



Department of
Developmental Disabilities

Mike DeWine, Governor
Jeff Davis, Director

Hearing Summary Report

Hearing Date: 04/26/2019

Today's Date: 05/10/2019

Rule Numbers: 5123:2-2-02, 5123:2-2-03, and 5123:2-2-04 (Rescind)
5123-2-02, 5123-2-03, and 5123-2-04 (New)

If no comments at hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

5123-2-02:

- Delores Beard, Human Resources Assistant, Developmental Disabilities of Clark County
- Nancy Richards, Executive Director, Clearwater Council of Governments

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

5123-2-02:

(C)(4): The Ohio Bureau of Motor Vehicles (BMV) offers an unofficial driver abstract report instantly online from their website. Is this unofficial report adequate to meet compliance with the rule or is an official report required to be applied for and prepared by BMV? If an official report must be obtained, is there an allowable grace period similar to the 60-day grace period for the Bureau of Criminal Identification and Investigation (BCII) records check whereby an employee may transport individuals while waiting for the official report to be received? **Department's Response:** A responsible entity may rely on the "unofficial" report from the BMV as long as the responsible entity maintains a copy of the report to document

that the operator's license was verified and the driving record was checked.

(C)(6): Addition of the required "reason fingerprinted" codes in this paragraph will assist responsible entities to remain in compliance by ensuring appropriate background checks are requested. **Department's Response:** We are not inclined to include the reason codes in our rule because the codes are dictated by BCII. We will continue to provide information and resources, including the current reason codes, at our website to aid all affected parties to comply with the rule.

(C)(6): How will the Department interpret "Prior to" for purposes of this rule? Is a responsible entity considered in compliance if a BCII check is submitted on the first day of employment when orientation and human resources paperwork is completed, but prior to initial contact with an Individual? **Department's Response:** We added the "prior to employing an applicant" phrasing throughout the rule in response to requests for clarification regarding the timing. We earlier proposed "at the point of employment" phrasing which some stakeholders found confusing. We recognize that hiring practices of responsible entities vary. The intent is that responsible entities request criminal records checks at the latest when onboarding staff. We would consider a responsible entity to be in compliance if the criminal records check is requested on the first day of employment.

(C)(6) & (C)(8): Is it allowable for responsible entities to share BCII reports for this purpose? If so, how recently must a shared BCII report have been conducted in order for the latter entity to be in compliance with its use? If an applicant is currently enrolled in Rapback with another employer, can the responsible entity remain in compliance if they bypass the requirements of (C)(6) and enroll the applicant directly into Rapback using the original Authentication Number from the applicant's previous BCII report? Currently Rapback will allow this if the Authentication Number is less than one year old. **Department's Response:** Section 5123.081 (I) of the Revised Code allows a responsible entity to share a criminal records check if or when the subject of the check submits a written request. Section 109.572 (D) of the Revised Code sets forth that the results of a criminal records check are valid for a period of one year from the date the Superintendent of BCII completes the criminal records check. We would recommend, as best practice, that a responsible entity that obtains a criminal records check from another entity request an updated background check from BCII which is available for a lower fee (currently \$8.00). The Authentication Number may be used to enroll in Rapback.

(C)(8): Currently employees are only able to be enrolled in Rapback using a BCII Authentication Number that is less than one year old. Can adjustments to the Rapback system be made to allow for a responsible entity to search for and associate with a currently enrolled direct service provider using another identifier such as Social Security Number? Many employees in direct service positions work for multiple agencies both simultaneously and over the course of their careers. Streamlining the Rapback enrollment process to eliminate the need for repeated BCII reports would both reduce costs significantly for

responsible entities and identify, without delay, applicants who have or are charged with disqualifying offenses. **Department's Response:** The Rapback system is administered by BCII. We shared your feedback with our BCII contact, who indicated the Attorney General's Office would not allow a Rapback search by Social Security Number and reminded us that the full Social Security Number is not even allowed to be displayed on rap sheets returned to responsible entities. Enrolling a person in Rapback does not cause a criminal records check to be conducted; it causes the enrolling entity to be notified if a new charge or disposition is submitted to BCII by a law enforcement agency. There must be an initial criminal records check to ensure the applicant has not committed an offense that would prohibit his or her employment.

(C)(8)(a): Very few applicants become an employee within 14 days of being fingerprinted. Our process is to fingerprint an applicant and then schedule a hire date, which could be four to eight weeks out, depending on our hiring schedule, and how much notice they may have to give to their current employer. We don't enter them into Rapback until they show up for their first day, at which time they are an employee, which, as I said could be four to eight weeks from the time we receive their criminal records check, since there is a cost involved and applicants often fall out before they get to their hire date. Could (C)(8)(a) be amended to say:

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 their date of hire, whichever comes later.

Department's Response: Paragraph (C)(8)(a) was revised in accordance with your request.

(C)(8)(c): Does the responsible entity's utilization of the Automated Registry Check System (ARCS) and continued enrollment of each direct support professional satisfy compliance for this rule? **Department's Response:** Yes; after an employee is entered in ARCS, ARCS notifies employers of any new registry findings that are recorded. See the *Automated Registry Check System User Guide* for more information.

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

Paragraph (C)(8)(a) of rule 5123-2-02 was revised based on testimony received.