



Required records checks

Criminal records checks – what you need to know

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If Ohio's criminal records checks laws confuse you, rest assured you are not alone. There are more than 20 statutes and rules outlining who must be checked and how frequently, the process and procedures that must be followed and the requirements for maintaining or releasing the results.

Once you add the list of disqualifying offenses and an employee's options for rehabilitation, more than 100 different statutes are involved. Add to that the fact that the laws underwent several major legislative overhauls over the past decade, and it's no wonder there is confusion over the current legal requirements in this extremely important area.

Let's take a good look at the current status of criminal records check requirements in Ohio and identify resources available to school districts.

Why

In light of the confusion, why is it so important to do criminal records checks? The simplest answer is also the one reiterated through the Ohio Department of Education's (ODE) rules. The rules governing criminal records checks for licensed (Ohio Administrative Code (OAC) 3301-20-01), nonlicensed (OAC 3301-20-03) and transportation employees (OAC 3301-83-23) all state the same thing: "The purpose of this rule is to provide for the safety and well-being of students."

People with serious criminal records may not be fit to have responsibility for the safety and well-being of children. Additionally, your district cannot legally hire individuals with certain criminal

offenses. Running a criminal records check will bring those offenses to light and help ensure the district is protected against an unlawful hire.

Who

Section 3319.39 of the Ohio Revised Code (RC) requires the appointing or hiring officer of a board of education to request a criminal records check for anyone who has applied for employment with the school district, educational service center or school. This requirement casts a fairly wide net and includes most individuals who routinely work with the district, including, but not limited to administrators, teachers, bus drivers, substitute teachers, coaches, educational aides, custodians and food service workers.

However, there are some individuals who are not required to have criminal records checks under Ohio law. For example, state law does not require criminal records checks for traditional public school board members, and school boards are prohibited from requiring them 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 would be an unconstitutional limitation on the individual's right to political expression.

Ohio law also does not require criminal records checks for most volunteers, although a school board may require them by policy. Regardless of whether the district requires the checks, 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.

OSBA has developed two resources to help districts determine the criminal records check requirements for specific groups of employees. Check out the "Criminal records check" fact sheet and the "Criminal records check requirements for school employees" chart, which are both available on the legal division's "Resources by Topic" page at www.ohioschoolboards.org/resources-by-topic.

What

The Ohio Bureau of Criminal Investigation (BCI) offers two separate types of criminal records checks. The first is a state background check. This check uses an individual's name, Social Security number and two fingerprints, and checks the state's central repository for criminal records in Ohio. In order for a "match" to be generated, the record must match at least two out of the three identifiers.

The check currently costs \$22, but the Ohio attorney general's office has filed an administrative rule that would raise this to \$25 by July 1, 2013, and \$28 by July 2, 2014. The second check is the FBI check. The FBI check provides official nationwide checks and runs a check on all 10 fingerprints. This check costs \$24.

In general, the first time an individual is checked, he or she is required to

have both a BCI and FBI criminal background check. If 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, only the FBI check is required on subsequent checks.

Although a school district may accept a certified copy of a criminal records check that took place within the year, school districts should not accept a criminal records check from another state. States apply different standards when they conduct their criminal records checks and a “clear” check from Texas doesn’t necessarily mean the individual would be eligible for employment in Ohio.

When

Generally, criminal records checks are required upon a new employee’s initial hire. In most cases, the school board may employ an applicant conditionally until the criminal records check is complete and the board receives the results of the check. However, this is not the case with transportation employees, including school bus drivers and drivers of vehicles other than school buses used for pupil transportation. OAC 3301-83-06 requires certain transportation employees to have a satisfactory criminal background report prior to being hired by the district.

Subsequent criminal records checks are required for most employees, but the length of time that may pass between the initial check and any subsequent check depends on the type of employee. Most licensed employees, for example, are required to have a subsequent criminal record check when they renew their license or certification. Nonlicensed employees and permanent certificate holders are required to have criminal records checks every five years by Sept. 5.

Since criminal records checks became mandatory for most nonlicensed employees in 2008, many nonlicensed employees will hit the five-year mark this year and be required to have a new check. Keep in mind that so long as 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, only the FBI check is required.

See the “Criminal records check” fact sheet and the “Criminal records check requirements for school employees” chart on OSBA’s website for a list of when subsequent criminal records checks are required for each category of school employees.

Rap back

BCI is required by law to establish and maintain a database of fingerprints from prior criminal records checks. This database is called the retained applicant fingerprint database, and is more commonly known as “rap back.”

Under RC 109.5721, when the bureau receives information that an individual whose name is in the rap back database has been arrested for, convicted of or pleaded guilty to any offense, BCI is required to promptly notify any participating public office. ODE is a “participating public office” under the statute and receives notification from the bureau on any person to whom the state board has issued a license.

Presumably, ODE would notify the local district when it receives any notification from BCI. For nonlicensed individuals, schools may choose to participate in rap back for their nonlicensed employees by paying a \$5 initial fee per person and an additional \$5 per person annually

While the rap back database may help school districts determine their employees’ continued eligibility for employment, the system is not foolproof. An offense only goes to rap back if fingerprints were taken, which leaves a number of offenses out of the database.

Additionally, rap back doesn’t pick up open-ended cases, so if an individual was arrested, but the case was never resolved and entered into the system, it would not show up in the rap back database.

As a result, the school may hear about an individual’s offense not from the rap back database, but from the arresting entity or members of the community. Schools may need to follow up with the clerk of courts in their jurisdiction to learn how the case was resolved and whether the offense will have any impact on the individual’s continued employment with the district.

Where

There are a number of entities that conduct criminal records checks for school district applicants and employees. Many school districts and ESCs serve as agents and transmit fingerprints and other data electronically to BCI. The Ohio attorney general’s website also has a list of local law enforcement agencies and other WebCheck locations that users can search by county or ZIP code. Visit <http://links.ohioschoolboards.org/72276> for a complete listing.

Disqualifying offenses

When a district requests a criminal records check from BCI, the district will receive any information the bureau determines exists on an individual, including information contained in sealed records. Offenses that appear on criminal records checks fall into three categories: offenses that are absolute bars to employment, disqualifying offenses that are eligible for rehabilitation and offenses that do not disqualify an individual from working in the district.

The list of disqualifying offenses varies significantly depending on the type of position. OSBA has created a list of the offenses that serve as absolute bars to employment — as well as a list of disqualifying offenses that are eligible for rehabilitation — which are available on OSBA’s website.

The rehabilitation rules in OAC clarify when and under what conditions an applicant or employee with a criminal conviction may be employed by a school district. OAC 3301-20-01 sets forth the conditions for licensed employees; OAC 3301-20-03 sets forth the conditions for nonlicensed employees; and OAC

3301-83-23 sets forth the conditions for transportation employees.

All three rules state that a district may employ an individual with a criminal conviction that is not an absolute bar to employment provided certain criteria

are met. That criteria includes, but is not limited to, the following:

- At the time of the offense, the victim of the offense was not a person under 18 years of age or enrolled as a student in the district.
- The district has received written

confirmation from the court, a parole officer, a probation officer and/or a counselor that the individual has been rehabilitated.

- A reasonable person would conclude that the individual's hiring would not jeopardize the health, safety or welfare of the persons served by the district. Evidence includes, but is not limited to, factors like 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, whether employment will have a negative impact on the local education community and any other factors the board considers relevant.

It is the applicant or employee's responsibility to provide written evidence of rehabilitation. If the applicant or employee can demonstrate that he or she meets the rehabilitation criteria, the applicant or employee is eligible for employment. There is no mandate or requirement that employment is granted. It is still left to the discretion of the district as to who is to be recommended to the local board of education for employment.

OSBA has updated several of its resources on criminal records checks for school districts in Ohio. To locate those resources, visit <http://links.ohioschoolboards.org/43698> or contact the division of legal services.

The legal division will host a webinar on the criminal records checks requirements on May 9 from 1:30 p.m. to 2:30 p.m. The webinar will review who needs to be checked and when. It also will include practical resources to help districts comply with the law. The cost to view the webinar is \$35. Visit www.ohioschoolboards.org/event-listings to register. ■

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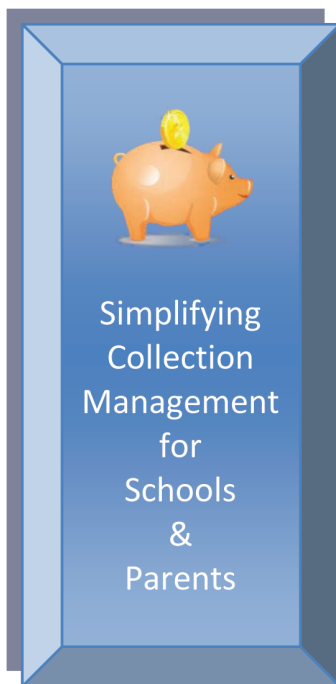
- Fees
- Activities
- After School Programs

Fees

- Tuition
- Book Fees
- Class Fees
- Etc.

Activities

- Swim Classes
- Prom Tickets
- Etc.



Lunch Service

- Student Accounts
- Auto Replenishment
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After School Programs

- Tutoring
- Child Care
- Etc.

Fundraisers

- Flowers
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- Etc.

... *needed* by schools ...

**Contact: Bob Reolfi, Esber Cash Register,
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