

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5101:2-5-09.1

Rule Type: Rescission

Rule Title/Tagline: Criminal records check required for certain prospective employees and certified foster caregivers.

Agency Name: Department of Job and Family Services

Division: Division of Social Services

Address: 30 E Broad Street Columbus OH 43215

Contact: Michael Lynch **Phone:** 614-466-4605

Email: Michael.Lynch@jfs.ohio.gov

I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 11/28/2023
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 33 - 135 - Edwards
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 2151.86, 5103.03, 5103.0310
5. **What statute(s) does the rule implement or amplify?** 109.572, 2151.86 , 5103.0310, 5153.11, 5153.111
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
 - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

This rule is being rescinded as there were too many changes and it was decided to rescind and re-introduce the rule as new.

- 8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule provides the requirements for criminal background checks for foster caregivers and employees of private agencies.

- 9. Does the rule incorporate material by reference? No**
- 10. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

Not Applicable

- 11. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

- 12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

0.00

Not applicable.

- 13. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

No new costs.

- 14. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

- 15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

16. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

Not applicable.

III. Common Sense Initiative (CSI) Questions

17. Was this rule filed with the Common Sense Initiative Office? Yes

18. Does this rule have an adverse impact on business? Yes

- A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes

Certification and re-certification of an agency by the Ohio Department of Job and Family Services is contingent, in part, upon compliance with this rule.

- B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? Yes

Lack of compliance can result in revocation of an agency's certification or denial of re-certification.

- C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

Agencies must follow the procedures and guidelines for conducting and approving background checks.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

- A. How many new regulatory restrictions do you propose adding to this rule? 0

- B. How many existing regulatory restrictions do you propose removing from this rule? 23

5101:2-5-09.1 (B) The appointing or hiring officer or administrative director of the agency shall provide each person listed in paragraph (A) of this rule with a copy of the BCI prescribed criminal records check form and a BCI standard impression sheet to obtain fingerprint impressions.

5101:2-5-09.1 (C) Any person subject to a criminal records check who receives a copy of the BCI prescribed criminal records check form and a BCI standard impression sheet and who is requested by the agency to complete the form and provide a set of fingerprints impressions shall:

5101:2-5-09.1 (D) The agency shall obtain the completed form and fingerprint impression sheet from each person subject to a criminal records check and forward the form and fingerprint impression sheet to BCI at the time the agency requests a criminal records check.

5101:2-5-09.1 (E) The agency shall pay to BCI the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted.

5101:2-5-09.1 (F) The agency may charge a person subject to a criminal records check a fee for the costs incurred in obtaining a criminal records check. Pursuant to division (D) of section 2151.86 of the Revised Code, a fee charged by the agency shall not exceed the fee paid by the agency to BCI.

5101:2-5-09.1 If a fee is charged, the agency shall notify the person at the time of initial application of the amount of the fee and that, unless the fee is paid, the person will not be considered for employment or certification as a foster caregiver.

5101:2-5-09.1 (G) The appointing or hiring officer or administrative director of the agency shall inform each prospective employee at the time of initial application, that as a precondition to being approved for that position:

5101:2-5-09.1 (H) If a prospective employee seeking appointment or employment by an agency fails to provide the information necessary to complete the form or fails to provide fingerprint impressions, the prospective employee shall not be employed by the agency.

5101:2-5-09.1 (I) The agency shall request that BCI obtain information from the "Federal Bureau of Investigation" (FBI) as a part of the criminal records check

for any entity that appoints or employs any person responsible for a child's out-of-home care.

5101:2-5-09.1 (J) Before a recommending agency may submit a recommendation to the Ohio department of job and family services (ODJFS) on whether the department should issue a certificate to operate a foster home, the administrative director of the agency shall, pursuant to section 2151.86 of the Revised Code, request that the superintendent of BCI conduct a criminal records check with respect to the prospective foster caregiver and all other persons eighteen years of age or older who reside with the foster caregiver.

5101:2-5-09.1 (K) The appointing or hiring officer or administrative director of the agency shall inform each person seeking certification as a foster caregiver, at the time of initial application, that as a precondition to being approved as a foster caregiver:

5101:2-5-09.1 (2) A criminal records check shall be conducted by BCI and satisfactorily completed for any person seeking certification as a foster caregiver.

5101:2-5-09.1 (L) If a person seeking certification as a foster caregiver fails to provide the information necessary to complete the form or fails to provide fingerprint impressions or fails to provide fingerprint impressions for any adult household members, that person shall be denied certification as a foster caregiver pursuant to rule 5101:2-5-26 of the Administrative Code.

5101:2-5-09.1 (M) The agency shall request the conducting of a criminal records check pursuant to section 2151.86 of the Revised Code:

5101:2-5-09.1 (1) For the foster care applicant and each adult who resides with the foster care applicant. The results shall be reviewed prior to the agency's recommendation for certification to ODJFS.

5101:2-5-09.1 (N) The agency shall request that BCI include information from the FBI in the criminal records check for each foster care applicant and each person eighteen years of age residing in the applicant's household subject to a criminal records check.

5101:2-5-09.1 (O) The recommending agency shall evaluate whether the foster home should continue to be recommended for certification or be recommended for denial or revocation of certification when a person who is

certified as a foster caregiver is convicted of any offense listed in appendix A to rule 5101:2-7-02 of the Administrative Code.

5101:2-5-09.1 (1) The evaluation shall begin within five days of the agency's knowledge of the person's conviction, be completed within thirty days, and be documented in the foster home's record.

5101:2-5-09.1 (2) At a minimum, the provisions of paragraph (P) of this rule shall be considered in the evaluation.

5101:2-5-09.1 (3) This requirement shall also be applicable for any adult who resides with a foster caregiver upon conviction of any offense listed in appendix A to rule 5101:2-7-02 of the Administrative Code.

5101:2-5-09.1 (P) The evaluation required by paragraph (O) of this rule shall include, at a minimum:

5101:2-5-09.1 (R) Upon receipt of notification of an adult who resides with a foster caregiver who has pleaded guilty to or been convicted of a foster caregiver disqualifying offense, the recommending agency shall assess the foster home for safety concerns and forward any recommendations to ODJFS for revocation if applicable.

5101:2-5-09.1 (A) The appointing or hiring officer or administrative director of an agency shall, pursuant to section 2151.86 of the Revised Code, request the bureau of criminal investigation (BCI) conduct a criminal records check with respect to any person subject to a criminal records check and any person providing respite care for a specialized foster care program that is not a certified foster caregiver.

C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

Not Applicable.

D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable