

173-9-07

Background checks: paid direct-care positions: Hiring 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 (A) of this rule, limited grandfathering under paragraph (B) of this rule, obtaining a certificate under paragraph (C) of this rule, or obtaining a pardon under paragraph (D) of this rule.

(A) Disqualifying offense exclusionary periods: ~~Except as set forth in paragraphs (B), (C) and (D) of this rule,~~ a A responsible party may hire an applicant or retain an employee who was convicted of, or pleaded guilty to, an offense listed in rule 173-9-06 of the Administrative Code unless an exclusionary period in paragraph (A)(1), (A)(2), (A)(3), or (A)(4) of this rule prohibits hiring the applicant or retaining the employee.

(1) 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 under paragraph (A)(1) of this rule, 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 ~~set forth~~ listed in section 2913.46 (illegal use of SNAP or WIC program benefits) and paragraph (A)(2)(a)(xiii) of this rule; 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 paragraphs (A)(1)(a) to (A)(1)(ee) of this rule.

(2) 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 under paragraph (A)(2)(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 paragraphs (A)(2)(a)(i) to (A)(2)(a)(xxxi) 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 (A)(2)(a) of this rule, and another offense or offenses listed in paragraph (A)(2)(a), (A)(3)(a), or (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(3) 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 under paragraph (A)(3)(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 paragraphs (A)(3)(a)(i) to (A)(3)(a)(xxvii) 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 (A)(3)(a) of this rule, and another offense or offenses listed in paragraph (A)(3)(a) or (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(4) 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); or,
 - (xlii) If related to another offense under paragraph (A)(4)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,
 - (xliii) 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 (A)(4)(a)(i) to (A)(4)(a)(xli) 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 (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.
- (5) 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);

- (c) 2925.141 (illegal use or possession of marihuana drug paraphernalia); or,
 - (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 violations described under paragraph (A)(5) 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 or~~ paid direct-care position because the employee was convicted of, or pleaded guilty to, an offense(s) listed under paragraph (A)(4) of this rule, but only if:
- (1) The responsible party hired the employee before January 1, 2013;
 - (2) The employee's conviction or guilty plea occurred before January 1, 2013; and,
 - (3) 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 (A)(1) of this rule if the applicant or employee was issued either a:
- (1) 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/>); or,
 - (2) 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 rule 173-9-06 of the Administrative Code under any of the following circumstances:
- (1) The applicant or employee was granted an unconditional pardon for the offense

pursuant to Chapter 2967. of the Revised Code;

- (2) 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;
- (3) The conviction or guilty plea was set aside pursuant to law; or,
- (4) 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.

Effective: 08/01/2017
Five Year Review (FYR) Dates: 05/04/2017 and 08/01/2022

CERTIFIED ELECTRONICALLY

Certification

07/11/2017

Date

Promulgated Under: 119.03
Statutory Authority: 173.01, 173.02, 173.38, 173.391, 173.392; Sections 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016; 45 C.F.R. 1321.11 (October, 2016 edition).
Rule Amplifies: 109.572, 173.38; 42 C.F.R. 460.68(a), 460.71(b)(1), 460.71(b)(2) (November 15, 2016).
Prior Effective Dates: 173-41-01: 03/04/1997 (Emer.), 07/31/1997, 04/17/2003, 01/01/2008. 173-9-01: 02/15/2009, 08/11/2011. 173-9-07: 01/01/2013, 04/01/2014, 02/01/2015.