



John Kasich, Governor
Bonnie Kantor-Burman, Director

AGENCY MEMORANDUM OF RESPONSE

To: Whitney Sullinger, Regulatory Policy Advocate, CSI Office

From: Tom Simmons, Policy Manager

Re: H.B.487: Criminal Records Checks

Date: October 16, 2012, Revised November 6, 2012

Thank you for reviewing ODA's proposed new criminal records check rules.

Because the "CSI Office is not suggesting any changes to the rules" and "generally" found "the rule package satisfactorily meets the standards espoused by the CSI Office," ODA will now proceed with filing the above mentioned rule proposals with JCARR.

In doing so, ODA has made further improvements to the proposed new rules after the CSI Office's review of the rules that should have no impact upon the adverse impact that the rules may cause to Ohio businesses. The changes include:

- Correctly stating in the description of proposed new rule 173-9-07 of the Administrative Code in the business impact analysis that minor drug possession is an offense in Tier V (not Tier IV) of proposed new rule 173-9-07 of the Administrative Code.
- Revising the title of the table in proposed new rule 173-9-04 of the Administrative Code from "FREQUENCY OF CRIMINAL RECORDS CHECKS" TO "ON WHOM IS A CRIMINAL RECORDS CHECK REQUIRED?" The language in paragraph (B) of the same rule was also revised to replace "frequency" with the same. The table and this revision should eliminate confusion expressed by some commenters during the public-comment period on whether or not applicants for positions to only deliver meals *etc.* are required to undergo criminal records checks.

- Transforming the last clause of paragraph (B)(3) of proposed new rule 173-9-04 of the Administrative Code into a sentence of its own. The paragraph has the same meaning, but now reads clearly.
- Revised the wording in paragraphs (B)(1) and (B)(2) of proposed new rule 173-9-05 of the Administrative Code so that it is clear that the maximum duration for conditional employment is 60 days and not 59 days.
- Revising, in proposed new rules 173-9-06 and 173-9-07 of the Administrative Code, the description of the crime associated with section 2907.23 of the Revised Code from “procuring” to “enticement or solicitation to patronize a prostitute; procurement of a prostitute for another.”
- Revising, in proposed new rules 173-9-06 and 173-9-07 of the Administrative Code, the description of the crime associated with section 2907.24 of the Revised Code from “soliciting” to “soliciting, engaging in solicitation after a positive HIV test.”
- Moving the conditional clause that begins with “if the state long-term care ombudsman designates...” from the beginning of paragraph (A)(1)(c) of proposed new rule 173-9-08 of the Administrative Code to the end of the same paragraph. This increases readability.
- Changing the language in paragraph (B)(1)(b) of proposed new rule 173-9-08 of the Administrative Code from that of retaining records in “personnel records” to retaining records in “personnel files.”
- Repairing grammatical errors (e.g., “plead” vs., “pleaded”) and typographical errors throughout the rule package.

On November 6, 2012, ODA made further improvements to five of the proposed new rules in this rule package after the CSI Office’s review of the rules. ODA’s improvements should have no impact upon the adverse impact that the rules may cause to Ohio businesses. ODA made these improvements with the knowledge and approval of the CSI Office. The changes include:

- In proposed new rule 173-9-03 of the Administrative Code: Replacing the name of the free database maintained by the General Services Administration from “EPLS” to “SAM.” GSA changed the name of the website during the development of this project.
- In proposed new rule 173-9-04 of the Administrative Code:
 - o Adding a new row to the table entitled, “ON WHOM IS A CRIMINAL RECORDS CHECK REQUIRED?” to represent ombudsman services.

- o Correcting a grammatical error by inserting “a” before “consumer’s” in paragraph (A)(2)(b)(ii) of the rule.
 - o Replacing the term “*revalidation*” in paragraph (B)(2)(3) of the rule with “*reverification*.” This is because the Office of the Ohio Attorney General has informed ODA that the term of art for the form described in division (D) of section 109.572 of the Revised Code is “*reverified*.” (*cf.*, Corresponding revision in proposed new rule 173-9-08 of the Administrative Code.)
- In proposed new rule 173-9-06 of the Administrative Code: Inserting the crime under section 2925.141 of the Revised Code (illegal use or possession of marihuana drug paraphernalia) as paragraph (A)(122) of the rule. S.B.337 created this new offense and added it to the list of disqualifying offenses in section 109.572 of the Revised Code after the passage of H.B.487.
- In proposed new rule 173-9-07 of the Administrative Code:
 - o Replacing “aggravated *robbery*” as the description of the crime created under section 2909.02 of the Revised Code in paragraph (A)(2)(a)(ix) of the rule with “aggravated *arson*.”
 - o Inserting the crime created under section 2925.141 of the Revised Code (illegal use or possession of marihuana drug paraphernalia) under paragraph (A)(5) of the rule [Tier V]. S.B.337 created this new offense and added it to the list of disqualifying offenses in section 109.572 of the Revised Code after the passage of H.B.487.
 - o Inserting a new paragraph into the rule regarding limited grandfathering. The paragraph allows “[a] responsible entity [to] choose to continue to employ an employee to provide ombudsman services or direct care who is otherwise excluded from employment to provide ombudsman services or direct care because the employee was convicted of, or pleaded guilty to, an offense(s) listed under paragraph (A)(4) [Tier IV] of this rule, but only if: (1) The responsible entity hired the employee before January 1, 2013; (2) The employee’s conviction or guilty plea occurred before January 1, 2013; and, (3) the Responsible entity has considered the nature and seriousness of the offense(s), and attests in writing before April 1, 2013, to the character and fitness of the employee based upon the employee’s demonstrated work performance.”
- In proposed new rule 173-9-08 of the Administrative Code:
 - o Replacing the term “*revalidated* criminal records report” in paragraph (B)(1)(a)(ii) of the rule with “*reverified* criminal records report.” This is because the Office of the Ohio Attorney General has informed ODA that the term of art for the form described in division (D) of section 109.572 of the

Revised Code is “reverified.” (*cf.*, Corresponding revision in proposed new rule 173-9-04 of the Administrative Code.)

- o Inserting a new paragraph under paragraph (B)(1) of the rule that requires the responsible entity to retain “[a] copy of the written attestation to the character and fitness of the employee, if the responsible entity completed a written attestation to comply with paragraph (B)(3) of rule 173-9-07 of the Administrative Code.”

cc: Mark Hamlin, CSI Office
Carla Dowling-Fitzpatrick, Chief Legal Counsel, ODA