



## Ohio Administrative Code

### Rule 5139-37-05 Personnel.

Effective: February 1, 2019

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(A) The following standards are mandatory:

(1) A detention center shall follow the bureau of criminal identification (BCII) and investigation process to conduct a criminal records check with respect to any prospective employee who has applied to the detention center for appointment or employment.

(2) The detention center shall inform each prospective employee at the time of initial application, that as a precondition to being approved for that position:

(a) The person is required to complete the BCII prescribed criminal records check form and provide a set of fingerprint impressions; and

(b) A criminal records check is required to be conducted by BCII.

(c) A test for illegal drug use shall be completed.

(3) A detention center shall document that any person hired after October 29, 1993 as director, child care staff, caseworker, or in any other position responsible for a child's care in out-of-home care shall not have been convicted of or pleaded guilty to any of the offenses listed in paragraph (A)(4)(a) of this rule.

(4) Except as provided in paragraph (A)(5) of this rule, a detention center shall not, as of October 29, 1993, hire a prospective employee as director, child care staff, caseworker, or in any other position responsible for a child's care in out-of-home-care if the person has been convicted of or pleaded guilty to any of the following offenses:

(a) A violation of section 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter), 2903.11 (felonious assault), 2903.12 (aggravated



assault), 2903.13 (assault), 2903.16 (failing to provide for a functionally impaired person), 2903.21 (aggravated menacing), 2903.34 (patient abuse or neglect), 2905.01 (kidnapping), 2905.02 (abduction), 2905.05 (criminal child enticement), 2905.32 (trafficking in persons), 2907.02 (rape), 2907.03 (sexual battery), 2907.04 (unlawful sexual conduct with a minor), 2907.05 (gross sexual imposition), 2907.06 (sexual imposition), 2907.07 (importuning), 2907.08 (voyeurism), 2907.09 (public indecency), 2907.21 (compelling prostitution), 2907.22 (promoting prostitution), 2907.23 (procuring), 2907.25 (prostitution - after positive HIV test), 2907.31 (disseminating matter harmful to juveniles), 2907.32 (pandering obscenity), 2907.321 (pandering obscenity involving a minor), 2907.322 (pandering sexually oriented matter involving a minor), 2907.323 (illegal use of minor in nudity-oriented material performance), 2911.01 (aggravated robbery), 2911.02 (robbery), 2911.11 (aggravated burglary), 2911.12 (burglary), 2919.12 (unlawful abortion), 2919.22 (endangering children), 2919.24 (contributing to unruliness or delinquency of a child), 2919.25 (domestic violence), 2923.12 (carrying concealed weapons), 2923.13 (having weapons while under disability), 2923.161 (improperly discharging firearm at or into a habitation, in a school safety zone, or with intent to cause harm or panic to persons in a school building or at a school function), 2925.02 (corrupting another with drugs), 2925.03 (trafficking, aggravated trafficking in drugs), 2925.04 (illegal manufacture of drugs - illegal cultivation of marihuana - methamphetamine offenses), 2925.05 (funding, aggravated funding of drug or marihuana trafficking), 2925.06 (illegal administration or distribution of anabolic steroids), or 3716.11 (placing harmful or hazardous objects in food or confection) of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 (interference with custody) of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of section 2925.11 (possession of controlled substances) of the Revised Code that is not a minor drug possession offense, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former law of this state that is substantially equivalent to any of the offenses listed in paragraph (A)(4)(a) of this rule.

(5) A prospective employee convicted of or who has pleaded guilty to an offense listed in paragraph (A)(4)(a) of this rule may be hired by a detention center as a director, child care staff or caseworker, or in any other position responsible for a child's care in out-of-home care only if the following conditions have been met:



- (a) Where the offense was a misdemeanor, or would have been a misdemeanor if conviction had occurred under the current criminal code, at least three years have elapsed from the date the prospective employee was fully discharged from any imprisonment or probation arising from the conviction. A prospective employee who has had a misdemeanor record of conviction sealed by a court pursuant to section 2953.32 of the Revised Code shall be considered to have met this condition.
- (b) Where the offense was a felony, at least ten years have elapsed since the person was fully discharged from imprisonment or probation.
- (c) The victim of the offense was not one of the following:
- (i) A person under the age of eighteen.
  - (ii) A person with a developmental disability as defined in division (Q) of section 5123.01 of the Revised Code.
  - (iii) A developmentally disabled person as defined in division (Q) and (R) of section 5123.01 of the Revised Code.
  - (iv) A person with a mental illness as defined in division (A) of section 5122.01 of the Revised Code.
  - (v) A person sixty years of age or older.
- (d) Hiring the prospective employee will not jeopardize in any way the health, safety or welfare of the children the agency serves. The following factors shall be considered in determining whether to hire the prospective employee:
- (i) The person's age at the time of the offense.
  - (ii) The nature and seriousness of the offense.



- (iii) The circumstances under which the offense was committed.
  - (iv) The degree to which the person participated in the offense.
  - (v) The time elapsed since the person was fully discharged from imprisonment or probation.
  - (vi) The likelihood that the circumstances leading to the offense will recur.
  - (vii) Whether the person is a repeat offender.
  - (viii) The person's employment record.
  - (ix) The person's efforts at rehabilitation and the results of those efforts.
  - (x) Whether any criminal proceedings are pending against the person.
  - (xi) Whether the person has been convicted of or pleaded guilty to a felony contained in the Revised Code that is not listed in paragraph (A)(4)(a) of this rule, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filed.
  - (xii) Any others factors the PCSA, PCPA, PNA considers relevant.
- (6) It is the prospective employee's duty to provide written verification that the conditions specified in paragraph (A)(5) of this rule are met. If the prospective employee fails to provide such proof or if the detention center determines that the proof offered by the prospective employee is inconclusive or insufficient, the person shall not be hired. Any doubt shall be resolved in favor of protecting the children the detention center serves.
- (7) To determine whether a prospective employee is qualified to be hired pursuant to paragraph (A)(4)(a) of this rule, a criminal records check shall be conducted pursuant to this rule.
- (8) A detention center may conditionally hire a prospective employee until the criminal records check required by this rule is completed and the detention center receives the results of the criminal



record check, if the prospective employee submits to the detention center a signed statement attesting that the prospective employee has not been convicted of or pleaded guilty to any offense listed in paragraph (A)(15)(a) of this rule. If the results of the criminal record check indicate that the person does not qualify for employment, the detention center shall release the person from employment.

(9) The provisions of paragraph (A)(5) of this rule must be considered for any prospective employee who has been convicted of, or pleaded guilty to, one or more of the offenses listed in paragraph (A)(4)(a) of this rule even if the person's record has been sealed by a court pursuant to section 2953.32 of the Revised Code because the information contained in the sealed record bears a direct and substantial relationship to the care of children who may be entrusted to the person's care.

(10) A conviction of, or plea of guilty to, an offense listed in paragraph (A)(4)(a) of this rule shall not prevent a prospective employee's hire if the person has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code or the conviction or guilty plea has been set aside pursuant to law. "Unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.

(11) Current employees suspected of involvement in any of the offenses listed in paragraph (A)(4)(a) of this rule shall be removed from contact with residents until the public children services agency or law enforcement agency has completed its investigation and has made applicable recommendations.

(12) A detention center shall assure that all staff hired or who are under any personal service contract who are required by law to possess any professional licensure or certification are so licensed or certified.

(13) Each detention facility shall have a written ethics policy that complies with the rules and regulations of the Ohio ethics commission.

(B) The following standards are recommended:

(1) Each detention center shall have written policies and procedures concerning personnel matters. The policies and procedures shall be approved by the parent agency and be available to all employees.



- (2) Written policy and procedure provide for provisional appointment to ensure the availability of personnel for short-term, full-time or part-time work in an emergency situation.
  
- (3) Written policy and procedure provide for a written annual performance evaluation of all employees, which is based on defined criteria and is reviewed and discussed with the employee.
  
- (4) Written policy and procedure provide for a current, accurate, and confidential personnel record for each employee; confidentiality is ensured by restricting its availability to only the employee who is the subject of the record and to other detention center employees who have a need for the record in the performance of their duties. A written procedure exists whereby the employee can challenge information in his or her personnel file and have it corrected or removed if it proves to be inaccurate.
  
- (5) There is a written employee grievance procedure, which is available to all employees.