Ohio | Department of Developmental Disabilities

Mike DeWine, Governor
Jeff Davis, Director

Changes to the Background Investigations Rule

Effective July 1, 2019, the Ohio Department of Developmental Disabilities (DODD) is adopting new rule 5123-2-02, *Background Investigations for Employment*. New rule 5123-2-02 will replace existing rule 5123:2-2-02, which is being rescinded. The rule establishes standards for conducting background investigations on persons employed or seeking employment in Ohio's service delivery system for people with developmental disabilities. New rule 5123-2-02 reflects revisions based on the comprehensive five-year review, including:

- Adding a definition of the Ohio Attorney General's "Retained Applicant Fingerprint Database" (also known as "Rapback").
- Clarifying that background investigations must be conducted prior to employing an applicant.
- Adding a requirement for a responsible entity to check the Ohio Department of Medicaid Provider Exclusion and Suspension List.
- Adding a requirement for a responsible entity to enroll employees in direct services positions in Rapback, which had not yet been established when rule 5123:2-2-02 went into effect in 2013. (Enrolling employees in Rapback is more effective and less costly than requesting that the Bureau of Criminal Identification and Investigation conduct a criminal record check on employees every five years.)
- Clarifying that a responsible entity may not employ a person who has been found eligible for intervention in lieu of conviction for a disqualifying offense.

What is Intervention in Lieu of Conviction?

Section 2951.041 of the Revised Code allows persons charged with an offense to receive treatment in lieu (instead) of a conviction. The defendant must initiate the process by filing a motion containing specific language outlined in Section 2951.041. If granted, the defendant will undergo an evaluation and if deemed eligible, he or she will plead guilty to the offense. At this point, the judge withholds a finding of guilt and any sentence he or she may impose. Instead, the defendant enrolls in a treatment program. If the defendant successfully completes his or her treatment program, the criminal charge is ultimately dismissed and the defendant avoids a conviction and is never sentenced. If

the defendant does not successfully complete the treatment program, the court makes a finding of "guilty" and imposes a sentence.

Can persons who have entered Intervention in Lieu of Conviction be employed under the background investigations rule?

The Bureau of Criminal Identification and Investigation (BCII) background check statute, Section 109.572 of the Revised Code, divisions (A)(3)(a) to (e), contains the disqualifying offenses that BCII is to disclose in a criminal record check. Section 109.572(A)(3)(a) requires BCII to determine if a person has been convicted of, pleaded guilty to, or been determined eligible for intervention in lieu of conviction for any of the disqualifying offenses listed in Section 109.572(A)(3)(a) to (e). The background investigations rule has been revised to align with Section 109.572(A)(3)(a).

On or after July 1, 2019, the effective date of the new background investigations rule:
- If a criminal record check for a person either hired (the actual start date) or under consider for employment indicates s/he has been placed in intervention in lieu of conviction for any of the disqualifying offenses listed in the background investigations rule, the person cannot be employed by DODD, a county board of developmental disabilities, or a provider agency.
- If an employee enrolled in Rapback receives intervention in lieu of conviction for any of the disqualifying offenses listed in the background investigations rule (as a result of a charge after he or she is employed), the person cannot be employed by DODD, a county board of developmental disabilities, or a provider agency.

Questions?

Staff of the Office of System Support and Standards are available to provide assistance. Please call 614-466-6670 and ask to speak with a manager.

View related materials under "Effective Dates for Newly Adopted/Amended Rules" on DODD's [website](#).