STANDARD PROCEDURE FOR SELF-DISCLOSURE OF CRIMINAL CONVICTIONS, TRAFFIC VIOLATIONS, AND BACKGROUND SCREENINGS

PROCEDURAL STATEMENT:

The purpose of this Standard Procedure is to establish a uniform process governing the self-disclosure of criminal convictions, traffic violations, and background screenings and to ensure the Ohio Department of Transportation’s (ODOT) process is job related and consistent with business necessity.

AUTHORITY:

DAS Policy HR-29
Driving Matrix
Fair Credit Reporting Act
Ohio Revised Code § 124.34
Ohio Revised Code Chapter 4112*
Ohio Administrative Code § 123:1-49-02*
Title VII of the Civil Rights Act of 1964*

*ODOT acknowledges that having a criminal conviction is not considered a protected class under anti-discrimination and anti-harassment statutes, rules, regulations, executive orders, and directives. However, ODOT must ensure that its policies and practices do not have a disparate impact on individuals based on their membership in a protected class.

SCOPE:

This procedure applies to all employees, applicants, permanent, temporary, seasonal and intermittent appointments, and temporary staff provided by third-party vendors unless the third-party vendor has conducted its own background check that complies with ODOT’s requirements.
DEFINITIONS:

Background Screening: Process of acquiring records regarding a candidate that are used to determine suitability for initial or ongoing employment.

Break in Service: Leave employment either voluntarily or involuntarily for any period of time.

CDL: Commercial Driver’s License

Criminal Conviction: Being found guilty, entering a guilty plea, or pleading no contest to a felony or misdemeanor. Convictions that have been expunged or sealed are no longer considered to be convictions.

Fair Credit Reporting Act: Federal law that regulates collection, dissemination, and use of consumer information.

Traffic Violation: Traffic violation includes any citation issued by a law enforcement official and deemed to be a moving violation, awards points, causes suspension of driver’s license or CDL privileges, or otherwise negatively affects the employee’s driving record. Traffic violations include those violations that occur outside the boundaries of the state of Ohio.

PROCEDURE:

I. Disclosure of Criminal Convictions by Current Employees

A. All employees of ODOT shall voluntarily disclose to their immediate supervisor the receipt of a criminal charge. Disclosure should be done no later than the start of the employee’s next work period.

B. The supervisor of an employee who has reported receipt of a criminal charge must immediately contact the respective Labor Relations Officer to determine the employee’s ability to legally and safely remain in the workforce.

C. It is the employee’s responsibility to disclose the final disposition of any criminal charges received by the employee throughout the course of employment.

D. Criminal charges and/or convictions are considered to be confidential information and should only be shared with applicable members of management.

E. Employees who fail to disclose a criminal conviction will be subject to disciplinary action up to and including dismissal.
II. Disclosure of Traffic Violations by Current Employees Required to Operate a Motor Vehicle for Employment

A. Any employee who through the course of employment will be required to operate a state vehicle or a privately owned vehicle on state time in furtherance of state business shall voluntarily disclose to his/her immediate supervisor the receipt of a traffic violation. Disclosure should be done no later than the start of the employee’s next work period.

B. It is the employee’s responsibility to disclose the effect of the violation on the status of the employee’s driver’s license or CDL privileges.

C. The supervisor of an employee who has reported a traffic violation must immediately contact the Office of Health and Safety located in ODOT’s Central Office and his/her respective Labor Relations Officer to determine the employee’s eligibility to operate a motor vehicle through the scope of his/her employment with the state.

D. An employee who fails to disclose a traffic violation or a traffic violation’s effect on his/her driving license or CDL privileges will be subject to disciplinary action up to and including dismissal.

III. Disclosure of Criminal Convictions by Applicants

A. In accordance with the guidance issued by the U. S. Equal Employment Opportunity Commission (EEOC) and Policy HR-29 issued by the Ohio Department of Administrative Services (DAS), ODOT does not disqualify applicants from employment based solely on the presence of a criminal conviction.

B. No members of ODOT staff, or third-party vendors acting on ODOT’s behalf, will inquire as to whether or not an applicant possesses a criminal conviction, felony or misdemeanor, prior to the applicant being offered an interview or a conditional offer of employment within ODOT.

C. Inquiries as to whether or not an applicant possess a criminal conviction shall not be included in interview questions and will not be addressed by the panel members as a whole.

D. Once an applicant has accepted an interview offer or has been given a conditional offer of employment, the applicant will be required to complete a Background Check Authorization form which includes a Supplemental Questionnaire wherein the applicant will be asked to disclose any previous criminal convictions.
E. Applicants may return the completed forms directly to the Human Resource (HR) representative or directly submit the information to the Office of Equal Opportunity (OEO) by mail, email, or fax. Applicants must return completed forms within 3 days of receipt to continue to be eligible for consideration.

F. Completed Background Check Authorization forms and Supplemental Questionnaires returned to HR representatives shall be sealed and forwarded to OEO. Once a final candidate is selected and/or a conditional offer of employment is extended HR should forward a copy of the selected candidate’s employment application to OEO. OEO will then begin the background check process using the selected candidate’s responses provided on the form and application.

G. ODOT will complete a background check for each candidate selected as a final candidate, including current employees.

H. Final candidates shall not begin employment until the background check process is complete and the applicant has been deemed eligible for employment in the position for which he/she applied.

I. Determination of eligibility will be made in accordance with the procedure outlined in Section IV of this Standard Procedure.

J. Applicants are required to self-disclose a prior criminal conviction upon request and failing to do so may affect consideration for hire.

IV. Background Screening

A. The Background Screening process includes two parts: a review of the applicant’s driving history and a criminal conviction check.

B. Driving History

1. Reviews of candidates’ driving records are completed in order to determine each candidate’s qualifications and to ensure that he/she has demonstrated the safety behaviors required.

2. Driving history reviews must be completed on those employees who will be operating the state’s equipment, or their own equipment, through the course of their employment with the state.

3. The majority of positions within ODOT require the employee to operate a motor vehicle in order to meet the expectations of the position.
4. ODOT reviews the driving record of each applicant through the Ohio Bureau of Motor Vehicles.

5. Those applicants who possess a driver’s license from a state other than Ohio, or those applicants who have possessed an out-of-state driver’s license at any time during the five years prior to review, must provide a certified copy of his/her out-of-state driving history for at least the five years prior to the review of the applicant’s driving qualifications. It is the responsibility of each HR representative to collect any out-of-state driver’s records prior to submitting the applicant for driving review.

6. Eligibility for hire into positions which require driving will be determined based on the required qualification for the position as well as in accordance with the driving matrix issued in memorandum and developed in conjunction with all applicable departments.

C. Criminal Background

1. Except as otherwise required by state or federal law, consideration of convictions will be analyzed on three factors: the time elapsed since the conviction or release from incarceration, the nature and severity of the offense, and how such relates to the position for which the applicant has applied.

2. A criminal background check will be run through a third party vendor that will check all state and municipal court systems within the state of Ohio.

3. Applicants that have lived in states other than Ohio will be checked for criminal convictions in each of the states the applicant has resided, as well as neighboring states as available.

4. Upon evidence of a felony or misdemeanor conviction, additional research will be performed on the exact conviction and to determine whether or not additional convictions exist.

5. Once a complete picture of the applicant’s criminal conviction(s) is ascertained, an analysis will be performed as to the time elapsed since the conviction or release from incarceration, the nature and severity of the offense, and how such relates to the position for which the applicant has applied.
6. If it is discovered that an applicant has failed to disclose a conviction, an attempt to contact the applicant will be made through email or via telephone. The applicant will have three days in which to respond to the notification and/or to file a dispute with the vendor and/or applicable court system if he/she believes the conviction is the result of an error.

7. Upon evidence of a felony or misdemeanor conviction that could potentially interfere with the applicant’s ability to perform the tasks of the position for which he/she applied, the applicant will be given an opportunity to disclose, in writing, any mitigating circumstances, any rehabilitation efforts the applicant has participated in, and offer any additional information the applicant believes to be relevant. The applicant will be notified in accordance to the provisions required under the Fair Credit Reporting Act.

8. A committee will convene to review the candidate’s responses to the request for additional information. A determination will be made as to the applicant’s eligibility for hire and will be approved by the Division’s Deputy Director and/or his/her designee.

9. The candidate will be notified in writing as to the reasons for his/her eligibility or ineligibility.

10. The respective HR representative will be notified via email of the candidate’s eligibility status. The exact convictions and reasons for determination will be kept confidential.

**TRAINING:**

It is anticipated that implementing this Standard Procedure will not require any formal training. This Standard Procedure will be reviewed with all Deputy Directors, Administrators, and Supervisors who will be responsible for disseminating the information to their employees.

**FISCAL ANALYSIS:**

It is anticipated that implementing this Standard Procedure will not require any additional funding.