



Criminal Records Checks FAQ

OSBA Legal Division

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What are the criminal records check requirements for licensed employees?

Substitute House Bill (HB) 190, passed in November 2007, required criminal records checks from both the Bureau of Criminal Identification and Investigation (BCII) and the Federal Bureau of Investigation (FBI) for all school employees licensed by the Ohio Department of Education (ODE). Criminal records checks have been required for ODE license, certificate and permit holders since 1993. However, prior law permitted a criminal records check through *BCII only*, if the person had lived in Ohio for the five years prior to the records check.

What are the criminal records check requirements for current, nonlicensed employees?

For current school district employees who are not licensed by ODE and who are not bus drivers, HB 190 requires the district to request criminal records checks by Sept. 5, 2008 (RC (Ohio Revised Code) 3319.391).

Substitute HB 428, effective September 12, 2008, requires these criminal records checks to be conducted by September 5, every five years. This will make keeping track of criminal records checks and renewals for nonlicensed employees much simpler for districts.

Ex: Jim was hired as a custodian in 1982, prior to the enactment of the law requiring criminal records checks for job applicants. The district requested his criminal records check in February 2008, to comply with the requirements of HB 190. The check came back without any disqualifying offenses, so he remains an employee in the district. The district will have to request his next criminal records check not in February 2013 (five years after the previous check), but by September 5 of that year, along with every other nonlicensed employee who receives a criminal records check in 2008.

What are the criminal records check requirements for job applicants?

HB 190 made a slight change to the requirements for criminal records checks for job applicants. Districts must still obtain criminal records checks for applicants under final consideration for a position; however all applicants must now obtain both BCII and FBI criminal records checks (RC 3319.39). Prior law excused applicants who had resided in Ohio for the preceding 5 years from the FBI requirement. The law does not require a criminal records check for applicants who are applying for a different position in the same school. No such exception exists for applicants applying for a position in a different school district. The new district could accept a copy of the applicant's prior criminal records check if it was completed within the previous year.

Do school board members have to get criminal records checks?

Ohio law does not require criminal records checks for traditional public school board members, and school boards may not impose such a requirement by policy. However, SB 3, enacted May 2008, limits certain convicted felons' ability to hold a position of honor, trust or profit, which includes being elected to a board of education. Boards of education may not further limit the ability of an individual from becoming, or serving as, a public official, including requiring criminal records checks. This would be an unconstitutional limitation on the individual's rights to political expression. Nothing would prohibit an individual board member from voluntarily submitting to a criminal records check. Criminal records checks are not public records and may not be disclosed by the school district (R.C. 3319.39(D)).

Are adult education instructors required to have criminal records checks?

Adult education instructors must obtain a criminal records check. HB 428 created an exception with regard to the FBI portion of the criminal records check for some employees. A BCII check, but not an FBI check is required if the individual (1) is applying to be an instructor of adult education; (2) in a position that does not involve routine interaction with a child or regular responsibility for the care, custody or control of a child or another employee will be present with the adult instructor and the child and (3) presents proof that they have

been a resident of Ohio for previous five years or they have received a FBI background check in the previous five years. (RC 3319.39 (A)(1)(a)-(c)).

May we require criminal records checks of volunteers?

Ohio law does not require criminal records checks for most volunteers. However, school boards may require them by policy.

If the volunteer will have “unsupervised access” to a child on a “regular basis,” the district is required to notify the volunteer that fingerprints and a criminal records check may be conducted at any time (RC 109.575).

If the school district does conduct a criminal records check on volunteers, it must determine whether the volunteer was convicted of or pled guilty to an offense listed in RC 109.572(A)(1). If the volunteer was convicted or pled guilty and the district decides to accept or retain the volunteer, the district must notify parents of the fact that the person has a conviction listed in the statute, but will still be accepted or retained as a volunteer (RC 109.576).

What are the criminal records check requirements for contractors?

HB 190 required criminal records checks of private contractors. RC 3319.391 currently requires a criminal records check for any person, other than a pupil transportation operator, who is:

- (1) hired to work in a school district, educational service center or chartered nonpublic school and
- (2) in any position that does not require a “license” issued by the State Board of Education.

This definition is very broad and OSBA along with others worked to get this language changed. New RC 3319.392, which is effective September 12, 2008, changes this standard.

Beginning September 12, 2008, criminal records checks will be required for contractors who meet the following four criteria:

- (1) the contractor is an employee of a private company under contract with the district to provide “essential school services”;
- (2) he or she works in a position involving routine interaction with a child or regular responsibility for the care, custody or control of a child;
- (3) he or she is not licensed by ODE; *and*
- (4) he or she is not a bus driver.

“Essential school services” are those services which:

- (1) are provided by a private company under a contract with the district;
- (2) the district's superintendent has determined are necessary for the operation of the district; *and*
- (3) that would be provided by district employees if not for the private company.

If a contractor meets the definitions above and is covered by this statute, the district may not allow that contractor to work in the district unless the contractor’s employer provides documentation of a criminal records check or the district adopts certain safety measures to safeguard students. The contractor’s employer may provide proof that the person has (1) been subject to a criminal records check in the five years prior to the date for the proposed work and (2) the criminal records check indicates they have not been convicted of or pleaded guilty to any offense listed in RC 3319.39(B)(1). Instead of a criminal records check for a contractor who meets the definitions above, the district may require an employee of the district to be present in the same room with the child or within a 30-yard radius of the child if they are outside.

Which standard should we follow *this summer* for our contractors?

The HB 190 standard mentioned in the first paragraph above *is the law* until September 12, 2008. Boards are advised to consult with their board attorney to determine how expansively to interpret this standard.

May private companies request criminal records checks through BCII?

Yes. In order to comply with RC 3319.392, private companies may request criminal records checks through BCII.

What if BCII does not send back a criminal records check until after September 5?

RC 3319.391 directs school districts and ESCs to “request a criminal records check” for employees hired before November 14, 2007 by September 5, 2008. The statute does not mandate that a completed report from BCII and FBI be in hand by September 5.

What happens if an applicant refuses to submit fingerprints or information for a criminal records check?

For an applicant, you cannot hire him or her (RC 3319.39).

Who pays for the criminal records checks?

HB 190 did not change who is required to pay for criminal records checks. All applicants under final consideration for employment are required to have criminal records checks. Payment is a local decision.

How much can we charge for criminal records checks?

RC 3319.39 permits school districts to charge a fee for a criminal records check, not to exceed the amount charged by BCII and FBI. The current prices are \$22 for BCII and \$24 for FBI. RC 109.572(C)(2) authorizes entities making fingerprint impressions to charge a reasonable fee for that service.

May we still hire an employee “conditionally” pending a successful criminal records check?

Yes (RC 3319.39(B)(2)). Note that with regard to school bus drivers, there is an apparent conflict between the Administrative Code and the Revised Code. RC 3319.39 provides an exception to hire individuals conditionally. RC 3327.10 (J)(1) requires criminal records checks for persons hired on or after November 14, 2007 “in accordance with section 3319.39” for persons hired by a school board to transport pupils. However, Ohio Administrative Code (OAC) section 3301-8-06 requires a satisfactory report prior to hiring a school bus driver.

Are criminal records checks subject to the Ohio Public Records Law?

No (RC 3319.39(D)). Not only are they not public records, but they may not be released to any person but the applicant, the applicant’s representative, the board requesting the criminal records check, court, hearing officer or other necessary individual involved in a case dealing with the denial of employment to the applicant.

How long is a criminal records check valid?

Criminal records checks are valid for one year. A board of education may accept a copy of a certified copy of records that were issued by BCII for up to one year after the date of their issuance by the bureau (RC 109.57 (F)(2)(b)). ODE may accept a copy of a certified copy of a criminal records check that has been conducted within the immediately preceding year (RC 3319.291 (C)).

How long are we required to keep criminal records check reports?

Ohio law does not set a specific time period for which criminal records checks must be retained, except for bus drivers. OAC 3301-83-06 requires districts to retain records of bus driver criminal records checks for six years.

Guidelines from the Auditor of State and Ohio Historical Society do not specify a length of time for retaining criminal records checks, instead recommending they be placed in the employee's personnel file and retained as long as that file is retained. Because districts are required to obtain criminal records checks for employees every five years, it is recommended that the district retain these checks for a minimum of six years. For applicants who are never hired, it is suggested that they be retained until the end of the fiscal year in which the job was open. Remember, even when placed in an employee's personnel file, criminal records checks are not public records (RC 3319.39(D)).

What offenses disqualify an employee from working in the district?

Before September 12, 2008

Consult [ODE's Matrix](#)

After September 12, 2008

No board of education may hire a person who has been convicted of or pleaded guilty to any of the offenses listed in RC 3319.39 (B)(1). This prohibition applies to all employees, both licensed and nonlicensed. Individuals who are licensed by the State Board of Education may not be employed by a board of education if they have plead guilty to or been convicted of certain additional offenses (RC 3319.31(B)). Both of these laws establishing offenses that are bars to employment are subject rehabilitation criteria established by the State Board (RC 3319.39 (E)). These criteria, established in OAC 3301-20-01, allow individuals with certain criminal convictions to be hired if they satisfy the rehabilitation criteria. Bus drivers may not be hired if they plead guilty to or been convicted of an offense listed in RC 3319.31(C) (RC 3327.10(K)). The rehabilitation criteria do not apply to bus drivers.

[RC 3319.31\(B\)\(2\) offenses](#)

[RC 3319.31\(C\) offenses.](#)

[RC 3319.39\(B\)\(1\) offenses.](#)

RC 3319.39(B)(3) additionally prohibits a district from employing a "teacher" who has been convicted of or pleaded guilty to any of the RC 3319.31 offenses listed below. "Teacher" includes anyone who holds an educator license or permit under RC 3319.22 or 3319.301.

A plea of guilty to, a finding of guilt by a jury or court of, or a conviction of any of the following if they are not automatic revocation offenses:

- A felony;
- An offense of violence;
- A theft offense as defined in RC 2913.01;
- A drug abuse offense defined in RC 2925.01, that is not a minor misdemeanor;
- A violation of an ordinance of a municipal corporation that is substantively comparable to any of the above.

A finding of eligibility for intervention in lieu of conviction or agreeing to a pre-trial diversion or similar program for any of the above offenses or an automatic revocation offense.

Failure to comply with the misconduct reporting requirements of RC 3314.40, 3319.313, 3326.24 or 5126.253.

What offenses are eligible for rehabilitation?

Some offenses are eligible for rehabilitation, which means that the district may employ, and the State Board may issue a license to, a person who was convicted of an offense that would normally bar their employment or

licensure. In order to be eligible for rehabilitation, the conviction must not be an offense of violence, a theft offense, a drug abuse offense or a sexually oriented offense as defined in OAC 3301-20-01. If the conviction is not listed in the rule, then the following criteria must also apply:

The victim was not under 18 or enrolled as a student in a district;

If the offense was a felony, five years have passed since the person was released from prison, probation or parole, or the conviction was sealed or expunged;

If the offense was a misdemeanor, five years have passed since the date of conviction or the conviction was sealed or expunged;

The applicant has not been convicted of or pled guilty to RC 3319.39(B)(1) or 3319.31 offenses two or more times in separate criminal actions;

The applicant provides written confirmation of his or her rehabilitation efforts;

A reasonable person would conclude hiring or licensure will not jeopardize the health, safety or welfare of the persons served by the district, considering the following:

- The nature and seriousness of the crime;
- The extent of the applicant's past criminal activity;
- The age of the applicant when the crime was committed;
- The amount of time that has elapsed since the applicant's last criminal activity;
- The conduct and work activity of the applicant before and after the criminal activity;
- Whether the applicant has completed the terms of his probation or deferred adjudication;
- Evidence of rehabilitation;
- Whether the applicant fully disclosed the crime to the state board, the department and the district;
- Whether employment or licensure will have a negative impact on the local education community;
- Whether employment or licensure will have a negative impact on the state-wide education community; and
- Any other factors the State Board, district, or superintendent considers relevant.

The above information is currently the law. The State Board currently is revising OAC 3301-20-01 to address the changes made by HB 428. More information on rehabilitation is available by viewing [ODE's Matrix](#).

Are nonlicensed individuals subject to the rehabilitation criteria?

Yes (RC 3319.391 (C)).

What if an offense was sealed or expunged?

Sealed and expunged offenses may still appear on the BCII criminal records check. If a sealed or expunged offense is a disqualifying offense, and it is not eligible for rehabilitation, then the district may not employ the individual.

How long does it take to receive the criminal records check from BCII?

BCII is required by statute to return a report within 30 days of the request (RC 109.57 (F)(2)(a)). For the September 5 deadline, the statute only requires districts to *request* criminal records checks by that date.

Can our ESC handle criminal records checks for substitute teachers?

Yes, under continuing law. HB 428 additionally authorized ESCs to handle criminal records checks for all substitute employees (RC 3319.39 (H)).

What offenses will get an educator license automatically revoked or denied?

Beginning September 12, 2008, the State Board will revoke or deny issuance or renewal of a license for a person who has plead guilty to, found guilty of, or been convicted of any of the “automatic revocation” offenses. See the [RC 3319.31\(C\) offenses](#).

If the individual appeals the conviction that led to the automatic revocation of his or her license, and the conviction is overturned, the State Board will reconsider the license revocation, and may choose to reinstate the license.

What other offenses can result in losing a license?

Beginning September 12, 2008, the State Board may also refuse to issue, limit, suspend or revoke a license to an applicant or licensee for any of the following reasons:

Engaging in an immoral act, incompetence, negligence or conduct that is unbecoming to the applicant’s or person’s position;

A plea of guilty to, a finding of guilt by a jury or court of, or a conviction of any of the following if they are not automatic revocation offenses:

- A felony;
- An offense of violence;
- A theft offense as defined in RC 2913.01;
- A drug abuse offense defined in RC 2925.01, that is not a minor misdemeanor;
- A violation of an ordinance of a municipal corporation that is substantively comparable to any of the above.

A finding of eligibility for intervention in lieu of conviction or agreeing to a pre-trial diversion or similar program for any of the above offenses or an automatic revocation offense.

Failure to comply with the misconduct reporting requirements of RC 3314.40, 3319.313, 3326.24 or 5126.253.

What if a nonlicensed employee refuses to be fingerprinted or supply the information required for the criminal records check?

The statute does not give explicit authority to terminate an employee for failing to submit to a criminal records check. However, the new law clearly imposes on districts a duty to request and obtain criminal records checks on all nonlicensed employees. Submitting to a criminal records check should be viewed as a condition of employment for all applicants and current employees.

What if a licensed employee refuses to be fingerprinted or supply the information required for the criminal records check?

Beginning September 12, 2008, if a person with a professional or permanent teaching certificate fails to submit fingerprints and permission to conduct a criminal records check, ODE will send them a letter demanding the prints and permission for the records check within 15 days. If the person fails to respond within 15 days, ODE will issue a written order inactivating the person’s teaching certificate (RC 3319.291 (D)(1)).

All other licensed individuals will have to submit fingerprints and permission to conduct a criminal records check as part of the process to apply for, or renew, their license. If the applicant or licensee fails to submit such information, ODE will reject their application for a license or renewal.

May we still employ a teacher whose license is inactivated or not renewed because of failure to submit fingerprints?

Ohio law prohibits paying an individual to perform the duties of a teacher if that individual has not obtained a license (RC 3313.30). This applies to individuals whose licenses are not renewed due to a lack of a criminal records check. Without a valid license, the district has no obligation to continue to employ the individual.

If I have multiple licenses, do I have to get a criminal records check each time I renew each of my licenses?

Am. Sub. HB 562, the capital reappropriations bill, included language that will alleviate this problem. RC 3319.291, effective September 22, 2008, applies to a person who holds more than one certificate, license or permit issued by ODE.

If the certificates, licenses or permits are of different durations: The holder will only have to get a criminal records check when renewing the certificate, license or permit with the longest duration. Prior to renewing a certificate, license or permit of a shorter duration, ODE will check for information on the applicant in the retained applicant fingerprint database.

If the licenses, certificates or permits expire in the same year: ODE will only require one criminal records check.

If the licenses, certificates or permits are of the same duration but do not expire in the same year: The person must designate one certificate as the person's "primary" certificate, license or permit. The person will only need to get a criminal records check when renewing the primary certificate, license or permit. ODE will check for information on the applicant for renewal in the retained applicant fingerprint database prior to renewing any non-primary license, certificate or permit.

Is it still possible to align licenses?

Alignment of multiple licenses is still an option, and will save most licensees money. See [ODE's Alignment of Licensure Explanation](#).

What is the retained applicant fingerprint database?

The retained applicant fingerprint database is compiled and maintained by BCII and is sometimes referred to as "rap back" (RC 109.5721). It contains the fingerprints of everyone for whom BCII has conducted a criminal records check. This database enables BCII to cross-reference arrests with fingerprints in the database. HB 428 requires ODE to participate in the database, and receive notice from BCII if any of its licensees is arrested or convicted (RC 3319.316). Presumably, the State Board would notify the local district when it receives such information.

When do we have to remove a school employee from the classroom?

Beginning September 12, 2008, RC 3319.40 requires schools to suspend employees from duties that involve the care, study or control of children when they commit certain offenses. For employees who are licensed, the offenses are those that result in automatic revocation of a license if convicted, listed in RC 3319.31(C). For employees not licensed by the Ohio Department of Education (ODE), the offenses are the offenses that are bars to employment for all school employees, listed in RC 3319.39 (B)(1).

See [Suspension from Duties](#) for the list of offenses.

How will we know when an employee has been arrested?

ODE is now a participating agency in the retained applicant fingerprint database. It will receive notice whenever a licensee is arrested or convicted (RC 3319.316). Presumably, ODE will notify your district of a licensee who has been arrested for or convicted of a disqualifying offense.

For nonlicensed individuals, the arresting entity may notify the school district of the arrest or indictment, or they may find out from members of the community. Schools may choose to participate in the retained applicant fingerprint database for their nonlicensed employees, by paying a \$5 initial fee per person and an additional \$5 per person per year OAC 109:5-1-03).

How will we know when an employee has been convicted?

The prosecutor on the case is required to notify the district whenever an employee of a board of education is convicted of, pleads guilty to, opts for intervention in lieu of conviction or a pre-trial diversion program for committing a felony, unlawful sex with a minor, gross sexual imposition, sexual imposition, importuning, an offense of violence, a theft offense, a drug abuse offense that is not a minor misdemeanor or any violation of a municipal ordinance that is substantively similar.

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