

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5123-2-02

Rule Type: New

Rule Title/Tagline: Background investigations for employment.

Agency Name: Department of Developmental Disabilities

Division:

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I. Rule Summary

1. Is this a five year rule review? No

A. What is the rule's five year review date?

2. Is this rule the result of recent legislation? No

3. What statute is this rule being promulgated under? 119.03

4. What statute(s) grant rule writing authority? 5123.04, 5123.081

5. What statute(s) does the rule implement or amplify? 5123.04, 5123.081, 5123.1610

6. What are the reasons for proposing the rule?

The Department is rescinding rule 5123:2-2-02 and adopting replacement rule 5123-2-02.

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

The rule establishes standards for conducting background investigations on persons employed or seeking employment in Ohio's service delivery system for individuals with developmental disabilities.

8. Does the rule incorporate material by reference? Yes
9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.

The incorporated references are to:

- The Social Security Act and the United States Code which are cited in a manner that is intelligible to persons who reasonably can be expected to be affected by the rule in accordance with Section 121.75 of the Revised Code. The Social Security Act and the United States Code are available at libraries and on the internet.

- The Revised Code and the Administrative Code which are exempt pursuant to Section 121.76 of the Revised Code. The Revised Code and the Administrative Code are available at LAWriter (<http://codes.ohio.gov>). The Department's administrative rules are also available at the Department's website (dodd.ohio.gov).

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

No changes have been made to the rule. The rule is being refiled to attach the Common Sense Initiative documents.

05/10/2019 PARAGRAPH (C)(8)(c) REVISED FROM:

Enroll each employee in a direct services position in the retained applicant fingerprint database within fourteen calendar days of receiving the employee's criminal records check from the bureau of criminal identification;

TO:

Enroll each employee in a direct services position in the retained applicant fingerprint database within fourteen calendar days of receiving the employee's criminal records check from the bureau of criminal identification and investigation or within fourteen calendar days of the employee's date of hire, whichever is later;

PARAGRAPH (E)(2)(a) REVISED FROM:

If an applicant, employee, or candidate has been convicted of or pleaded guilty to multiple disqualifying offenses listed in paragraphs (E)(1)(b)(i) to (E)(1)(b)(xxxii) of this rule, and offenses listed in paragraphs (E)(1)(c)(i) to (E)(1)(c)(xxvii) of this rule, and paragraphs (E)(1)(d)(i) to (E)(1)(d)(xliii) of this rule, the applicant, employee, or candidate is subject to a fifteen-year exclusion period beginning on the date the applicant, employee, or candidate was fully discharged from imprisonment, probation, or parole for the most recent offense.

TO:

If an applicant, employee, or candidate has been convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction for multiple disqualifying offenses listed in paragraphs (E)(1)(b)(i) to (E)(1)(b)(xxxii) of this rule, and offenses listed in paragraphs (E)(1)(c)(i) to (E)(1)(c)(xxvii) of this rule, and paragraphs (E)(1)(d)(i) to (E)(1)(d)(xlili) of this rule, the applicant, employee, or candidate is subject to a fifteen-year exclusion period beginning on the date the applicant, employee, or candidate was fully discharged from imprisonment, probation, or parole for the most recent offense.

PARAGRAPH (E)(2)(b) REVISED FROM:

If an applicant, employee, or candidate has been convicted of or pleaded guilty to multiple disqualifying offenses listed in paragraphs (E)(1)(c)(i) to (E)(1)(c)(xxvii) of this rule and offenses listed in paragraphs (E)(1)(d)(i) to (E)(1)(d)(xlili) of this rule, the applicant, employee, or candidate is subject to a ten-year exclusion period beginning on the date the applicant, employee, or candidate was fully discharged from imprisonment, probation, or parole for the most recent offense.

TO:

If an applicant, employee, or candidate has been convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction for multiple disqualifying offenses listed in paragraphs (E)(1)(c)(i) to (E)(1)(c)(xxvii) of this rule and offenses listed in paragraphs (E)(1)(d)(i) to (E)(1)(d)(xlili) of this rule, the applicant, employee, or candidate is subject to a ten-year exclusion period beginning on the date the applicant, employee, or candidate was fully discharged from imprisonment, probation, or parole for the most recent offense.

PARAGRAPH (E)(2)(c) REVISED FROM:

If an applicant, employee, or candidate has been convicted of or pleaded guilty to multiple disqualifying offenses listed in paragraphs (E)(1)(d)(i) to (E)(1)(d)(xlili) of this rule, the applicant, employee, or candidate is subject to a seven-year exclusion period beginning on the date the applicant, employee, or candidate was fully discharged from imprisonment, probation, or parole for the most recent offense.

TO:

If an applicant, employee, or candidate has been convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction for multiple disqualifying offenses listed in paragraphs (E)(1)(d)(i) to (E)(1)(d)(xlili) of this rule, the applicant, employee, or candidate is subject to a seven-year exclusion period beginning on the date the applicant, employee, or candidate was fully discharged from imprisonment, probation, or parole for the most recent offense.

II. Fiscal Analysis

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

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Rescinding rule 5123:2-2-02 and adopting replacement rule 5123-2-02 will neither increase nor decrease revenues or expenditures for the Department.

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

The costs associated with the rule include:

- Staff time for checking an applicant's references, checking the databases listed in paragraph (C)(2), obtaining an applicant's driving record, requesting criminal records checks, and enrolling employees in Rapback.
- Fees for criminal records checks by the Bureau of Criminal Identification and Investigation (\$22.00 per check) and by the Federal Bureau of Investigation for applicants, candidates, and employees who do not present proof of Ohio residency (\$25.25 per check).
- The cost of enrolling employees in Rapback (\$5.00 per employee, per year).

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

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

III. Common Sense Initiative (CSI) Questions

- 15. Was this rule filed with the Common Sense Initiative Office? Yes**

- 16. 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? No**
- 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? No**

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

Paragraph (C)(6) requires a responsible entity to request a criminal records check by the Bureau of Criminal Identification and Investigation prior to hiring a person for a direct services position at a cost of \$22.00 per check. For a person who does not present proof of Ohio residency, the responsible entity must also request a criminal records check by the Federal Bureau of Investigation at a cost of \$25.25 per check.

Paragraph (C)(8) requires a responsible entity to enroll employees in direct services positions in Rapback at a cost of \$5.00 per year, per employee. For an employee who does not present proof of Ohio residency, the responsible entity must request, once every five years, a criminal records check by the Federal Bureau of Investigation at a cost of \$25.25 per check.

Paragraph (C)(9) requires a responsible entity to request a criminal records check by the Bureau of Criminal Identification and Investigation once every five years at a cost of \$22.00 per check for an employee in a direct services position who cannot be enrolled in Rapback. For an employee who does not present proof of Ohio residency, the responsible entity must also request a criminal records check by the Federal Bureau of Investigation at a cost of \$25.25 per check.

Paragraph (D)(1) requires a candidate to request a criminal records check by the Bureau of Criminal Identification and Investigation at the point of application for Supported Living Certification at a cost of \$22.00. A candidate who does not present proof of Ohio residency must also request a criminal records check by the Federal Bureau of Investigation at a cost of \$25.25.

Paragraph (D)(6) requires a candidate who cannot be enrolled in Rapback to request a criminal records check by the Bureau of Criminal Identification and Investigation once every five years at a cost of \$22.00. A candidate who does not present proof of Ohio residency must also request a criminal records check by the Federal Bureau of Investigation at a cost of \$25.25.

Paragraph (G) requires a responsible entity to provide personnel records to the Department.