

## **The Criminal Records Check Law in Ohio**

This information is being sent to you per your inquiry about how the Criminal Records Check law may impact your employment as a nurse in Ohio. This information is not intended to be used as legal advice. It is intended to be used as general information and for guidance as it only provides a limited summary of parts of the Criminal Records Check law. For additional information, consult the Ohio Revised Code and Ohio Administrative Code as referenced below. If you have a specific issue or problem consult with your legal counsel.

### **The History of Senate Bill 38 and Senate Bill 160**

Ohio is one of the many states in the country to mandate criminal records checks. In 1993, Senate Bill 38 (SB 38) was passed and codified in Section 3701.881 of the Ohio Revised Code (ORC). SB 38 requires criminal records checks for potential employees working in positions with responsibility for the care, control, or custody of children. Senate Bill 160 (SB 160), effective January 27, 1997, requires entities to request a criminal records check of each applicant under final consideration for a position that involves providing care to a person age 60 and older. SB 160 applies to home health agencies, hospice care programs and PASSPORT (Medicaid waiver) provider agencies, as well as other types of entities such as nursing homes, skilled nursing facilities, residential care facilities, adult care facilities, certain adult day care centers, and homes for the aging. ***The law requires the record checks be requested from the Bureau of Criminal Identification and Investigation (BCII) and prohibits hiring an applicant who has been convicted of certain offenses or who fails to provide the information necessary for a records check.***

The law requires a criminal records check for all prospective employees who are under final consideration for either a full-time, part-time, or temporary position where the individual will be caring for older adults or children. The law applies only to those applicants who are under final consideration for employment, not to all those who apply for a position.

### **Disqualifying Offenses and Personal Character Standards**

The Criminal Records Check law sets forth a list of disqualifying offenses. Certain of the offenses are absolute bars to employment; however for other offenses, an employer may choose to employ an applicant, if the applicant meets the “personal character standards” set forth in Ohio Administrative Code (OAC) rules. If an employer finds an applicant has a certain disqualifying offense but the employer believes the applicant warrants further consideration, the employer may apply the OAC rules and the personal character standards. If the applicant provides proof that the personal character standards are met, the employer may hire the applicant. ***However, even if the applicant meets the personal character standards, the employer is not obligated to hire the applicant. The employer chooses to hire or not to hire based on all the factors considered.***

The various sets of rules are generally consistent in their requirements, but there are some differences. A PASSPORT agency must apply the rules and the personal character standards to applicants as specified in OAC rule 173:3-1-13. A home health agency must apply the personal character standards established in OAC rules 3701-60-02 through 3701-60-10. Other providers must apply the rules and the personal character standards in OAC rules 3701-13-01 to 3701-13-09.

### **The Screening Tool Based on the OAC Rules**

The screening tool categorizes the disqualifying offenses and is based on the statute and rules. It is designed to assist providers in applying the criminal records check requirements and the personal character standards. The tool is comprised of “screens” which categorize the offenses according to the OAC rules. For some of the screens, some designated offenses apply only to older adults and some apply only to children. Those offenses that apply only to older adults or only to children are specified. If not specified, the offense applies to both children and adults.

Each screen is a “hurdle” that must be met before hiring is allowed. For example, the first section lists

absolute bars to employment. If an applicant has a conviction or a guilty plea to any of the offenses listed under this first section of absolute bars, the applicant cannot be employed. However, if the applicant has none of the offenses listed under the first screen, the first hurdle has been met, and the employer may continue to the second screen, and so forth. If all the hurdles are met, the employer may decide to employ the applicant.

Again, this document is for guidance only and is not intended to provide legal advice. For specific questions or problems, contact your legal counsel. This screening tool may be reproduced, but the tool should be reproduced in its entirety and not altered. Any alterations could change the content and then the tool may not meet the regulatory requirements.

## First Screen for Employment

### Offenses That Are Absolute Bars

If an applicant has been convicted of or pled guilty to any one of the following offenses (or any substantially equivalent offense in any state), the applicant cannot be employed. *A check mark for any one of these offenses disqualifies the applicant for employment.*

	<b>Based on Ohio Revised Code</b>	<b>Offense</b>
	2903.34	Patient Abuse or Neglect
	3716.11	Adulteration of Food
	2903.01	Aggravated Murder
	2903.02	Murder
	2903.03	Voluntary Manslaughter
	2907.02	Rape
	2907.03	Sexual Battery
	2907.05	Gross Sexual Imposition
	2907.12	Felonious Sexual Penetration
	2903.11	Felonious Assault (with a purpose to satisfy sexual needs or desires of the offender)
	2903.04 Division (A)	Involuntary Manslaughter (with a purpose to satisfy sexual needs or desires of the offender)
	2905.01	Kidnapping (with a purpose to satisfy sexual needs or desires of the offender OR if the victim was a minor)
	2905.02	Abduction (if the victim is a minor)
	2907.321	Pandering Obscenity Involving a Minor For older adults: Division (A) (1) or (A) (3) For children: 2907.321
	2907.322	Pandering Sexually-Oriented Matter Involving a Minor For older adults: Division (A) (1) or (A) (3) For children: 2907.322
	2907.323	Illegal Use of a Minor in Nudity-Oriented Material or Performance For older adults: Division (A) (1) or (A) (2) For children: 2907.323

## Continuation of the First Screen for Employment – Absolute Bars

The following offenses, when involving a minor, apply to applicants who will be responsible for the care, custody, or control of children. These offenses are not applicable for applicants providing direct care to older adults. *One check mark here disqualifies the applicant from providing care to children.*

	Based on Ohio Revised Code	Offense
	2905.04	Child Stealing
	2905.05	Child Enticement
	2907.21	Compelling Prostitution
	2919.22	Endangering Children

The following theft-related offenses apply to applicants who will be providing direct care to older adults. Theft-related offenses are not applicable for applicants who will be responsible for the care, custody, or control of children. *Two check marks, either for separate offenses or for a repeat conviction or guilty plea for the same offense, disqualify the applicant from providing direct care to older adults. Repeat Theft Related Offenses: If a person has been convicted of or pleaded guilty to the commission of two theft-related offenses or a combination of any two of these theft-related offenses, in two or more criminal actions, the applicant is barred from providing direct care to older adults.*

	Based on Ohio Revised Code	Offense
	2913.02	Theft
	2913.11	Passing Bad Checks
	2913.21	Misuse of Credit Cards
	2913.31	Forgery
	2913.40	Medicaid Fraud
	2913.47	Insurance Fraud
	2913.51	Receiving Stolen Property

**This ends the first screen. If the applicant does not pass the above screen, the employer cannot hire the applicant. If the applicant passes the above screen, continue to the next screen.**

## The Second Screen for Employment

### Violent Offenses

The following list identifies violent offenses that are not absolute bars. *Notice that some of the violent offenses become absolute bars under certain circumstances, i.e., with a sexual motivation or if a minor is involved.* Without these specific circumstances, the violent offense is not an absolute bar, so the offense is listed below. For example, felonious assault with a sexual motivation is an absolute bar, but felonious assault without a sexual motivation is not an absolute bar but still is a violent offense. A

violent offender may be employed if ALL the following conditions are met:

- 1) The victim was not a minor; and
- 2) The victim was not an older adult; and
- 3) The applicant is not a repeat violent offender; and
- 4) At least five years have elapsed since the applicant was fully discharged from imprisonment, probation and parole.

	<b>Based on Ohio Revised Code</b>	<b>Offense</b>
	2903.04	Involuntary Manslaughter (Division (A) offense with a purpose to gratify the sexual needs and desires of the offender is an absolute bar)
	2903.11	Felonious Assault (If done with a purpose to satisfy the sexual needs or desires of the offender, it is an absolute bar.)
	2903.12	Aggravated Assault
	2903.13	Assault
	2903.21	Aggravated Menacing
	2905.01	Kidnapping (If done with a purpose to satisfy the sexual needs or desires of the offender OR if the victim was a minor, it is an absolute bar)
	2905.02	Abduction (If the victim was a minor, it is an absolute bar.)
	2905.11	Extortion (does not apply for children)
	2911.01	Aggravated Robbery
	2911.02	Robbery
	2911.11	Aggravated Burglary
	2911.12	Burglary
	2919.25	Domestic Violence
	2923.161	Improperly Discharging a Firearm/Habitation or School
		Any offense substantially equivalent to the offenses of violence listed above or any statutorily designated offense of violence in any state that was committed purposely or knowingly and involving physical harm to persons or a risk of serious physical harm to persons.

This is the end of the Second Screen. *If the applicant does not pass the above screen, the employer cannot hire the applicant.* If the applicant passes the above screen, continue to the next screen.

## **The Third Screen for Employment**

### **Non-Violent Offenses**

For non-violent offenses, the employer must consider the offenses in relation to frequencies, patterns, etc., and if the applicant is on parole, probation, or fined, the employer needs to investigate further to determine if the applicant is meeting all conditions subject to the conviction. An applicant may be employed if the offense is a non-violent offense AND the applicant is discharged from imprisonment, sentenced to probation, or is fined or is on parole and is meeting all conditions subject to that conviction.

<b>These offenses apply to both older adults and children</b>		
	<b>Based on Ohio Revised Code</b>	<b>Offense</b>
	2903.16	Failing to Provide for a Functionally-Impaired Person
	2907.06	Sexual Imposition
	2907.07	Impositioning
	2907.08	Voyeurism
	2907.09	Public Indecency
	2907.25	Prostitution
	2907.31	Disseminating Matter Harmful to Juveniles
	2907.32	Pandering Obscenity
	2923.12	Carrying Concealed Weapons
	2923.13	Having Weapons While Under Disability
	2925.02	Corrupting Another With Drugs
	2925.03	Drug Trafficking Offenses
	2925.11	Drug Abuse

<b>These offenses apply only to children</b>		
	<b>Based on Ohio Revised Code</b>	<b>Offense</b>
	2907.04	Corruption of Minor
	2907.22	Promoting Prostitution
	2907.23	Procuring
	2919.12	Unlawful Abortion
	2919.22	Endangering Children
	2919.24	Contributing to the Unruliness or Delinquency of a Child
	2925.04	Illegal Manufacturing of Drugs
	2925.05	Funding Drug Trafficking
	2925.06	Illegal Administration of Distribution of Anabolic Steroids

**These offenses apply only to older adults.** Remember that one theft-related offense (theft, passing bad checks, misuse of credit cards, forgery, Medicaid fraud, insurance fraud, receiving stolen property) does not automatically disqualify an applicant, but a repeat of any one of these offenses or a combination of two or more of the offenses is an automatic bar for applicants working with older adults (See absolute bars).

	<b>Based on Ohio Revised Code</b>	<b>Offense</b>
	2905.12	Coercion
	2911.13	Breaking and Entering
	2913.02	Theft, Aggravated Theft (see above explanation)
	2913.03	Unauthorized Use of a Vehicle
	2913.04	Unauthorized Use of Property; Unauthorized Access to Computer Systems
	2913.11	Passing Bad Checks (see above explanation)
	2913.21	Misuse of Credit Cards (see above explanation)
	2913.31	Forgery (see above explanation)
	2913.40	Medicaid Fraud (see above explanation)
	2913.43	Securing Writings by Deception
	2913.47	Insurance Fraud (see above explanation)
	2913.51	Receiving Stolen Property (see above explanation)
	2921.36	Prohibition of Conveyance of Certain Items onto Grounds of Detention Facility or Mental Health or Mental Retardation and Developmental Disabilities Facility
	2925.13	Permitting Drug Abuse
	2925.22	Deception to Obtain a Dangerous Drug
	2925.23	Illegal Processing of Drug Documents

## For PASSPORT Applicants Only

**If the applicant is being considered for PASSPORT only, apply these factors.** If the applicant is being considered only for home care or hospice, apply the factors on the next page. If the applicant is being considered for PASSPORT and home care or hospice, apply the factors listed here **and** the factors on next page.

The PASSPORT agency must consider all of the following factors to determine if it is likely the applicant will commit another disqualifying offense. If it is determined that it is likely the applicant will commit another disqualifying offense, the applicant must not be hired.

- The duties and responsibility of the position;
- The nature and seriousness of the offense;
- Whether or not the applicant committed a theft-related offense or a violation of an existing or former law of this state, any other state, or the United States, if the offense is substantially equivalent to any theft-related offense (aggravated theft, theft, misuse of credit cards, forgery, receiving stolen property, Medicaid fraud, insurance fraud, passing bad checks);
- Whether or not the applicant had committed an offense of violence;
- The circumstances under which the offense was committed, including, but not limited to:
  - The applicant's age at the time of the offense;
  - The degree to which the applicant participated in the offense;
  - The age and ability of the victim, including whether the victim was an individual with a physical disability and/or an older adult (if the victim was an older adult, the PASSPORT agency should give greater consideration in the decision whether or not to hire);
- The extent to which the position being filled provides an opportunity for the commission of the same or similar offenses;
- The time elapsed since the applicant was fully discharged from imprisonment, probation, and parole;
- The applicant's efforts at rehabilitation and the results of those efforts;
- Whether any criminal proceedings are pending against the applicant;
- A conviction listed on the report of a criminal background check which lists an offense contained in the Revised Code that is not listed as a designated offense by the statute, if the crime bears a direct and substantial relationship to the duties and responsibilities of the position being filled; and
- Any other factors which are relevant to the performance of the job duties.

## For Applicants Other Than PASSPORT

**If the applicant is being considered by providers other than PASSPORT, apply these factors.** If the applicant is being considered only for PASSPORT, apply the factors on the previous page. If the applicant is being considered for PASSPORT **and** other providers, apply the factors listed here **and** the factors on the previous page.

The provider must consider the following factors to determine whether it is likely that the applicant will cause harm to an older adult or child.

- The applicant's age at the time of the offense;
- Regardless of whether the applicant knew the victim prior to the committing of the offense, the age and mental capacity of the victim;
- The nature and seriousness of the offense;
- The number of previous offenses or length of time since the most recent conviction or guilty plea;
- The degree to which the applicant participated in the offense and the degree to which the victim contributed to or provoked the offense;
- The likelihood that the circumstances leading to the offense will reoccur;
- The extent to which the position applied for provides an opportunity for the commission of a disqualifying offense;
- The applicant's employment record;
- The applicant's efforts at rehabilitation and the results of those efforts;
- If known, whether the applicant has been convicted of or pleaded guilty to any violation of an existing or former municipal ordinance substantially equivalent to any offense listed as a designated offense in the statute;
- Whether any criminal proceedings are pending; and
- Any other factors related to the position that the chief administrator considers relevant to the performance of job duties.