

3301-83-23

Employment of school bus and school van drivers with certain criminal convictions.

The purpose of this rule is to provide for the safety and well-being of children utilizing pupil transportation services, and, pursuant to section 3319.39 of the Revised Code, establish rehabilitation standards for those individuals with certain criminal convictions seeking employment for a position as a school bus or school van driver with a district or private owner and those individuals currently employed by a district or private owner in the position of a school bus or school van driver subject to the requirements of a criminal records check pursuant to section 3327.10 of the Revised Code.

The rule establishes offenses for which employment and a determination of rehabilitation of an individual for a position as a school bus or school van driver are expressly forbidden and sets forth conditions under which a determination of rehabilitation is possible.

(A) Definitions – The following terms are defined as they are used in this rule:

(1) “Applicant” means one who is under final consideration for employment in a position with a district as a school bus or school van 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 date of receipt of the results of a background check requested by a district, which shall be time-stamped by district on the date of receipt by the district.

(3) “District” means a school district as described in section 3311.01 of the Revised Code, municipal school district as described in section 3311.71 of the Revised Code, educational service center, community school, county MR/DD, chartered non-public school, or preschool program.

(4) “Private owner” means a private entity that provides pupil transportation services as described in section 4511.76 of the Revised Code.

(5) “Employee” means one who is employed as a school bus or school van driver by a district or private owner, and is subject to the requirements of a background check pursuant to section 3327.10 of the Revised Code.

(6) “Offense” for the purposes of this rule means an offense as provided for in section 3319.31 and division (B)(1) of section 3319.39 of the Revised Code 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 section 3319.31 or division (B)(1) of section 3319.39 of the Revised Code.

(7) “Non-rehabilitative offense,” pursuant to division (K) of section 3327.10 of the Revised Code, means any offense listed in division (C) of section 3319.31 of

the Revised Code as follows:

- (a) Violent offenses: sections 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter), 2903.041 (reckless homicide), 2903.11 (felonious assault), 2903.12 (aggravated assault), 2903.15 (permitting child abuse), 2905.01 (kidnapping), 2905.02 (abduction), 2905.05 (criminal child enticement), 2905.11 (extortion), 2909.02 (aggravated arson), 2911.01 (aggravated robbery), 2911.02 (robbery), 2911.11 (aggravated burglary), 2917.01 (inciting to violence), 2917.02 (aggravated riot), 2917.03 (riot), 2917.31 (inducing panic), 2921.03 (intimidation), 2921.04 (intimidation of attorney, victim or witness in criminal case), 2921.34 (escape), 2923.161 (improper discharge firearm at or into habitation; school-related offenses), 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance or illegal possession of an object indistinguishable from a firearm in school safety zone), 2923.123 (illegal conveyance of deadly weapon or dangerous ordnance into courthouse, illegal possession or control in a courthouse), 2923.21 (improperly furnishing firearms to minor), 2923.17 (unlawful possession of dangerous ordnance; illegally manufacturing or processing explosives) of the Revised Code; divisions (B)(1), (2), (3), or (4) of sections 2919.22 (endangering children), 2909.22 (soliciting or providing support for act of terrorism), 2909.23 (making terroristic threat), 2909.24 (terrorism), 2917.33 (unlawful possession or use of a hoax weapon of mass destruction), 2927.24 (contaminating substance for human consumption or use; contamination with hazardous chemical, biological, or radioactive substance; spreading false report), 3716.11 (placing harmful objects in food/confection), 2921.05 (retaliation), 2919.12 (unlawful abortion), 2919.121 (performing or inducing unlawful abortion upon minor), or 2919.13 (abortion manslaughter) of the Revised Code, section 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.
- (b) Theft offenses and other offenses against public administration: sections 2911.12 (burglary), 2913.44 (personating an officer), 2921.41 (theft in office), 2921.11 (perjury), or 2921.02 (bribery) of the Revised Code.
- (c) Drug abuse offenses: sections 2925.02 (corrupting another with drugs), 2925.03 (trafficking in drugs), 2925.04 (illegal manufacture of drugs or cultivation of marihuana), 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs), 2925.05 (funding of drug or marihuana trafficking), 2925.06 (illegal administration or distribution of anabolic steroids), 2925.13 (permitting drug abuse), 2925.22

(deception to obtain a dangerous drug), 2925.23 (illegal possession of drug documents), 2925.24 (tampering with drugs), 2925.32 (trafficking in harmful intoxicants; improperly dispensing or distributing nitrous oxide), 2925.36 (illegal dispensing of drug samples), or 2925.37 (possession of counterfeit controlled substances) of the Revised Code.

(d) Sexually-oriented offenses: sections 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), 2907.24 (soliciting; after positive HIV test), 2907.241 (loitering to engage in solicitation; solicitation after positive HIV test) 2907.25 (prostitution; after positive HIV test), 2907.31 (disseminating matter harmful to juveniles), 2907.311 (displaying harmful to juveniles), 2907.32 (pandering obscenity), 2907.321 (pandering obscenity involving a minor), 2907.322 (pandering sexually oriented matter involving a minor), 2907.33 (deception to obtain matter harmful to juveniles), 2907.34 (compelling acceptance of objectionable materials), or 2907.323 (illegal use of a minor in nudity-oriented material or performance) of the Revised Code, a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code.

(B) Pursuant to division (K) of section 3327.10 of the Revised Code, no district shall employ any individual if he/she has been convicted of or pled guilty to a non-rehabilitative offense as listed in paragraph (A)(7) 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 listed in paragraph (A)(7) 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 district maintains the discretion whether to employ or retain in employment an individual who has been deemed rehabilitated pursuant to this rule. A district 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 as defined in paragraph (A)(6) of this rule if all of the following conditions are met:

(1) The offense is not a non-rehabilitative offense as listed in paragraph (A)(7) of this rule.

(2) If the conviction is not a non-rehabilitative offense listed in paragraph (A)(7) of this rule, the following rehabilitation criteria shall apply:

(a) 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 district.

- (b) If the offense was a felony, at least five years have elapsed since the applicant was fully discharged from imprisonment, probation, or parole or the applicant has had the record of his/her guilty plea, finding of guilt or conviction sealed or expunged 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. If the offense was a misdemeanor, at least five years have elapsed since the date of conviction or the applicant has had the record of his/her guilty plea, finding of guilt or conviction sealed or expunged 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.
- (c) The applicant or employee has not pled guilty to, been found guilty by a jury or court of or convicted of the commission of any of the offenses listed in division (B)(1) of section 3319.39 of the Revised Code two or more times in separate criminal actions. Convictions or guilty pleas resulting from or connected with the same act, or resulting from offenses committed at the same time, shall be counted as one conviction or guilty plea for purposes of this paragraph. A sealed or expunged conviction shall not be counted for purposes of this paragraph.
- (d) 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 district that the applicant or employee has been rehabilitated.
- (e) A reasonable person would conclude that the applicant's hiring or the retention of the employee would not jeopardize the health, safety, or welfare of the persons served by the district, based upon information pertinent to the following factors:

 - (i) The nature and seriousness of the crime;
 - (ii) The extent of the applicant's or employee's past criminal activity;
 - (iii) The age of the applicant or employee when the crime was committed;
 - (iv) The amount of time that has elapsed since the applicant's or employee's last criminal activity;
 - (v) The conduct and work activity of the applicant or employee before

and after the criminal activity;

(vi) Whether the applicant or employee has completed the terms of his probation or deferred adjudication;

(vii) Evidence of rehabilitation;

(viii) Whether the applicant fully disclosed the crime to the district or employer;

(ix) Whether employment will have a negative impact on the local education community;

(x) Whether employment will have a negative impact on the state-wide education community; and

(xi) Any other factors the district or employer considers relevant.

(D) It is the duty of the applicant or employee 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 district 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 district.

(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 applicant's 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 district's 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 district 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 district on whether to employ or continue to employ an individual pursuant to the requirements of this rule can not be appealed to the Ohio department of education or state board of education.
- (J) Pursuant to sections 3319.39 and 4511.76 of the Revised Code, the criminal records prohibitions and rehabilitation criteria as established by this rule also apply, where applicable, to employees of private owners who transport students and those applicants seeking a position with a private owner that may require transportation of students.
- (1) If an employee fails to meet the rehabilitation criteria as established by this rule, the employee shall be expressly forbidden from transporting students or otherwise participating in the private owner's contractual obligations with the contracting school district in his/her capacity as an employee of the private owner until such rehabilitation criteria are met and a determination of rehabilitation can be made by the private owner.
- (2) A private owner shall inform an applicant that fails to meet the rehabilitation criteria as established by this rule that he/she, if hired, would be expressly forbidden from transporting students until such rehabilitation criteria are met and a determination of rehabilitation can be made by the private owner.
- (K) This rule is promulgated under the state board and department of education's rule-making authority under section 4511.76 and division (E) of section 3319.39 of the Revised Code.

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	3301.07, 3319.39, 3319.391, 3327.10, 4511.76
Rule Amplifies:	3319.39, 3319.391, 3327.10, 4511.76