

5123-2-02

Background investigations for employment.**(A) Purpose**

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

(B) Definitions

For the purposes of this rule, the following definitions shall apply:

- (1) "Agency provider" means a person, association, corporation, nonprofit organization, partnership, trust, or other group of persons that provides specialized services and employs, directly or through contract, one or more persons in a direct services position.
- (2) "Applicant" means:

 - (a) A person who is under final consideration for appointment to or employment with the department or a county board;
 - (b) A person who is being transferred to the department or a county board;
 - (c) An employee who is being recalled to or reemployed by the department or a county board after a layoff; or
 - (d) A person under final consideration for a direct services position with an agency provider or subcontractor.
- (3) "Candidate" means:

 - (a) The chief executive officer of an agency provider that applies pursuant to section 5123.161 or 5123.164 of the Revised Code for supported living certification; or
 - (b) A person who applies pursuant to section 5123.161 or 5123.164 of the Revised Code for supported living certification as an independent provider.
- (4) "County board" means a county board of developmental disabilities.
- (5) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

- (6) "Department" means the Ohio department of developmental disabilities.
- (7) "Direct services position" means an employment position in which the employee has the opportunity to be alone with or exercises supervision or control over one or more individuals.
- (8) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.
- (9) "Employee" means a person appointed to or employed by the department or a county board or a person employed in a direct services position by an agency provider or subcontractor. "Employee" does not mean a person who provides only respite care to his or her family member under a family support services program established pursuant to section 5126.11 of the Revised Code.
- (10) "Independent provider" means a self-employed person who provides services for which he or she must be certified in accordance with rule 5123:2-2-01 of the Administrative Code and does not employ, either directly or through contract, anyone else to provide the services.
- (11) "Individual" means a person with a developmental disability.
- (12) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.
- (13) "Multiple disqualifying offenses" means two or more convictions or guilty pleas to disqualifying offenses. 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.
- (14) "Responsible entity" means:
 - (a) The department in the case of an applicant under final consideration for appointment to or employment with the department, being transferred to the department, or being recalled to or reemployed by the department after a layoff or a person appointed to or employed by the department;
 - (b) A county board in the case of an applicant under final consideration for appointment to or employment with the county board, being transferred to the county board, or being recalled to or reemployed by the county board after a layoff or a person appointed to or employed by the county board;

- (c) An agency provider in the case of an applicant under final consideration for a direct services position with the agency provider or a person employed in a direct services position by the agency provider; or
 - (d) A subcontractor in the case of an applicant under final consideration for a direct services position with the subcontractor or a person employed in a direct services position by the subcontractor.
 - (15) "Retained applicant fingerprint database" means the database also known as "Rapback," maintained by the bureau of criminal identification and investigation pursuant to section 109.5721 of the Revised Code that contains the fingerprints of individuals for whom the bureau of criminal identification and investigation has conducted criminal records checks.
 - (16) "Specialized services" mean any program or service designed and operated to serve primarily individuals with developmental disabilities, including a program or service provided by an entity licensed or certified by the department. If there is a question as to whether a provider or subcontractor is providing specialized services, the provider or subcontractor may request that the director of the department make a determination. The director's determination is final. Programs or services available to the general public are not specialized services.
 - (17) "Subcontractor" means a person to which both of the following apply:
 - (a) The person has:
 - (i) A subcontract with an agency provider to provide specialized services included in the contract between the agency provider and the department or a county board; or
 - (ii) A subcontract with another subcontractor to provide specialized services included in a subcontract between the other subcontractor and an agency provider or other subcontractor.
 - (b) The person employs one or more persons in direct services positions.

(C) Requirements for responsible entities

- (1) A responsible entity shall, prior to employing an applicant:
 - (a) Require the applicant to complete an employment application and provide the names and addresses of present and former employers; and

- (b) Attempt to obtain references from the applicant's present and former employers and maintain written evidence that reference checks were attempted and/or completed.
- (2) Prior to employing an applicant, a responsible entity shall check each of the following databases to determine if the applicant is included:
 - (a) The list of excluded persons and entities maintained by the office of inspector general in the United States department of health and human services pursuant to section 1128 of the Social Security Act, 94 Stat. 2619 (1980), 42 U.S.C. 1320a-7, and section 1156 of the Social Security Act, 96 Stat. 388 (1982), 42 U.S.C. 1320c-5 (available at <http://exclusions.oig.hhs.gov/>);
 - (b) The abuser registry established pursuant to section 5123.52 of the Revised Code (available at https://its.prodapps.dodd.ohio.gov/abr_default.aspx);
 - (c) The nurse aide registry established pursuant to section 3721.32 of the Revised Code (available at https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx) and there is a statement detailing findings by the director of the Ohio department of health that the applicant or employee neglected or abused a resident of a long-term care facility or residential care facility or misappropriated property of such a resident;
 - (d) The sex offender and child-victim offender database established pursuant to division (A)(11) of section 2950.13 of the Revised Code (available at <http://www.icrimewatch.net/index.php?AgencyID=55149&disc=>);
 - (e) The United States general services administration system for award management database (available at <https://www.sam.gov/>);
 - (f) The Ohio department of medicaid provider exclusion and suspension list (available at <https://medicaid.ohio.gov/provider/enrollmentandsupport/providerexclusionandsuspensionlist>); and
 - (g) The database of incarcerated and supervised offenders established pursuant to section 5120.066 of the Revised Code (available at <https://appgateway.drc.ohio.gov/offendersearch>).
- (3) A responsible entity shall not employ an applicant or continue to employ an employee if the applicant or employee is included in one or more of the databases described in paragraphs (C)(2)(a) to (C)(2)(f) of this rule.

- (4) Prior to employing an applicant in a position that involves transporting individuals or operating the responsible entity's vehicles for any purpose, a responsible entity shall verify that the applicant has a valid motor vehicle operator's license and obtain the applicant's driving record prepared by the bureau of motor vehicles. A person having six or more points on his or her driving record is prohibited from transporting individuals.
- (5) Prior to employing an applicant, a responsible entity shall require the applicant to:
- (a) Submit a statement to the responsible entity with the applicant's signature attesting that he or she has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. An applicant or employee shall disclose to the responsible entity a conviction for any offense that has been sealed.
 - (b) Sign an agreement under which the applicant agrees to notify the responsible entity within fourteen calendar days if, while employed by the responsible entity, the applicant is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a disqualifying offense. The agreement shall provide that failure to make the notification may result in termination of employment.
- (6) Prior to employing an applicant, a responsible entity shall request the bureau of criminal identification and investigation to conduct a criminal records check of the applicant. If an applicant does not present proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the responsible entity shall request that the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as part of the criminal records check. If an applicant presents proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the responsible entity may request that the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as part of the criminal records check. For purposes of this paragraph, an applicant may provide proof of Ohio residency by presenting, with a notarized statement asserting that he or she has been a resident of Ohio for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the applicant's permanent residence, or any other document the responsible entity considers acceptable.
- (7) A responsible entity may conditionally employ an applicant, for a period not to exceed sixty calendar days, pending receipt of information concerning

the applicant's criminal records check once the applicant submits to the responsible entity the statement required by paragraph (C)(5)(a) of this rule. The responsible entity shall terminate the applicant's employment if it is informed that the applicant has been convicted of or pleaded guilty to a disqualifying offense.

(8) A responsible entity shall:

(a) 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;

(b) Maintain enrollment in the retained applicant fingerprint database for each employee in a direct services position throughout the employee's tenure; and

(c) At a frequency of no less than once every five years:

(i) Check the databases specified in paragraph (C)(2) of this rule for each employee in a direct services position; and

(ii) Request the bureau of criminal identification and investigation to obtain a federal bureau of investigation criminal records check of each employee in a direct services position who does not present proof that he or she has been a resident of Ohio for the five-year period immediately prior. For purposes of this paragraph, an employee in a direct services position may provide proof of Ohio residency by presenting, with a notarized statement asserting that he or she has been a resident of Ohio for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the employee's permanent residence, or any other document the responsible entity considers acceptable.

(9) In the case that a responsible entity is notified by the bureau of criminal identification and investigation that an employee in a direct services position cannot be enrolled in the retained applicant fingerprint database, the responsible entity shall, at a frequency of no less than once every five years, request the bureau of criminal identification and investigation to conduct a criminal records check of the employee. If an employee in a direct services position does not present proof that he or she has been a resident of Ohio for the five-year

period immediately prior to the date upon which the criminal records check is requested, the responsible entity shall request that the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as part of the criminal records check. If an employee in a direct services position presents proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the responsible entity may request that the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as part of the criminal records check. For purposes of this paragraph, an employee in a direct services position may provide proof of Ohio residency by presenting, with a notarized statement asserting that he or she has been a resident of Ohio for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the employee's permanent residence, or any other document the responsible entity considers acceptable.

(D) Requirements for candidates

(1) At the point of a candidate's application for initial supported living certification, the candidate shall request the bureau of criminal identification and investigation to conduct a criminal records check of the candidate. If a candidate does not present proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the candidate shall request that the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as part of the criminal records check. If a candidate presents proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the department may require the candidate to request that the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as part of the criminal records check. For purposes of this paragraph, a candidate may provide proof of Ohio residency by presenting, with a notarized statement asserting that he or she has been a resident of Ohio for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the candidate's permanent residence, or any other document the department considers acceptable.

(a) The candidate shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check requested.

- (b) The candidate shall instruct the bureau of criminal identification and investigation to submit the completed report of the criminal records check directly to the department.
- (2) At the point of a candidate's application for initial or renewal supported living certification, the department shall check the databases specified in paragraph (C)(2) of this rule to determine if the candidate is included. The department shall not issue supported living certification to a candidate if the candidate is included in one or more of the databases described in paragraphs (C)(2)(a) to (C)(2)(f) of this rule.
- (3) At the point of a candidate's application for initial or renewal supported living certification, the candidate shall submit a statement to the department with the candidate's signature attesting that he or she has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. A candidate shall disclose a conviction for any offense that has been sealed.
- (4) At the point of a candidate's application for initial or renewal supported living certification, the candidate shall sign an agreement under which the candidate agrees to notify the department within fourteen calendar days if, while holding supported living certification, the candidate is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a disqualifying offense. The agreement shall provide that failure to make the notification may result in denial, revocation, or suspension of the candidate's supported living certification.
- (5) At the point of a candidate's application for initial or renewal supported living certification as an independent provider, the candidate shall obtain and provide to the department his or her driving record prepared by the bureau of motor vehicles if the services the candidate will provide involve transporting individuals. The department may consider the candidate's driving record when determining whether to issue supported living certification. A person having six or more points on his or her driving record is prohibited from transporting individuals.
- (6) When the department issues initial supporting living certification to a candidate, the department shall enroll the candidate in the retained applicant fingerprint database. In the case that the department is notified by the bureau of criminal identification and investigation that a candidate cannot be enrolled in the retained applicant fingerprint database, the candidate shall, at a frequency of no less than once every five years, request the bureau of criminal identification and investigation to conduct a criminal records check of the candidate. If a candidate

does not present proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the candidate shall request that the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as part of the criminal records check. If a candidate presents proof that he or she has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested, the department may require the candidate to request that the bureau of criminal identification and investigation obtain information from the federal bureau of investigation as part of the criminal records check. For purposes of this paragraph, a candidate may provide proof of Ohio residency by presenting, with a notarized statement asserting that he or she has been a resident of Ohio for that five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the candidate's permanent residence, or any other document the department considers acceptable.

- (a) The candidate shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check requested.
- (b) The candidate shall instruct the bureau of criminal identification and investigation to submit the completed report of the criminal records check directly to the department.

(E) Disqualifying offenses

- (1) There are five tiers of disqualifying offenses with corresponding time periods that preclude an applicant from being employed or an employee from remaining employed by a responsible entity and preclude a candidate from receiving supported living certification issued by the department.

(a) Tier one: permanent exclusion

No responsible entity shall employ an applicant or continue to employ an employee, nor shall the department issue supported living certification to a candidate, if the applicant, employee, or candidate has been convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the following sections of the Revised Code:

(i) 2903.01 (aggravated murder);

(ii) 2903.02 (murder);

(iii) 2903.03 (voluntary manslaughter);

- (iv) 2903.11 (felonious assault);
- (v) 2903.15 (permitting child abuse);
- (vi) 2903.16 (failing to provide for a functionally impaired person);
- (vii) 2903.34 (patient abuse and neglect);
- (viii) 2903.341 (patient endangerment);
- (ix) 2905.01 (kidnapping);
- (x) 2905.02 (abduction);
- (xi) 2905.32 (human trafficking);
- (xii) 2905.33 (unlawful conduct with respect to documents);
- (xiii) 2907.02 (rape);
- (xiv) 2907.03 (sexual battery);
- (xv) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor);
- (xvi) 2907.05 (gross sexual imposition);
- (xvii) 2907.06 (sexual imposition);
- (xviii) 2907.07 (importuning);
- (xix) 2907.08 (voyeurism);
- (xx) 2907.12 (felonious sexual penetration);
- (xxi) 2907.31 (disseminating matter harmful to juveniles);
- (xxii) 2907.32 (pandering obscenity);
- (xxiii) 2907.321 (pandering obscenity involving a minor);
- (xxiv) 2907.322 (pandering sexually oriented matter involving a minor);
- (xxv) 2907.323 (illegal use of minor in nudity-oriented material or performance);

(xxvi) 2909.22 (soliciting/providing support for act of terrorism);

(xxvii) 2909.23 (making terrorist threat);

(xxviii) 2909.24 (terrorism);

(xxix) 2913.40 (medicaid fraud);

(xxx) 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense is any of the offenses or violations described in paragraphs (E)(1)(a)(i) to (E)(1)(a)(xxix) of this rule;

(xxxi) 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 set forth in section 2913.46 of the Revised Code (illegal use of supplemental nutrition assistance program or women, infants, and children program benefits); 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 in paragraphs (E)(1)(a)(i) to (E)(1)(a)(xxxi) of this rule.

(b) Tier two: ten-year exclusion

No responsible entity shall employ an applicant or continue to employ an employee, nor shall the department issue supported living certification to a candidate, for a period of ten years from the date the applicant, employee, or candidate was fully discharged from imprisonment, probation, and parole, if the applicant, employee, or candidate has been convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction for 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 prior to July 1, 1996;

(iv) 2905.05 (criminal 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 supplemental nutrition assistance program or women, infants, and children program benefits);
- (xiv) 2913.48 (workers' compensation fraud);
- (xv) 2913.49 (identity fraud);
- (xvi) 2917.02 (aggravated riot);
- (xvii) 2923.12 (carrying concealed weapon);
- (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 dangerous ordnance into 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 minor);
- (xxiv) 2923.32 (engaging in pattern of corrupt activity);
- (xxv) 2923.42 (participating in 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 marihuana);

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

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

(xxxi) 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense is any of the offenses or violations described in paragraphs (E)(1)(b)(i) to (E)(1)(b)(xxx) of this rule;
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 in paragraphs (E)(1)(b)(i) to (E)(1)(b)(xxxi) of this rule.

(c) Tier three: seven-year exclusion

No responsible entity shall employ an applicant or continue to employ an employee, nor shall the department issue supported living certification to a candidate, for a period of seven years from the date the applicant, employee, or candidate was fully discharged from imprisonment, probation, and parole, if the applicant, employee, or candidate has been convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction for 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 theft offense, falsification to purchase 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 grounds of detention facility or institution);
- (xxii) 2925.05 (funding of drug or marihuana trafficking);
- (xxiii) 2925.06 (illegal administration or distribution of anabolic steroids);
- (xxiv) 2925.24 (tampering with drugs);
- (xxv) 2927.12 (ethnic intimidation);
- (xxvi) 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense is any of the offenses or violations described in paragraphs (E)(1)(c)(i) to (E)(1)(c)(xxv) of this rule; 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 in paragraphs (E)(1)(c)(i) to (E)(1)(c)(xxvi) of this rule.

(d) Tier four: five-year exclusion

No responsible entity shall employ an applicant or continue to employ an employee, nor shall the department issue supported living certification to a candidate, for a period of five years from the date the applicant, employee, or candidate was fully discharged from imprisonment, probation, and parole, if the applicant, employee, or candidate has been convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction for 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 after positive human immunodeficiency virus 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 property, 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 unruliness or delinquency of 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/harassing police dog or horse/service animal);
- (xxxiii) 2921.51 (impersonation of peace officer);
- (xxxiv) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using any dangerous veterinary drug);
- (xxxv) 2925.11 (drug possession other than a minor drug possession offense);

- (xxxvi) 2925.13 (permitting drug abuse);
- (xxxvii) 2925.22 (deception to obtain dangerous drugs);
- (xxxviii) 2925.23 (illegal processing of drug documents);
- (xxxix) 2925.36 (illegal dispensing of drug samples);
- (xl) 2925.55 (unlawful purchase of pseudoephedrine product);
- (xli) 2925.56 (unlawful sale of pseudoephedrine product);
- (xlii) 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense is any of the offenses or violations described in paragraphs (E)(1)(d)(i) to (E)(1)(d)(xli) of this rule; 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 in paragraphs (E)(1)(d)(i) to (E)(1)(d)(xlii) of this rule.

(e) Tier five: no exclusion

A responsible entity may employ an applicant or continue to employ an employee, and the department may issue supported living certification to a candidate, if the applicant, employee, or candidate has been convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the following sections of the Revised Code:

- (i) 2925.11 (drug possession that is minor drug possession offense);
- (ii) 2925.14 (illegal use or possession of drug paraphernalia);
- (iii) 2925.141 (illegal use or possession of marihuana drug paraphernalia); or
- (iv) 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 paragraphs (E)(1)(e)(i) to (E)(1)(e)(iii) of this rule.

(2) Multiple disqualifying offenses

- (a) 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)(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.

(b) 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)(xliii) 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.

(c) 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)(xliii) 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.

(F) A conviction of or plea of guilty to a disqualifying offense listed or described in paragraph (E)(1) of this rule shall not preclude an applicant from being employed or an employee from remaining employed by a responsible entity or preclude a candidate from receiving supported living certification issued by the department under the following circumstances:

(1) The applicant, employee, or candidate has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;

(2) The applicant, employee, or candidate has been 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;

(3) The applicant's, employee's, or candidate's conviction or guilty plea has been overturned pursuant to law;

- (4) The applicant, employee, or candidate has been 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;
- (5) The applicant's, employee's, or candidate's conviction or guilty plea is not for an offense listed or described in paragraph (E)(1)(a) of this rule and the applicant, employee, or candidate has a certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code; or
- (6) The applicant's, employee's, or candidate's conviction or guilty plea is not for an offense listed or described in paragraph (E)(1)(a) of this rule and the applicant, employee, or candidate has a certificate of achievement and employability in a home and community-based services-related field, issued by the Ohio department of rehabilitation and correction pursuant to section 2961.22 of the Revised Code.
- (G) A responsible entity may continue to employ a person who is excluded by paragraph (E)(1)(d) of this rule if the conviction for a tier four offense occurred prior to January 1, 2013, the employee was hired prior to January 1, 2013, and if the responsible entity has considered the nature and seriousness of the offense and attested in writing to the character and fitness of the person based on the person's demonstrated work performance. The responsible entity shall have made this determination and attestation by April 1, 2013 and shall maintain the written attestation in the employee's personnel record. The determination and attestation shall be subject to review by the department.
- (H) The department may renew the supported living certification of a candidate who is excluded by paragraph (E)(1)(d) of this rule if the conviction for a tier four offense occurred prior to January 1, 2013, the candidate was originally certified to provide supported living prior to January 1, 2013, and if the department has considered the nature and seriousness of the offense and determines that the candidate has demonstrated the appropriate character and fitness to have the supported living certification renewed based on the candidate's demonstrated work performance. The department shall keep a written record of its determination for each candidate.
- (I) Any report obtained pursuant to this rule is not a public record for purposes of section 149.43 of the Revised Code and shall not be made available to any person other than:

 - (1) The applicant, employee, or candidate who is the subject of the report or the applicant's, employee's, or candidate's representative;
 - (2) The responsible entity that requested the report or its representative;

- (3) The department if a county board, agency provider, or subcontractor is the responsible entity that requested the report and the department requests the responsible entity to provide a copy of the report to the department;
 - (4) A county board if an agency provider or subcontractor is the responsible entity that requested the report and the county board requests the responsible entity to provide a copy of the report to the county board; or
 - (5) A court, hearing officer, or other necessary person involved in a case dealing with the denial of employment to the applicant or employee; the denial, suspension, or revocation of certification issued pursuant to section 5123.166 or 5123.45 of the Revised Code; or a civil or criminal action regarding the medicaid program or a program the department administers.
- (J) For purposes of this rule, reports from the bureau of criminal identification and investigation or any other state or federal agency regarding a person's criminal record and records supplied by the bureau of motor vehicles regarding a person's record of convictions for violations of motor vehicle laws are valid for a period of one year from the date of the report.

Replaces: 5123:2-2-02

Effective:

Five Year Review (FYR) Dates:

Certification

Date

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