

5101:2-48-10

Restrictions concerning provision of adoption services.

(A) A public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency (PNA) shall request that the bureau of criminal identification and investigation (BCII) conduct a criminal records check on prospective adoptive parents pursuant to the procedures set forth in section 2151.86 of the Revised Code. ~~A federal bureau of investigation (FBI) criminal records check shall be requested as part of the BCII criminal records check when prospective adoptive parents:~~ The PCSA, PCPA or PNA shall request that BCII obtain information from the FBI as a part of the criminal records check for prospective adoptive parent(s) subject to a criminal records check if the prospective adoptive parent(s):

- (1) ~~Does not present proof that they have been a resident of residency in Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested; or~~
- (2) ~~Does not provide proof of residency per (A)(1) of this rule, and does not provide evidence that within that five-year period, BCII has requested information about them from the FBI in a criminal records check; or~~
- (3) Indicates they have committed an offense or violation listed in paragraph (C) of this rule.

The PCSA, PCPA, or PNA may request that BCII ~~obtain~~ include information from the FBI in the criminal records check even if the prospective adoptive parent ~~has presented~~ presents proof ~~that he has been a resident of residency in Ohio for a five-year period.~~

(B) A PCSA, PCPA or PNA ~~may~~ shall request that BCII conduct a criminal records check on adult members of the prospective adoptive parent's household pursuant to the procedures set forth in section 2151.86 of the Revised Code. ~~An FBI criminal records check may be requested as part of the BCII criminal records check when the adult members of the household:~~ The PCSA, PCPA or PNA shall request that BCII obtain information from the FBI as a part of the criminal records check for adult members of the prospective adoptive parent's household subject to a criminal records check if the adult member(s) of the prospective adoptive parent's household:

- (1) ~~Does not present proof that they have been a resident of residency in Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested; or~~
- (2) Do not provide evidence that within that five-year period, BCII has requested

information about them from the FBI in a criminal records check; or

- (3) Indicate they have committed an offense or violation listed in paragraph (C) of this rule.

The PCSA, PCPA, or PNA may request that BCII obtain information from the FBI even if an adult member of the prospective adoptive parent's household has presented proof that he has been a resident of Ohio for a five-year period.

- (C) Except as provided in paragraph (D) of this rule, a PCSA, PCPA or PNA shall not approve an adoptive placement if the results of the BCII criminal records check indicate that a prospective adoptive parent or, when applicable, any adult member of the household has been convicted of or pleaded guilty to any of the offenses or violations contained in section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 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], 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 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 or 3716.11 of the Revised Code, 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, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code or an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of these offenses.

- (D) A prospective adoptive parent or any adult member of the household, when applicable, who has been convicted of an offense listed in paragraph (C) of this rule may be considered for adoptive placement only if all of the following conditions are 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 since the prospective adoptive parent was fully discharged from imprisonment or probation or the prospective adoptive parent has had his record of conviction sealed pursuant to section 2953.32 of the Revised Code.
- (2) Where the offense was a felony, at least ten years have elapsed since the prospective adoptive parent 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;
- (b) A functionally impaired person as defined in section 2903.10 of the Revised Code;
- (c) A mentally retarded 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; or
- (f) A person sixty years of age or older.

(4) The prospective adoptive parent's approval will not jeopardize in any way the health, safety, or welfare of the children the PCSA, PCPA, or PNA serves. The following factors shall be considered in determining the prospective adoptive parent's approval:

- (a) The prospective adoptive parent'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 prospective adoptive parent participated in the offense;
- (e) The time elapsed since the prospective adoptive parent was fully discharged from imprisonment or probation;
- (f) The likelihood that the circumstances leading to the offense will recur;
- (g) Whether the prospective adoptive parent or adult household member is a repeat offender. "Repeat offender" means a person who has been

convicted of or pleaded guilty to the commission of any of the offenses listed in paragraph (C) of this rule two or more times in 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;

- (h) The prospective adoptive parent's employment record;
 - (i) The prospective adoptive parent's efforts at rehabilitation and the results of those efforts;
 - (j) Whether any criminal proceedings are pending against the prospective adoptive parent; or
 - (k) Any other factors the PCSA, PCPA, or PNA considers relevant.
- (E) It is the prospective adoptive parent's duty to provide written verification that the conditions specified in paragraph (D) of this rule are met. If the prospective adoptive parent fails to provide such proof or if the PCSA, PCPA, or PNA determines that the proof offered by the prospective adoptive parent is inconclusive, the prospective adoptive parent shall not be considered. Any doubt shall be resolved in favor of protecting the children the PCSA, PCPA, or PNA serves.
- (F) This rule is applicable to records of convictions that have been sealed pursuant to section 2953.32 of the Revised Code because the information contained in those sealed records bears a direct and substantial relationship to the position for which the prospective adoptive parent is being considered.
- (G) A conviction of an offense listed in paragraph (C) of this rule shall not prevent approval of a prospective adoptive parent if the prospective adoptive parent 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. For purposes of this rule, "unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.
- (H) The report of any criminal records check conducted by BCII in accordance with section 109.572 of the Revised Code and pursuant to a request made by the PCSA, PCPA or PNA is not a public record for purposes of section 149.43 of the Revised Code. The report shall be made available only to the following persons:
- (1) The person who is the subject of the criminal records check or his

representative;

- (2) The PCSA, PCPA, or PNA requesting the criminal records check or its representative;
 - (3) Ohio department of job and family services employees who conduct agency monitoring activities; and
 - (4) Any court, hearing officer, or other necessary person involved in a case dealing with denial of an applicant for adoptive placement.
- (I) Prospective adoptive parents who are applying for simultaneous approval for adoptive placement and certification as a foster home must be at least twenty-one years of age in order to meet the foster care requirements contained in rule 5101:2-7-02 of the Administrative Code.
- (J) Foster parents who are being considered for adoption of a foster child residing in their home shall be assessed according to the standards contained in rules 5101:2-5-09.1 and 5101:2-7-02 of the Administrative Code.

Effective:

R.C. 119.032 review dates: 05/01/2003

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5153.16, 3107.032
Rule Amplifies: 2151.86, 3107.031, 3107.032,
5153.16
Prior Effective Dates: 71/90, 9/1/94, 12/15/95
(Emer.), 3/1/96, 9/18/96,
2/13/98 (Emer.), 5/14/98,
12/31/98 (Emer.), 4/1/99,
11/12/02