

5123:2-17-03 **Abuser registry.**(A) Purpose

The purpose of this rule is to set forth procedures to be used to determine whether the name of an MR/DD employee should be placed on the registry established under section 5123.52 of the Revised Code and set forth standards for determining whether such employee has been rehabilitated.

(B) Application

This rule shall apply to all MR/DD employees and any person or government entity employing, hiring, or contracting with an MR/DD employee.

(C) Definitions(1) "Abuse" means all of the following:

(a) Physical abuse. "Physical abuse" means the use of physical force that can be reasonably expected to result in physical harm or serious physical harm, as those terms are defined in section 2901.01 of the Revised Code.

(b) Sexual abuse. "Sexual abuse" means unlawful sexual conduct or sexual contact, as those terms are defined in section 2907.01 of the Revised Code.

(c) Verbal abuse. "Verbal abuse" means purposely using words to threaten, coerce, intimidate, harass, or humiliate an individual.

(2) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.

(3) "Director" means the director of the department, unless otherwise stated, or the director's designee.

(4) "Failure to report" means an unreasonable failure to make a report pursuant to division (C) of section 5123.61 of the Revised Code when the employee knew or should have known that the failure would result in a substantial risk of harm to an individual.

(5) "Individual" means a person with mental retardation or other developmental disabilities.

(6) "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Revised Code, including Chapters 2911. and 2913. of the Revised Code.

- (7) "MR/DD employee" means at the time of the incident any of the following:
- (a) An employee of the department;
 - (b) An employee of a county board of mental retardation and developmental disabilities;
 - (c) A person who is employed in a position that includes providing specialized services to an individual.
- (8) "Neglect" means, when there is a duty to do so, failing to provide an individual with any treatment, care, goods, or services necessary to maintain the health and safety of the individual.
- (9) "Prohibited sexual relations" means engaging in sexual conduct or having sexual contact with an individual for whom the MR/DD employee is employed or under a contract to provide care unless the individual is the MR/DD employee's spouse. "Provide care" means the MR/DD employee has direct contact or communication with the individual in the course of the MR/DD employee's employment.
- (10) "Registry" means the registry established under section 5123.52 of the Revised Code of MR/DD employees found to have committed abuse, neglect, misappropriation, a failure to report, or engaged in prohibited sexual relations.
- (11) "Sexual conduct" has the same meaning as in section 2907.01 of the Revised Code.
- (12) "Sexual contact" has the same meaning as in section 2907.01 of the Revised Code.
- (13) "Specialized services" means any program or service designed and operated to serve primarily individuals, including a program or service provided by an entity licensed or certified by the department. A program or service available to the general public is not a specialized service.
- (14) "Spouse" has the same meaning as in section 2907.01 of the Revised Code.

(D) Department review

- (1) The department shall review all reported incidents where a registry offense may have been committed by an MR/DD employee to determine whether the facts of the case may warrant placement of the MR/DD employee's name on the registry. When conducting this review, the department may conduct its own investigation or adopt the findings of an investigation conducted by any entity

authorized to conduct such investigations. When considering whether to adopt the findings of an investigation conducted by another entity, the department shall consider the following:

(a) Whether the entity that conducted the investigation is a law enforcement agency;

(b) Whether the findings of the investigation include sufficient information to allow the department to determine whether the standard for placement on the registry has been met;

(c) Any other relevant factors that may require the department to conduct its own investigation.

(2) If the department determines that the facts of a case may warrant placement of an MR/DD employee's name on the registry, the department shall:

(a) Present the case to a review committee. Members of the review committee shall be appointed by the director for a term of four years except that a member may be appointed for a term of less than four years in order to stagger the members' terms so that not more than half the members' terms expire in the same year. Members may be reappointed. Members shall sign an agreement ensuring that the proceedings before the committee are kept confidential. The review committee shall make a recommendation regarding whether there is a reasonable basis for believing that an MR/DD employee has committed a registry offense. If the MR/DD employee has been convicted of a criminal offense for the same incident, the case need not be reviewed by the review committee.

(b) Consider the review committee's recommendation and determine whether there is a reasonable basis for believing that an MR/DD employee has committed a registry offense.

(c) If there is a reasonable basis for believing that an MR/DD employee has committed a registry offense, the department shall provide notification to the MR/DD employee of the charges against the MR/DD employee and the MR/DD employee's right to a hearing if timely requested.

(d) Before conducting any hearing, the department shall determine whether any criminal proceeding or collective bargaining arbitration arising from the same allegations has concluded. The department may conduct a hearing before a criminal proceeding concerning the same allegation is concluded if the department notifies the prosecutor responsible for the criminal proceeding that the department proposes to conduct a hearing and the prosecutor consents to the hearing.

(E) Hearing procedure

- (1) Except as otherwise provided by statute, all hearing and adjudication proceedings shall be conducted in accordance with the requirements set forth in Chapter 119. of the Revised Code. The department is not required to hold a hearing if the employee does not timely request a hearing in accordance with section 119.07 of the Revised Code.
- (2) If the MR/DD employee timely requests a hearing, the director shall appoint an independent hearing officer to conduct the hearing. If the MR/DD employee is an MR/DD employee of the department and is represented by a union, the director and a representative of the union shall jointly select the hearing officer.
- (3) At least fifteen days prior to the date set for hearing, upon request by either party, the department and the MR/DD employee whose name is being considered for placement on the registry shall exchange witness lists and lists of exhibits to be introduced at the hearing. The hearing officer may extend the time for good cause shown.
- (4) The hearing officer shall conduct a hearing for the purpose of determining whether the department has established by clear and convincing evidence that the MR/DD employee has committed any of the following registry offenses:

 - (a) Misappropriated the property of one or more individuals that has a value, either separately or taken together, of one hundred dollars or more;
 - (b) Misappropriated property of an individual that is designed to be used as a check, draft, negotiable instrument, credit card, charge card, or device for initiating an electronic fund transfer at a point of sale terminal, automated teller machine, or cash dispensing machine;
 - (c) Knowingly abused an individual;
 - (d) Recklessly abused or neglected an individual, with resulting physical harm;
 - (e) Negligently abused or neglected an individual, with resulting serious physical harm;
 - (f) Recklessly neglected an individual, creating a substantial risk of serious physical harm;
 - (g) Engaged in sexual conduct or had sexual contact with an individual who was not the MR/DD employee's spouse and for whom the MR/DD employee was employed or under a contract to provide care; or
 - (h) Unreasonably failed to make a report pursuant to division (C) of section

5123.61 of the Revised Code when the employee knew or should have known that the failure would result in a substantial risk of harm to an individual.

- (5) In making this determination, the hearing officer shall give weight to the decision in any collective bargaining arbitration regarding the same allegation, give weight to any relevant facts presented at the hearing, and shall consider all extenuating circumstances, including whether the person used physical force necessary as self-defense.
- (6) If the MR/DD employee was an MR/DD employee of the department at the time of incident, the report shall be sent to the director of the Ohio department of health or that director's designee.
- (7) If the director or, if applicable, the director of the Ohio department of health or that director's designee, determines that the MR/DD employee's name should be placed on the registry, the director shall sign an adjudication order directing that the MR/DD employee's name be placed on the registry and provide notice to the MR/DD employee.
- (8) The department shall send copies of the order to the individual who was the subject of the report, the individual's guardian, the attorney general, the prosecuting attorney or other law enforcement agency, and to any person or government entity that employs or contracts with the employee. Any notified person or entity employing or contracting with the MR/DD employee shall, within ten days of notification, inform the department of the MR/DD employee's employment status. If the MR/DD employee holds a license, certificate, registration or other authorization to engage in a profession issued pursuant to Title 47 of the Revised Code, the director shall notify the entity responsible for regulating the MR/DD employee's professional practice.

(F) Check of registry

- (1) The department shall establish a process to be used by parties to determine whether a person's name has been placed on the registry. The process shall ensure that parties submitting inquiries can accurately determine whether the person about whom an inquiry is made is the person whose name is on the registry, while also ensuring that confidential information about the person is not made public. The process shall specify both electronic and non-electronic means by which inquiries may be made.
- (2) The department shall establish and maintain a procedure setting forth the manner in which parties making inquiries shall be informed of the result. The procedure shall ensure that parties making inquiries by electronic means receive an immediate response and that parties making inquiries by non-electronic means receive a response within three working days.

(3) Any person or government entity seeking to hire, contract with, or employ a person as an MR/DD employee shall make an inquiry to the department regarding whether the person's name is on the registry. If the subject of the inquiry is on the registry, the inquiring party shall not hire, contract with, or employ the person as an MR/DD employee.

(G) Petition for removal from registry

(1) A person whose name has been placed on the registry may petition the director to have the person's name removed from the registry.

(2) Any petition for removal from the registry must be made in writing to the director. The petition shall include the name of the person, the action for which the person's name was placed on the registry, and any reasons demonstrating the appropriateness of removal of the person's name.

(3) Upon receipt of a petition for removal, the department shall notify the individual who was the victim of the action for which the person's name was placed on the registry, the individual's guardian, and any other persons to whom the department determines notification should be given. Any party receiving the notification shall have the right to send written comments regarding the petition to the department.

(4) The director shall consider the petition, along with any comments received from any person regarding the petition, and shall determine whether good cause exists to remove the person's name from the registry.

(5) A petition claiming that good cause for removal exists because the person has satisfied the rehabilitation standards set forth in paragraph (G) (6) (c) of this rule can be filed no earlier than five years from the date the person's name was placed on the registry. If the person has previously made a petition to have the person's name removed from the registry based on the rehabilitation standards set forth in paragraph (G) (6) (c) of this rule, the director shall not consider any subsequent petition unless at least two years have passed since the previous petition was filed. If good cause exists, the director may waive the timelines set forth in this paragraph except that the director may not remove a person's name from the registry until one year after the date the person's name was placed on the registry.

(6) In determining whether good cause exists, the director shall consider the following:

(a) Whether a criminal conviction arising from the act that resulted in the person's name being placed on the registry has been subsequently reversed on appeal, and no new conviction on the same charge has occurred.

- (b) Whether new, substantial, and material evidence has been discovered which would indicate that the person did not commit the act for which the person's name was placed on the registry. The person claiming that such new evidence has been discovered shall provide a detailed description of said evidence, along with a statement of the reasons for the failure to discover the evidence prior to the adjudication hearing.
- (c) Whether the person can demonstrate that the person has been rehabilitated. In determining whether a person has been rehabilitated, the director shall consider the following factors:
- (i) The nature and seriousness of the act for which the person's name was placed on the registry, including whether the person was criminally convicted for the act;
 - (ii) Whether the person has been convicted of any crimes other than those related to the act for which the person's name was placed on the registry;
 - (iii) Whether the person, at the time of the incident, sought immediate medical attention for the individual if necessary, timely reported the incident, and accurately related the facts of the incident including the person's part in the incident;
 - (iv) The time elapsed since the person's name was placed on the registry;
 - (v) The person's efforts at rehabilitation and the result of those efforts;
 - (vi) Personal references provided by the person;
 - (vii) The person's employment history; and
 - (viii) Any other relevant factors.
- (7) The director shall inform the person in writing of the outcome of the petition within thirty days of receipt of the petition. The director's decision is final and may not be appealed.
- (8) If the director determines that good cause exists to remove a person's name from the registry, the director shall issue an order directing that the person's name be removed from the registry. If a person's name has been removed from the registry, the department shall respond to any inquiries regarding whether the person's name is currently on the registry in the negative, and shall not voluntarily disclose the fact that the person's name was previously on the registry. The department will notify the parties set out in paragraph (E)(8) of

this rule that the person's name has been removed from the registry.

(H) Information contained in the registry is a public record for the purposes of section 149.43 of the Revised Code and is subject to inspection and copying under section 1347.08 of the Revised Code.

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Certification

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