

**Local Mandate Fiscal Impact Estimate  
Kentucky Legislative Research Commission  
2017 Regular Session**

**Part I: Measure Information**

**Bill Request #:** 1710

**Bill #:** HB 402

**Bill Subject/Title:** AN ACT relating to background checks.

**Sponsor:** Representative Addia K Wuchner

Unit of Government:  City  County  Urban-County  
 Charter County  Consolidated Local  Unified Local  
Government

Office(s) Impacted: Law enforcement

Requirement:  Mandatory  Optional

Effect on

Powers & Duties:  Modifies Existing  Adds New  Eliminates Existing

**Part II: Purpose and Mechanics**

HB 402 sets criteria for requiring background checks as a condition of employment primarily at youth camps and establishes penalties against owners and operators who **knowingly** employ an individual with a conviction or offense specified in Section 1.

**Section 1:**

HB 402 creates a new section of Chapter 211 and provides definitions for the following throughout the bill:

- Criminal offense against a minor – a conviction or guilty plea to specific offenses if the victim is under the age of eighteen at the time of the commission.
- Sex crime – a conviction or guilty plea to specific offenses.
- Violent offender – a person who has been convicted or who has entered a guilty plea to the commission of a capital offense, Class A felony, Class B felony involving the death of or the serious injury to the victim, rape in the first degree, or sodomy in the first degree.
- Youth Camp – any camp required to obtain a permit to operate pursuant to public health standards (KRS 211.180) and any free or paid program provided for recreational, educational, sports training, or vacation purposes to children under eighteen years of age that a child attends without his or her parent or guardian.

**Section 2:**

HB 402 creates a new section of Chapter 211 and provides for the following:  
Exempts the following entities from the provisions of Section 1 through 4:

- Public school districts;
- Private schools;
- Child-care centers;
- Child-care and child-placing agencies;
- Family child-care homes; and
- Foster care, relative caregiver services, or adoptive homes governed by the Cabinet of Health and Human Services (CHFS).

**Section 3:**

HB 402 creates a new section of Chapter 211 and provides for the following:  
No youth camp shall employ, contract, or utilize as a volunteer any person who has been convicted of or who has entered a guilty plea to a criminal offense against a minor or a sex crime, who is a violent offender, or who has been found by CHFS or a court to have abused or neglected a child.

Prior to employment, contracting with, or allowing to be a volunteer, and prior to the individual's presence at the youth camp or any camp programs, the person shall undergo a criminal background check from the Justice and Public Safety Cabinet.

Each application form provided by a youth camp to an applicant, contractor, or volunteer shall state the following: "STATE LAW REQUIRES A STATE CRIMINAL BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT OR INVOLVEMENT IN THIS PROGRAM."

Request to the Justice Cabinet for a background check shall be on a form approved by the Cabinet, and the Cabinet may charge a fee to be paid by the subject of the request in an amount no greater than the actual cost of processing the request.

This section applies to all applicants, contractors, or volunteers having supervisory or disciplinary power over a minor.

This section shall not prohibit an exempted organization from requiring its employees, contractors, or volunteers to a background check.

This section shall not limit a youth camp's ability to establish a more stringent background check process for its employees, contractors, or volunteers regarding other criminal offenses which, in the discretion of the youth camp, would disqualify the individual from involvement with the youth camp.

**Section 4:**

Creates a new section of Chapter 211 and provides for the following:

Failure to comply with the Section 3 requirements will result in the immediate suspension of the entity's permit until compliance is reached.

If any employer, contractor, or volunteer is later discovered to have been a violent offender or has been convicted of a sex crime or a criminal offense against a minor, or has been found by CHFS or a court to have abused or neglected a child, he or she will be terminated immediately and removed from the property.

Any person who owns or operates a youth camp and knowingly allows an individual to serve or continue to serve as an employee, contractor, or volunteer despite a conviction or offense specified in this section shall be guilty as a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

Sections 5 and 6, establishes that parents or legal guardians employing a child care provider may, with the consent of the childcare provider, request a background check from CHFS. The sections also expands the type of background checks that superintendents of school districts shall or may require of employees, contractors, volunteers, or visitors.

### **Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost**

**The fiscal impact of HB 402 on local governments is expected to be minimal.**

The procedures, personnel, and facilities to implement HB 402 are already in place. There will be cost associated with disseminating the changes in law and training local law enforcement as to the changes in the law, most of which are expansions of the current law.

Any background check performed by CHFS on behalf of a youth camp or school district within the boundary of a local government is a reimbursable expense to CHFS and will have no fiscal impact on local government.

#### **Section 4:**

Any person who owns or operates a youth camp and knowingly allows an individual to serve or continue to serve as an employee, contractor, or volunteer despite a conviction of offense specified in this section shall be guilty as a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

A person convicted of a Class A misdemeanor may be incarcerated for up to twelve months. Misdemeanants are housed in one of Kentucky's 76 full service jails or five life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a D felon. Since the per diem pays for the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

**Data Source(s):** LRC Staff

**Preparer:** Wendell F. Butler      **Reviewer:** KHC      **Date:** 2/20/17