



## *Bill Analysis*

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### **S.B. 270**

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(As Introduced)

**Sens. Cates, Padgett**

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#### **BILL SUMMARY**

- 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.
- 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.
- Requires the Department of Education to participate in receiving notifications through BCII's Retained Applicant Fingerprint Database of the arrest or conviction of licensed educators.

- Requires the Attorney General to grant access to the Ohio Law Enforcement Gateway (OLEG) to persons employed in the Department of Education's Office of Professional Conduct.
- Designates persons responsible under continuing law for reporting to the Department of Education specified misconduct by licensed educators employed by school districts, educational service centers (ESCs), chartered nonpublic schools, county MR/DD boards, community schools, and Science, Technology, Engineering, and Math (STEM) schools.
- 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.
- Grants immunity from civil liability to persons who make good-faith reports about misconduct by licensed educators.
- Specifies that if an employee of a school district, ESC, 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.

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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. The check must include information from both the Ohio Bureau of Criminal Identification and Investigation (BCII) and the Federal Bureau of Investigation

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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 (last section not in the bill).

(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 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.

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<sup>3</sup> R.C. 3319.291, not in the bill.

<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, not in the bill.) 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 (not in the bill) and Ohio Administrative Code (O.A.C.) 3301-83-06).

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, not in the bill) 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 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

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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).

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



- Possession of drugs or marihuana, unless the offense is a minor drug possession offense
- 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, if that plea, finding, or conviction is overturned on appeal, "upon exhaustion of the criminal appeal" (that is, after all criminal appellate proceedings are final), the person may file with the State Board a petition along with appropriate court documents. Upon receipt of that 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 may 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.

**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.

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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.

## **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 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

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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.

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

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 "**Employer 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 offense committed or alleged to have been committed by the applicant. The bill states further that, if the record of that conviction 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.

**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 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.

### **Participation in Retained Applicant Fingerprint Database**

(R.C. 3319.316)

Am. Sub. S.B. 97 of the 127th General Assembly required the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to establish 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>15</sup> The Superintendent of BCII must establish the database, known as the Retained Applicant Fingerprint Database, by February 15, 2008. When the Superintendent receives information that an individual whose

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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).

<sup>15</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).

name is in the 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.

### **Access to Ohio Law Enforcement Gateway**

(R.C. 109.66)

The Attorney General operates the Ohio Law Enforcement Gateway (OLEG), which is a closed online database exclusively for use by law enforcement personnel, prosecutors, and corrections officers. OLEG consists of several distinct databases that allow law enforcement agencies to share detailed information about suspects or investigations across jurisdictions. An individual authorized to use OLEG must apply to the Attorney General for access to the database.

The bill requires the Attorney General, upon application, to grant access to OLEG to any person employed in the Department of Education's Office of Professional Conduct. The Office of Professional Conduct is responsible for investigating allegations of misconduct by persons licensed by the State Board of Education and pursuing action against a person's license or other forms of discipline.

### **Employer reporting of licensee misconduct**

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

Current law requires each school district or educational service center (ESC) board, each county MR/DD board, each community school governing authority, and each Science, Technology, Engineering, and Math (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 (see "**Background on reporting misconduct**" below). The bill retains this reporting requirement, but it makes several changes.<sup>16</sup>

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<sup>16</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))

First, it designates specific individuals to file the 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.

Type of Employer	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.

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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.





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>17</sup> A report must be filed about an operator's employee in the same circumstances in 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 a report must be filed with the Department, the bill requires all mandatory reporters 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**

Continuing law requires designated 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>18</sup> or an offense for which the State

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<sup>17</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).

<sup>18</sup> "Conduct unbecoming to the teaching profession" is as described in rules adopted by the State Board.



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

**Immunity for reporters of licensee misconduct**

(R.C. 3314.40(F), 3319.311(G), 3319.313(F), 3326.24(F), and 5126.253(F))

The bill grants a qualified civil immunity to all persons who report misconduct by licensed educators to the Department of Education. Specifically, any person who reports misconduct about a licensee or an applicant for a license, 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 to both mandatory and non-mandatory reporters. In addition, if a non-mandatory reporter provides in good faith information about licensee misconduct, the Department must keep that person's name confidential.

**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, educational service centers (ESCs),<sup>19</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

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<sup>19</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).

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.

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>20</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>20</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

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