

# The Redemption & Retention Gateway

How Ohio employers can hire and keep the best workers — even if they have criminal records



There is a clear path for employers that simply want to **hire the best workers**, regardless of their past criminal records. At least 1 in 6 Ohioans—over 16% of our available workforce—has a criminal record. Many of these people are eager to compete in the labor market and contribute to your bottom line. This guide will navigate you through the gateway to finding skilled, grateful, and loyal talent.

## THE FIRST GATEPOST

*Compliance with federal hiring laws made easy*

### Title VII & the EEOC

Winning the best talent for your company goes hand-in-hand with EEOC compliance. That federal agency requires that any criminal-record-based hiring exclusion be job related and consistent with business practices. Courts have ruled that categorically excluding job applicants based on criminal records *may violate Title VII of the Civil Rights Act*, because such a policy often has a racially disparate impact.

In April 2012, the U.S. EEOC updated its guidance on how it enforces that law. Instead of using categorical exclusions, the EEOC strongly encourages employers to individually assess criminal records using three factors:

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense and completion of any sentence; and
- The nature of the job held or sought.

BMW settled an EEOC lawsuit in September 2015 for \$1.6 million because of its use of categorical exclusions.



### GET THE DETAILS

The EEOC's 2012 enforcement guidance:  
[bit.ly/EEOCcrimrecs](http://bit.ly/EEOCcrimrecs)

### Don't rely on mere arrests

PepsiCo settled a 2012 EEOC complaint for \$3.1 million, in part, because the company used arrests to bar prospective workers from a bottling plant. Arrests are not proof of criminal conduct. In the courtroom and in the interview room, everyone must be presumed innocent until proven guilty.

### Background checking and the FCRA

The Fair Credit Reporting Act (FCRA) governs commercial background-checking companies and the employers that use their services. The FCRA is enforced by the Federal Trade Commission (FTC). The law *requires* employers to give job applicants certain information:

1. Written notice of intent to check criminal records
2. Written authorization from applicant to do the check
3. A copy of standard FCRA notice form

*If the employer intends to reject the applicant, they must give:*

4. Notice of the adverse decision
5. A copy of the background check itself
6. Contact info for the background-checking agency

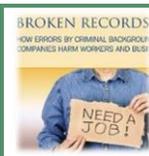


### READ FURTHER

The FTC's advice for employers:  
[bit.ly/FCRA-crimrecords](http://bit.ly/FCRA-crimrecords)

### Incomplete & inaccurate background checks

Not all background-checking services—whether an online company or a governmental entity—are reliable. A recent report details the numerous kinds of errors seen in the background-checking industry.



### LEARN MORE

National Consumer Law Center report:  
[bit.ly/NCLC-BrokenRecords](http://bit.ly/NCLC-BrokenRecords)

Don't lose your best candidates and expose yourself to liability over a mistake by one of these companies. The FCRA *requires* employers give applicants a reasonable time to seek corrections from the background-checking agency.

## THE SECOND GATEPOST

*A single solution for two legal issues*

### Negligent hiring

Fear of litigation need not hold you back from hiring job applicants with records. Lawyers and insurers sometimes warn employers about *negligent hiring* lawsuits; that is, an accusation that the *employer should have known*—based on a past criminal record—that an employee who caused some injury was a dangerous or untrustworthy person.

These cases are extremely rare. And OJPC's research has found no Ohio case where an employer lost such a case on appeal. A 2012 survey of human resource managers, however, found that concern about negligent-hiring liability was the #1 reason companies conducted criminal-record checks.



HEAR FROM YOUR PEERS  
SHRM's 2012 survey results:  
[bit.ly/SHRM-2012](http://bit.ly/SHRM-2012)

### Government regulations restricting your ability to hire

Even when an employer believes in an applicant's redemption and is ready to hire, there may be local, state, and federal laws that prevent them from doing so. These statutes and regulations are sometimes called "collateral sanctions;" they affect public and private employers in dozens of industries. OJPC maintains an online database of collateral sanctions in Ohio state law.



THE BEST TOOL  
The Ohio Civil Impacts of Criminal Convictions Database:  
[CIVICohio.org](http://CIVICohio.org)

A similar database of federal collateral sanctions is available at: [www.abacollateralconsequences.org](http://www.abacollateralconsequences.org)

### CQEs: the solution for negligent-hiring & regulations

Ohio employers have the opportunity to maximize their talent pool by relying on the fairly new **Certificates of Qualification for Employment (CQEs)**. Businesses cannot be sued for negligent hiring when they take on workers that have CQEs. And these workers cannot be categorically excluded from jobs and job-related licenses by over-restrictive regulations. Find links for more about CQEs on the last page of this guide.

## PASSING THROUGH THE GATE — PART I

*The Redemption & Retention Checklist*

This checklist will help you build a solid hiring policy — one that allows you to **get the best workers** without being held back by criminal-record issues. Using this checklist will help you comply with the EEOC and the FCRA, and avoid negligent hiring and hiring restrictions — all so you can **grow your talent base**. The last section includes four programs that make hiring people with criminal records an **even better deal for your company**.

### Before you start hiring

- Assess which job positions actually need criminal-record checks and which do not.
- For jobs that you decide *do* warrant a record check, assess what crimes are relevant to each job's responsibilities.
- Choose a reasonable "look-back" period. The likelihood of someone committing a new crime drops off dramatically as they have more and more years between them and their last offense.



GO TO THE SOURCE  
The best available research on  
"redemption" time and re-offending  
<http://1.usa.gov/Redemption2010>

- Choose a reputable background-checking company by asking hard questions: how many data points do they match before reporting a criminal record? How often do they update their data?

### Job posting and application form

- Do not scare off potentially excellent candidates with language such as "no felons" or "clean background check required." Only warn about criminal-record barriers in posting if regulation absolutely bars people with specific convictions.
- Remove the question about criminal record from job application.

### Interviewing & evaluating applicants

- Give written notice that you will do a criminal-record check & get written permission to do so.
- Do not request or review arrest-only information.
- Give a copy of criminal-record check to the candidate and give them a reasonable time to correct it if something is wrong.
- Discuss criminal records at interview.
- Do not require applicants to get their record sealed or expunged if you are not absolutely certain they are legally eligible.
- If you intend to reject the applicant based on criminal records, give the required FCRA notice of adverse action.

## Use the EEOC factors to guide your discretion

- How many convictions are on the applicant's record? How serious are they?
- How old are the offenses? How old was the person when they committed the offenses?
- What has the person done to distinguish him- or herself since completing their last criminal sentence?
- Do the offenses relate to the job responsibilities?

## Record checks on current workers

- As above, comply with FCRA requirements when requesting the record check and use the EEOC factors above to appropriately weigh the seriousness of the criminal records.
- Presume current employees with a good track record are fit to stay. If the law has not changed and an employee has been consistently performing well, *do not dismiss* them simply because you have a new HR system, contractor, or policy.
- If a law has changed, ask the regulatory agency about ways to keep your existing workforce; there are sometimes "grandfathering" provisions for existing workers.

## PASSING THROUGH THE GATE — PART II

### Four incentives for hiring workers with criminal records

#### Peace of mind — for you and your insurer

- Use the Federal Bonding Program.** This program, administered in our state by the Ohio Department of Rehabilitation and Corrections, offers employers a **\$5,000 bond** that last for 6 months. It can be cover any employee with a criminal record that is initially deemed a risk to the company. The employer applies for this.



GET THE FORMS  
[bit.ly/OhioFedBonding](https://bit.ly/OhioFedBonding)  
[www.bonds4jobs.com](http://www.bonds4jobs.com)

#### Money in your pocket

- Use the Work Opportunity Tax Credit.** This program, administered in our state by the Ohio Department of Job & Family Services, offers employers a tax-credit of up to \$2,400 per eligible worker. An eligible worker includes people with felony records within 1 year of their release from prison. The employer applies for this.



GET THE FORMS  
[jfs.ohio.gov/wotc](https://jfs.ohio.gov/wotc)

#### Avoid regulations and liability

- Use Certificates of Qualification for Employment (CQEs).** This is a fairly new benefit for employers and workers, only available since 2013. The job seeker can get it before applying to work for you, or after getting hired. It has **two legal effects**:
  - ▶ CQEs overcome state laws and regulations that set up mandatory barriers to jobs or licenses. CQEs are issued by judges for particular licenses or fields of employment. For example, if a state law prohibited a hospital from employing a job candidate with certain felony convictions, the hospital could hire that candidate if he or she had a CQE that targeted the relevant state law.
  - ▶ CQEs also give the employer **negligent-hiring immunity**. If you hire someone with a CQE, you cannot be sued because you *should have known* the employee was dangerous or untrustworthy based on the past criminal record.



LEARN MORE  
[bit.ly/OJPC-CQE1pg](https://bit.ly/OJPC-CQE1pg)



***“U.S. business needs all its qualified and able workers involved to compete...”***

*“We have focused our business practice on creating a level playing field for individuals who are shut out of employment due to a blemish on their record.*

*“Nehemiah is proof that fair hiring works: It not only helps people, but it is profitable. Our turnover rate is lower than any business could ask for.”*

#### DAN MEYER

CEO, Nehemiah Manufacturing  
[www.NehemiahMfg.Com](http://www.NehemiahMfg.Com)

Chair, Beacon Of Hope Business Alliance  
[www.BeaconOfHopeBA.Org](http://www.BeaconOfHopeBA.Org)

## Find skilled, loyal workers

- **Use workforce intermediaries.** In recent years, many private non-profits, public agencies, and some academic institutions have pioneered a model for meeting the needs of both job seekers and employers. These entities go beyond job matching, often providing multiple kinds of support to keep your employees on the job even when challenging situations arise. Some intermediaries go even further, developing HR systems, career ladders, and other job-quality features with individual employers and whole industry groups.

Many workforce intermediaries in Ohio now specialize in serving job seekers with criminal records, and supporting employers after they've made the hire. Here are some examples from the Cincinnati region:

### The Greater Cincinnati Urban League

www.gcul.org  
513-281-9955

### Cincinnati Works

www.cincinnatiworks.org  
513-744-9675

### The HELP Program

www.helpprogramcincinnati.net/  
513-961-0027

### JobsPlus (part of City Gospel Mission)

citygospelmission.org/job-readiness  
513-241-1800

### The Community Action Agency — Fresh Start program

www.cincy-caa.org  
513-924-2031



MAKE A CONNECTION  
Intermediaries in greater Columbus  
[bit.ly/Workforce-Columbus](http://bit.ly/Workforce-Columbus)

## MORE INFORMATION

The checklist is built off of the National HIRE Network's *Best Practice Standards: The Proper Use of Criminal Records*, available online at <http://bit.ly/BestPractices-CrimRec>.

### Did you know?

In June 2015, Governor Kasich's administration *voluntarily* adopted nearly all of the practices outlined in this guide, for state-government hiring. You can review the Department of Administrative Services' full policy (HR-29) along with an FAQ section, implementation guide, and model forms at <http://bit.ly/DAS-HR29> (scroll down to "Disclosure of Criminal Convictions").

### Share this everywhere!

OJPC is eager for you to share this anywhere you want. You can always get the most up-to-date version of this guide online at <http://bit.ly/RedemptionRetention>. This version was published on **September 25, 2015**.

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STATEWIDE RESOURCE  
[www.ohiomeansjobs.com](http://www.ohiomeansjobs.com)



OJPC is dedicated to creating fair, intelligent, and redemptive criminal justice systems through zealous client-centered advocacy, collaborative policy reform, and empowering community education. We are a non-profit law office based in Cincinnati and working all across the state.

Find out more at [www.ohiojpc.org](http://www.ohiojpc.org). Connect with us at [Facebook.com/ohiojpc](https://www.facebook.com/ohiojpc).



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## State of Ohio Administrative Policy

### Disclosure of Criminal Convictions During the Application Process

No: Human Resources  
HR-29

Effective: May 15, 2015

Issued By:



Robert Blair, Director

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#### 1.0 Purpose

This policy is being issued in conjunction with a revised Ohio Civil Service Application. Effective June 1, 2015, the Ohio Civil Service Application will no longer have an initial question requiring applicants to disclose all felony convictions. The purpose of this policy is to ensure agency, board, and commission human resources departments understand when it is proper to exclude an applicant from further consideration based on a past criminal conviction.

#### 2.0 Policy

Questions requiring applicants to disclose prior felony and other criminal convictions will be removed from the Ohio Civil Service Application, effective June 1, 2015. This policy provides guidance to agency, board, and commission human resources departments, to ensure applicants with past criminal convictions are properly considered and only disqualified from a position when required by state or federal law, other federal restrictions, or following an analysis by the appointing authority of the facts and circumstances surrounding the conviction and the nature of the duties associated with the position for which the individual has applied.

State law provides that certain positions of employment within the State of Ohio are unavailable to individuals who have plead guilty and/or been convicted of criminal conduct, based on the nature of the criminal violation and/or the type of position being sought. Some positions are restricted due to the nature of their funding sources and yet other positions are of the type that an identifiable nexus exists between a criminal conviction and the duties associated with the position, such that the conviction may eventually disqualify an applicant from consideration for the position. However not every criminal conviction precludes job opportunities.

#### 2.1 Posting a position:

When posting vacancies, agencies should analyze whether any state or federal law or other federal restriction would prohibit the hiring of an individual for criminal violations. Prior to posting a position, agencies must determine if there are restrictions against a convicted felon, or an individual convicted of a particular criminal offense, being

STATE OF OHIO ADMINISTRATIVE POLICY  
DISCLOSURE OF CRIMINAL CONVICTIONS DURING THE APPLICATION PROCESS

employed based on the nature, type, or status of a position. For example, state law provides restrictions regarding certain positions for certain felony convictions (e.g. ORC 2961.02 prohibits individuals convicted of a felony involving fraud, deceit, or theft from holding a position that has substantial management or control over the property of a state agency). Additionally, federally funded positions may contain restrictions against an individual convicted of a criminal offense being employed in the position. There may also be specific Ohio Revised Code language regarding particular positions in certain agencies (e.g. ORC 1531.132 precludes anyone convicted of a felony from serving as a game warden).

When an agency determines, based on state or federal law or other federal restrictions, that a restriction exists for a position based on a type of conviction, the agency shall include a statement on the job posting which indicates the specific violation(s) that may disqualify an applicant from consideration. (E.g. If the agency determines that the position has "substantial management or control over the property of a state agency," in accordance with ORC 2961.02 above, the posting should state "Conviction of a felony involving fraud, deceit, or theft prohibits an applicant from being selected for this position.")

**2.2 Disclosures of criminal convictions and background checks:**

Applicants are not prohibited from voluntarily disclosing a criminal conviction at any time during the application process. An applicant who is considered a candidate for a position shall be asked, during the interview process, whether he or she has been convicted of a felony or has a relevant criminal background. If the applicant acknowledges that he or she has a felony conviction or criminal background and is still eligible for the position according to state and federal law, the applicant shall be given an opportunity to explain the conviction or criminal background, as well as the circumstances of the conviction, including post-conviction rehabilitation.

The agency shall have the applicant complete a background check authorization during the application process. Agencies should consult with their legal counsel regarding the background check authorization.

The agency shall conduct a criminal background check (e.g., a WebCheck through the Ohio Attorney General's Bureau of Criminal Investigation) of each applicant selected as a final candidate. The requirement in this paragraph is not intended to supersede or replace the background check process that is in place for unclassified employees. Additionally, the requirement in this paragraph is not intended to supersede or replace any other background check process that is currently conducted by an agency. Agencies should consult with their legal counsel regarding the integration of the requirement of this paragraph into current agency practice.

No final candidate shall begin employment until the agency first conducts an analysis, pursuant to section 2.3 below, of the results of the candidate's criminal background check. At the agency's discretion, final candidates may be given conditional offers of

STATE OF OHIO ADMINISTRATIVE POLICY  
DISCLOSURE OF CRIMINAL CONVICTIONS DURING THE APPLICATION PROCESS

employment and begin work pending the results and analysis of background checks that are done in addition to the background check required by this policy.

Information regarding criminal convictions received at any stage of the application process must be analyzed in accordance with section 2.3 below and any agency policies or procedures adopted as referenced in section 2.4 below.

**2.3 Analysis of information received from an applicant regarding a criminal conviction at any time during the application process:**

Except as otherwise required by state or federal law, consideration of convictions must be analyzed based on the nature of the position being posted. Applicants should not be rejected solely on the basis of having a past conviction. A rejection should only be made after careful analysis of the position and the conviction, and any other pertinent information.

**2.3.1 Requesting and analyzing information about convictions**

Sufficient information should be sought to allow the agency to consider whether the conviction should disqualify the applicant. Such information for consideration may include:

- the nature of the conviction;
- the time that has passed since the conviction or since release from incarceration;
- any mitigating factors;
- any evidence demonstrating the applicant's rehabilitation;
- the age at which the criminal activity took place; and
- any other information the agency determines would be helpful in considering whether the applicant should be disqualified from consideration for the specific position.

This is not intended to be an exhaustive list of potential considerations. An agency should proactively analyze each position for which it is seeking applicants, and perform an individualized assessment of whether there are restrictions associated with hiring for that position.

**2.3.2 Applicant disqualification or selection**

Agencies shall develop a procedure for analyzing the information provided by an applicant or a background check and comparing that information to the specific duties associated with the position for which the applicant applied. An individual assessment should be made before excluding an individual from consideration because of a prior conviction or selecting an individual who has a prior conviction.

STATE OF OHIO ADMINISTRATIVE POLICY  
DISCLOSURE OF CRIMINAL CONVICTIONS DURING THE APPLICATION PROCESS

An agency shall only disqualify an applicant if the agency determines one of the following exists:

- either a state law, federal law, or other federal restriction (e.g. funding restrictions that prohibit using federal funds to pay for a convicted felon in the position at issue) exists that would prohibit the hiring of the applicant; or
- following an analysis of the duties of the position and the information the applicant submitted regarding the conviction, a sufficient nexus exists between the conviction and the position to disqualify the applicant from further consideration.

The recommendation to disqualify or select a candidate who has a criminal conviction must be reviewed and approved by the agency human resources administrator.

**2.4 Implementation:**

Agencies should work with their legal counsel to adopt policies or procedures to ensure proper consideration is given to a candidate's disclosure of a past conviction.

Agencies should adopt a process for notifying applicants who may be disqualified based on a conviction. The process should allow the applicant an opportunity to explain why the conviction should not disqualify the applicant from the pool. Such a process should allow an applicant to provide the information listed in Section 2.3.1 above.

**3.0 Authority**

ORC 124.09, 124.34, 1347.15, 2961.02

**4.0 Revision History**

Date	Description of Change
05/15/2015	Original policy.
05/15/2016	Scheduled policy review.

STATE OF OHIO ADMINISTRATIVE POLICY  
DISCLOSURE OF CRIMINAL CONVICTIONS DURING THE APPLICATION PROCESS

**5.0 Inquiries**

Direct inquiries about this policy to:

Office of HRD/OCB Policy  
Human Resources Division  
Ohio Department of Administrative Services  
1602 West Broad Street  
Columbus, Ohio 43223  
614.752.5393 | DASHRD.HRPolicy@das.ohio.gov

State of Ohio Administrative Policies may be found online at  
[www.das.ohio.gov/forStateAgencies/Policies.aspx](http://www.das.ohio.gov/forStateAgencies/Policies.aspx)

**Appendix A - Resources**

Document Name
<i>EEOC Enforcement Guidance 915.002 (4/25/12)</i>

# FAQs for HR-29 (Disclosure of Criminal Convictions During the Application Process)

## **What is the purpose of this policy?**

The purpose of the policy is to prevent applicants for positions with the State of Ohio from being automatically excluded from consideration based solely on a previous criminal conviction without a detailed analysis of the factors surrounding any previous criminal conviction. This policy is being issued in conjunction with revisions that are being made to the Ohio Civil Service Application. Questions on the Ohio Civil Service Application that require an applicant to disclose whether they had previously been convicted of a felony will be removed from the Application, effective June 1, 2015.

## **What is the impact on positions currently posted on Ohio Hiring Management System (OHMS) or that will be posted prior to June 1, 2015?**

Agencies will need to set all active postings to close by 11:59 pm on May 29, 2015\*. The existing job posting template will be inactivated and replaced by a new template that excludes the conviction question. The new template will be available for use on June 1, 2015.

*\* OCSEA bargaining unit positions must be posted for ten (10) days. Therefore, agencies should plan accordingly (i.e., post by May 20 or wait until June 1).*

## **What happens to the conviction category currently visible on the applicant's OHMS Master Profile?**

The conviction category and applicant response will be removed from the OHMS Master Profile.

## **Will applications submitted prior to policy implementation still show the conviction question and applicant's response when the application is printed or viewed in OHMS?**

No. OHMS will be configured so that question and response will not appear on the application when printed or viewed in NEOGOV.

## **Will agencies have a record of an applicant's response to the conviction question for applications submitted prior to June 1, 2015?**

Yes. The conviction question and response will be stored with an applicant's master record and viewable through reports ONLY to those HR users given access to view confidential information in their HR User account.

## **Does this policy apply if an applicant applies for a position prior to June 1, 2015 but is not actually hired until after June 1, 2015?**

Yes, if an applicant is hired for a position after June 1, 2015, then the policy will be applicable to them. This would include conducting a criminal background check on an applicant who is a final

candidate for the position. However, if a candidate has been offered a position and it has been accepted, but the start date is after June 1, 2015, the policy does not apply.

**How will I know if an applicant has been previously convicted of a crime?**

Agencies will be permitted to ask an applicant about any criminal conviction history during the initial interview with the applicant. All applicants will also be required to undergo a criminal background check prior to the start of the position. Applicants may also choose to voluntarily disclose any previous criminal convictions at any time.

**What if there is a federal or state law that prohibits employees convicted of a crime from holding a specific position? What is my obligation?**

There are federal and state laws that prevent employers from employing individuals in certain positions within the State of Ohio who have been convicted of specific criminal offenses. Prior to posting a position, agencies must determine whether any federal or state law prohibits individuals convicted of certain criminal offenses from holding that position. Human resources personnel should work with their agency legal counsel to make this determination. If applicable laws exist, then the agency must include a statement on the posting that individuals convicted of the particular offenses identified by the federal or state law will be automatically disqualified from consideration for the position.

**Is it possible for an applicant to be excluded from employment solely as a result of a prior conviction?**

Yes, an applicant may be excluded from employment for a particular position if there is a federal or state law which precludes individuals who have been convicted of certain crimes from holding a specified position. An applicant can also be excluded based solely on a prior conviction if, following an analysis of the duties of the position and information about the conviction provided by the applicant, a sufficient nexus exists between the conviction and the position to exclude the applicant.

**Can I include a list of disqualifying offenses in a supplemental question on the job posting?**

For positions in which a federal or state law will prohibit applicants with certain criminal convictions from holding the position, a supplemental statement should be included on the job posting which states the specific law or provision and a list of disqualifying offenses. Agencies cannot request criminal conviction information from an applicant via a supplemental question on a job posting.

**Does this policy mean that I have to hire an applicant if they have a criminal record?**

This policy does not give any preference to an applicant with a criminal conviction; it allows the applicant to be evaluated consistently with all other applicants. The purpose of this policy is to not exclude applicants who have previous criminal convictions based solely on the criminal history of the applicant, when the applicant may otherwise be the best choice for the position.

**When can an applicant’s criminal conviction be discussed?**

An agency may inquire about an applicant’s previous criminal convictions during an initial interview with the applicant.

**What if an applicant voluntarily discloses that they have been convicted of a criminal offense? Am I in violation of the policy?**

An applicant may voluntarily disclose that they have a prior criminal conviction at any time during the application process. However, applicants will no longer be required to disclose previous criminal convictions on a job application. Agencies may not request prior conviction information from an applicant until the initial interview.

**Does a guilty plea count as a criminal conviction?**

Yes, an applicant who has plead guilty to a criminal charge would have a criminal conviction for purposes of this policy.

**Can I ask an applicant about sealed or expunged records?**

No, sealed and expunged records should not be requested from an applicant and should not be considered if disclosed, unless a request for such records is required by state or federal law for a specific position.

**What factors should be evaluated prior to the decision to exclude an applicant as a result of a prior criminal conviction?**

An agency must consider several factors prior to disqualifying an applicant based on a previous criminal conviction. These factors may include, but are not limited to:

- Nature of conviction
- Age at which criminal action took place
- Time passed since conviction or release from incarceration
- Evidence demonstrating rehabilitation
- Any mitigating factors
- Any other information the agency determines would be helpful in determining whether applicant should be disqualified from consideration

**How do I obtain information from an applicant regarding a previous criminal conviction in order to perform an analysis?**

Each agency will need to develop a process in order to obtain the information they believe is necessary to render a complete analysis of an applicant’s previous criminal conviction. This may include, but will not be limited to, contacting the applicant to inform them of the previous criminal conviction and requesting that the applicant submit any information they would want considered as part of the analysis. This process may also include gathering additional

information during the interview with the applicant through follow-up questions if a previous conviction is revealed.

**Do criminal background checks need to be performed on all applicants for a position?**

Criminal background checks are only required for applicants selected as final candidates for positions with the State of Ohio.

**When is an applicant considered to be a final candidate?**

An applicant becomes a final candidate when the agency is prepared to make a conditional offer of employment to the applicant. A particular job posting could have one or multiple applicants who qualify as final candidates.

**When during the posting and selection process must criminal background checks be performed?**

Criminal background checks may be performed at any time following the initial interview with the applicant. However, the criminal background check must be performed prior to the final candidate starting the position. The applicant must sign a background check authorization form prior to the agency conducting a criminal background check.

**Will applicants be informed that they will need to undergo a criminal background check?**

Information should be included on all job postings that final applicants for a position will be required to undergo a criminal background check prior to employment. Applicants will also be required to sign a background check authorization form prior to the hiring agency beginning a criminal background check on the applicant.

**What constitutes a criminal background check?**

This policy requires only that a check be performed on a final candidate that searches for any previous felony convictions. However, it is recommended that agencies supplement the checks performed on applicants which may include reviewing an applicant's previous addresses and contacting local law enforcement to determine the existence of any criminal record.

**What if my agency did not previously conduct criminal background checks for new hires in certain positions?**

All new state employees will be required to undergo a criminal background check prior to the start of employment. This includes positions which may not have previously required a criminal background check.

**Can an applicant begin employment prior to completion of a criminal background check?**

No, an applicant cannot begin work with an agency until the agency has received the results of the applicant's criminal background check and conducted an analysis of the results. Agencies

that perform additional background checks on an applicant (tax record check, driving history, etc.) may allow an applicant to begin work pending the results of those additional checks.

**What if I already conduct a background check for specific positions? Do I need to change the process?**

If you already conducted a criminal background check for a specific position, then you will likely not have to make any changes. This policy requires background checks to be completed on any applicant selected as a final candidate for a position. Applicants will not be permitted to start a position until the criminal background check is completed.

**What if I performed other checks in addition to a criminal background check (tax records, driving history, etc.)? Am I still permitted to engage in those additional checks?**

This policy does not affect any other checks that may be performed by an agency (tax record check, driving history, social security number, etc.). Agencies performing additional checks on applicants may continue to do so. Agencies that did not previously engage in additional checks, in general or for specific positions, will not be required to perform any additional checks other than the criminal background check under this policy.

**Do I have to perform a background check on an applicant who is an existing State of Ohio employee?**

Yes, all aspects of this policy will apply to existing State of Ohio employees who have applied for other positions with the State of Ohio. This includes State of Ohio employees who are promoted, apply for a position that may result in a demotion or laterally transfer between agencies or within their current agency. All such individuals will also be subject to a criminal background check, regardless of whether they were required to undergo a check prior to becoming a State of Ohio employee.

**Does this policy apply to bargaining unit employees?**

This policy will apply to all applicants, which may include current bargaining unit employees.

**Does this policy apply to unclassified hires?**

Yes, this policy applies to all applicants, including applicants hired or appointed to an unclassified position. The current background checks that are performed on unclassified appointments are consistent with this policy and should continue.

**Does this policy apply to current employees who are being reclassified or reassigned to a different classification or position?**

No, this policy does not apply to reclassification agreements entered into under an applicable collective bargaining agreement or to reassignment or reclassification of classified exempt employees under the Ohio Revised Code.

**Will this policy affect job classifications which utilize automatic progression?**

No, changes in an employee's job title that occur as a result of automatic progression are not subject to the provisions of this policy as the changes in job title occur without the employee submitting an application for that new position.

**What if a background check on an existing State of Ohio employee applicant reveals a criminal conviction that was previously unknown?**

A case-by-case analysis of such a situation would need to be done, including an analysis of the factors mentioned in this policy. Additionally, agency legal counsel should be consulted if this situation occurs.

**Do I need to inform an applicant that they have been disqualified due to a criminal conviction?**

Yes, an applicant will need to be informed if they are being disqualified due to a previous criminal conviction. Each agency will be responsible for adopting a process for notifying applicants in such a situation.

**Do applicants have the ability to appeal a disqualification decision based on a criminal conviction?**

No, an applicant does not have the ability to appeal a decision to disqualify the applicant from a position as a result of a previous criminal conviction.

**If I disqualify an applicant based on a criminal conviction, do I need to follow the guidelines set forth in the Fair Credit Reporting Act?**

The Fair Credit Reporting Act (FCRA) requires that employers who use the results of a consumer report or investigative consumer report (which can include criminal background checks, driving record checks, etc.) as the basis for deciding to disqualify someone from employment have certain notification obligations. These obligations include provision of a pre-adverse action disclosure to an applicant, allowing an applicant the opportunity to dispute the results of a consumer report and provision of an adverse action disclosure if an applicant is ultimately disqualified. Agencies utilizing an official government database for their criminal background checks (e.g., BCI, LEADS) are not obligated to comply with the FCRA provisions. However, agencies utilizing third party vendors that are not directly affiliated with a government database (e.g., OPENonline) may be required to provide disclosures in accordance with the FCRA. If your agency uses a third party vendor to conduct criminal background checks, consult with your legal counsel to determine whether you are obligated to follow the notification provisions set forth in the FCRA.

**What if my agency has not previously performed criminal background checks? How do I get started?**

If an agency did not previously conduct criminal background checks on its new hires, it will need to set up a process to conduct the criminal background check. While an agency is not required

to utilize any one specific source, one possible option that each agency may use is the Ohio Attorney General's Bureau of Criminal Investigation ("BCI").

### **What does BCI do when conducting a criminal background check?**

BCI criminal background checks are based on fingerprints and information provided by the individual upon whom the criminal background check is being performed. BCI uses this information to search for criminal records related to that individual. Criminal background checks performed through BCI exclusively focus on records in the state of Ohio. However, BCI is also capable of performing a criminal background check through the Federal Bureau of Investigation ("FBI") which checks criminal records in the other 49 states. Thus, BCI can perform two separate criminal record checks, one for records in Ohio through BCI and one for the remaining 49 states through an FBI check. The situations when an FBI check may be conducted are limited and agency legal counsel should be consulted prior to requesting an FBI check.

### **How do I conduct a criminal background check through BCI?**

BCI/FBI criminal background checks are based on fingerprints provided by the individual upon whom the background check is being performed. If utilizing the services provided by BCI, there are two ways in which applicants can get fingerprinted and submit documentation to BCI. The first option is to use a WebCheck® system which allows the agency to digitally scan an applicant's fingerprints onto a computer program. These prints, along with identifying information, can then be submitted to BCI. Alternatively, applicants may need to get ink-based fingerprints. In this situation, agencies will need to provide applicants with information on how to get fingerprinted and submit documentation to BCI. Please note that if a vendor other than BCI is utilized for a criminal background check that the methods and procedures for conducting the criminal background check could differ. It is recommended that you consult your criminal background check vendor for information.

### **What is WebCheck®?**

WebCheck® is a computer program purchased from a certified vendor and utilized by BCI that allows agencies to submit criminal background check requests. The WebCheck® program is typically installed onto a computer and provided to an agency for use. All WebCheck® systems come with a magnetic strip reader that is used to read driver's licenses and an electronic fingerprint scanner which digitally scans an applicant's fingerprints directly onto the computer. While WebCheck® is monitored by BCI, the program and computer are purchased from a BCI approved vendor. Additional information can be found on the Ohio Attorney General's website at <http://www.ohioattorneygeneral.gov/Business/Services-for-Business/WebCheck®/Purchasing-WebCheck®-Equipment>.

**How long is a BCI criminal background check valid?**

Criminal background checks conducted through BCI are valid for one year. If a criminal background check is requested on an individual who has previously had a check performed within the last year, contact BCI to see if they may be able to provide the requesting agency with a copy of the previous criminal background check.

**How much do BCI/FBI criminal background checks cost?**

There are two separate costs for BCI and FBI criminal background checks. BCI criminal background checks cost \$22.00 per check. FBI criminal background checks cost \$24.00 per check. Please note that these prices are only for criminal background checks conducted through the Ohio Attorney General's BCI program. Other vendors conducting criminal background checks may charge a different amount for these services.

**Can my agency require that applicants pay the cost of a criminal background check?**

No, agencies are not permitted to require or allow an applicant to pay for the costs of a criminal background check. Payment of the costs of the criminal background check cannot be used as a condition of employment.

**How quickly will my agency receive criminal background check results?**

Typically, criminal background checks submitted through BCI are returned fairly quickly. Ohio Revised Code 109.572 requires that BCI process a criminal background check request within 30 days of receipt. However, many results are often returned within 24 hours. If a criminal background check reveals a possible conviction, then the process may take several weeks while BCI verifies the conviction and identity of the individual. Other factors that may delay a response include poor fingerprint quality or checks of very common names. If an agency is using another entity for their criminal background checks, then return time for a criminal background check may be different.

**What if my agency does not want to use BCI? What other options are available?**

There are many options available for agencies that may want to use a third party vendor to conduct their criminal background checks (e.g., OPENonline). Agencies interested in using a third party vendor for criminal background check services should consult with their legal counsel to determine whether the services provided by a particular third party vendor are compliant with this policy and meet the criminal background check requirements of the agency.

**What if my agency already uses another vendor for criminal background checks?**

If an agency already has an agreement or contract with another vendor to provide criminal background checks, then it is likely that no change will be required. Agencies will not be required to use a specific vendor.

**What if my agency only hires a few individuals each year? Do I still need to purchase WebCheck® or other criminal background check equipment?**

All agencies must comply with the guidelines of this policy, regardless of how many people that agency hires each year. In instances where an agency may not be able to afford the cost of criminal background check equipment, that agency should determine if another agency that does possess criminal background check equipment is willing to share their resources. In such an arrangement, the agency seeking the use of another agency's equipment would still be responsible for the cost of each criminal background check. Agencies in this situation will need to work closely with the other agency and agency legal counsel to set up a sharing arrangement.

# Disclosure of Criminal Convictions During the Application Process

## HR-29

### Implementation Guide

1. Introduction.....	2
2. Ohio Hiring Management System (OHMS) Operations Guide .....	3
a. Background.....	3
b. HR-29 Implementation Timeline.....	4
c. New Job Posting Guidelines.....	4
3. Policy Guidance for Application of HR-29 .....	8
a. General Guidance.....	8
b. Policy Considerations and Recommendations.....	8
c. Other Recommendations Outside of the Policy.....	11
4. “How to” Guide for Criminal Background Checks .....	12
a. Bureau of Criminal Convictions.....	12
b. Information on Other Background Check Vendors.....	15
c. Supplementing of Criminal Background Checks.....	15
d. Sharing of WebCheck® System Resources.....	16
5. Additional Resources.....	17
6. Contact Information .....	18

## Introduction

On May 15, 2015, the Department of Administrative Services (DAS) issued policy HR-29, Disclosure of Criminal Convictions During the Application Process. This policy provides guidance to state agencies on when and how to inquire about whether an applicant has a prior criminal history and requires analysis of any information received from an applicant. Effective June 1, 2015, questions on the civil service application that require an applicant to disclose whether they have been convicted of a felony will be removed. The first time an agency will be permitted to ask applicants about their past criminal history is during the initial interview process. The policy requires that all final candidates for positions with the State of Ohio must undergo a criminal background check prior to starting the position. Agencies will also be required to implement their own policy that sets forth the agency’s process and procedure for complying with HR-29. This implementation guide focuses on the operational changes to the Ohio Hiring Management System (OHMS) and also provides guidance to agencies on areas of discretion under the policy (i.e. choosing a background check vendor) and provides ideas on how to set up an internal process for evaluating applicants with a criminal history in accordance with this policy.

## HR-29 Quick Guide

<b>HR-29 Does..</b>	<b>HR-29 Does NOT..</b>
<b>Remove the felony conviction check box from the civil service application</b>	<b>Require agencies to offer a position to a person who has a criminal conviction history</b>
<b>Require any final candidate for positions to undergo a background check</b>	<b>Require that any applicant for a position must undergo a background check</b>
<b>Require that agencies establish a method for conducting a background check</b>	<b>Require the use of a specific vendor to conduct background checks</b>
<b>Require agencies to implement an agency policy</b>	<b>Require DAS HRD/OCB Policy to approve agency policies prior to implementation</b>
<b>Remove supplemental questions about criminal history</b>	<b>Prevent agencies from making supplemental statements on the posting about applicable disqualifying convictions</b>
<b>Require agencies to notify applicants if they are being disqualified based on a prior criminal history</b>	<b>Create an appeal process for applicants who are disqualified based on prior criminal history</b>

# Ohio Hiring Management System (OHMS) Operations Guide

## Background

Effective June 1, 2015, the following questions will be removed from the online (and printed) civil service application:

- Have you ever been convicted of a felony? (A felony conviction may not automatically exclude you from consideration.)
- If you answered YES to the previous question, please give date(s) of conviction(s).

**Note:** Applications submitted **prior** to June 1, 2015 will have conviction questions and responses “hidden” so they will not show when an application is printed or viewed in OHMS. The questions and responses will be stored with the applicant’s record and will be viewable through reports **ONLY** to those HR users given access to view confidential information in their HR user account. Although the information will be visible to certain HR users, any applicants with convictions that are considered after June 1, 2015, must be considered in accordance with HR-29.

In addition, the “conviction” category and applicant’s response to conviction question will no longer appear on an applicant’s Master Profile in OHMS.

Figure - 1 Master Profile prior to June 1, 2015

Applicant: Groves, Carolyn <202920>		<a href="#">Edit Master Profile</a> <a href="#">Merge Master Profile</a> <a href="#">Audit Trail</a>	
First Name	Carolyn	Person ID	202920
Initial	L	Primary Phone	(614) 123-4567
Last Name	Groves	Alternate Phone	(614) 543-2100
Address 1	1234 Center St.	Email Address	carolyn.groves@das.state.oh.us
Address 2		Notification Type	Paper
City	Columbus	Driver's License?	Yes
State	Ohio	Driver's License State	Ohio
Zip Code	43215	Country	US
Driver's License Class	A	Legal Right to Work?	Yes
Date Entered	03/17/2008	Barred From Applying	No
Last Modified	08/05/2013	Work Types	
Modified By	Abdur-Rashid, Naima	Shifts	
Seniority Date		Former Last Name	
Month and Day of Birth		Conviction	No
Gender	Female	Age Group	40-54
Ethnicity	BLACK or AFRICAN AMERICAN: All persons having origins in any of the Black racial groups of Africa.	Disability	No
Veteran	No	Source	careers.ohio.gov
Employee ID	11111111		

Figure -2 Master Profile beginning June 1, 2015 (without conviction category and response)

Applicant: Groves, Carolyn <202920>		<a href="#">Edit Master Profile</a> <a href="#">Merge Master Profile</a> <a href="#">Audit Trail</a>	
First Name	Carolyn	Person ID	202920
Initial	L	Primary Phone	(614) 123-4567
Last Name	Groves	Alternate Phone	(614) 543-2100
Address 1	1234 Center St.	Email Address	carolyn.groves@das.state.oh.us
Address 2		Notification Type	Paper
City	Columbus	Driver's License?	Yes
State	Ohio	Driver's License State	Ohio
Zip Code	43215	Country	US
Driver's License Class	A	Legal Right to Work?	Yes
Date Entered	03/17/2008	Barred From Applying	No
Last Modified	08/05/2013	Work Types	
Modified By	Abdur-Rashid, Naima	Shifts	
Seniority Date		Former Last Name	
Month and Day of Birth		Gender	Female
Age Group	40-54	Ethnicity	<b>BLACK or AFRICAN AMERICAN: All persons having origins in any of the Black racial groups of Africa.</b>
Disability	No	Veteran	No
Source	careers.ohio.gov	Employee ID	11111111

HR-29 Implementation Timeline

- May 29 – All active job postings will close by 11:59 pm
- May 30 – Inactivate existing job posting application templates
- May 31 – Activate new job posting application templates
- June 1 – Post positions using new application template

New Job Posting Guidelines – Effective June 1, 2015

- Select one of the following new application templates to create a posting; **do not copy** an old posting:
  - HR-29 Recruitment/Civil Service Application
  - HR-29 No Attachments Recruitment Civil Service Application
- Supplemental questions **may not** be used to inquire about criminal convictions.
- Supplemental statements advising of a criminal background check requirement **may be** included in the “supplemental information” section of the job posting.
  - Sample language for positions **without** state or federal government conviction restrictions: *(See Figure – 3 Administrative Professional 2 Sample Job Posting)*

*The final candidate selected for the position will be required to undergo a criminal background check. Criminal convictions do not necessarily preclude an applicant from consideration for a position. An individual assessment of an applicant’s prior criminal convictions will be made before excluding an applicant from consideration.*

- Sample language for positions **with** state or federal government conviction restrictions: ( See Figure – 4 Fiscal Officer 3 Sample Job Posting)

*The final candidate selected for the position will be required to undergo a criminal background check. Section 2961 of the Ohio Revised Code (ORC) prohibits individuals convicted of a felony involving fraud, deceit, or theft from holding a position that has substantial management or control over the property of a state agency.*

Figure - 3 AP2 Job Posting

My HR

Detailed Job Posting

[Return to List](#)

[Edit](#)

[View Class Spec](#) | [View Exam Plan](#) | [Supplemental Questions](#) | [Item Bank](#) | [Scoring Plan](#)

Job #	Hits	Submitted	Advertised
87654321	0	0	06/01/15 - 06/10/15 11:59 PM

**Job Title:** Administrative Professional 2

**Closing Date/Time:** Wed. 06/10/15 11:59 PM Eastern Time

**Salary:** \$16.35 - \$19.88 Hourly  
\$34,008.00 - \$41,350.40 Annually

**Job Type:** Full-Time, Permanent, Bargaining Unit

**Location:** Franklin County, Ohio

**Department:** OHMS Training

Job Duties	Benefits	Custom Form Fields
<p>Relieves supervisors by performing routine administrative tasks in a technical environment: makes recommendations regarding program activities specific to underwriting &amp; statistical functions; assists in developing new procedures related to established program policy; researches &amp; analyzes documents, materials, information &amp; programs; provides technical information &amp; advice to Administrator to aid in decision making; transmits decisions &amp; directives; edits existing report queries in SAP Business Objects; creates ad hoc reports in SAP Business Objects; performs initial troubleshooting of failed reports &amp; escalates the issue if necessary; assists in creating &amp; maintaining complex excel spreadsheets relating to statements of values for insurance programs, premium allocations &amp; billing summaries; performs data entry of billable insurance &amp; fee related expenses into billing application; sets up incoming loss notices &amp; enters data into risk management information system; creates electronic folder to store documentation; receives, reviews, &amp; enters information from weekly warrant report; receives &amp; enters information from customer satisfaction survey; reviews, enters, generates, &amp; maintains motor vehicle liability endorsements.</p> <p>Please use the link below for the full position:  <a href="http://apps.das.ohio.gov/EmpSrv/Upload/20077229%20Admin.%20Prof.%202%20PD%20GSD%204.9.15.pdf">http://apps.das.ohio.gov/EmpSrv/Upload/20077229%20Admin.%20Prof.%202%20PD%20GSD%204.9.15.pdf</a></p>		
<p><b>Minimum Qualifications:</b></p> <p>Completion of associate core coursework in secretarial science or business office applications from accredited career school or community college.</p> <p>-Or 18 mos. exp. or 18 mos. trg. in secretarial/administrative professional field.</p> <p>-Or 6 mos. exp. as Administrative Professional 1, 16871.</p> <p>-Or equivalent of Minimum Class Qualifications For Employment noted above.</p>		
<p><b>Major Worker Characteristics:</b></p> <p>Knowledge of English grammar &amp; composition; arithmetic that includes addition, subtraction, multiplication &amp; division; records management; business communications; administrative practices &amp; procedures*; general office practices &amp; procedures; agency-specific office practices &amp; procedures*; budgeting*; government structure &amp; process*. Skill in keyboarding; business office software applications (e.g., Microsoft Office); operation of personal computer &amp; office machines (e.g., transcribing equipment, calculators). Ability to deal with problems involving several variables within familiar context; apply principles to solve practical, everyday problems; interpret instructions in written or oral form; write routine business letters following standard procedures; compose directives, memos &amp; other publications; complete routine forms or records; make appointments; arrange items in numerical or alphabetical order; move fingers easily to perform manual functions; assess questions &amp; provide appropriate information or referral.</p> <p>(*Developed after employment.</p>		
<p><b>Supplemental Information:</b></p> <p>The final candidate selected for the position will be required to undergo a criminal background check. Criminal convictions do not necessarily preclude an applicant from consideration for a position. An individual assessment of an applicant's prior criminal convictions will be made before excluding an applicant from consideration.</p>		



Figure – 4 Fiscal Officer 3 Posting

My HR Detailed Job Posting

[Return to List](#) [Edit](#)  
[View Class Spec](#) | [View Exam Plan](#) | [Supplemental Questions](#) | [Item Bank](#) | [Scoring Plan](#)

Job #	Hits	Submitted	Advertised
12345678	0	0	06/01/15 - 06/10/15 11:59 PM

**Job Title:** Fiscal Officer 3

**Closing Date/Time:** Wed. 06/10/15 11:59 PM Eastern Time

**Salary:** \$29.64 - \$38.86 Hourly  
\$61,651.20 - \$80,828.80 Annually

**Job Type:** Full-Time, Permanent, Exempt

**Location:** Franklin County, Ohio

**Department:** OHMS Training

[Print Job Bulletin](#)

**Job Duties** | **Benefits** | **Custom Form Fields**

The Ohio Department of Administrative Services (DAS), Administrative Support Division (ASD), Office of Finance is seeking an experienced Fiscal Officer to oversee the budget responsibilities for the agency. Responsibilities include, but are not limited to:

- Plans and manages budget development activities
- Develops agency procedures & guidelines for development of capital & operating budgets
- Coordinates agency's review and submission of budget documents
- Writes budget language and testimony
- Serves as budget liaison to Office of Budget & Management (OBM) and Legislative Service Commission.
- Supervises Budget Unit Staff

Click the following link to view the full position description:  
<http://apps.das.ohio.gov/EmpSrv/Upload/20074520%20Fiscal%20Officer%203-PD%20ASD-FIN%201.17.12.pdf>

**Minimum Qualifications:**

Completion of undergraduate core coursework in business administration or accounting; 4 yrs. exp. in accounting, fiscal &/or budgetary management, planning & control; 2 yrs. trg. or 2 yrs. exp. in supervisory principles/techniques & training personnel. -Or completion of undergraduate core coursework in business administration or accounting; 2 yrs. exp. in accounting, fiscal &/or budgetary management & control; 2 yrs. exp. in accounting, fiscal &/or budgetary management, planning & control in agency paid by warrant of Ohio Auditor of State; 2 yrs. trg. or 2 yrs. exp. in supervisory principles/techniques & training personnel. -Or equivalent of Minimum Class Qualifications for Employment noted above.

**Major Worker Characteristics:**

Knowledge of supervisory principles/techniques; employee training & development; business administration or accounting; applicable state &/or federal laws, rules, procedures & standards governing fiscal & budgetary operations\*. Skill in use of calculator, video display terminal &/or personal computer. Ability to deal with large number of fiscal &/or budgetary variables & determine specific course of action; gather, collate & classify information about data, people or things; handle routine & sensitive inquiries from & contacts with officials/representatives of same &/or different political jurisdiction. (\*)Developed after employment.

**Supplemental Information:**

The final candidate selected for the position will be required to undergo a criminal background check. Section 2961 of the Ohio Revised Code (ORC) prohibits individuals convicted of a felony involving fraud, deceit, or theft from holding a position that has substantial management or control over the property of a state agency.

# Policy Guidance for Implementation of HR-29

## General Guidance

HR-29 requires that all state agencies create their own policy to implement the statewide policy. The purpose of this requirement is to ensure that agencies are giving proper consideration to a candidate who discloses a past conviction. Under HR-29, agency policies should address the following main points:

- How to appropriately gather initial information about whether an applicant has a criminal history;
- How to gather additional information about an applicant's criminal history;
- How to give proper consideration to a candidate that discloses a past conviction, including analyzing the information to determine whether the conviction disqualifies the candidate from the position; and
- How to notify the applicant that their prior conviction may disqualify them from the position.

Although the policy requires agencies to gather information, analyze the information, and notify the applicant, the specific process for gathering, analyzing, and notifying is not dictated by HR-29. The agency policy should address the processes the agencies will use to comply with the statewide policy. Below are suggested considerations and recommendations on these provisions that would ensure compliance with HR-29. In addition, HRD/OCB Policy has example policies that can be provided to agencies upon request.

## Policy Considerations and Recommendations

### Supplemental Statements/Automatic Disqualifiers

Agency policy should establish whether a statement should be on the posting indicating that there are restrictions in hiring for the position.

- The agency policy may include specific permanent exclusions required by state or federal laws, exclusions based on a specific nexus to positions within the agency, or may include a general statement that applicants with criminal convictions shall be considered on a case-by-case basis according to any nexus to the position and the other factors listed in the statewide policy.

### Appropriate method for gathering information about an applicant's criminal history

At a minimum, HR-29 states that agencies cannot inquire about an applicant's criminal history until the initial interview with the applicant. Agencies have discretion in determining who within their agency can gather this information and how it will be gathered. Agency policy should establish a uniform process to ensure consistency in how applicants are questioned.

- The agency may state in the policy who within the agency is permitted to inquire about the past criminal history (e.g. human resources representative or the hiring manager).

- The agency may include a list of appropriate/inappropriate questions for the interviewer. The agency may include the use of follow up questions meant to gather additional information about a conviction once it has been disclosed. The following are examples of appropriate questions that may be asked of an applicant:
  - *“Have you ever been convicted of a felony?”*
  - If Yes:
    - *“What was the nature of the conviction and criminal charge?”*
    - *“Were you a minor at the time the criminal activity took place?”*
    - *“How much time has passed since the conviction?”*
    - *“Were you incarcerated? (If yes)*
      - *“How much time has passed since release from incarceration?”*
    - *Describe how you have been rehabilitated since the conviction (or incarceration); including employment history, education or training.*

### Considering and Analyzing Information about Criminal History

Agency policy should address how an agency will uniformly analyze and consider the information gathered about the conviction.

- Agency policy may include the appropriate factors listed in HR-29 for analyzing the conviction to determine whether it is a disqualifier for the position.
  - The nature of the conviction;
  - The time that has passed since the conviction or since release from incarceration;
  - Any mitigating factors;
  - Any evidence demonstrating the applicant’s rehabilitation;
  - The age at which the criminal activity took place; and
  - Any other information the agency determines would be helpful in considering whether the applicant should be disqualified from consideration for the position.
- Agency policy may include statements on how the information will be analyzed, such as a specific timeframe (e.g. all convictions that have occurred within five years will be automatically analyzed).
- The agency may include a statement in their policy that sealed or expunged records will not be inquired about or considered, unless otherwise required by law.
- The agency policy should include a statement that the Human Resources Administrator must review and approve all decisions to disqualify or select a candidate with a criminal conviction (Note HR-29 requires that the Human Resources Administrator be responsible for the final decision);

- The agency policy should include a process for notifying applicants who may be disqualified based on a conviction.
  - After an applicant discloses the conviction during the interview, agencies may consider informing the applicant that their conviction may be a disqualifier but that their conviction will be analyzed and considered and then provide the applicant with a chance to respond.
  - If any agency notifies the applicant after the interview, the agency may include a timeframe in the notification that allows an applicant to review the information relied on as the basis for disqualification and, if the information was in error or incomplete, offer an explanation (e.g. 15 days).
  - If the agency allows for additional review, the agency's process should include a verification of the additional information provided by the applicant and a new analysis based on the additional information.

#### Background Check Process for Final Candidate

- The agency policy should include the process for conducting a criminal background check on any final candidate for a position, including what point in the process the criminal background check will be conducted and the use of the background check authorization form. A process will ensure consistent treatment of all applicants. For example, agencies may conduct a background check at the time they are ready to make a conditional offer.
- The agency policy may include a provision for internal candidates who have had a background check within a certain timeframe (e.g. 12 months); the policy may indicate that the internal candidate is not required to have a new background check if the candidate has had a background check within that timeframe.
- The agency policy may contain a statement that if an applicant fails to consent to the background check, it will preclude the applicant from consideration.
- The agency policy should include any processes the agency will use to supplement the criminal background check, including reaching out to local law enforcement in the cities/counties of the applicant's prior residences. (For more information on supplementing the background check process see p. 15).
- The agency policy should include a statement that no final candidate shall start the position until an analysis of the criminal background check has been conducted.

- The agency may include how a conditional offer of employment will be made pending the receipt and analysis of the background check.

#### **Other recommendations outside of the Background Check Policy**

- Agencies should consider creating a work rule requiring self-disclosure of convictions that occur while employed, if one does not already exist. Agencies should work with legal counsel to determine what is appropriate for your agency.
  - Sample: *“It is a reasonable expectation that employees will not only obey the letter of the law but the spirit of the law, whether engaged in personal or official activities. In the event any employee is arrested for, charged with, or convicted of any felony or misdemeanor (except for a minor misdemeanor), or is required to be a defendant in any criminal action, that employee shall immediately notify his/her immediate supervisor.”*

# “How to” Guide for Criminal Background Checks

## Introduction

HR-29 requires that all final candidates for a position must undergo a criminal background check prior to the start of the position. HR-29 does not require that agencies utilize any one particular vendor for conducting that background check. Agencies should work with their legal counsel to determine a background check process that is both compliant with the requirements of HR-29 and also operationally appropriate for their agency. For agencies that already have a mechanism in place this will not likely need to be changed. One of the most common vendors used for criminal background checks is the Attorney’s General’s Bureau of Criminal Investigation (BCI) and therefore, the following provides detailed information about BCI. Please note agencies are not required to utilize BCI. There are agencies that currently use other vendors. This section of the guide focuses on BCI but also provides resources for other vendors. .

## Bureau of Criminal Investigation Background Checks

### What is a BCI/FBI Background Check?

BCI serves as the central repository for criminal records for the State of Ohio and regularly performs criminal background checks for employment and licensing purposes. BCI checks statewide criminal databases for conviction records. In the event that a broader search is required, a national FBI criminal background check can also be performed. FBI checks go through BCI but utilize the FBI’s national criminal database in order to check for an individual’s criminal history in other states.

### WebCheck® Registration

If an agency wants to use BCI for criminal background checks and acquire its own WebCheck® system, there are several steps involved in establishing a new account with BCI to perform criminal background checks using the WebCheck® system. Note, if your agency is not considering purchasing the WebCheck® system, then you do not need to set up an account with BCI.

In order to establish a new account, the agency will need to contact BCI and submit a request form to set up a billing account number and unique ID. The agency will then need to submit two signed National WebCheck® Agreements to BCI which functionally serve as a contract to work with BCI. If an agency wants to purchase a WebCheck® system, the agency will need to contact one of the three approved vendors that are certified to sell WebCheck® systems. A list of approved BCI WebCheck® vendors can be found at <http://www.ohioattorneygeneral.gov/Business-and-Non-Profits/Business/WebCheck/WebCheck-Equipment-Vendors.aspx>. The WebCheck® systems consist of: a desktop or laptop with the WebCheck® program installed, a magnetic strip reader used to read a person’s driver’s license, and an electronic fingerprint reader. The one-time cost for a WebCheck® system from one of the approved vendors is approximately \$5000.00, although the price will vary by vendor. There are also optional maintenance and update packages that can be \$700.00 to \$800.00 per

year. These packages provide maintenance assistance for the WebCheck® system and automatically provide software updates.

If an agency acquires its own WebCheck® system, it will be responsible for designating the employees who will be operating the WebCheck® system for training through BCI and the vendor. The training sessions can be done at the agency or at the vendor's office. The training sessions typically last two to three hours total and include instruction on the set-up, operation of the WebCheck® system and submission of background check results. There is no cost associated with this training.

Additionally, BCI can provide training on ink-based fingerprinting. Ink-based fingerprints can be used in instances where the individual's digital fingerprint was not able to be captured electronically by the WebCheck® system or in agency locations that may not have a WebCheck system. An ink-based fingerprinting training session typically lasts less than one hour and can be held in conjunction with WebCheck® training. There is no cost for the ink-based fingerprint training.

Additional information about setting up an account and purchasing a WebCheck® system can be found on the BCI website at <http://www.ohioattorneygeneral.gov/Business/Services-for-Business/WebCheck/Purchasing-WebCheck-Equipment>.

#### How to Conduct a BCI/FBI Criminal Background Check Through WebCheck® System

In order to conduct a BCI or FBI criminal background check, the operator of the WebCheck® system will need to verify the applicant's identity with a photo ID. Ideally, the applicant will also provide a social security number, but a social security number is not required to perform the check. Once a person's fingerprints are scanned by the electronic fingerprint reader, the prints are uploaded into the WebCheck® system. If the program is unable to acquire quality prints from a person, then ink-based prints may need to be used. Also, the swiping of the driver's license populates many of the fields on the WebCheck® system.

If a potential applicant does not live within 75 miles of a WebCheck® system, then they can submit ink fingerprints through the mail for analysis. Ink based fingerprints will also be used if an applicant lives outside the state of Ohio or if an applicant is unable to produce quality digital fingerprints on the WebCheck® system. If an agency needs to submit ink-based fingerprints, contact BCI to request fingerprint cards. There is no cost for the fingerprint cards. Agencies will also need to purchase ink supplies, which can be purchased from many businesses that sell laboratory or forensic supplies (e.g., Sirchie, Inc.). Additionally, if the applicant is in central Ohio, the individual can go to BCI's central office to have an ink-based fingerprint background check performed. There is no cost for the rolling of ink-based fingerprints done at BCI's central office

#### Cost to Conduct a BCI Background Check

The cost to conduct a BCI background check is \$22 while an FBI background check costs \$24. Thus, the combined total to both the BCI and FBI background checks is \$46. However, this amount will

vary if an agency does not use one of the BCI certified vendors. Agencies are not permitted to allow an applicant to pay for the cost of their criminal background check.

#### Timing of BCI Background Check Results

Ohio Revised Code Section 109.572 requires that BCI process a background check request within 30 days. BCI also has 30 days from the time that the FBI completes a federal background check to send the results to the requesting agency. Typically, however, many checks are completed within one to two days. The process may take up to a few weeks if there is poor fingerprint quality, a common name, or if the results may show a potential conviction because BCI will verify that the conviction and identity of the applicant match. Both BCI and FBI background checks search for misdemeanor and felony convictions. Sealed convictions can be produced through these searches if required by state or federal law.

#### FBI Background Checks Through BCI

Many agencies currently perform both BCI and FBI background checks on an individual. However, there are restrictions on when an FBI check can be done. Specifically, there must be a state or federal statute that permits an individual to be checked in the FBI database. Agencies hiring individuals for the following types of positions are permitted to conduct an FBI criminal background check:

- People working with children (teachers, daycare workers)
- People working with the elderly (nursing home or home care employees)
- People working in the developmental disabilities field (working for a county or private agency)
- Nurses (nursing students or those applying for initial licensure)
- Firefighters and EMTs
- Pharmacy technicians
- Pain management clinic owners and employees

If an applicant who has had an FBI background check done has a criminal record, the results of that check will go directly to the applicant and not to the Agency. The applicant can either send the results to the agency or the applicant can challenge the result. The FBI will release the results to the agency following a challenge if it is determined that the criminal record is legitimate.

#### WebCheck® Billing

Once an agency has set up an account with BCI, that agency will receive a monthly bill from BCI that covers all criminal background checks performed in the previous month. BCI does not have a mechanism in place for an agency to have a billing account if the agency does not have their own WebCheck® system. Additional information for those agencies who are sharing resources is contained below.

## Information on Other Background Check Vendors

There are other vendors that provide criminal background check services outside of BCI. Some agencies currently use other vendors outside of BCI and can continue to do so in compliance with this policy. Through this process, agencies have reported that they are using third party vendors such as Open Online, Justifacts, National Background Check, Inc, and Intelius . The websites for each of these vendors are below:

<http://www.openonline.com/>

<http://www.justifacts.com/>

<http://www.nationalbackgroundcheck.com/>

[http://www.intelius.com/background-check.html?searchform=background&utm\\_source=google&utm\\_medium=cpc&utm\\_campaign=brand+official+site&gclid=COSohlvKwcUCFQiRaQodKIQAKw](http://www.intelius.com/background-check.html?searchform=background&utm_source=google&utm_medium=cpc&utm_campaign=brand+official+site&gclid=COSohlvKwcUCFQiRaQodKIQAKw)

Unlike BCI, there may be more variation on the services and cost associated with private third party vendors. Agencies interested in using these vendors will need to work internally to determine if the services provided fit the needs of the agency. If an agency is interested in other vendors and would like to talk with another agency that has used a third party vendor, please contact DAS HRD/OCB Policy for a list of contacts. If your agency decides to use a third party vendor, please consult with your legal counsel to ensure that the checks are in compliance with all applicable state and federal laws and regulations.

## Supplementing Criminal Background Checks

While this policy only requires that state agencies do a criminal background check that examines the previous felony conviction history of a final candidate, it is highly recommended that agencies take additional steps to ensure that the final candidates for positions have been thoroughly checked. The following are a list of several resources available to agencies interested in supplementing their criminal background checks:

- Review previous addresses of final candidates and contact local law enforcement in those jurisdictions to determine any conviction, arrest or warrant history.
- Review of county or city criminal records databases.
- Conduct a search using the final candidate's social security number, which can often confirm the locations in which the final candidate has lived and worked.
- Submit a Freedom of Information Act request to the FBI, which allows for a national criminal background check if no state or federal statute authorizes FBI check through BCI.
- Utilize an online or third party vendor for a national background check (e.g., OPENOnline).
- Request a review of tax records through Ohio Department of Taxation.
- Request a review of motor vehicle driving history through the Ohio Bureau of Motor Vehicles.

Ultimately, it is highly encouraged that agencies supplement their criminal background checks to ensure that the final candidate is appropriately qualified for the position.

### **Sharing of WebCheck® Resources**

Whether your agency is considering utilizing BCI or a third party vendor, we recognize that agencies may need additional solutions for the immediate implementation of this policy. A sharing of resources between state agencies will assist agencies with implementation. Many agencies currently have WebCheck® systems and billing accounts with BCI. Sharing resources with an agency that currently has WebCheck® system, will allow agencies to comply with the policy immediately.

When a requesting agency uses another agency's (volunteering agency) WebCheck® system, the requesting agency will need to specify where the results of the criminal background check will be sent since the default setting on the systems is to send the results to the owner of the WebCheck system. Prior to submitting a criminal background check through BCI, the requesting agency will need to change the "Mail To" setting to an appropriate representative at the requesting agency. Thus, once BCI has completed their check, the result will be sent to the requesting agency and not the volunteering agency.

This option can also be used for FBI criminal background checks as well, however, if an FBI check reveals a criminal record, the results will be sent directly to the applicant and not to the agency. The applicant has the option of sending the results directly to the agency or challenging the results. The FBI will release the results to the agency following a challenge if it is determined that the criminal record is legitimate.

Agencies that volunteer the use of their WebCheck® systems will not be required to pay the fees for criminal background checks performed for the benefit of other agencies. The volunteering agency should bill the requesting agency for the cost of those criminal background checks. The bills sent to the volunteering agency from BCI contain a list of all individuals whose information was submitted for a criminal background check during that month. Thus, agencies that are sharing resources will be able to send the proper bill to any other agencies that may have utilized their WebCheck® system that month. In previous instances where agencies have shared WebCheck® resources, the volunteering agency has sent an Intrastate Transfer Voucher (ISTV) to the requesting agency for the amount of the background check.

Agencies that utilize third party vendors in order to perform their criminal background checks may be able to share their resources with other state agencies. However, volunteering agencies using a third party vendor should work with their legal counsel and the third party vendor to determine if such an arrangement can be accommodated.

If your agency is interested in sharing resources with another agency and have not yet been in contact with DAS HRD/OCB Policy or another agency, please contact DAS HRD/OCB Policy to get connected with an agency who is willing to assist.

## Additional Resources

There are additional resources available on the DAS HRD OCB/Policy Website. These resources include sample documentation that agencies can utilize and modify for use during the positing and interview process. There is also a Frequently Asked Questions document available covering the implementation requirements of HR-29. Below are some important websites that provide additional information on this topic.

DAS HRD/OCB Policy: <http://das.ohio.gov/Divisions/HumanResources/HRDOCBPolicy.aspx>

EEOC Enforcement Guidance, Consideration of Arrest and Conviction Records in Employment Decisions: [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)

EEOC, Background Checks What the Employers Need to Know: [http://www.eeoc.gov/eeoc/publications/background\\_checks\\_employers.cfm](http://www.eeoc.gov/eeoc/publications/background_checks_employers.cfm)

Bureau of Criminal Investigation: <http://www.ohioattorneygeneral.gov/Business/Services-for-Business/WebCheck/Purchasing-WebCheck-Equipment>.

Open Online: <http://www.openonline.com/>

Justifacts: <http://www.justifacts.com/>

National Background Check: <http://www.nationalbackgroundcheck.com/>

Intelius: [http://www.intelius.com/background-check.html?searchform=background&utm\\_source=google&utm\\_medium=cpc&utm\\_campaign=brand+official+site&gclid=COSohlVkcUCFQiRaQodKIQAKw](http://www.intelius.com/background-check.html?searchform=background&utm_source=google&utm_medium=cpc&utm_campaign=brand+official+site&gclid=COSohlVkcUCFQiRaQodKIQAKw)

## **Contact Information**

For additional questions or comments please contact DAS HRD/OCB Policy:

Phone: 614-752-5393

Email: [dashrd.hrpolicy@das.ohio.gov](mailto:dashrd.hrpolicy@das.ohio.gov)

## JOB POSTING LANGUAGE FOR COMPLIANCE WITH HR-29\*

### Sample Job Posting Language for Positions without State or Federal Government Conviction Restrictions:

The final candidate selected for the position will be required to undergo a criminal background check. Criminal convictions do not necessarily preclude an applicant from consideration for a position. An individual assessment of an applicant's prior criminal convictions will be made before excluding an applicant from consideration.

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### Sample Job Posting Language for Positions with State or Federal Government Conviction Restrictions:

The final candidate selected for the position will be required to undergo a criminal background check. Section \_\_\_\_\_ of \_\_\_\_\_ prohibits individuals convicted of \_\_\_\_\_ from holding a position that \_\_\_\_\_.

#### **Example:**

*Section 2961 of the Ohio Revised Code (ORC) prohibits individuals convicted of a felony involving fraud, deceit, or theft from holding a position that has substantial management or control over the property of a state agency.*

\*Include pertinent language in the "Supplemental" section of online job posting.

OHIO AGENCY NAME

**CRIMINAL BACKGROUND CHECK AUTHORIZATION FORM**

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**A criminal background check is required for employment. This check into official public records will determine the existence or non-existence of any record of criminal convictions. Federal and state law provides that certain positions of employment within the State of Ohio are unavailable to individuals who have plead guilty and/or been convicted of criminal conduct, based on the nature of the criminal violation and/or the type of position being sought. Prior criminal convictions do not automatically preclude employment.**

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*Please Print Clearly*

Name (Last, First, M.I.): \_\_\_\_\_

*List other names used and dates of name change in the last ten (10) years:*

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Full Name \_\_\_\_\_ Date \_\_\_\_\_

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Full Name \_\_\_\_\_ Date \_\_\_\_\_

---

Full Name \_\_\_\_\_ Date \_\_\_\_\_

Date of Birth: \_\_\_\_\_ (MM/DD/YYYY)

Social Security Number (SSN): \_\_\_\_\_

Has this SSN been issued in the last 90 days?    Yes     No

**Residence History: Provide complete addresses for U.S. residences during the last ten (10) years**

Address	City	State/Zip Code	Dates From	To

*Attach additional sheet if needed*

**OHIO AGENCY MAINTAINS THE RIGHT TO CONDUCT, EITHER THROUGH STATE EMPLOYEES OR THROUGH A THIRD PARTY, A CRIMINAL BACKGROUND CHECK OF ANY EMPLOYEE OR JOB APPLICANT. NONE OF THE INFORMATION PROVIDED ON THIS FORM WILL BE USED TO DISCRIMINATE AGAINST ANY APPLICANT OR EMPLOYEE ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, SEXUAL ORIENTATION, GENETIC INFORMATION, RELIGION, AGE, DISABILITY OR MILITARY STATUS.**

**BY SIGNING THIS FORM, YOU AUTHORIZE THE OHIO AGENCY AND/OR ITS DESIGNATED THIRD PARTY TO CONDUCT A CRIMINAL BACKGROUND CHECK. IN ADDITION, YOU ACKNOWLEDGE THAT ANY FALSE OR MISLEADING STATEMENT, OMISSION OR FAILURE TO DISCLOSE INFORMATION MAY DISQUALIFY YOU FROM EMPLOYMENT OR, IF EMPLOYED, MAY RESULT IN DISMISSAL.**

\_\_\_\_\_  
Applicant/Employee Signature

\_\_\_\_\_  
Date

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Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_, County of \_\_\_\_\_, and the State of \_\_\_\_\_.

\_\_\_\_\_  
Notary

\_\_\_\_\_  
My Commission Expires

## SAMPLE INTERVIEW QUESTIONS FOR COMPLIANCE WITH HR-29\*

*As noted on the job posting, the final candidate selected for this position will be required to undergo a criminal background check.*

*Listen carefully to the following question, explanation, and definitions in their entirety, before responding. You are not required to disclose information about sealed records or records that have been expunged; do not include this information in your response.*

Have you ever been convicted of a felony?

- **Convicted** means you either pled or were found guilty and sentenced.
- **Felony** is defined as a serious crime that is punished more harshly than a misdemeanor.

If yes:

- What was the nature of the conviction and criminal charge?
- Were you a minor at the time criminal activity took place?
- How much time has passed since the conviction?
- Were you incarcerated? (If yes)
  - How much time has passed since release from incarceration?
  - Describe how you've been rehabilitated since conviction (or incarceration); including employment history, education or training.