

TO BE RESCINDED

5123:1-7-01 Background investigations on applicants for department employment.

- (A) The purpose of this rule is to prevent the employment of persons who would be a risk to the safety and security of individuals served, staff or state property and to determine the fitness of the person to serve in the position being filled by establishing standards for conducting background investigations on applicants.
- (B) The provisions of this rule shall be applicable to applicants for all employee classifications in the classified and unclassified service with the department and any other entity that is under the managing responsibility of the department.
- (C) As used throughout this rule, the following definitions shall apply:
- (1) "Applicant" means a person who is under final consideration for appointment to or employment with the department, including, but not limited to, a person who is being transferred to the department and an employee who is being recalled or reemployed after a layoff.
 - (2) "BCII" means the bureau of criminal identification and investigation.
 - (3) "Classified service" means the competitive civil service of the state in which incumbents may only be reduced, suspended or removed for cause as specified in section 124.34 of the Revised Code.
 - (4) "Department" means the Ohio department of mental retardation and developmental disabilities.
 - (5) "Director" means the executive head of the department or the director's designee.
 - (6) "FBI" means the federal bureau of investigation.
 - (7) "Minor drug possession offense" means either of the following:
 - (a) A violation of section 2925.11 (drug abuse) of the Revised Code as it existed prior to July 1, 1996;
 - (b) A violation of section 2925.11 (possession of drugs) of the Revised Code as it exists on or after July 1, 1996, that is a misdemeanor or a felony of

the fifth degree.

(8) "Repeat offender" means a person who has been convicted of or pleaded guilty to the commission of any of the offenses listed or described in paragraphs (F)(1) to (F)(4) of this rule in two or more separate criminal actions. 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.

(9) "Sexually oriented offense" means any of the following offenses:

- (a) Regardless of the age of the victim of the offense, a violation of section 2907.02 (rape), 2907.03 (sexual battery), or 2907.05 (gross sexual imposition) of the Revised Code or a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code;
- (b) A violation of section 2905.01 (kidnapping), 2905.02 (abduction), 2905.05 (child enticement), or 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor) of the Revised Code, or a violation of section 2905.04 (child stealing) of the Revised Code as it existed prior to July 1, 1996, or a violation of section 2919.23 (interference with custody) of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation occurred prior to that date, when the victim of the offense is under eighteen years of age;
- (c) A violation of section 2907.21 (compelling prostitution) of the Revised Code when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under eighteen years of age;
- (d) A violation of division (A)(1) or (A)(3) of section 2907.321 (pandering obscenity involving a minor) or 2907.322 (pandering sexually oriented matter involving a minor) of the Revised Code;
- (e) A violation of division (A)(1) or (A)(2) of section 2907.323 (illegal use of a minor in nudity-oriented material or performance) of the Revised Code;
- (f) A violation of division (B)(5) of section 2919.22 (endangering children) of the Revised Code when the child who is involved in the offense is

under eighteen years of age;

(g) Regardless of the age of the victim of the offense, a violation of section 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault), 2905.01 (kidnapping), or division (A) of section 2903.04 (involuntary manslaughter) of the Revised Code that is committed with a purpose to gratify the sexual needs or desires of the offender;

(h) A sexually violent offense listed or described in paragraph (C)(10) of this rule; or

(i) Any violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in paragraphs (C)(9)(a) to (C)(9)(h) of this rule.

(10) "Sexually violent offense" means any of the following:

(a) A "violent sex offense," which means a violation of section 2907.02 (rape) or 2907.03 (sexual battery) of the Revised Code, a violation of division (A)(4) of section 2907.05 (gross sexual imposition) of the Revised Code, or a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code, or a felony violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in this paragraph; or

(b) A violation of section 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault), or 2905.01 (kidnapping) of the Revised Code or a violation of division (A) of section 2903.04 (involuntary manslaughter) of the Revised Code for which the offender also was convicted of or pleaded guilty to a sexual motivation specification, as described in section 2941.147 of the Revised Code, that charges that a person charged with an offense designated in this paragraph committed the offense with a purpose to gratify the sexual needs or desires of the offender, or a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in this paragraph.

(11) "Unclassified service" means the noncompetitive service of the state in which employees are appointed to positions at the discretion of the appointing authority and in which the incumbent serves, without tenure, at the pleasure

of the appointing authority.

(D) Procedure for conducting background investigations

The director shall conduct a background investigation, including a criminal records check, of each applicant under final consideration for a position in the classified or unclassified service of the department.

(1) Notification

Each person shall be informed at the time of the person's initial application for employment that a background investigation shall be conducted as a precondition to employment in a position if the person is under final consideration and shall be requested to sign an authorization(s) for the release of information from present or prior employer(s). The director shall also inform each person at the time of initial application that he/she is required to provide a set of impressions of his/her fingerprints and that a criminal records check is required to be conducted and satisfactorily completed in accordance with section 109.572 of the Revised Code if the person comes under final consideration for employment.

(2) Background investigation on applicant

When the initial interviews have been completed and the applicant is under final consideration for employment, the director shall do the following:

- (a) Contact the applicant's present or last prior employer(s) regarding the individual's work habits and reason(s) for leaving the employment.
- (b) Request BCII to conduct a criminal records check in accordance with section 109.572 of Revised Code with respect to each applicant, except that a criminal records check is not required for an employee of the department who is being considered for a different position or is returning after a leave of absence or seasonal break in employment, as long as the director has no reason to believe that the employee has committed any of the offenses listed or described in paragraphs (F)(1) to (F)(4) of this rule.
- (c) Request that BCII obtain information from the FBI as part of the criminal records check if the applicant does not present proof that the applicant has been a resident of this state for the five-year period immediately prior to the date upon which the criminal records check is requested.

- (i) If the applicant presents proof that he/she has been a resident of this state for that five-year period, the director may request that BCII include information from the FBI in the criminal records check.
 - (ii) For purposes of paragraph (D)(2)(c) of this rule, an applicant may provide proof of residency in this state by presenting, with a notarized statement asserting that the applicant has been a resident of this state for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the applicant's permanent residence, or any other document the director considers acceptable.
 - (d) Contact all personal references submitted by the applicant for information concerning the person.
 - (e) Contact the Ohio department of health to inquire whether the nurse aide registry established under section 3721.32 of the Revised Code reveals that its director has made a determination of abuse, neglect, or misappropriation of property of a resident of a long-term care facility or residential care facility by the applicant.
 - (f) Review the registry established by the department pursuant to section 5123.52 of the Revised Code to determine whether the applicant is included in the registry.
 - (g) Contact the registrar of motor vehicles in order to determine and verify that the applicant has a valid motor vehicle operator's license and to request a certified abstract regarding the record of convictions for violations of motor vehicle laws, if the duties of the position for which the applicant has applied require the applicant to transport individuals with mental retardation or developmental disabilities or to operate the department's vehicles for any other purpose.
- (E) Except as otherwise provided in a collective bargaining agreement entered into under Chapter 4117. of the Revised Code that was in effect on November 22, 2000, the department shall not employ an applicant who is included in the registry established pursuant to section 5123.52 of the Revised Code.
- (F) Except as provided in paragraphs (J) and (K) of this rule, the department shall not employ an applicant who has been convicted of or pleaded guilty to any of the following:

(1) A violation of the following sections of the Revised Code:

- (a) 2903.01 (aggravated murder),
- (b) 2903.02 (murder),
- (c) 2903.03 (voluntary manslaughter),
- (d) 2903.04 (involuntary manslaughter),
- (e) 2903.11 (felonious assault),
- (f) 2903.12 (aggravated assault),
- (g) 2903.13 (assault),
- (h) 2903.16 (failing to provide for a functionally impaired person),
- (i) 2903.21 (aggravated menacing),
- (j) 2903.34 (patient abuse and neglect),
- (k) 2905.01 (kidnapping),
- (l) 2905.02 (abduction),
- (m) 2905.05 (criminal child enticement),
- (n) 2907.02 (rape),
- (o) 2907.03 (sexual battery),
- (p) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor),
- (q) 2907.05 (gross sexual imposition),
- (r) 2907.06 (sexual imposition),

- (s) 2907.07 (importuning),
- (t) 2907.08 (voyeurism),
- (u) 2907.09 (public indecency),
- (v) 2907.21 (compelling prostitution),
- (w) 2907.22 (promoting prostitution),
- (x) 2907.23 (procuring),
- (y) 2907.25 (prostitution),
- (z) 2907.31 (disseminating matter harmful to juveniles),
- (aa) 2907.32 (pandering obscenity),
- (bb) 2907.321 (pandering obscenity involving a minor),
- (cc) 2907.322 (pandering sexually oriented matter involving a minor),
- (dd) 2907.323 (illegal use of minor in nudity- oriented material or performance),
- (ee) 2911.01 (aggravated robbery),
- (ff) 2911.02 (robbery),
- (gg) 2911.11 (aggravated burglary),
- (hh) 2911.12 (burglary),
- (ii) 2919.12 (unlawful abortion),
- (jj) 2919.22 (endangering children),
- (kk) 2919.24 (contributing to unruliness or delinquency of child),

- (ll) 2919.25 (domestic violence),
 - (mm) 2923.12 (carrying concealed weapon),
 - (nn) 2923.13 (having weapons while under disability),
 - (oo) 2923.161 (improperly discharging a firearm at or into a habitation or school),
 - (pp) 2925.02 (corrupting another with drugs),
 - (qq) 2925.03 (trafficking in drugs),
 - (rr) 2925.04 (illegal manufacture of drugs or cultivation of marihuana),
 - (ss) 2925.05 (funding of drug or marihuana trafficking),
 - (tt) 2925.06 (illegal administration or distribution of anabolic steroids),
 - (uu) 3716.11 (placing harmful objects in food or confection),
 - (vv) 2905.04 (child stealing) as it existed prior to July 1, 1996,
 - (ww) 2919.23 (interference with custody) that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation occurred prior to that date,
 - (xx) 2925.11 (possession of drugs) that is not a minor drug possession offense as defined in this rule,
 - (yy) Felonious sexual penetration in violation of former section 2907.12 of the Revised Code;
- (2) A felony contained in the Revised Code that is not listed in paragraph (F)(1) of this rule, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled;
 - (3) Any offense contained in the Revised Code constituting a misdemeanor of the first degree on the first offense and a felony on a subsequent offense, if the

offense bears a direct and substantial relationship to the position being filled and the nature of the services being provided by the department;

- (4) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in paragraph (F)(1), (F)(2), or (F)(3) of this rule.
- (G) The offenses listed in paragraph (F)(1) of this rule or a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to any of the offenses listed or described in paragraph (F)(1) of this rule bear a direct and substantial relationship to the duties and responsibilities of any position with the department.
- (H) The director shall consider the following factors in determining whether an offense listed or described in paragraph (F)(2) or (F)(3) of this rule bears a direct and substantial relationship to the position being filled:
 - (1) The duties and responsibilities of the position;
 - (2) The nature and seriousness of the offense;
 - (3) The circumstances under which the offense was committed;
 - (4) The degree to which the applicant participated in the offense;
 - (5) The age and ability of the victim, including whether the victim is an individual with physical or mental disabilities;
 - (6) The likelihood that the circumstances leading to the offense will recur;
 - (7) The extent to which the position being filled provides an opportunity for the commission of the same or similar offenses; and
 - (8) The time elapsed since the applicant was fully discharged from imprisonment, probation, and parole.
- (I) Prior to employing an applicant, the director shall require the applicant to submit a statement with the person's signature attesting that he/she has not been convicted of or pleaded guilty to any of the offenses listed or described in paragraphs (F)(1) to (F)(4) of this rule. The director also shall require the person to sign an agreement

under which the person agrees to notify the department within fourteen calendar days if, while employed by the department, the person is ever formally charged with, convicted of, or pleads guilty to any of the offenses listed or described in paragraphs (F)(1) to (F)(4) of this rule. The agreement shall inform the person that failure to report formal charges, a conviction, or a guilty plea may result in being dismissed from employment.

- (J) The director may employ an applicant pending receipt of reports requested under this rule. The director shall terminate employment of any such applicant if it is determined from the reports that the applicant failed to inform the department that he/she had been convicted of or pleaded guilty to any of the offenses listed or described in paragraphs (F)(1) to (F)(4) of this rule.
- (K) The director may employ an applicant who has been convicted of or pleaded guilty to an offense listed or described in paragraphs (F)(1) to (F)(4) of this rule only if each of the following standards in regard to rehabilitation are met:
- (1) The offense is not a sexually oriented offense as listed or described in paragraph (C)(9) of this rule;
 - (2) The offense is not a violation of section 2907.06 (sexual imposition), 2907.07 (importuning), 2907.08 (voyeurism), 2907.31 (disseminating matter harmful to juveniles), 2907.32 (pandering obscenity) of the Revised Code or a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to the offenses listed or described in this paragraph;
 - (3) The offense is not a violation of section 2903.16 (failing to provide for a functionally impaired person) or 2903.34 (patient abuse and neglect) of the Revised Code or a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States, if the offense is substantially equivalent to the offense listed or described in this paragraph;
 - (4) The victim of the offense was not a person for whom the applicant was responsible for providing care;
 - (5) The applicant is not a repeat offender as defined in paragraph (C)(8) of this rule;
 - (6) At least five years have elapsed since the applicant was fully discharged from imprisonment, probation, and parole;
 - (7) The applicant has had the record of his or her conviction sealed pursuant to

section 2953.32 of the Revised Code or any substantially equivalent provision under existing or former municipal ordinances or laws of this state, any other state, or the United States; and

- (8) The applicant's name does not appear on the registry established under section 5123.52 of the Revised Code.
- (L) If an applicant meets all the standards listed for rehabilitation in paragraph (K) of this rule with the exception of paragraph (K)(7) of this rule due to the nonexistence of a statute that would allow the person to petition the court to have his/her conviction record sealed, the applicant may petition the director to be considered rehabilitated under the provisions of this rule. The director shall not consider for rehabilitation an applicant for whom a court has denied the applicant's request to have the record of his/her conviction sealed. The director shall consider the following factors in determining if the applicant has been rehabilitated:
 - (1) The duties and responsibilities of the position;
 - (2) The nature and seriousness of the offense;
 - (3) The time elapsed since the applicant was fully discharged from imprisonment, probation or parole;
 - (4) The applicant's efforts at rehabilitation and the results of those efforts;
 - (5) Whether any criminal proceedings are pending against the applicant;
 - (6) Any personal references;
 - (7) The applicant's employment history; and
 - (8) Any other relevant factors.
- (M) It is the applicant's duty to provide proof that the standards in regard to rehabilitation specified in paragraph (K) of this rule have been met. If the applicant fails to provide such proof or if the department determines that the proof offered by the applicant is inconclusive, the applicant shall not be employed. Any doubt shall be resolved against the applicant.
- (N) An applicant shall disclose a conviction for any offense that has been sealed because the information bears a direct and substantial relationship to any position with the

department.

(O) A conviction of or a plea of guilty to an offense listed or described in paragraphs (F)(1) to (F)(4) of this rule shall not prevent an applicant's employment under the following circumstances:

(1) The applicant has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code.

(2) The applicant has been granted an unconditional pardon for the offense pursuant to an existing or former law of this state, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code.

(3) The conviction or guilty plea has been set aside pursuant to law.

As used in this rule, "unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.

(P) An applicant shall cooperate fully with the department by providing any information and assistance the department needs to comply with section 5123.081 of the Revised Code and this rule. If the applicant fails to cooperate, the director shall not employ the applicant.

(Q) For purposes of this rule, reports from BCII or any other state or federal agency regarding a person's criminal record and abstracts supplied by the registrar of motor vehicles regarding a person's record of convictions for violations of motor vehicle laws are valid for a period of one year from the date of the report or abstract.

(R) If the applicant's name appears on a civil service certification list for the position being filled and the background investigation discloses information that would preclude the applicant from further consideration for employment pursuant to this rule, the director shall notify the director of the Ohio department of administrative services in accordance with section 124.25 of the Revised Code.

(S) The department's equal employment opportunity (EEO) officer shall be kept aware of specific reasons for hiring or not hiring an applicant. The EEO officer shall maintain files of this information.

Effective:

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Certification

Date

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