BACKGROUND CHECKS FOR EMPLOYMENT
The requirements for background investigations for employment were changed in January, 2013.

The new requirements are found in R.C. 5123.081 and Rule 5123:2-2-02.
Background Checks For Employment

This presentation explains the changes to the background check process. It covers:

- New definitions for who is required to have a background check
- New definitions for who is required to conduct a background check
- The convictions that disqualify an applicant for employment:
  - expanded list of convictions
  - use of Exclusionary Periods
- Putting it together --- the revised background check process:
  - employment application
  - more registries to check
  - driving record
  - conditional employment
- Background checks for current employees
- When a Responsible Entity may hire an applicant/retain employee with a conviction that would otherwise disqualify him/her for employment
Background Checks For Employment

New definitions for who is required to have a background check
Background Checks For Employment
New definitions for who is required to have a background check

Applicant

- person under final consideration for appointment/employment with DODD or county board
- person transferred to DODD or county board
- employee recalled/reemployed by DODD or county board after a layoff
- person under final consideration for a direct services position with an agency provider or subcontractor
  - includes employee recalled or reemployed after a layoff
Background Checks For Employment
New definitions for who is required to have a background check

Candidate
- Chief Executive Officer of agency provider that applies for certification
- person who applies for certification as an independent provider
Background Checks For Employment
New definitions for who is required to have a background check

Employee
- person appointed/employed by DODD or a county board
- person employed in a direct services position by an agency provider or subcontractor

If you or your employees serve persons enrolled in programs of the Department of Aging, the Department of Health or the Department of Medicaid (formerly the Ohio Department of Job and Family Services) you must carefully review the specific state agency’s background check rules to see which applicants and employees require criminal records checks.
Background Checks For Employment
New definitions for who is required to conduct background checks

New definitions for who is required to conduct a background check
“Responsible entity” means:

- the department in the case of an applicant under final consideration for appointment to or employment with the department, being transferred to the department, or being recalled to or reemployed by the department after a layoff or a person appointed to or employed by the department;

- a county board in the case of an applicant under final consideration for appointment to or employment with the county board, being transferred to the county board, or being recalled to or reemployed by the county board after a layoff or a person appointed to or employed by the county board;

- an agency provider in the case of an applicant under final consideration for a direct services position with the agency provider or a person employed in a direct services position by the agency provider; or

- a subcontractor in the case of an applicant under final consideration for a direct services position with the subcontractor or a person employed in a direct services position by the subcontractor.
Subcontractor
- person who has a subcontract with agency provider to provide specialized services
- subcontract with another subcontractor to provide specialized services
- employs one or more persons in direct services positions
Background Checks For Employment

The convictions that disqualify an applicant for employment

- expanded list of convictions
- use of Exclusionary Periods
Background Checks For Employment
Convictions that disqualify an applicant for employment

The laws created **one list** of Disqualifying Offenses.

- 109.572(B)(1) requires the Bureau of Criminal Identification and Investigation to release any sealed offenses.

Applies to DODD, Department of Medicaid (formerly known as Ohio Department of Job and Family Services), Department of Aging and Department of Health.
## Background Checks for Employment

Convictions that disqualify an applicant for employment.

Disqualifying Offenses are divided into five tiers or levels. Click on each of the following Tiers to see the list of offenses.

- **Tier One**
- **Tier Two**
- **Tier Three**
- **Tier Four**
- **Tier Five**

Each tier has an Exclusionary Period.

### Tier Three Disqualifying Offenses (Seven-Year Exclusion):

<table>
<thead>
<tr>
<th>Offense</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>959.13</td>
<td>(cruelty to animals)</td>
</tr>
<tr>
<td>959.131</td>
<td>(prohibitions concerning companion animals)</td>
</tr>
</tbody>
</table>

### Tier Four Disqualifying Offenses (Five-Year Exclusion):

<table>
<thead>
<tr>
<th>Offense</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2903.13</td>
<td>(assault)</td>
</tr>
<tr>
<td>2903.22</td>
<td>(menacing)</td>
</tr>
<tr>
<td>2907.09</td>
<td>(public indecency)</td>
</tr>
<tr>
<td>2907.24</td>
<td>(soliciting after positive human immunodeficiency virus test)</td>
</tr>
<tr>
<td>2907.25</td>
<td>(prostitution)</td>
</tr>
<tr>
<td>2907.33</td>
<td>(deception to obtain matter harmful to juveniles)</td>
</tr>
<tr>
<td>2911.13</td>
<td>(breaking and entering)</td>
</tr>
<tr>
<td>2921.12</td>
<td>(tampering with evidence)</td>
</tr>
<tr>
<td>2921.21</td>
<td>(compounding a crime)</td>
</tr>
<tr>
<td>2921.24</td>
<td>(disclosure of confidential information)</td>
</tr>
<tr>
<td>2921.32</td>
<td>(obstructing justice)</td>
</tr>
<tr>
<td>2921.321</td>
<td>(assaulting/harassing police dog or horse/service animal)</td>
</tr>
<tr>
<td>2921.51</td>
<td>(impersonation of peace officer)</td>
</tr>
</tbody>
</table>
| 2923.01 | (conspiracy) when the underlying offense is any of the offenses or violations on this list.

### Tier Five Disqualifying Offenses (No Exclusion):

<table>
<thead>
<tr>
<th>Offense</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2925.11</td>
<td>(drug possession that is minor drug possession offense)</td>
</tr>
<tr>
<td>2925.14</td>
<td>(illegal use or possession of drug paraphernalia)</td>
</tr>
<tr>
<td>2925.141</td>
<td>(illegal use or possession of marihuana drug paraphernalia)</td>
</tr>
</tbody>
</table>

- **Tier One:** Violations (level) of a court order, or a court order in the custody proceedings.
- **Tier Two:** Violations (level) of a court order, or a court order in the custody proceedings.
- **Tier Three:** Violations (level) of a court order, or a court order in the custody proceedings.
- **Tier Four:** Violations (level) of a court order, or a court order in the custody proceedings.
- **Tier Five:** Violations (level) of a court order, or a court order in the custody proceedings.

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 on this list.
Background Checks For Employment
Convictions that disqualify an applicant for employment

What is an Exclusionary Period?

It is a period of time during which a person who has committed a specified offense is disqualified from being employed.

After an Exclusionary Period is over for a person, a responsible entity is permitted to employ him.
Background Checks For Employment
Convictions that disqualify an applicant for employment

The 2013 rules will establish five tiers of Exclusionary Periods:

1. Permanently excluded - Tier One
2. 10 years of exclusion - Tier Two
3. 7 years of exclusion - Tier Three
4. 5 years of exclusion - Tier Four
5. 0 years of exclusion - Tier Five
Background Checks For Employment
Convictions that disqualify an applicant for employment

Must be fully discharged from imprisonment, probation, and parole.
Background Checks For Employment
Convictions that disqualify an applicant for employment

Multiple Disqualifying Offenses result in a longer Exclusionary Period.

<table>
<thead>
<tr>
<th>Disqualifying Offenses</th>
<th>Exclusionary Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier Two, Three, Four</td>
<td>15 Year Exclusion</td>
</tr>
<tr>
<td>Tier Three, Four</td>
<td>10 Year Exclusion</td>
</tr>
<tr>
<td>Tier Four</td>
<td>7 Year Exclusion</td>
</tr>
</tbody>
</table>
Background Checks For Employment

The revised criminal background check process:

- employment application
- more registries to check
- driving record
- changes to conditional employment
Background Checks For Employment
Revised criminal background check process

Responsible Entity must:

- require applicant to complete employment application
  - provide names and addresses of present/former employers
- attempt to obtain references from applicant’s previous/former employers
  - keeps written evidence of reference checks attempted/completed
Background Checks For Employment
Revised criminal background check process

Responsible entity must check six free registries to determine if applicant is included.

- registry check must be completed prior to criminal background check
Background Checks For Employment
Revised criminal background check process

The free registries to review are:

1. SAM
2. OIG Exclusions Database

These registries contain names of people who have defrauded the federal government. For SAM, you are looking to see if the word “Excluded” appears by the name of the applicant or employee. If it appears then you cannot hire the person.
Background Checks For Employment
Revised criminal background check process

The free registries to review are:

1. SAM
2. OIG Exclusions Database
3. Abuser registry
4. Sex offender search
5. Offender search: Dept. of Rehabilitation and Correction’s offender search

This registry contains names of people who are in community correctional institutions.
Background Checks For Employment
Revised criminal background check process

The free registries to review are:

1. SAM
2. OIG Exclusions Database
3. Abuser registry
4. Sex offender search
5. Offender search
6. Nurse aide registry

This database contains names of nurse aides in good and bad standing with the Dept. of Health. Within this registry, you can look to see if there is a statement detailing findings by the Director of the Dept. of Health that an applicant or employee neglected or abused a resident of a long-term care facility or residential care facility or misappropriated property of such resident.
A responsible entity may not hire or continue to employ an applicant or employee whose name appears in:

- Abuser registry
- OIG Exclusions Database
- Sex offender search
- SAM if “Excluded” appears by the name
- Nurse aide registry if there is a statement detailing findings by the Director of the Department of Health that the person has neglected or abused an individual of a long-term care facility or residential facility or misappropriated property of such resident
Background Checks For Employment
Revised criminal background check process

The responsible entity must check these 6 free registries before conducting any criminal records check required by the rules.

If an applicant or employee is disqualified by the free registry reviews, there is no reason for the responsible entity to pay for a criminal records check.
Background Checks For Employment
Revised criminal background check process

Driving Record

Responsible entity must verify applicant has a valid operator’s license and obtain driving record from BMV if:

- Position requires transporting individuals or the operation of the responsible entity’s vehicles.
- A person with six or more points on his/her driving record, **cannot** provide transportation services to individuals.
While waiting for the results of the criminal background check, you may conditionally employ the applicant:

- only if the registries don’t disqualify the applicant
- conditional employment limited to 60 days
Post Hire Criminal Record Checks

For agency providers and county boards who completed a 3-year background check under the Provider Certification rule, the next criminal background check is due 5 years from the date of the last post hire criminal record check.
Background Checks For Employment
Background checks for current employees

Post Hire Criminal Record Checks

ICF/IDDs and licensed residential facilities must conduct an initial post-hire criminal records check of employees in direct services position by December 31, 2014.
Background Checks For Employment
Background checks for current employees

Post Hire Criminal Record Checks

- includes checks of 6 free databases
- BCII check
- FBI record check for those who have not been an Ohio resident for last 5 years
Background Checks For Employment

When a responsible entity may hire an applicant/retain an employee with a conviction that would otherwise disqualify him/her for employment…
Background Checks For Employment
When a responsible entity may hire an applicant/retain an employee with a conviction that would otherwise disqualify him/her for employment

Here are the *new circumstances* under which a responsible entity may hire an applicant or retain an employee with a Disqualifying Offense on his or her criminal record:

1. Exclusionary Period has passed; or
2. Certificate of Qualification for Employment
Background Checks For Employment
When a responsible entity may hire an applicant/retain an employee
with a conviction that would otherwise disqualify him/her for
employment

What is *Certificate of Qualification for Employment*?

Through H.B.86 and S.B.337, the Kasich Administration and legislators enacted a
new opportunity for Ohioans with criminal records to obtain jobs.
Background Checks For Employment
When a responsible entity may hire an applicant/retain an employee
with a conviction that would otherwise disqualify him/her for
employment

What is *Certificate of Qualification for Employment*

- H.B.86 and S.B.337 authorize the Ohio Department of Rehabilitation
  and Correction or a county court to grant a limited order of relief
  against hiring prohibitions in the rules.
- R.C. 2953.25 allows a Court of Common Pleas to issue a Certificate
  of Qualification for Employment (CQE). The CQE excuses the
  applicant/employee from the Exclusionary Period established for
  convictions listed in Tiers 2, 3 and 4 of the background check rule.
  More information on CQEs is available at the website of the Ohio
  Department of Rehabilitation and Correction, www.drc.ohio.gov.
Background Checks For Employment

Questions??

Contact the Office of Provider Standards and Review at
(614) 466-6670