

**BOARD POLICY**

**Category: Board and General  
Administrative Matters**

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**CRIMINAL HISTORY VERIFICATIONS**

**Resolution No. 861 – March 16, 1994 (Attached)**  
(Repealed and replaced Resolution No. 512 – June 10, 1981)

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Adopted: 06/81

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

RESOLUTION NO. 861

A RESOLUTION ESTABLISHING CATEGORIES OF CRIMES FOR WHICH CERTAIN DISTRICT JOB APPLICANTS MAY BE DETERMINED INELIGIBLE FOR EMPLOYMENT; AUTHORIZING THE GENERAL MANAGER TO ACQUIRE SUMMARY CRIMINAL HISTORY INFORMATION; ADOPTING REGULATIONS TO SECURE CONFIDENTIALITY OF SUCH INFORMATION; AND AUTHORIZING THE GENERAL MANAGER TO DESIGNATE A RECORDS SECURITY OFFICER

WHEREAS, it is the policy and goal of the Alameda-Contra Costa Transit District to provide safe transit to the general public; and

WHEREAS, it is recognized that some applicants for employment may possess a history of one or more criminal convictions; and

WHEREAS, it is also recognized that, under specific circumstances, an applicant's criminal conviction background may render the applicant ineligible for employment; and

WHEREAS, it is recognized that an applicant person who possesses one or more criminal convictions may successfully rehabilitate himself or herself, so as to be considered a productive member of society;

NOW, THEREFORE, the Alameda-Contra Costa Transit District Board of Directors does resolve as follows:

SECTION I: PREAMBLE

THIS RESOLUTION is adopted by the Board of Directors of the Alameda-Contra Costa Transit District ("AC Transit" or "the District") pursuant to California Penal Code Section 11105 and Section 13300. Nothing in this Resolution shall be construed to limit AC Transit's recruiting practices, except as specifically set forth in this Resolution. Further, nothing contained in this Resolution shall, in any way, restrict AC Transit's right to terminate or otherwise discipline an employee.

SECTION II: DEFINITIONS

A. Summary Criminal History Information: That record of information maintained by the California Department of Justice pertaining to the identification and criminal history of any person. Such record of information shall be limited to convictions only, and shall not include criminal information relating to conduct that did not result in a conviction; information concerning a referral to, and participation in, any

diversion program; information concerning convictions that have been judicially ordered sealed, expunged, or statutorily eradicated; information relating to any misdemeanor conviction for which probation has been successfully completed or otherwise discharged and the case judicially dismissed pursuant to Penal Code Section 1203.4; or information relating to certain marijuana convictions precluded by Labor Code Section 432.8.

If the specific behavior in issue resulted in a conviction, the record of information may include name, date of birth, physical description, date of arrest, arresting agency, and booking numbers, charges, dispositions and similar data about such person as it relates to said criminal conviction.

B. Applicant for Employment: A person who is being considered for employment with the District in one of the job classifications designated in this Resolution, regardless of whether the person is currently employed by the District in a different job capacity or has been previously employed by the District in any capacity.

C. Records Security Officer: The General Manager, or the person designated by the General Manager, whose responsibility is to assure confidentiality and security of all criminal history information requested and received by the District.

D. Conviction: A plea of guilty or no contest, a verdict or finding of guilt, regardless of whether sentence is imposed by the Court, of a felony or misdemeanor offense.

E. Felony: Any crime which is punishable by death or by imprisonment in the state penitentiary, regardless of whether such sentence is actually imposed.

F. Misdemeanor: Any crime not designated as a felony and which is punishable by a term of imprisonment not exceeding one year in a local detention facility.

G. Nexus: The relationship between specific criminal conduct and the duties of a specified job classification.

### SECTION III: DENIAL OF EMPLOYMENT

A. No applicant for employment with AC Transit will be summarily disqualified from employment solely on the basis that the applicant has incurred a criminal conviction. AC Transit shall consider an applicant's prior criminal record as one of several factors in making individual hiring decisions. AC Transit shall evaluate each application on a case-by-case basis to determine if the particular circumstances of the conviction

record indicate the applicant's unsuitability for the applied-for job classification.

B. In determining whether there is a nexus between the applicant's criminal record and the applied-for job duties, the following will be considered:

1. The nature of the criminal conduct at issue;
2. The proximity or remoteness in time of the criminal conduct in relation to the time of the job application;
3. The degree of rehabilitation evidenced by the applicant;
4. The circumstances under which the crime(s) was (were) committed, including any mitigating circumstances;
5. Whether the nature of the criminal record in relation to the particular duties of the applied for job classification creates a risk of endangerment to the person and property of the public and/or AC Transit employees.

C. If the District finds that a nexus exists between the criminal conduct at issue and the particular duties of the applied-for job classification, a business necessity is established, and the District may deny the applicant employment with the District.

#### SECTION IV. JOB DISQUALIFICATION BASED ON NEXUS

A. Absent overriding evidence of mitigating circumstances or rehabilitation, and in consideration of the high duty of care owed by a common carrier to its passengers, and the frequency of contact with and responsibility for the safety of the general public, the District finds that the following criminal convictions establish an impermissible nexus with the job duties of Bus Operator:

1. Crimes of a sexual nature committed against an individual including, but not limited to, rape, child molestation, and prohibited sexual acts.
2. Crimes involving violent or assaultive behavior including, but not limited to, murder, manslaughter, rape, robbery, assault, battery, kidnapping, mayhem, false imprisonment, extortion, carrying or use of a deadly weapon, and like offenses.
3. Crimes involving the sale, use, transportation of controlled substances, and/or operating a motor vehicle while under the influence of alcohol and/or controlled substances.

4. Crimes involving dishonesty including, but not limited to, theft, fraud, perjury, embezzlement, extortion, burglary, robbery, and like offenses.

B. Absent overriding evidence of mitigating circumstances or rehabilitation, and in consideration of safety/security concerns associated with the fueling, driving, and parking of revenue vehicles under circumstances which allow for limited supervision, the District finds that the following criminal convictions establish an impermissible nexus with the job duties of **Service Worker**:

1. Crimes involving violent or assaultive behavior including, but not limited to, murder, manslaughter, rape, robbery, assault, battery, kidnapping, mayhem, false imprisonment, extortion, carrying or use of a deadly weapon, and like offenses.
2. Crimes involving the sale, use, transportation of controlled substances, and/or operating a motor vehicle when under the influence of alcohol and/or controlled substances.
3. Crimes involving dishonesty including, but not limited to, theft, fraud, perjury, embezzlement, extortion, burglary, robbery, and like offenses.

C. Absent overriding evidence of mitigating circumstances or rehabilitation, and in consideration of safety/security concerns associated with the repair of fare boxes and potential access to the revenues of the District, the District finds that the following criminal convictions establish an impermissible nexus with the job duties of **Electronic Technician**:

1. Crimes involving violent or assaultive behavior including, but not limited to, murder, manslaughter, rape, robbery, assault, battery, kidnapping, mayhem, false imprisonment, extortion, carrying or use of a deadly weapon, and like offenses.
2. Crimes involving dishonesty including, but not limited to, theft, fraud, perjury, embezzlement, extortion, burglary, robbery, and like offenses.

D. Absent overriding evidence of mitigating circumstances or rehabilitation, and in consideration of safety/security concerns associated with the collection of fare boxes from revenue vehicles, the District finds that the following criminal convictions establish an impermissible nexus with the job duties of **Dispatcher/Vault Puller**:

1. Crimes involving violent or assaultive behavior including, but not limited to, murder, manslaughter, rape, robbery, assault, battery,

kidnapping, mayhem, false imprisonment, extortion, carrying or use of a deadly weapon, and like offenses.

2. Crimes involving dishonesty including, but not limited to, theft, fraud, perjury, embezzlement, extortion, burglary, robbery, and like offenses.

E. Absent overriding evidence of mitigating circumstances or rehabilitation, and in consideration of the safety/security concerns associated with the repair, maintenance, and driving of revenue vehicles incident to such repair and maintenance, the District finds that the following criminal convictions establish an impermissible nexus with the job duties of Mechanic:

1. Crimes involving violent or assaultive behavior including, but not limited to, murder, manslaughter, rape, robbery, assault, battery, kidnapping, mayhem, false imprisonment, extortion, carrying or use of a deadly weapon, and like offenses.
2. Crimes involving the sale, use, transportation of controlled substances, and/or operating a motor vehicle when under the influence of alcohol and/or controlled substances.
3. Crimes involving dishonesty including, but not limited to, theft, fraud, perjury, embezzlement, extortion, burglary, robbery, and like offenses.

Section V: AUTHORIZATION TO ACQUIRE JOB APPLICANT'S SUMMARY CRIMINAL HISTORY INFORMATION

The General Manager, or his or her designated representative, is authorized to require the submission of fingerprints of a job applicant for employment positions specified in this Resolution and shall submit these prints to the California Department of Justice to acquire an applicant's summary criminal history information for use in screening applicants in accordance with the standards set forth in this Resolution.

Section VI: PROHIBITED DISQUALIFICATIONS

A. In accordance with Labor Code Section 432.8, no job applicant shall be asked to disclose, nor shall the district utilize as a factor in determining eligibility for employment, criminal convictions for the following:

1. Subdivision (b) or (c) of Section 11357 of the Health and Safety Code or a statutory predecessor thereof;
2. Subdivision (c) of Section 11360 of the Health and Safety Code; or
3. Sections 11364, 11365, or 11550 of the Health and

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Safety Code as they related to marijuana prior to January 1, 1976, or a statutory predecessor thereof, two years from the date of such a conviction.

B. AC Transit shall not disqualify an applicant for employment for failure to disclose, through any written or verbal form, information concerning an arrest or detention which did not result in conviction. AC Transit shall not utilize any record of arrest or detention, which did not result in conviction, as a factor in determining eligibility for employment.

C. In accordance with Labor Code Section 432.7(a), nothing in this Section shall prevent AC Transit from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.

**SECTION VII: RECORDS SECURITY OFFICER**

The General Manager shall designate a Records Security Officer who shall handle the Summary Criminal History Information and assure that each personnel file which contains such information be so arranged that the Criminal History Information is sealed in an envelope, with a notation thereon indicating those persons who are specifically authorized to open the envelope and gain access to the information.

**SECTION VIII: COSTS OF ACQUISITION**

The General Manager is hereby authorized to pay all costs associated with the acquisition of Summary Criminal History Information. Any fees or charges incurred in the acquisition shall be a valid expenditure of AC Transit funds.

**SECTION IX: FINDING OF NECESSITY**

In accordance with Section 11105(b)(10) and Section 13300(b)(10) of the California Penal Code, the Board finds that access to Summary Criminal History Information is needed in order to assist AC Transit in fulfilling its employment duties.

**SECTION X: EFFECTIVE DATE; REPEAL OF PREDECESSOR**


This Resolution shall become effective immediately upon its enactment. This Resolution supersedes and replaces Resolution No. 512, which is repealed in its entirety as of the effective date of this Resolution.

SECTION XI: SAVINGS CLAUSE

If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution. The Board of Directors of the Alameda-Contra Costa Transit District hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

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IT IS HEREBY RESOLVED that this Resolution authorizing the General Manager to acquire summary criminal history information, adopting policies to secure confidentiality, designating a Records Security Officer and further establishing policies for review of applicants with past criminal histories is hereby adopted this 16th day of March, 1994.

  
Alice H. Creason  
Board President

ATTEST:

  
Frances Miller-Rogers, District Secretary

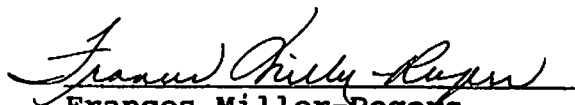
I, Frances Miller-Rogers, District Secretary of the Alameda-Contra Costa Transit District, do hereby certify that the foregoing Resolution was introduced and adopted at a regular meeting of the Board of Directors of the Alameda-Contra Costa Transit District held on the 16th of March, 1994, by the following votes:

AYES: Woodbury, Ganong, Piras, Sasaki, Creason

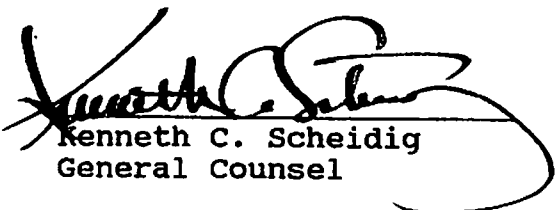
NOES: None

ABSENT: Bischofberger

ABSTAIN: None

  
Frances Miller-Rogers  
District Secretary

APPROVED AS TO FORM:

  
Kenneth C. Scheidig  
General Counsel