



# Criminal records checks

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*This fact sheet is designed to address the most frequently asked questions about criminal records checks in Ohio. The information is of a general nature. Readers should seek the advice of legal counsel for specific legal problems or questions.*

## **What are the criminal records check requirements for:**

### *Licensed employees*

Pursuant to Ohio Revised Code Section (RC) 3319.291, criminal records checks are required for licensed employees when they initially apply for or renew a certificate, license or permit issued by the Ohio Department of Education (ODE) unless they have undergone a records check less than five years prior to that time. The law requires a criminal records check from the Bureau of Criminal Investigation (BCI) and FBI, unless the individual can demonstrate that he or she has been a resident of Ohio for the preceding five years and has previously been subject to a BCI check, in which case only a FBI check is required.

### *Nonlicensed employees*

Pursuant to RC 3319.391, criminal records checks are required for nonlicensed employees who are not licensed by ODE and who are not bus drivers upon their initial hire. Subsequent checks are required by Sept. 5 every fifth year thereafter. The law requires a criminal records check from BCI and FBI, unless the individual can demonstrate that he or she has been a resident of Ohio for the preceding five years and has previously been subject to a BCI check, in which case only an FBI check is required.

### *Transportation employees*

Pursuant to RC 3327.10, criminal records checks are required for transportation employees prior to being hired. Subsequent checks are required every sixth year thereafter. The law requires a criminal records check from BCI and FBI unless the individual can demonstrate that he or she has been a resident of Ohio for the preceding five years and has previously been subject to a BCI check, in which case only an FBI check is required.

### *Board members*

Ohio law does not require criminal records checks for public school board members, and school boards may not impose such a requirement by policy. Requiring a public official to submit to a criminal records check could limit the ability of an individual from serving as a public official and might be viewed as an unconstitutional limitation on the individual's right to political expression. Nothing prohibits an individual board member from voluntarily submitting to a criminal records check.

RC 2961.01 limits the abilities of certain convicted felons to hold a position of honor, trust or profit, which includes being elected to a board of education.

### *Adult education instructors*

Pursuant to RC 3319.39(A)(1), adult education instructors are only required to have a BCI check if the individual has been a resident of Ohio for the five years prior to the records check and the job will not involve routine interactions with children or, if routine interactions with children will occur,

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the person's duties are always performed when another school employee is present in the same room, or if outdoors, when another school employee is in visual contact or within a 30-yard radius.

Adult education instructors who are being rehired for short-term employment and whose duties do not involve routine interaction with children are not required to have a records check if they have previously undergone a records check in the same district in the preceding two-year period.

#### *Preschool employees*

RC 3301.541 requires applicants for preschool positions involving the care, custody or control of a child to complete a criminal records check. If the person can demonstrate that he or she has been a resident of Ohio for the five years prior to the records check, they will need only a BCI check. See RC 3301.541 for the list of disqualifying offenses.

#### *Community schools*

Pursuant to RC 3314.19(I) and RC 3326.23(G), the sponsor of each community school must provide annual assurances to ODE on the school's compliance with certain laws in preparation for the upcoming school year. One required assurance is that the community school has complied with the requirement to conduct a criminal records check with respect to all employees and that the school has conducted a criminal records check of each of its governing authority members.

#### *Volunteers*

Ohio law does not require criminal records checks for most volunteers. However, school boards may require them by policy. If a criminal records check is conducted on a volunteer and the check reveals that the individual was convicted of or pleaded guilty to an offense listed in RC 109.572(A)(1), the district may no longer use the volunteer in a position involving unsupervised access to children on a regular basis unless a notice is sent to parents. The notice must name the volunteer and indicate that the volunteer has been convicted of or entered a guilty plea to one or more of the prohibited violations. The notice may not identify the specific offense(s).

Additionally, 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. Unsupervised means 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 18 years of age or older is within a 30-yard radius of the child or has visual contact with the child.

#### *Contractors*

Pursuant to RC 3319.392, criminal records checks are required for contractors who:

- are employed by a private company under contract with the district to provide "essential school services," such as services the district's superintendent has determined are necessary for the operation of the district and would be provided by district employees if not for the private company;
- work in a position involving routine interaction with a child or regular responsibility for the care, custody or control of a child;
- are not licensed by ODE;
- are not bus drivers.

To comply with RC 3319.392, private companies may request criminal records checks through BCI.

A school district is not required to conduct a criminal records check if the private company can demonstrate that the contractor has been subject to a criminal records check in the five years prior to the date for the proposed work and the check indicates that the contractor has not been convicted of or pleaded guilty to any offense listed in RC 3319.39(B)(1). In lieu of a criminal records check, the district also may require a district employee to be present in the same room with the child or within a 30-yard radius of the child if outside.

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

Pursuant to RC 3319.291, if a person holds more than one certificate, license or permit, the following applies:

- *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 his or her "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 nonprimary license, certificate or permit.

### **How long does it take to receive the criminal records check from BCI?**

BCI is required by statute to return a report within 30 days of the request (RC 109.57(F)(2)(a)).

### **Can our ESC handle criminal records checks for substitute teachers?**

Yes, RC 3319.39(H) authorizes ESCs to handle criminal records checks for all substitute employees. The local school district must adopt a resolution requesting the assistance of the ESC in which the local district has territory.

### **Who pays for the criminal records checks?**

Payment is a local decision. RC 3319.39 allows school districts to charge a fee to applicants for a criminal records check, not to exceed the amount charged by BCI and FBI. RC 109.572(C)(2) authorizes entities making fingerprint impressions to charge a reasonable fee for that service.

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

RC 3319.39(B)(2) states that a school board may employ an applicant conditionally until the criminal records check is completed and the board receives the results of the check. However Ohio Administrative Code (OAC) 3301-83-06 requires school bus and van drivers, bus aides, on-the-bus instructors and transportation directors and supervisors to have a satisfactory criminal background report prior to being hired by the district.

### **Are criminal records checks subject to the Ohio Public Records Laws?**

RC 3319.39(D) states that criminal records checks are not public records under the Ohio Public Records Laws. Not only are they not public records, but they also may not be released to any person but the applicant, the applicant’s representative, the board requesting the criminal records check or a court, hearing officer or other necessary individual involved in a case dealing with the denial of employment to the applicant.

### **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 Ohio auditor of state and Ohio History Connection 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 certain 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 their criminal records checks 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)).

### **How long is a criminal records check valid?**

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

### **What offenses disqualify an employee from working in the district?**

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)(a). This prohibition applies to all employees, both *licensed and nonlicensed, and transportation employees*.

Individuals who are *licensed* by the State Board of Education may lose their licenses if they have pleaded guilty to or been convicted of any of the offenses set forth in RC 3319.31(B). The State Board of Education is required to revoke a license if the individual has pleaded guilty to or been convicted of any of the automatic revocation offenses set forth in RC 3319.31(C).

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

*Bus drivers* may not be hired if they have pleaded guilty to or been convicted of an offense listed in RC 3319.31(C) (RC 3327.10(K)).

The offenses that are bars to employment are subject to rehabilitation criteria established by the State Board of Education. The criteria are set forth in OAC 3301-20-01 (licensed employees), 3301-20-03 (nonlicensed employees) and 3301-83-23 (transportation employees), and allow individuals with certain criminal convictions to be hired if they satisfy the rehabilitation criteria.

**What if an offense was sealed or expunged?**

Sealed and expunged offenses may appear on the BCI criminal records check (RC 109.57(F)(2)(a)). If a sealed or expunged offense is a disqualifying offense and it is not eligible for rehabilitation, a district may not employ the individual.

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

RC 3319.40 requires schools suspend employees from duties that involve the care, custody or control of children when they are arrested, summoned or indicted for an alleged violation of certain offenses. For employees who are licensed, the offenses are those listed in RC 3319.31(C). For employees not licensed by ODE, the offenses are listed in RC 3319.39(B)(1).

**What is the retained applicant fingerprint database?**

The retained applicant fingerprint database is compiled and maintained by BCI and is sometimes referred to as "rap back" (RC 109.5721). It contains the fingerprints of everyone for whom BCI has conducted a criminal records check. This database enables BCI to cross-reference arrests with fingerprints in the database. ODE participates in the database and receives notice from BCI if any licensed employee is arrested or convicted (RC 3319.316). ODE has interpreted Ohio laws to also include school transportation employees in rap back. As a result, transportation employees are entered into rap back at the time of their initial criminal records check, and ODE will receive notification of any subsequent arrests or convictions. Presumably, ODE would notify the local district when it receives such information.

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 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 when an employee of a board of education is convicted of, pleads guilty to or 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 (RC 3319.20).

*The information in this fact sheet is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.*