



Ohio Legislative Service Commission

Bill Analysis

Andrea Holmes

H.B. 498

129th General Assembly
(As Introduced)

Reps. Fedor and Garland, Antonio, Celebrezze, Driehaus, Fende, R. Hagan, Okey, Phillips, Yuko

BILL SUMMARY

Volunteer coaches for recreational youth athletics organization or entity

- Requires each person who applies to be a volunteer coach for a recreational youth athletics organization or entity to be the subject of a criminal records check conducted by the Superintendent of the Bureau of Criminal Identification and Investigation (BCII).
- Generally prohibits a recreational youth athletics organization or entity from using a person as a volunteer coach if the person has been convicted of or pleaded guilty to any of a list of certain specified offenses.
- Subject to the following dot point, permits a recreational youth athletics organization or entity to use a person who has been convicted of or pleaded guilty to any of the offenses described in the previous dot point as a volunteer coach if the recreational youth athletics organization or entity has reasonable cause to believe that the use of the person as a volunteer coach would not pose a threat to the safety of any child to whom the person would have unsupervised access on a regular basis as a result of the person's service as a volunteer coach.
- Specifies that, if a person described in the preceding dot point was imprisoned under a sentence imposed for a violation of any of the offenses described in the second preceding dot point, a recreational youth athletics organization or entity may not use the person as a volunteer coach prior to 5 years after the person's release from imprisonment for that offense and that, if a person was not imprisoned under a sentence imposed for a violation of any of the offenses described in the second preceding dot point, the recreational youth athletics organization or entity may not

use the person as a volunteer coach prior to 5 years after the date on which the court imposed the sentence on the person for that violation.

Permits to officiate interscholastic athletic games and contests

- Requires each individual who applies for issuance or renewal of a permit to officiate interscholastic athletic games and contests to be the subject of a criminal records check to be conducted by the Superintendent of the BCII.
- Generally prohibits an organization or association that regulates interscholastic athletics among public or nonpublic schools in the state from issuing or renewing a permit for any individual who has been convicted of or pleaded guilty to any of a list of certain specified offenses.
- Subject to the following dot point, permits an organization or association to use an individual who has been convicted of or pleaded guilty to any of the offenses described in the previous dot point to officiate interscholastic athletic games and contests if the organization or association has reasonable cause to believe that the use of the individual to officiate interscholastic athletic games and contests would not pose a threat to the safety of any child to whom the individual would have access as a result of the individual's service.
- Specifies that, if an individual described in the preceding dot point was imprisoned under a sentence imposed for a violation of any of the offenses described in the second preceding dot point, an organization or association may not use the individual to officiate interscholastic athletic games and contests prior to 5 years after the person's release from imprisonment for that offense, and if the person was not imprisoned under a sentence imposed for a violation of any of the offenses described in the second preceding dot point, the organization or association may not use the person to officiate interscholastic athletic games and contests prior to 5 years after the date on which the court imposed the sentence on the individual for that violation.

Duties of Superintendent of BCII

Mandatory criminal records checks

- Requires the Superintendent of BCII, upon receipt of a request from a recreational youth athletics organization or entity or an organization or association that regulates interscholastic athletics among public or nonpublic schools in the state, a completed form, and a set of fingerprint impressions to conduct a criminal records check to determine whether any information exists that indicates that the person who is the

subject of the request previously has been convicted of or pleaded guilty to any of a list of certain specified offenses.

Discretionary criminal records checks

- Specifies that, in addition to or in conjunction with a request for a mandatory criminal records check, the administrator of a recreational youth athletics organization or entity or any organization or association that regulates interscholastic athletics among public or nonpublic schools in the state may request that BCII's Superintendent investigate and determine with respect to any individual who has applied to be a volunteer coach for the organization or entity or any individual who has applied for issuance or renewal of a permit to officiate interscholastic athletic games and contests whether BCII has any additional specified information that pertains to that individual.

Volunteers who regularly have unsupervised access to a child

- Specifies that the provisions described in the dot point above under "**Volunteer coaches for recreational youth athletics organization or entity**," apply with respect to a person who applies to be a volunteer coach for a recreational youth athletics organization or entity, instead of the provisions that apply under existing law in regards to potential criminal records checks for other volunteers for organizations and entities.
- Expands the information that the Ohio Commission on Service and Volunteerism must make available to parents and guardians of children to include notice about the provisions described in the dot point above under "**Volunteer coaches for recreational youth athletics organization or entity**," as part of the educational program that the Commission is required to establish and maintain.

Qualified immunity for recreational youth athletics organization or entity

- Includes a recreational youth athletics organization or entity among the organizations and entities that are immune from civil liability under existing law, but creates certain specifications for that immunity.
- Specifies that the bill does not create a new cause of action or substantive legal right against a recreational youth athletics organization or entity, and does not affect any immunities from civil liability or defenses established by another Revised Code section or available at common law, to which a recreational youth athletics organization or entity may be entitled under circumstances not covered by the bill.

TABLE OF CONTENTS

Volunteer coaches for recreational youth athletics organization or entity.....	4
Permits to officiate interscholastic athletic games and contests	5
Duties of Superintendent of BCII	6
Mandatory criminal records checks	6
Discretionary criminal records checks	7
Volunteers who regularly have unsupervised access to a child	8
Existing law	8
Operation of the bill	10
Qualified immunity for recreational youth athletics organization or entity.....	11

CONTENT AND OPERATION

Volunteer coaches for recreational youth athletics organization or entity

The bill requires each person who applies to be a volunteer coach for a recreational youth athletics organization or entity to be the subject of a criminal records check. The administrator of the recreational youth athletics organization or entity must request the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to conduct the criminal records check to determine whether the person has been convicted of or pleaded guilty to any of the following offenses:¹

(1) Any offense of violence (as used in the Revised Code, "offense of violence" means (a) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12(A)(1), (2), or (3), 2917.01, 2917.02, 2917.03, 2917.31, 2919.22(B)(1), (2), (3), or (4), 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, or felonious sexual penetration in violation of former R.C. 2907.12, (b) a violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any offense listed above in (a), (c) an offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons, or (d) a conspiracy or attempt to commit, or complicity in committing, any offense described above in paragraph (a), (b), or (c);

(2) A violation of any section of R.C. Chapter 2907. (sex offenses) that is not an offense of violence;

¹ R.C. 1541.82(A) and 109.572(A)(16).

(3) A violation of any existing or former law of this state, any other state, or the United States that is substantially equivalent to any offense described above in paragraph (1) or (2).

Except as provided in the following paragraph, the bill generally prohibits a recreational youth athletics organization or entity from using a person as a volunteer coach if the person has been convicted of or pleaded guilty to any of the offenses described above.²

Subject to the conditions described in the next two sentences, a recreational youth athletics organization or entity may use a person who has been convicted of or pleaded guilty to an offense described above in paragraph (1), (2), or (3) as a volunteer coach if the recreational youth athletics organization or entity has reasonable cause to believe that the use of the person as a volunteer coach would not pose a threat to the safety of any child to whom the person would have unsupervised access on a regular basis as a result of the person's service as a volunteer coach. However, if the person was imprisoned under a sentence imposed for a violation of any offense described above in paragraph (1), (2), or (3), a recreational youth athletics organization or entity may not use the person as a volunteer coach prior to 5 years after the person's release from imprisonment for that offense. If a person was not imprisoned under a sentence imposed for a violation of any of the offenses described in the previous paragraph, the recreational youth athletics organization or entity may not use the person as a volunteer coach prior to 5 years after the date on which the court imposed the sentence on the person for that violation.³

Permits to officiate interscholastic athletic games and contests

The bill requires each organization or association that regulates interscholastic athletics among public or nonpublic schools in the state to require each individual who applies for issuance or renewal of a permit to officiate interscholastic athletic games and contests to undergo a criminal records check. The organization or association must request the Superintendent of BCII to conduct the criminal records check to determine whether that individual has been convicted of or pleaded guilty to any of the following offenses:⁴

(1) Any offense of violence (see definition above under "**Volunteer coaches for recreational youth athletics organization or entity**);

² R.C. 1541.82(B)(1) and 109.572(A)(16).

³ R.C. 1541.82(B)(2).

⁴ R.C. 3313.539 and 109.572(A)(16).

(2) A violation of any section of R.C. Chapter 2907. (sex offenses) that is not an offense of violence;

(3) A violation of any existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses described above in paragraph (1) or (2).

Except as provided in the following paragraph, the bill generally prohibits the organization or association from issuing or renewing a permit for any individual who has been convicted of or pleaded guilty to any offense described above in paragraph (1), (2), or (3).⁵

Subject to the conditions described in the next two sentences, an organization or association may use an individual who has been convicted of or pleaded guilty to an offense described above in paragraph (1), (2), or (3) to officiate interscholastic athletic games and contests if the organization or association has reasonable cause to believe that the use of the individual to officiate interscholastic athletic games and contests would not pose a threat to the safety of any child to whom the individual would have access as a result of the individual's service. However, if the individual was imprisoned under a sentence imposed for a violation of an offense described above in paragraph (1), (2), or (3), an organization or association may not use the individual to officiate interscholastic athletic games and contests prior to five years after the person's release from imprisonment for that offense. If the person was not imprisoned under a sentence imposed for a violation of an offense described above in paragraph (1), (2), or (3), the organization or association may not use the person to officiate interscholastic athletic games and contests prior to 5 years after the date on which the court imposed the sentence on the individual for that violation.⁶

Duties of Superintendent of BCII

Mandatory criminal records checks

The bill requires the Superintendent of BCII, upon receipt of a request from a recreational youth athletics organization or entity or an organization or association that regulates interscholastic athletics among public or nonpublic schools in the state as described above under "**Volunteer coaches for recreational youth athletics organization or entity**" and "**Permits to officiate interscholastic athletic games and contests**," a completed form that is prescribed by the Superintendent under existing law to obtain the information necessary to conduct a records check from the person for

⁵ R.C. 3313.539(B)(1) and 109.572(A)(16).

⁶ R.C. 3313.539(B)(2).

whom the records check is requested, and a set of fingerprint impressions that is obtained on the standard impression sheets prescribed by the Superintendent to conduct a criminal records check to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following offenses:⁷

(1) Any offense of violence (see definition above under "**Volunteer coaches for recreational youth athletics organization or entity**");

(2) A violation of any section of R.C. Chapter 2907. (sex offenses) that is not an offense of violence;

(3) A violation of any existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses described in paragraph (1) or (2).

The Superintendent must conduct the records check under the existing statutory procedure for records checks. The Superintendent within 30 days after receipt of the request must send the requesting entity any information that the Superintendent determines exists with respect to the person who is the subject of the request.⁸

Discretionary criminal records checks

The bill enacts a provision that specifies that, in addition to or in conjunction with a request for a mandatory criminal records check made under the bill's provisions described above in "**Volunteer coaches for recreational youth athletics organization or entity**" or "**Permits to officiate interscholastic athletic games and contests**," the administrator of a recreational youth athletics organization or entity or any organization or association that regulates interscholastic athletics among public or nonpublic schools in the state may request that BCII's Superintendent investigate and determine with respect to any individual who has applied to be a volunteer coach for the organization or entity or any individual who has applied for issuance or renewal of a permit to officiate interscholastic athletic games and contests whether BCII has any information gathered under division (A) of R.C. 109.57 (described in the next paragraph) that pertains to that individual. Upon receipt of the request, the Superintendent must determine whether that information exists and, upon request of the administrator or organization or entity, must also request from the Federal Bureau of Investigation any criminal records it has pertaining to that individual. The

⁷ R.C. 109.572(A)(16), (C)(1) and (2).

⁸ R.C. 109.572(A)(17), (B), (C), and (D).

Superintendent also may request criminal history records from other states or the federal government under certain specified circumstances.⁹

Under existing R.C. 109.57(A), unchanged by the bill, BCII's Superintendent is required to procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of all persons who have been convicted of committing within Ohio a felony, a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or a specified misdemeanor, of all children under 18 who have been adjudicated delinquent children for committing within Ohio an act that would be a felony or an offense of violence if committed by an adult or who have been convicted of committing within Ohio a felony or an offense of violence, and of all well-known and habitual criminals. The person in charge of any local correctional facility or state correctional institution, and the person in charge of any state institution with custody of a person suspected of having committed a felony, a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or a specified misdemeanor or with custody of a child under 18 with respect to whom there is probable cause to believe that the child may have committed an act that would be a felony or an offense of violence if committed by an adult must furnish such material to the Superintendent. Every clerk of an Ohio court of record, other than the Supreme Court or a court of appeals, must send to the Superintendent a weekly report containing a summary of, and specified information regarding, each case involving a felony, a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, a specified misdemeanor, or an adjudication in a case in which a child under 18 was alleged to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult.

Volunteers who regularly have unsupervised access to a child

Existing law

Existing law sets forth a series of provisions regarding volunteers for "organizations or entities" who, on a regular basis, have "unsupervised access to a child." As used in all of the provisions, "organization or entity" means a religious, charitable, scientific, educational, athletic, or service institution or organization or local government entity that provides care, treatment, education, training, instruction, supervision, or recreation to children, and "unsupervised access to a child" means that the person in question has access to a child and either that no other person 18 years of age or older is present in the same room with the child or, if outdoors, no other person

⁹ R.C. 109.57(F)(2)(a).

18 years of age or older is within a 30-yard radius of the child or has visual contact with the child.¹⁰ Under the provisions:

(1) The Ohio Commission on Service and Volunteerism is required to adopt a set of "recommended best practices" for organizations and entities to follow when one or more of its volunteers have unsupervised access to one or more children or otherwise interact with one or more children. The recommended best practices must focus on, but not be limited to, the issue of the safety of the children and, in addition, the screening and supervision of volunteers. They must include as a recommended best practice that the organization or entity subject to a criminal records check performed by BCII all persons who apply to serve as a volunteer in a position in which the person will have unsupervised access to a child on a regular basis, and all volunteers who are in a position in which the person will have unsupervised access to a child on a regular basis and who the organization or entity has not previously subjected to a criminal records check performed by BCII. The recommended best practices are in addition to the educational program required to be established by the Commission under the provision described below in (4).¹¹

(2) At the time of a person's initial application to an organization or entity to be a volunteer in a position in which the person on a regular basis will have unsupervised access to a child, the organization or entity must inform the person that, at any time, the person might be required to provide a set of fingerprints and a criminal records check might be conducted with respect to the person. Each organization or entity also was required to notify each volunteer serving it on March 22, 2001, who was in a position in which the volunteer on a regular basis had unsupervised access to a child that, at any time, the volunteer might be required to provide a set of fingerprints and a criminal records check might be conducted.¹²

(3) If a person applies to an organization or entity to be a volunteer in a position in which the person on a regular basis has unsupervised access to a child, if the organization or entity subjects the person to a criminal records check and the check shows that the person has been convicted of or pleaded guilty to one or more of a list of specified offenses (see below), and if the organization or entity accepts the person to serve as a volunteer in that position, the organization or entity must notify the parent or guardian of each child for whom it provides services that the person has been convicted of one or more of the offenses but that, nonetheless, the person will be serving the

¹⁰ R.C. 109.574 and 121.401(A), not in the bill.

¹¹ R.C. 121.401(B) and (C), not in the bill.

¹² R.C. 109.575.

organization or entity in that position. A similar provision applies regarding persons already serving as a volunteer in such a position, who are subjected to a criminal records check that shows a conviction, and who are retained as a volunteer in the same position or in any other position with regular access to a child. The notification provisions apply regarding any criminal records checks conducted by BCII, any criminal records check performed in any manner by the organization or entity or any of its employees or officers, or any criminal records checks performed in any manner by any person on the request of the organization or entity or any of its employees or officers. The notice must be in writing, must identify the person who is accepted or retained as a volunteer, and must state that the person has been convicted of or pleaded guilty to the offense, but it may not identify the specific offense in question. The notice must be sent on the date the organization or entity begins providing services to the child or on the date the organization or entity decides to accept or retain the person as a volunteer after receiving the report of the results of the criminal records check, whichever is later. The specified offenses are the same as those identified under existing law as offenses that disqualify a person from being an adoptive parent, a foster caregiver, or a person responsible for a child's care in out-of-home care.¹³

(4) The Ohio Commission on Service and Volunteerism is required to establish and maintain an educational program that does all of the following: (a) makes available to parents and guardians of children notice about the provisions of law described above in (1) to (4) and information about how to keep children safe when they are under the care, custody, or control of a person other than the parent or guardian, (b) makes available to organizations and entities information regarding the best methods of screening and supervising volunteers, how to obtain a criminal records check of a volunteer, confidentiality issues relating to reports of criminal records checks, and record keeping regarding the reports, (c) makes available to volunteers information regarding the possibility of being subjected to a criminal records check and displaying appropriate behavior to minors, and (d) makes available to children advice on personal safety and information on what action to take if someone takes inappropriate action towards a child. The program must begin making the materials described in the previous sentence not later than March 22, 2002.¹⁴

Operation of the bill

The bill specifies that the provisions described above under "**Volunteer coaches for recreational youth athletics organization or entity**" apply with respect to a person who applies to be a volunteer coach for a recreational youth athletics

¹³ R.C. 109.576.

¹⁴ R.C. 121.402.

organization or entity instead of the provisions described in paragraphs (2) and (3) above under "**Existing law.**" Additionally, the bill removes a provision in existing law that is no longer relevant due to the passage of time – the requirement in paragraph (2), above, that each organization or entity must provide a certain specified notice to volunteers within 30 days of March 22, 2001.¹⁵

Additionally, the bill expands the information that the Ohio Commission on Service and Volunteerism must make available to parents and guardians of children described in paragraph (4), above, to include notice about the provisions described above under "**Volunteer coaches for recreational youth athletics organization or entity,**" as part of the educational program that the Commission is required to establish and maintain. The bill also removes another provision in existing law that is no longer relevant due to the passage of time – the requirement that the educational program established by the Commission begin making the required materials available not later than March 22, 2002.¹⁶

Qualified immunity for recreational youth athletics organization or entity

Under existing law, if an organization or entity uses a volunteer in a position in which the volunteer on a regular basis has unsupervised access to a child and the volunteer has been subjected to a criminal records check conducted by BCII, the organization or entity, and its officials and employees, are immune from civil liability that might otherwise be incurred or imposed for any death or any injury or loss to person or property that is caused by an act or omission of the volunteer and that results from or is related to the volunteer having unsupervised access to a child on a regular basis. The immunity does not apply to a person, organization, or entity that has immunity under existing R.C. 9.86, 2844.02, or 2744.03 for the good faith compliance, attempted compliance, or failure to comply. The provision specifies that it does not create a new cause of action or substantive legal right against a person, organization, or entity and does not affect any immunities from civil liability or defenses established by another Revised Code section or available at common law, to which a person, organization, or entity may be entitled under circumstances covered by the act.¹⁷

¹⁵ R.C. 109.575 and 109.576.

¹⁶ R.C. 121.402.

¹⁷ R.C. 109.577.

The bill includes a recreational youth athletics organization or entity among the organizations and entities that are immune from civil liability as described in the prior paragraph, but it creates the following specifications for that immunity:¹⁸

(1) In the case of an organization or entity, the organization or entity also must not have acquired any reasonable basis on which to suspect the volunteer has committed an act that would be an offense that would be discovered in the original criminal records check subsequent to the organization or entity's receipt of the results of the criminal records check.

(2) In the case of a recreational youth athletics organization or entity, the organization or entity also must not have acquired any reasonable basis on which to suspect the volunteer has committed an act that would be an offense described above under "**Volunteer coaches for recreational youth athletics organization or entity**," subsequent to the organization or entity's receipt of the results of the criminal records check.

Additionally, the bill specifies that it does not create a new cause of action or substantive legal right against a recreational youth athletics organization or entity, and does not affect any immunities from civil liability or defenses established by another Revised Code section or available at common law, to which a recreational youth athletics organization or entity may be entitled under circumstances not covered by the bill.¹⁹

HISTORY

ACTION	DATE
Introduced	03-27-12

H0498-I-129.docx/emr

¹⁸ R.C. 109.577(A)(1).

¹⁹ R.C. 109.577(B).

