminal records checks of substitutes for other district employees as well. As in current law, the local district first must adopt a resolution requesting the ESC's assistance.

### *Community school and STEM school assurances*

(R.C. 3314.19 and 3326.23)

Under continuing law, the sponsor of each community school and the governing body of each STEM school must provide annual assurances to the Department of Education regarding the school's compliance with certain laws in preparation for the upcoming school year. One assurance that must be provided is that the community or STEM school has complied with the existing requirement to conduct a criminal records check of job applicants prior to hiring. The bill adds that the sponsor or governing body also must provide assurance that the school has complied with the ongoing requirement to conduct criminal records checks every five years on its employees who are not licensed by the State Board of Education and are not bus drivers.

### *Reporting of licensee misconduct*

(R.C. 3314.40, 3314.401, 3314.402, 3319.313, 3319.314, 3326.24, 3326.241, 3326.242, 5126.253, 5126.254, and 5153.176; conforming changes in R.C. 3314.03, 3319.311, and 3326.11)

Current law requires each school district or ESC board, each county MR/DD board, each community school governing authority, and each STEM school governing body to report to the Department of Education specified information regarding misconduct by their employees who are licensed by the State Board of Education. Also, each public children services agency (PCSA) must report to the Department information regarding certain investigations of reports of child abuse or neglect involving State Board licensees. (See "**Background on reporting misconduct**" below.) The bill retains these reporting requirements, but it makes several changes.<sup>24</sup>

First, it designates specific individuals to file the reports. In the case of employer reports, this change aligns public employers with chartered nonpublic schools where, under current law, the chief administrator is required to report licensee misconduct. The table below shows the bill's designated reporters and exceptions in which another person is the designated reporter.

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<sup>24</sup> Current law requires community schools and STEM schools to comply with the reporting of licensee misconduct as if they were school districts (R.C. 3314.03(A)(11)(d) and 3326.11, respectively). The bill enacts new sections in the Community School Law (R.C. Chapter 3314.) and the STEM School Law (R.C. Chapter 3326.) describing the reporting requirements and designating who is to make the reports. These new sections mirror the language applicable to school districts and do not change the reporting requirements with which community schools and STEM schools currently must comply.

Type of Entity	Reporter	Exceptions
School district or ESC	Superintendent	If the superintendent or treasurer is the employee who must be reported, the president of the district board of education or ESC governing board must make the report.
County MR/DD board	Superintendent	If the superintendent is the employee who must be reported, the president of the county MR/DD board must make the report.
Community school	Chief administrator	If the chief administrator is the employee who must be reported, the president or chairperson of the school's governing authority must make the report.
STEM school	Chief administrative officer	If the chief administrative officer is the employee who must be reported, the president or chairperson of the school's governing body must make the report.
Chartered nonpublic school	Chief administrator (as in current law)	If the chief administrator is the employee who must be reported, the president or chairperson of the school's governing authority must make the report.
Public children services agency	Director	

Second, in the case of a community school that has hired an operator to manage the school, the bill requires the school's chief administrator to report misconduct by a licensed employee of the operator who is working in the school.<sup>25</sup> A report must be filed about an operator's employee in the same circumstances in

<sup>25</sup> An operator of a community school is (1) an individual or organization that manages the school's daily operations or (2) a nonprofit organization that provides programmatic oversight and support to the school and that retains the right to terminate its affiliation with the school if the school fails to meet the organization's quality standards (R.C. 3314.014, not in the bill).

which the school's own employees must be reported. Also, as with its own employees, the governing authority must keep the reports of the operator's investigation of the employee misconduct in the employee's personnel file and, if the Superintendent of Public Instruction determines that action against the employee's license is not warranted, must move the investigation reports to a separate public file.

Finally, in addition to the existing circumstances in which an employer must file a report with the Department, the bill requires the designated reporter to file a report if the reporter knows that a licensed employee has been found by a court to be eligible for intervention in lieu of conviction for, or has agreed to participate in a pre-trial diversion program for, an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee (see "*Disciplinary actions based on intervention in lieu of conviction or a pre-trial diversion agreement*" above).

### **Background on reporting misconduct**

**Employers.** Continuing law requires designated employer reporters to submit the name and social security number of a licensed employee and a factual statement of the employee's misconduct if:

(1) The reporter *knows* that the employee has pleaded guilty to, been found guilty by a jury or court of, or been convicted of an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee;

(2) The employer has initiated termination or nonrenewal proceedings against, has terminated, or has not renewed the contract of the employee because the employer has reasonably determined that the employee has committed an act that is "unbecoming to the teaching profession"<sup>26</sup> or an offense for which the State Board may sanction the licensee or which would bar the employment of the licensee;

(3) The employee has resigned under threat of termination or nonrenewal as described in (2) above; or

(4) The employee has resigned because of or in the course of an investigation by the employer regarding whether the employee has committed an act that is "unbecoming to the teaching profession" or an offense for which the

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<sup>26</sup> "Conduct unbecoming to the teaching profession" is as described in rules adopted by the State Board.



State Board may sanction the licensee or which would bar the employment of the licensee.

**Public children services agencies.** Under continuing law, a PCSA must provide information about its investigation of a report of child abuse or neglect by a licensed educator if the PCSA determines that child abuse or neglect occurred and the abuse or neglect is related to the person's duties and responsibilities under the license. The information provided must include (1) a summary of the nature of the allegations contained in the report and (2) the final disposition of the investigation of the report or, if the investigation is not complete, the status of the investigation. Upon written request from the Superintendent of Public Instruction, the PCSA must provide additional information about its investigation, including information about the alleged child victim, the alleged perpetrator, and other persons considered important to the investigation.

**Penalties for failure to report licensee misconduct**

(R.C. 3314.40(F), 3314.99(A), 3319.31(B), 3319.313(F), 3319.99(B), 3326.24(F), 3326.99(A), 5126.253(F), 5126.99(B), 5153.176(F), and 5153.99)

The bill makes it a crime for a mandatory reporter to knowingly fail to report required information about misconduct by a licensed educator to the Department of Education. Failure to file a required report generally is a fourth degree misdemeanor under the bill. However, it is a *first degree* misdemeanor if (1) the licensee who was not reported was required to be reported for an act or offense constituting child abuse or neglect and (2) prior to the designated reporter's conviction or plea of guilty for the failure to file the report, the licensee abuses or neglects the same or a different child attending a school district, educational service center, public or private school, or county MR/DD board where the licensee works.

Additionally, the bill authorizes the State Board to deny, limit, suspend, or revoke the educator license of a designated reporter who fails to file a required report about another licensee's misconduct. The State Board must provide the designated reporter with an opportunity for a hearing prior to the action.

**Immunity for reporters of school employee misconduct**

(R.C. 3314.40(G), 3314.403(C), 3319.311(G), 3319.313(G), 3319.317(C) and (E), 3326.24(G), 3326.243(C), and 5126.253(G))

The bill grants a qualified civil immunity to people who report misconduct by school employees. Specifically, a person who reports misconduct by a school employee, in good faith and in accordance with prescribed procedures, is immune

from civil liability for injury, death, or loss to person or property that results from the provision of that information. This immunity applies in two ways.

First, the bill grants immunity to a person who makes a report to the Department of Education regarding alleged misconduct by a person who is licensed by the State Board of Education or is an applicant for a license. The immunity covers both mandatory and non-mandatory reporters. If a non-mandatory reporter provides good-faith information about licensee misconduct, the Department must keep that person's name confidential.

Second, the bill provides immunity for reports of misconduct by licensed or non-licensed employees to officials at the school or district level. The immunity applies only if (1) the report of alleged misconduct is made by another employee of the school district, educational service center (ESC), community school, community school operator, STEM school, or chartered nonpublic school that employs the subject of the report and (2) the report is made to the appropriate official designated by the bill. For school districts and ESCs, this official is the superintendent, or the superintendent's designee. For community schools, STEM schools, and chartered nonpublic schools, this official is the chief administrator of the school, or the chief administrator's designee. If the alleged misconduct involves a licensed employee but the superintendent or chief administrator is not required to report that information to the Superintendent of Public Instruction (see "Reporting of licensee misconduct" above), the superintendent or chief administrator (or the designee who receives the report) is covered by the immunity for voluntarily reporting that information to the Superintendent of Public Instruction or the State Board.

### **Criminal and civil liability for false reports of employee misconduct**

#### **Criminal liability**

**School employees** (R.C. 3314.403(B), 3314.99, 3319.317(B) and (D), 3319.99(D), 3326.243(B), and 3326.99). The bill makes it a first degree misdemeanor for an employee of a school district, educational service center (ESC), community school or operator, STEM school, or chartered nonpublic school to do either of the following:

(1) Knowingly make a false report to the official designated by the bill to receive employee reports (see above) alleging misconduct by another employee of the district, ESC, school, or operator; or

(2) Knowingly cause the designated official to make a false report of the alleged misconduct to the Superintendent of Public Instruction or the State Board of Education.

**Other persons** (R.C. 3319.311(H)(1) and 3319.99(B)). Likewise, the bill makes it a first degree misdemeanor for any person (whether or not that person is another school employee) to knowingly make a false report directly to the Superintendent of Public Instruction or the State Board alleging misconduct by a school employee, including an employee of a community school operator.

**Civil liability**

(R.C. 3314.403(D), 3319.311(H)(2), 3319.317(F), and 3326.243(D))

Under the bill, the subject of a false report of misconduct may receive attorney's fees or restitution in certain circumstances. If the subject of the false report prevails in a civil action brought against the reporter, the court must award the prevailing party reasonable attorney's fees and costs incurred in the civil action or as a result of the false report. Also, the court that sentences a person for making a false report must order the person to pay restitution to the subject of the false report, if the subject of the report was charged with a crime based on the false report and was found not to be guilty of the charge or the charge was dismissed. The amount ordered for restitution must be equal to reasonable attorney's fees and costs incurred by the subject of the false report in relation to the criminal charges.

**Suspension of school employees**

(R.C. 3314.101, 3319.40, and 3326.081; conforming changes in R.C. 3313.31 and 3319.01)

Under the bill, upon the arrest, summons, or indictment of a school employee for specified offenses, the employee must be suspended from all duties that require the care, custody, or control of a child. This requirement applies to all licensed and non-licensed employees of school districts, ESCs,<sup>27</sup> community schools and their operators, STEM schools, and chartered nonpublic schools. Employees licensed by the State Board of Education must be suspended if the arrest, summons, or indictment is for an offense for which the State Board must automatically revoke the person's license upon a conviction or other finding of guilt (see "**Automatic revocation or denial of licenses**" above). Non-licensed employees must be suspended for an offense that would bar the person from employment with the district, ESC, or school. In all cases, the suspension must continue through the conclusion of the criminal action against the employee.

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<sup>27</sup> Although the statute does not explicitly mention ESCs, another provision of law states that "wherever in [the Education Code] the term "school district" is used without expressly referring to city, local, exempted village, or joint vocational school districts . . . , the term shall be construed to include [ESCs]" (R.C. 3311.055, not in the bill).

The table below indicates the official or entity responsible for imposing the suspension. When a licensed employee is suspended, the same official or entity must promptly report the suspension to the Department of Education and the alleged offense that prompted the suspension.

Type of Employer	Official with Duty to Suspend	Exceptions
School district or ESC	Superintendent	If the employee subject to suspension is a fiscal employee under the direction of the district or ESC treasurer, the treasurer must suspend the employee. <sup>28</sup> If the employee subject to suspension is the superintendent or treasurer, the district board of education or ESC governing board must suspend the employee.
Community school or community school operator	Chief administrator of school in which employee works	If the employee subject to suspension is the chief administrator, the school's governing authority must suspend the employee.
STEM school	Chief administrative officer	If the employee subject to suspension is the chief administrative officer, the school's governing body must suspend the employee.
Chartered nonpublic school	Chief administrative officer	If the employee subject to suspension is the chief administrative officer, the school's governing authority must suspend the employee.

<sup>28</sup> Under continuing law, the school district or ESC treasurer, rather than the superintendent, is responsible for directing and assigning employees who are engaged in the day-to-day fiscal operations of the district or ESC (R.C. 3313.31).

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## HISTORY

ACTION	DATE
Introduced	01-09-08
Reported, H. Education	05-21-08
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