

## Employment of individuals with convictions

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## Introduction

- ▶ New rule adopted for individuals licensed by ODE
- ▶ Follows amendments of statutes by HB 190 and HB 428
- ▶ Will address “non-licensed” individuals below as well

## OAC 3301-20-01

- ▶ County boards of DD are included in the definition of “district”
- ▶ Rule applies to teachers, substitutes, educational aides, holders of pupil activity supervisor permits, and any other position that requires a license issued by ODE
  - Applies to both applicants and educators

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## Termination required

- ▶ No County Board shall employ an applicant or educator upon learning that he/she has pled guilty to, been found guilty by a jury or court of, or convicted of any violation of any of the offenses listed in R.C. §3319.31(C) or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to the offenses listed in R.C. §3319.31(C)
- ▶ ODE must revoke the license

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## Standards of rehabilitation

- ▶ If educator has pled guilty to, been found guilty by a jury or court of, or convicted of any offense, other than the offenses referred to in R.C. §3319.31(C), ODE shall investigate, revoke the license, provide a notice of hearing, and hearing, and may enter into a consent agreement
- ▶ If the educator satisfies all terms and conditions of a consent agreement or ODE resolution pertaining to the educator, he/she shall be deemed rehabilitated with regard to the specific offense addressed in the consent agreement or resolution for purposes of future employment

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## Standards of rehabilitation

- ▶ Like R.C. §5126.28, County Board can employ applicant provisionally while waiting for result of background check; have to release if a conviction comes back
- ▶ County Board may employ an applicant otherwise disqualified if all of the following apply:
  - (1) Conviction was not for a non-rehabilitative offense
    - Defined by OAC 3301-20-01(A)(10)

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## Standards of rehabilitation

- ▶ 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
- ▶ If the offense was a felony, at least five (5) years have elapsed since the applicant was fully discharged from imprisonment, probation, or parole or the applicant had the conviction sealed or expunged
- ▶ If the offense was a misdemeanor, at least five (5) years have elapsed since the date of conviction or the applicant has had conviction sealed or expunged

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## Standards of rehabilitation

- ▶ The applicant 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 R.C. §3319.39(B)(1) and R.C. §3319.31 or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent, two (2) or more times in separate criminal actions, with the exception of two (2) or more misdemeanor theft related convictions
  - 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

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## Standards of rehabilitation

- ▶ The applicant provides written confirmation of his/her efforts at rehabilitation and the results of those efforts.
  - May include a statement by a court, parole officer, probation officer and/or counselor that the applicant has been rehabilitated.
- ▶ A reasonable person would conclude that the applicant's hiring or licensure will not jeopardize the health, safety, or welfare of the persons served by the County Board.
  - Evidence that the applicant's hiring or licensure will not jeopardize the health, safety, or welfare of the persons served by the County Board shall include, but not be limited to the following factors:
    - (i) The nature and seriousness of the crime;
    - (ii) The extent of the applicant's past criminal activity;
    - (iii) The age of the applicant when the crime was committed;

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## Standards of rehabilitation

- (iv) The amount of time that has elapsed since the applicant's last criminal activity;
- (v) The conduct and work activity of the applicant before and after the criminal activity;
- (vi) Whether the applicant has completed the terms of his probation or deferred adjudication;
- (vii) Evidence of rehabilitation;
- (viii) Whether the applicant fully disclosed the crime to the State Board, ODE and the County Board;
- (ix) Whether employment or licensure will have a negative impact on the local education community;
- (x) Whether employment or licensure will have a negative impact on the state-wide education community; and
- (xi) Any other factors ODE, County Board, or Superintendent of Public Instruction considers relevant.

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## Applicant's obligations

- ▶ Rule places the burden on the applicant to demonstrate rehabilitation
- ▶ Applicant has to provide written evidence that the conditions specified in the rule have been met
- ▶ If the applicant fails to provide such evidence or if the County Board or ODE determines that the proof offered by the applicant is inconclusive or does not establish proof of rehabilitation, the applicant shall not be hired by the County Board and the license shall not be issued by ODE

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## Exceptions

- ▶ Rule is applicable to convictions that have been sealed
- ▶ Law and rule do not prevent an applicant's hiring if the applicant has been granted an unconditional pardon pursuant to R.C. Chapter 2967 or the conviction or guilty plea has been set aside pursuant to law
  - Unconditional pardon includes a conditional pardon with respect to which all conditions have been performed or have transpired

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## Exceptions

- ▶ If an applicant or educator has been granted a judicial finding of eligibility for intervention in lieu of conviction under R.C. §2951.041, or has agreed to participate in a pre-trial diversion program under R.C. §2935.36, or a similar diversion program under rules of a court, for any offense listed in R.C. §3319.31 (B)(2) or R.C. §3319.31(C), ODE shall act in accordance with R.C. §§3319.31 and 3319.311 and OAC Chapter 3301-73

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## OAC 3301-20-03

- ▶ Covers applicants and employees of a “district” for a position that does not require a license but who are subject to the requirements of a criminal records check pursuant to R.C. §3319.391
  - Employment prohibited for those convicted of offenses listed in R.C. §3319.39(B)(1)
- ▶ County boards of DD are included in the definition of “district”

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## OAC 3301-20-03

- ▶ No County Board shall employ a person 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”
- ▶ “Non-rehabilitative offense” is defined by the rule, not statute
  - More encompassing than teacher’s rule

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## Standards of rehabilitation

- ▶ 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
- ▶ The applicant provides written confirmation of his/her efforts at rehabilitation and the results of those efforts.
  - May include a statement by a court, parole officer, probation officer and/or counselor that the applicant has been rehabilitated.
- ▶ A reasonable person would conclude that the applicant’s hiring or licensure will not jeopardize the health, safety, or welfare of the persons served by the County Board.
  - Evidence that the applicant’s hiring or licensure will not jeopardize the health, safety, or welfare of the persons served by the County Board shall include, but not be limited to the following factors:
    - (i) The nature and seriousness of the crime;
    - (ii) The extent of the applicant/employee’s past criminal activity;
    - (iii) The age of the applicant/employee when the crime was committed;

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## Standards of Rehabilitation

- iv) The amount of time that has elapsed since the applicant/employee's last criminal activity;
- (v) The conduct and work activity of the applicant/employee before and after the criminal activity;
- (vi) Whether the applicant/employee has completed the terms of his probation or deferred adjudication;
- (vii) Evidence of rehabilitation;
- (viii) Whether the applicant/employee fully disclosed the crime to the County Board;
- (ix) Whether employment or licensure could have a negative impact on the local education community;
- (x) Whether employment or licensure could have a negative impact on the state-wide education community; and
- (xi) Any other factors the County Board considers relevant.

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## Burden on applicant/employee

- ▶ Rule places burden on applicant/employee to demonstrate rehabilitation
  - Has to provide written evidence that the conditions specified in the rule have been met
- ▶ If applicant/employee fails to provide such evidence or if the County Board determines that the proof offered by the applicant/employee is inconclusive or does not establish proof of rehabilitation, the applicant **shall not** be hired by the County Board or employee shall be released from employment

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## Exceptions

- ▶ Rule is applicable to convictions that have been sealed
- ▶ Law and rule do not prevent an applicant's hiring if the applicant has been granted an unconditional pardon pursuant to R.C. Chapter 2967 or the conviction or guilty plea has been set aside pursuant to law
  - Unconditional pardon includes a conditional pardon with respect to which all conditions have been performed or have transpired

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## Other conditions

- ▶ As a condition of initial or continued employment, the County Board may request the applicant/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 applicant/employee shall bear all direct and associated costs of the evaluation and treatment program
- ▶ Failure on the part of an applicant/employee to comply with the County Board's request may be considered as a factor against initial or continued employment

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## Other conditions

- ▶ County Board maintains the discretion whether to employ or retain in employment an individual who has been deemed rehabilitated pursuant to the rule
- ▶ Prior to rendering a decision on employment, the County Board shall provide an opportunity for a meeting to an employee, if requested by the individual, so that he/she may provide evidence of rehabilitation

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## OAC 3301-83-23

- ▶ No County Board shall employ an individual as school bus or school van driver who has been convicted of a non-rehabilitative offense
  - Cannot hire and must terminate
- ▶ Non-rehabilitative offenses seem to be different than those contained in OAC 3301-20-03
- ▶ Cannot employ a bus driver conditionally pending record check
  - Have to have complete prior to hiring

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## OAC 3301-83-23

- ▶ Standards of Rehabilitation, burden on applicant/employee, exceptions, and other conditions are the same as in OAC 3301-20-03
  - Applicant/employee must demonstrate rehabilitation
  - County Board maintains the discretion whether to employ or retain in employment an individual who has been deemed rehabilitated pursuant to the rule
  - Can require evaluation and treatment program
  - Prior to rendering a decision on employment, the County Board shall provide an opportunity for a meeting to an employee, if requested by the individual, so that he/she may provide evidence of rehabilitation