



## Ohio Administrative Code

### Rule 3301-83-23 Employment of school bus and van drivers with certain criminal convictions.

Effective: April 25, 2019

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#### (A) Definitions

- (1) Applicant means one who is under final consideration for appointment or employment as a pupil transportation driver.
- (2) Criminal records check has the same meaning as in section 109.572 of the Revised Code. For the purposes of this rule, date of criminal records check shall mean the date of receipt of the results of a background check requested by a district or employer, which shall be time-stamped by the district on the date of receipt by the district.
- (3) School means a school district as described in section 3311.01 of the Revised Code, a municipal school district as described in section 3311.71 of the Revised Code, an educational service center, a community school, a county department of developmental disabilities, a chartered non-public school, or a preschool program.
- (4) Employee means a current employee of a school district or employer as a school transportation driver who is subject to the requirements of a background check pursuant to section 3327.10 of the Revised Code.
- (5) Offense for the purposes of this rule means an offense as listed in sections of the Revised Code as listed in this rule and includes any municipal ordinance, law of this state, another state, or the United States that is substantially equivalent to one of the offenses referred to in this rule.
- (6) Non-rehabilitative offense means a criminal offense that would prohibit an employer from hiring or continuing employment of such an individual, and are the following:
  - (a) Sexually-oriented offenses: section 2907.02 (rape), 2907.03 (sexual battery), 2907.04 (unlawful sexual conduct with a minor), 2907.05 (gross sexual imposition), 2907.06 (sexual imposition),



2907.07 (importuning), 2907.21 (compelling prostitution), 2907.22 (promoting prostitution), 2907.23 (procuring), 2907.25 (prostitution; after positive HIV test), 2907.31 (disseminating matter harmful to juveniles), 2907.32 (pandering obscenity), 2907.321 (pandering obscenity involving a minor), 2907.322 (pandering sexually oriented matter involving a minor), or 2907.323 (illegal use of a minor in nudity-oriented material or performance) of the Revised Code or a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code.

(b) Child-related violent offenses: section 2905.01 (kidnapping), 2905.02 (abduction), 2905.05 (criminal child enticement), or 2919.23 (interference of custody) of the Revised Code that would have been a violation of section 2905.04 (child stealing) of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, division (B)(1), (B)(2), (B)(3), or (B)(4) of section 2919.22 (endangering children) of the Revised Code.

(c) Violent offenses: section 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter), 2903.06 (vehicular manslaughter and assault), 2903.08 (vehicular manslaughter and assault), 2903.09 (vehicular manslaughter and assault), or 2909.24 (terrorism) of the Revised Code.

(d) Other violence-related offenses, which mean a violation of the following sections that occurred either within twenty years prior to the date of the current application for a position as a school transportation driver or, for a current employee, within twenty years prior to the date of the current criminal records check: 2903.11 (felonious assault), 2903.12 (aggravated assault), 2911.01 (aggravated robbery), 2911.02 (robbery), 2911.11 (aggravated burglary), or 2923.161 (improper discharge firearm at or into habitation; school-related offenses) of the Revised Code; 3716.11 (placing harmful objects in food/confection), 2919.12 (unlawful abortion) of the Revised Code.

(e) Drug offenses, which mean a violation of the following sections that occurred either within ten years prior to the date of the current application for a position as a school transportation driver or, for a current employee, within ten years prior to the date of the current criminal records check: section 2925.02 (corrupting another with drugs), 2925.03 (trafficking in drugs), 2925.04 (illegal manufacture of drugs or cultivation of marihuana), 2925.05 (funding of drug or marihuana trafficking), or 2925.06 (illegal administration or distribution of anabolic steroids) of the Revised Code.



(f) Non-violent theft offense, which means a violation of section 2911.12 (burglary) of the Revised Code that occurred either within ten years prior to the date of the current application for a position as school transportation driver with the district or, for a current employee, within ten years prior to the date of the current criminal records check.

(g) Major motor vehicle offenses, which means a violation of section 4511.19 (operating a motor vehicle under the influence) of the Revised Code, that occurred within ten years prior to the date of the current application for a position as a student transportation driver or within ten years prior to current records check for a current employee; and 4511.20 (reckless operation), 4510.11 (driving under suspension), 4510.14 (driving under OVI suspension), or 4511.194 (physical control while under the influence) of the Revised Code, that occurred either within six years prior to the date of the current application for a position as student transportation driver, or for a current employee, within six years prior to the date of the current records check.

(h) Other offenses, which mean a violation of the following sections that occurred either within five years prior to the date of the current application for a position as school transportation driver, or for a current employee, within five years prior to the date of the current criminal records check: 2903.13 (assault), 2903.16 (failing to provide for a functionally impaired person), 2903.21 (aggravated menacing), 2903.34 (patient use or neglect), 2907.08 (voyeurism), 2907.09 (public indecency), division (A) of section 2919.22 (endangering children), 2919.24 (contributing to unruliness or delinquency of a child), 2919.25 (domestic violence), 2923.12 (carrying concealed weapons), 2923.13 (having weapons while under disability), or 2925.11 (possession of a controlled substance that is not a minor drug possession offense) of the Revised Code.

(i) Other motor vehicle offenses, which means a violation of section 4511.75 (violation of school bus warning lights), 4511.21 (school zone speed limit) while operating a school vehicle, or 4511.62 (railroad crossing violation) of the Revised Code; that occurred either within one year prior to the date of the current application for a position as student transportation driver, or for a current employee, within one year prior to the date of the current records check.

(B) No provider of school transportation services shall employ an applicant upon learning that he/she has pled guilty to, been found guilty by a jury or court of, or convicted of any violation of a non-rehabilitative offense as listed in paragraph (A)(6) of this rule. In addition, the district shall



release an employee from employment upon learning that he/she has pled guilty to, been found guilty by a jury or court of, or convicted of any violation of a non-rehabilitative offense as listed in paragraph (A)(6) of this rule. Likewise, a district shall release from employment an individual if the results of a criminal records check indicate that, pursuant to this rule, the applicant does not qualify for employment.

(C) A provider of school transportation services maintains the discretion whether to employ or retain in employment an individual who has been deemed rehabilitated pursuant to this rule. A provider of school transportation services may employ an applicant or continue to employ an individual that has previously pled guilty to, been found guilty by a jury or court of, or convicted of an offense listed in division (B)(1) of section 3319.39 of the Revised Code, if all of the following conditions for rehabilitation are met:

- (1) The offense is not a non-rehabilitative offense as listed in paragraph (A)(6) of this rule;
- (2) At the time of the offense, the victim of the offense was not a person under eighteen years of age or enrolled as a student in a school.
- (3) The applicant or employee provides written confirmation of his/her efforts at rehabilitation and the results of those efforts. Written confirmation may include a statement by a court, parole officer, probation officer and/or counselor, or another source as approved by the employer that the applicant or employee has been rehabilitated.
- (4) A reasonable person would conclude that the applicants hiring or the retention of the employee would not jeopardize the health, safety, or welfare of the persons served by the employer, based upon information pertinent to the following factors:
  - (a) The nature and seriousness of the crime;
  - (b) The extent of the applicant or employees past criminal activity;
  - (c) The age of the applicant or employee when the crime was committed;



- (d) The amount of time elapsed since the applicant or employees last criminal activity;
  - (e) The conduct and work activity of the applicant or employee before and after the criminal activity;
  - (f) Whether the applicant or employee has completed the terms of his probation or deferred adjudication;
  - (g) Evidence of rehabilitation;
  - (h) Whether the applicant fully disclosed the crime to the district and/or employer;
  - (i) Whether employment could have a negative impact on the local education community;
  - (j) Whether employment could have a negative impact on the state-wide education community;
  - (k) If the employer is a private employer, information regarding the individual's criminal background check and any subsequent actions by the contractor must be disclosed to any entity contracting for school transportation services;
  - (l) Any entity contracting for transportation services is not bound by the determination of a private employer to re-employ an individual in accordance with this section; and
  - (m) Any other factor the employer considers relevant.
- (D) It is the applicant or employees duty to provide written evidence that the conditions specified in paragraph (C) of this rule are met. If the applicant or employee fails to provide such evidence or if the employer determines that the proof offered by the applicant or employee is inconclusive or does not establish proof of rehabilitation, the applicant shall not be hired or the employee shall be released from employment. Any doubt shall be resolved in favor of protecting the persons served by the school transportation provider.
- (E) Except as otherwise specified in this rule, the provisions of this rule are also applicable to records of convictions that have been sealed pursuant to section 2953.32 of the Revised Code or any



municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to section 2953.32 of the Revised Code.

(F) A plea of guilty to, a finding of guilt by a jury or court of, or a conviction of an offense listed in division (B)(1) of section 3319.39 of the Revised Code shall not prevent an applicants hiring or the retention of an employee if the applicant or employee has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code or the conviction or guilty plea has been set aside pursuant to law. For purposes of this rule, unconditional pardon includes a conditional pardon with respect to which all conditions have been performed or have transpired.

(G) As a condition of initial or continued employment pursuant to the requirements of this rule, the district may request the applicant or employee to be evaluated by a licensed provider (e.g. physician, psychologist, psychiatrist, independent social worker, professional counselor, chemical dependency counselor, etc.) and/or successfully complete a recognized and/or certified treatment program relevant to the nature of the conviction. (Unless otherwise specified in an employee contract, labor agreement, or other similar agreement, the employee or applicant shall bear all direct and associated costs of the evaluation and treatment program.) Failure on the part of an applicant or employee to comply with the districts request pursuant to this paragraph may be considered by the district as a factor against initial or continued employment.

(H) Prior to rendering a decision on employment, the employer shall provide an opportunity for a meeting to an employee, if requested by the individual, so that he/she may provide evidence of rehabilitation pursuant to the requirements of this rule.

(I) The decision of the employer on whether to employ or continue to employ an individual pursuant to the requirements of this rule cannot be appealed to the Ohio department of education or state board of education.

(J) If a person who is employed by a school or school transportation provider is arrested, summoned, or indicted for an alleged violation of a listed offense, the superintendent of the school or chief executive officer of the transportation provider shall suspend that person from all duties that require the care, custody, or control of a child during the pendency of the criminal action against the person.



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(K) This rule is promulgated under the state board and the department's rule-making authority under division (E) of section 3319.39 of the Revised Code.