

5101:2-5-09

**Personnel and prohibited convictions for employment.**

- (A) An agency, as defined in rule 5101:2-1-01 of the Administrative Code, shall have written descriptions specific for each position or group of positions within the agency's certified function for all college interns, volunteers, and employees.
- (B) Prior to hire, an agency shall obtain, from persons not related to the subject of reference, at least three written references or written notes on verbal references regarding prospective college interns, volunteers, and employees who will have direct contact with children.
- (C) An agency shall hire qualified employees to provide the services which it is certified to provide.
- (1) The person employed as the administrator of the agency shall possess at least a bachelor's degree from a college or university accredited by a nationally recognized accrediting organization and other qualifications and experience as determined by the governing body in writing.
  - (2) An agency shall assure that all staff hired or who are under any personal service contract who are required by law to possess any professional license or certification are so licensed or certified.
  - (3) Persons employed in positions responsible for the daily direct care or supervision of children shall be at least twenty-one years of age and possess a high school diploma or equivalency certificate. As an alternative to the educational requirement such persons shall have at least one year of full-time equivalent paid or volunteer experience in the direct provision of care to children.
- (D) In those instances when an employee is responsible for varied job responsibilities and, as such, falls within more than one category of paragraph (C) of this rule, such employee shall meet those qualifications which are the most rigorous among the competing criteria.
- (E) A residential facility shall require a JFS 01390 "ODJFS Medical Statement for Child Care Staff in Residential Facilities" (~~rev. 6/2001~~) to be completed by a licensed physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife within six months prior to employing any person who will have direct contact with children.
- (F) An agency shall, at its own discretion or at the request of the Ohio department of job and family services (ODJFS), require an employee or prospective employee to provide reports on the individual's physical or mental health from qualified professionals

when the individual exhibits signs of a physical or mental health problem which might impair the individual's ability to ensure the health and safety of children.

(G) Pursuant to section 5103.037 of the Revised Code, prior to hiring or appointing a person as board president, administrator or officer, an agency is to:

- (1) Conduct an alleged perpetrator search as described in paragraph (P) of this rule. The process can be found at: <http://jfs.ohio.gov/ocf/childprotectiveservices.stm>.
- (2) Request a certified search of the findings for recovery database. The website is located at: <http://ffr.ohioauditor.gov/>.
- (3) Conduct a database review at the federal website known as the system for award management. The website is located at: <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>.
- (4) Conduct a search of the United States department of justice national sex offender public website. The website is located at: <https://www.nsopw.gov/>.
- (5) Create a file for each board president, administrator or officer to house the information required in this paragraph.

(H) The agency may refuse to hire or appoint a person as a board president, administrator or officer as follows:

- (1) Based solely on the findings of the summary report as described in paragraph (G) (1) of this rule or the results of the search described in paragraph (G)(4) of this rule.
- (2) Based on the results of the certified search or database review as described in paragraphs (G)(2) and (G)(3) of this rule.

~~(G)~~(I) An agency shall document that any person hired after October 29, 1993 as administrator, child care staff, caseworker, or in any other position responsible for a child's care in out-of-home care shall not have been convicted of or pleaded guilty to any of the offenses listed in ~~paragraph (H) appendix A of~~ paragraph (I) appendix A of this rule except as provided in paragraph ~~(H)~~(J) of this rule.

~~(H)~~(J) A~~Unless specifically prohibited in appendix A to this rule, a prospective employee convicted of or who has pleaded guilty to an offense listed in ~~paragraph (H) appendix A of~~ paragraph (J) appendix A of this rule may be hired by an agency as an administrator, child care staff or caseworker, or in any other position responsible for a child's care in out-of-home care only if the following ~~conditions have~~rehabilitative criteria has been met:~~

- (1) Where the offense was a misdemeanor, or would have been a misdemeanor if conviction had occurred under the current criminal code, at least three years have elapsed from the date the prospective employee was fully discharged from any imprisonment or probation arising from the conviction. A prospective employee who has had a misdemeanor record of conviction sealed by a court pursuant to section 2953.32 of the Revised Code shall be considered to have met this condition.
- (2) Where the offense was a felony, at least ten years have elapsed since the person was fully discharged from imprisonment or probation.
- (3) The victim of the offense was not one of the following:
  - (a) A person under the age of eighteen or person sixty years of age or older.
  - (b) A functionally impaired person as defined in section 2903.10 of the Revised Code.
  - (c) ~~A mentally retarded~~ An intellectually disabled person as defined in section 5123.01 of the Revised Code.
  - (d) A developmentally disabled person as defined in section 5123.01 of the Revised Code.
  - (e) A person with a mental illness as defined in section 5122.01 of the Revised Code.
- (4) Hiring the prospective employee will not jeopardize in any way the health, safety or welfare of the children the agency serves. The following factors shall be considered in determining whether to hire the prospective employee:
  - (a) The person's age at the time of the offense.
  - (b) The nature and seriousness of the offense.
  - (c) The circumstances under which the offense was committed.
  - (d) The degree to which the person participated in the offense.
  - (e) The time elapsed since the person was fully discharged from imprisonment or probation.
  - (f) The likelihood that the circumstances leading to the offense will recur.
  - (g) Whether the person is a repeat offender.

- (h) The person's employment record.
- (i) The person's efforts at rehabilitation and the results of those efforts.
- (j) Whether any criminal proceedings are pending against the person.
- (k) Whether the person has been convicted of or pleaded guilty to a felony contained in the Revised Code that is not listed in paragraph ~~(H)~~(K)(1) of this rule, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled.
- (l) Any others factors the agency considers relevant.

~~(H)~~(K) Except as provided in paragraph ~~(H)~~(J) of this rule, an agency shall not, as of October 29, 1993, hire a prospective employee as administrator, child care staff, caseworker, or in any other position responsible for a child's care in out-of-home-care if the person has been convicted of or pleaded guilty to any of the following ~~offenses~~:

- (1) ~~A violation of section 959.13, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321 (2907.32.1), 2907.322 (2907.32.2), 2907.323 (2907.32.3), 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2913.49, 2919.12, 2917.01, 2917.02, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161 (2923.16.1), 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2927.12 or 3716.11 of the Revised Code~~ Any offense listed in appendix A to this rule.
- (2) A violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996; a violation of section 2919.23 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 been committed prior to that date, a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, a violation of section 2923.01 of the Revised Code that involved an attempt to commit aggravated murder or murder, a violation of section 4511.19 of the Revised Code if the person previously was convicted of or plead guilty to two or more violations within the three years immediately preceding the current violation, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code ~~as listed in appendix A of this rule.~~

- (3) A violation of an existing or former law of this state or the United States that is substantially equivalent to any of the offenses listed in ~~paragraph (I)(1)~~appendix A of this rule.
- ~~(H)~~(L) It is the prospective employee's duty to provide written verification that the conditions specified in paragraph ~~(H)~~(J) of this rule are met. If the prospective employee fails to provide such proof or if the agency determines that the proof offered by the prospective employee is inconclusive or insufficient, the person shall not be hired. Any doubt shall be resolved in favor of protecting the children the agency serves.
- ~~(K)~~(M) To determine whether a prospective employee is qualified to be hired pursuant to paragraph ~~(H)~~(K) of this rule, a criminal records check shall be conducted pursuant to rule 5101:2-5-09.1 of the Administrative Code.
- ~~(L)~~ An agency may conditionally hire a prospective employee until the criminal records check required by rule 5101:2-5-09.1 of the Administrative Code is completed and the agency receives the results of the criminal record check, if the prospective employee submits to the agency a signed statement attesting that the prospective employee has not been convicted of or pleaded guilty to any offense listed in paragraph (I) of this rule. If the results of the criminal record check indicate that the person does not qualify for employment, the agency shall release the person from employment.
- ~~(M)~~(N) The provisions of paragraph ~~(H)~~(J) of this rule must be considered for any prospective employee who has been convicted of, or pleaded guilty to, one or more of the offenses listed in ~~paragraph (I)~~appendix A of this rule even if the person's record has been sealed by a court pursuant to section 2953.32 of the Revised Code because the information contained in the sealed record bears a direct and substantial relationship to the care of children who may be entrusted to the person's care.
- ~~(N)~~(O) A conviction of, or plea of guilty to, an offense listed in ~~paragraph (I)~~appendix A of this rule shall not prevent a prospective employee's hire if the person has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code or the conviction or guilty plea has been set aside pursuant to law. "Unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.
- (P) If the agency has the ability to complete the search in the statewide automated child welfare information system (SACWIS), the agency is to complete an alleged perpetrator search of abuse and neglect report history through the system for each prospective employee. If the agency does not have the ability to complete the search in SACWIS, the agency is to request a search of the system from ODJFS for each employee and prospective employee.

- (1) The agency is to request a check of the child abuse and neglect registry of any other state a prospective employee has resided in the five years immediately prior to the date of the criminal records check as required by division (A) of section 2151.86 of the Revised Code. The process can be found at: <http://centerforchildwelfare.fmhi.usf.edu/ChildProtective/AdamWalsh.pdf>.
  - (2) A report with the results of the search is to be placed in the applicant or employee's record.
  - (3) This report is to be used to determine the suitability of the applicant or employee to provide care to children.
- (O) An agency is to conduct a search of the United States department of justice national sex offender public website for each employee and prospective employee. The website is located at: <https://www.nsopw.gov/>.
- (1) A report with the results of the search is to be placed in the applicant or employee's record.
  - (2) This report is to be used to determine the suitability of the applicant or employee to provide care to children.
- (R) An agency may refuse to hire a prospective employee based solely on the findings of the summary report described in paragraph (P) of this rule or the results of the search described in paragraph (O) of this rule.
- (S) An individual is not eligible for employment or approval as an employee, board president, administrator or officer in a residential setting if either of the following is true:
- (1) The individual's alleged perpetrator results show a finding of substantiated abuse or neglect within the past ten years.
  - (2) The individual is listed on the national sex offender public website.
- ~~(T)~~(T) An agency shall have a separate personnel file for each employee which shall include at a minimum:
- (1) The employee's application for employment.
  - (2) Copies of references.
  - (3) A copy of the employee's current job description.

- (4) A copy of each job evaluation performed.
  - (5) A copy of all medical records obtained.
  - (6) Documentation of all training received, including specific training for and an annual review of acceptable methods of restraint, if applicable.
  - (7) Copies of all professional credentials, licenses or certifications.
  - (8) Copies of all disciplinary actions involving the employee.
  - (9) The employee's date of hire and termination if applicable.
  - (10) The ~~BCI and FBI~~ bureau of criminal investigation (BCI) and federal bureau of investigation (FBI) criminal records check results required by rule 5101:2-5-09.1 of the Administrative Code and, if applicable, documentation that the requirements of paragraph ~~(H)~~(J) of this rule have been met.
  - (11) Any notification of charges of any criminal offense brought against the employee and any notification of conviction of any criminal offense.
  - (12) Copies of all educational degrees, diplomas or equivalency certificates.
  - (13) Copies showing proof of a valid driver's license and current automobile insurance, if the staff member will be utilizing his or her own vehicle when transporting children.
- ~~(P)~~(U) Personnel files for each employee shall be maintained for at least five years after the date of employment ends.
- ~~(Q)~~(V) Nothing in this rule shall apply to a foster caregiver who is subject to the provisions of Chapter 5101:2-7 of the Administrative Code.

Effective:

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Certification

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Date

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