

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** OHIO DEPARTMENT OF AGING

**Package Title:** BACKGROUND CHECKS

**Rule Numbers:** 173-9-03, 173-9-03.1, 173-9-10, 173-14-14

**Date:** November 8, 2017

**Rule Types:**

- ☒ **5-Year Review** 173-9-03, 173-9-03.1, 173-9-10, 173-14-14
- ☒ **Rescinded** 173-9-10
- ☒ **New** 173-9-10
- ☒ **Amended** 173-9-03, 173-9-03.1, 173-14-14
- ☐ **No change**

The Common-Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### Regulatory Intent

#### 1. Please briefly describe the regulations in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

#### OVERVIEW

Chapter 173-9 requires responsible parties to conduct background checks<sup>1</sup> when considering hiring applicants or retaining employees in direct-care positions. ODA proposes to amend 3 rules from this chapter with basic updates.

173-9-03 and 173-9-03.1 require responsible parties to conduct database reviews on applicants and employees in direct-care positions and requires doing so before requesting criminal records on those applicants and employees.

173-9-10 provides a link between the requirements of Chapter 173-9 and other rules or agreements establishing the means by which a responsible party would face consequences for failure to comply with Chapter 173-9.

173-14-14 establishes the staffing requirements for regional programs, staff qualifications for the program, and implements the background-check requirements for paid ombudsman positions as required by ORC §173.27. Although this rule is part of a rule package in which other rules regulate Ohio businesses, this rule does not regulate any Ohio business. It is, therefore, not subject to the Common-Sense Initiative.

None of the proposed amendments to any rule in this package would increase the adverse impact upon Ohio businesses.

<sup>1</sup> Background checks, as used in this document, mean both database reviews and criminal record checks.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

### SPECIFIC AMENDMENTS

The Ohio Department of Rehabilitation and Corrections recently changed the URL for its offender-search database. Therefore, in 173-9-03, 173-9-03.1, and 173-14-14, ODA proposes to replace <http://www.drc.ohio.gov/OffenderSearch/Search.aspx> with <https://appgateway.drc.ohio.gov/OffenderSearch>.

The HHS Office of Inspector General changed the URL for its exclusionary database. Therefore, in 173-9-03, 173-9-03.1, and 173-14-14, ODA proposes to replace <http://exclusins.oig.hs.gov> with <https://exclusions.oig.hhs.gov/>.

ODA proposes to replace the mistaken URL listed for the sex-offender search in 173-14-14 from <http://www.drc.ohio.gov/OffenderSearch/Search.aspx> to <http://www.icrimewatch.net/index.php?AgencyID=55149&disc=>.

In 173-9-03, 173-9-03.1, and 173-14-14, just above the table entitled, "DATABASES TO REVIEW," ODA proposes to insert the following.

In the table below, ODA listed the web address (URL) on which each database was accessible to the public at the time of this rule's adoption. If a URL listed in the table becomes obsolete, please consult with the government entity publishing the database for an updated URL.

In 173-14-14(D), ODA proposes to clean-up language on volunteers.

In 173-9-03, 173-9-03.1, and 173-14-14, just below the table entitled, "DATABASES TO REVIEW," ODA proposes to add language from ORC §§ 173.27, 173.38, and 173.381 identifying the laws creating each of the 6 databases.

In 173-9-10, ODA proposes to make the following improvements:

- Add *Background checks for paid direct-care positions* to the beginning of the rule's title. This appears in the title of every other rule in Chapter 173-9 and quickly informs readers this rule does not regulate background checks on ombudsman positions, volunteer positions, or owners who aren't working in paid direct-care positions.
- Reorganize the rule to make it easier to read. Currently, the rule has an unnumbered introductory paragraph followed by 3 numbered paragraphs. ODA proposes to move the language in the introductory paragraph into each of the 3 paragraphs and eliminate the introductory paragraph.
- Delete *agency* as it occurs before *provider* in (C), because ODA also has authority to address the failure of ODA-certified non-agency and participant-directed providers to comply with Chapter 173-9.
- Delete the reference to 173-39-05.1, because that rule does not contain disciplinary actions.
- Add a paragraph to explicitly address PACE.
- Replace the internal cross-reference saying *Chapter 173-9 of the Administrative Code* with *this chapter*.<sup>2</sup>
- Replacing the following words to achieve internal consistency within this chapter and with other ODA rules:
  - *Disciplinary actions* with *failure to comply* and *does not comply*.
  - *ODA (or ODA's designee)* with *ODA (or its designee)*.
  - *One or more of the following [2 options]* with *one or both of the following [2 options]*.
  - *Furnishing* with *providing*.
  - *Services* with *goods or services*.
  - *Consumers* with *individuals*.<sup>3</sup>

---

<sup>2</sup> LEGISLATIVE SERVICE COMMISSION. *Rule Drafting Manual*. §5.2.3. (May, 2006.)

<sup>3</sup> This chapter consistently uses *consumers* to represent recipients of goods and services through ODA programs. Because (C)(1) only refers to a program requiring ODA-certified providers, because the only ODA program requiring ODA-certified providers to be subject to this chapter is the PASSPORT Program, and because the PASSPORT Program refers to recipients of goods and services as *individuals*, ODA is replacing this occurrence of *consumers* with *individuals*, while retaining other occurrences of *consumers* in this chapter.

## Business Impact Analysis

The table below shows how 173-9-10 would look up on adoption compared to the current rule.

CURRENT RULE LANGUAGE	PROPOSED RULE LANGUAGE
173-9-10 <b>Disciplinary action.</b>	173-9-10 <b>Background checks: paid direct-care positions: failure to comply.</b>
ODA (or ODA's designees) may discipline a responsible party that does not comply with Chapter 173-9 of the Administrative Code according to the following:	
(A) When the responsible party is an area agency on aging, it is according to rule 173-2-07 of the Administrative Code.	(A) If an area agency on aging (AAA) does not comply with this chapter, ODA may take whatever action against the AAA is appropriate under rule 173-2-07 of the Administrative Code.
(B) When the responsible party is a PASSPORT administrative agency, it is according to the terms of the agreement entered into between the PASSPORT administrative agency and ODA.	(B) If a PASSPORT administrative agency (PAA) does not comply with this chapter, ODA or the Ohio department of medicaid (ODM) may take whatever action against the PAA is appropriate under the terms of the three-party agreement entered into between ODA, ODM, and the PAA under sections 173.52 and 173.54 of the Revised Code
	(C) If a PACE organization does not comply with this chapter, ODA or the centers for medicare and medicaid services (CMS) may take whatever action against the PACE organization is appropriate under the terms of the PACE organization agreement entered into by ODA, CMS, and the PACE organization under 42 C.F.R. Part 460, Subpart D.
(C) When the responsible party is an agency provider, it is according to one or more of the following:	(D) If a provider does not comply with this chapter, ODA (or its designees) may take whatever action against the provider is appropriate under one or both of the following:
(1) Rules 173-39-05 and 173-39-05.1 of the Administrative Code when the provider is furnishing services to consumers through a program that requires ODA-certification.	(1) Section 173.391 of the Revised Code and rule 173-39-05 of the Administrative Code when the provider is providing goods or services to individuals through a program requiring ODA-certified providers.
(2) The provider agreement entered into between the provider and the area agency on aging when the provider is furnishing services to consumers through a program that does not require ODA-certification.	(2) The AAA-provider agreement entered into between the provider and the AAA when the provider is providing goods or services to consumers through a program not requiring ODA-certified providers.

## 2. Please list the Ohio statute authorizing the Agency to adopt these regulations.

173-9-03, 173-9-03.1, 173-9-10: ORC §§ [109.572\(A\)\(3\)](#), [173.01](#), [173.02](#), [173.38](#), [173.381](#), [173.391](#), and [173.392](#).

173-14-14: ORC §§ [109.572\(A\)\(3\)](#), [173.01](#), [173.02](#), and [173.27](#).

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

173-9-03, 173-9-03.1, 173-9-10: §305(a)(1)(C) of the Older Americans Act of 1965, as amended by the Older Americans Act Reauthorization Act of 2016, 79 Stat. 210, 42 USC 3001; 42 CFR 460.68(a), 460.71(a)(1), and 460.71(a)(2); 45 CFR 1321.11.

173-14-14: §§ 305(a)(1)(C) and 712(a)(5)(D) of the Older Americans Act of 1965, as amended by the Older Americans Act Reauthorization Act of 2016, 79 Stat. 210, 42 USC 3001; 45 CFR 1321.11, 1324.11(e), 1324.13(b), 1324.15(b).

Additionally, the US Dept. of Health and Human Services, Centers for Medicare and Medicaid Services, awarded a federal grant<sup>4</sup> to the state bringing Ohio into the National Background Check Program for Patient Protection, which was authorized by the Affordable Care Act. The program required ODA and other state agencies to require database reviews, and requiring the State to create and operate the [Automated Registry Check Systems \(ARCS\)](#), which is built upon the database-review requirements in 173-9-03, 173-9-03.1, 173-14-14 and similar rules for other state agencies' programs.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

The rules exist to comply with the *state* laws ODA listed in its response to BIA question #2.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

ORC §§ [173.38](#), [173.381](#), [173.391](#), and [173.392](#) require ODA to adopt Chapter 173-9 in which 173-9-03, 173-9-03.1, and 173-9-10 are parts.

ORC [173.27](#) requires ODA to adopt rule 173-14-14.

173-9-03, 173-9-03.1, and 173-14-14 save money for responsible parties they require (1) reviewing only free-of-charge databases and (2) reviewing those free databases *before* conducting a criminal records check. This prevents responsible parties from spending unnecessary money on for-pay databases or for criminal records checks when a person is already disqualified for a direct-care position according to a free database review.

As mentioned earlier, 173-9-10 provides a link between this chapter's requirements and other rules or agreements establishing the means by which a responsible party would be disciplined for non-compliance with this chapter. Without the rule, readers of this chapter may be unaware that other bodies of law apply to their compliance to this chapter.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

ODA monitors its AAAs for compliance.

ODA and ODM monitor PAAs for compliance.

ODA and CMS monitor PACE organizations for compliance.

ODA and its designees monitor providers for compliance.

---

4 Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long-Term Care Facilities and Providers. U.S. DEPT. OF HEALTH & HUMAN SERVICES: CENTERS FOR MEDICARE AND MEDICAID SERVICES. CFDA 93.506.

### **Development of the Regulations**

#### **7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulations.**

***If applicable, please include the date and medium by which the stakeholders were initially contacted.***

On August 3, 2017, ODA emailed the Ohio Association of Senior Centers, the Ohio Association of Area Agencies on Aging, LeadingAge Ohio, Ohio Health Care Association, Ohio Council for Home Care and Hospice, Catholic Social Services of the Miami Valley, and Ohio Association of Medical Equipment Suppliers to provide them with a list of proposed amendments to the rules and to see if the proposed amendments looked good to them, if they saw errors (in amendments or elsewhere in rule), or if their organizations wanted to request alternate language.

On September 22, 2017, ODA emailed the following businesses and organizations to inform them of an opportunity to review this rule and other rules then provide ODA with recommendations for improving this rule and other rules:

- **4 Providers:**
  - Alzheimer's and Dementia Care Services.
  - Home Care by Black Stone.
  - National Church Residences (NCR).
  - Senior Resource Connection.
- **7 Provider Associations:**
  - LeadingAge Ohio.
  - Ohio Academy of Senior Health Sciences, Inc.
  - Ohio Assisted Living Association.
  - Ohio Association of Medical Equipment Services.
  - Ohio Council for Home Care and Hospice.
  - Ohio Health Care Association.
  - Ohio Jewish Communities.
- **1 PASSPORT Administrative Agency:** Catholic Social Services of the Miami Valley.
- **1 Association Representing Many PASSPORT Administrative Agencies:** Ohio Association of Area Agencies on Aging (O4A).

ODA requested responding before September 30, but later extended the deadline to October 2.

ODA asked the following questions in the September 22 email:

- What are your thoughts on ODA's proposals to:
  - Update the URLs for the databases listed in rules 173-9-03, 173-9-03.1, and 173-14-14?
  - Mention 42 CFR Part 460 Subpart D in 173-9-10 as the authority on disciplinary actions for non-compliant PACE organizations? (173-9-10 doesn't contain unique actions ODA or its designees may take for failure to comply with background checks. Instead, it refers to other rules or other standards governing actions ODA or its designees may take.)
- Do you recommend other amendments?

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

To the August 3, 2017 email, ODA received the following responses.

COMMENTS
<p>I do not see anything that I do not agree with.</p> <p><i>Catholic Social Services of the Miami Valley</i></p>
<p>LeadingAge Ohio does not have any issues with the changes you are suggesting to the rule.</p> <p>The new table [in 173-9-03 and 173-9-03.1] read well and is easier to follow.</p> <p><i>LeadingAge Ohio</i></p>
<p>I do not have any difficulty with the revisions that you have had to make.</p> <p><i>Wood County Committee on Aging, Inc. on behalf of the Ohio Association of Senior Centers (OASC).</i></p>

To the September 22, 2017 email, ODA received the following 4 comments from 3 stakeholders:

COMMENTS	ODA's RESPONSES
<p><b>To our email:</b></p> <p>I agree.</p> <p><i>Catholic Social Services of the Miami Valley</i></p>	<p>Thank you.</p>
<p><b>On 173-9-03:</b></p> <p>Databases checked prior to or the same day as criminal record checks. Databases cannot be checked after criminal record checks.</p> <p>Note: For those providers who are trying to increase the turnaround time of an applicant the current wording can delay that process, which in turn delays services for the individual.</p> <p><i>Home Care by Black Stone</i></p>	<p>A responsible party is permitted to conduct a background check on the same day the responsible party checks databases if the responsible party checks the databases before paying a WebCheck vendor to conduct a criminal records check. This requirement prevents unnecessary spending. It takes a few minutes to check the databases and they are free to check. If a person is already disqualified by one or more of these databases, there is no reason to spend funds checking criminal records.</p>
<p><b>On 173-39-03:</b></p> <p>Can changes be made to allow the database searches to be conducted in conjunction with the fingerprint check rather than always requiring it to be done prior to? Currently we spend a lot of time citing providers for conducting the database searches one day or two days after they submit the fingerprint request however in these instances, they are both done prior to the applicant being hired or providing any service. As long as they are done prior to hire or providing service, does it matter which is done first? Many providers prefer applicants to show they are serious about being hired by first getting a fingerprint and having it submitted to the provider before they conduct interviews.</p> <p><i>Ohio Assn. of Area Agencies on Aging (O4A)</i></p>	<p>Please see ODA's response to the previous comment.</p>

COMMENTS	ODA's RESPONSES
<p>On 173-9-10:</p> <p>Unique actions to be taken by ODA or its designee for failure to comply should be listed in detail.</p> <p><i>Home Care by Black Stone</i></p>	<p>The rule provides a link between Chapter 173-9 and the general standards for providers, which differs from one program to the next. Details for failure to comply are listed in the standards for those programs.</p>

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

ODA did not develop the rules in this package according to scientific data.

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

ODA did not consider any alternative regulations. The rules must comply with §§ 173.27, 173.38, or 173.381. Additionally, to provide employers in community-based long-term care with the same background-check standards in Ohio, ODA continues to maintain the requirements the Ohio Depts. of Aging, Developmental Disabilities, Health, and Medicaid agreed upon for our rules beginning on January 1, 2013.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**  
*Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

On one hand, §§ 173.27, 173.38 and 173.381 require background checks regardless of the performance of the employer. On the other hand, the same statutes allowed ODA to adopt language allowing employers to hire applicants (or retain employees) with disqualifying criminal records if the applicant (or employee) meets the conditions detailed in 173-9-07, 173-9-07.1, or 173-14-14.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

§§ [173.27](#), [173.38](#), [173.381](#), [173.391](#), and [173.392](#) only authorize ODA (i.e., not any other state agency) to develop these rules.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

Before the rules would take effect, ODA will post them on ODA's [Online Rules Library](#). ODA also sends an email to subscribers of our rule-notification service to feature the rules.

ODA (and its designees) routinely monitor responsible parties. 173-9-10 explains how ODA (or its designees) may discipline a responsible party if the party does not comply with the rules of this chapter.

The State Long-Term Care Ombudsman monitors the responsible parties implementing 173-14-14.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

Responsible parties subject to this chapter are those who provide direct care to consumers through ODA-administered programs, except the Assisted Living Program, such as the Alzheimer's Respite Program, Long-Term Care Consultation Program, PACE, and PASSPORT Programs and goods or services paid (in whole or in part) with Older Americans Act funds or Senior Community Services funds. Responsible parties must review the status of applicants, employees, and self-employed providers in 6 databases unless exempted by [§173.38](#), [§173.381](#), or [173-9-02](#). [173-9-01](#) defines responsible party as follows:

When hiring an applicant for, or retaining an employee in, a paid direct-care position, "responsible party" means the area agency on aging, PASSPORT administrative agency, provider, or sub-contractor.

When hiring an applicant for, or retaining an employee in, a paid direct-care position in a participant-direction or self-direction arrangement, "responsible party" means the consumer or individual.

When considering a self-employed applicant for ODA-certification under section 173.391 of the Revised Code or a self-employed person already ODA-certified section 173.391 of the Revised Code, "responsible party" means the ODA or the PASSPORT administrative agency.

When considering a self-employed bidder for an AAA-provider agreement under section 173.392 of the Revised Code or a self-employed person already in an AAA-provider agreement under section 173.392 of the Revised Code, "responsible party" means the area agency on aging.

Although part of a rule package with rules having adverse impact on Ohio businesses, 173-14-14 does not regulate any Ohio business and has no adverse impact upon Ohio businesses. It is, therefore, not subject to the Common-Sense Initiative.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

An adverse impact to 173-9-03 and 173-9-03.1 is that if 1 or more of the 6 databases lists a person as a sex offender, abuser, defrauder, etc. the responsible party would be prohibited from doing the following:

- Hiring the person into a paid direct-care position.
- Retaining the person in a paid direct-care position.
- Awarding an AAA-provider agreement to the person as a self-employed provider.
- Certifying the person as a non-agency provider.

If the SAM or OIG databases lists the person as a defrauder of the federal government, the responsible party would be prohibited from doing the same even if 173-9-03 or 173-9-03.1 didn't exist.

Another indirect adverse impact to 173-9-03 and 173-9-03.1 is the time necessary for the responsible party to review the 6 databases. The state offers ARCS<sup>5</sup> as a time-saving alternative for checking employees (post-hire).

As mentioned earlier, 173-9-10 provides a link between this chapter's requirements and other rules or agreements establishing the means by which a responsible party would be disciplined for non-compliance with this chapter. Without the rule, readers of this chapter may be unaware that other bodies of law apply to their compliance to this chapter. The rule has no adverse impact.

---

<sup>5</sup> For more information on ARCS, please review ODA's response to #3.



**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

The direct adverse impact reviewing databases is \$0.00, because the databases are free to the public.

Because most persons will not appear negatively in the databases, ODA estimates it takes approximately 5 minutes for the responsible party to review all 6 databases. Using ARCS would automate database reviews on employees (post-hire).

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

Ensuring the safety of consumers receiving goods and services through ODA-administered programs outweighs the time necessary to review databases of paid applicants and employees who would (or already do) provide goods and services to the consumers. Plus, to alleviate the impact of reviewing databases, the state offers ARCS to automate database reviews on employees (post-hire).

Additionally, [§173.38](#) and [§173.381](#) require ODA to adopt the chapter in which these 3 rules are parts.

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

The rules treat providers the same, regardless of their size. ODA does not discriminate between providers based upon the size of their business or organization. Providers regulated by this rule are typically small businesses according to [§119.14](#).

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

ODA complies with the requirement in §119.14 to exempt small businesses from penalties for first-time paperwork violations if the business timely corrects the violation,<sup>6</sup> but not if the violation is ineligible for such an exemption according to §119.14(C).

**18. What resources are available to assist small businesses with compliance of the regulation?**

ODA (and its designees) are available to help providers of all sizes with their questions. Any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about the rule.

Additionally, ODA maintains an [online rules library](#) to help providers find rules regulating them. Providers may access the online library 24 hours per day, 365 days per year.

---

<sup>6</sup> §119.14 does not override a provider's need to conduct background checks pursuant to §173.38 or §173.381.

\*\*\* DRAFT - NOT YET FILED \*\*\*

173-9-03

**Background checks for paid direct-care positions: reviewing databases (except for the self-employed).**

- (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: listed in paragraphs (A)(1) to (A)(6) of this rule. In the table below, ODA listed the web address (URL) on which each database was accessible to the public at the time of this rule's adoption. If a URL listed in the table becomes obsolete, please consult with the government entity publishing the database for an updated URL.

DATABASES TO REVIEW	
SAM	<a href="https://www.sam.gov/">https://www.sam.gov/</a>
OIG	<del><a href="http://exclusions.oig.hhs.gov/">http://exclusions.oig.hhs.gov/</a></del> <a href="https://exclusions.oig.hhs.gov/">https://exclusions.oig.hhs.gov/</a>
Abuser Registry	<a href="https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx">https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx</a>
Sex-Offender Search	<a href="http://www.icrimewatch.net/index.php?AgencyID=55149&amp;disc=">http://www.icrimewatch.net/index.php?AgencyID=55149&amp;disc=</a>
Offender Search	<del><a href="http://www.drc.ohio.gov/OffenderSearch/Search.aspx">http://www.drc.ohio.gov/OffenderSearch/Search.aspx</a></del> <a href="https://appgateway.drc.ohio.gov/Of">https://appgateway.drc.ohio.gov/Of</a>
Nurse-Aide Registry	<a href="https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx">https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx</a>

- (1) The United States general services administration's system for award management, which is maintained pursuant to subpart 9.4 of the federal acquisition regulation.
- (2) The office of inspector general of the United States department of health and human services' list of excluded individuals and entities, which is maintained pursuant to sections 1128 and 1156 of the "Social Security Act," 42 U.S.C. 1320a-7 and 1320c-5.
- (3) The department of developmental disabilities' online abuser registry, established under section 5123.52 of the Revised Code, ~~that~~ which lists people cited for abuse, neglect, or misappropriation.
- (4) The Ohio attorney general's sex offender and child-victim offender database, established under division (A)(1) of section 2950.13 of the Revised Code.

\*\*\* DRAFT - NOT YET FILED \*\*\*

173-9-03

2

- (5) The department of rehabilitation and correction's database of inmates, [established under section 5120.66 of the Revised Code](#).
- (6) The department of health's state nurse aide registry, [established under section 3721.32 of the Revised Code](#). 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:

WHEN TO REVIEW DATABASES		
POSITIONS	APPLICANTS (PRE-HIRE)	EMPLOYEES (POST-HIRE)
Direct-care position: Only delivers meals	Required	Not required
Direct-care position: Only has access to consumers' or individuals' personal records	Required	Not required
Direct-care position: Only provides a specified once-ever service	Required	Not required
Transportation position: If applying for, or employed by, a county transit system, regional transit authority, or regional transit commission	Not required	Not required
Transportation position: If applying for, or employed by, a provider other than a county transit system, regional transit authority, or regional transit commission, the position is a direct-care position	Required	Required
All direct-care positions not listed above	Required	Required

- (1) Applicants (pre-hire): The responsible party shall review each applicant's (pre-hire) status in the databases before conducting the criminal records check that rule 173-9-04 of the Administrative Code requires for applicants.
- (2) Employees (post-hire): The responsible party shall review each employee's (post-hire) status in the databases before conducting the criminal records check that rule 173-9-04 of the Administrative Code requires for employees. Because rule 173-9-02 of the Administrative Code does not require criminal records checks on employees (post-hire) in three types of direct-care positions, the responsible party is not required to review databases on employees (post-hire) in the same three types of direct-care positions.

(C) Disqualifying status:

- (1) No responsible party shall hire an applicant or retain an employee if the applicant's or employee's status in the databases reveals the following that one or more of the databases in paragraphs (A)(1) to (A)(5) of this rule lists the applicant or employee or the database in paragraph (A)(6) of this rule lists the applicant or employee as a person who neglected or abused a long-term care facility resident or residential care facility resident or misappropriated such a resident's property.
- (2) 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.

- (D) Referrals from employment services: A responsible party is not required to review the databases if the applicant, or employee of a direct-care position was referred to the responsible party by an employment service that refers applicants to responsible parties to fill full-time, part-time, or temporary direct-care positions if the responsible party obtains copies of records from the employment service that verify that the applicant's or employee's status in the databases does not disqualify him or her.

\*\*\* DRAFT - NOT YET FILED \*\*\*

173-9-03.1

**Background checks for paid direct-care positions: reviewing databases (for the self-employed).**

- (A) Databases to review: Any time this rule requires a responsible party to review a self-employed provider's status in databases, the responsible party shall review the ~~following~~ six databases: listed in paragraphs (A)(1) to (A)(6) of this rule. In the table below, ODA listed the web address (URL) on which each database was accessible to the public at the time of this rule's adoption. If a URL listed in the table becomes obsolete, please consult with the government entity publishing the database for an updated URL.

DATABASES TO REVIEW	
SAM	<a href="https://www.sam.gov/">https://www.sam.gov/</a>
OIG	<del><a href="http://exclusions.oig.hhs.gov/">http://exclusions.oig.hhs.gov/</a></del> <a href="https://exclusions.oig.hhs.gov/">https://exclusions.oig.hhs.gov/</a>
Abuser Registry	<a href="https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx">https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx</a>
Sex-Offender Search	<a href="http://www.icrimewatch.net/index.php?AgencyID=55149&amp;disc=">http://www.icrimewatch.net/index.php?AgencyID=55149&amp;disc=</a>
Offender Search	<del><a href="http://www.drc.ohio.gov/OffenderSearch/Search.aspx">http://www.drc.ohio.gov/OffenderSearch/Search.aspx</a></del> <a href="https://appgateway.drc.ohio.gov/">https://appgateway.drc.ohio.gov/</a>
Nurse-Aide Registry	<a href="https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx">https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx</a>

- (1) The United States general services administration's system for award management, which is maintained pursuant to subpart 9.4 of the federal acquisition regulation.
- (2) The office of inspector general of the United States department of health and human services' list of excluded individuals and entities, which is maintained pursuant to sections 1128 and 1156 of the "Social Security Act," 42 U.S.C. 1320a-7 and 1320c-5.
- (3) The department of developmental disabilities' online abuser registry, established under section 5123.52 of the Revised Code, ~~that~~ which lists people cited for abuse, neglect, or misappropriation.
- (4) The Ohio attorney general's sex offender and child-victim offender database, established under division (A)(1) of section 2950.13 of the Revised Code.
- (5) The department of rehabilitation and correction's database of inmates, established under section 5120.66 of the Revised Code.

\*\*\* DRAFT - NOT YET FILED \*\*\*

173-9-03.1

2

- (6) The department of health's state nurse aide registry, [established under section 3721.32 of the Revised Code](#). 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:

\*\*\* DRAFT - NOT YET FILED \*\*\*

173-9-03.1

3

WHEN TO REVIEW DATABASES		
SELF-EMPLOYED DIRECT-CARE POSITIONS	WHEN APPLYING TO BECOME ODA-CERTIFIED OR WHEN BIDDING FOR AN AAA-PROVIDER AGREEMENT	AFTER BECOMING ODA-CERTIFIED OR WHEN ENTERING INTO AN AAA-PROVIDER AGREEMENT
Only delivers meals	Required	Not required
Only has access to consumers' or individuals' personal records	Required	Not required
Only provides a specified once-ever service	Required	Not required
All other self-employed direct-care positions not listed above	Required	Required

- (1) When the self-employed provider applies to become ODA-certified or bids for an AAA-provider agreement, the responsible party shall review the self-employed provider's status in the databases before checking the self-employed provider's criminal records.
  - (2) After the self-employed provider is ODA-certified or has entered into an AAA-provider agreement, the responsible party may review the self-employed provider's status in the databases at any time. But, the responsible party shall review the self-employed provider's status in the databases no less often than each time that the responsible party conducts a criminal records check according to one of the schedules in rule 173-9-04.1 of the Administrative Code. If the self-employed provider provides services equivalent to one of the direct-care positions under paragraph (B) of rule 173-9-02 of the Administrative Code, the responsible party is not required to conduct subsequent databased reviews and criminal records checks after the self-employed provider becomes ODA-certified or has entered into an AAA-provider agreement.
- (C) Disqualifying status: No responsible party shall certify a self-employed provider to provide a direct-care service, enter into an AAA-provider agreement with a self-employed provider, fail to terminate an AAA-provider agreement with a self-employed provider, or fail to revoke a self-employed provider's certification, if

\*\*\* DRAFT - NOT YET FILED \*\*\*

173-9-03.1

4

the self-employed person's status in the databases reveals that one or more of the databases in paragraphs (A)(1) to (A)(5) of this rule lists the self-employed provider or the database in paragraph (A)(6) of this rule lists the self-employed provider as a person who neglected or abused a long-term care facility resident or residential care facility resident or misappropriated such a resident's property.



TO BE RESCINDED

173-9-10                    **Disciplinary action.**

ODA (or ODA's designees) may discipline a responsible party that does not comply with Chapter 173-9 of the Administrative Code according to the following:

- (A) When the responsible party is an area agency on aging, it is according to rule 173-2-07 of the Administrative Code.
- (B) When the responsible party is a PASSPORT administrative agency, it is according to the terms of the agreement entered into between the PASSPORT administrative agency and ODA.
- (C) When the responsible party is an agency provider, it is according to one or more of the following:
  - (1) Rules 173-39-05 and 173-39-05.1 of the Administrative Code when the provider is furnishing services to consumers through a program that requires ODA-certification.
  - (2) The provider agreement entered into between the provider and the area agency on aging when the provider is furnishing services to consumers through a program that does not require ODA-certification.

\*\*\* DRAFT - NOT YET FILED \*\*\*

173-9-10

**Background checks for paid direct-care positions:  
consequences for failure to comply with this chapter.**

- (A) If an area agency on aging (AAA) fails to comply with this chapter, ODA may take whatever action against the AAA is appropriate under rule 173-2-07 of the Administrative Code.
- (B) If a PASSPORT administrative agency (PAA) fails to comply with this chapter, ODA or the Ohio department of medicaid (ODM) may take whatever action against the PAA is appropriate under the terms of the three-party agreement entered into between ODA, ODM, and the PAA under sections 173.52 and 173.54 of the Revised Code.
- (C) If a PACE organization fails to comply with this chapter, ODA or the centers for medicare and medicaid services (CMS) may take whatever action against the PACE organization is appropriate under the terms of the PACE organization agreement entered into by ODA, CMS, and the PACE organization under 42 C.F.R. Part 460, Subpart D.
- (D) If a provider fails to comply with this chapter, ODA (or its designees) may take whatever action against the provider is appropriate under one or more of the following:
- (1) Section 173.391 of the Revised Code and rule 173-39-05 of the Administrative Code when the provider is providing goods or services to individuals through a program requiring ODA-certification ODA-certified providers.
  - (2) The AAA-provider agreement entered into between the provider and the AAA when the provider is providing goods or services to consumers through a program not requiring ODA-certified providers.

\*\*\* DRAFT - NOT YET FILED \*\*\*

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: listed in paragraphs (C)(2)(a)(i) to (C)(2)(a)(vi) of this rule. In the table below, ODA listed the web address (URL) on which each database was accessible to the public at the time of this rule's adoption. If a URL listed in the table becomes obsolete, please consult with the government entity publishing the database for an updated URL.

DATABASES TO REVIEW

SAM	<a href="https://www.sam.gov/">https://www.sam.gov/</a>
-----	---------------------------------------------------------

\*\*\* DRAFT - NOT YET FILED \*\*\*

173-14-14

4

OIG	<del><a href="http://exclusions.oig.hhs.gov/">http://exclusions.oig.hhs.gov/</a></del> <a href="https://exclusions.oig.hhs.gov/">https://exclusions.oig.hhs.gov/</a>
Abuser Registry	<a href="https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx">https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx</a>
Sex-Offender Search	<del><a href="http://www.drc.ohio.gov/OffenderSearch/Search.aspx">http://www.drc.ohio.gov/OffenderSearch/Search.aspx</a></del> <a href="http://www.icrimewatch.net/in">http://www.icrimewatch.net/in</a>
Offender Search	<del><a href="http://www.drc.ohio.gov/OffenderSearch/Search.aspx">http://www.drc.ohio.gov/OffenderSearch/Search.aspx</a></del> <a href="https://appgateway.drc.ohio.g">https://appgateway.drc.ohio.g</a>
Nurse-Aide Registry	<a href="https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx">https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx</a>

- (i) The United States general services administration's system for award management, [which is maintained pursuant to subpart 9.4 of the federal acquisition regulation.](#)
- (ii) The office of inspector general of the United States department of health and human services' list of excluded individuals [and entities, which is maintained pursuant to sections 1128 and 1156 of the "Social Security Act," 42 U.S.C. 1320a-7 and 1320c-5.](#)
- (iii) The department of developmental disabilities' online abuser registry, [established under section 5123.52 of the Revised Code,](#) ~~that~~ [which](#) lists people cited for abuse, neglect, or misappropriation.
- (iv) The Ohio attorney general's sex offender and child-victim offender database, [established under division \(A\)\(1\) of section 2950.13 of the Revised Code.](#)
- (v) The department of rehabilitation and correction's database of inmates, [established under section 5120.66 of the Revised Code.](#)
- (vi) The department of health's state nurse aide registry, [established under section 3721.32 of the Revised Code.](#) 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



\*\*\* DRAFT - NOT YET FILED \*\*\*

173-14-14

7

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

\*\*\* DRAFT - NOT YET FILED \*\*\*

173-14-14

10

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);

\*\*\* DRAFT - NOT YET FILED \*\*\*

173-14-14

14

- (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);
- (lix) 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);
- (lxxxii) 2919.121 (unlawful abortion upon minor);
- (lxxxiii) 2919.123 (unlawful distribution of an abortion-inducing drug);
- (lxxxiv) 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 of 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);
- (*xl ii*) 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,
- (*xl iii*) 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

\*\*\* DRAFT - NOT YET FILED \*\*\*

173-14-14

32

(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:

\*\*\* DRAFT - NOT YET FILED \*\*\*

173-14-14

33

- (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~~ volunteers in 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~~ volunteers are not subject to the background check requirements in section 173.27 of the Revised Code or paragraph (C) of this rule when they apply to volunteer or after they become volunteers. 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~~ volunteer 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.