



## Ohio Revised Code

### Section 173.27 Criminal records check of ombudsman applicants.

Effective: October 17, 2019

Legislation: House Bill 166 - 133rd General Assembly

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(A) As used in this section:

(1) "Applicant" means a person who is under final consideration for employment by a responsible party in a full-time, part-time, or temporary position that involves providing ombudsman services to residents and recipients. "Applicant" includes a person who is under final consideration for employment as the state long-term care ombudsman or the head of a regional long-term care ombudsman program. "Applicant" does not include a person seeking to provide ombudsman services to residents and recipients as a volunteer without receiving or expecting to receive any form of remuneration other than reimbursement for actual expenses.

(2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(3) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.

(4) "Employee" means a person employed by a responsible party in a full-time, part-time, or temporary position that involves providing ombudsman services to residents and recipients. "Employee" includes the person employed as the state long-term care ombudsman and a person employed as the head of a regional long-term care ombudsman program. "Employee" does not include a person who provides ombudsman services to residents and recipients as a volunteer without receiving or expecting to receive any form of remuneration other than reimbursement for actual expenses.

(5) "Responsible party" means the following:

(a) In the case of an applicant who is under final consideration for employment as the state long-term care ombudsman or the person employed as the state long-term care ombudsman, the director of aging;



(b) In the case of any other applicant who is under final consideration for employment with the state long-term care ombudsman program or any other employee of the state long-term care ombudsman program, the state long-term care ombudsman;

(c) In the case of an applicant who is under final consideration for employment with a regional long-term care ombudsman program (including as the head of the regional program) or an employee of a regional long-term care ombudsman program (including the head of a regional program), the regional long-term care ombudsman program.

(B) A responsible party may not employ an applicant or continue to employ an employee in a position that involves providing ombudsman services to residents and recipients if any of the following apply:

(1) A review of the databases listed in division (D) of this section reveals any of the following:

(a) That the applicant or employee is included in one or more of the databases listed in divisions (D)(1) to (5) of this section;

(b) That there is in the state nurse aide registry established under section 3721.32 of the Revised Code a statement detailing findings by the director of health that the applicant or employee abused, neglected, or exploited a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(c) That the applicant or employee is included in one or more of the databases, if any, specified in rules adopted under this section and the rules prohibit the responsible party from employing an applicant or continuing to employ an employee included in such a database in a position that involves providing ombudsman services to residents and recipients.

(2) After the applicant or employee is provided, pursuant to division (E)(2)(a) of this section, a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard impression sheet prescribed pursuant to division (C)(2) of that section, the applicant or employee fails to complete the form or provide the applicant's or employee's fingerprint impressions



on the standard impression sheet.

(3) Unless the applicant or employee meets standards specified in rules adopted under this section, the applicant or employee is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(C) A responsible party or a responsible party's designee shall inform each applicant of both of the following at the time of the applicant's initial application for employment in a position that involves providing ombudsman services to residents and recipients:

(1) That a review of the databases listed in division (D) of this section will be conducted to determine whether the responsible party is prohibited by division (B)(1) of this section from employing the applicant in the position;

(2) That, unless the database review reveals that the applicant may not be employed in the position, a criminal records check of the applicant will be conducted and the applicant is required to provide a set of the applicant's fingerprint impressions as part of the criminal records check.

(D) As a condition of any applicant's being employed by a responsible party in a position that involves providing ombudsman services to residents and recipients, the responsible party or designee shall conduct a database review of the applicant in accordance with rules adopted under this section. If rules adopted under this section so require, the responsible party or designee shall conduct a database review of an employee in accordance with the rules as a condition of the responsible party continuing to employ the employee in a position that involves providing ombudsman services to residents and recipients. A database review shall determine whether the applicant or employee is included in any of the following:

(1) The excluded parties list system that is maintained by the United States general services administration pursuant to subpart 9.4 of the federal acquisition regulation and available at the federal web site known as the system for award management;

(2) The list of excluded individuals and entities maintained by the office of inspector general in the



United States department of health and human services pursuant to section 1128 of the "Social Security Act," 94 Stat. 2619 (1980), 42 U.S.C. 1320a-7, as amended, and section 1156 of the "Social Security Act," 96 Stat. 388 (1982), 42 U.S.C. 1320c-5, as amended;

(3) The registry of developmental disabilities employees established under section 5123.52 of the Revised Code;

(4) The internet-based sex offender and child-victim offender database established under division (A)(11) of section 2950.13 of the Revised Code;

(5) The internet-based database of inmates established under section 5120.66 of the Revised Code;

(6) The state nurse aide registry established under section 3721.32 of the Revised Code;

(7) Any other database, if any, specified in rules adopted under this section.

(E)(1) As a condition of any applicant's being employed by a responsible party in a position that involves providing ombudsman services to residents and recipients, the responsible party or designee shall request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of the applicant. If rules adopted under this section so require, the responsible party or designee shall request that the superintendent conduct a criminal records check of an employee at times specified in the rules as a condition of the responsible party continuing to employ the employee in a position that involves providing ombudsman services to residents and recipients. However, the responsible party or designee is not required to request the criminal records check of the applicant or employee if the responsible party is prohibited by division (B)(1) of this section from employing the applicant or continuing to employ the employee in a position that involves providing ombudsman services to residents and recipients. If an applicant or employee for whom a criminal records check request is required by this section does not present proof of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the superintendent has requested information about the applicant or employee from the federal bureau of investigation in a criminal records check, the responsible party or designee shall request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check. Even if an



applicant or employee for whom a criminal records check request is required by this section presents proof of having been a resident of this state for the five-year period, the responsible party or designee may request that the superintendent include information from the federal bureau of investigation in the criminal records check.

(2) A responsible party or designee shall do all of the following:

(a) Provide to each applicant and employee for whom a criminal records check request is required by this section a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a standard impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Obtain the completed form and standard impression sheet from the applicant or employee;

(c) Forward the completed form and standard impression sheet to the superintendent.

(3) A responsible party shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check the responsible party or the responsible party's designee requests under this section. The responsible party may charge an applicant a fee not exceeding the amount the responsible party pays to the bureau under this section if the responsible party or designee notifies the applicant at the time of initial application for employment of the amount of the fee.

(F)(1) A responsible party may employ conditionally an applicant for whom a criminal records check is required by this section prior to obtaining the results of the criminal records check if both of the following apply:

(a) The responsible party is not prohibited by division (B)(1) of this section from employing the applicant in a position that involves providing ombudsman services to residents and recipients;

(b) The responsible party or designee requests the criminal records check in accordance with division (E) of this section before conditionally employing the applicant.

(2) A responsible party shall terminate the employment of an applicant employed conditionally under



division (F)(1) of this section if the results of the criminal records check, other than the results of any request for information from the federal bureau of investigation, are not obtained within the period ending sixty days after the date the request for the criminal records check is made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, the responsible party shall terminate the applicant's employment unless the applicant meets standards specified in rules adopted under this section that permit the responsible party to employ the applicant and the responsible party chooses to employ the applicant. Termination of employment under this division shall be considered just cause for discharge for purposes of division (D)(2) of section 4141.29 of the Revised Code if the applicant makes any attempt to deceive the responsible party or designee about the applicant's criminal record.

(G) The report of any criminal records check conducted pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

- (1) The applicant or employee who is the subject of the criminal records check or the applicant's or employee's representative;
- (2) The responsible party or designee;
- (3) In the case of a criminal records check conducted for an applicant who is under final consideration for employment with a regional long-term care ombudsman program (including as the head of the regional program) or an employee of a regional long-term care ombudsman program (including the head of a regional program), the state long-term care ombudsman or a representative of the office of the state long-term care ombudsman program who is responsible for monitoring the regional program's compliance with this section;
- (4) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following:
  - (a) A denial of employment of the applicant or employee;



(b) Employment or unemployment benefits of the applicant or employee;

(c) A civil or criminal action regarding the medicaid program or a program the department of aging administers.

(H) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an applicant or employee who a responsible party employs in a position that involves providing ombudsman services to residents and recipients, all of the following shall apply:

(1) If the responsible party employed the applicant or employee in good faith and reasonable reliance on the report of a criminal records check requested under this section, the responsible party shall not be found negligent solely because of its reliance on the report, even if the information in the report is determined later to have been incomplete or inaccurate.

(2) If the responsible party employed the applicant in good faith on a conditional basis pursuant to division (F) of this section, the responsible party shall not be found negligent solely because it employed the applicant prior to receiving the report of a criminal records check requested under this section.

(3) If the responsible party in good faith employed the applicant or employee because the applicant or employee meets standards specified in rules adopted under this section, the responsible party shall not be found negligent solely because the applicant or employee has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(I) The state long-term care ombudsman may not act as the director of aging's designee for the purpose of this section. The head of a regional long-term care ombudsman program may not act as the regional program's designee for the purpose of this section if the head is the employee for whom a database review or criminal records check is being conducted.

(J) The director of aging shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section.



(1) The rules may do the following:

(a) Require employees to undergo database reviews and criminal records checks under this section;

(b) If the rules require employees to undergo database reviews and criminal records checks under this section, exempt one or more classes of employees from the requirements;

(c) For the purpose of division (D)(7) of this section, specify other databases that are to be checked as part of a database review conducted under this section.

(2) The rules shall specify all of the following:

(a) The procedures for conducting database reviews under this section;

(b) If the rules require employees to undergo database reviews and criminal records checks under this section, the times at which the database reviews and criminal records checks are to be conducted;

(c) If the rules specify other databases to be checked as part of the database reviews, the circumstances under which a responsible party is prohibited from employing an applicant or continuing to employ an employee who is found by a database review to be included in one or more of those databases;

(d) Standards that an applicant or employee must meet for a responsible party to be permitted to employ the applicant or continue to employ the employee in a position that involves providing ombudsman services to residents and recipients if the applicant or employee is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.