

173-14-14

Staffing requirements, staff qualifications, and background checks.

(A) Staffing requirements: Each regional program shall employ one paid, full-time employee to serve as the program's ombudsman program director. If a sponsoring agency administers more than one regional program, each regional program shall have full-time supervision provided by a certified ombudsman program director in that region.

(B) Staff qualifications:

(1) Representative: To accept a candidate for certification as a representative of the office, the state or regional program shall either hire a person as a paid staff member or accept the person as a volunteer staff member. The state or regional program shall only hire or accept a person who:

(a) Is at least eighteen years of age; and,

(b) Has the ability to understand and empathize with the concerns of consumers of long-term care services.

(2) Ombudsman specialist: A regional program shall only hire a person to be an ombudsman specialist if the person is at least a registered nurse or has earned a bachelor of science degree in nursing, or a bachelor of arts or bachelor of science degree in social work, social services, a health-related field. Any paid representative who does not meet this requirement may substitute commensurate experience or education to meet the education qualification with the approval of the SLTCO.

(3) Ombudsman program director: A regional program shall only hire a person to be the ombudsman program director if the person meets both of the following requirements:

(a) The person is at least a registered nurse or has earned a bachelor of science degree in nursing, or a bachelor of arts degree or a bachelor of science degree in social work, social services, a health-related field, or any other related field. Any paid representative who does not meet this requirement may substitute commensurate experience or education to meet the education qualification.

(b) The person has one year's experience in supervision/management in the fields of aging, long-term care, health care, social services, advocacy, or investigation with the approval of the SLTCO.

(4) Background checks: Section 173.27 of the Revised Code and paragraph (C) of this rule require meeting background-check requirements when hiring an applicant for, or retaining an employee in, a paid ombudsman position.

(C) Background checks for paid ombudsman positions:

(1) Definitions for paragraph (C) of this rule:

"Applicant" means a person that a responsible party is giving final consideration for hiring into a paid ombudsman position that is full-time, part-time, or temporary, including the position of state long-term care ombudsman or regional director. "Applicant" does not include a volunteer.

"BCII" means "the bureau of criminal identification and investigation" and includes the superintendent of BCII.

"Criminal records" has the same meaning as "results of the criminal records check," "results," and "report" in section 173.27 of the Revised Code when the section uses "results of the criminal records check," "results," and "report" to refer to the criminal records that BCII provides to responsible parties that conduct criminal records checks. Criminal records originate from BCII unless the context indicates that the criminal records originate from the FBI.

"Criminal records check" ("check") means the criminal records check described in section 173.27 of the Revised Code.

"Disqualifying offense" means any offense listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.

"Employee" means a person that a responsible party hired into a paid ombudsman position that is full-time, part-time, or temporary, including the position of the state long-term care ombudsman or regional director. "Employee" does not include a volunteer.

"FBI" means "federal bureau of investigation."

"Fire" has the same meaning as "terminate" in section 173.27 of the Revised Code when the "terminate" regards firing an employee.

"Hire" has the same meaning as "employ" in section 173.27 of the Revised Code when "employ" regards hiring an applicant.

"Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

"ODA" means "the Ohio department of aging."

"Ombudsman position" has the same meaning as "position that involves providing ombudsman services to residents and recipients" in section 173.27 of the Revised Code. "Ombudsman position" includes the positions of

ombudsman associate, ombudsman specialist, and ombudsman program director.

"Release" has the same meaning as "terminate" in section 173.27 of the Revised Code when "terminate" regards releasing a conditionally-hired applicant.

"Responsible party": When hiring an applicant for, or retaining an employee in, a paid ombudsman position as the state long-term care ombudsman, "responsible party" means ODA's director. When hiring an applicant for, or retaining an employee in, a paid ombudsman position in the office of the state long-term care ombudsman, "responsible party" means the state long-term care ombudsman. When hiring an applicant for, or retaining an employee in, a paid ombudsman position as the director of a regional program, "responsible party" means the regional program. When hiring an applicant for, or retaining an employee in, a paid ombudsman position in the regional program, "responsible party" means the regional program.

"Retain" has the same meaning as "continue to employ" in section 173.27 of the Revised Code.

"Volunteer" means a person who serves in an ombudsman position without receiving, or expecting to receive, any form of remuneration other than reimbursement for actual expenses.

(2) Reviewing databases:

(a) Databases to review: Any time this rule requires a responsible party to review an applicant's (pre-hire) or employee's (post-hire) status in databases, the responsible party shall review the following six databases:

DATABASES TO REVIEW

SAM	https://www.sam.gov/
OIG	http://exclusions.oig.hhs.gov/
Abuser Registry	https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx
Sex-Offender Search	http://www.drc.ohio.gov/OffenderSearch/Search.aspx
Offender Search	http://www.drc.ohio.gov/OffenderSearch/Search.aspx
Nurse-Aide Registry	https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx

- (i) The United States general services administration's system for award management.
- (ii) The office of inspector general of the United States department of health and human services' list of excluded individuals.
- (iii) The department of developmental disabilities' online abuser registry that lists people cited for abuse, neglect, or misappropriation.
- (iv) The Ohio attorney general's sex offender and child-victim offender database.
- (v) The department of rehabilitation and correction's database of inmates.
- (vi) The department of health's state nurse aide registry. If the applicant or employee does not present proof that he or she has been a resident of Ohio for the five-year period immediately preceding the date of the database review, the responsible party shall conduct a database review of the nurse aide registry in the state or states in which the applicant or employee lived.

(b) When to review databases:

- (i) Applicants (pre-hire): The responsible party shall review each applicant's (pre-hire) status in the databases before conducting the criminal records check that paragraph (C)(3) of this rule requires for applicants.
- (ii) Employees (post-hire): The responsible party shall review each employee's (post-hire) status in the databases before conducting the criminal records check that paragraph (C)(3) of this rule requires for employees.

(c) Disqualifying status:

- (i) No responsible party shall hire an applicant or retain an employee if the applicant's or employee's status in the databases reveals that one or more of the databases in paragraphs (C)(2)(a)(i) to (C)(2)(a)(v) of this rule lists the applicant or employee or the database in paragraph (C)(2)(a)(vi) of this rule lists the applicant or employee as a person who abused, neglected, or exploited a long-term care facility resident or misappropriated such a resident's property.

(ii) If the responsible party's database reviews reveal that the applicant or employee is disqualified, the responsible party shall inform the applicant or employee of the disqualifying information.

(3) Criminal records checks: when to check criminal records, inform applicants, charge fees, and use forms.

(a) Database reviews first: The responsible party shall conduct database reviews on each applicant (pre-hire) and each employee (post-hire) before conducting a criminal records check. If the database reviews disqualify the applicant or employee, the responsible party shall not conduct a criminal records check. If the database reviews do not disqualify the applicant or employee, the responsible party shall conduct a criminal records check.

(b) When to check criminal records:

(i) Applicants (pre-hire): The responsible party shall conduct a criminal records check on each applicant.

(ii) Employees (post-hire): According to one of the following three schedules, the responsible party shall conduct a post-hire criminal records check on each employee at least once every five years:

(a) Five-year schedule for pre-2008 hire dates: If the responsible party hired the employee before January 1, 2008, the responsible party shall conduct a criminal records check on the employee no later than thirty days after the 2013 anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary. A responsible party that follows this schedule is not required to wait until the employee's anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check.

(b) Five-year schedule for 2008-present hire dates: If the responsible party hired the employee on or after January 1, 2008, the responsible party shall conduct a criminal records check on the employee no later than thirty days after the fifth anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary. A responsible party that follows this schedule is not required to wait until the employee's five-year anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check.

- (c) Less-than-five-year schedule: The responsible party may conduct criminal records checks on an employee more frequently than every five years. If the responsible party checks more frequently than every five years, the responsible party is not required to conduct criminal records checks according to the five-year schedules. If a responsible party complies with the requirements for rapback, the responsible party is conducting criminal records checks on a daily basis, which is a less-than-five-year schedule.
- (iii) Reverification: If any person has requested a criminal records check on an applicant or employee in the past year that, according to division (B)(1) of section 109.572 of the Revised Code, requires BCII to include sealed criminal records in the criminal records that it returns to the person, the responsible party may request a reverification of that criminal record from BCII to determine if an applicant's or employee's criminal records disqualifies him or her from being hired into, or retaining, a paid ombudsman position. The reverification of the criminal record has the same validity as the criminal records received during the past year.
- (c) Sealed records: Division (B)(1) of section 109.572 of the Revised Code requires BCII to include sealed criminal records in its criminal records reports for criminal records checks conducted under section 173.27 of the Revised Code.
- (d) When to check FBI's criminal records:
- (i) Residency: If an applicant or employee does not provide the responsible party with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the responsible party must request a criminal records check, or if the applicant or employee does not provide the responsible party with evidence that BCII has requested his or her criminal records from the FBI within the five-year period immediately preceding the date the responsible party requests the criminal records check, the responsible party shall request that BCII obtain criminal records from the FBI as part of the criminal records check.
- (ii) Will of the responsible party: If an applicant or employee provides the responsible party with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the responsible party requests the criminal records check, the responsible party may request that BCII obtain criminal

records from the FBI as part of the criminal records check.

(e) Inform applicant: When an applicant initially applies for a paid ombudsman position, the responsible party shall inform the applicant of the following:

(i) If the responsible party gives the applicant final consideration for hiring into the position, the following shall happen:

(a) The responsible party shall review the applicant's status in the databases listed in paragraph (C)(2)(a) of this rule.

(b) Unless the database reviews reveal that the responsible party shall not hire the applicant, the responsible party shall conduct a criminal records check and the applicant shall provide a set of his or her fingerprints as part of the criminal records check.

(ii) If the responsible party hires the applicant, as a condition to retain the position, the responsible party shall conduct post-hire database reviews and criminal records checks according to one of the three schedules listed under paragraph (C)(3)(b)(ii) of this rule.

(iii) If the responsible party intends to charge the applicant the fees divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize the responsible party to charge, the responsible party shall inform the applicant of the fees at the time of application.

(f) Investigation fees:

(i) The responsible party shall pay BCII the fees that divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize for each criminal records check.

(ii) The responsible party may charge the applicant a fee for checking criminal records so long as the fee does not exceed the amount the responsible party pays to BCII; and, if at the time of initial application, the responsible party informed the applicant of the fee's amount and that the responsible party would not hire the applicant if the applicant did not pay the fee.

(g) Forms: Unless the applicant or employee follows the procedures that BCII established in rule 109:5-1-01 of the Administrative Code for providing fingerprints electronically and requesting criminal records electronically, the responsible party shall complete the following two

tasks:

(i) The responsible party shall provide each applicant or employee with the form(s) that BCII requires in division (C)(1) of section 109.572 of the Revised Code.

(ii) The responsible party shall forward the completed fingerprints and forms to BCII for processing.

(4) Conditional hiring: This paragraph addresses the conditional hiring of applicants for paid ombudsman positions. This paragraph does not require employees who hold paid ombudsman positions to enter a conditional status when they undergo post-hire criminal records checks

(a) Sixty-day period: A responsible party may conditionally hire an applicant for up to sixty days while it waits for the applicant's criminal records, but only if the responsible party complies with the following requirements:

(i) Database reviews: The responsible party shall not conditionally hire an applicant unless the responsible party conducted database reviews and the applicant's status in the databases was not disqualifying.

(ii) Criminal records check: The responsible party shall not conditionally hire an applicant unless the responsible party requests a criminal records check before the following deadlines:

(a) "WebCheck": If the responsible party requires the applicant to provide his or her fingerprints directly to BCII by using "WebCheck," the responsible party shall not conditionally hire the applicant until the applicant provides his or her fingerprints to a "WebCheck" vendor.

(b) Fingerprint impression sheet: If the responsible party does not require the applicant to provide his or her fingerprints directly to BCII by using "WebCheck," the responsible party shall not conditionally hire the applicant until the responsible party receives the applicant's fingerprints on a completed fingerprint impression sheet. If the responsible party conditionally hires the applicant after receiving the fingerprint impression sheet, the responsible party shall provide the sheet to BCII no later than five business days after the responsible party conditionally hires the applicant.

(b) Three reasons to release an applicant:

(i) Sixty-day period ends:

(a) Only BCII check required: The responsible party shall release the conditionally-hired applicant from a paid ombudsman position if more than sixty days passed since the day the responsible party requested a criminal records and the responsible party has not yet received the criminal records.

(b) BCII and FBI checks required: The responsible party is not required to release the conditionally-hired applicant if more than sixty days passed since the responsible party requested criminal records from the FBI and the responsible party has not yet received the FBI's criminal records, but only if section 173.27 of the Revised Code required the responsible party to request criminal records from the FBI, and one of the following two conditions exist:

(i) The responsible party received criminal records from BCII before the sixty-day period ended and the criminal records from BCII did not list a disqualifying offense.

(ii) The responsible party received criminal records from BCII before the sixty-day period ended and the criminal records from BCII listed a disqualifying offense, but the terms of paragraph (C)(6) of this rule would allow the responsible party to hire the applicant, and the responsible party would be willing to hire the applicant under the terms of paragraph (C)(6) of this rule if the forthcoming criminal records from the FBI would not prohibit the responsible party from doing so.

(ii) Disqualifying offense on record: The responsible party shall release the conditionally-hired applicant if the applicant's criminal record lists a disqualifying offense, unless the responsible party is able and willing to hire the applicant under the terms of paragraph (C)(6) of this rule. If the responsible party is unable or unwilling to hire an applicant with a disqualifying offense on his or her criminal record, the responsible party shall release the conditionally-hired applicant regardless of the day during the sixty-day period that the responsible party received the criminal records.

(iii) Deception: If a conditionally-hired applicant made any attempt to

deceive the responsible party about his or her criminal record, the attempt is just cause for the responsible party to release the conditionally-hired applicant.

(c) Hiring released applicants: If a responsible party released a conditionally-hired applicant to comply with the sixty-day limit in paragraph (C)(4)(a) of this rule, the responsible party may resume hiring the released applicant after the responsible party receives the criminal records if either one of the following two conditions exist:

(i) The applicant's criminal record does not list a disqualifying offense.

(ii) The applicant's criminal record lists a disqualifying offense, but the responsible party is able and willing to hire the applicant under the terms of paragraph (C)(6) of this rule.

(5) Disqualifying offenses:

(a) Except as established in paragraph (C)(6) of this rule, no responsible party shall hire an applicant or retain an employee if the applicant or employee was convicted of, or pleaded guilty to, a violation of any of the following sections of the Revised Code:

(i) 959.13 (cruelty to animals);

(ii) 959.131 (prohibitions concerning companion animals);

(iii) 2903.01 (aggravated murder);

(iv) 2903.02 (murder);

(v) 2903.03 (voluntary manslaughter);

(vi) 2903.04 (involuntary manslaughter);

(vii) 2903.041 (reckless homicide);

(viii) 2903.11 (felonious assault);

(ix) 2903.12 (aggravated assault);

(x) 2903.13 (assault);

(xi) 2903.15 (permitting child abuse);

(xii) 2903.16 (failing to provide for a functionally-impaired person);

- (xiii) 2903.21 (aggravated menacing):
- (xiv) 2903.211 (menacing by stalking):
- (xv) 2903.22 (menacing):
- (xvi) 2903.34 (patient abuse and neglect):
- (xvii) 2903.341 (patient endangerment):
- (xviii) 2905.01 (kidnapping):
- (xix) 2905.02 (abduction):
- (xx) 2905.04 (child stealing, as it existed before July 1, 1996):
- (xxi) 2905.05 (criminal child enticement):
- (xxii) 2905.11 (extortion):
- (xxiii) 2905.12 (coercion):
- (xxiv) 2905.32 (trafficking in persons):
- (xxv) 2905.33 (unlawful conduct with respect to documents):
- (xxvi) 2907.02 (rape):
- (xxvii) 2907.03 (sexually battery):
- (xxviii) 2907.04 (unlawful sexual conduct with a minor, formerly
corruption of a minor):
- (xxix) 2907.05 (gross sexual imposition):
- (xxx) 2907.06 (sexual imposition):
- (xxxi) 2907.07 (importuning):
- (xxxii) 2907.08 (voyeurism):
- (xxxiii) 2907.09 (public indecency):
- (xxxiv) 2907.12 (felonious sexual penetration, as it existed before July
1, 1996):
- (xxxv) 2907.21 (compelling prostitution):

- (xxxvi) 2907.22 (promoting prostitution);
- (xxxvii) 2907.23 (enticement or solicitation to patronize a prostitute; procurement of a prostitute for another);
- (xxxviii) 2907.24 (soliciting, engaging in solicitation after a positive HIV test);
- (xxxix) 2907.25 (prostitution);
- (xl) 2907.31 (disseminating matter harmful to juveniles);
- (xli) 2907.32 (pandering obscenity);
- (xlii) 2907.321 (pandering obscenity involving a minor);
- (xliii) 2907.322 (pandering sexually-oriented matter involving a minor);
- (xliv) 2907.323 (illegal use of a minor in nudity-oriented material or performance);
- (xlv) 2907.33 (deception to obtain matter harmless to juveniles);
- (xlvi) 2909.02 (aggravated arson);
- (xlvii) 2909.03 (arson);
- (xlviii) 2909.04 (disrupting public services);
- (xlix) 2909.22 (soliciting or providing support for act of terrorism);
- (l) 2909.23 (making terroristic threat);
- (li) 2909.24 (terrorism);
- (lii) 2911.01 (aggravated robbery);
- (liii) 2911.02 (robbery);
- (liv) 2911.11 (aggravated burglary);
- (lv) 2911.12 (burglary);
- (lvi) 2911.13 (breaking and entering);
- (lvii) 2913.02 (theft);

- (lviii) 2913.03 (unauthorized use of a vehicle);
- (lix) 2913.04 (unauthorized use of computer, cable, or telecommunication property);
- (lx) 2913.05 (telecommunications fraud);
- (lxi) 2913.11 (passing bad checks);
- (lxii) 2913.21 (misuse of credit cards);
- (lxiii) 2913.31 (forgery, forging identification cards);
- (lxiv) 2913.32 (criminal simulation);
- (lxv) 2913.40 (medicaid fraud);
- (lxvi) 2913.41 (defrauding a rental agency or hostelry);
- (lxvii) 2913.42 (tampering with records);
- (lxviii) 2913.43 (securing writings by deception);
- (lxix) 2913.44 (personating an officer);
- (lxx) 2913.441 (unlawful display of law enforcement emblem);
- (lxxi) 2913.45 (defrauding creditors);
- (lxxii) 2913.46 (illegal use of SNAP or WIC program benefits);
- (lxxiii) 2913.47 (insurance fraud);
- (lxxiv) 2913.48 (workers' compensation fraud);
- (lxxv) 2913.49 (identify fraud);
- (lxxvi) 2913.51 (receiving stolen property);
- (lxxvii) 2917.01 (inciting to violence);
- (lxxviii) 2917.02 (aggravated riot);
- (lxxix) 2917.03 (riot);
- (lxxx) 2917.31 (inducing panic);

- (lxxxix) 2919.12 (unlawful abortion);
- (lxxxviii) 2919.121 (unlawful abortion upon minor);
- (lxxxviii) 2919.123 (unlawful distribution of an abortion-inducing drug);
- (lxxxv) 2919.22 (endangering children);
- (lxxxv) 2919.23 (interference with custody);
- (lxxxvi) 2919.24 (contributing to unruliness or delinquency of child);
- (lxxxvii) 2919.25 (domestic violence);
- (lxxxviii) 2921.03 (intimidation);
- (lxxxix) 2921.11 (perjury);
- (xc) 2921.12 (tampering with evidence);
- (xci) 2921.13 (falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license);
- (xcii) 2921.21 (compounding a crime);
- (xciii) 2921.24 (disclosure of confidential information);
- (xciv) 2921.32 (obstructing justice);
- (xcv) 2921.321 (assaulting or harassing a police dog, horse, or service animal);
- (xcvi) 2921.34 (escape);
- (xcvii) 2921.35 (aiding escape or resistance to lawful authority);
- (xcviii) 2921.36 (illegal conveyance of weapons, drugs or other prohibited items onto grounds of detention facility or institution);
- (xcix) 2921.51 (impersonation of peace officer);
- (c) 2923.01 (conspiracy, related to another disqualifying offense);
- (ci) 2923.02 (attempt to commit an offense, related to another disqualifying offense);

- (cii) 2923.03 (complicity, related to another disqualifying offense);
- (ciii) 2923.12 (carrying concealed weapons);
- (civ) 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone);
- (cv) 2923.123 (illegal conveyance, possession, or control of deadly weapon or ordnance into a courthouse);
- (cvi) 2923.13 (having weapons while under disability);
- (cvii) 2923.161 (improperly discharging a firearm at or into a habitation or school);
- (cviii) 2923.162 (discharge of firearm on or near prohibited premises);
- (cix) 2923.21 (improperly furnishing firearms to minor);
- (cx) 2923.32 (engaging in a pattern of corrupt activity);
- (cxi) 2923.42 (participating in criminal gang);
- (cxii) 2925.02 (corrupting another with drugs);
- (cxiii) 2925.03 (trafficking in drugs);
- (cxiv) 2925.04 (illegal manufacture of drugs or cultivation of marijuana);
- (cxv) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs);
- (cxvi) 2925.05 (funding of drug or marijuana trafficking);
- (cxvii) 2925.06 (illegal administration or distribution of anabolic steroids);
- (cxviii) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous veterinary drug);
- (cxix) 2925.11 (possession of drugs);
- (cxx) 2925.13 (permitting drug abuse);

(cxxi) 2925.14 (illegal use, possession, dealing, selling, or advertising of drug paraphernalia);

(cxxii) 2925.141 (illegal use or possession of marihuana drug paraphernalia);

(cxxiii) 2925.22 (deception to obtain dangerous drugs);

(cxxiv) 2925.23 (illegal processing of drug documents);

(cxxv) 2925.24 (tampering with drugs);

(cxxvi) 2925.36 (dispensing drug samples);

(cxxvii) 2925.55 (unlawful purchase of a pseudoephedrine product, underage purchase of a pseudoephedrine product, using false information to purchase a pseudoephedrine product, improper purchase of a pseudoephedrine product);

(cxxviii) 2925.56 (unlawfully selling a pseudoephedrine product;unlawfully selling a pseudoephedrine product to a minor;improper sale of a pseudoephedrine product);

(cxxix) 2927.12 (ethnic intimidation); or,

(cxxx) 3716.11 (placing harmful objects in food or confection).

(b) Except as established in paragraph (C)(6) of this rule, no responsible party shall hire an applicant or retain an employee if the applicant or employee was convicted of a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraph (C)(5)(a) of this rule.

(6) Hiring an applicant, or retaining an employee, who has a disqualifying offense on criminal record: There are four possible ways to hire an applicant, or retain an employee, if the applicant's or employee's criminal record contains a disqualifying offense: not being in an exclusionary period under paragraph (C)(6)(a) of this rule, limited grandfathering under paragraph (C)(6)(b) of this rule, obtaining a certificate under paragraph (C)(6)(c) of this rule, or obtaining a pardon under paragraph (C)(6)(d) of this rule.

(a) Disqualifying offense exclusionary periods: A responsible party may hire an applicant or retain an employee who was convicted of, or pleaded guilty to, an offense listed in paragraph (C)(5) of the rule unless an exclusionary period in paragraph (C)(6)(a)(i), (C)(6)(a)(ii),

(C)(6)(a)(iii), or (C)(6)(a)(iv) of this rule prohibits hiring the applicant or retaining the employee.

(i) Tier I: Permanent exclusion: No responsible party shall hire an applicant or retain an employee if the applicant or employee was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(a) 2903.01 (aggravated murder);

(b) 2903.02 (murder);

(c) 2903.03 (voluntary manslaughter);

(d) 2903.11 (felonious assault);

(e) 2903.15 (permitting child abuse);

(f) 2903.16 (failing to provide for a functionally-impaired person);

(g) 2903.34 (patient abuse or neglect);

(h) 2903.341 (patient endangerment);

(i) 2905.01 (kidnapping);

(j) 2905.02 (abduction);

(k) 2905.32 (human trafficking);

(l) 2905.33 (unlawful conduct with respect to documents);

(m) 2907.02 (rape);

(n) 2907.03 (sexual battery);

(o) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor);

(p) 2907.05 (gross sexual imposition);

(q) 2907.06 (sexual imposition);

(r) 2907.07 (importuning);

(s) 2907.08 (voyeurism);

- (t) 2907.12 (felonious sexual penetration);
- (u) 2907.31 (disseminating matter harmful to juveniles);
- (v) 2907.32 (pandering obscenity);
- (w) 2907.321 (pandering obscenity involving a minor);
- (x) 2907.322 (pandering sexually-oriented matter involving a minor);
- (y) 2907.323 (illegal use of a minor in nudity-oriented material or performance);
- (z) 2909.22 (soliciting or providing support for an act of terrorism);
- (aa) 2909.23 (making terroristic threats);
- (bb) 2909.24 (terrorism);
- (cc) 2913.40 (medicaid fraud);
- (dd) If related to another offense in this paragraph, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity);
- (ee) A conviction related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program, excluding the disqualifying offenses listed in section 2913.46 (illegal use of SNAP or WIC program benefits); or,
- (ff) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in this paragraph.

(ii) Tier II: Ten-year exclusionary period:

- (a) No responsible party shall hire an applicant or retain an employee for a period of ten years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

- (i) 2903.04 (involuntary manslaughter);
- (ii) 2903.041 (reckless homicide);
- (iii) 2905.04 (child stealing, as it existed before July 1, 1996);
- (iv) 2905.05 (child enticement);
- (v) 2905.11 (extortion);
- (vi) 2907.21 (compelling prostitution);
- (vii) 2907.22 (promoting prostitution);
- (viii) 2907.23 (enticement or solicitation to patronize a prostitute; procurement of a prostitute for another);
- (ix) 2909.02 (aggravated arson);
- (x) 2909.03 (arson);
- (xi) 2911.01 (aggravated robbery);
- (xii) 2911.11 (aggravated burglary);
- (xiii) 2913.46 (illegal use of SNAP or WIC program benefits);
- (xiv) 2913.48 (worker's compensation fraud);
- (xv) 2913.49 (identity fraud);
- (xvi) 2917.02 (aggravated riot);
- (xvii) 2923.12 (carrying concealed weapons);
- (xviii) 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone);
- (xix) 2923.123 (illegal conveyance, possession, or control of deadly weapon or ordnance into a courthouse);
- (xx) 2923.13 (having weapons while under disability);

(xxi) 2923.161 (improperly discharging a firearm at or into a habitation or school);

(xxii) 2923.162 (discharge of firearm on or near prohibited premises);

(xxiii) 2923.21 (improperly furnishing firearms to a minor);

(xxiv) 2923.32 (engaging in a pattern of corrupt activity);

(xxv) 2923.42 (participating in a criminal gang);

(xxvi) 2925.02 (corrupting another with drugs);

(xxvii) 2925.03 (trafficking in drugs);

(xxviii) 2925.04 (illegal manufacture of drugs or cultivation of marijuana);

(xxix) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs);

(xxx) 3716.11 (placing harmful or hazardous objects in food or confection);

(xxxi) If related to another offense listed under paragraph (C)(6)(a)(ii)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,

(xxxii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (C)(6)(a)(ii)(a) of this rule.

(b) An applicant or employee is subject to a fifteen-year exclusionary period if the applicant, or employee was convicted of multiple disqualifying offenses, including an offense listed in paragraph (C)(6)(a)(ii)(a) of this rule, and another offense or offenses listed under paragraph (C)(6)(a)(ii)(a), (C)(6)(a)(iii)(a) , or (C)(6)(a)(iv)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(iii) Tier III: Seven-year exclusionary period:

(a) No responsible party shall hire an applicant or retain an employee for a period of seven years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee was convicted of, or pleaded guilty to, any offense in any of the following sections of the Revised Code:

(i) 959.13 (cruelty to animals);

(ii) 959.131 (prohibitions concerning companion animals);

(iii) 2903.12 (aggravated assault);

(iv) 2903.21 (aggravated menacing);

(v) 2903.211 (menacing by stalking);

(vi) 2905.12 (coercion);

(vii) 2909.04 (disrupting public services);

(viii) 2911.02 (robbery);

(ix) 2911.12 (burglary);

(x) 2913.47 (insurance fraud);

(xi) 2917.01 (inciting to violence);

(xii) 2917.03 (riot);

(xiii) 2917.31 (inducing panic);

(xiv) 2919.22 (endangering children);

(xv) 2919.25 (domestic violence);

(xvi) 2921.03 (intimidation);

(xvii) 2921.11 (perjury);

(xviii) 2921.13 (falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license);

(xix) 2921.34 (escape);

(xx) 2921.35 (aiding escape or resistance to lawful authority);

(xxi) 2921.36 (illegal conveyance of weapons, drugs, or other prohibited items onto the grounds of a detention facility or institution);

(xxii) 2925.05 (funding drug trafficking);

(xxiii) 2925.06 (illegal administration or distribution of anabolic steroids);

(xxiv) 2925.24 (tampering with drugs);

(xxv) 2927.12 (ethnic intimidation);

(xxvi) If related to another offense listed under paragraph (C)(6)(a)(iii)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,

(xxvii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (C)(6)(a)(iii)(a) of this rule.

(b) An applicant or employee is subject to a ten-year exclusionary period if the applicant or employee was convicted of multiple disqualifying offenses, including an offense listed in paragraph (C)(6)(a)(iii)(a) of this rule, and another offense or offenses listed in paragraph (C)(6)(a)(iii)(a) or (C)(6)(a)(iv)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(iv) Tier IV: Five-year exclusionary period:

(a) No responsible party shall hire an applicant or retain an employee for a period of five years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(i) 2903.13 (assault);

(ii) 2903.22 (menacing);

- (iii) 2907.09 (public indecency):
- (iv) 2907.24 (soliciting, engaging in solicitation after a positive HIV test):
- (v) 2907.25 (prostitution):
- (vi) 2907.33 (deception to obtain matter harmful to juveniles):
- (vii) 2911.13 (breaking and entering):
- (viii) 2913.02 (theft):
- (ix) 2913.03 (unauthorized use of a vehicle):
- (x) 2913.04 (unauthorized use of computer, cable, or telecommunication property):
- (xi) 2913.05 (telecommunications fraud):
- (xii) 2913.11 (passing bad checks):
- (xiii) 2913.21 (misuse of credit cards):
- (xiv) 2913.31 (forgery, forging identification cards):
- (xv) 2913.32 (criminal simulation):
- (xvi) 2913.41 (defrauding a rental agency or hostelry):
- (xvii) 2913.42 (tampering with records):
- (xviii) 2913.43 (securing writings by deception):
- (xix) 2913.44 (personating an officer):
- (xx) 2913.441 (unlawful display of law enforcement emblem):
- (xxi) 2913.45 (defrauding creditors):
- (xxii) 2913.51 (receiving stolen property):
- (xxiii) 2919.12 (unlawful abortion):
- (xxiv) 2919.121 (unlawful abortion upon minor):

- (xxv) 2919.123 (unlawful distribution of an abortion-inducing drug);
- (xxvi) 2919.23 (interference with custody);
- (xxvii) 2919.24 (contributing to the unruliness or delinquency of a child);
- (xxviii) 2921.12 (tampering with evidence);
- (xxix) 2921.21 (compounding a crime);
- (xxx) 2921.24 (disclosure of confidential information);
- (xxxi) 2921.32 (obstructing justice);
- (xxxii) 2921.321 (assaulting or harassing a police dog, horse, or service animal);
- (xxxiii) 2921.51 (impersonation of peace officer);
- (xxxiv) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous veterinary drug);
- (xxxv) 2925.11 (drug possession), unless a minor drug possession offense;
- (xxxvi) 2925.13 (permitting drug abuse);
- (xxxvii) 2925.22 (deception to obtain a dangerous drug);
- (xxxviii) 2925.23 (illegal processing of drug documents);
- (xxxix) 2925.36 (illegal dispensing of drug samples);
- (xl) 2925.55 (unlawful purchase of a pseudoephedrine product, underage purchase of a pseudoephedrine product, using false information to purchase a pseudoephedrine product, improper purchase of a pseudoephedrine product);
- (xli) 2925.56 (unlawfully selling a pseudoephedrine product;unlawfully selling a pseudoephedrine product to a minor;improper sale of a pseudoephedrine product);

(xlii) If related to another offense listed under paragraph (C)(6)(a)(iv)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,

(xliii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (C)(6)(a)(iv)(a) of this rule.

(b) An applicant, or employee is subject to a seven-year exclusionary period if the applicant or employee was convicted of multiple disqualifying offenses listed in paragraph (C)(6)(a)(iv)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(v) Tier V: No exclusionary period: A responsible party may hire an applicant or retain an employee if the applicant or employee was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(a) 2925.11 (drug possession), but only if a minor drug possession offense;

(b) 2925.14 (illegal use, possession, dealing, selling, or advertising of drug paraphernalia); or,

(c) 2925.141 (illegal use or possession of marihuana drug paraphernalia);

(d) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violation described under paragraph (C)(6)(a)(v) of this rule.

(b) Limited grandfathering: A responsible party may have chosen to retain an employee if the employee would otherwise have been excluded from a paid ombudsman position because the employee was convicted of, or pleaded guilty to, an offense(s) listed under paragraph (C)(6)(a)(iv) of this rule, but only if all of the following three requirements were met:

(i) The responsible party hired the employee before January 1, 2013.

(ii) The employee's conviction or guilty plea occurred before January 1, 2013.

- (iii) The responsible party considered the nature and seriousness of the offense(s), and attested in writing before April 1, 2013, to the character and fitness of the employee based upon the employee's demonstrated work performance.
- (c) Certificates: A responsible party may hire an applicant or retain an employee with a disqualifying offense that is not one of the offenses listed under paragraph (C)(6)(a)(i) of this rule if the applicant or employee was issued either of the following:
- (i) Certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code (A person may petition for a certificate of qualification for employment on "The Ohio Certificate of Qualification for Employment Online Petition Website" or <https://www.drccqe.com/>).
- (ii) Certificate of achievement and employability in a home and community-based service-related field, issued by the department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code.
- (d) Pardons: A responsible party may hire an applicant or retain an employee if the applicant or employee has a conviction or a plea of guilty to an offense listed or described in paragraph (C)(5) of this rule under any of the following circumstances:
- (i) The applicant or employee was granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code.
- (ii) The applicant or employee was 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.
- (iii) The conviction or guilty plea was set aside pursuant to law.
- (iv) The applicant or employee was granted a conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the conditions under which the pardon was granted have been satisfied.
- (7) Confidentiality: Criminal records are not public records. The responsible party shall only make criminal records available to the following people:
- (a) The applicant or employee who is the subject of the criminal records

check or the applicant's or employee's representative.

(b) The responsible party or the responsible party's designee.

(c) The state long-term care ombudsman or a representative of the office of the state long-term care ombudsman program who is responsible for monitoring the regional program's compliance.

(d) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

(i) A denial of employment of the applicant or employee.

(ii) Employment or unemployment benefits of the applicant or employee.

(iii) A civil or criminal action regarding the medicaid program or an ODA-administered program.

(8) Records retention:

(a) Personnel files:

(i) What to retain: To verify compliance with this rule, for each applicant the responsible party hired and each employee the responsible party retained, the responsible party shall retain electronic or paper copies of the following records:

(a) The result of each of the database reviews.

(b) Any criminal records including reverified records received as a result of a check conducted to comply with section 173.27 of the Revised Code.

(c) The written attestation to the character and fitness of the employee, if the responsible party completed a written attestation before April 1, 2013 to comply with paragraph (C)(6)(c)(1) of this rule.

(d) A certificate of qualification for employment, if a court issued a certificate of qualification for employment to the employee.

(e) A certificate of achievement and employability, if the department of rehabilitation and corrections issued a certificate of achievement and employability to the employee.

- (f) A pardon, if a governor pardoned the employee. The date the responsible party hired the employee.
- (ii) Sealed files: To comply with paragraph (C)(7) of this rule, the responsible party shall retain the records that paragraph (C)(8)(a)(i) of this rule requires the responsible party to retain by sealing the records within each applicant's or each employee's personnel files or by retaining the records in separate files from the personnel files. Regarding a self-employed person, the responsible party shall simply retain the records.
- (b) Roster: A responsible party shall maintain a roster of applicants and employees, accessible by ODA's director (or the director's designees), that includes all the following:
- (i) The name of each applicant and employee.
- (ii) The date the responsible party hired the employee.
- (iii) The date the responsible party requested criminal records from BCII.
- (iv) The date the responsible party received criminal records from BCII.
- (v) A determination of whether the criminal records revealed that the applicant or employee committed a disqualifying offense(s).
- (9) Immunity from negligent hiring: In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an applicant or employee, all of the following apply:
- (a) If the responsible party hired the applicant or retained the employee in good faith and reasonable reliance upon the applicant's or employee's criminal record, the responsible party shall not be found negligent solely because of its reliance on the criminal record, even if the criminal record is later determined to have been incomplete or inaccurate.
- (b) If the responsible party conditionally hired the applicant in good faith and in compliance with paragraph (C)(4) of this rule, the responsible party shall not be found negligent solely because it hired the applicant before receiving the applicant's criminal record.
- (c) If the responsible party in good faith hired an applicant or retained an employee because paragraph (C)(6) of this rule allows the responsible party to hire an applicant or retain an employee with a disqualifying offense on his or her criminal record, the responsible party shall not be

negligent solely because the applicant or employee has been convicted of, or pleaded guilty to, a disqualifying offense.

(D) Background checks for volunteer ombudsman positions: Because section 173.27 of the Revised Code excludes volunteers from the definitions of "applicant" and "employee," applicants for, and employees in, volunteer ombudsman positions are not subject to the background check requirements in section 173.27 of the Revised Code or paragraph (C) of this rule. A responsible party may conduct a criminal records check on a applicant for, or an employee in, a volunteer ombudsman position if the responsible party complies with rule 109:5-1-01 of the Administrative Code, but the check may only involve reviewing sealed records if the applicant or employee who is the subject of the check authorizes the responsible party to view sealed records according to division (D)(3) of section 2953.32 of the Revised Code.

Replaces: Chapter 173-9, 173-14-14.

Effective:

Five Year Review (FYR) Dates:

Certification

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Rule Amplifies: 173.16, 173.27; Section 712(a)(5) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016; 45 C.F.R. 1321.11(e) (October, 2016 edition).

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