

Ohio Department of Job and Family Services
Model Background Check Policy

I. PURPOSE/REASON:

The purpose of this policy is to establish standards within (enter entity name here—e.g. county department of job and family services, child support enforcement agency, or public children services agency) regarding criminal background checks, and to set uniform procedures for conducting investigations and evaluating investigation results to make suitability determinations for general employment and access to Federal Tax Information (FTI).

II. AUTHORITIES:

1. Ohio Revised Code (ORC) 301.22, 307.981, 329.02
2. ORC 2921.02, 2921.41, 2921.43 and 2961.02
3. ORC 124.25, 124.74
4. IRS Publication 1075, issued September 2021.
5. R.C. 5101:9-9-26

III. SUPERSEDES:

Previous policy on background checks.

IV. SCOPE:

- A. This policy applies to all final candidates selected for and offered positions with (entity name), including all current (entity name) employees applying for positions.
- B. This policy also applies to employees, current and prospective contract or subcontract employees, intermittent employees, and temporary service personnel, including those who have or will have access to Federal Tax Information (FTI).
- C. The (enter name of office that manages human resources for the entity) is responsible for implementing the procedures contained within this policy and ensuring they are equally applied to all final candidates, employees, current and prospective intermittent employees, contract or subcontract employees, and temporary service personnel working for (entity name).

V. DEFINITIONS:

Conviction – As used in this policy, a conviction means a finding of guilty, no contest, or the imposition of a sentence by a judge or jury in any federal or state court.

Employee – As used in this policy, an individual who is currently appointed to a position at (entity name).

Favorable Adjudication – Is either the determination that a final candidate, employee, a current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel has no criminal conviction or record of criminal activity or the outcome of a background check of an individual with a criminal conviction or record of criminal activity when it is determined by the (enter name of individual or office that will make final determinations on suitability of individuals with criminal backgrounds) that the conviction or record of criminal activity does not prevent the individual from holding or continuing to hold a position having access to FTI. This term is used interchangeably within this policy with the concept of suitability.

Federal Tax Information (FTI) – Includes federal tax returns (including supplements, schedules, attachments, 1040s, 1099s, or W-2s) and information found on the tax return, if the return and return information have been provided to (entity name) directly from a federal agency like the IRS, Social Security, OCSE, Health and Human Services or from the Ohio Department of Job and Family Services, where the original source is the IRS, Social Security, OCSE, or Health and Human Services.

Final Candidate – A "final candidate" is an individual, whether or not currently employed by a county agency, who has submitted an application for employment at the county agency and who has received an offer of employment conditioned upon a favorable adjudication of an Federal Bureau of Investigation (FBI) and Ohio Bureau of Criminal Investigation (BCI) fingerprint background check.

Intermittent employee – Means an appointment where an employee is required to work less than one thousand hours per fiscal year, or for the duration of a specific project or grant which may exceed one thousand hours in a fiscal year.

Local Law Enforcement Check – Includes checks with local law enforcement agencies where the subject has lived, worked, and/or attended school within the past five years. A fingerprint background check conducted by BCI is acceptable as a local check.

VI. PROCEDURES – CRIMINAL BACKGROUND CHECKS:

A. INTRODUCTION:

1. (entity name) requires that final candidates submit to a background check which is conducted in accordance with state and federal law. Background checks ensure that (entity name) does not employ any individual who is barred from county, state or federally funded employment because of the conviction of certain crimes. (entity name) is also responsible for assuring that those individuals who have criminal convictions are suitable for the applied for position with (entity name).

2. Except as otherwise provided for in R.C. 5101:9-9-26 (B)(2),(3), and (4) final candidates, employees, current and prospective intermittent employees, contract or subcontract employees, and temporary service personnel who will have or have access to FTI are required to have an FBI and BCI fingerprint background check conducted by BCI and the FBI with IRS Publication 1075 that is favorably adjudicated in accordance with this policy before being afforded access to FTI, and then every five years thereafter if remaining in a position that has access to FTI.

B. REVIEWING A CRIMINAL RECORD:

Unless provided by law, a record of criminal conviction(s) will not automatically disqualify a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel from being appointed to or maintaining a position with (entity name).

If a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary services personnel has a criminal conviction, (name of office that manages human resources for the county), with assistance, if required, from (name of the office that provides legal guidance to the entity, whether it be the county prosecutor or law director), will determine whether the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel is or remains qualified and suitable to hold the position, given the criminal conviction record.

1. Disqualifications from employment provided by law or policy: The following will disqualify a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel from appointment, working or continued employment at (entity name):
 - (a) Refusal to consent to a background check, including unusual delay in executing the consent to conduct a background check;
 - (b) A conviction listed in ORC 2961.02;
 - (c) A felony conviction or guilty plea for a violation of any of the following sections of the Ohio Revised Code or a felony conviction (or equivalent) or guilty plea in another state for the same type of violation:
 - (1) Bribery, ORC 2921.02;
 - (2) Theft in Office, ORC 2921.41;

- (3) Soliciting/Receiving Improper Compensation, ORC 2921.43; any conviction for this offense within seven years of submission of the employment application to (entity name).

2. Criminal convictions considered for positions with access to FTI:

When a position includes access to FTI, (entity name) will engage in the individualized analysis below when reviewing any conviction involving a crime of theft, dishonesty or fraud, including the following: theft, identity fraud, embezzlement, forgery, burglary, robbery, or any equivalent crime in another jurisdiction.

3. General relevance of criminal convictions to employment at (entity name):

Even when a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee or temporary service personnel will not, in the course of employment, have access to or use FTI, (entity name) will conduct an individualized analysis on a final candidate, employee, intermittent employee, contract employee, or temporary service personnel's conviction history, as is set forth below.

4. Individualized analysis:

(a) Unless otherwise provided by federal or state law, to determine whether a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel is or continues to be suitable for a position, (entity name) will conduct an analysis of the duties of the position and the crime(s) committed, along with the following, which is not intended to be an exclusive list:

- (1) Relationship of the criminal record to the type of FTI used or accessible in the position;
- (2) The nature of the work to be performed;
- (3) The time that has lapsed since the conviction;
- (4) The age of the final candidate, employee, current or prospective intermittent employee, contract employee or temporary service personnel at the time of the offense;
- (5) The seriousness and specific circumstances of the offense, including the type of harm that the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, temporary service personnel caused, and/or the legal elements involved in the specific crime committed;
- (6) The number of offenses;

- (7) Whether the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel has pending charges;
- (8) Any evidence of rehabilitation or contrition;
- (9) Any other relevant information, including that submitted by or on behalf of the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel, or other information obtained by (entity name).

(b) Assessing a criminal background check with arrests: Since arrests are not evidence of the commission of a crime, they cannot serve as the basis for a denial of employment or continued employment. However, if the identity of the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel is confirmed, and if there is corroborating evidence of criminal activity involving acts identified in section VI, B, 2, above, these may be considered when performing the individualized analysis in determining suitability for a position with access to FTI.

The (enter name of individual or office that will make final determinations on suitability of individuals with criminal backgrounds) will determine from these factors, and other information deemed appropriate, whether there is a significant relationship between the duties that the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel would perform for (entity name) and the crime(s) committed and/or criminal record and whether this renders this individual unsuitable for the job or access to FTI as a matter of business necessity. The final decision whether to withdraw a conditional offer of employment or to seek termination of employment based on this analysis will be made by the (enter name of individual or office that will make final determinations on suitability of individuals with criminal backgrounds).

5. Notification of automatic disqualification or unsuitability.

- (a) If the (enter name of individual or office that will make final determinations on suitability of individuals with criminal backgrounds) determines in accordance with section VI, B, above, that a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee or temporary service personnel's criminal record automatically disqualifies or renders the individual unsuitable or no longer suitable for the position, the individual will be notified immediately.
- (b) The final candidate, employee, current or prospective intermittent employee, contract or subcontract employee or temporary service

personnel will be provided a copy of the background check information upon which the (enter name of individual or office that will make final determinations on suitability of individuals with criminal backgrounds) relied, a copy of this policy, and will be provided the reason why the criminal record rendered this individual disqualified or unsuitable for employment with (entity name).

- (c) The final candidate, employee, current or prospective intermittent employee, contract or subcontract employee or temporary service personnel will also be informed of the right to dispute the accuracy and/or relevancy of the criminal record within eight (8) business days. This individual may dispute the accuracy or relevancy of the criminal record by providing verified information indicating that the criminal record is inaccurate or by providing information that demonstrates the irrelevance of the criminal record to the duties of the position being sought or maintained.
- (d) Once (entity name) has received the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee or temporary service personnel's dispute and accompanying information, the (enter name of individual or office that will make final determinations on suitability of individuals with criminal backgrounds) shall make a final determination about the disqualification or suitability within two (2) business days. After a final decision has been made about the disqualification or suitability of a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, temporary service personnel, there is no further appeal.

C. REPORTING OF KNOWN OFFENDERS

Should the results of the criminal background check disclose outstanding warrant(s), violation(s) of probation or parole, or any other similar outstanding actions against a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel any pertinent information supplied as part of the background check process will be forwarded to the (enter the name of the office that provides legal guidance to the entity, whether it be the county prosecutor or law director), for appropriate action on behalf of (entity name).