Addresses FAQ

*** DRAFT - NO

In response to FAQs about a conditional status for employees (*vs.*, applicants) while waiting for the criminal records, ODA proposes to (1) entitle the rule "conditional hiring," not "conditional employment," (2) add an applicability paragraph, and (3) uses the new "hire" and "release" terms in rule 173-9-01 in this rule and the rest of the chapter as well as the term "post-hire."

173-9-05 **Conditional hiring.**

(A) Applicability: This rule only applies to the conditional hiring of applicants. The rule does not require a conditional status for employees while undergoing post-hire criminal records checks.

(B) Sixty-day period (no referral): A responsible party may conditionally hire an applicant that an employment service did not refer to the responsible party for up to sixty days before the responsible party obtains the applicant's criminal records only if the all of the following three items occur:

(1) The responsible party conducted database reviews and the applicant's status in the databases did not disqualify him or her.

(2) The applicant provides the responsible party with fingerprint impressions before the responsible party conditionally hires the applicant.

(3) The responsible party requests a criminal records check no later than five business days after the responsible party conditionally hires the applicant.

(C) Sixty-day period (referral):

(1) Forward letter to responsible party: A responsible party may conditionally hire an applicant that an employment service refers to the responsible party for up to sixty days, but only if the employment service (or the applicant) forwards a letter to the responsible party that the employment service printed on its letterhead, that a designated official of the employment service dated and signed, and that verifies the following five items:

(a) The employment service conducted database reviews and the applicant's status in the databases and the status did not disqualify him or her.

(b) The employment service requested the applicant's criminal record from BCII.

(c) The requested criminal records check is to include a determination of whether the applicant has been convicted of, or pleaded guilty to, a disqualifying offense.

(d) The employment services has not, as of the date of the letter, received the applicant's criminal record from BCII.

(e) The employment service will promptly forward a copy of the criminal record to the responsible party when the employment service obtains it.

(2) Forward criminal records to responsible party: If a responsible party conditionally hires an applicant that an employment service referred to the responsible party, the employment service shall promptly forward the

Because the way to handle conditional hiring is different when an employment service refers the applicant, ODA separated the regulation into paragraphs (B) and (C).

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criminal records to the responsible party when the employment service obtains the criminal records.

(D) Three reasons to release an applicant:

(1) Sixty-day period ends:

(a) Only BCII required: The responsible party shall release the conditionally-hired applicant if more than sixty days passed since the day the responsible party requested a criminal records and the responsible party has not yet obtained the criminal records.

(b) BCII and FBI 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 obtained the FBI's criminal records, but only if section 173.27 or 173.38 of the Revised Code required the responsible party to request criminal records from the FBI, and one of the following two conditions exist:

This information was true before H.B.59 but did not appear in the rule. After receiving question about FBI checks taking longer than 60 days, ODA decided to add the language to the rule.

(i) The responsible party obtained 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 obtained criminal records from BCII before the sixty-day period ended and the criminal records from BCII listed a disqualifying offense, but the terms of rule 173-9-07 of the Administrative Code would allow the responsible party to hire the applicant, and the responsible party would be willing to hire the applicant under the terms of rule 173-9-07 of the Administrative Code if the forthcoming criminal records from the FBI would not prohibit the responsible party from doing so.

(2) 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 rule 173-9-07 of the Administrative Code. 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 obtained the criminal records.

(3) 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.

(E) Hiring released applicants: If a responsible party released a conditionally-hired

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applicant to comply with the sixty-day limit in paragraph (D)(1)(a) of this rule, the responsible party may resume hiring the released applicant after the responsible party obtains the criminal records if either one of the following two conditions exist:

(1) The applicant's criminal record does not list a disqualifying offense.

(2) 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 rule 173-9-07 of the Administrative Code.